

Evidence chronology, Spring 2005. Professor Lewis.

Introduction

The criminal jury trial: a brief history of the early days

FRE 606(b)

Tanner v. United States

RELEVANCE

General principles and relevance

Probativeness and materiality

FRE 401 and 402

Probativeness

James: *Relevancy, Probability, and the Law*

Materiality

United States v. James

Conditional relevance

FRE 104(b)

Cox v. State

Probativeness versus the risk of unfair prejudice

FRE 403

Photos and other inflammatory evidence

State v. Bocharski

United States v. James

Excerpts from the ruling on the Fuhrman tapes

Evidence of flight

United States v. Myers

Probability evidence

People v. Collins

Effect of stipulations

United States v. Jackson

Old Chief v. United States

Order of proof, witness examination, rulings on evidence and exclusion of witnesses

FRE 103

FRE 611

FRE 615

Authentication, identification, and the “best evidence” rule

Authentication and identification

FRE 901 and 902

Documents

United States v. Stelmokas

Phone calls

People v. Lynes

“Rulings in Simpson trial fuel second-guessing”

Photographs

Simms v. Dixon

Wagner v. State

The “best evidence rule”

FRE 1001, 1002, 1003, and 1004

Seiler v. Lucasfilm

The specialized relevance rules

Subsequent remedial measures

FRE 407

Tuer v. McDonald

Compromise offers and payment of medical expenses

FRE 408 and 409

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

Litigants shouldn't be sorry for apologizing

Comparing rules 408 (compromise) and 409 (medical expenses)

Liability insurance

FRE 411

Williams v. McCoy

Diamond & Vidmar: *Jury Room Ruminations on Forbidden Topics*

Pleas in criminal cases

FRE 410

United States v. Biaggi

Character evidence

The character-propensity rule

FRE 404

People v. Zackowitz

The propensity box

Character evidence flowchart

Mendez: *Character Evidence Reconsidered*

Routes around the box

Proof of knowledge

Proof of motive

Proof of identity

United States v. Trenkler

United States v. Stevens

Narrative integrity (res gestae)

Absence of accident

Doctrine of chances

The Brides Case

Imwinkelried: *The Use of an Accused's Uncharged Misconduct*

Rothstein: *Intellectual Coherence in an Evidence Code*

The Huddleston standard

Huddleston v. United States

Propensity evidence in sexual assault cases

FRE 413, 414, and 415

Lannan v. State

State v. Kirsch

Floor statement of principal house sponsor

Report of the Judicial Conference

How far should we go?

Baker: *Once a Rapist? Motivational Evidence and Relevancy in Rape Law*

United States v. Guardia

United States v. Mound

Proof of the defendant's and the victim's character

FRE 404(a) and 405(a)

Michelson v. United States

Proof of defendant's and victim's character in civil cases

Perrin v. Anderson

SEC v. Towers Financial Corp.

Evidence of habit

FRE 406

Hallin v. Virginia Chemicals Inc.

Character for truthfulness

General principles

FRE 404(a)(3) and 608

Uviller: *Credence, Character, and the Rules of Evidence*

Impeachment evidence flow chart

Use of past convictions

FRE 609

The theory and history of rule 609

Uviller: *Credence, Character, and the Rules of Evidence*

Rule 609 and defendant testimony: historical prelude

Kalven, Jr., & Zeisel: *THE AMERICAN JURY*

Rule 609 in force

United States v. Brewer

United States v. Brackeen

Rule 609 issues on appeal

Wissler & Saks: *On the Inefficacy of Limiting Instructions*

Rehabilitation

Use of extrinsic evidence

IRE 609

Lewis: *Has the Idaho Supreme Court Rewritten the Law . . . ?*

The rape shield law

Historical backdrop

People v. Abbott

State v. Sibley

Wigmore: *A Treatise . . . on Evidence*

The shield law

Estrich: *Real Rape*

FRE 412

Colb: *"Whodunit" Versus "What Was Done"*

Galvin: *Shielding Rape Victims in the State and Federal Courts*

The law in force

Past sexual behavior with the accused

Explaining the source of physical evidence

Past allegedly false accusations

State v. Smith

404(b)-style uses of evidence of past sexual behavior

Proof of bias

Olden v. Kentucky

Boggs v. Collins

Narrative integrity (res gestae)

Stephens v. Miller

Defendant's state of mind

United States v. Knox

A glance at civil cases

“President's accuser may be questioned on her sexual past”

RELIABILITY

Competency of witnesses

Historical prelude: witness competency and the clash between North and South

FRE 601, 602, 603, and 610

Competency rules today

IRE 601

The rule against hearsay

Historical prelude

The trial of Sir Walter Raleigh

Defining hearsay

The basic rule

FRE 801(a)–(c) and 802

Defining assertions

Falknor: *The “Hear-Say” Rule as a “See-Do” Rule*

The nature of assertions

State v. Boehner (Idaho)

Hearsay evidence flowchart

Exceptions to the hearsay rule

Statements of party-opponents

The party's own words

FRE 801(d)(2)(A)

Adoptive admissions

FRE 801(d)(2)(B)

Statements of agents

FRE 801(d)(2)(C) and (D)

Mahlandt v. Wild Canid Survival & Research Center

Coconspirator's statements

FRE 801(d)(2)(E) and 104(a)

