Index

ABANDONMENT OF EVIDENCE ACCIDENTS—Cont'd Photograph of site, 11:9 General discussion, 4:4 Presumptions, driver presumed to **ABSENCE** have owner's permission, 3:19 Accident or mistake, uncharged Prior accidents, generally inadmiscrimes to prove absence of sible, 4:44 general discussion, 4:21 Reports civil cases, 4:29 hearsay exception Business records, absence of; hearsay general discussion, 8:41 general discussion, 8:45 federal rules, 8:44 federal rules, 8:47 no work product immunity, 5:14 Escape or flight, relevancy Similar occurrences considerations, 4:4 general discussion, 4:35 Missing witnesses rule federal rules, 4:38 general discussion, 4:5 federal rules, 4:9 index Original evidence, absence of ACCOMPLICES see Best Evidence Rule, this index Bias and interest of witnesses, 6:44 Public records, absence of; hearsay Corroboration, 3:4 exception general discussion, 8:46, 8:62

ACCESS TO EVIDENCE

federal rules, 8:69

Unavailability, this index

Burden of proof allocation, factor influencing, 3:2

certified report of absence, 8:62

ACCESS TO PROOF

Presumptions creation, reason for, 3:19

ACCIDENT OR MISTAKE

Uncharged crimes to prove absence of general discussion, 4:21 civil cases, 4:29

ACCIDENTS

See also Negligence; Personal Injury Actions, this index Dead man's statute, facts of accident exception, 6:14 Liability Insurance, this index

Subsequent Remedial Measures, this

ACCOUNTANTS

Retained to facilitate communication, attorney-client privilege applicable general discussion, 5:7 federal rules, 5:11

ACQUIRED IMMUNE DEFICIENCY SYNDROME

AIDS, this index

ACQUITTAL

Burden of production federal rules, 3:6

ADMINISTRATIVE PROCEEDINGS

Medical records, hearsay exception federal rules, 8:44 Self-incrimination, privilege against, 5:46

ADMISSIBILITY

See specific index headings

ADMISSIONS	ADMISSIONS—Cont'd
Acts as	Preliminary rulings, 1:17
general discussion, 8:16	Principle and surety, 8:17
federal rules, 8:25	Prior inconsistent statements by
Adoptive	adverse party, 6:33
general discussion, 8:20	Privity, statements of person in, as,
federal rules, 8:25	8:18
Against interest, generally. Declarations, this index	Representative capacity, statements made in, as
Agent's or servant's statements as	general discussion, 8:19
general discussion, 1:19, 8:21	federal rules, 8:25
federal rules, 8:26	Silence as admission
Attorneys' representations, 8:21	general discussion, 8:17
federal rules, 8:26	adoptive admission, 8:20
Best evidence rule satisfied, 10:14	while in custody, 5:50
Burden of production, meeting, 3:3	Sobriety test, refusal to submit to,
Coconspirator's statements	5:50
general discussion, 1:17, 8:22	Speaking agent, 1:15, 8:21
federal rules, 8:27	Statements, as
in course of conspiracy, 8:27	general discussion, 8:15
in furtherance of conspiracy, 8:27	federal rules, 8:25
Completeness doctrine, 1:21	Subsequent Remedial Measures, this
Compromise, admissions made dur-	index
ing negotiation, 4:58	Vicarious, 8:26
Conduct as, 8:16	ADULTERY
Confessions, distinguished from, 8:14	Husbands and wives, incompetent to testify, 5:24
Employment relationship basis, 8:26	ADVERSE INFERENCE
Evidentiary admissions, 8:14	
Guilty pleas	Failure to call witness, from, 4:5
informal admission in related liti-	Failure to produce relevant evidence federal rules, 4:9
gation, as, 8:16	Invoking privilege, from, 5:59, 5:60
withdrawn	Self-incrimination, privilege against
general discussion, 4:62	credibility, jury may consider in
federal rules, 4:63	assessing, 5:47, 6:71
Inculpatory words used during compromise negotiations, 8:16	Suppression of evidence, from, 4:4
Interpreters, 8:26	ADVERSE PARTY
Judicial admissions, 8:14, 8:24	Leading questions permissible on
Partner's, 8:21	direct examination
Party-opponent, statements not	general discussion, 6:70
hearsay, 8:7	federal rules, 6:78
Party's statement, 8:15-8:22	Prior inconsistent statements as
federal rules, 8:23-8:27	admissions, 6:52
Payment of medical and similar expenses, 4:60	Refreshing recollection, right of inspection
Pleadings, 8:14	general discussion, 6:81
federal rules, 8:23	federal rules, 6:82

INDEX ADVERSE POSSESSION AGENTS—Cont'd Personal knowledge of facts underly-Burden of persuasion, clear and ing vicarious admission, 8:26 convincing evidence, 3:10 Speaking agent rule, 1:17 **AFFIDAVITS** Public officers, facts or acts performed, hearsay exception, 8:50 Public records, maps or surveys, hearsay exception, 8:52 AFFIRMATIONS **ALCOHOL** Oaths and Affirmations, this index AFFIRMATIVE DEFENSES Burden of proof general discussion, 3:2 burden of persuasion, 3:5 burden of production general discussion, 3:5 shifting of burden constitutionality, 3:14 federal rules, 3:15 **Duress**, 3:14 federal cases, 3:15 Reasonable doubt, 3:14 ALIASES **AGE** Competency of witnesses, 6:6 Display of person for determination of general discussion, 11:4

AGENTS

federal rules, 11:5

Lay opinion regarding

federal rules, 7:3

general discussion, 7:2

Attorney-client privilege, 5:7 Dead man's statute deceased agent, principal not entitled to invoke statute. 6:12 transaction between decedent and principal, agent competent to testify, 6:11 transaction between decedent's agent and interested witness, 6:13

Emergency medical technicians, privilege only if physician's agent, 5:19

Statements made by, as admissions general discussion, 1:19, 8:21 federal rules, 8:26

Patient-Physician Privilege, 5:18

Impeachment based on consumption general discussion, 6:47 federal rules, 6:48 Intoxication, this index Sobriety test expert testimony regarding, 7:6 refusal to submit to as admission, 5:50 Witnesses under influence of, effect on competency general discussion, 6:8 federal rules, 6:17

Explanation admissible to rehabilitate, 6:39 Impeachment purposes, 6:29 Prior acts of misconduct, admissibility as, **6:59**

ALIBI

Burden of production federal rules, 3:15 Relevancy of false alibis, 4:4

ALIBI WITNESSES

Impeachment with prior silence, 6:51

AMNESIA

Burden of persuasion, preponderance of evidence, 3:9

ANCIENT DOCUMENTS

Authentication and identification, 8:74, 9:17 federal rules, 8:77, 9:18 Hearsay, 8:73, 8:74 federal, 8:77 maps, 8:52

ANNULMENT ATTORNEY-CLIENT PRIVILEGE -Cont'd Corroboration, 3:4 Arbitration proceedings, federal APPEAL court-mandated, 5:11 Conviction of crime offered to Attorney-client relationship impeach existence, 5:4 effect of pending appeal, 6:64 federal rules, 5:11 pretrial ruling, 1:13 Burden of establishing applicability, Harmless error 5:3 general discussion, 1:8 Business communications not federal rules, 1:14 privileged, 5:6 Judicial notice of adjudicative facts, Communications, generally, 5:5 taking for first time on appeal, federal rules, 5:11 2:5 Confidentiality, 5:7, 5:10 federal rules, 2:7 federal rules, 5:11 Objections, this index Corporate application, 5:7, 5:8 Offer of proof to preserve error federal rules, 5:11 general discussion, 1:6 Corporate change of control, 5:8 federal rules, 1:12 federal rules, 5:11 Preserving error for appeal Death. effect. 5:3, 5:9 general discussion, 1:4, 1:5 federal rules, 5:11 federal rules, 1:10 Definition under federal rules, 5:11 ARRESTS Discovery, documents disclosed during, 5:10 Bias or interest of witness, 6:44 federal rules, 5:11 Character in issue, arrest irrelevant, Documents, 5:3-5:5 federal rules, 5:11 Cross-examination of character witness regarding defendant's prior inadvertent disclosure during arrests, **4:13** discovery, waiver of privilege, 5:10 Impeachment value, 6:59, 6:61 Eavesdroppers or interlopers, 5:3, 5:7 Silence following, 5:50 Elderly clients, 5:7 **ARSON** Employees of corporation, control Burden of persuasion, clear and over disclosure, 5:8 convincing evidence, 3:10 federal rules, 5:11 Engagement of counsel, facts relating ASSAULT AND BATTERY to, 5:5 Character of defendant in civil case, ERISA pension plan administration, 4:11, 4:12 exception ATTORNEY-CLIENT PRIVILEGE federal rules, 5:11 General discussion, 5:3 et seq. Exceptions, 5:9 Accountants retained to facilitate federal rules, 5:11 communication, 5:7 Federal rules, 5:11 federal rules, 5:11 Fiduciary duty owed by client to Address of client, disclosure, 5:5 party seeking disclosure, excep-Agents of attorney or client, 5:7 tion. 5:9 federal rules, 5:11 Former employees or directors of corporation, 5:8 Agreement of parties, disclosure by,

federal rules, 5:11

5:11

ATTORNEY-CLIENT PRIVILEGE —Cont'd	ATTORNEY-CLIENT PRIVILEGE —Cont'd
Fruits or instrumentalities of crime,	Waiver, 5:3, 5:10 —Cont'd
5:5	malpractice allegation, exception,
Future crime or fraud, exception to	5:9
privilege, 5:9	Who may assert privilege, 5:3
federal rules, 5:11	Will contests
Gestures, 5:5	disclosure disgracing decedent's
Governmental bodies, applicability	memory, 5:3 , 5:9
federal rules, 5:11	exception to privilege, 5:9
Identity of client, disclosure, 5:5	Work Product Immunities, this index
federal rules, 5:11	ATTORNEYS
Inadvertent disclosure, 5:10	Admissions, attorneys' representa-
federal rules, 5:11	tions as, 8:21
Interpreters, 5:7	federal rules, 8:26
Invocation of privilege, 5:3	Attorney-Client Privilege, this index
Joint client rule, 5:7	Certification of copy as authentica-
federal rules, 5:11	tion, 9:21
Joint defense doctrine, 5:7	Disbarment, impeachment value,
federal rules, 5:11	6:60
Judicial notice of, 2:8	Government attorneys
Legal advice, 5:6	attorney-client privilege, 5:11
federal rules, 5:11	Statements and questions by, not evi-
Malpractice allegation, exception, 5:9	dence, 1:2
Personal communications not	Summation comments about party's
privileged, 5:6	failure to testify or call witness,
Post-death exception, refusal to create	4:5
federal rules, 5:11	Work Product Immunities, this index
Proceedings in which privilege may	AUDIO TAPES
be invoked, 5:3	
Public policy exception, 5:9	Recordings, this index
Refreshing memory of witness with	AUTHENTICATION AND
privileged communication, 5:10,	IDENTIFICATION
6:81	See also Real and Demonstrative
federal rules, 5:11 , 6:82	Evidence, this index
Shareholder actions, exception, 5:9	General discussion, 9:1 et seq.
federal rules, 5:11	Admission to establish authenticity,
Tangible objects, 5:5	9:1
Third party presence, 5:10	Ancient documents, 8:74, 9:17
federal rules, 5:11	federal rules, 8:77, 9:18
Trustees, 5:9	Attorney certification of copy, 9:21
Waiver, 5:3 , 5:10	Ballistics, expert comparison and
document used to refresh memory,	analysis, 9:7
6:81	Bloodhound tracking identification,
federal rules, 6:82	8:12
federal rules, 5:10 , 5:11	Burden of proof, 9:1

AUTHENTICATION AND IDENTIFICATION—Cont'd
Federal rules, 9:1 et seq.
Fingerprints, expert comparison and
analysis, 8:6, 9:7
Foreign records, 9:15 , 9:24
federal rules, 9:25
Handwriting, 7:6
expert opinion, 9:7
federal rules, 9:8
lay opinion, 9:5
federal rules, 9:6
Jury determination of authenticity,
9:1
Laboratory reports, 8:6, 8:41
Lay opinion on handwriting, 9:5
federal rules, 9:6
Methods provided by statute or rule,
9:21
Motion pictures and videotapes,
11:12
federal rules, 11:17
Negative identification evidence, 8:12
Newspapers and periodicals
federal rules, 9:25
Official publications, 9:24
federal rules, 9:25
Photographs, 9:3 , 11:9
federal rules, 11:1
Place of custody used to authenticate,
9:9
Police sketches, 8:12 , 8:13
Preliminary question matter for judge
or jury, 1:16
federal rules, 1:18
Process or system, 9:19, 9:21
federal rules, 9:20, 9:22
Public records, 9:15, 9:24
federal rules, 9:16, 9:25
Real property
foreign conveyances, 9:24
title documents, 9:17
Recordings, 9:1, 9:3, 11:11
criminal cases, burden of proof,
9:1
federal rules, 11:16
voice identification, 9:11

