



**FEDERAL PUBLIC
DEFENDER**
— District of Nevada —

The Busy Lawyer's Guide to Objections

Rene L. Valladares, Federal Public Defender, District of Nevada

A Defender's Guide to Federal Evidence

A Trial Practice Handbook for Criminal Defense Attorneys



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This Guide to Federal Evidence is the only federal evidence handbook written exclusively for criminal defense lawyers. The Guide analyzes each Federal Rule of Evidence and outlines the main evidentiary issues that confront criminal defense lawyers. It also summarizes countless defense favorable cases and provides tips on how to avoid common evidentiary pitfalls. The Guide contains multiple user-friendly flowcharts aimed at helping the criminal defense lawyer tackle evidence problems. A Defender's Guide to Federal Evidence is an indispensable tool in preparing a case for trial, and an invaluable resource during trial.

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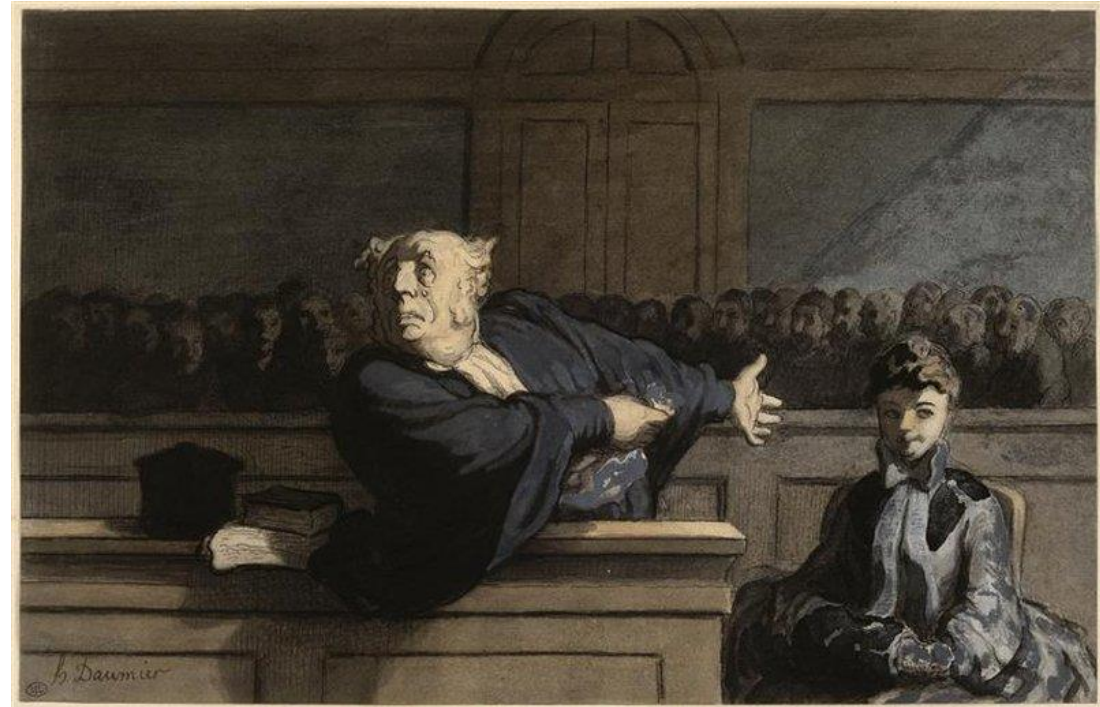
Approach to Objections

- A. The law of preservation-**FRE 103**
- B. Objections procedure
- C. Objections to form
- D. Objections to substance



Framework

- We will review the top 20 objections
- Top 10 form objections
- Top 10 content objections
- We will discuss:
 - 1) FRE
 - 2) Examples
 - 3) Practice tips



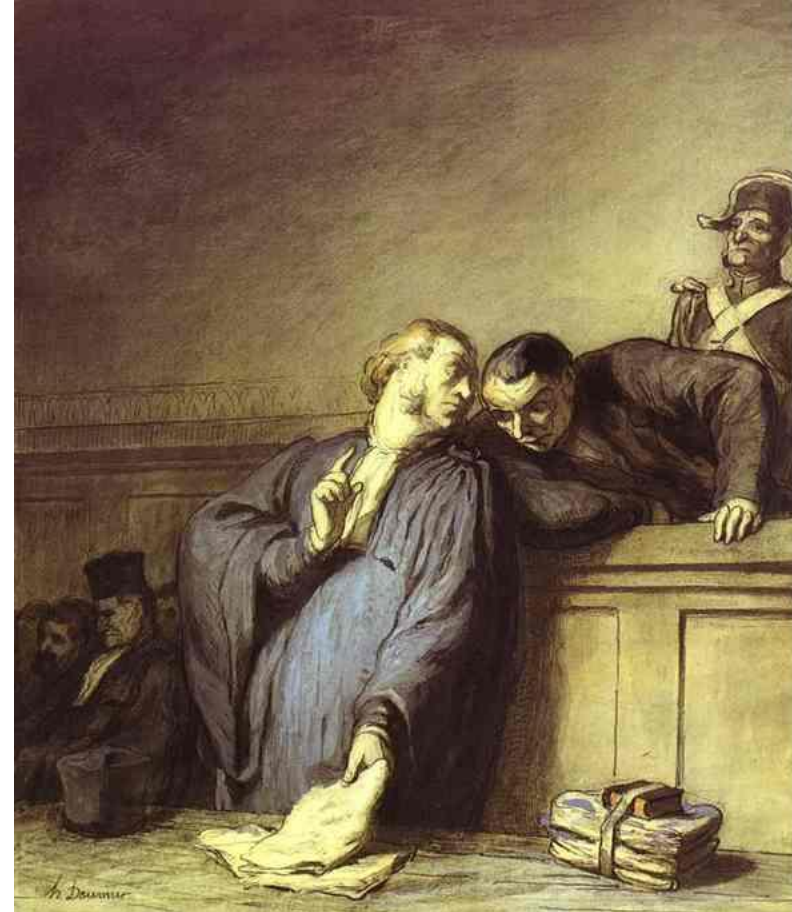
Approach to Objections

- A. The law of objections-
FRE 103
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Preservation-FRE 103(a)

- A party might claim error in a ruling...**only if the error affects a substantial right** and:
 - (1) if the ruling admits evidence, a party on the record:
 - (A) timely objects or moves to strike; and
 - (B) states the specific ground, unless it was apparent from the context



Preservation-FRE 103(a)

- A party might claim error in a ruling...**only** if the error affects a substantial right and:
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context



Renewing objections-FRE 103(b)

- Once the court rules **definitively** on the record-either before or at trial-a party need not renew an objection or offer of proof to preserve a claim of error for appeal



Preventing jury from hearing inadmissible E-FRE 103(d)

- Court must conduct trial so that inadmissible E is not suggested to jury by any means



