

This is your new Fall 2013 Supplement to

Trial Handbook

2013 Edition

by Kent Sinclair

This supplement to your 2013 Edition of *Trial Handbook* updates both the Case Authority volume of the treatise and the accompanying CD-ROM and USB flash drive. Simply discard your old Volume 2 and replace it with this new and updated Fall 2013 Edition of the Case Authority. Similarly, you may discard your old CD-ROM and USB flash drive and replace them with the ones included here, which contain the entire contents of the two updated volumes. (Do not discard your existing copy of Volume 1 of *Trial Handbook*.)

In this updated Case Authority, Professor Sinclair has added **hundreds of new case summaries** of decisions under the rules. The following is just a small sample:

When read in conjunction, **Rule 104(a) and Rule 702** require that a party seeking to present expert testimony must first show by a preponderance of the evidence that the **expert is qualified by knowledge, skill, experience, training, or education**. See pages CA-46 to CA-51 for more on **expert and scientific proof foundations**.

In the context of drug trafficking cases, **expert testimony concerning the tools of the trade and the methods of operation of those who distribute various types of illegal narcotics** has consistently been deemed **relevant, under Rule 401, and admissible under Rule 702**, because the average juror is not well versed in the mechanics of the drug trade. See page CA-145.

In a prosecution of a lobbyist for honest-services fraud, paying an illegal gratuity, and conspiracy relating to his provision of gifts to public officials, the trial court did not commit an abuse of discretion in deeming evidence of the **lobbyist's lawful campaign contributions** admissible after considering the implications under the First Amendment and conducting the balancing of probative value and prejudicial effect required under Rule 403. See page CA-207 for discussion of this 2013 D.C. Circuit case, in which **frequently repeated curative instructions** mitigated the potential for confusion and First Amendment chilling, even if it could not have entirely eliminated the potential for **unfair prejudice**.

A defendant can seek to introduce evidence of a government witness's prior bad acts if that evidence tends to negate the defendant's guilt. Colloquially (at least among lawyers), such evidence is referred to as **"reverse 404(b) evidence."** See pages CA-295 to CA-296 for further discussion.

Because **Rule 501** reflects that evidentiary privileges should generally be construed in the most narrow manner that will give effect to their purpose, statements regarding mental health made to an emergency room at-

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tendant who is not trained in psychotherapy may not be subject to the privilege. *See* page CA-448 for more on **privilege and psychotherapist-patient communications**.

Although it is unclear whether an **oath taken by translators** to “truly and faithfully perform all the duties of their office” is sufficient to satisfy the requirement of Rule 604, court interpreters are presumed to be translating faithfully and accurately in the absence of special circumstances, even where there is a possibility that the interpreters did not take the requisite oath. *See* page CA-513 for more about **translating under oath**.

Whether or not Rule 606(b) prevents consideration of evidence that a juror’s racial bias was expressed during deliberations, where a juror has been asked direct questions about racial bias during voir dire and has sworn that racial bias would play no part in his deliberations, **evidence of that juror’s alleged racial bias** is indisputably admissible for the purpose of determining whether the juror’s responses were truthful. *See* page CA-530 for more on **juror competency and racial prejudice**.

Out of 15,000 total **latent-fingerprint experts**, there are only about 840 who are certified by the International Association for Identification, the foremost international fingerprint organization. In a recent Seventh Circuit case involving one such certified examiner, it was held that even though latent print matching depends on subjective judgments by the examiner, responsible latent-fingerprint matching is admissible evidence under Rule 702. *See* page CA-757.

A nine-minute lapse of time between a vehicular collision and the statements regarding the collision given by the truck driver whose vehicle was involved in the collision to police officers who responded to the scene created an opportunity for strategic modification undercutting the reliability that spontaneity insures and was thus not a present sense impression under Rule 803(1). *See* pages CA-958 to CA-967 for more on the **present sense impression exception to rule against hearsay**.

Estimates of property values available to the public through the Zillow website, commonly known as “zestimates,” are inherently unreliable and accordingly not admissible as a market report or compilation under Rule 803(17). *See* page CA-1064 to CA-1066 for more on the **market reports/commercial publications exception to rule against hearsay**.

Documents issued by American Indian Tribes cannot be self-authenticating because these tribes do not qualify as political subdivisions under Rule 902(1). *See* page CA-1175 for more examples of what does and does not constitute **self-authenticating evidence**.

The product of Professor Kent Sinclair’s knowledge and experience as a litigator, judge, law professor, and legal skills trainer, *Trial Handbook 2013 Edition* helps you master every trial phase—from **pretrial planning** and **opening statements**, to the **presentation of proof**, to **closing arguments** and **post-trial motions**. *Trial Handbook* strengthens your ability to win at trial by showing you how to apply proven trial preparation strategies, timely rules of evidence, and powerful litigation techniques.