AUTHENTICATION AND	AUTHENTICATION AND
IDENTIFICATION—Cont'd	IDENTIFICATION—Cont'd
Samples, authenticity for comparison, 9:7	Voice identification, 9:11—Cont'd spectrograph use, 9:12
federal rules, 9:8	voiceprints, expert comparison and
Scientific evidence, 9:19	analysis, 9:7
federal rules, 9:20	Voir dire of witnesses regarding,
Self-authentication, 9:23, 9:24	6:74
certified copies of public records,	Wiretaps, voice identification, 9:11
9:15	federal rules, 9:12
federal rules, 9:25	X-rays, 9:20 , 11:10
Signature. Handwriting, above	federal rules, 11:15
Silent witness theory of authentication, 11:9 , 11:10 , 11:12	AUTOPSY REPORTS
federal rules, 11:14, 11:15, 11:17	Nonhearsay, 8:6 , 8:42
Statutory methods, 9:21, 9:24	BACKGROUND EVIDENCE
federal rules, 9:22, 9:25	Noncollateral, use for impeachment,
Stipulation to establish authenticity,	6:30
9:1	Uncharged crimes, 4:24
Subscribing witnesses, 9:26	BAILMENT
Summaries, 10:13	Conversion or loss of property,
Tangible objects, 11:2	presumptions, 3:19
Tariff or classification, 9:24	
federal rules, 9:25	BEST EVIDENCE RULE
Telephone conversations caller identification, 9:11	General discussion, 10:1 et seq.
federal rules, 9:12	Admission of party as genuineness of contents, 10:14
content identification, 9:9	Applicability of rule, 10:1
federal rules, 9:10	Business records
listener identification, 9:13	electronic data imaging
federal rules, 9:14	distinguished, 10:3
voice identification, 9:3	originals, as, 10:3
Testimony of witness with knowledge, 9:3	voluminous records summarized, 10:12
federal rules, 9:4	federal rules, 10:13
Trade inscriptions, 9:24	Carbon copies accepted as originals,
federal rules, 9:25	10:3
UCC provisions, 9:25	Collateral matters, secondary evi-
Vital statistics as authentication	dence, 10:9
method, 9:21	Computer printouts
Voice identification, 9:11	coverage of, 10:2
burden of proof, 9:1	originals, as, 10:3
circumstantial evidence, 9:9	summaries, 10:12
conditional relevancy principle,	Confessions, 10:1
1:16, 1:18	Convictions, 10:2
conversation participants attesting	Correspondence, originals, 10:3
to accuracy, 9:3	Court and jury, functions of, 10:15
federal rules, 9:12	federal rules, 10:16

BEST EVIDENCE RULE—Cont'd	
Definitions, generally, 10:2	Transcripts, 10:1, 10:4
Duplicates, 10:4	Voluminous writings summarized,
Electronic data imaging, 10:3	10:12
Federal rules, 10:1 et seq.	federal rules, 10:13
Film, 10:2	Will contests, 10:4
Functions of court and jury, 10:15	X-rays, 10:3
federal rules, 10:16	excusable loss or destruction of,
	10:6
Inscriptions, 10:2	10.0
Judgments, 10:1	BIAS AND INTEREST OF
Letters, 10:2, 10:3	WITNESS
Loss or destruction of evidence, 10	
Memory refreshment records exclu	Compromises, 4:58 , 4:59
sion, 10:2	Credibility, 6:28 et seq.
Mortgage documents, 10:2	Federal rules, 6:45
Notice to produce original, 10:8	
Originals, 10:3	Group affiliations, 6:65
excusable loss or destruction of,	Own witness, impeachment generally
10:6	prohibited, 6:32
opponent possessing, 10:8	Religious belief, 6:65
unobtainable, 10:7	federal rules, 6:66
· · · · · · · · · · · · · · · · · · ·	BIGAMY
Photographs 10.2	
coverage, 10:2	Spousal privileges, 5:29
originals, 10:3	BIRTH CERTIFICATES
Plot plans, 10:2	TT 0 #6
Preliminary ruling by judge or jury	•
1:16	federal rules, 8:66
federal rules, 1:18	BLOODHOUND TRACKING
Public records, 10:10	EVIDENCE
federal rules, 10:11	Identification of persons, used for,
Real property title documents, 10:1	, 8:12
10:10	0.12
Receipt for payment of debt, 10:1	BLOOD TESTS
Recordings, originals, 10:3	DNA reports, hearsay exception,
Refreshing memory, inapplicable to	0.40
10:2	Genetic markers, hearsay exception,
Secondary evidence, 10:5 et seq.	8:43
	Intoxication, to prove
collateral matters, 10:9	
functions of court and jury, 10:1	
10:16	refusal to submit to as admission, 5:50
loss or destruction of evidence,	
10:6	Relationship, to prove; expert
original in possession of opponer	nt, testimony regarding, 7:6
10:8	BREATHALYZER TEST
original not obtainable, 10:7	Expert opinion regarding, 7:6
Summaries, 10:12	Expert opinion regarding, 1.0
federal rules, 10:13	BRIBE
Telegram rule, 10:3	Bias and interest of witness, 6:44

BURDEN OF PERSUASION	BURDEN OF PROOF—Cont'd
Burden of Proof, this index	Burden of persuasion—Cont'd
BURDEN OF PRODUCTION	clear and convincing evidence
Burden of Proof, this index	—Cont'd
, and the second	paternity, 3:10
BURDEN OF PROOF	real property
General discussion, 3:1 et seq.	adverse possession, 3:10
Affirmative defenses, 3:2	gifts, decedent's pre-death transfer by, 3:10
burden of persuasion, 3:5	implied easements, 3:10
burden of production, 3:5	usury, 3:10
criminal proceedings	criminal proceedings, 3:12
reasonable doubt, 3:14	affirmative defenses
Allocation, factors influencing	reasonable doubt, 3:14
general discussion, 3:2	circumstantial evidence, 3:13
access to evidence, 3:2	federal rules, 3:15
change in status quo, 3:2	constitutional constraints, 3:30
fairness, 3:2	reasonable doubt, 3:13-3:15
policy, 3:2	defined, 3:1
practicality and convenience, 3:2 probabilities, 3:2	federal cases
Authentication and identification, 9:1	civil cases, 3:11
Burden of persuasion	criminal cases, 3:15
general discussion, 3:7 et seq.	jury instructions, 3:7
affirmative defenses, 3:5	preponderance of evidence
duress, 3:14	general discussion, 3:9
entrapment, 3:14	amnesia, 3:9
insanity, 3:14	civil proceedings, 3:9
reasonable doubt, 3:14	federal rules, 3:9
allocation of burdens of proof, 3:2	federal cases, 3:11
beyond reasonable doubt, criminal	lost insurance policy, 3:10
proceedings, 3:12-3:15	noseworthy charge, 3:9
civil proceedings, 3:8	punitive damages, 3:10
clear and convincing evidence,	wrongful death actions, 3:9
3:10	noseworthy doctrine, 3:9
federal rules, 3:11	Burden of production
preponderance of evidence, 3:9	general discussion, 3:3-3:6
clear and convincing evidence	affirmative defenses, 3:5
general discussion, 3:10	shifting of burden
arson, 3:10	constitutionality, 3:14
civil proceedings, 3:10	federal rules, 3:15
contracts	allocation of burdens of proof, 3:2
mistake, 3:10	circumstantial evidence, 3:4
reformation, 3:10	defined, 3:3
defamation, 3:10 federal rules, 3:10	exclusion of other possible
moral turpitude, 3:10	causes, 3:4
fraud, 3:10	federal rules, 3:6
malice 3:10	direct evidence,

BURDEN OF PROOF—Cont'd	BURDEN OF PROOF—Cont'd
Burden of production—Cont'd	Defined, 3:1
circumstantial evidence, 3:4	Federal cases
—Cont'd	burden of persuasion
federal rules, 3:6 —Cont'd	civil cases, 3:11
not inherently inferior to,	criminal cases, 3:15
3:6	burden of production, 3:6
sufficiency question, 3:4	civil cases
corroboration, 3:4	burden of persuasion, 3:11
accomplice testimony, 3:4	burden of production, 3:6
annulment, 3:4	criminal cases
confessions, 3:4	burden of persuasion, 3:15
federal rules, 3:6	Negligence, 3:2
minors, unsworn testimony, 3:4	Presumptions
defenses	effect of, 3:16
federal rules, 3:15	meeting, 3:3
defined, 3:1	Reasonable doubt
directed verdict motion, 3:4	
federal rules, 3:6	criminal proceedings
direct evidence, 3:4	burden of persuasion, 3:13
defined, 3:3	Uncharged crimes, 4:18
dismissal of actions, 3:4	federal rules, 4:31
federal rules, 3:6	Witnesses
functions of judge and jury, 3:6	incompetency, 6:2
judgment notwithstanding verdict motion, 3:4	missing witness inference, 4:5
presumptions, effect	BUSINESS PRACTICE
"bursting bubble" rule, 3:21,	Habit, 4:42 , 4:43
3:23	federal rules, 4:48
hybrid approach rule, 3:23	Similar transactions, 4:36
Morgan rule, 3:22, 3:23	federal rules, 4:39
Thayer rule, 3:21 , 3:23 , 3:27	rederar rules, 4.37
prima facie evidence, 3:4, 3:25	BUSINESS RECORDS
rebuttal evidence, 3:5	Absence of, hearsay, 8:45
self-defense	federal rules, 8:47
federal rules, 3:15	Best evidence rule, 10:3
shifting of burden, 3:5	Dead man's statute, applicability,
affirmative defenses, 3:14	6:10
duress, 3:14	Exception to personal knowledge
entrapment, 3:14	requirement, 9:3
insanity, 3:14	federal rules, 9:4
sufficiency test, 3:4	Hearsay exception, 8:41
federal rules, 3:6	federal rule, 8:44
testimony pointing to guilt and	In limine motion, 1:7
innocence, 3:4	Prior inconsistent statements
Contracts, 3:2	recorded verbatim, 6:53
prenuptial agreements, 3:2	Self-incrimination, privilege against
Criminal cases, 3:12	5:47

CENSUS CHARACTER EVIDENCE—Cont'd Criminal cases, proof of conduct, Judicial notice, adjudicative facts, 4:13 2:3, 2:4 federal rules, 4:17, 4:68 Population certificates, hearsay Cross-examination of defendant's exception, 8:59 character witnesses, 4:13 CERTIFICATES federal rules, 4:17 Absence of public records, certified Defamation cases, character of victim report of, hearsay exception, in issue, 4:11 8:62 Defendant taking the stand, effect on Agricultural inspection, hearsay character evidence, federal rules, exception, 8:58 4:17 Attorney certification of copy as Effect of, 4:14 authentication, 9:21 federal rules, 4:17 Baptismal certificates, hearsay excep-Entrapment, evidence to rebut, 4:11 tion. **8:64** Federal rules, 4:17 federal rules, 8:70 Forfeiture action, 4:11 Birth, hearsay exception, 8:56 Habit, distinguished from, 4:12, 4:41 federal rules, 8:66 Hearsay exception, federal rules, 8:78 Business records certification, Hiring employee, negligent, 4:11 hearsay exception, 8:43 Homicide victim, 4:15 Death, hearsay exception, 8:56, 8:66 federal rules, 4:17 Foreign public records, authentica-Impeachment tion purpose, 9:15 see also Impeachment, this index Marriage, hearsay exception, 8:54 federal rules, 8:60, 8:70 character witness, 4:13, 4:16 Innocent owner defense, 4:11 Population, hearsay exception, 8:59 Public officers certificate of affidavit Judgments as to personal family, general history, or boundaries of facts or acts performed federal rules, hearsay exception, authentication purpose, 9:15 8:68 hearsay exception, 8:50 Jury instructions on, 4:14 Surveyor's standard, hearsay excepfederal rules, 4:17 tion, **8:60** Method of proof, 4:13 Transcripts, certification of, 9:22 federal rules, 4:17 CHAIN OF CUSTODY Peacefulness trait Tangible evidence, 9:3, 11:2 civil cases, 4:12 federal rules, 9:4, 11:3 criminal cases, 4:13 federal rules, 4:17 CHARACTER EVIDENCE Rape victim, 4:66 General discussion, 4:10 et seq. federal rules, 4:67 Character in issue, 4:11 Rebuttal evidence, 4:10, 4:13 federal rules, 4:17 federal rules, 4:17 Civil cases, proof of conduct, 4:12 Reputation, 8:75 federal rules, 4:17 federal rules, 4:17, 4:33, 8:68, Community reputation, defined, 4:13 8:78 Credibility of witnesses, character hearsay exception, method of evidence to prove, 6:54 et seq. proof, 4:11