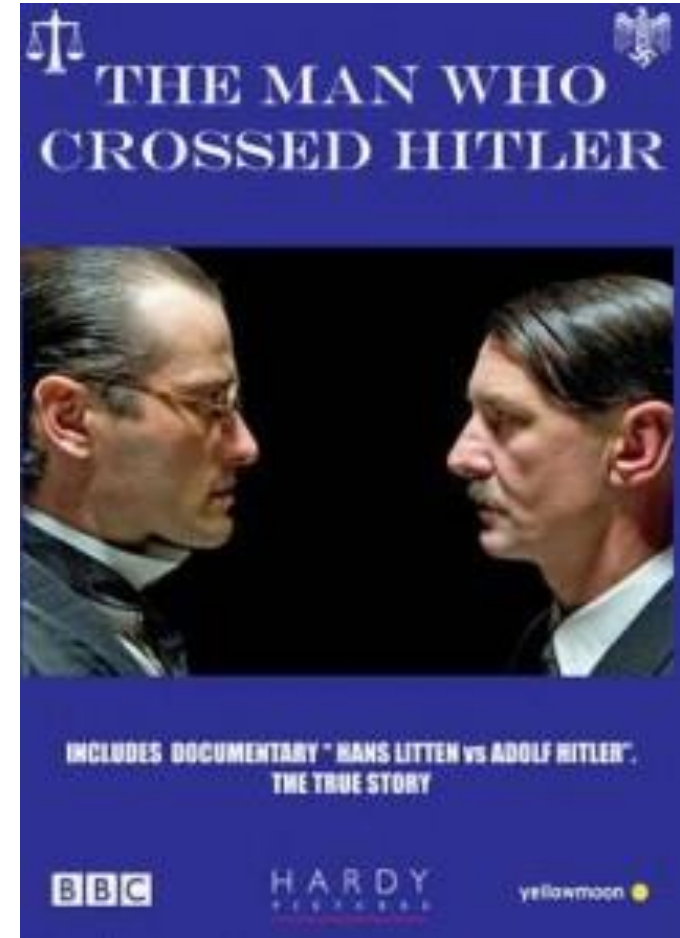
Taking notice of plain error- 103(e)

- A court may take notice of plain error affecting a substantial right, even if the claim of error is not properly preserved



Miscellaneous FREs

- **FRE 401**-Test for Relevant Evidence
- **FRE 403**-Excluding Evidence for Prejudice, Confusion, etc.
- **FRE 611**-Mode and Order of Examining W's



Approach to Objections

- A. The law-FRE 103
- B. Objections procedure
- C. Objections to form
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Objection sliding scale

- ❑ Objection
- ❑ Move to strike
- ❑ Request curative instruction
- ❑ Motion for mistrial



Approach to Objections

- A. The law-FRE 103
- B. Objections procedure
- C. Form objections
- D. Content objections





Objections to form

- ❑ Argumentative
- ❑ Asked and answered
- ❑ Assumes facts not in evidence
- ❑ Beyond the scope
- ❑ Compound question
- ❑ Cumulative
- ❑ Harassing W
- ❑ Leading
- ❑ Narrative
- ❑ Vague

Objection-Argumentative

- FRE 403, 611
- Objection. The question is argumentative
- Argumentative questions are not intended to elicit new information, instead, they are intended to argue to the jury through the W

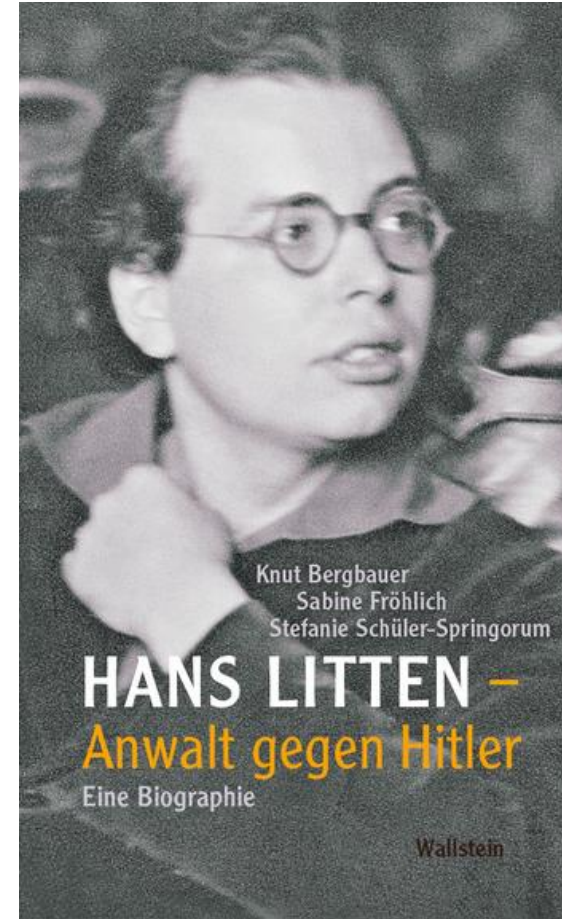


- **Examples:**
- “Do you mean to tell me that...”
- “Isn’t what you told this jury ridiculous?”
- “You wouldn't know the truth if it hit you in the head, would you?”
- Wasn’t it careless to leave the gun in a place accessible to a child?



Objection-Asked and answered

- FRE 403, 611
- **Objection.** The question has been asked and answered.
- Asked and answered questions are an attempt to emphasize the answer by repeating it.
- Form of the Q does not have to be identical to raise this objection.
- Objection applies if W has given A, or W stated they don't know A
- **Related objection: Cumulative**



Objection-Assumes facts not in evidence

- **FRE 403, 611**
- **Objection.** The question assumes facts that have not been introduced into E
- **Example:**
- When did you stop beating your wife?
- ABA Standards for Criminal Justice:
- “A prosecutor should not ask a question which implies the existence of a factual predicate for which a good faith belief is lacking.”
- U.S. v. Adair, 746 F.3d 260 (7th Cir. 2014) (government lacked good faith basis for believing defendant lied on tax and school aid forms; trial court erred by allowing prosecutor to ask a series of accusatory and prejudicial questions about them)

Objection-Beyond the scope

- FRE 611
- **Objection. Outside the scope of examination**
- **FRE 611** limits scope of cross-examination to subject matter of direct and matters relating to credibility of the W
- Scope of cross is **broadly defined** to encompass questions that challenge or explain the direct testimony (and conclusions and inferences drawn from testimony)
- **Note: right to test the W's:**
- Bias,
- Interest,
- Memory,
- Motivation
- Perception
- See, e.g.: *Davis v. Alaska*, 415 U.S. 308 (1974) (“The exposure of a W’s motivation...is a proper and important function of the constitutional protected right of cross-examination.”)

Objection-Beyond the scope (cont.)

- U.S. v. Muhamad Mahmoud Al-Farekh, 956 F.3d 99 (2d Cir. 2020) (undue limitation on cross-examination may violate confrontation clause **if it prevents defendant from exposing witness's biases, motivation or incentives for lying, or eliciting testimony relevant and material to the defense**)



Objection-Beyond the scope (cont.)

- According to **FRE 611**, a “court might allow inquiry into additional matters **as if on direct examination.**”
- When this happens, counsel must proceed through direct examination



Objection-Compound question

- FRE 403, 611
- **Objection. The question is compound**
- A question that contains two or more questions is improper
- “Wasn’t the fire truck driving westbound and flashing its lights?”
- “On that day, did you go to Target in the morning and Home Depot in the afternoon?”



Objection-Cumulative

- FRE 403, 611(a)
- **Objection.** Question calls for cumulative E
- A question is cumulative when its subject has been covered by other exhibits or witnesses



Objection-Harassing the W

- FRE 403, 611
- **Objection.** Counsel is harassing the W
- FRE 611(a) directs the court to protect W from harassment or undue embarrassment
- Examples:
- L repeatedly asks same questions, poses rudely phrased questions, uses sarcasm, yells at W



Objection-Leading

- **FRE 611(c)**
- **Objection. Counsel is leading the W**
- Leading Qs should not be used on direct examination. Ordinarily, courts allow leading questions:
 - (1) on cross-examination; and
 - (2) when a party calls a hostile W
- Other circumstances:
 - Subject of direct is preliminary/uncontested
 - W is having trouble understanding Qs
 - W is infirm
 - W is young

Objection-Leading (cont.)

