

<p style="text-align: center;"><b>ARTICLE VIII. HEARSAY</b></p> <p style="text-align: center;"><b>Rule 801. Definitions</b></p>	<p style="text-align: center;"><b>ARTICLE VIII. HEARSAY<sup>1</sup></b></p> <p style="text-align: center;"><b>Rule 801 — Definitions That Apply To This Article</b></p>
<p>The following definitions apply under this article.</p> <p><b>(a) Statement.</b> A “statement” is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion</p>	<p><b>(a) Statement.</b> “Statement” means</p> <p>(1) a person’s oral or written assertion; or</p> <p>(2) a person’s nonverbal conduct, if the person intended it as an assertion</p>
<p><b>(b) Declarant.</b> A “declarant” is a person who makes a statement.</p>	<p><b>(b) Declarant.</b> “Declarant” means the person who made the statement</p>
<p><b>(c) Hearsay.</b> “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.</p>	<p><b>(c) Hearsay.</b> “Hearsay” means a prior statement — one not made by someone while testifying at the current trial or hearing — that a party offers in evidence to prove the truth of the matter asserted by the declarant</p>
<p><b>(d) Statements which are not hearsay.</b> A statement is not hearsay if—</p> <p><b>(1) Prior statement by witness.</b> The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or</p>	<p><b>(d) Statements That Are Not Hearsay.</b> A statement that meets the following conditions is not hearsay</p> <p><b>(1) A Witness’s Prior Statement.</b> The declarant testifies and is subject to cross-examination about the statement, and the statement</p> <p>(A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;</p> <p>(B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from an improper influence or motive in so testifying; or</p> <p>(C) identifies a person as someone the declarant perceived earlier.</p>

<sup>1</sup> The date of this version is March 25, 2009.

**(2) Admission by party-opponent.** The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

**(2) *An Opposing Party's Statement*** The statement is offered against an opposing party and

- (A) was made by the party in an individual or representative capacity,
- (B) is one that the party adopted or the party accepted as true,
- (C) was made by a person whom the party authorized to make a statement on the subject;
- (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed, or
- (E) was made by the party's co-conspirator during the conspiracy and to further it

The statement must be considered but does not by itself establish the declarant's authority under (C), the existence or scope of the relationship under (D), or the existence of the conspiracy or participation in it under (E).

[Special note 801(d) and the rules that follow adopt a format that we generally don't use. They create a hybrid of a list and independent subparts. When we set up a list, often signaled by words like *the following* and a colon, we normally don't use a heading for each item in the list, and we don't start a new sentence inside the list, as in current 803(5) ]

<p align="center"><b>Rule 802. Hearsay Rule</b></p>	<p align="center"><b>Rule 802 — General Inadmissibility of Hearsay</b></p>
<p>Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress</p>	<p>Hearsay is not admissible unless any of the following provides otherwise</p> <ul style="list-style-type: none"> <li>• a federal statute,</li> <li>• these rules, or</li> <li>• other rules prescribed by the Supreme Court [under statutory authority?].</li> </ul>

<p><b>Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial</b></p>	<p><b>Rule 803 — Exceptions to the Hearsay Rule — Regardless of Whether the Declarant Is Available as a Witness</b></p>
<p>The following are not excluded by the hearsay rule, even though the declarant is available as a witness</p> <p><b>(1) Present sense impression.</b> A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter</p>	<p><b>(a) The Exceptions.</b> The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness</p> <p><b>(1) <i>Present Sense Impression.</i></b> A statement describing or explaining an event or condition, made while the declarant was perceiving it or immediately after perceiving it</p>
<p><b>(2) Excited utterance.</b> A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.</p>	<p><b>(2) <i>Excited Utterance.</i></b> A statement related to a startling event or condition, made while the declarant was under the stress or excitement that it caused.</p>
<p><b>(3) Then existing mental, emotional, or physical condition.</b> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.</p>	<p><b>(3) <i>Then-Existing Mental, Emotional, or Physical Condition.</i></b> A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will</p>
<p><b>(4) Statements for purposes of medical diagnosis or treatment.</b> Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.</p>	<p><b>(4) <i>Statement Made for Medical Diagnosis or Treatment.</i></b> A statement that</p> <p><b>(A)</b> is made for — and is reasonably pertinent to — medical diagnosis or treatment; and</p> <p><b>(B)</b> describes medical history, past or present symptoms or sensations; or the inception or general character of their cause.</p>