CHARACTER EVIDENCE—Cont'd CHILDREN—Cont'd Reputation, 8:75—Cont'd Leading questions permissible on direct examination, 6:70 judgments as to personal family, general history, or boundaries federal rules, 6:78 federal rules, hearsay exception, Legitimacy, competency of spouse to 8:68 testify regarding, 6:4 Truthfulness Paternity Proceedings, this index bad character for, use to impeach, Privileged communications with 6:56 parents, 5:32 federal rules, 6:57 federal rules, 5:35 evidence of: use to rehabilitate. Sex crime cases 6:40 child sexual abuse syndrome, 7:6 Uncharged Crimes, this index defendant's sexual history, 4:68 Victim of homicide, 4:15 separate testimonial room, 6:6 federal rules, 4:17 Support enforcement proceedings. competency of spouse as wit-**CHARTS** ness, **6:4** Aids distinguished from evidence, Unsworn testimony, 6:6 corroboration, 3:4 Demonstrative evidence, as, 11:6 Vaccination of public school chilfederal rules, 11:7 dren, 2:8 CHILD ABUSE **CHIROPRACTORS** Child sexual abuse syndrome, expert Privileged communications, 5:18 testimony, 7:6 Child's testimony from separate CHOICE OF LAW room, 6:6 Privileges, **5:1**, **5:2** Hearsay exception, out-of-court statements made by children, 8:92 CIRCUMSTANTIAL EVIDENCE Physician-patient privilege inap-Authenticity, of, 9:9 plicable, 5:18, 5:21, 5:22 federal rules, 9:10 Rape crisis counselor privilege inap-Burden of production, 3:4 plicable, 5:40 burden of proof Social worker privilege inapplicable, exclusion of other possible 5:38 causes, 3:4 CHILDREN federal rules See also Parent and Child, this index direct evidence, circumstantial evidence not inherently inferior to, see Child Abuse, this index Bias and interest as witness, 6:44 federal rules, 3:6 Competency as witness, 6:6 Corroboration. 3:4 federal rules, 6:17 federal rules, 3:6 Contraceptives distribution law, 2:8 Defined, 3:3 Custody, character of parent in issue, Flight or escape, 4:4 4:11 Jury instructions Display of child to permit age deterreasonable doubt, 3:13 mination, 11:4 federal rules, 11:5 federal rules, 3:15 Juvenile Delinguency, this index Relevancy considerations, 4:3, 4:4

CIRCUMSTANTIAL EVIDENCE

—Cont'd

Sufficiency test, **3:4** federal rules, **3:6**

CIVIL PROCEEDINGS

Burden of persuasion clear and convincing evidence, 3:10

preponderance of evidence, **3:9** Commitment proceedings, self-incrimination, privilege against, **5:46**

CLERGY

Privileged communications, **5:36** federal rules, **5:37**

CLOSED CIRCUIT TELEVISION

Presentation of testimony, 6:77

COERCION

Relevancy of witness coercion, 4:4

COHABITATION

No spousal privilege, 5:29

COLLATERAL MATTERS

Best evidence rule, 10:9

Contradiction of witness on, **4:20**, **6:30**

Court's discretion to restrict proof of collateral facts affecting credibility, **4:20**, **6:30**

Relevancy considerations, 4:8

COMMERCE

Judicial notice, adjudicative facts, 2:4

COMMERCIAL PAPER

Self-authenticating, 9:25

COMMERCIAL PUBLICATIONS

Hearsay exception, **8:71** federal rules, **8:72**

COMMITMENT PROCEEDINGS

Self-incrimination, privilege against, **5:46**

COMMON-LAW MARRIAGE

Spousal privileges, 5:29

COMMON SCHEME OR PLAN

Uncharged crimes to prove, 4:22

COMMUNICATIONS

Taxpayer communications, privileges, **5:2**

COMPETENCY OF EVIDENCE

General discussion, 1:2, 6:2

COMPETENCY OF WITNESSES

General discussion, **6:2 et seq.** Age

general discussion, **6:6** federal rules, **6:17**

Alcohol, under influence of, 6:8

Burden of proof, 6:2

Children, 6:6

federal rules, 6:17

Communication-impaired persons, **6:7**

Convictions, 6:5

Dead Man's Statute, this index

Deaf persons, 6:7

interpreters for, **6:22**

federal rules, 6:22

Discretion of trial judge, 6:2

federal rules, 6:17

Drugs, under influence of, 6:8

federal rules, 6:17

Expert opinion, 7:4

federal rules, 7:10

Federal rules, 6:17

Hypnotically induced memory, 1:7, 6:9

federal rules, 6:17

Interest in outcome, 6:3

Interpreters, 6:22

federal rules, 6:23

Intoxication, 6:8

jurors, 6:27

Judges as witnesses, 6:24

federal rules, 6:25

Jurors as witnesses, 6:26

federal rules, 6:27

Lay opinion, 7:2

federal rules, 7:3

COMPETENCY OF WITNESSES

-Cont'd

Memory hypnotically induced, 1:7, 6:9

federal rules, 6:17

Mental capacity, 6:7

federal rules, 6:17

Narcotics, under influence of, **6:8** federal rules, **6:17**

Oaths and Affirmations, this index

Party to action, 6:3

spouse of, 6:4

Per se disqualifications, 6:2

Personal knowledge, 6:18

federal rules, 6:19

Presumption of competency, 6:2

Religious beliefs, 6:65

federal rules, 6:66

Rule of competency, 6:2

Spouse of party, **6:4**

Unsworn evidence

child testifying, 6:6

mentally infirm witness, 6:7

Voir dire of witness, 6:74

COMPLETENESS DOCTRINE

General discussion, 1:21, 1:22

Federal rules, 1:22

Redacted confessions, 1:19, 1:21

COMPROMISES AND OFFERS TO COMPROMISE

General discussion, 4:58, 4:59

Federal rules, 4:59

Inculpatory words used during negotiations as admission, **8:16**

Pleas and Plea Discussions, this index

Presumption, 4:59

Settlement agreement with party, bias and interest of witness, 4:58, 4:59, 6:44

Statements and admissions of fact included in offer, **4:58**

"White v. The Old Dominion" rule, abrogation, **4:58**

Witness bias, showing, **4:58**, **6:44** federal rules, **4:59**

COMPUTER-GENERATED DATA

Authentication, 9:20

Business records, hearsay exception, 8:41

Demonstrative evidence, use as, 11:20

Electronic data imaging, best evidence rule, 10:3

Graphics, 11:20

Missing records, relevancy of, 4:6

Printouts, best evidence rule, 10:3

Summaries, 10:12

CONCEALMENT OF EVIDENCE

General discussion, 4:4

CONDITIONAL RELEVANCY

General discussion, 1:16

Federal rules, 1:18

CONFESSIONS

Admissions, distinguished from, 8:14

Best evidence rule, 10:1

Burden of production

corroboration, 3:4

Clergy, privileged communications, **5:36**

federal rules, 5:37

Limited admissibility, 1:19

federal rules, 1:20

Preliminary rulings, 1:17

federal rules, 1:18

Redacted confessions

"Bruton" rule, limited admissibility, 1:19

completeness doctrine, 1:21

Suppressed due to Miranda violations, use to impeach, 5:50, 6:50

CONFIDENTIAL COMMUNICATIONS

Privileges, this index

CONFRONTATION RIGHT

"Bruton" rule, 1:19, 1:20

"Crawford" rule, 8:6

Cross-examination, 6:71, 8:6

federal rules, 6:79

Exposure of biased witness, **6:44** federal rules, **6:45**

CONFRONTATION RIGHT

-Cont'd

Hearsay exceptions, consistency with coconspirator's statements, 8:22, 8:27
''Crawford'' rule, 8:6

declaration against interest, 8:88 dying declaration, 8:85 former testimony, 8:82, 8:83 general rule, 8:6, 8:93 police records, 8:41, 8:42 residual or catchall exception, 8:93

CONFUSION

Basis for exclusion of relevant evidence, 4:8

"CONNECTING UP"

Conditional relevance shown later, 1:6, 1:16 federal rules, 1:12, 1:18

CONSCIOUSNESS OF GUILT

Relevancy considerations, 4:4

CONSPIRACY

Foundation for admissibility of coconspirator statements, 1:18
Statements made during and in furtherance of as admission bourjaily rule, 8:27 coconspirator's statements, 1:17, 8:22, 8:27 distinguishing between, 8:27

CONSTITUTIONAL LAW

Affirmative defenses, shifting burden of production, **3:14**Burden of persuasion as to constitutional protections, **3:10**Contraceptives distribution to children, **2:8**

Criminal proceedings, presumptions, constitutional restraints, **3:30**, **4:68**

self-incrimination, **5:46 et seq.**Fourth amendment rights
preliminary rulings, **1:17**violations, basis for exclusion of
relevant evidence, **4:8**

Fifth amendment privilege against

CONSTITUTIONAL LAW—Cont'd

Judicial notice of constitution, taking, 2:9

Presumptions in criminal proceedings, constitutional restraints, 3:30

Sixth amendment confrontation right. Confrontation Right, this index

Suppressed confession admissible to impeach, 5:50, 6:50

Vaccination of public school children, 2:8

CONTRACTS

Burden of proof, **3:2**Mistake, burden of persuasion clear and convincing evidence, **3:10**

Negotiations, **4:59**Prenuptial agreements
burden of proof, allocation, **3:2**Reformation, burden of persuasion
clear and convincing evidence,

Similar transactions, **4:36** federal rules, **4:39** Trade secrets, privilege, **5:57**

CONTRADICTION OF WITNESSES

3:10

Impeachment, this index Own witness, **6:32** Prior Inconsistent Statements, this index

CONVERSATIONS

Recordings, this index
Telephone conversations, generally.
Authentication and Identification, this index

CONVERSION

Bailment, presumptions, 3:19

CONVICTION OF CRIME

"Alford pleas," convictions based on impeachment, use for, **6:61**Appeal, effect on offer to impeach, **6:64**Competency of witnesses, **6:5**

CONVICTION OF CRIME—Cont'd CORROBORATION—Cont'd Burden of proof, 3:4—Cont'd Criminal judgments of conviction. hearsay exception, 8:63 burden of production—Cont'd Extrinsic evidence admissible to annulment, 3:4 show, **6:61** confessions, 3:4 Impeachment by evidence of, 6:5, minors, unsworn testimony, 3:4 6:61 federal rules, 3:6 civil cases, 6:62 Circumstantial evidence, 3:4 criminal cases, 6:63 federal rules, 3:6 federal rules, 6:64 **COURT FILES** pretrial ruling on admissibility, Judicial notice, 2:4 6:63 appellate review of, 1:13 **COURT MARTIAL** Judgment of previous conviction, **PROCEEDINGS** hearsay exception Polygraphs, exclusion from use, 7:6, federal rules, 8:68 7:11 Juvenile delinquency adjudications, **COURT REPORTERS** not admissible as convictions, Certification of transcripts, 9:22 6:61 federal rules, 6:64 **CREDIBILITY OF WITNESSES** Own witness, prior convictions to General discussion, 6:28 et seq. soften blow of cross-examina-Attacking and supporting hearsay tion, 6:32, 6:37 declarant, 8:96 Relevancy considerations, 6:63 Character evidence to prove, 6:54 et federal rules, 6:64 seq. COPIES Defendant's presence during trial, Best Evidence Rule, this index unfair comment prohibited, 6:30 COPYRIGHT INFRINGEMENT Discretion of court to restrict proof of Prior conduct, 4:33 collateral facts affecting credibility, 6:30 CORPORATIONS Impeachment, this index Attorney-client privilege, application, Instructions to jury 5:7, 5:8 cross-examination, 6:71 federal rules, 5:11 Employees, generally. Employers and self-incrimination, privilege Employees, this index against, 5:47 Garner doctrine, 5:8 Rehabilitation and Support of Cred-Seal as authentication, 9:21 ibility of Witness, this index Self-incrimination, privilege against, CRIMES AND OFFENSES 5:47 See also Criminal Defendants; Crimi-Shareholders nal Proceedings, this index actions between management and, Attorney-client privilege, exception 5:8 competency as witnesses, dead when future fraud contemplated, 5:9 man's statute, 6:11 federal rules, 5:11 CORROBORATION Criminal judgments of conviction, Burden of proof, 3:4 hearsay exception, 8:63 burden of production