- A leading Q is one that puts the desired answer in the mouth of the W by suggesting the answer
- **Examples:**
- At what time did you see Michael?
- vs.
- You saw Michael at 3:00 p.m., right?
- Did you see Michael at 3:00 p.m.?
- Are close-ended Qs inherently leading?
- A question calling for a 'yes' or 'no' answer is a leading question only if, **under the circumstances, it is obvious that the examiner is suggesting that the witness answer the question one way only, whether it be 'yes' or 'no.'**

Objection-Narrative

- FRE 403, 611
- **Objection.** The q calls for a narrative answer
- A question that is so general it provokes a rambling answer
- **Examples:**
- “Tell the jury how you went about investigating the case”
- “Tell us everything you did on that day”



Objection-Vague

- FRE 403, 611
- **Objection.** The question is vague
- A vague and ambiguous question is susceptible to several different interpretations:
- “When do you leave your house in the morning?”



Approach to Objections

- A. The law-FRE 103
- B. Objections procedure
- C. Objections to form
- D. Objections to content



Objections to content

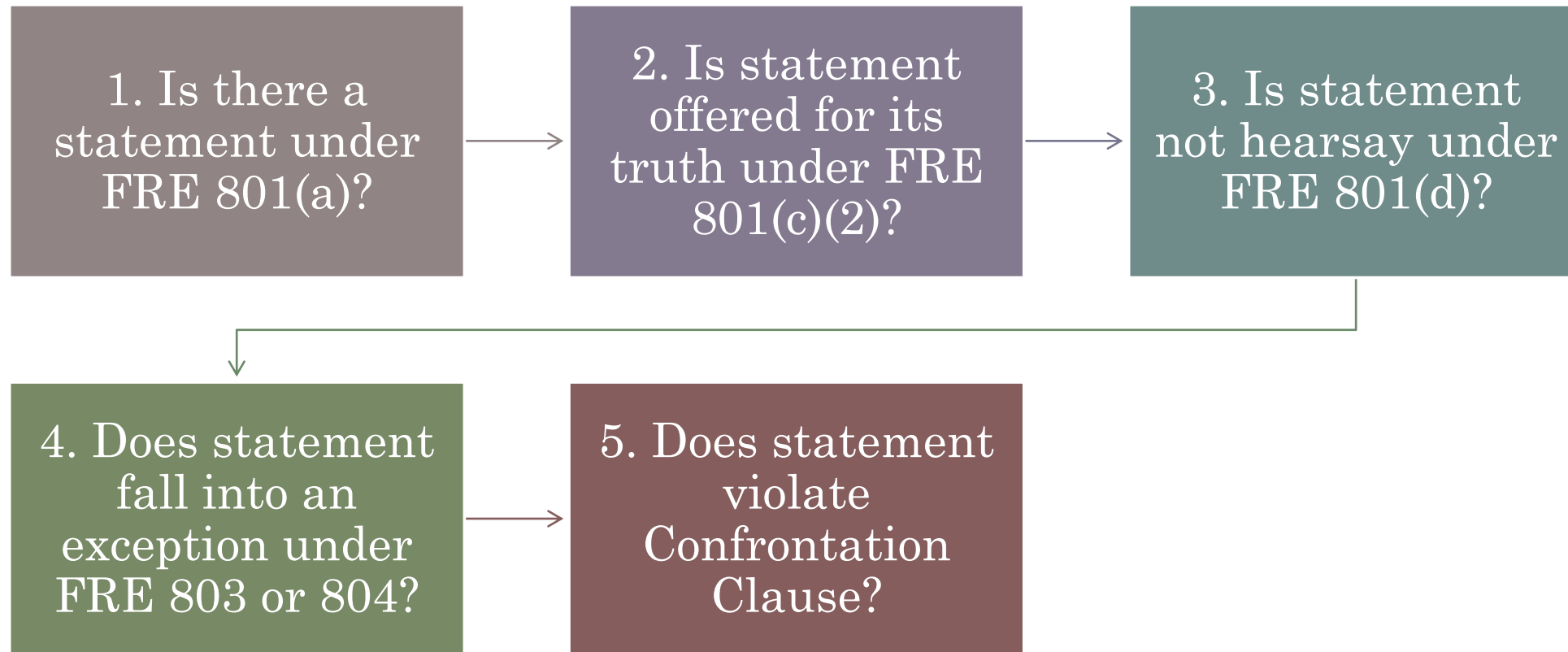
- ❑ Hearsay
- ❑ Improper argument
- ❑ Improper character E
- ❑ Improper opinion
- ❑ Irrelevant
- ❑ Lack of authentication
- ❑ Lacks personal knowledge
- ❑ Nonresponsive
- ❑ Prejudicial
- ❑ Speculation

Objection-Hearsay

- **Objection.** The question calls for hearsay
- Hearsay definition
- Hearsay exceptions
- Hearsay exclusions



Approach to Hearsay



Hearsay-Definition

FRE 801(c)

1. A declarant's
2. Out of court
3. Statement
4. Offered for the truth of the matter asserted

FRE 801(c)(1); FRE 801(c)(2)

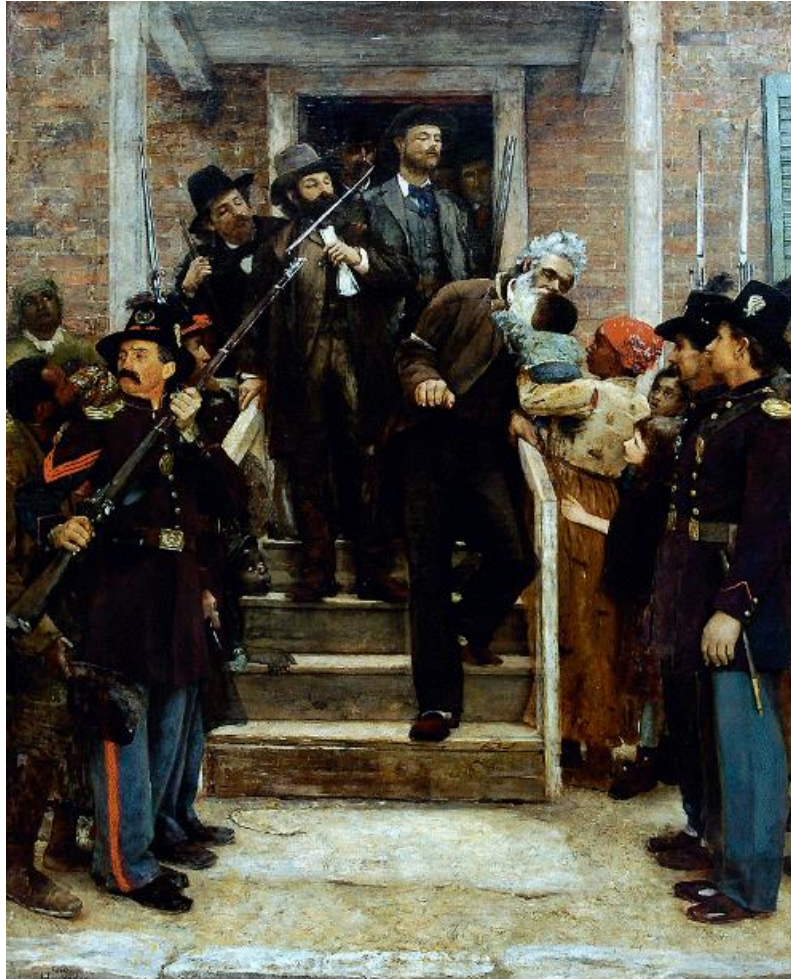


Not for Truth of the Matter Asserted- FRE 801(c)(2)

