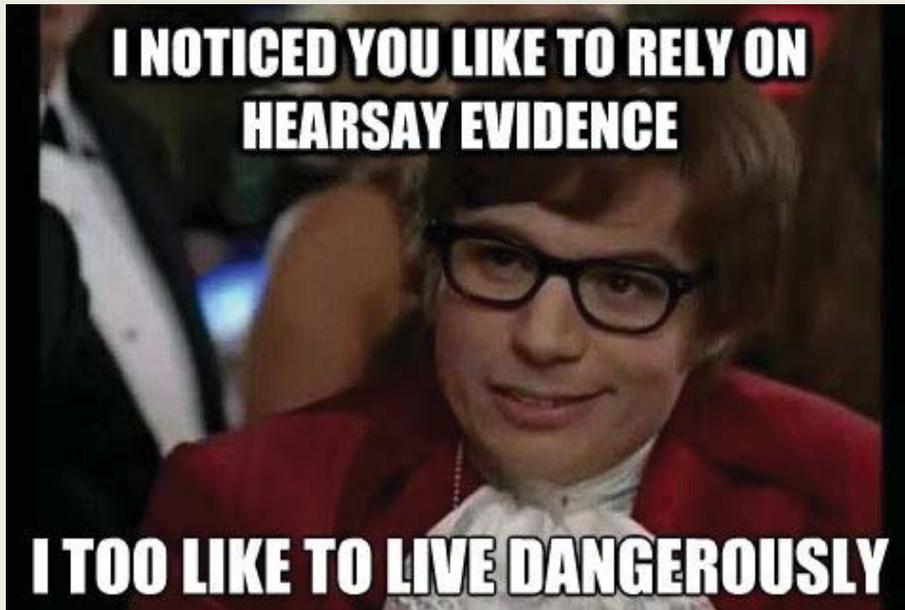


## THE IMPORTANCE OF EVIDENCE



### To be admitted, evidence must be:

- **Authentic** – it is what the proponent purports it to be.

AND

- **Admissible**



## Practice Pointers



- Read the relevant local rules and judge's procedures before trial.
- DO NOT WAIT until trial to think about authenticity and admissibility.
- The authenticity requirements of Fed. R. Evid. 901 are NOT met by the fact that you obtained a document in discovery from another litigant.
- Double check your exhibit books.
- Consider an evidence cheat sheet.
- Always carry your *current* rule book!

## Authentication of Exhibits (FRE 901 and 902)



Authenticity : Showing an exhibit is what it purports to be.

Authenticity can be established through a couple of simple questions to a witness with personal knowledge:

Q: Can you identify what is marked as Exhibit 1?

A: Yes.

Q: What is it?

A: It is a \_\_\_\_\_.

Assuming that the witness has personal knowledge and can answer the questions, the exhibit is authenticated.

## Self-Authenticating Documents – F.R.E. 902



There are 12 categories of self-authenticating documents – no extrinsic evidence of authenticity is required. Examples include—

F.R.E. 902(4). Certified Copies of Public Records A document recorded or filed in a public office as authorized by law and is certified as correct by an authorized person or accompanied by a certificate that complies with 902(1)-(3).

F.R.E. 902(8). Acknowledged Documents - documents accompanied by a certificate of acknowledgement lawfully executed by a notary or other person authorized to take acknowledgements.

F.R.E. 902(9). Commercial Paper and Related Documents i.e. a check. *See* Tex. Bus. & Com. Code § 1.202 – *prima facie* evidence of their own authenticity.

## Business Records Affidavit



F.R.E. 902(11). The Business Records Affidavit Authenticity can be established by a declaration provided by a **custodian** of the document or “other qualified person.”

The declaration **must** establish that:

- It was in the regular course of business to make the record.
- The record was made by someone with knowledge.
- The record was made at or near the time of the event.
- It was in the regular course of business to keep the record.

Proponent provide “reasonable written notice” to all adverse parties. Must make the affidavit and the document available for inspection “sufficiently in advance” of the offer to provide adverse parties with a fair opportunity to challenge.

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