Informer privilege, 5:51

federal rules, 5:52

accomplice testimony, 3:4

federal rules, 3:6

CRIMES AND OFFENSES—Cont'd CRIMINAL DEFENDANTS Judgment of previous conviction, —Cont'd hearsay exception Physical features, injuries as evidence federal rules, 8:68 without testifying, 11:4 Prior Crimes or Misconduct, this Pleas and Plea Discussions, this index index Privilege exception for future crimes, Postcrime conduct, relevancy, 4:4 fraud or harmful acts Prior Crimes or Misconduct, this Attorney-client privilege, 5:9 federal rules, 5:11 Prior identification by witness, 6:37, Informer privilege, 5:51 8:12, 8:13 federal rules, 5:52 Privileged communications, joint Social worker privilege, 5:38 defense doctrine, 5:7 Social worker privilege, exception for federal rules, 5:11 future crimes or harmful acts, Real evidence, as, 11:4 5:38 Recalling by court for questioning, Uncharged Crimes, this index 6:84 Victims of Crime, this index Self-Defense, this index Self-incrimination, privilege against, CRIMINAL CHARGES 5:47, 5:50 Multiple counts, evidence of other prior acts of misconduct used to counts, 4:26 impeach, 6:59 CRIMINAL DEFENDANTS federal rules, 6:60 Aliases, used to impeach, 6:29 Severance of trials, 1:19 Arrests, this index Sexual history, 4:68 Character evidence as proof of Uncharged Crimes, this index conduct, **4:13** Unsworn evidence against, 6:6, 6:7 federal rules, 4:17 Victim's physician-patient privilege, Codefendants; self-incrimination, defendant may not assert, 5:19 privilege against, 5:47 Voice as real evidence, 11:4 Confessions, this index federal rules, 11:5 Confrontation Right, this index Wealth, relevancy, 4:8 Consciousness of guilt evidence, rele-Witnesses, as; sequestration, 6:88 vancy, **4:4** Conviction of crime offered for CRIMINAL PROCEEDINGS impeachment, 6:63 Affirmative defenses, burden of federal rules, **6:64** persuasion Cross-examination, 5:47 prosecution witnesses, character-Attorney-client privilege izing as "liars" judicial discretion, 6:73

Flight evidence, relevancy, 4:4

Guilty pleas, generally. Pleas and

Hypnotically induced memory, 6:9

Past recollection recorded, using to

Plea Discussions, this index

federal rules, 4:9

federal rules, 6:17

identify, 8:39

preponderance of evidence, 3:14 post-death exception, refusal to create, **5:11** Authentication and Identification, this index Burden of persuasion reasonable doubt, 3:13

shifting due to presumptions, 3:31

Burden of proof, 3:12 Criminal Defendants, this index

CRIMINAL PROCEEDINGS	CROSS-EXAMINATION—Cont'd
—Cont'd	Completeness doctrine, 1:21
Criminal judgments of conviction,	federal rules, 1:22
hearsay exception, 8:63	Confrontation Right, this index
Defenses, this index	Federal rules, 6:79
DNA analysis, expert testimony	Hearsay, rationale for, 8:1, 8:6
regarding, 7:6	Impeachment, this index
Impeachment of own witness with	Instructions to jury
prior inconsistent statements, 6:33	credibility, jury may consider in
federal rules, 6:34	assessing, 5:47
Insanity as affirmative defense, expert	Judicial discretion, 6:73
testimony, 7:12	federal rules, 6:79
Interpreter, waiver of right to obtain,	Leading questions, 6:70
6:22	federal rules, 6:78
Judicial notice, effect, 2:6	Prosecution witnesses, characterizing
federal rules, 2:7	as "liars"
Jury views, 11:21	judicial discretion, 6:73
federal rules, 11:22	Question, Form of, this index
Law enforcement records, hearsay	Recross, 6:75
exception, 8:42	federal rules, 6:79
Motions in limine, 1:7	Redirect, 6:75
federal rules, 1:13	federal rules, 6:79
Pleas and Plea Discussions, this index	Remote location, testimony from
Presumptions	federal rules, 6:77
general discussion, 3:31	Scope, 6:72
constitutional restraints, 3:30	federal rules, 6:79
federal rules, 3:32	Self-incrimination, privilege against,
motor vehicles, weapons in.	6:71
presumption of possession,	Voir dire of the witness, 6:74
3:31	Waiver of right, 6:71
permissive, 3:30, 3:31	Witness unavailable for, 6:71
federal rules, 3:32	CUMULATIVE EVIDENCE
receiving stolen property, posses-	Exclusion, 4:8
sion, 3:31	federal rules, 4:9
Prior inconsistent statements used for	rodordi raico,
impeachment, 8:8	CUSTODY OF CHILDREN
Reasonable doubt, burden of proof, 3:13	Character of parent in issue, 4:11
Recorded recollection, use, 8:40	CUSTOM
Rosario rule, 6:81	Habit and Custom, this index
Secondary evidence of document in	DATA COMPILATIONS
defendant's possession, 10:8	
CROSS-EXAMINATION	Authentication, 9:18
General discussion, 6:71	"DAUBERT" STANDARD
Character witnesses, 4:13	Appellate review, 7:11
federal rules, 4:17	Federal rules, 7:11
· · · · · · · · · · · · · · · · · · ·	· · · · · · · · · · · · · · · · · · ·

"DAUBERT" STANDARD—Cont'd DEAD MAN'S STATUTE—Cont'd Foundation for expert testimony Preliminary hearings, inapplicable to, based on out-of-court material, 6:16 effect on, 7:13 Prohibited subject matter, 6:13 Nonscientific evidence, applicability Protected persons, 6:12 of, federal rules, 7:11 testimony or examination as Scientific evidence, 7:11 waiver, 6:15 Renunciation of interest, 6:11 DEAD MAN'S STATUTE Spouses, 6:11 General discussion, 6:10 et seq. joint property ownership, survivor Accident, facts exception, 6:14 competent to testify, 6:14 Agents Standing to invoke, **6:12** deceased agent, principal not Successors in interest. 6:12 entitled to invoke statute, 6:12 Transaction within statute, **6:13** transaction between decedent and Waiver, 6:15 principal, agent competent to testify, 6:11 Will contests, 6:11 transaction between decedent's **DEAF PERSONS** agent and interested witness, Competency as witnesses, 6:7 6:13 Interpreters for, 6:22 Business records, 6:10 Communication within statute, 6:13 federal rules, 6:23 Completion evidence, 1:21 Corporate shareholders, competency Attorney-client privilege, effect on, as witnesses, 6:11 5:3, 5:9 Decedent's testimony, introduction of Burden of proof, effect on, 3:9 as waiver, **6:15** Certificate of death, hearsay excep-Definitions tion, 8:56, 8:66 person interested in event, 6:11 Dead Man's Statute, this index Disqualified witnesses, 6:11 Dying declarations, hearsay excep-Documentary evidence, generally not tion, 8:84 barred, 6:10 federal rules, 8:85 Exceptions, 6:14 Physician-patient privilege, effect on, Failure to object to competency, 6:15 5:18 et seq. Federal rules, 6:17 Presumption of death, public records, Former testimony exception, 6:14 hearsay exception, 8:55 Indirect proof, rule against, 6:13 Spousal privileges, 5:31 In limine motion as to use of, 1:7 Suicide, physician-patient privilege Life insurance beneficiaries, standing applicable despite lack of to invoke statute, **6:12** consent to treatment, 5:19 Negligent operation of vehicle excep-Wrongful death actions tion, 6:14 burden of persuasion, preponder-Parent and child, 6:11 ance of evidence, 3:9 Parties, incompetent witnesses, 6:11 noseworthy doctrine, 3:9 Pension beneficiaries, standing to **DEBTORS AND CREDITORS** invoke statute, 6:12 Person interested in event, defined, Joint debtors 6:11 survivor, protected by dead man's

Predecessors in interest, 6:11

statute, **6:12**

DEFINITIONS—Cont'd

Evidentiary admission, 8:14 Receipt for payment, best evidence Hearsay, 8:1 rule, 10:1 Judicial admission, 8:14 Judicial notice DECLARATIONS adjudicative facts, 2:1 Against interest, 8:86 legislative facts, 2:1 civil cases, 8:87 Judicial notice of law, 2:1 federal rules, 8:89 Legislative facts, 2:1 criminal cases, 8:88 Limited admissibility, 1:19 federal rules, 8:89 Offer of proof, 1:6 federal rules, 8:89 Original, best evidence rule, 10:2, hearsay exception, 8:14, 8:86 10:3 Dying declaration, hearsay exception, Personal knowledge, 6:18 8:84 Person interested in event, dead federal rules, 8:85 man's statute, 6:11 Pedigree, hearsay exception, 8:90 Photographs, best evidence rule, 10:2 federal rules, 8:91 Preponderance, 3:11 **DEFAMATION** Presumption, 3:17 Burden of persuasion, clear and Presumptive evidence, 3:25 convincing evidence, 3:10 Public record, 10:10, 10:11 Character of victim in issue, 4:11 Real and demonstrative evidence, 11:1 **DEFENDANTS** Recent fabrication, 6:41 Criminal Defendants, this index Recordings, best evidence rule, 10:2 **DEFENSES** Relevancy, 4:2 Affirmative Defenses, this index Self-authentication, 9:23 Statement, 8:1, 8:2 Burden of production Statement against interest, 8:14 federal rules, 3:15 Unavailability, 8:79 Innocent owner defense, 4:11 Work product protection, 5:11 Reasonable doubt, 3:14 Writings, best evidence rule, 10:2 **DEFINITIONS** DELAY Adjudicative facts, 2:1 Basis for exclusion of relevant evi-Attorney-client privilege, 5:11 dence, 4:8 Best evidence rule. 10:2 federal rules, 4:9 Burden of persuasion, 3:1 Burden of production, 3:1 DEMEANOR EVIDENCE Burden of proof, 3:1 Effect on credibility, 6:28 Circumstantial evidence, 3:3 **DEMONSTRATIVE EVIDENCE** Community, reputation in, 4:13 Real and Demonstrative Evidence, Competent evidence, 1:2 this index Confession, 8:14 **DENTISTS** Declarant, 8:1 Privileged communications, 5:18, Direct evidence, 3:3 5:21 Duplicate, best evidence rule, 10:2, **DEPOSITIONS** 10:4 Evidence, 1:2 Ordered by judge, 6:84

DEBTORS AND CREDITORS

-Cont'd

DEPOSITIONS—Cont'd

Own witness if deposition introduced as affirmative evidence, **6:32**Transcripts, authentication of, **9:22**Videotaped deposition, motion in limine as to, **1:7**

DESTRUCTION OF EVIDENCE

Best evidence rule, 10:6 Relevancy considerations, 4:4, 4:6 federal rules, 4:9

DIAGRAMS

Demonstrative evidence, as, 11:6 federal rules, 11:7

DIRECTED VERDICT

Burden of production, **3:4** shifting of burden, **3:5**

DIRECT EVIDENCE

Burden of production, 3:4
Defined, 3:3
Relevancy considerations, 4:1, 4:3

DIRECT EXAMINATION

Examination, this index

DISABLED PERSONS

nesses, **6:22**federal rules, **6:23**Mental or sensory impairment,
impeachment value, **6:46**, **6:47**

Interpreters for, competency as wit-

DISCOVERY

Attorney-Client Privilege, this index Depositions, this index Documents disclosed, waiver of privilege or immunity, 5:10, 5:15 federal rules, 5:11, 5:17 Notice to produce not discovery

Work Product Immunities, this index

DISCRETION OF TRIAL JUDGE

device, 10:8

Collateral issues, relevancy of, **4:8** Competency of witnesses, **6:2** federal rules, **6:17** Credibility of witnesses, restricting

proof of collateral facts affecting, **6:30**

DISCRETION OF TRIAL JUDGE

—Cont'd

Cross-examination, **6:73** federal rules, **6:79**

Disclosure of trial preparation materials, **5:10**

Exclusion of evidence, 4:8

federal rules, 4:9

Experts, court-appointed, 7:18

federal rules, 7:19

Judicial notice

adjudicative facts, of, 2:5

law, of, 2:9

federal rules, 2:10

Narrative testimony, 6:69

federal rules, 6:78

Prejudicial effect of evidence, 4:8

Probative value-predjudicial effect of evidence test, **4:8**

Prosecution witnesses, characterizing as "liars," 6:73

Relevancy, 4:2, 4:4., 4:7, 4:8

federal rules, 4:9, 7:11

Similar occurrences, 4:37

federal rules, 4:40

Third-party culpability evidence, relevancy of, **4:7**

Trial transcript, partial, sending to jury room, federal rules, 11:24

DISHONESTY

Character Evidence, this index Credibility of Witnesses, this index Crime of, conviction offered to impeach, **6:61**