- **Course of investigation**
- Effect on hearer/reader
- Knowledge
- Impeachment



D. Favorable case: United States v. Becker, 230 F.3d 1224 (10th Cir. 2000)



Hearsay Exclusions: FRE 801(d)(2)- Opposing Party Statements

- FRE 801(d)(2)(A):
Personal statement
- FRE 801(d)(2)(B):
Adoptive statement
- FRE 801(d)(2)(C): By
authorized spokesperson
- FRE 801(d)(2)(D): By
agent/employee
- **FRE 801(d)(2)(E): By
co-conspirator**

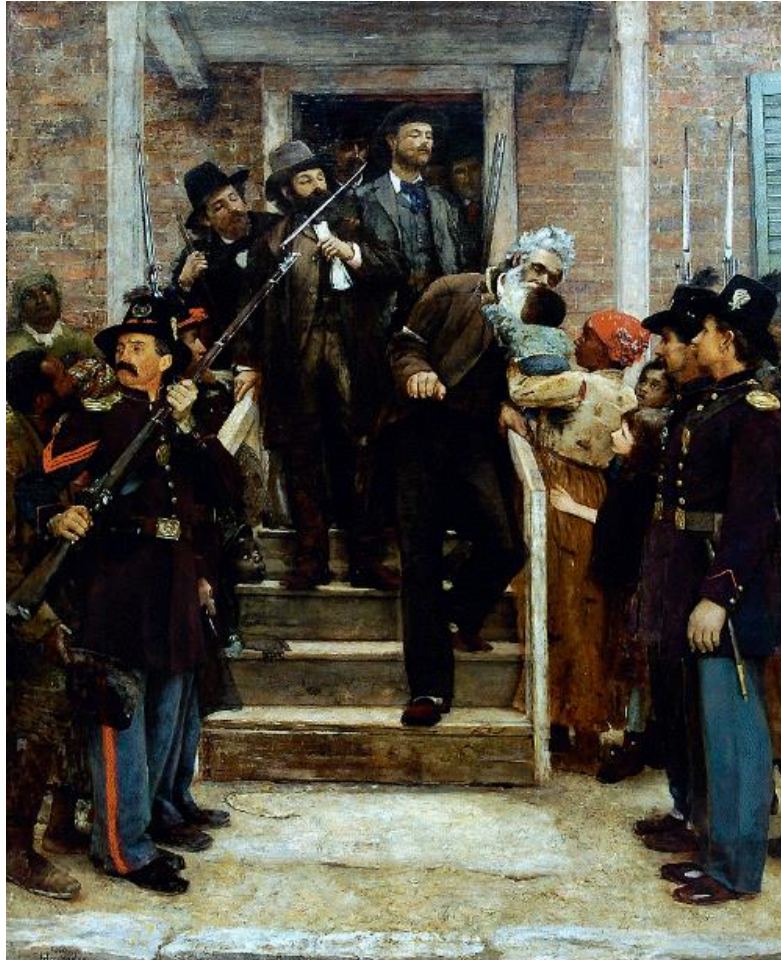


Furtherance of a Conspiracy

- Idle conversation is not sufficient.
- Casual conversation about past events **not** “in furtherance.”



**D Favorable case: United States v. Darwich, 337
F.3d 645 (6th Cir. 2003)**



Hearsay Exclusions: FRE 801(d)-Declarant-Witness Prior Statement

- FRE 801(d)(1)(A): Prior inconsistent statement given under penalty of perjury
- FRE 801(d)(1)(B): Prior consistent statement offered to rebut claim of recent fabrication
- FRE 801(d)(1)(C): Statement of **identification**



Hearsay Exceptions

- **FRE 803** – Availability of declarant **immaterial** (23)
- **FRE 804** – Declarant **must be unavailable** (5)



Hearsay Exceptions: FRE 803

Availability Immaterial

- ❑ FRE 803(1)-Present Sense Impression
- ❑ FRE 803(2)-Excited Utterance
- ❑ FRE 803(3)-State of Mind
- ❑ FRE 803(4)-Statements for Purposes of Medical Diagnosis
- ❑ FRE 803(6)-Business Records
- ❑ FRE 803(8)-Public Records
- ❑ FRE 803(7), (9)-Absence of Records
- ❑ FRE 803 (22)-Judgment of Conviction

FRE 803(1): Present Sense Impression

Present Sense Impression

1. Statement **describing event or condition**
 2. made **while or immediately after declarant perceived it**
- Statement must be **nearly contemporaneous** with incident
 - Statement **need not be startling**

FRE 803 (2): Excited Utterance

- 1. Statement relating to a **startling event or condition,**
- 2. Made while the declarant was under the **stress or excitement that it caused**



FRE 803(3): Then Existing Mental, Emotional, Condition (State of Mind)

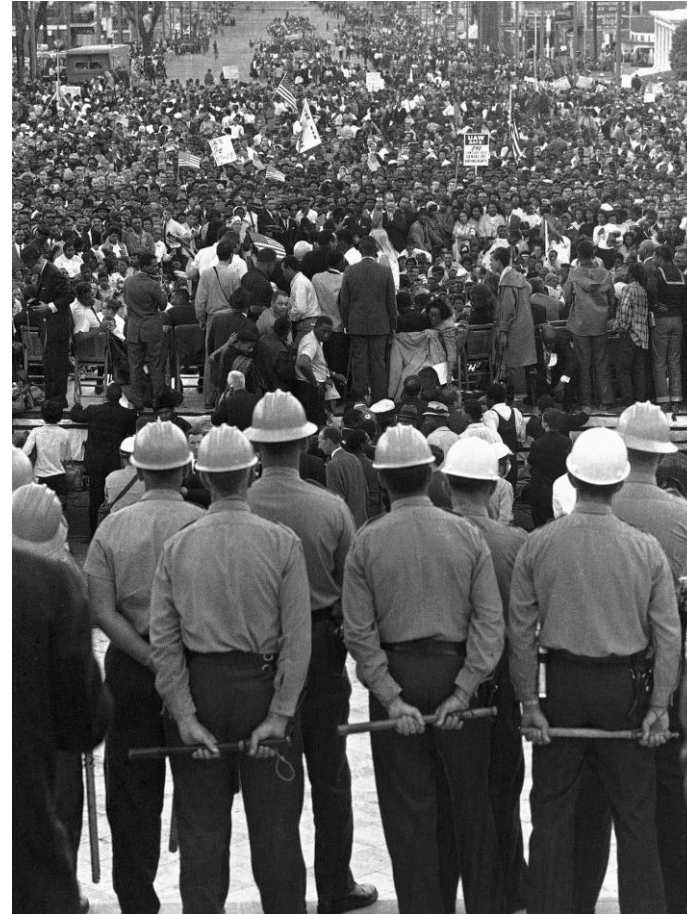
1. Statement describes state of mind (motive, intent, plan), or emotional/physical condition of declarant at time made

2. Does not include statement of memory or belief

- Such a statement might be introduced to prove that declarant acted in accordance with stated intent

Note: Statement of memory or belief excluded

- Statement of memory or belief excluded:
 - “I’m scared”: OK
 - “I’m scared because Joe Smith threatened me several days ago”: not OK



803(4): Statement for Purposes of Medical Diagnosis or Treatment

1. Statement is made for **medical diagnosis/treatment**
2. Statement would be **reasonably** relied upon by health care provider for treatment or diagnosis



Note: A statement that identifies perpetrator usually excluded

- Statement that assigns fault or identifies perpetrator usually excluded



FRE 803(6): Business Records

- 1. Record made at or near **the time**,
- 2. By, or from information transmitted by, **a person with knowledge**,
- 3. If kept in the course of a **regularly conducted business activity**,
- 4. **Regular practice** to keep such records

- 5. As shown by the testimony of the **custodian or other qualified witness**, or by certification
- 6. **Opponent does not show that source of information or method of preparation indicate lack of trustworthiness**

FRE 803(6): Business Records (cont.)