<p><b>(5) Recorded recollection.</b> A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.</p>	<p><b>(5) Recorded Recollection.</b> A record that</p> <ul style="list-style-type: none"> <li><b>(A)</b> is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately,</li> <li><b>(B)</b> was made or adopted by the witness when the matter was fresh in the witness's memory, and</li> <li><b>(C)</b> accurately reflects the witness's knowledge.</li> </ul> <p>If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.</p>
<p><b>(6) Records of regularly conducted activity.</b> A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.</p>	<p><b>(6) Records of a Regularly Conducted Activity.</b> A record of an act, event, condition, opinion, or diagnosis if</p> <ul style="list-style-type: none"> <li><b>(A)</b> the record was made at or near the time by — or from information transmitted by — someone with knowledge,</li> <li><b>(B)</b> the record was kept in the course of a regularly conducted business activity,</li> <li><b>(C)</b> making the record was a regular practice of that business activity,</li> <li><b>(D)</b> all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(b)(11) or (12) or with a statute permitting certification; and</li> <li><b>(E)</b> the opponent [note a good contrast with <i>proponent</i>? we'd have to check for consistency] does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.</li> </ul> <p>"Business" in this paragraph (6) includes any kind of organization, occupation, or calling, whether or not conducted for profit.</p>

<p><b>(7) Absence of entry in records kept in accordance with the provisions of paragraph (6).</b> Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness</p>	<p><b>(7) <i>Absence of an Entry in a Record of a Regularly Conducted Activity.</i></b> Evidence that a matter is not included in a record described in paragraph (6), if</p> <p><b>(A)</b> the evidence is offered to prove that the matter did not occur or exist,</p> <p><b>(B)</b> a record was regularly kept for a matter of that kind, and</p> <p><b>(C)</b> the opponent does not show that the possible source [why is the current rule plural? cf. (6)(E)] of the information or other circumstances indicate a lack of trustworthiness.</p>
<p><b>(8) Public records and reports.</b> Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness</p>	<p><b>(8) <i>Public Records.</i></b> A record of a public office or agency [check for consistency] setting out</p> <p><b>(A)</b> the office's or agency's activities,</p> <p><b>(B)</b> a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by someone officially engaged in law-enforcement [the current plural suggests that two persons have to observe]; or</p> <p><b>(C)</b> in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation</p> <p>But the record is not admissible if the opponent shows that the source of information or other circumstances indicate a lack of trustworthiness</p>
<p><b>(9) Records of vital statistics.</b> Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law</p>	<p><b>(9) <i>Public Records of Vital Statistics.</i></b> A record of a birth, death, or marriage, if reported to a public office or agency in accordance with a legal duty.</p>

<p><b>(10) Absence of public record or entry.</b> To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry</p>	<p><b>(10) <i>Absence of a Public Record or an Entry in a Public Record.</i></b> Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record, or an entry in one, if the testimony or certification is offered to prove that</p> <ul style="list-style-type: none"> <li><b>(A)</b> the record or entry does not exist, or</li> <li><b>(B)</b> a matter did not occur or exist, even though a public office or agency regularly kept a record for a matter of that kind</li> </ul>
<p><b>(11) Records of religious organizations.</b> Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization</p>	<p><b>(11) <i>Records of Religious Organizations Concerning Personal or Family History.</i></b> A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization</p>
<p><b>(12) Marriage, baptismal, and similar certificates.</b> Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter</p>	<p><b>(12) <i>Certificates of Marriage, Baptism, and Similar Ceremonies.</i></b> A statement of fact contained in a certificate</p> <ul style="list-style-type: none"> <li><b>(A)</b> made by a person who is authorized by a religious organization or by law to perform the act certified,</li> <li><b>(B)</b> attesting that the person performed a marriage or similar ceremony or administered a sacrament, and</li> <li><b>(C)</b> purporting to have been issued at the time of the act or within a reasonable time after it</li> </ul>
<p><b>(13) Family records.</b> Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like</p>	<p><b>(13) <i>Family Records.</i></b> A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker</p>

<p><b>(14) Records of documents affecting an interest in property.</b> The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office</p>	<p><b>(14) <i>Records of Documents That Affect an Interest in Property.</i></b> The record of a document that purports to establish or affect an interest in property if</p> <ul style="list-style-type: none"> <li>(A) the record is offered to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it,</li> <li>(B) the record is kept in a public office, and</li> <li>(C) a statute authorizes recording documents of that kind in that office</li> </ul>
<p><b>(15) Statements in documents affecting an interest in property.</b> A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document</p>	<p><b>(15) <i>Statements in Documents That Affect an Interest in Property.</i></b> A statement contained in a document that purports to establish or affect an interest in property if:</p> <ul style="list-style-type: none"> <li>(A) the matter stated was relevant to the document's purpose, and</li> <li>(B) the opponent does not show that later dealings with the property are inconsistent with the truth of the statement or the purport of the document</li> </ul>
<p><b>(16) Statements in ancient documents.</b> Statements in a document in existence twenty years or more the authenticity of which is established</p>	<p><b>(16) <i>Statements in Ancient Documents.</i></b> A statement in a document that is at least 20 years old and whose authenticity is established.</p>
<p><b>(17) Market reports, commercial publications.</b> Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.</p>	<p><b>(17) <i>Market Reports and Similar Commercial Publications.</i></b> Market quotations, lists, directories, or other compilations — published in any form — generally relied on by the public or by persons in particular occupations.</p>