federal rules, 6:64

Perjury, this index

Rehabilitation and Support of Credibility, this index

Relevancy of false statements or alibis, **4:4**

Reputation, use to impeach, 6:56 federal rules, 4:33, 6:57

DISMISSAL OF ACTIONS

Burden of production, 3:4

DIVORCE

Custody of children, character of parent in issue, **4:11**

DNA

Analysis, expert testimony regarding, 7:6

Records and reports, hearsay exception, 8:6, 8:41, 8:43

DOCTOR-PATIENT PRIVILEGE

Physician-Patient Privilege, this index

DOCTORS

Malpractice, Medical, this index Medical Diagnosis and Treatment, this index

Physician-Patient Privilege, this index

DOCUMENTS

Acknowledged

self-authenticating, 9:24

federal rules, 9:25

Ancient

authentication, 9:17

federal rules, 9:18

hearsay exception, 8:73, 8:74

federal, 8:76

maps, 8:52

Attorney-client privilege, 5:3, 5:5

federal rules, 5:11

Authentication and Identification, this index

Best Evidence Rule, this index

Records and Reports, this index

Refreshing recollection, admissibility, **6:80**

Self-incrimination, privilege against, 5:49

Work product immunities preparation "in anticipation of litigation," 5:17

DOMESTIC RELATIONS **PROCEEDINGS**

Court-appointed expert witnesses, 7:18

DOUBLE JEOPARDY

Uncharged crimes, 4:32

DRAWINGS

Demonstrative evidence, as, 11:6 federal rules, 11:7

DRUGS

Authentication and identification,

9:3, 11:2

Impeachment

based on consumption of, 6:47

federal rules, 6:48

drug use at time of operative event, 6:8

Marijuana

opinion testimony, 7:4

Witnesses under influence of, effect

on competency, 6:8

federal rules, 6:17

DUE PROCESS

Burden of persuasion

clear and convincing evidence, 3:10

constitutional constraints, 3:30

Criminal proceedings

presumptions

constitutional restraints, 3:30,

4:68

statutory permissive inference,

3:31

rational connection test, 3:30

DUPLICATES

Best Evidence Rule, this index

DURESS

Burden of persuasion, 3:14

Burden of production

federal rules, 3:15

DYING DECLARATIONS

Hearsay exception, 8:84

federal rules, 8:85

Preliminary rulings, judge's responsibilities, 1:16

EAVESDROPPING

Attorney-client privilege, 5:3, 5:7

Physician-patient privilege, 5:19

Spousal privileges; recordings, admissibility, 5:27

Index-22

ELDERLY PERSONS

Attorney-client privilege, 5:7

ELECTIONS

Voting, secrecy of vote privilege, 5:55 federal rules, 5:56

ELECTRONICALLY STORED INFORMATION

Best evidence rule, 10:3 Business records, as, 8:41, 10:3 Missing records, 4:6

ELECTRONIC COMMUNICATIONS

Authentication, circumstantial evidence, **9:9**Instant messages, **10:3**Privileges, **5:1**

E-MAIL

Privileged communications, 5:1

EMERGENCY MEDICAL TECHNICIANS

Physician-patient privilege not applicable unless acting as physician's agent, **5:19**

EMERGENCY SITUATIONS

Hearsay aspect of statements made in ongoing emergency, **8:6**

EMINENT DOMAIN

Similar sales, 4:37

EMPLOYERS AND EMPLOYEES

Attorney's employees, applicability of attorney-client privilege, **5:3**, **5:7**

federal rules, 5:11

Bias and interest of witness, 6:44

Corporate employees

control over corporation's distribution of communication, **5:8**

federal rules, 5:11

former employees of corporation, applicability of corporation's attorney-client privilege, **5:8**

federal rules, 5:11

witnesses, as; dead man's statute, 5:8

EMPLOYERS AND EMPLOYEES

-Cont'd

Discrimination. Employment
Discrimination, this index
Negligence actions, character of
employee in issue, **4:11**

Prior misconduct evidence, 4:33

Social agency employees, social worker privilege inapplicable, 5:38

EMPLOYMENT DISCRIMINATION

Presumption rebutted when nondiscriminatory reason introduced, **3:23**

Reputation or opinion evidence, 4:33

ENTRAPMENT

Burden of persuasion, 3:14
Burden of production
federal rules, 3:15
Character of defendant in issue, 4:11
Uncharged crimes evidence, entrapment defense, 4:20

ERROR

Harmless, 1:8 federal rules, 1:14 Plain error doctrine, 1:10

ESCAPE

Relevancy considerations, **4:4** federal rules, **4:9**

EXAMINATION

Cross-Examination, this index Judicial questioning of witnesses, **6:83, 6:85**

federal rules, 6:87

Jurors questioning witnesses, **6:83**, **6:86**

federal rules, 6:87

Question, Form of, this index

Redirect and recross, **6:75**

federal rules, 6:79

Testimony, this index

Voir dire of witness, 6:74

EXCEPTIONS TO HEARSAY EXCEPTIONS TO HEARSAY RULE—Cont'd RIILE Declarant's availability immaterial, Absence as basis for unavailability, 8:79, 8:82 8:28 et seq.—Cont'd Autopsy report, 8:6, 8:42 judgment of previous conviction "Catchall" exceptions, 8:92 federal rules, 8:68 federal rules, 8:93 justice of the peace proceedings, Child abuse, out-of-court statements made by children, 8:92 land boundaries, family history, "Crawford" rule, 8:6 8:75 Crime laboratory reports, 8:6, 8:41 federal rules, 8:78 Declarant's availability immaterial, law enforcement records in criminal cases, 8:42 8:28 et seq. accident reports, 8:41 learned treatises, 8:72 federal rules, 8:44 federal rules, 8:72 Admissions, this index market reports, 8:71 agriculture inspection certificates, federal rules, 8:72 8:58 medical diagnosis or treatment, ancient documents, 8:74 statements, 8:29, 8:33 federal rules, 8:77 federal rules, 8:38 books of registry, 8:71 medical records, 8:43 federal rules, 8:72 federal rules, 8:44 business records, 8:41 mortality tables, 8:71 federal rule, 8:44 federal rules, 8:72 certified business records, 8:43 MRIs, 8:43 character reputation past recollection recorded, 8:39 federal rules, 8:78 federal rules, 8:40 commercial publications population certificates, 8:59 federal rules, 8:72 present sense impressions, 8:30 computer information, 8:41 federal rules, 8:35 criminal judgments of conviction, 8:63 price lists. 8:71 federal rules, 8:68 federal rules, 8:72 DNA reports, 8:41, 8:43 Public Records, this index electronic business records, 8:41 recorded recollection, 8:39 excited utterances, 8:31 federal rules, 8:40 federal rules, 8:36 registry books, 8:71 family records, 8:73-8:75 federal rules, 8:72 federal rules, 8:76-8:78 regularly kept records, 8:41 federal rules, general discussion, religious institution records, 8:64 8:28 federal rules, 8:70 genetic markers, 8:6, 8:43 reputation, 8:75 government records, 8:43 federal rules, 8:78 hospital records, 8:43 shop book rule, 8:41 intent, expressions of, 8:32 spontaneous statements, 8:29 federal rules, 8:37 federal rules, 8:34 investigatory reports by governmental agencies, 8:65 state department records, 8:43

EXCEPTIONS TO HEARSAY

RULE—Cont'd RULE—Cont'd Declarant's availability immaterial, Laboratory reports, 8:6, 8:41 8:28 et seq.—Cont'd Medical examiner's office reports, state of mind or physical condition, 8:6, 8:41 Notice required for residual excepfederal rules, 8:37 tion, **8:93** statistical abstracts, 8:71 Ongoing emergency situation statesurveyor's standard, 8:60 ments, **8:6** Pedigree, 8:90 weather records, 8:57 federal rules, 8:91 writings, recorded recollection, 8:39 Personal history, 8:90 federal rules, 8:40 federal rules, 8:91 Probative value required for residual x-rays, 8:43 exception, 8:93 Declarant unavailable, 8:79 et seq. Public safety, ongoing emergency absence as basis for unavailability, situation statements, 8:6 8:79, 8:82 Residual exceptions, 8:92 assertion of self-incrimination privilege as basis for unavailfederal rules, 8:93 ability, 8:79 State of mind statements, 8:4 federal rules, 8:82 Testimonial statements, 8:6 criteria for being unavailable, 8:79 Unavailability defined, 8:79 death or illness as basis for **EXCITED UTTERANCES** unavailability, 8:79 Dying declaration as, 8:84 declarations against interest Hearsay exception, 8:31 see Against interest, generally. federal rules, 8:36 Declarations, this index Preliminary rulings, judge's responsidying declarations, 8:84 bilities, **1:16** federal rules, 8:84 **EXCLUSIONARY RULES** federal rules, general discussion, 8:79 Evidence admitted for impeachment former testimony, 8:81 purposes despite, 6:30 civil cases, 8:81 Relevancy considerations, 4:8 criminal cases, 8:82 federal rules, 4:9 federal rules, 8:83 EXCLUSION OF WITNESSES lack of memory as basis for Exclusion from courtroom, 6:88 unavailability, 8:79 federal rules, 6:89 pre- or post-trial proceedings, 8:6 Victims of crime, exemption, 6:89 refusal to testify as basis for **EXECUTORS AND** unavailability, 8:79 threats and intimidation used ADMINISTRATORS against witness, 8:97 Admissions, statements made in representative capacity as, 8:19 wrongdoing by party to procure Dead Man's Statute, this index declarant's unavailability as witness, 8:97 Will Contests, this index Family history, 8:90 EXPERIMENTS AND federal rules, 8:91 DEMONSTRATIONS Family records, **8:73-8:75** Effects of human injuries, 11:4 federal rules, 8:76-8:78 federal rules, 11:5

EXCEPTIONS TO HEARSAY

EXPERIMENTS AND EXPERT TESTIMONY—Cont'd DEMONSTRATIONS—Cont'd Handwriting, 7:6, 9:7 Jury experimentation, 11:23 federal rules, 9:8 federal rules, 11:24 Hearsay as basis of, 7:12 Real and demonstrative evidence, as, federal rules, 7:13 11:18 Hypothetical question to elicit federal rules, 11:19 testimony, 7:16 federal rules, 7:17 **EXPERT TESTIMONY** Impeachment of experts, 7:9 General discussion, 7:4 et seq. learned treatises, use, 7:9, 8:71 Ballistic expert's methodology, 7:11 federal rules, 8:72 Basis of testimony, 7:12 Information compiled by experts, data not in evidence, 7:12, 7:13 trial preparation immunity, 5:14 disclosure of facts underlying federal rules, 5:17 opinion, 7:16, 7:17 waiver for materials considered by federal rules, 7:13, 7:17 expert in reaching opinion, Bias and interest of witness, 6:44 5:17 Blood tests, 7:6 In limine motions, 1:7 Interested observer, 7:7 Character of accused, 4:13 Interpreters qualified as experts, 6:23 Federal rules, 4:17 Judge as gatekeeper to, 7:11 Comparisons by experts, 9:7 Judicial scrutiny of reliability under federal, 9:8 "Daubert" and "Kumho Tire," Computer-generated graphics used in 7:11 conjunction with, 11:20 Medical testimony, 7:6 Conclusions and methodology, scien-Mental condition of witness, regardtific evidence, 7:11 ing, **6:47**, **7:6** Conclusory opinions, 7:14 Negligence case, invoking res ipsa Conflicting opinions, 7:11 loquitur, 3:24, 7:4 Court-appointed experts, 6:84, 7:18 Nonscientific evidence, applicability federal rules, 7:19 of "Daubert" and "Kumho "Daubert" standard, scientific evi-Tire," 7:11 dence, 7:11 Personal knowledge, 6:18, 7:12 Disclosure of expert's identity, 5:14 federal rules, 7:13 Disclosure of facts underlying Physical condition, 7:6 opinion, 7:16 Polygraph, 7:5, 7:6 federal rules, 7:17 Pretrial discovery concerning experts, Eyewitnesses, psychologist testimony 5:14 to unreliability of, 7:6 federal rules, 5:17 Eyewitness identification, reliability, waiver for materials considered in 7:10 trial preparation by expert in Federal rules, 7:10 reaching opinion, 5:17 Former testimony, 8:83 Prior inconsistent statements, Foundation for testimony based on impeachment by, 6:51 out-of-court material, 7:12 Problems of expert testimony, 7:6 federal rules, 7:13 Psychiatrists, professional reliance rule, 7:12 "Frye" standard, scientific evidence, 7:5 Qualifications, 7:8 Hair analysis, 7:6 Radar gun, 7:6