- **Cannot** be prepared in anticipation of litigation
- **Lookout** for hearsay within hearsay

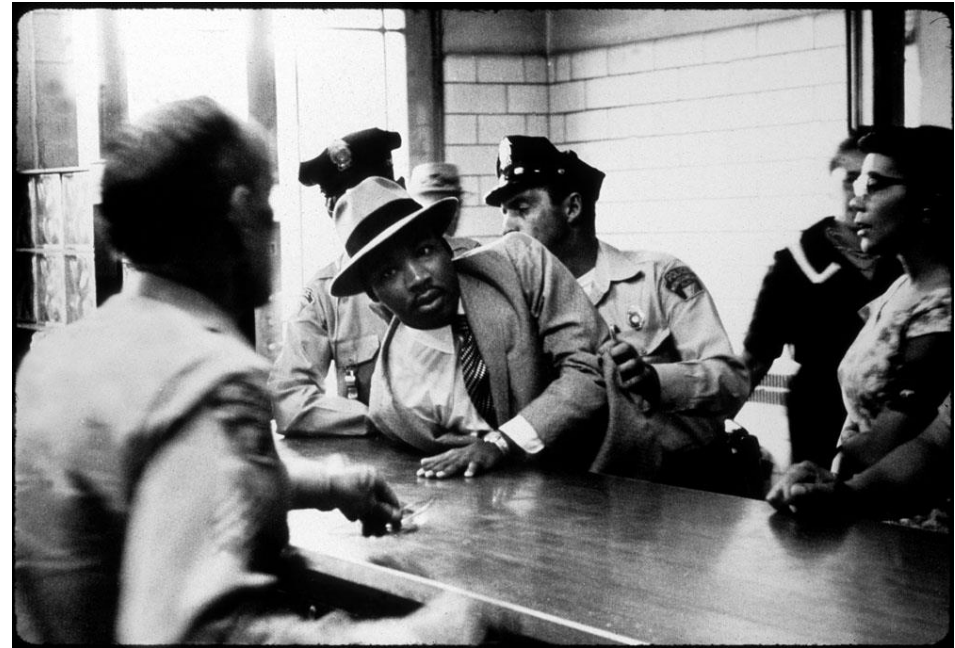


FRE 803(8): Public Records

- 1. Records setting forth activities of a public office or agency, or
 - 2. matters observed in the course of official duties
 - 3. **may be admitted unless opponent shows lack of trustworthiness**
- **Cannot** be prepared in anticipation of litigation
 - **Lookout** for hearsay within hearsay

Note: Law Enforcement Exclusion

- FRE 803 (8) bars the prosecution in a criminal case from introducing factual findings resulting from an investigation
- The defendant, however, can use these factual findings



FRE 803 (7), (10): Absence of Record

- Absence of entry may prove non-occurrence. FRE 803(7), (10).
- Unless opponent shows lack of trustworthiness
- Examples:
 - Failure to file tax return
 - Failure to obtain firearms license.
 - Certificate of non-existence of immigration records.

Date	Description	Amount	Other
145 179	Genl Charges to To Wm Smith for 1 Year Salary as Clerk 110 Dollars, equal to ...	41.5	
	" 8 Mo. Boarding himself ...	48 5	
113 99	Sundries to To Bar Iron Wm Mite for 2 ^o per haly ...	8	
	George Nixon for 7 ^o ...	2.4	
133 148	Cash rec. of Zimmerman for 17 ^o ...	5.8	8 8
117 140	Horse Provindure to To Thomas Braucher for 95 Bundles Straw ...		7 11
127 145	Frederick Nipple to To Genl Charges for 1 Bushel of wheat from Mite ...		4 6
145 119	Genl Charges to To Thomas Beale for 6 ^o Bushels of wheat ...		1 6
127 173	Wm Smith to To Cash paid him ...		5 8
	Sundries to To Bar Iron		
150	Robert Nelson for 60 ^o ...	1.0	0
80	Robert Irvine for 10 ^o ...	3.4	
150	Wm Beatty for 2 ^o 27 ^o ...	1.3	9
147	Frederick Nipple for 8 ^o ...	2.8	

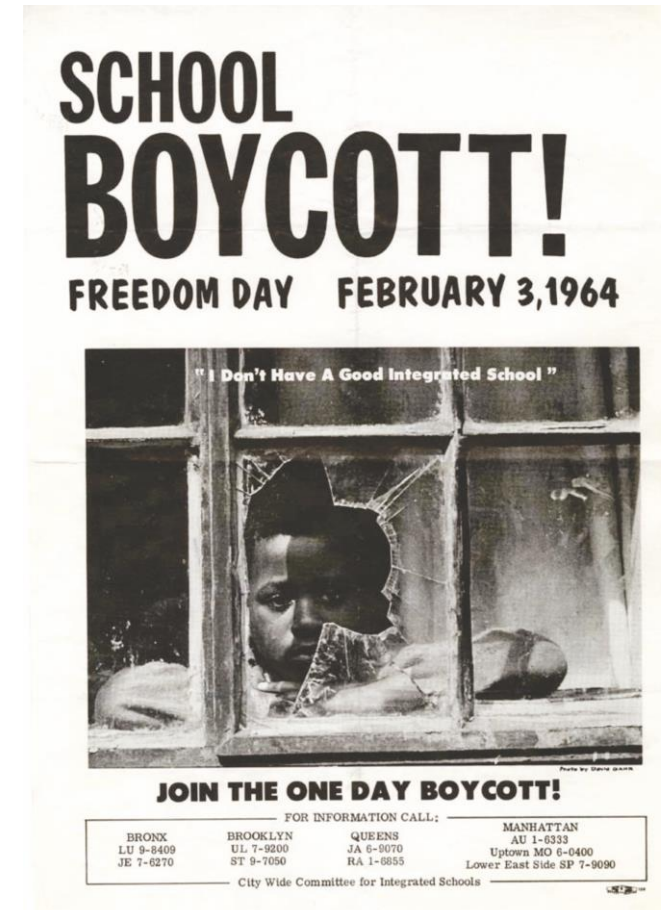
Hearsay Exceptions: FRE 804 Declarant Unavailable

- Dying Declaration-FRE 804(b)(2)
- Statement Against Interest-FRE 804(b)(3)



FRE 804(b)(2): Dying Declaration

- 1. Homicide case
- 2. Made while declarant believed death was imminent
- 3. Concerning cause of death



FRE 804 (b)(3): Statement Against Interest

- 1. Statement against interest
- 2. Contrary to declarant's pecuniary or proprietary
- 3. Subjects declarant to civil or criminal liability
- If declarant inculpated but offered to exculpate accused, need corroborating circumstances "clearly indicative of trustworthiness."

