

Miscellaneous Evidence Issues and Small Group Workshops



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UNC School of Government

Advanced Criminal Evidence for Superior Court Judges

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Rules 401 and 403: Relevance and Prejudice Balancing

- Rule 401. Definition of "relevant evidence."
- **"Relevant evidence"** means evidence having **any tendency** to make the existence of **any fact** that is **of consequence to the determination of the action more probable or less probable** than it would be without the evidence.

Rules 401 and 403: Relevance and Prejudice Balancing

- Rule 403. **Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.**
- Although relevant, evidence may be excluded if its **probative value is substantially outweighed** by the **danger of unfair prejudice**, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Andrew v. White, 604 U. S. _____ (2025)

- D on trial for murder of her husband
- Prosecution presented extensive evidence about her sex life:
 - Her sexual partners going back two decades
 - Two witnesses take stand solely to discuss her provocative clothing
 - Display of thong underwear D packed on trip to Mexico with her boyfriend (and co-D) after the murder
- Also presented evidence re: her failings as mother and wife



Rules 401 and 403: *Andrew v. White*

- Question was whether the evidence was so unduly prejudicial that it rendered the trial fundamentally unfair and violated the Due Process Clause



Bodycam and Evidence Issues

Body-Worn Camera (BWC) footage is becoming more and more common as law enforcement agencies adopt the technology



Evidence Issues with Bodycam

- Things can get tricky
- What evidence issues commonly arise?
 - Authentication?
 - Completeness?



Evidence Issues with Bodycam

- Hearsay issues?
 - What exceptions might apply?
 - (1) excited utterance, (2) present sense impression, (3) then existing mental, emotional or physical condition (Rule 803(1)-(3))
- Confrontation issues?
 - Ongoing emergency?
 - Or aftermath of incident?



Impeachment with Prior Conviction- Rule 609

- “What if any crimes punishable by 60 days or more have you been convicted of in the past 10 years?”
- “Other than Class 3 misdemeanors, what if any crimes have you been convicted of in the past 10 years?”
- “Weren’t you convicted of felony larceny in 2019?”
- Can also ask about sentence received, time and place of conviction



Rule 609

- Rule 609. Impeachment by evidence of conviction of crime.
 - (a) General rule. - For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited from the witness **or established by public record** during cross-examination or thereafter.
- Can prove up with judgment or electronic record- note difference with Rule 608- cannot use extrinsic evidence to prove up specific instance of conduct to attack credibility

Business Records: Custodians, Affidavits, Signed Certificates

Rule 803(6): Please Hold for the Next Available Representative...



March 13, 2018 [Jonathan Holbrook](#)

Print

A few weeks ago I participated in a seminar on digital evidence, and one of the topics we discussed was cell phone records (subscriber information, call detail records, historical location data, etc.). That's not surprising, since the widespread use of cell phones has made these records an increasingly common and important tool in criminal cases. Location data can help prove that the defendant was in the victim's house at the time of the murder, call logs can help prove the co-conspirators were in regular contact with each other, and so on.

What did surprise me was when I asked a group of 75+ prosecutors how often they have used an affidavit to authenticate these kinds of records and get them

Tweak to Business Records Hearsay Exception

- Amended Evid. R. 803(6) now allows business records to be authenticated by certification by custodian or witness if made on penalty of perjury
- May use in place of sworn affidavit or notarized document under seal
- Notice requirement: “advance notice” required -unclear exactly what is reasonable for time frame

State v. Graves, 907 S.E.2d 470 (2024)

Emails Definition Registered Email Addresses: Displays a list of registered email addresses. To "register" an address, it requires confirmation by the account holder.

Registered Email nolan.k.graves@gmail.com
100012076592150@facebook.com

Name Definition Name: Name provided by the account holder.
First: First name provided by the account holder.
Middle: Middle name provided by the account holder.
Last: Last name provided by the account holder.

Name First Jpc
Middle
Last Cartel

State v. Graves

Author Jpc Cartel (Facebook: 100012076592150)

Sent 2021-04-13 17:39:31 UTC

Body Lena morgan got me busted

Facebook Business Record

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Author Jpc Cartel (Facebook: 100012076592150)


Sent 2021-04-11 16:21:08 UTC

Body Got popped. Stay away from Mackenzie Morgan and lena morgan

Certificate of Authenticity of Domestic Records of Regularly Conducted Activity

I, Adeline Ballard, certify:

1. I am employed by Facebook, Inc. ("Facebook"), headquartered in Menlo Park, California. I am a duly authorized custodian of records for Facebook and am qualified to certify Facebook's domestic records of regularly conducted activity.
2. I have reviewed the records produced by Facebook in this matter in response to the Search Warrant received on May 13, 2021. The records include search results for Basic Subscriber Information, IP Address Logs, Messages, Photos, Transactional Information, Videos, Other Content and records for the account with identifier 100012076592150.
3. The records provided are an exact copy of the records that were made and kept by the automated systems of Facebook in the course of regularly conducted activity as a regular practice of Facebook. The records were saved in electronic format after searching Facebook's automated systems in accordance with the above-specified legal process. The records were made at or near the time the information was transmitted by the Facebook user.
4. I declare under penalty of perjury that the foregoing certification is true and correct to the best of my knowledge.



Adeline Ballard
Custodian of Records

Date: June 10, 2021

Choose your own adventure- Problems in small groups.

- Options:
 - Intro to Rules of Evidence, Rule 104(a) and (b)
 - Rule 403, *Old Chief* hypothetical
 - Relevancy questions
 - Character Evidence- case study and problems
 - Examination generally (direct, cross, rebuttal, opening the door)
 - Impeachment
 - Hearsay problems
 - Experts in Cases with Children- scenarios with testimony from real cases
 - Lay and Expert Opinion questions
 - Rape Shield fact pattern and questions





Questions