



# FEDERAL EVIDENCE REVIEW

HIGHLIGHTING RECENT FEDERAL EVIDENCE CASES & DEVELOPMENTS

Volume 4, Number 3

www.FederalEvidence.com

March 2007

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Material from the FEDERAL EVIDENCE REVIEW should be cited:

[Volume] FED. EVID. REV. [page number] (Month Year)

Thus, 4 FED. EVID. REV. 40 (Jan. 2007) indicates volume three of the FEDERAL EVIDENCE REVIEW at page 40.

Page numbers in any volume of the REVIEW are consecutive from the first issue of that volume.

**FEDERAL EVIDENCE REVIEW**

(ISSN: 1556-5645)

Volume 4, Number 3 (March 2007)

Published monthly by FederalEvidence.com

P.O. Box 6883 Arlington, VA 22206-0883

Fax: (571) 312-5642

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## *Lead Story:* Excluding Evidence Based On Violations Of Discovery And Other Rules

*In most instances, the admission or exclusion of evidence is governed by the requirements of the Federal Rules of Evidence. However, in some limited circumstances, a willful violation of discovery or other rules can result in the exclusion of evidence as a sanction. This Lead Story explores some of the rules and the circumstances in which evidence exclusion may be enforced to redress a willful violation of court rules.*



The discovery process is an essential part in our adversarial system and fulfills a fundamental role in the ascertainment of the truth in criminal and civil trials. As the U.S. Supreme Court has recognized, “[t]he adversary process could not function effectively without adherence to rules of procedure that govern the orderly presentation of facts and arguments to provide each party with a fair opportunity to assemble and submit evidence to contradict or explain the opponent’s case.” *Taylor v. Illinois*, 484 U.S. 400, 410-11 (1988). As part of the effective admission of evidence at trial, “[d]iscovery, like cross-examination, minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony.” *Id.* at 411-12. Meaningful exchange and review of discovery by the parties before trial is an essential part of effectively preparing for trial and presenting evidence at trial.

Given the importance of the discovery rules of the adversary process, what impact on evidence should result when discovery rules are willfully disregarded? A trial court has the discretion of imposing sanctions on a party who abuses the discovery process, for example, by precluding the admission of evidence that was otherwise admissible, or considering other appropriate measures.

In addition to general discovery violations, non-compliance with other specific, procedural rules may result in evidence preclusion. This may include the failure of the defense to provide written pretrial notice of an alibi defense (FED. R. CRIM. P. 12.1); insanity defense (FED. R. CRIM. P. 12.2); or public authority defense (FED. R. CRIM. P. 12.3). Additionally, the trial court may exclude

witnesses during a trial under FRE 615. The non-compliance with these rules may result in evidence exclusion, as surveyed below.

### I. Sixth Amendment Compulsory Process Clause

One possible limitation on the ability of a court to apply a sanction in a criminal case arises under the Sixth Amendment’s Compulsory Process Clause. This Clause provides: “In all criminal prosecutions, the accused shall enjoy the right to ... have compulsory process for obtaining witnesses in his favor....”

As with other constitutional rights, compulsory process is not an absolute right. In criminal cases, the U.S. Supreme Court has recognized that the Compulsory Process Clause does not prohibit exclusion of evidence in response to a discovery violation. The Sixth Amendment does not confer “an unfettered right to offer testimony that is incomplete, privileged, or otherwise inadmissible under standard rules of evidence.” *Taylor v. Illinois*, 484 U.S. 400, 410 (1988); *see also Montana v. Egelhoff*, 518 U.S. 37, 42 (1996) (“The accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.”) (quoting *Taylor*, 484 U.S. at 410); *United States v. Bautista*, 145 F.3d 1140, 1151-52 (10th Cir. 1998) (“[T]he right to present defense witnesses is not absolute. A defendant must abide by the rules of evidence and procedure.”). As the Supreme Court noted:

“A trial judge may certainly insist on an explanation for a party’s failure to comply with a request to identify his or her witnesses in advance of trial. If that explanation reveals that the omission was willful and motivated by a desire to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence, it would be entirely consistent with the purposes of the [Sixth Amendment] Compulsory Process Clause simply to exclude the witness’ testimony.”



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