Compare:

Party Admissions

1. Must be made by the party against whom they are being used
2. Do not have to be against interest when made
3. Declarant can be available

Statement Against Interest

1. Can be made by anyone, party or not
2. Must be against interest when made
3. Declarant must be unavailable

FRE 806: Attacking and Supporting Declarant Credibility

- Hearsay or non-hearsay statements (such as co-conspirator statements) **can be attacked and supported like any other testimony**
- Party against whom offered may call declarant as witness and examine concerning statement as if on **CROSS**

Note

- A hearsay objection **will not preserve** a confrontation clause challenge



Objection-Improper Argument

- **FRE 403**

- **Opening Statement**

- ❑ Argumentative (only on closing argument)
- ❑ Discussing other side's evidence
- ❑ Giving personal opinion
- ❑ Golden rule
- ❑ Vouching

- **FRE 403**

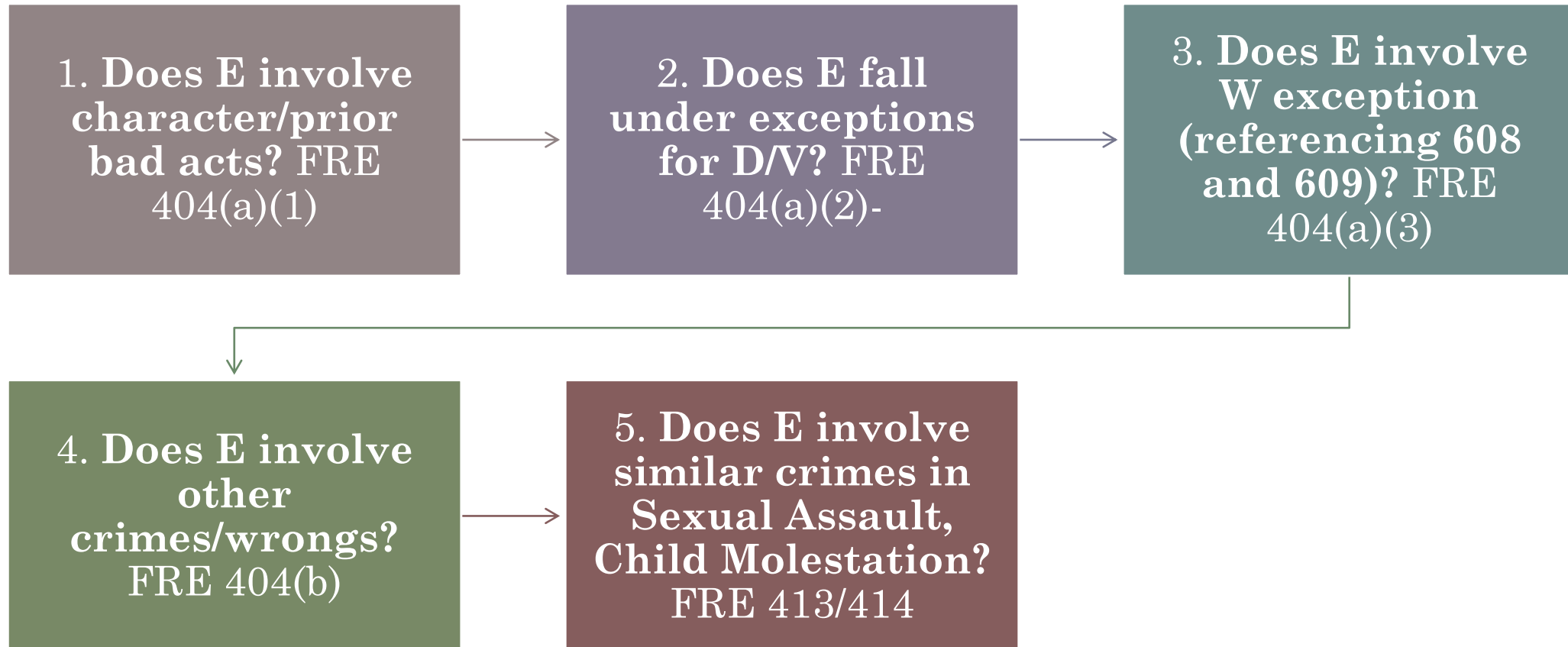
- **Closing Argument**

- ❑ Misstating evidence/law
- ❑ Giving personal opinion
- ❑ Golden rule
- ❑ Prejudicial arguments: “D will commit more crimes if released”
- ❑ Vouching

Objection-Improper character/ impeachment



Character and Prior Acts E Approach



FRE 404(a)-Propensity Prohibition

- **Objection:**
Improper character
E
- FRE 404(a)-Character not admissible to prove action in conformity
- FRE 404(b)(1)-propensity prohibition also applies to other crimes, wrongs, or acts



Exceptions for a D or V in a Criminal Case-FRE 404(a)(2)

- Evidence of D's character
- Evidence of V's character
- Prohibited Use of V's sexual behavior or disposition



2. Exceptions for a D or V in a Criminal Case-FRE 404(a)(2) (cont.)

- A. Evidence of D's good character
- B. G's right to rebut
- C. Evidence of V's character
- D. G's right to rebut
- E. G's right to rebut E that V was first aggressor (in homicide case)



Character of W- FRE 608(a)

- Only relevant character trait of a witness is **truthfulness or untruthfulness**
- E of truthful character of W only admissible **after character for truthfulness has been attacked**



FRE 609-Impeachment by E of Criminal Conviction

- **FRE 609** allows a party to attack a W's credibility by E of prior conviction
- **Drivers:**
 - ❑ What type of case is it? (Is dishonesty involved)
 - ❑ Is the W the D?
 - ❑ How much time has passed since conviction/release?
 - ❑ Has the conviction been pardoned or annulled?
 - ❑ Was adjudication a juvenile one?

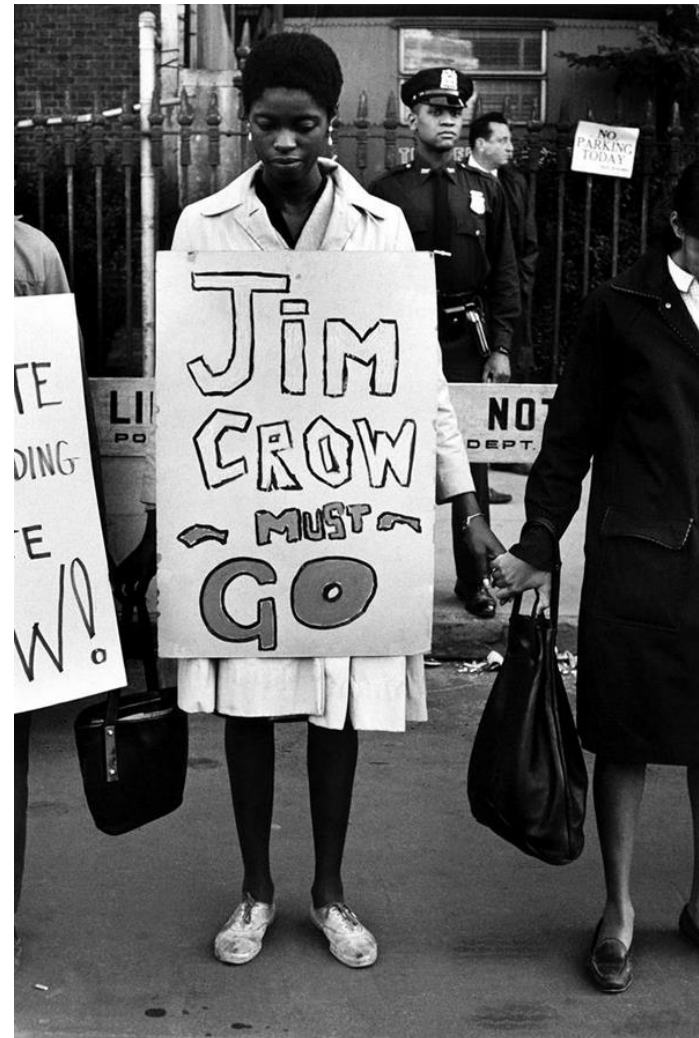
FRE 609(a)(2)-Dishonest act element of crime of conviction

