

# Admissibility and Authentication of (some) Electronic Evidence

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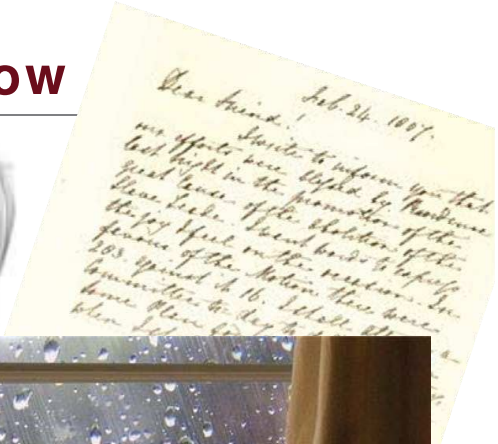
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## Evidence: then and now

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

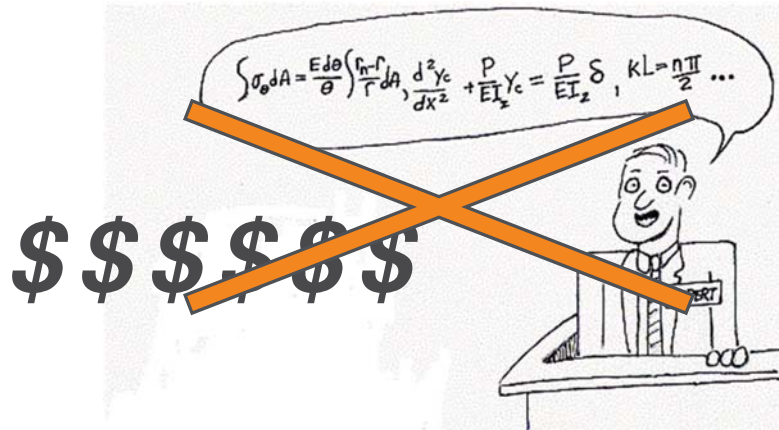


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## Electronic evidence is admissible

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



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3

## Authentication issues

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



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4

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## Admissibility and Authentication

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- 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.”

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5

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## Authenticating electronic evidence

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

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6

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