EXPERT TESTIMONY—Cont'd	EYEWITNESSES
Rape trauma syndrome, 7:6	Habit evidence, effect of eyewit-
homosexual male assault,	nesses, 4:45
applicability, 7:6	Identification, reliability
Reliability of principles and methods	expert testimony, 7:10
used by expert witness, 7:11	negative identification evidence,
Sanity, 7:6	8:12
Scientific evidence, recurring	police sketches, 8:12 , 8:13
problems, 7:6	Psychologist testimony to unreli-
standard for novel theories and	ability, 7:6
methods, 7:5	FALSE STATEMENT
federal rules, 7:11	Dishonesty, this index
Sequestration of witnesses, 6:88	Perjury, this index
Sobriety tests, 7:6	
Stipulation to expert's qualifications,	FAMILY
7:8	History (pedigree or lineage), hearsay
Trial preparation materials, 5:14	exception, 8:90
federal rules, 5:17	federal rules, 8:91
Ultimate issues, 7:14	Judgments as to personal family, general history, or boundaries
federal rules, 7:15	federal rules, hearsay exception,
Voice identification, 9:12	8:68
Voir dire of witness, 6:74	Records, hearsay exception, 8:64 ,
Waiver	8:73-8:75
work product immunities, 5:17	ancient documents, 8:74
Work product immunities, 5:14, 5:17	federal rules, 8:77
EXTRINSIC EVIDENCE	federal rules, 8:68, 8:70, 8:76-8:78
	reputation, 8:75
Bias and interest of witness, admissible to show, 6:44	federal rules, 8:68 , 8:78
federal rules, 6:45	Religious organizations records,
Character for truthfulness, admissible	hearsay exception, 8:64
to show, 6:56	federal rules, 8:70
federal rules, 6:58	FEDERAL GOVERNMENT
Conviction of crime, admissible to	Attorney-client privilege, applicabil-
show, 6:61	ity
Impeachment purposes, 6:29	federal rules, 5:11
admissible for noncollateral mat-	FEDERAL RULES
ters, 6:30	Absence of business records, hearsay
Mental or sensory impairment,	exception, 8:28
admissible to show, 6:47	Absence of public records, hearsay
federal rules, 6:48	exception, 8:69
Prior inconsistent statements, admis-	Accident reports, hearsay exception,
sibility to prove, 6:52	8:44
federal rules, 6:53	Admissions
Prior misconduct to impeach,	acts, as, 8:25
extrinsic evidence prohibited,	adoptive, 8:25
6:59	agent's or servant's statements as,
federal rules 6.60	8.26

FEDERAL RULES—Cont'd	FEDERAL RULES—Cont'd
Admissions—Cont'd	Burden of proof—Cont'd
coconspirator's statements, 8:27	burden of production—Cont'd
judicial, 8:14, 8:24	corroboration, accomplice
statements, as, 8:25	testimony, 3:6
Ancient documents	defenses, 3:15
authentication and identification,	directed verdict motion, 3:6
9:18	duress, 3:15
hearsay exception, 8:77	entrapment, 3:15
Attorney-client privilege, 5:10, 5:11	insanity, 3:15
Authentication and identification, 9:1	self-defense, 3:15
et seq.	sufficiency test, 3:6
ancient documents, 9:18	corroboration, 3:6
circumstantial evidence of	limiting instruction, need for, 1:20
authenticity, 9:10	Business records, hearsay exception,
comparisons by trier or expert witness, 9:8	8:44
lay opinion on handwriting, 9:6	absence of records, 8:47
methods provided by statute or	Character evidence, 4:17
rule, 9:22	hearsay exception, 8:78
process or system, 9:20	Circumstantial evidence
public records, 9:16	authenticity, of, 9:10 corroboration, 3:6
self-authentication, 9:25	· · · · · · · · · · · · · · · · · · ·
telephone conversations, 9:14	Clergy, privileged communications, 5:37
testimony of witness with knowl-	Commercial publications, hearsay
edge, 9:4	exception, 8:72
voice identification, 9:12	Competency of witnesses, 6:17
Baptismal certificates, hearsay excep-	credibility, 6:28 et seq.
tion, 8:70	rehabilitation of, 6:42
Best evidence rule, 10:1 et seq.	interpreters, competency as wit-
Bias and interest of witness, 6:45	nesses, 6:23
"Bourjaily" rule codified, 8:27	judges as witnesses, 6:25
Burden of proof	jurors as witnesses, 6:27
burden of persuasion	oaths and affirmations, 6:21
civil proceedings	personal knowledge, 6:19
clear and convincing evi-	Completeness doctrine, 1:22
dence, 3:11	Compromises and offers to compro-
clear and convincing evidence,	mise, 4:59
3:10	Conviction of crime offered for
moral turpitude, 3:10	impeachment, 6:64
preponderance of evidence	Corroboration
civil proceedings, 3:9	burden of proof, 3:6
burden of production	circumstantial evidence, 3:6
acquittal motion, 3:6	Credibility of witnesses, 6:28 et seq.
affirmative defenses, shifting of	instructions to jury
burden, 3:15	cross-examination, 6:71
alibi, 3:15	self-incrimination, privilege
circumstantial evidence, 3:15	against, 5:47

FEDERAL RULES—Cont'd	FEDERAL RULES—Cont'd
Credibility of witnesses, 6:28 et seq.	Impeachment, 6:28 et seq.—Cont'd
—Cont'd	in limine motions, 1:14
rehabilitation of, 6:42	mental or sensory impairment,
Criminal proceedings	6:48
presumptions, 3:32	own witness, 6:34
testimony from remote location,	prior crimes or misconduct, 6:60
6:77	prior inconsistent statements, 6:53
Cross-examination, 6:79	truthfulness, bad reputation for,
Dead man's statute, 6:17	6:57
Declarations against interest, 8:89	Informer privilege, 5:52
Definition of evidence, 1:2	In limine motions, 1:13
"Door opening" rationale for	Interpreters, competency as wit-
introduction of extrinsic evidence of contradiction, 6:30	nesses, 6:23
	Investigatory reports by
Dying declarations, hearsay exception, 8:85	governmental agencies, hearsay
Excited utterances, hearsay excep-	exception, 8:65
tion, 8:36	Journalist privilege, 5:45
Expert testimony, 7:10, 7:13	Judges, competency as witnesses,
conclusions and methodology, sci-	6:25
entific evidence, 7:11	Judgment of previous conviction,
court-appointed experts, 7:19	hearsay exception, 8:68 Judicial notice
Expressions of intent, hearsay excep-	
tion, 8:37	adjudicative facts, 2:3, 2:7
Family history, hearsay exception,	commerce and trade matters, 2:7
8:91	effect, 2:6
Family records, hearsay exception,	geographical facts, 2:7
8:76-8:78	jury instructions, 2:7
Foreign records, hearsay exception, 8:44	post-notice hearing, 2:7
Former testimony, hearsay exception,	procedure, 2:7
8:83	public records, 2:7
Government communications, privi-	scientific and mechanical facts, 2:7
lege, 5:54	
Habit and custom	sources whose accuracy cannot be reasonably questioned,
general discussion, 4:47	2:3
business and professional habit,	government websites, 2:3, 2:7
4:48	judicial notice of law
negligence case, 4:49	general discussion, 2:10
standard of care, 4:50	_
Harmless error doctrine, 1:14	discretionary, 2:10
Hearsay, nature of, 8:1-8:6	mandatory, 2:10
Hearsay exceptions, 8:28, 8:34-8:38	notice, 2:10
Hearsay within hearsay, 8:95	legislative facts, 2:7, 2:8
Identification testimony not	defined, 2:1
considered hearsay, 8:13	websites, 2:3, 2:7
Impeachment, 6:28 et seq.	Jurors, competency as witnesses,
bias and interest of witness, 6:45	6:27

FEDERAL RULES—Cont'd	FEDERAL RULES—Cont'd
Lay opinion, 7:3	Prior consistent statements not
handwriting, 9:6	hearsay, 8:11
Learned treatises, hearsay exception, 8:72	Prior crimes or misconduct, impeachment by, 6:60
Liability insurance, 4:65	Prior identification of person evi-
Library records, privileged com-	dence, 8:13
munications, 5:43	Prior inconsistent statements
Limited admissibility, 1:20	impeachment by, 6:53
Litigation-records doctrine, hearsay	statements not hearsay, 8:10
exception, 8:44	Privileges, 5:2
Market reports, hearsay exception,	Attorney-client privilege, 5:11
8:72	Choice of law, 5:1 , 5:2
Marriage certificates, hearsay excep-	Clergy communications, 5:37
tion, 8:66, 8:70	Comment on or inference from
Medical diagnosis or treatment, state-	claim of privilege, 5:60
ments; hearsay exception, 8:38	Government communications, 5:54
Medical expenses, payment, 4:61	Informer privilege, 5:52
Medical records, hearsay exception,	Journalist privilege, 5:45
8:44	Library records, 5:43
Mental or sensory impairment,	Physician-patient and related privi-
impeachment by, 6:48	leges, 5:23
Mortality tables, hearsay exception,	Political vote, 5:56
8:72	Psychotherapist-patient privilege,
Motions in limine, 1:13	5:23 Rana crisis acunsalar communica
Motions to strike, 1:10	Rape crisis counselor communications, 5:40
Oaths and affirmations, 6:21	Self-incrimination, 5:46-5:50
Objections, 1:9-1:11	Social worker privilege, 5:39
Offer of proof and offer "to connect	Spousal privileges, 5:33-5:35
up,'' 1:12, 1:18	Taxpayer-accountant privilege, 5:2
Order of trial, 6:77	Trade secrets, 5:58
Own witness, impeachment of, 6:34	Waiver, document used to refresh
Past recollection recorded, hearsay	memory, 6:82
exception, 8:40	Work product immunities, 5:17
Pedigree, hearsay exception, 8:91	Psychotherapist-patient privilege,
Personal history, hearsay exception,	5:23
8:91	Public Records, this index
Personal knowledge, competency of	Question, form of, 6:78
witnesses, 6:19	Rape crisis counselor, privileged communications, 5:40
Physician-patient privilege not	Real and demonstrative evidence,
recognized, 5:23	11:1 et seq.
Pleas and plea discussions, 4:63	drawings, diagrams and models,
Political vote, 5:56	11:7
Present sense impressions, hearsay	exhibits in jury room, 11:24
exception, 8:35	experiments and demonstrations,
Presumptions	11:19
civil proceedings, 3:26-3:28	jury conducting experiments,
criminal proceedings, 3:32	11:24

FEDERAL RULES—Cont'd	FEDERAL RULES—Cont'd
Real and demonstrative evidence,	Social worker privilege, 5:39
11:1 et seq.—Cont'd	Spontaneous statements, hearsay
jury views, 11:22	exception, 8:34
persons, physical features and	Spousal privileges, 5:33
injuries, 11:5	State of mind, hearsay exception,
photographic and related evidence,	8:37
11:14	Subsequent remedial measures,
relevance-prejudice balancing,	amendment, 4:57
11:5	Testimony, remote location, from,
tangible objects, 11:3	6:68, 6:77
Real property, documents affecting interest in; hearsay exception,	Trade secrets, 5:58
8:67	Treatises, hearsay exception, 8:72
statements contained in, 8:77	Truthfulness, bad reputation for, 6:57
Reasonable doubt, court's failure to	Ultimate issues, opinion testimony, 7:15
define not constituting reversible	Uncharged crimes, 4:1 , 4:30 , 4:31
error, 3:15	civil cases, 4:33
Recorded recollection, hearsay	"Old Chief" rule, limitations, 4:9
exception, 8:40	procedure, 4:30, 4:32
Redirect and recross examination,	Victims of crime
6:79	
Refreshing memory, 6:82	exclusion of witnesses, exemption, 6:89
Registry books, hearsay exception,	Vital statistics, hearsay exception,
8:72	8:66
Regularly kept records, hearsay exception, 8:44	Witnesses
Rehabilitation of credibility, 6:42	calling or questioning by court or
Relevancy, 4:9	jury, 6:87
"Old Chief" rule, 4:9	exclusion from courtroom, 6:89
Religious belief of witness, 6:66	Work product immunities, 5:17
Religious institution records, hearsay	EIDUCIADIES
exception, 8:70	FIDUCIARIES
Reputation	Attorney-client privilege, fiduciary duty owed by client to party
character evidence, 4:17, 4:33	seeking disclosure, 5:9
hearsay exception, 8:78	seeking discressire, 2.7
Residual exception relocated, 8:93	FILMS
Rulings on evidence	Motion Pictures and Videotapes, this
general discussion, 1:9	index
harmless error, 1:14	FINGERPRINTS
motions in limine, 1:13	Comparison or crime laboratory anal-
motions to strike, 1:10	ysis reports, hearsay aspect of,
objections, 1:10, 1:11	8:6
offer of proof and offer "to connect	Identification, expert comparison and
up," 1:12, 1:18	analysis, 9:7
Sexual history, 4:68	•
rule 414, constitutionality, 4:68	FLIGHT
Shield laws, 4:67	Relevancy considerations, 4:4
Similar occurrences, 4:38-4:40	federal rules, 4:9

FOREIGN LAW

Judicial notice of, 2:9 federal rules, 2:10

FOREIGN PUBLIC RECORDS

Authentication, 9:15, 9:24 federal rules, 9:25 Hearsay exception federal rules, 8:44

FORMER TESTIMONY

Dead man's statute exception, 6:14 Hearsay exception, 8:80, 8:81 civil cases, 8:81 criminal cases, 8:82 federal rules, 8:83

FOUNDATION QUESTIONS

Authentication and Identification, this index
Business records, hearsay exception,
8:41
absence of
federal rules, 8:44
federal rules, 8:44
Impeachment by prior inconsistent statements, 6:52, 8:8
federal rules, 6:53
Maps, hearsay exception, 8:52

