Admissibility and Authentication of (some) Electronic Evidence

Pierre Grosdidier

May 4, 2018

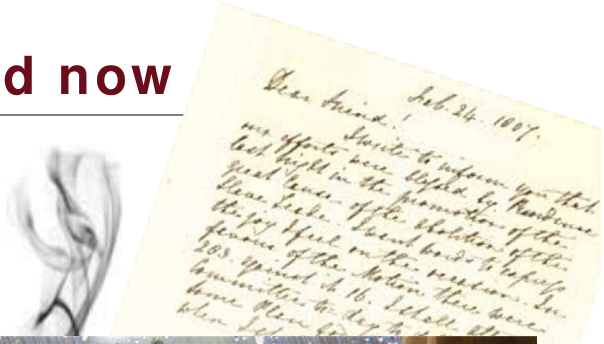
haynesboone

© 2015 Haynes and Boone, LLP

15286554/2

Evidence: then and now

- Then: tangible
- Now: intangible
  - Zeros and ones
  - Ephemeral
  - Manipulable





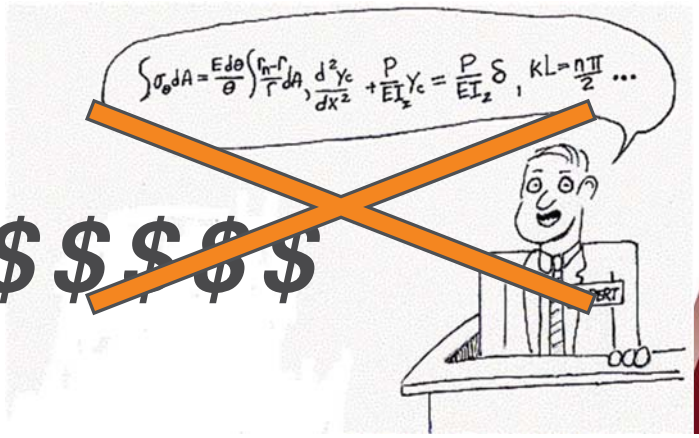


haynesboone

© 2015 Haynes and Boone, LLP

Electronic evidence is admissible

- Emails
- Computer simulations
- Computer outputs (*e.g.*, from databases)
- The issue today is *authentication*
  - Without an expert witness



haynesboone

© 2015 Haynes and Boone, LLP

Authentication issues

1. Cell phone text messages
2. Social media postings
3. Metadata
4. GPS







haynesboone

© 2015 Haynes and Boone, LLP

Admissibility and Authentication

- TRE 104(a) admissibility
  - Question of law for court
  - Not bound by evidence rules
  - Only threshold necessary
  - Jury decides weight of evidence
- Evid. inadmissible unless authenticated
- TRE 901(a) authentication
  - "[p]roponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."

haynesboone

© 2015 Haynes and Boone, LLP

Authenticating electronic evidence

- TRE 901(b)(1)
  - Personal knowledge
- TRE 901(b)(4)
  - Distinctive characteristics and circumstantial evidence

haynesboone

© 2015 Haynes and Boone, LLP

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Authentication of Electronic Evidence

Also available as part of the eCourse
Authentication of Electronic Evidence

First appeared as part of the conference materials for the
2018 STUDIO WEBCAST: Authentication of Electronic Evidence session
"Authentication of Electronic Evidence"