- If dishonest act or false statement is **element of crime**: conviction can always be used to impeach W (false pretenses, forgery, fraud, etc.)
- Admissible whether conviction is felony or misdemeanor
- Court has **no discretion to exclude under FRE 403** (probative vs. prejudice)
- Subject to 10-year rule



FRE 609(a)(1)-Dishonest act not element of crime of conviction

- If dishonest act is not an element of crime:
- Conviction can be used if felony
- Can be used against D W if probative value of e outweighs prejudicial evidence.
- Will be used against other W's unless probative value substantially outweighed by unfair prejudice.
- Subject to 10-year rule.



4. FRE 404(b)(1)-Propensity prohibition

- **FRE 404(b)(1)** sets out prohibition on use of other crimes, wrongs or acts to establish propensity
- **FRE 404(b)(2)**, however, permits other crimes, wrongs or acts E to establish **(MIMIC)**:
 - Motive
 - Intent
 - Modus operandi
 - Identity
 - Common scheme or plan
- **FRE 404(b)(3)**-Rule subject to notice requirement
- Can be used by D

FRE 404(b)(3)-Important changes to Notice requirement

- A. Fed. R. Evid. 404(b) was amended effective **Dec. 1, 2020** in ways that should benefit defendants in criminal cases.
- B. Under the Amended Rule:
 - 1. The defendant does not have to request 404(b) notice anymore
 - Prosecution has to provide it if they want to use any 404(b) evidence



FRE 404(b)(3)-Important changes to Notice requirement (cont.)

- 2. The prosecution now has to:
 - a. Identify the bad act,
 - b. Articulate the non-propensity reason for which the evidence is offered,
 - c. Provide the basis for concluding why the evidence is relevant,
 - d. Do the above in writing before trial (unless excused, for good cause, by the court).



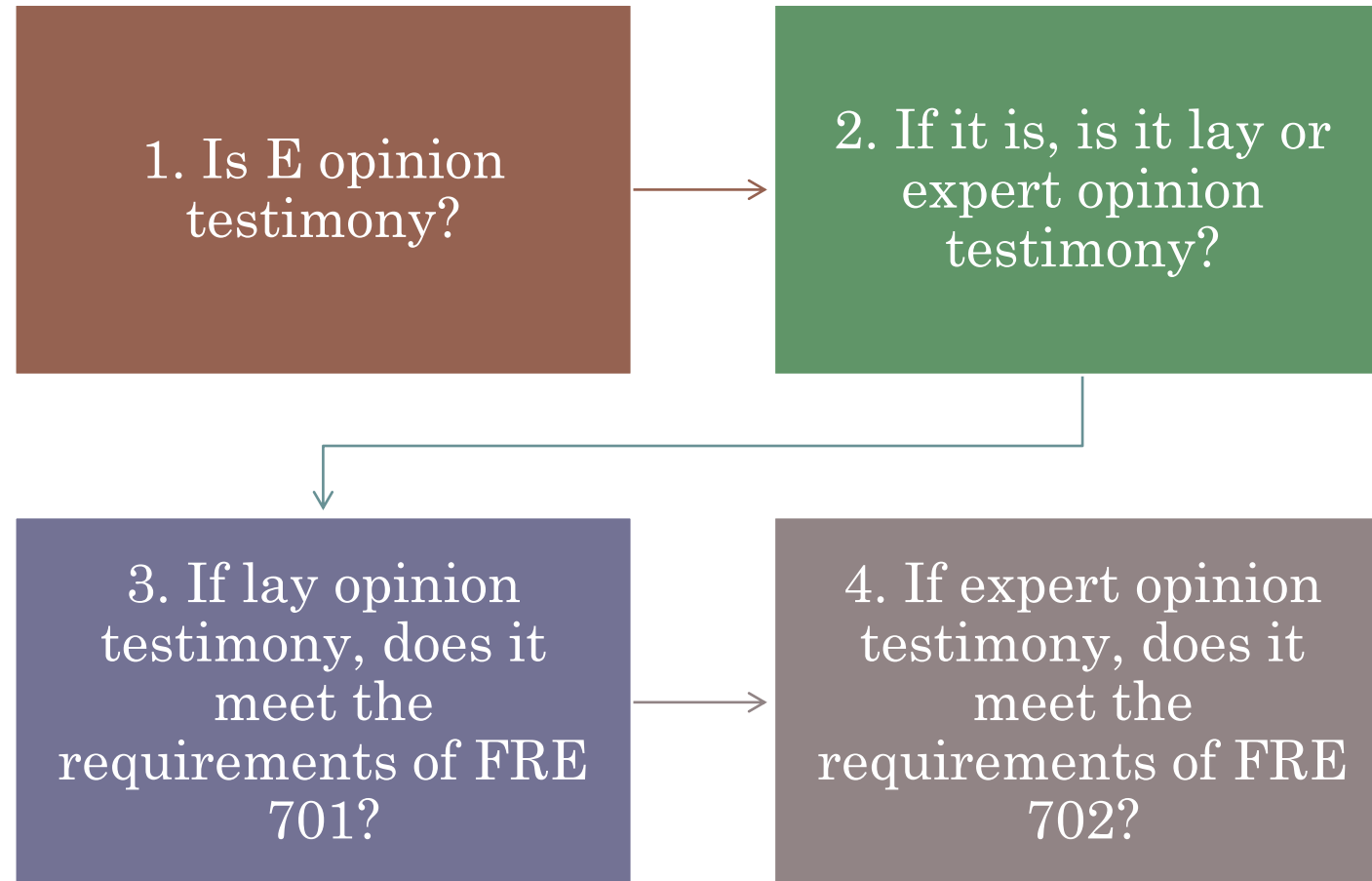
FRE 414-Similar Crimes in Child-Molestation Cases

- If Defendant accused of child molestation, the court may admit evidence that the defendant committed “any other child molestation.”
- **Evidence might be considered for any matter to which it is relevant=propensity**
- **Evidence is subject to FRE 403 balancing**
- The prosecution must disclose its intent to offer the evidence;
- Disclosure includes “**witnesses’ statements or a summary of the expected testimony**”; and
- The prosecution must disclose **15 days prior to trial** or at a later time, if the court allows for good cause.

Objection-Improper opinion E



Opinion and Expert Testimony Approach



FRE 701-Lay opinion testimony

- An opinion presented by a lay witness:
 - ❑ Must be “rationally based on the witness’s perception.” FRE 701(a),
 - ❑ Must be “(h)elpful to clearly understanding the witness’s testimony or to determining a fact in issue.” FRE 701(b), and
 - ❑ Cannot be “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. 701(c).



