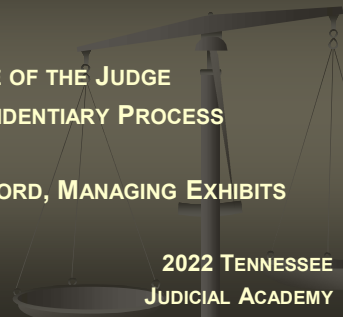


**EVIDENTIARY FRAMEWORK  
EVIDENTIARY FOUNDATIONS**

**ROLE OF THE JUDGE  
IN THE EVIDENTIARY PROCESS**

**MAKING A RECORD, MANAGING EXHIBITS**

**2022 TENNESSEE  
JUDICIAL ACADEMY**



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- 1. Evidentiary Framework, Evidentiary Foundations  
Role of the Judge in the Evidentiary Process  
Making a Record, Managing Exhibits**
- 2. Relevance; Special Rules of Legal Relevance;  
Balancing Dangers; Habit and Character**
- 3. Witnesses and Impeachment**
- 4. Hearsay and Confrontation**
- 5. Opinion Testimony**

**BIG PICTURE**



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- 1. Evidentiary Framework, Evidentiary Foundations  
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Making a Record, Managing Exhibits**

**BIG PICTURE**



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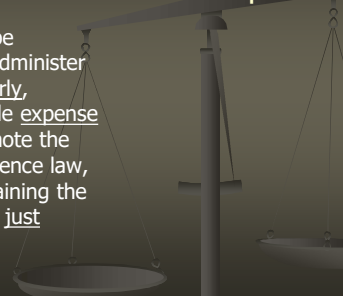
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**Evidence Framework: Purpose**

Rule 102. Purpose and Construction

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.



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*Efficiency?*



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Do my evidence rulings matter?



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- Overall Judicial Discretion
- Vantage Point for Justice
- Responsibility only for Grounds Stated
  - Deference on Appeal

Presumed Correctness of Factual Findings

- Abuse of Discretion Standard
- Harmless Error Standard

Evidence Framework: Significance

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Any Verbal or Tangible Matter  
Or Evidentiary Principle

That can be used to establish the existence or nonexistence of a factual proposition

Evidence Framework: Working Definition

And, that is deemed competent and admissible

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Evidence Framework:

<u>Verbal</u>	100s	General Provisions
	200s	Judicial Notice
	300s	Presumptions
<u>Tangible</u>	400s	Relevance, Character, Balancing
	500s	Privileges
	600s	Witnesses, Impeachment
<u>Evidentiary Principle</u>	700s	Opinion
	800s	Hearsay
	900s	Authentication
	1000s	Content of Writings, Photos, Recordings

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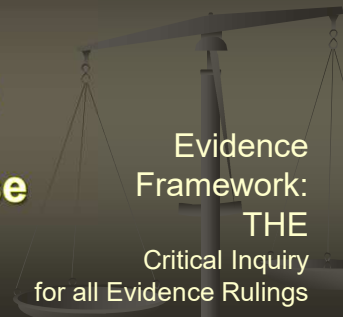
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**For  
What  
Purpose**



Evidence  
Framework:  
**THE**  
Critical Inquiry  
for all Evidence Rulings

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**The  
Two  
A's**



Evidence  
Framework:  
Key to Simplifying all  
Evidentiary Rulings

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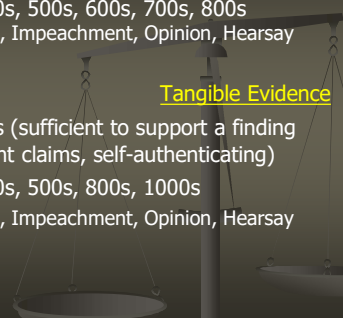
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Verbal Evidence

- **A**uthentic – FRE 602 – (1<sup>st</sup> hand knowledge)
- **A**dmissible – FRE 400s, 500s, 600s, 700s, 800s
  - Relevance, Privilege, Impeachment, Opinion, Hearsay