<p><b>(18) Learned treatises.</b> To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.</p>	<p><b>(18) <i>Statements in Learned Treatises, Periodicals, or Pamphlets.</i></b> A statement contained in a treatise, periodical, or pamphlet — published in any form — if the publication is:</p> <p>(A) called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination, and</p> <p>(B) established as a reliable authority by the expert’s admission or testimony, by another expert’s testimony, or by judicial notice.</p> <p>If admitted, the statement may be read into evidence but not received as an exhibit.</p>
<p><b>(19) Reputation concerning personal or family history.</b> Reputation among members of a person’s family by blood, adoption, or marriage, or among a person’s associates, or in the community, concerning a person’s birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.</p>	<p><b>(19) <i>Reputation About Personal or Family History.</i></b> A reputation among a person’s family by blood, adoption, or marriage — or among a person’s associates or in the community — about the person’s birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.</p>
<p><b>(20) Reputation concerning boundaries or general history.</b> Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.</p>	<p><b>(20) <i>Reputation About Boundaries or General History.</i></b> A reputation in a community — arising before the controversy — about boundaries of land in the community or customs that affect the land, or about general historical events important to that community, state, or nation.</p>
<p><b>(21) Reputation as to character.</b> Reputation of a person’s character among associates or in the community.</p>	<p><b>(21) <i>Reputation About Character.</i></b> A reputation among a person’s associates or in the community about the person’s character.</p> <p>[Note on (19)–(21): is there a better word than <i>reputation</i>? The whole idea seems fuzzy here. There’s a hearsay exception for “reputation” — an abstract idea, as opposed to a record, etc. I can’t see what is being offered or who is testifying.]</p>

**(22) Judgment of previous conviction.**

Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

**(22) *Judgment of a Previous Conviction.***

Evidence of a final judgment of conviction — even one on appeal — if

- (A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea,
- (B) the judgment was for a crime punishable by death or by imprisonment for more than a year;
- (C) the evidence is intended to prove any fact essential to the judgment, and
- (D) when offered by the government in a criminal prosecution [case?] for a purpose other than impeachment, the judgment was against the defendant

The opponent may show that an appeal is pending [really needed?]

<p><b>(23) Judgment as to personal, family, or general history, or boundaries.</b> Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation</p>	<p><b>(23) <i>Judgments Involving Personal, Family, or General History or a Boundary.</i></b> A judgment that is offered to prove a matter of personal, family, or general history, or boundaries, if the matter</p> <p>(A) was essential to the judgment, and</p> <p>(B) could be proved by evidence of reputation</p>
<p><b>(24) [Other exceptions.]</b> [Transferred to Rule 807]</p>	
	<p><b>(b) Definition of “Record.”</b> In paragraphs (a)(5)–10, “record” includes a memorandum, report, or data compilation, in any form. [This omits <i>statement</i> from (8) &amp; (10). I think it may be swallowed up by <i>report</i>. I assume that we’re not talking about “statements” to the newspaper, for instance ]</p> <p>[Special note current 803 changes the numbering scheme; for the first time, a number follows a number — e.g., 803(6). Nothing like that in any of the restyled rules. Surely, we don’t want to leave that anomaly. And the definition in (b) saves gobs of repetition.]</p>

<p align="center"><b>Rule 804. Hearsay Exceptions; Declarant Unavailable</b></p>	<p align="center"><b>Rule 804 — Exceptions to the Hearsay Rule — When the Declarant Is Unavailable as a Witness</b></p>
<p><b>(a) Definition of unavailability.</b> “Unavailability as a witness” includes situations in which the declarant—</p> <ul style="list-style-type: none"> <li><b>(1)</b> is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement, or</li> <li><b>(2)</b> persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so, or</li> <li><b>(3)</b> testifies to a lack of memory of the subject matter of the declarant’s statement, or</li> <li><b>(4)</b> is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity, or</li> <li><b>(5)</b> is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means</li> </ul> <p>A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying</p>	<p><b>(a) Criteria for Being Unavailable.</b> A declarant is considered to be unavailable as a witness if the declarant:</p> <ul style="list-style-type: none"> <li><b>(1)</b> is exempted by a court ruling on the ground of having a privilege to not testify about the subject matter of the declarant’s statement,</li> <li><b>(2)</b> refuses to testify about the subject matter despite a court order to do so;</li> <li><b>(3)</b> testifies to not remembering the subject matter;</li> <li><b>(4)</b> cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness, or</li> <li><b>(5)</b> is absent from the trial or hearing and the statement’s proponent has not been able, by process or other reasonable means, to procure <ul style="list-style-type: none"> <li><b>(A)</b> the declarant’s attendance, or</li> <li><b>(B)</b> in the case of a hearsay exception under subdivision (b)(2), (3), or (4) below, the declarant’s attendance or testimony.</li> </ul> </li> </ul> <p>But this Rule 804 does not apply if the statement’s proponent wrongfully caused the declarant to be unavailable in order to prevent the declarant from attending or testifying.</p>

