

Admissibility and Authentication of (some) Electronic Evidence

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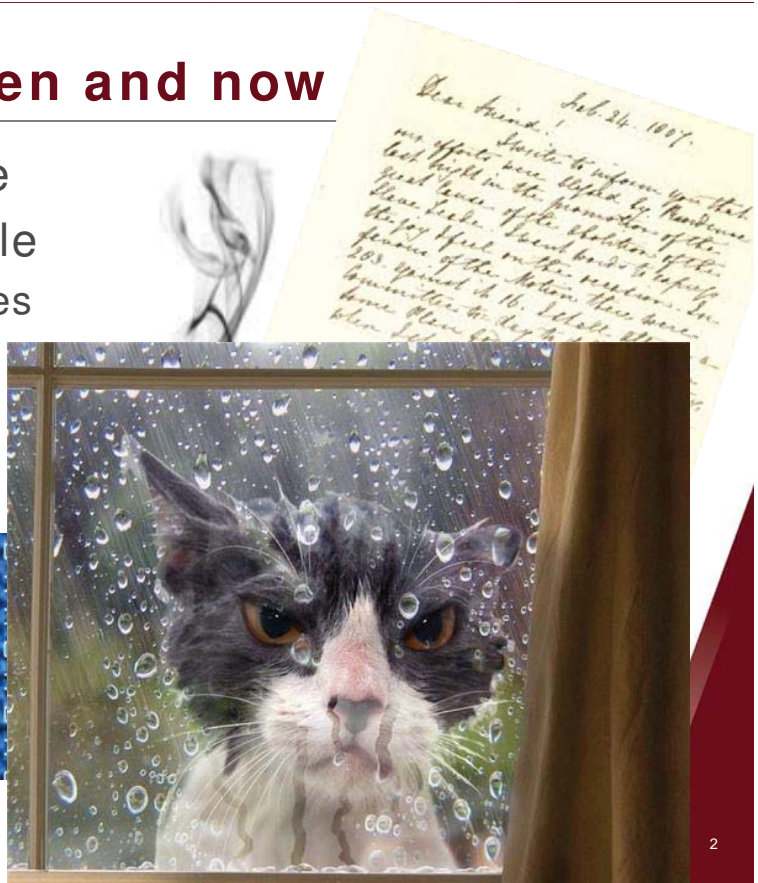
Evidence: then and now

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



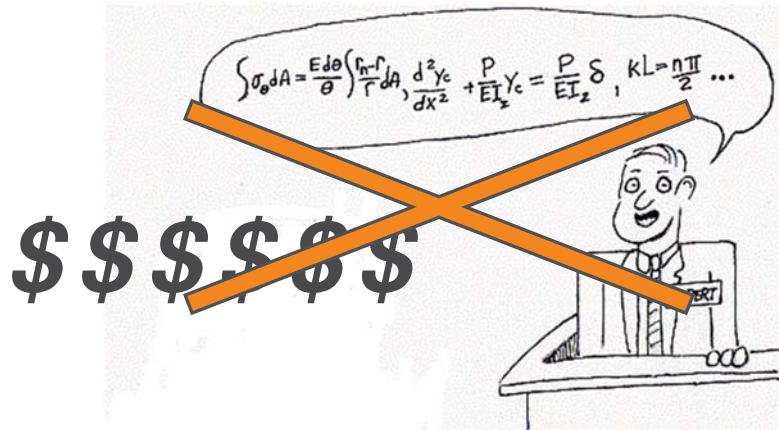
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Electronic evidence is admissible

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



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Authentication issues

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



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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.”

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Authenticating electronic evidence

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

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