

Admissibility and Authentication of (some) Electronic Evidence

Pierre Grosdidier

May 4, 2018

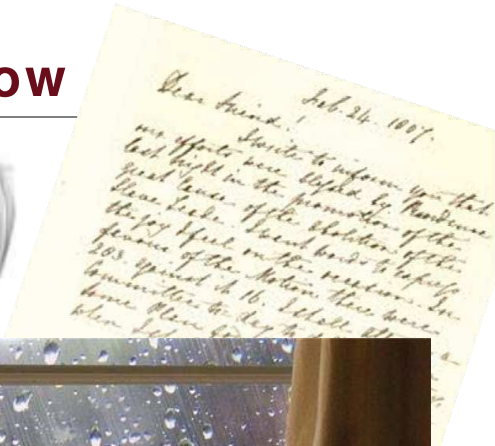
haynesboone

© 2015 Haynes and Boone, LLP

15286554/2

Evidence: then and now

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

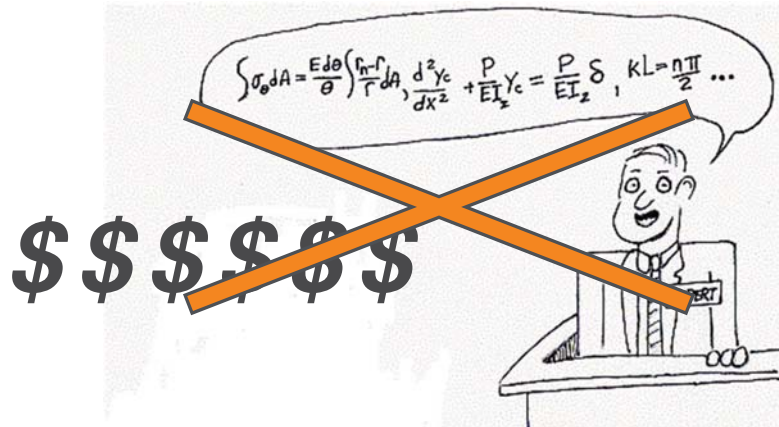


haynesboone

© 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

3

Authentication issues

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



haynesboone

© 2015 Haynes and Boone, LLP

4

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

5



Authenticating electronic evidence

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

haynesboone

© 2015 Haynes and Boone, LLP

6



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 \(utcle.org/elibrary\)](https://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"