<p><b>(b) Hearsay exceptions.</b> The following are not excluded by the hearsay rule if the declarant is unavailable as a witness</p> <p><b>(1) Former testimony.</b> Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination</p>	<p><b>(b) The Exceptions.</b> The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness</p> <p><b>(1) Former Testimony.</b> Testimony that</p> <p><b>(A)</b> was given as a witness at a trial, hearing, or deposition, whether given during the current proceeding or a different one, and</p> <p><b>(B)</b> is now offered against a party — or, in a civil case, a predecessor in interest — who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination</p>
<p><b>(2) Statement under belief of impending death.</b> In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.</p>	<p><b>(2) Statement Under the Belief of Imminent Death.</b> In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances</p>
<p><b>(3) Statement against interest.</b> A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.</p>	<p><b>(3) Statement Against Interest.</b> A statement that:</p> <p><b>(A)</b> a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability, and</p> <p><b>(B)</b> is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability</p>

<p><b>(4) Statement of personal or family history.</b>  (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated, or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared</p>	<p><b>(4) <i>Statement of Personal or Family History.</i></b>  A statement about</p> <p><b>(A)</b> the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact, or</p> <p><b>(B)</b> another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is probably accurate</p>
<p><b>(5) [Other exceptions.]</b> [Transferred to Rule 807]</p> <p><b>(6) Forfeiture by wrongdoing.</b> A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness</p>	<p><b>(5) <i>Statement Offered Against a Party Who Wrongfully Caused the Declarant's Unavailability.</i></b> A statement offered against the party that wrongfully caused — or acquiesced in wrongfully causing — the declarant to be unavailable in order to prevent the declarant from attending or testifying.</p>

<b>Rule 805. Hearsay Within Hearsay</b>	<b>Rule 805 — Hearsay Within Hearsay</b>
<p>Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules</p>	<p>Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule</p>

<p align="center"><b>Rule 806. Attacking and Supporting Credibility of Declarant</b></p>	<p align="center"><b>Rule 806 — Attacking and Supporting the Declarant’s Credibility</b></p>
<p>When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant’s hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.</p>	<p>When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant’s credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of [The evidence may consist of] an inconsistent statement or conduct by the declarant, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.</p>

<b>Rule 807. Residual Exception</b>	<b>Rule 807 — Residual Exception</b>
<p>A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.</p>	<p>(a) <b>In General.</b> Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804</p> <ul style="list-style-type: none"> <li>(1) the statement has equivalent circumstantial guarantees of trustworthiness, and</li> <li>(2) all the following apply. <ul style="list-style-type: none"> <li>(A) the statement is offered as evidence of a material fact,</li> <li>(B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and</li> <li>(C) admitting the statement will best serve the purpose of these rules and the interests of justice</li> </ul> </li> </ul> <p>(b) <b>Notice.</b> The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it</p> <p>[Trying for as much consistency as possible with 404(b)(2) &amp; 609(b) Note our continuing problem with <i>hearing or trial</i>. 404(b)(2)(B) uses <i>trial</i> only.]</p>