Tangible Evidence

- **A**uthentic – FRE 900s (sufficient to support a finding that is what proponent claims, self-authenticating)
- **A**dmissible – FRE 400s, 500s, 800s, 1000s
  - Relevance, Privilege, Impeachment, Opinion, Hearsay



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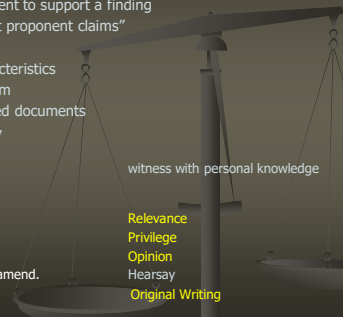
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**Checklist for Authentication and Admissibility of Tangible and Documentary Evidence**

	<u>Documentary Evidence</u>	<u>Tangible Evidence</u>
<i>Authentication</i>	"evidence sufficient to support a finding that item is what proponent claims"	
Rules 901- 902	Distinctive characteristics Process or System Self-authenticated documents Chain of Custody	
Rule 602		witness with personal knowledge
<i>Admissibility</i>	Rule 401-411 Rule 501 Rule 701-705 Rule 801-807, 6 <sup>th</sup> amend. Rule 1001 - 1005	Relevance Privilege Opinion Hearsay Original Writing



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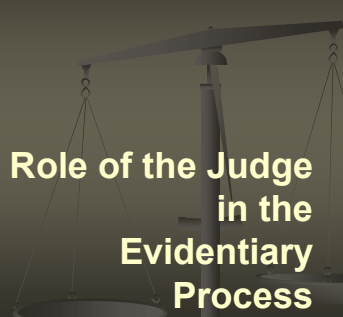
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**Role of the Judge in the Evidentiary Process**



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**SEEK JUSTICE**

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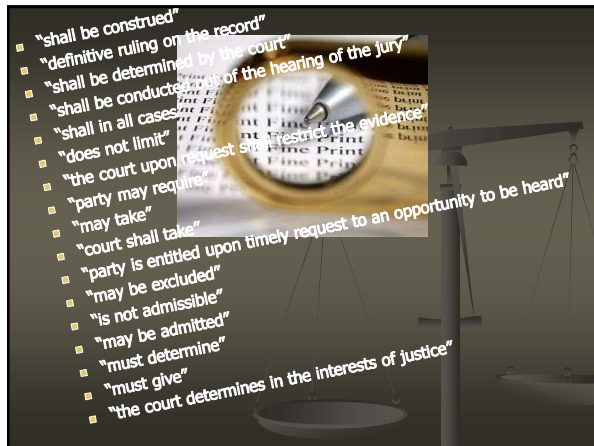
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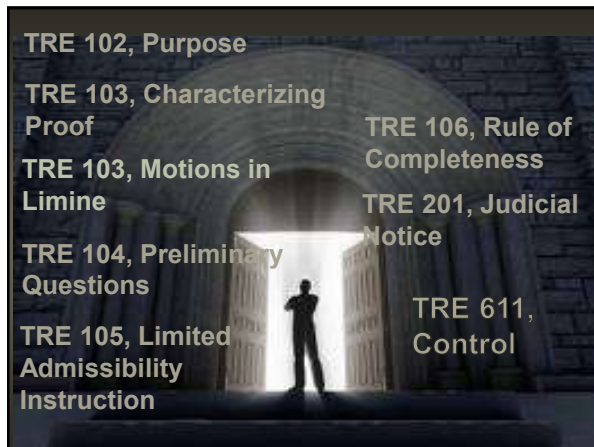
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**That's not how we do it in MY court.**


