

## 2022 TENNESSEE JUDICIAL ACADEMY

### **Relevance: The Evidence Cornerstone Balancing Probative Value and Evidentiary Dangers Judicial Discretion and the Scales of Justice**

#### **YOU BE THE JUDGE!**

##### **1. But she hired me!**

Plaintiff mother sued obstetrician for medical malpractice arising from the birth of her first child. Before filing suit, but after the injuries to the first child were evidence, mother became pregnant and returned to obstetrician for medical care. At the medical malpractice trial, defendant obstetrician wishes to introduce evidence that mother hired obstetrician for the care and delivery of her second child. Plaintiff mother objects.

##### **2. We're such a cute couple. He's a swell guy!**

After child reported abuse, mother contacted authorities and boyfriend was arrested for sexual abuse of mother's child. After arrest but before trial, mother posts a picture of mother and boyfriend on her Facebook page with the following caption: "We're such a cute couple. He's swell." Boyfriend's defense lawyers wish to introduce picture along with caption at boyfriend's criminal trial for sexual abuse of child. Prosecution objects.

##### **3. Poor Taste!**

Defendant, arrested for a minor drug offense, is photographed for mug shots. A detective looking for leads in a case notices a tattoo that depicts a murder crime scene in sufficient detail to suggest that it captured the scene of a recent murder with no suspects. Defendant is charged with the crime. The prosecutor wishes to introduce evidence from the tattoo artist's records indicating that the defendant got the tattoo shortly after the murder. Defense counsel objects.

##### **5. You can't make this stuff up! (Well, you can, but you don't need to.)**

Plaintiff sues the city for excessive force following a long police chase. Plaintiff is a gang member, who has tattoos, including his gang insignia above his lip. Plaintiff's counsel, in his blog, releases a before-and-after picture, which he used Photoshop to create in order to project what his client will look like during the trial. City wishes to introduce the photo to account for the police reaction and on the issue of damages. Plaintiff's counsel objects.