<p align="center"><b>ARTICLE IX. AUTHENTICATION AND IDENTIFICATION</b></p> <p align="center"><b>Rule 901. Requirement of Authentication or Identification</b></p>	<p align="center"><b>ARTICLE IX. AUTHENTICATION AND IDENTIFICATION</b></p> <p align="center"><b>Rule 901 — Authenticating or Identifying Evidence</b></p>
<p><b>(a) General provision.</b> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims</p>	<p><b>(a) In General.</b> When an exhibit or other item must be authenticated or identified in order to have it admitted, the requirement is satisfied by evidence sufficient to support a finding that the item is what its proponent claims</p> <p>(Alternative) To authenticate or identify an exhibit or other item in order to have it admitted, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is</p>
<p><b>(b) Illustrations.</b> By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule</p>	<p><b>(b) Examples.</b> The following are examples only — not a complete list — of evidence that satisfies the requirement.</p>
<p><b>(1) Testimony of witness with knowledge.</b> Testimony that a matter is what it is claimed to be.</p>	<p><b>(1) <i>Testimony of a Witness with Knowledge.</i></b> Testimony that an item is what it is claimed to be</p>
<p><b>(2) Nonexpert opinion on handwriting.</b> Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation</p>	<p><b>(2) <i>Nonexpert Opinion About Handwriting.</i></b> A nonexpert's opinion that the handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation</p>
<p><b>(3) Comparison by trier or expert witness.</b> Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated</p>	<p><b>(3) <i>Comparison by an Expert Witness or the Trier of Fact.</i></b> A comparison with an authenticated specimen by an expert witness or the trier of fact.</p>
<p><b>(4) Distinctive characteristics and the like.</b> Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances</p>	<p><b>(4) <i>Distinctive Characteristics and the Like.</i></b> The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.</p>

<p><b>(5) Voice identification.</b> Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.</p>	<p><b>(5) <i>Opinion About a Voice.</i></b> An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker</p>
<p><b>(6) Telephone conversations.</b> Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone</p>	<p><b>(6) <i>Evidence About a Phone</i></b> [to cover a cell] <b><i>Conversation.</i></b> For a phone conversation, evidence that a call was made to the number assigned at the time to</p> <p>(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called, or</p> <p>(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the phone</p>
<p><b>(7) Public records or reports.</b> Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept</p>	<p><b>(7) <i>Evidence About Public Records or Reports.</i></b> Evidence that</p> <p>(A) a public record, report, or data compilation is from the public office or agency where items of this kind are kept; or</p> <p>(B) a document was lawfully<sup>2</sup> recorded or filed in a public office or agency</p>
<p><b>(8) Ancient documents or data compilation.</b> Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered</p>	<p><b>(8) <i>Evidence About Ancient Documents or Data Compilations.</i></b> For a document or data compilation, in any form, evidence that it</p> <p>(A) is in a condition that creates no suspicion about its authenticity,</p> <p>(B) was in a place where, if authentic, it would likely be, and</p> <p>(C) is at least 20 years old when offered</p>

<sup>2</sup> The Style Subcommittee wants to make sure that “lawfully” captures the meaning of the current rule. The current rule refers to a “writing authorized by law to be recorded or filed . . . in a public office.” The restyled version refers to a “writing that was lawfully filed or recorded in a public office or agency.” Are there examples of filings “lawfully” made in a public office that are not “authorized by law” to be made there? In other words, is the intent of “lawfully recorded” to describe the methodology of recording, or whether the document is authorized by law to be recorded?

<p><b>(9) Process or system.</b> Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result</p>	<p><b>(9) <i>Evidence About a Process or System.</i></b> Evidence describing a process or system and showing that it produces an accurate result</p>
<p><b>(10) Methods provided by statute or rule.</b> Any method of authentication or identification provided by Act of Congress or by other rules prescribed by the Supreme Court pursuant to statutory authority.</p>	<p><b>(10) <i>Methods Provided by a Statute or Rule.</i></b> Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court [under statutory authority?].</p>

<p align="center"><b>Rule 902. Self-authentication</b></p>	<p align="center"><b>Rule 902 — Items That Are Self-Authenticating</b></p>
<p>Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following</p> <p><b>(1) Domestic public documents under seal.</b> A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution</p>	<p>(a) <b>In General.</b> The items described in this rule are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted</p> <p>(b) <b>The Items.</b> The following are self-authenticating</p> <p><b>(1) <i>Domestic Public Documents That Are Signed and Sealed.</i></b> A document that bears</p> <p>(A) a signature purporting to be an execution or attestation [which is the more logical order?], and</p> <p>(B) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone, the Trust Territory of the Pacific Islands; a political subdivision of any of these entities, or a department, agency, or officer [check order of <i>agency</i> or <i>officer</i>] of any entity named above</p>
<p><b>(2) Domestic public documents not under seal.</b> A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine</p>	<p><b>(2) <i>Domestic Public Documents That Are Signed But Not Sealed.</i></b> A document that bears no seal, if</p> <p>(A) it bears the signature of an officer or employee of an entity named in Rule 902(b)(1)(B); and</p> <p>(B) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine</p>