FRE 702-Expert witness testimony

- ❑ The witness must **qualify** as an expert
- ❑ The expert knowledge must be **helpful** to the trier of fact. FRE 702 (a)
- ❑ It must be based on “**sufficient facts or data.**” FRE 702 (b)
- ❑ It must be the product of “**reliable principles and methods.**” FRE 702(c)
- ❑ The expert must have “**reliably applied the principles and methods** to the facts of the case.” FRE (d)



FRE 702-Witness must be qualified as an expert-D arguments

- A witness can qualify as an expert based on “**knowledge, skill, experience, training or education.**” FRE 702
 - ❑ The expert’s experience is **not relevant** to the testimony;
 - ❑ Their experience in the relevant area is **shallow or anecdotal**;
 - ❑ The expert **lacks recent** experience in the relevant field; or
 - ❑ The expert has **provided no methodology or guiding principles** that would support her opinions

FRE 702(c)-Expert testimony is product of reliable principles and methods

- Reliability is measured by the non-exclusive checklist in Daubert v. Merrell Dow, 509 U.S. 579, 592-593 (1993).
- The factors outlined in Daubert can also apply in cases involving non-scientific evidence. Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999).



Daubert checklist

- 1. Whether the theory or technique in question can and has been **tested**
- 2. Whether the theory or technique has been subjected to **peer review and publication**
- 3. The theory or technique's known or potential **rate of error**
- 4. The existence and maintenance of **standards** controlling the theory or technique's operation
- 5. Whether the theory or technique has attracted **widespread acceptance** within a relevant scientific community

- Courts are not performing “gate-keeping” function.
- Expected “sea change” in the admissibility of faulty forensic science did not materialize.
- Little change in law to prevent admissibility of faulty forensic science.
- Instead, courts are leaving “scientific validity” determinations in hands of the jury and cross-examination by defense counsel.
- Courts turn blind eye to advances in science insisting on **precedent**.
- Appellate courts more willing to question admissibility of scientific evidence in civil cases.
- Vast majority of reported opinions in crim. cases show courts rarely exclude or restrict expert testimony offered by prosecutors.
- Courts more willing to exclude or restrict expert testimony offered by the defense.

“Junk” science

- National epidemic of faulty forensic science.
- Judges have largely disregarded Daubert in criminal cases.
- 1. E.G. “Gerry” Morris: *Flawed Science in the Courtroom. Is Excluding it Really that Difficult?*, **THE CHAMPION**, Nov. 2015.
- 2. Janis C. Puracal and Aliza B. Kaplan: *Science in the Courtroom: Challenging Faulty Forensics*, **THE CHAMPION**, Jan.-Feb. 2020.
- 3. Aliza B. Kaplan and Janis C. Puracal, *It’s not a Match: Why the Law Can’t Let Go of Junk Science*. **ALBANY LAW REVIEW**, Vol 81:3, 895.
- 4. Brandon L. Garrett, *Unpacking the Source of Error in Forensic Evidence*, **THE CHAMPION**, June 2021.



Problem areas

- Problem areas:
 - ❑ DNA Analysis of complex mixtures
 - ❑ Bitemark analysis
 - ❑ Latent fingerprint analysis
 - ❑ Firearms analysis
 - ❑ Footwear analysis
 - ❑ Hair analysis



Objection-Lack of Authentication

- **FRE 901**
- The proponent of evidence is required to prove its authenticity
- Foundational requirement of authentication or identification is satisfied by **evidence sufficient to support a finding that the matter in question is what its proponent claims**
- **An exhibit can be authenticated by the testimony of the witness that:**
 - ○ she was present at the scene at the time in question and that the [photograph] [videotape] fairly and accurately represents the particular condition at the time in question;
 - ○ she saw the author [compose] [sign] the document;
 - ○ she recognizes and is familiar with this handwriting;
 - ○ she knows that this letter came in reply to his own earlier letter.

Objection-Lacks personal knowledge

- FRE 602
- A witness must have personal knowledge of the matter
- ❑ When counsel believes the witness lacks personal knowledge, she should object pursuant to FRE 602 and request **voir dire** of the witness to establish that the witness is not competent
- ❑ When lack of personal knowledge is established by cross-examination, a **motion to strike the witness's testimony** should be made

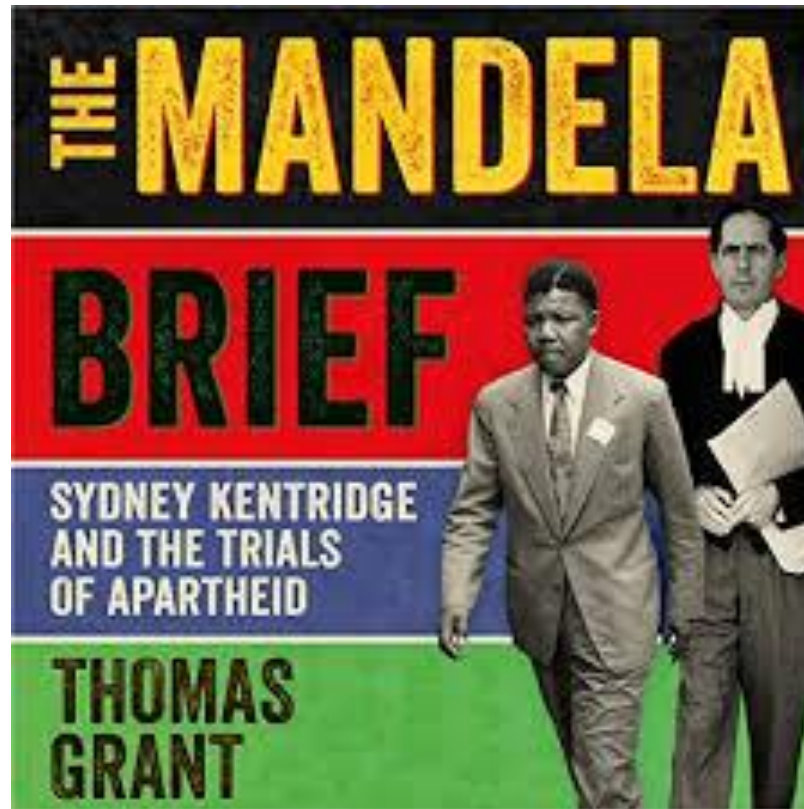


Objection-Nonresponsive

- FRE 611(a)
- **Objection:** The answer is non-responsive
- A non-responsive or volunteered answer occurs when a witness provides information not required by the attorney's question. Any response that extends beyond the specific information sought by the question is objectionable
- Move to strike?
- Move for a mistrial?



Objection-Prejudicial



Relevance/Prejudice Approach

1. Is the E
relevant? FRE 401



2. Is the probative
value of the E
substantially
outweighed by
danger? FRE 403

Is the E relevant under FRE 401?

- According to **FRE 401**, evidence is relevant if:
 - **a.** It has any tendency to make a fact more or less probable than it would be without the evidence (**FRE401(a)**); and
 - **b.** The fact is of consequence in determining the action (**FRE 401(b)**)



Objection-Prejudicial

- **FRE 403** allows courts to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the jury, or waste of time
- Evidence is unfairly prejudicial under **FRE 403** if it tends to produce a jury decision based on an improper ground, **typically an emotional one**, unrelated to whether the defendant is guilty of the crime

Objection-Speculation

- FRE 403, 602
- **Objection: Speculation**
- Witness's testimony must be based on personal knowledge. **FRE 602**
- Speculative evidence may also be excluded under **FRE 403** to avoid confusing or misleading jury





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