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RULE 401 -RELEVANCE

- Evidence is relevant if
- it has **any tendency**
- to make a fact **more or less probable** than it would be without the evidence, and
- the fact is **of consequence** in determining the action

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CRUCIAL INQUIRY

**For What Purpose Is the Evidence Offered?**

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## Legal Relevance Rules

- Rules 404, 405 - Character
- Rule 406 - Habit
- Rule 407 - Subsequent remedial measures
- Rule 408 - Compromise offers, negotiations
- Rule 409 - Offers to pay medical and similar expenses
- Rule 409.1 – Expressions of sympathy or benevolence
- Rule 410 - Pleas, discussions
- Rule 411 - Liability insurance
- Rule 412 - Past Sexual Behavior

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## Ruling on Objections Based on Special Relevance Rules

- When evidence is objected to based on a special relevance rule, ask counsel offering the evidence
  - FWP the evidence is offered
  - Determine whether the purported purpose is a prohibited purpose or an exception
  - If an exception, determine that the purported purpose is relevant in the case
  - If relevant, and a Rule 403 object is raised, consider the Rule 403 objection
  - If admitted, give an clear limiting instruction advising the jury as to the legitimate use of the evidence
  - Make sure that the evidence is not relied upon or argued for its impermissible purpose.

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## Additional Considerations in Applying Special Legal Relevance Rules

- 1. What is the policy justification for the special legal relevance rule?
- 2. In what type of cases does the special legal relevance rule apply?
- 3. For what purpose is the evidence offered in this case?
- 4. Is the purpose for which the evidence is offered a prohibited purpose under the special legal relevance rule?
- 5. If not, and the evidence is admitted, will a limiting instruction help assure proper use of the evidence?

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## Character: Five Question Approach

- 1. What is the purpose of the character evidence?
  - Propensity    Essential Element    Other Purpose
- 2. Whose character does the evidence concern?
  - Accused    Victim    Witness    Other
- 3. Who is offering the character evidence?
  - Defense in Criminal Case    Prosecution    Civil Case
- 4. What type of character evidence is being offered?
  - Reputation    Opinion    Specific Instance of Conduct
- 5. At what stage of the trial is the evidence offered?
  - Case in Chief    Rebuttal

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## Framework for Analyzing Character Evidence, cont'd

PURPOSE	CASE, TYPE	RULE
Propensity	Criminal; Rep., Op. and Sp. Inst. In Judge's Discretion on Cross-Ex	TRE 404(a)
		TRE 405(a)
Non-Propensity "some other authorized purpose"	Criminal, Civil; All types evidence	TRE 404(b)
Essential Element	Criminal, Civil, All types evidence	TRE 405(a)(b)
Untruthfulness, Truthfulness of Witness	Criminal, Civil; ; Rep., Op. and Sp. Inst. In Judge's Discretion on Cross	TRE 608(a)
		TRE 608(b)
Habit	Criminal, Civil, All types evidence	TRE 406

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## RULE 403 - SCALES OF JUSTICE RULE

- Court **may** exclude relevant evidence if its
- **probative value**
- is **substantially outweighed**
  
- by a danger of
  - **unfair prejudice,**
  - **confusing the issues,**
  - **misleading the jury,**
  - **undue delay,**
  - **wasting time,**
  - **and/or needlessly presenting cumulative evidence**

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## Probative Value of Evidence

- Tendency of the evidence to make a fact of consequence more or less probably
  
- Usefulness of the evidence
  
- Value of the evidence in assessing the claims and defenses in the case, including on issues of credibility
  
- Weight of the evidence

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## Balancing under Rule 403: Consideration of Alternatives

- Old Chief v. United States

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### Steps in Old Chief Analysis

- **1. Standard of appellate review on evidence questions is abuse of discretion.**
  - **Why?**
- **2. The name of prior offense as contained in the official record is **relevant** in the case against Old Chief for being a felon in possession of a firearm.**

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### Steps in Old Chief Analysis, cont'd

- **3. 403 requires a balancing of the relative probativeness of the prior conviction against the danger of unfair prejudice caused by the admission of the name of the prior conviction.**
- **4. Evidence of the name or nature of the prior conviction carries a risk of unfair prejudice.**
- **5. Though relevant, the name and nature add no detail essential to the case, i.e., the probative value is low.**

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### Steps in Old Chief Analysis, cont'd

- **6. The offered stipulation "supplied evidentiary value" at least equivalent to what the Government offered, i.e., the two methods of proving the element of the offense were equal.**
- **7. The only difference in the two methods of proof was that one carried a risk of prejudice and the other did not.**
- **8. The judge abused discretion by admitting the conviction record instead of the stipulation.**

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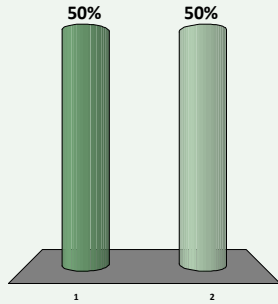
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### 1. But she hired me!

- 1. Sustain
- 2. Overrule



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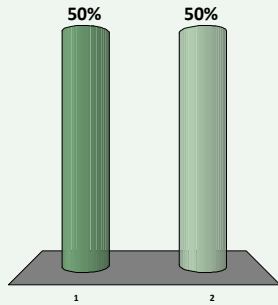
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### 2. "We're such a cute couple."

- 1. Sustain
- 2. Overrule



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L.A. County Sheriff's detectives said the tattoo on Anthony Garcia's chest included key details from the scene of a liquor store murder that puzzled them for four years. (Los Angeles County Sheriff's Department)

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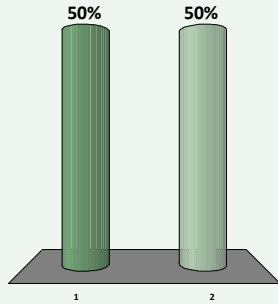
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### 3. Poor Taste!

- 1. Sustain
- 2. Overrule



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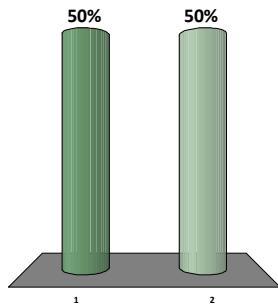
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### 4. You can't make this stuff up!

- 1. Sustain
- 2. Overrule



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