<p><b>(3) Foreign public documents.</b> A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.</p>	<p><b>(3) <i>Foreign Public Documents.</i></b> A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation, by a consul general, vice consul, or consular agent of the United States, or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either</p> <p>(A) order that it be treated as presumptively authentic without final certification, or</p> <p>(B) permit it to be evidenced by an attested summary with or without final certification.</p> <p>[Note: A tough paragraph. I tried to follow Civil Rule 44(a)(2) as much as I could.]</p>
<p><b>(4) Certified copies of public records.</b> A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.</p>	<p><b>(4) <i>Certified Copies of Public Records.</i></b> A copy of an official record, report, data compilation [what happened to <i>statement</i>? cf. 901(b)(7)] — or a copy of a document [901(b)(7) uses <i>writing</i>] that was lawfully<sup>3</sup> recorded or filed in a public office or agency — if the copy is certified as correct by</p> <p>(A) the custodian or another person authorized to make the certification; or</p> <p>(B) a certificate that complies with Rule 902(b) (1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court [under statutory authority?]</p>

<sup>3</sup> The Style Subcommittee wants to make sure that “lawfully” captures the meaning of the current rule. The current rule refers to a “writing authorized by law to be recorded or filed . . . in a public office.” The restyled version refers to a “writing that was lawfully filed or recorded in a public office or agency.” Are there examples of filings “lawfully” made in a public office that are not “authorized by law” to be made there? In other words, is the intent of “lawfully recorded” to describe the methodology of recording, or whether the document is authorized by law to be recorded?

<p>(5) <b>Official publications.</b> Books, pamphlets, or other publications purporting to be issued by public authority</p>	<p>(5) <i>Official Publications.</i> A book, pamphlet, or other publication purporting to be issued by a public authority</p>
<p>(6) <b>Newspapers and periodicals.</b> Printed materials purporting to be newspapers or periodicals</p>	<p>(6) <i>Newspapers and Periodicals.</i> Printed material purporting to be a newspaper or periodical</p>
<p>(7) <b>Trade inscriptions and the like.</b> Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.</p>	<p>(7) <i>Trade Inscriptions and the Like.</i> An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control</p>
<p>(8) <b>Acknowledged documents.</b> Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments</p>	<p>(8) <i>Acknowledged Documents.</i> A document accompanied by a certificate of acknowledgment that is lawfully signed by a notary public or another officer who is authorized to take acknowledgments</p>
<p>(9) <b>Commercial paper and related documents.</b> Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law</p>	<p>(9) <i>Commercial Paper and Related Documents.</i> Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law</p>
<p>(10) <b>Presumptions under Acts of Congress.</b> Any signature, document, or other matter declared by Act of Congress to be presumptively or prima facie genuine or authentic</p>	<p>(10) <i>Presumptions Under a Federal Statute.</i> A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine [or authentic? omit? we use <i>genuine</i> alone in (2)(B) and (3)].</p>

**(11) Certified domestic records of regularly conducted activity.** The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record—

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters,

(B) was kept in the course of the regularly conducted activity, and

(C) was made by the regularly conducted activity as a regular practice

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them

**(11) *Certified Domestic Records of a Regularly Conducted Activity.*** The original or a copy of a domestic record that meets the requirements of Rule 803(a)(6), modified as follows: the conditions referred to in 803(a)(6)(D) must be shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court under statutory authority [let's revisit *under statutory authority*] Before the trial or hearing, the proponent must give an adverse party [cf 807(b), which uses the singular] written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them

**(12) Certified foreign records of regularly conducted activity.** In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record—

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters,

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

**(12) *Certified Foreign Records of a Regularly Conducted Activity.*** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(b)(11), modified as follows: the declaration, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the declaration is signed. [No need to repeat the notice requirement; it's already in (11) ]

[Note: I'll deal with *in any form* in the top-to-bottom review. Such a problem!]

<p><b>Rule 903. Subscribing Witness' Testimony Unnecessary</b></p>	<p><b>Rule 903 — Subscribing [Attesting?] Witness's Testimony</b></p>
<p>The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing</p>	<p>A subscribing [attesting?] witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity</p>

<p style="text-align: center;"><b>ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS</b></p> <p style="text-align: center;"><b>Rule 1001. Definitions</b></p>	<p style="text-align: center;"><b>ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS</b></p> <p style="text-align: center;"><b>Rule 1001 — Definitions That Apply to This Article</b></p>
<p>For purposes of this article the following definitions are applicable</p> <p><b>(1) Writings and recordings.</b> “Writings” and “recordings” consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation</p> <p><b>(2) Photographs.</b> “Photographs” include still photographs, X-ray films, video tapes, and motion pictures</p> <p><b>(3) Original.</b> An “original” of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An “original” of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an “original”</p> <p><b>(4) Duplicate.</b> A “duplicate” is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original</p>	<p><b>(a) Writing.</b> “Writing” means any object or medium on which letters, words, numbers, or their equivalent are set down</p> <p><b>(b) Recording.</b> “Recording” means any object or medium on which letters, words, numbers, or their equivalent are recorded</p> <p><b>(c) Photograph.</b> “Photograph” means an image in any form</p> <p><b>(d) Original.</b> An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For data stored in a computer or similar device, “original” means any printout — or other output readable by sight — if it accurately reflects the data. An “original” of a photograph includes the negative or a print from it.</p> <p><b>(e) Duplicate.</b> “Duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original</p>