**Maybe that's how they do it where you come from but not IN MY COURT!**

**Maybe you should let Mr. \_\_\_ take this witness.**

**You are wasting my time and the jury's.**

**We all know what his witness is going to say. Why call him/her?**

**I'm going to put you two in a mud ring and let you duke it out.**



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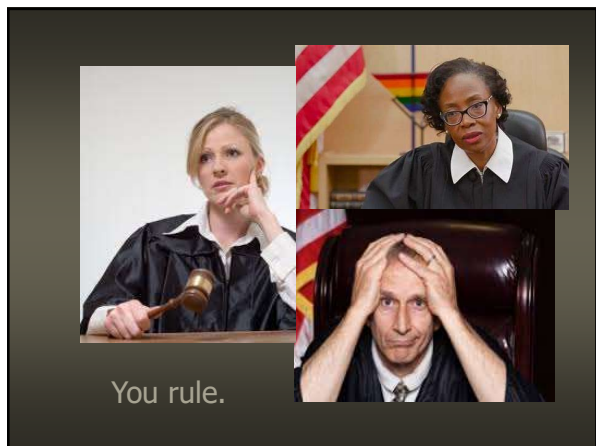
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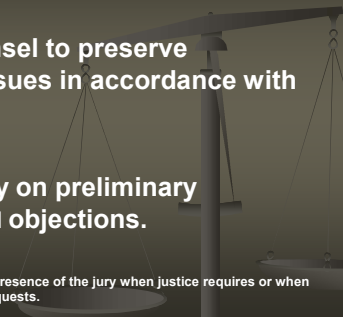
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### Role of Judge: When Objections Are Made

- 1. Allow counsel to preserve evidentiary issues in accordance with the rules.
- 2. Rule clearly on preliminary questions<sup>1</sup> and objections.

<sup>1</sup> Conduct hearing out of the presence of the jury when justice requires or when an accused is witness and requests.



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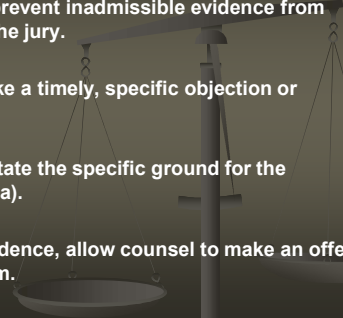
### 1. Allow counsel to preserve evidentiary issues in accordance with the rules.

Conduct hearing to prevent inadmissible evidence from being suggested to the jury.

Allow counsel to make a timely, specific objection or motion to strike.

Require counsel to state the specific ground for the objection – Rule 103(a).

If ruling excludes evidence, allow counsel to make an offer of proof in Q & A form.



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**2. Rule clearly on preliminary questions and objections.**

- Rule on the specific objections raised.
- If helpful, characterize the evidence, objection, and ruling – Rule 103(b).
- If appropriate, rule on pretrial motions in limine in advance of trial to facilitate fairness and efficiency – Rule 103(c).
- If appropriate, issue a cautionary or limiting instruction to the jury.

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### 3. Managing Exhibits

- Devise a numbering system that is simple for the court reporter, the court, counsel, and the jurors. Premark? It's allowed.
- Make sure the court reporter is clearly delineating between "for identification" and "admitted" exhibits.
- Don't sweat marking any exhibits counsel requests for identification. Its for the appellate court.
- Make sure only admitted exhibits are sent to the deliberation room.

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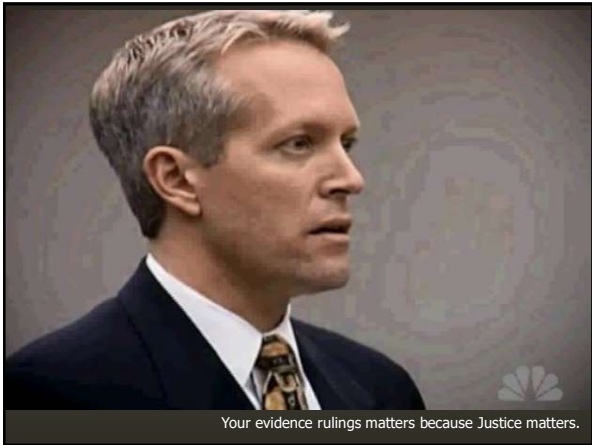
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