- Past statements of witnesses and past testimony
 - Introduction
 - Chart of past statements
 - Morgan: *Hearsay Dangers*
 - Inconsistent statements offered to impeach
 - FRE 613
 - United States v. Barrett*
 - United States v. Ince*
 - Fletcher v. Weir*
 - Hearsay: *Miranda* and silence
 - Inconsistent statements offered substantively
 - FRE 801(d)(1)(A)
 - Past consistent statements
 - FRE 801(d)(1)(B)
 - Tome v. United States*
 - Statements of identification
 - FRE 801(d)(1)(C)
 - Commonwealth v. Weichell*
 - United States v. Owens*
- Hearsay exceptions under rule 804: “declarant unavailable”
 - Past testimony
 - FRE 804(a) and 804(b)(1)
 - United States v. DiNapoli*
 - Lloyd v. American Export Lines, Inc.*
 - Statements against interest
 - FRE 804(b)(3)
 - Williamson v. United States*
 - Dying declarations
 - FRE 804(b)(2)
 - Shakespeare: *On Truth and Dying*
 - Shepard v. United States*
 - Liang: *Shortcuts to “Truth”*
 - Forfeiture by wrongdoing
 - FRE 804(b)(6)
 - United States v. Houlihan*
 - Public comments to FRE 804(b)(6)
- Hearsay exceptions under rule 803: “availability of declarant immaterial”
 - Present sense impressions and excited utterances
 - FRE 803(1) and (2)
 - Statements of then-existing condition
 - FRE 803(3)
 - Mutual Life Insurance Co. v. Hillmon*
 - Shepard v. United States*
 - Statements for medical diagnosis
 - FRE 803(4)

United States v. Iron Shell
Refreshing memory and recorded recollections
FRE 803(5) and 612
Johnson v. State
IRE 612
Business records
FRE 803(6) and (7)
Palmer v. Hoffman
United States v. Vigneau
Public records and reports
FRE 803(8) and (10)
Beech Aircraft Corp. v. Rainey
Police reports and business records
IRE 803(8)
Residual exception
FRE 807
Dallas County v. Commercial Union Assurance Co.
United States v. Laster
State v. Gray (Idaho)
State v. Ransom (Idaho)

Confrontation and compulsory process

The confrontation clause and hearsay
Mattox v. United States
The pre-*Roberts* era
Pointer v. Texas
California v. Green
Dutton v. Evans
The *Roberts* era
Ohio v. Roberts
United States v. Inadi
Maryland v. Craig
Idaho v. Wright
White v. Illinois
Lilly v. Virginia
The post-*Roberts* era
Crawford v. Washington
Three questions
Hearsay and confrontation flow chart
The trial of Sir Walter Raleigh
The *Bruton* doctrine
Bruton v. United States
Cruz v. New York
Gray v. Maryland
Compulsory process
Chambers v. Mississippi

Lay opinions and expert testimony

Lay opinions

FRE 701

United States v. Figueroa-Lopez

Expert testimony

Who qualifies as an expert?

FRE 702

United States v. Johnson

Jinro America Inc. v. Secure Investments, Inc.

(Im)proper topics of expert testimony

FRE 702 and 704

Matters of common knowledge

Opinions on law and opinions on ultimate issues

Hygh v. Jacobs

Opinions on credibility

State v. Batangan

Opinions on eyewitness identification

United States v. Hines

Proper bases of opinion testimony

FRE 703 AND 705

In re Melton

Assessing the reliability of expert scientific testimony

The doctrine

Frye v. United States

Daubert v. Merrell Dow Pharmaceuticals, Inc.

“Judge rules breast implant evidence invalid”

Haack: *An Epistemologist in the Bramble-Bush*

A focus on polygraph evidence

United States v. Crumby

Risinger: *Navigating Expert Reliability*

Saxe & Ben-Shakhar: *Admissibility of Polygraph Tests*

United States v. Scheffer

Assessing the reliability of non-scientific expertise

The doctrine

Kuhmo Tire Company v. Carmichael

Public comments to FRE 702

Saks: *The Aftermath of Daubert*

A focus on syndrome evidence

State v. Kinney

Grove & Barden: *Protecting the Integrity . . .*

State v. Konechny (Idaho)

PRIVILEGES

General privileges

FRE 501

Proposed 504

Jaffee v. Redmond

Proposed 506 and 511

Morales v. Portuondo

IRE 502, 505, 517, and 518

The lawyer-client privilege and the privilege against self-incrimination

Bentham: *Rationale of Judicial Evidence*

Scope of the lawyer-client privilege

Common elements of the professional privileges

The nature of legal services

FRE 503

People v. Gionis

Defining confidentiality

Blackmon v. State

Defining communications: source of fees and client's identity

In re Osterhoudt

Duration of the privilege

Swidler & Berlin v. United States

The crime-fraud exception

United States v. Zolin

Commonwealth v. Stockhammer

Government lawyers

In re Lindsey

Self-incrimination and the lawyer-client privilege

General principles

A guide through the doctrinal thicket

Fisher v. United States

The problem of use immunity

United States v. Doe

Use and transactional immunity

United States v. Hubbell

Familial privileges

The marital privileges

The spousal testimonial privilege

Tilton v. Beecher

Proposed FRE 505

Trammel v. United States

Overview of the two marital privileges

The marital confidenees privilege

United States v. Rakes

IRE 504

A parent-child privilege?

In re Grand Jury Proceedings

IRE 514

Other privileges

IRE 509: identity of informer privilege
IRE 519: licensed social worker-client privilege

OTHER TOPICS

Presumptions

FRE 301 and 302

IRE 301 and 303

State v. Hebner (Idaho)

Sandstrom v. Montana

Judicial notice

FRE 201

IRCP 44(d)

United States v. Gould

United States v. Lewis

United States v. Bowers

United States v. Bello