FRAUD

Attorney-client privilege, exception when future fraud contemplated, 5:9

Real and Demonstrative Evidence,

federal rules, 5:11

this index

Other accidents, 4:35, 4:38

Burden of persuasion, clear and convincing evidence, **3:10**Conviction offered to impeach, **6:64**Medicaid practices, exception to physician-patient privilege, **5:21**

Prior instances of fraud, 4:29 impeachment value, 6:60

Social worker privilege, exception for fraud, 5:38

Spousal privileges, exceptions, **5:31** federal rules, **5:34**

FRAUD—Cont'd

Work product immunities, exception for fraud, 5:17

FREEDOM OF INFORMATION LAW

Privilege for official information, effect, 5:53 federal application, 5:54 Trade secrets, 5:58

FREEDOM OF THE PRESS

Journalist privilege, **5:44** federal rules, **5:45**

"FRYE" STANDARD

11:20

Authentication of scientific evidence, 9:19 computer-generated graphics,

Federal application, 7:11 Scientific theories, novel; expert testimony, 7:5

GENETIC MARKERS

Hearsay exception, 8:6, 8:43

GOVERNMENTAL BODIES

Attorney-client privilege, applicability federal rules, **5:11**

GOVERNMENT COMMUNICATIONS

Investigatory reports, hearsay exception, 8:51, 8:65

Privilege, **5:53**

federal rules, 5:54

Records, hearsay exception, 8:43

GRAND JURIES

Plea bargain, testimony against others induced by; admissibility, **4:62**

GUARDIANSHIP PROCEEDINGS

Physician-patient privilege, exception; mentally ill parents, **5:21**, **5:22**

Representative capacity of guardian making admissions, 8:19

GUILT OR INNOCENCE HAIR ANALYSIS Defendant's conduct offered to prove Expert testimony regarding, 7:6 consciousness of guilt, 4:4 HANDWRITING Guilty pleas Expert testimony regarding, 7:6, 9:7 admission in related litigation, federal rules, 9:8 used as, 8:16 Lay opinion regarding, 7:2, 9:5 declaration against interest, as, federal rules, 7:3, 9:6 8:89 Specimen authenticity, 9:7 withdrawn, 4:62, 8:14 federal rules, 4:63 HARASSMENT Presumption of innocence, criminal Questions, harassing, 6:70 proceedings; court's failure to federal rules, 6:78 instruct not reversible error, Relevancy of witness harassment, 4:4 3:32 Testimony pointing to both, burden HARMLESS ERROR of production, 3:4 General discussion, 1:8 Federal rules, 1:14 HABIT AND CUSTOM General discussion, 4:41 et seq. **HEALTH AND** Business habit, 4:42, 4:43 **HOSPITALIZATION** federal rules, 4:48 **INSURANCE** Character evidence, distinguished Physician-Patient Privilege, this from, 4:12, 4:41 index Custom and usage as standard of **HEARINGS** care, 4:46 Federal rules federal rules, 4:50 judicial notice, adjudicative facts Eyewitnesses present, **4:45** post-notice hearing, 2:7 Federal rules Preliminary hearings, dead man's general discussion, 4:47 statute inapplicable, 6:16 business and professional habit, 4:48 **HEARSAY** negligence case, 4:49 General discussion, 8:1 et seq. standard of care, 4:50 Absence as basis for unavailability, Industry standards, 4:46 exception, 8:79, 8:82 federal rules, 4:50 Absence caused by party as basis for Institutional habit, 4:42 unavailability, 8:97 federal rules, 4:48 Accident reports, exception, 8:41 Limited to personal conduct, 4:44 federal rules, 8:44 Negligence Admissions, this index federal rules, 4:47, 4:49 Agriculture inspection certificates, non-workplace situations, 4:44 exception, 8:58 standard of care, 4:46 Ancient documents, 8:73, 8:74 workplace situations, 4:43 federal, 8:76, 8:77 Professional habit, 4:42 maps, 8:52 federal rules, 4:48 Assertions, 8:2, 8:3 Standard of care, custom and usage, definition of statement, 8:1, 8:2 4:46 self-incrimination privilege as federal rules, 4:50 basis for unavailability, Workplace habit, **4:42**, **4:43** exception, 8:79

HEARSAY—Cont'd	HEARSAY—Cont'd
Autopsy report, 8:6, 8:42	Exceptions to Hearsay Rule, this
Business records, exception, 8:41	index
federal rule, 8:44	Excited utterances, exception, 8:31
"Catchall" exceptions, 8:92	federal rules, 8:36
Character reputation, exception	Expert testimony, basis of, 7:12
federal rules, 8:78	federal rules, 7:13
Child abuse, out-of-court statements	Failure to complain as, 8:2
made by children; exception,	Family history, exception, 8:90
8:92	federal rules, 8:91
Clarifying words accompanying	Family records, exception, 8:73
ambiguous acts, 8:3	federal rules, 8:76
Commercial publications, exception,	Federal rules, 8:1
8:71	Former testimony, exception, 8:81
federal rules, 8:72	civil cases, 8:81
Computer information, exception, 8:41	criminal cases, 8:82
Conduct as assertion, 8:2	federal rules, 8:83
Confrontation Right, this index	Genetic markers, exception, 8:6, 8:43
Consistent statements, not hearsay,	Government records, exception, 8:43
8:9	Guilty pleas, withdrawn, 8:14
federal rules, 8:11	Hospital records, exception, 8:43
"Crawford" rule, 8:6	Identification testimony not
Credibility of declarant, attacking and	considered hearsay, 8:12
supporting, 8:96	federal rule, 8:13
Criminal judgments of conviction,	Inconsistent statements, not hearsay, 8:8
exception, 8:63	federal rules, 8:10
Cross-examination rationale for, 8:1 , 8:6	Indirect hearsay, 8:5
Declarant's availability immaterial,	Intent, expressions of, 8:32
generally. Exceptions to	federal rules, 8:37
Hearsay Rule, this index	Intimidation of witness as admission,
Declarant unavailable, generally.	8:16
Exceptions to Hearsay Rule, this	Investigatory reports by
index	governmental agencies, excep-
Declarations against interest, exception	tion, 8:65
	Judgment of previous conviction, exception
see Against interest, generally. Declarations, this index	federal rules, 8:68
Definition, 8:1	Justice of the peace proceedings,
DNA reports, exception, 8:6 , 8:41 ,	exception, 8:61
8:43	Laboratory reports, 8:6, 8:41
Double hearsay, 8:94	Lack of memory as basis for unavail-
federal rules, 8:95	ability, exception, 8:79
Dying declarations, exception, 8:84	Law enforcement, calls to, 8:6
federal rules, 8:85	Law enforcement records in criminal
Emergency situation ongoing, state-	cases, exception, 8:42
ments when, 8:6	Learned treatises, exception, 8:72

HEARSAY—Cont'd	HEARSAY—Cont'd
Market reports, exception, 8:71	Prior statements by witness, not
federal rules, 8:72	hearsay—Cont'd
Medical diagnosis or treatment, state-	inconsistent statements, 8:8
ments; exception, 8:29, 8:33	federal rules, 8:10
federal rules, 8:38	Prison logs
Medical records, exception, 8:43	regularly kept records, exception
federal rules, 8:44	federal rules, 8:44
MRIs, exception, 8:43	Probative value required for residual
Nature of hearsay	exception, 8:93
general discussion, 8:1	Public Records, this index
assertions, 8:2	Public safety, ongoing emergency
indirect hearsay, 8:5	situation statements, 8:6
legally operative words (verbal	Rape victim's report to police, nonhearsay, 8:12
acts), 8:3	Recorded recollection, exception,
right to confrontation, the	8:39
"Crawford" rule, 8:6	federal rules, 8:40
state of mind, 8:4	Records
Nonassertive conduct, 8:2	absence of, 8:45
Nonhearsay, 8:7	business transactions
distinguished from, 8:1	absence of, 8:45
verbal acts, 8:3	Public Records, this index
Nonverbal acts as assertion, 8:2	Refusal to testify as basis for unavail-
Notice required for residual excep-	ability, exception, 8:79
tion, 8:93	Regularly kept records, exception,
Ongoing emergency situation state-	8:41
ments, 8:6	Religious institution records, excep-
Operative words, 8:3	tion, 8:64 federal rules, 8:70
Past recollection recorded, exception,	Reputation, exception, 8:75
8:39	federal rules, 8:78
federal rules, 8:40	Residual exceptions, 8:92 , 8:93
Pedigree, exception, 8:90	Silence, 8:2
federal rules, 8:91	Spontaneous statements, exception,
Personal history, exception, 8:90	8:29
federal rules, 8:91	federal rules, 8:34
Personal knowledge of out-of-court statement, 6:18	State department records, exception, 8:43
federal rules, 6:19	Statements, 8:1
Population certificates, exception,	against interest, generally. Declara-
8:59	tions, this index definition, 8:1, 8:2
Present sense impressions, exception,	ongoing emergency situation, 8:6
8:30	state of mind, 8:4
federal rules, 8:35	testimonial, 8:6
Prior statements by witness, not	Statements not hearsay, 8:7
hearsay	inconsistent statements of witness,
consistent statements, 8:9	8:8
federal rules, 8:11	federal rules, 8:10

HEARSAY—Cont'd Statements not hearsay, 8:7—Cont'd prior consistent statements of witness, 8:9 federal rules, 8:11 prior identification of person by witness, 8:12 federal rules, 8:13 State of mind exception, as, 8:32 federal rules, 8:37 nonhearsay, as, 8:4 Surveyor's standard, exception, 8:60 Testimonial statements, 8:6 Threats and intimidation used against witness as basis for unavailability, exception, 8:97 Verbal acts, 8:3 Weather records, exception, 8:57 Within hearsay, 8:94 federal rules, 8:95 Writings, recorded recollection; exception, 8:39 federal rules, 8:40 Wrongdoing against witness as basis for unavailability, exception, 8:97 X-rays, exception, 8:43

HIV

AIDS, this index

HOSPITAL RECORDS

Certification of, **8:43**Hearsay exception, **8:43**Mental impairment of witness, admissibility, **6:48**Physician-patient privilege, **5:18**, **5:19**

HOSTILE WITNESSES

Bias and interest of witness, **6:44**Leading questions permitted, **6:32**direct examination, **6:70**federal rules, **6:78**

HUSBANDS AND WIVES

Spouses, this index

HYPNOSIS

Effect on witness competency, **6:9** federal rules, **6:17**

HYPOTHETICAL QUESTION

Expert testimony, eliciting, **7:16** federal rules, **7:17**

IDENTIFICATION OF EVIDENCE

Authentication and Identification, this index

IDENTIFICATION OF PERSONS

Bloodhound tracking evidence used for, **8:12**

Criminal defendants

past recollection recorded, using to identify, **8:39**

Dental records, physician-patient privilege inapplicable, **5:18**, **5:22**

Eyewitness identification, reliability expert testimony, **7:10**

Fingerprints, this index

Handwriting, this index

Intermediate, admissibility, 8:12

Lineup identification, admissibility, **6:37**

Prior identification under nonsuggestive circumstances, **6:37**

Statements not considered hearsay, 8:12

federal rule, 8:13

Voice identification, generally.

