

*This is your new*

# Trial Handbook

*Fall 2015*

by **Kent Sinclair**

This *new Trial Handbook (Fall 2015)* replaces the Spring 2015 edition. Simply discard the two chartreuse-colored volumes of *Trial Handbook (Spring 2015)*, as well as the USB flash drive, and replace them with this completely updated set.

In addition to updating **Volume 2's** extensive **Case Authority** with scores of the most recent leading decisions construing the evidence rules, this edition of *Trial Handbook* presents the "Established Doctrine" portion of individual rules in a new bulleted format, distilling each key principle into separate blackletter propositions that you can consult before delving into the extensive individual reverse-chronological annotations in the "Case Applications" sections. The easy-to-read bulleted points of established doctrine are the controlling thoughts the courts go back to time and time again, which practitioners can use in making arguments to a judge. For example:

## **Rule 412: Sex Offense Cases: The Victim's Sexual Behavior or Predisposition**

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### ***General Principles***

#### *Established Doctrine*

- **Rule 412 is the so-called rape shield rule, generally prohibiting admission of evidence of a complaining witness's prior sexual acts, unless certain conditions are met.** United States v. Pumpkin Seed, 572 F.3d 552 (8th Cir. 2009); J.W. v. City of Oxnard, 2008 U.S. Dist. LEXIS 91366 (C.D. Cal. 2008); Wilson v. City of Des Moines, 442 F.3d 637 (8th Cir. 2006); United States v. Raplinger, 2006 U.S. Dist. LEXIS 86750 (N.D. Iowa 2006); Williams v. Muhammad's Holy Temple of Islam, Inc., 2006 U.S. Dist. LEXIS 7425 (E.D.N.Y. 2006); French v. Amsleep, Inc., 2003 U.S. Dist. LEXIS 445 (N.D. Ill. 2003).

#### *Case Applications*

In determining admissibility of a victim's other sexual behavior under Rule 412(b)(1)(C), courts start with the premise that defendants have a constitutional right under the Fifth and Sixth Amendments to introduce evidence in their defense. However, this constitutional right is not without limitations, including concerns about harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant. Evidence concerning a victim's other sexual behavior in a sex offense case is permissibly excluded under such limitations as long as those limitations are not arbitrary or disproportionate to the purposes they are designed to serve. United States v. Never Misses A Shot, 781 F.3d 1017 (8th Cir. 2015).

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Rule 412 contains three exceptions in criminal cases to the general ban on evidence of prior sexual conduct. Of course, even if the proffered evidence fits into one of the exceptions delineated in the rule, it, like all evidence, must still pass the Rule 403 balancing test before it can be admitted at trial. *United States v. Mack*, 2014 U.S. Dist. LEXIS 12198 (N.D. Ohio 2014).

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In addition, you will find the entire contents of both volumes of *Trial Handbook (Fall 2015)* on the companion **USB flash drive**—a searchable, electronic version of the book that provides instant access to all of Professor Sinclair’s materials, in a convenient, portable format.

The product of Professor Kent Sinclair’s knowledge and experience as a litigator, judge, law professor, and legal skills trainer, *Trial Handbook (Fall 2015)* helps you master every trial phase—from **pretrial planning** and **opening statements**, to the **presentation of proof**, to **closing arguments** and **post-trial motions**.