<p><b>Rule 1002. Requirement of Original</b></p>	<p><b>Rule 1002 — Requirement of the Original</b></p>
<p>To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress</p>	<p>An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise</p>

<p><b>Rule 1003. Admissibility of Duplicates</b></p>	<p><b>Rule 1003 — Admissibility of Duplicates</b></p>
<p>A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original</p>	<p>A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate</p>

<p><b>Rule 1004. Admissibility of Other Evidence of Contents</b></p>	<p><b>Rule 1004 — Admissibility of Other Evidence of Content</b></p>
<p>The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if—</p> <p><b>(1) Originals lost or destroyed.</b> All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith, or</p> <p><b>(2) Original not obtainable.</b> No original can be obtained by any available judicial process or procedure; or</p> <p><b>(3) Original in possession of opponent.</b> At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing, or</p> <p><b>(4) Collateral matters.</b> The writing, recording, or photograph is not closely related to a controlling issue</p>	<p>An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if</p> <p><b>(a)</b> all the originals are lost or destroyed, and not by the proponent acting in bad faith,</p> <p><b>(b)</b> an original cannot be obtained by any available judicial process,</p> <p><b>(c)</b> the party against whom the original would be offered had control of the original, was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing, and fails to produce it at the trial or hearing, or</p> <p><b>(d)</b> the writing, recording, or photograph is not closely related to a controlling issue</p>

<b>Rule 1005. Public Records</b>	<b>Rule 1005 — Copies of Public Records to Prove Content</b>
<p>The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.</p>	<p>The proponent may use a copy to prove the content of an official record, report, or data compilation [what happened to <i>report</i> and <i>entry</i>? cf 902(b)(4)] — or of a document that was lawfully<sup>4</sup> recorded or filed in a public office or agency — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(b)(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.</p>

<sup>4</sup> The Style Subcommittee wants to make sure that “lawfully” captures the meaning of the current rule. The current rule refers to a “writing authorized by law to be recorded or filed . . . in a public office.” The restyled version refers to a “writing that was lawfully filed or recorded in a public office or agency.” Are there examples of filings “lawfully” made in a public office that are not “authorized by law” to be made there? In other words, is the intent of “lawfully recorded” to describe the methodology of recording, or whether the document is authorized by law to be recorded?

<b>Rule 1006. Summaries</b>	<b>Rule 1006 — Summaries to Prove Content</b>
<p>The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.</p>	<p>The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. And the court may order the proponent to produce them.</p>

<p><b>Rule 1007. Testimony or Written Admission of Party</b></p>	<p><b>Rule 1007 — Testimony or Admission of a Party to Prove Content</b></p>
<p>Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original</p>	<p>The proponent may use the testimony, deposition, or written admission of the party against whom a writing, recording, or photograph is offered to prove its content. The proponent need not account for the original.</p>

<b>Rule 1008. Functions of Court and Jury</b>	<b>Rule 1008 — Functions of the Court and Jury</b>
<p>When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.</p>	<p>Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether</p> <ul style="list-style-type: none"> <li>(a) an asserted writing, recording, or photograph ever existed,</li> <li>(b) another one produced at the trial [or hearing?] is the original, or</li> <li>(c) other evidence of content accurately reflects the content.</li> </ul>

<p style="text-align: center;"><b>XI. MISCELLANEOUS RULES</b></p> <p style="text-align: center;"><b>Rule 1101. Applicability of Rules</b></p>	<p style="text-align: center;"><b>XI. MISCELLANEOUS RULES</b></p> <p style="text-align: center;"><b>Rule 1101 — Applicability of the Rules</b></p>
<p><b>(a) Courts and judges.</b> These rules apply to the United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, the United States courts of appeals, the United States Claims Court, 1 and to United States bankruptcy judges and United States magistrate judges, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms “judge” and “court” in these rules include United States bankruptcy judges and United States magistrate judges</p>	<p><b>(a) To Courts and Judges.</b> These rules apply to proceedings before.</p> <ul style="list-style-type: none"> <li>• United States district courts,</li> <li>• United States bankruptcy and magistrate judges,</li> <li>• United States courts of appeals,</li> <li>• the United States Court of Federal Claims; and</li> <li>• the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands</li> </ul>
<p><b>(b) Proceedings generally.</b> These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and proceedings, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under title 11, United States Code</p>	<p><b>(b) To Proceedings.</b> These rules apply in</p> <ul style="list-style-type: none"> <li>• civil actions and proceedings, including admiralty and maritime cases;</li> <li>• criminal cases and proceedings,</li> <li>• contempt proceedings, except those in which the court may act summarily, and</li> <li>• cases and proceedings under 11 U.S.C.</li> </ul>
<p><b>(c) Rule of privilege.</b> The rule with respect to privileges applies at all stages of all actions, cases, and proceedings</p>	<p><b>(c) Rules on Privilege.</b> The rules on privilege apply to all stages of a case or proceeding</p>
<p><b>(d) Rules inapplicable.</b> The rules (other than with respect to privileges) do not apply in the following situations:</p> <p><b>(1) Preliminary questions of fact.</b> The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104</p> <p><b>(2) Grand jury.</b> Proceedings before grand juries</p> <p><b>(3) Miscellaneous proceedings.</b> Proceedings for extradition or rendition; preliminary examinations in criminal cases, sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants, and proceedings with respect to release on bail or otherwise</p>	<p><b>(d) Exceptions.</b> These rules — except for those on privilege — do not apply to the following:</p> <p><b>(1)</b> the court’s determination, under Rule 104(a) [(a) and (b)? we should be as accurate as possible] on a preliminary question of fact governing admissibility,</p> <p><b>(2)</b> grand-jury proceedings; and</p> <p><b>(3)</b> miscellaneous proceedings such as:</p> <ul style="list-style-type: none"> <li>• extradition or rendition,</li> <li>• issuing an arrest warrant, criminal summonses, or search warrant,</li> <li>• a preliminary examination in a criminal case;</li> <li>• sentencing;</li> <li>• granting or revoking probation or supervised release, and</li> <li>• considering whether to release on bail or otherwise.</li> </ul>

**(e) Rules applicable in part.** In the following proceedings these rules apply to the extent that matters of evidence are not provided for in the statutes which govern procedure therein or in other rules prescribed by the Supreme Court pursuant to statutory authority the trial of misdemeanors and other petty offenses before United States magistrate judges, review of agency actions when the facts are subject to trial de novo under section 706(2)(F) of title 5, United States Code, review of orders of the Secretary of Agriculture under section 2 of the Act entitled "An Act to authorize association of producers of agricultural products" approved February 18, 1922 (7 U.S.C. 292), and under sections 6 and 7(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f, 499g(c)); naturalization and revocation of naturalization under sections 310-318 of the Immigration and Nationality Act (8 U.S.C. 1421-1429); prize proceedings in admiralty under sections 7651-7681 of title 10, United States Code; review of orders of the Secretary of the Interior under section 2 of the Act entitled "An Act authorizing associations of producers of aquatic products" approved June 25, 1934 (15 U.S.C. 522); review of orders of petroleum control boards under section 5 of the Act entitled "An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes", approved February 22, 1935 (15 U.S.C. 715d), actions for fines, penalties, or forfeitures under part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581-1624), or under the Anti-Smuggling Act (19 U.S.C. 1701-1711); criminal libel for condemnation, exclusion of imports, or other proceedings under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301-392), disputes between seamen under sections 4079, 4080, and 4081 of the Revised Statutes (22 U.S.C. 256-258), habeas corpus under sections 2241-2254 of title 28, United States Code, motions to vacate, set aside or correct sentence under section 2255 of title 28, United States Code; actions for penalties for refusal to transport destitute seamen under section 4578 of the Revised Statutes (46 U.S.C. 679), 2 actions against the United States under the Act entitled "An Act authorizing suits against the United States in admiralty for damage caused by and salvage service rendered to public vessels belonging to the United States, and for other purposes", approved March 3, 1925 (46 U.S.C. 781-790), as implemented by section 7730 of title 10, United States Code

Rule 1102. Amendments	Rule 1102 — Definitions
	<p>In these rules</p> <ul style="list-style-type: none"> <li>(a) “civil case” means a civil action or proceeding,</li> <li>(b) “criminal case” includes a criminal proceeding,</li> <li>(c) “public office” includes a public agency,</li> <li>(d) a “rule prescribed by the Supreme Court” means a rule adopted by the Supreme Court under statutory authority, and</li> <li>(e) a reference to any kind of written material, such as a document or record [we can play with the examples], includes the electronic form of the material</li> </ul>

<b>Rule 1102. Amendments</b>	<b>Rule 1103 — Amendments</b>
Amendments to the Federal Rules of Evidence may be made as provided in section 2072 of title 28 of the United States Code	These rules may be amended as provided in 28 U S C § 2072

<b>Rule 1103. Title</b>	<b>Rule 1104 — Title</b>
These rules may be known and cited as the Federal Rules of Evidence	These rules may be cited as the Federal Rules of Evidence