Authentication and Identification, this index

IDENTITY

Informer, disclosure, **5:51** Uncharged crimes as proof of, **4:23**

IMPEACHMENT

General discussion, **6:28 et seq.** "Alford pleas," convictions based on, use, **6:61**Bias and Interest of Witness, this

index

Character of witness, **4:13**, **4:16**, **6:54** et seq.

bad character for truthfulness, **6:56** federal rules, **6:57**

IMPEACHMENT—Cont'd	IMPEACHMENT—Cont'd
Character of witness, 4:13, 4:16,	Prior Inconsistent Statements, this
6:54 et seq.—Cont'd	index
federal rules, 4:17	Rape victim, sexual history to
Collateral matters, 4:20, 6:30	impeach, 4:66
Confession suppressed due to	Refreshing memory, document
Miranda violations, used to	introduced into evidence by
impeach, 5:50 , 6:50	adversary, 6:81
Contradiction, 6:30	federal rules, 6:82
own witness, contradiction permitted, 6:32	Rehabilitation and Support of Cred- ibility, this index
Conviction of Crime, this index	Religious belief of witness, 6:65
Credibility of witnesses, 6:28 et seq.	federal rules, 6:66
own witness, impeachment	Sensory impairment, 6:46 , 6:47
prohibited, 6:32	federal rules, 6:48
rehabilitation and Support of Cred-	Silence while in custody, 5:50
ibility, this index	Statements made during plea negotia-
Criminal defendant, 4:16	tions used to impeach, 4:62
Defendant's presence during trial, unfair comment prohibited, 6:28	Subsequent remedial measures to
"Door opening" rationale for	impeach witness denying
introduction of extrinsic evi-	responsibility, 4:55
dence of contradiction, 6:30	Truthfulness
Drug use at time of operative event,	general discussion, 6:54 et seq.
6:8 Experts, of, 7:9	bad reputation for; use to impeach, 6:55, 6:56
Extrinsic evidence used for, 6:29 ,	federal rules, 6:57
6:30	evidence of; use to rehabilitate,
Impairment, mental or sensory; due	6:40
to, 6:46 , 6:47	federal rules, 6:42
federal rules, 6:48	Violation of sequestration, 6:88
In limine motions, 1:13	federal rules, 6:89
Intoxication at time of operative event, 6:8	Withdrawn guilty pleas, traffic court, 8:14
Learned treatises, use of, 7:9, 8:71	
federal rules, hearsay exception,	INCONSISTENT STATEMENTS
8:72	Prior Inconsistent Statements, this
Mental infirmities used for, 6:17 ,	index
6:46, 6:47	INDUSTRY STANDARDS
federal rules, 6:48	Habit and custom evidence, 4:46
Noncollateral matters, 6:30	federal rules, 4:50
bias and interest of witness, 6:44	•
mental or sensory impairment,	"INEXTRICABLY
6:47	INTERTWINED''
prior inconsistent statements on material issues, 6:52	References to uncharged crimes, 4:25
Own Witness, this index	INFORMERS
Prior Crimes or Misconduct, this index	Privileged communications, 5:51 federal rules, 5:52

INJURIES INSTRUCTIONS TO JURY -Cont'd Medical Diagnosis and Treatment, Criminal proceedings, presumptions this index general discussion, 3:30 Personal Injury Actions, this index innocence, 3:31 Real and demonstrative evidence of, permissive presumptions, 3:30, 11:4 3:31 federal rules, 11:5 federal rules, 3:32 INNOCENCE Cross-examination Presumption of innocence, criminal credibility, jury may consider in proceedings; court's failure to assessing, 6:71 instruct not reversible error, Failure to call witness, 4:5 3:32 Judicial notice of adjudicative facts, 2:6 **INSANITY** federal rules, 2:7 Sanity, this index Limited admissibility, 1:19, 1:20 **INSCRIPTIONS** federal rules, 1:20 Missing documents, 4:6 Best evidence rule, 10:2 Trade inscriptions, self-authenticat-Missing witnesses, inference from, 4:5 ing, 9:24 federal rules, 4:9 federal rules, 9:25 Presumptions **INSPECTIONS** civil proceedings, 3:20 Certificates federal rules, 3:26 agriculture inspection certificates. criminal proceedings, 3:29 hearsay exception, 8:58 federal rules, 3:32 State health inspections, hearsay innocence, 3:31 exception, 8:51 judge-made presumptions, 3:31 Right of inspection permissive aspect of presumpcriminal prosecutions, Rosario tions, 3:30, 3:31 rule, 6:81 federal rules, 3:32 refreshing memory, adversary's missing witnesses, 4:5 right of inspection, 6:81 Privileges, inference from, 5:59 federal rules, 6:82 Reasonable doubt, 3:13 circumstantial evidence. 3:13 INSTANT MESSAGES federal rules, 3:15 Best evidence, 10:3 Self-incrimination, privilege against, 5:47 INSTRUCTIONS TO JURY credibility, jury may consider in Generally, 1:2 assessing, 5:47 Burden of persuasion Stricken evidence, disregard, 1:2, 1:4 civil cases, 3:7 Subsequent remedial measures, 4:55 criminal cases, federal, 3:15 Uncharged crimes, 4:18 shifting burden, 3:30 **INSURANCE** Character evidence, 4:14 Adoptive admissions, 8:20 federal rules, 4:17 Claims, social worker privilege, 5:38 Circumstantial evidence, reasonable doubt, 3:13 Liability Insurance, this index

Life Insurance, this index

federal rules, 3:15

INSURANCE—Cont'd INTOXICATION Lost policy, existence and terms Competency of witness, 6:8 proved by preponderance of jurors, 6:27 evidence, 3:10 Expert opinion regarding, 7:6 Physician-Patient Privilege, this Impeachment purposes, 6:47 index federal rules, 6:48 Previous claims, 4:29 noncollateral fact, 6:30 Lay opinion regarding, 7:2 INTENT federal rules, 7:3 See also State of Mind, this index Expressions of intent, hearsay excep-INVESTIGATORY REPORTS tion, 8:32 Governmental records, hearsay federal rules, 8:37 exception, 8:51 Uncharged crimes to prove, 4:20 federal rules, 8:65 civil cases, 4:29 Work product immunities, 5:14 INTEREST **IRS** Bias and Interest of Witness, this Civil tax proceedings index taxpayer-accountant privilege, 5:2 Declarations against, 8:86 Restructuring and Reform Act of civil cases, 8:87 1998, **5:2** federal rules, 8:89 **JOURNALISTS** criminal cases, 8:88 Privileged communications, 5:44 federal rules, 8:89 federal rules, 5:45 federal rules, 8:89 **JUDGES** hearsay exception, 8:14 Calling witnesses, 6:84 Interested observer, expert testimony, 7:7 federal rules, 6:87 Competency as witnesses, 6:24 Pecuniary interest federal rules, 6:25 declarations against, 8:87 Experts appointed by, 7:18 Proprietary interest federal rules, 7:19 statements against, 8:87 Judicial Notice, this index Witnesses, interest in outcome, 6:3, Preliminary rulings, responsibilities, 6:10 1:16 federal rules, 6:17 federal rules, 1:18 INTERNAL REVENUE SERVICE Questioning witnesses, 6:83, 6:85 IRS, this index federal rules, 6:87 Secondary evidence, judicial determi-**INTERPRETERS** nation of foundation for admis-Admissions, 8:26 sibility, 10:15 Attorney-client privilege, 5:7 federal rules, 10:16 Competency as witnesses, 6:22 JUDGMENT AS MATTER OF LAW federal rules, 6:23 Directed Verdict, this index INTERROGATION **JUDGMENT** Examination, this index

INTIMIDATION OF WITNESS

Hearsay exception, 8:97

NOTWITHSTANDING

Burden of production, 3:4

VERDICT

JUDGMENTS	JUDICIAL NOTICE—Cont'd
Best evidence rule, 10:1	Adjudicative facts—Cont'd
Consent judgment between federal	judge's personal knowledge
agency and private corporation,	distinguished, 2:3
admissibility, 4:63	jury instructions, 2:6
Personal family, general history, or	federal rules, 2:7
boundaries	jury's general knowledge
federal rules, hearsay exception,	distinguished, 2:3
8:68	notorious facts, 2:3, 2:4
Previous convictions, hearsay excep-	post-notice hearing
federal rules, 8:68	federal rules, 2:7
rederar rules, 8:08	precedent, 2:4
JUDICIAL NOTICE	procedure, 2:5 , 2:6
General discussion, 2:1 et seq.	federal rules, 2:7
Adjudicative facts	public officials, 2:4
general discussion, 2:2	public records, 2:4
almanacs, 2:3	federal rules, 2:7
animal characteristics, 2:4	refreshing recollection with, 2:3
appellate court, 2:5	scientific and mechanical facts,
federal rules, 2:7	2:3-2:5
business regularity or practice,	federal rules, 2:7
8:41	sources whose accuracy cannot be
census data, 2:3, 2:4	questioned, 2:3
challenging, 2:6	federal rules, 2:7
commerce and trade matters, 2:4	standard for judicial notice, 2:3
federal rules, 2:7	timeliness of taking judicial notice
court files, 2:4	2:5
court records, 2:4	federal rules, 2:7
court's discretion, 2:5	time of sunset, 2:3
current events, 2:4	types of facts subject to judicial notice, 2:3, 2:4
days and dates, 2:4	federal rules, 2:7
defined, 2:1, 2:2	· · · · · · · · · · · · · · · · · · ·
discretion of court in taking	websites, 2:3, 2:7
judicial notice, 2:5	Appellate court, 2:5, 2:7
effect, 2:6	Attorney-client privilege, 2:8
federal rules, 2:7	Burden of production, meeting, 3:3 Judicial notice of law
federal rules, 2:3, 2:7	
function, 2:2	general discussion, 2:9
general or common knowledge	choice of law rules, 2:9
facts, 2:3	defined, 2:1
geographical facts, 2:4	discretionary, 2:9
federal rules, 2:7	federal rules, 2:10
historical facts, 2:4	federal rules, 2:10
human characteristics, 2:3, 2:4	foreign law, 2:9
federal rules, 2:7	federal rules, 2:10
introduction of contradictory evi-	mandatory, 2:9
dence, 2:6	federal rules, 2:10

Judicial notice of law—Cont'd Judicial notice of law—Cont'd	Instructions to Jury, this index
notice, 2:9 federal rules, 2:10 procedure, 2:9 federal rules, 2:10	JUSTICE OF THE PEACE Proceedings hearsay exception, 8:61
Legislative facts, 2:7, 2:8 defined, 2:1	JUVENILE DELINQUENCY Adjudications, not admissible as
JURISDICTION Absence from, as basis for unavailability, 8:79	convictions, 6:61 federal rules, 6:64 Social worker privilege, applicability, 5:38
JURORS	LABORATORY REPORTS
Competency as witnesses, 6:26 federal rules, 6:27	Hearsay exception, 8:6, 8:41
Questioning witnesses, 6:83 , 6:86 federal rules, 6:87	LANGUAGE Interpreters, competency as witnesses, 6:22
JURY	federal rules, 6:23
Authenticity, jury determination of, 9:1	LAW CLERKS Judicial, competency as witnesses,
Exclusion of relevant evidence that misleads the jury, 4:8	6:25
federal rules, 4:9 Exhibits in jury room, 11:23 federal rules, 11:24	LAW ENFORCEMENT PRIVILEGE General discussion, 5:54
lists matching exhibits with corresponding count of indictment, 11:23	LAWYERS Attorneys, this index
Experiments by jury, 11:23 federal rules, 11:24	LAYING A FOUNDATION Foundation Questions, this index
Fact-finding based on general knowledge, 2:3 Instructions to Jury, this index Note-taking by, 11:23 federal rules, 11:24 Preliminary rulings, responsibilities, 1:16 federal rules, 1:18	LAY OPINION General discussion, 7:2 Federal rules, 7:3 Handwriting, 9:5 federal rules, 9:6 Ultimate issues, 7:14 federal rules, 7:15
Secondary evidence, fact-finders as to	
ultimate issue of accuracy, 10:15 federal rules, 10:16 Trial transcript, partial, judge's discretion to send to jury room federal rules, 11:24	General discussion, 6:70 Federal rules, 6:78 Hostile witnesses, 6:32 Refreshing memory, 6:80 LEARNED TREATISES
federal rules, 11:24 Views, 11:21	Hearsay exception, 8:71
federal rules, 11:22	federal rules, 8:72

LEARNED TREATISES—Cont'd

Impeachment of expert, for, 7:9

LEGISLATIVE HEARINGS

Self-incrimination, privilege against, **5:46**

LIABILITY INSURANCE

General discussion, 4:64

Attorney-client privilege, insurer as agent, **5:7**

Claims evaluations, work product immunities, **5:14**

Federal rules, 4:65

LIBRARY RECORDS

Privileged communications, **5:42** federal rules, **5:43**

LIE DETECTOR

Scientific evidence, expert testimony, 7:5, 7:6

LIE DETECTORS

Court martial proceedings, exclusion, 7:6, 7:11

LIFE INSURANCE

Beneficiaries, no standing to invoke dead man's statute, **6:12**

Physician-patient privilege, contractual waiver enforceable, 5:20

LIMITED ADMISSIBILITY

General discussion, 1:19 et seq. "Bruton rule," 1:19
Federal rules, 1:20

LINE-UP IDENTIFICATION

Nonhearsay, 8:12, 8:13

LIQUOR

Alcohol, this index

MALICE

Burden of persuasion, clear and convincing evidence, 3:10

MALPRACTICE, LEGAL

Allegation waives attorney-client privilege, **5:9**

MALPRACTICE, MEDICAL

Character evidence as proof of conduct, **4:12**

Res ipsa loquitur, applicability, **3:24**, **7:6**

Sexual misconduct by doctor alleged, similar occurrences with other patients, testimony excluded, 4:34

MAPS

Demonstrative evidence, as, 11:6 federal rules, 11:7 Public records, hearsay exception,

8:52 MARIJUANA

Opinion testimony regarding, 7:4

MARRIAGE

Adultery, husbands and wives incompetent to testify, **5:25**

Annulment; burden of production, corroboration, **3:4**

Certificate, hearsay exception, **8.54** federal rules, **8.66**, **8.70** religious organizations, **8.70**

Prenuptial agreements, burden of proof, allocation, **3:2**

Social worker privilege inapplicable to client's spouse, **5:38**

Spousal Privileges, this index Spouses, this index

MATERIALITY OF EVIDENCE

Distinguished from relevancy, 4:3

MEDICAID

Fraud, exception to physician-patient privilege, **5:21**

MEDICAL CORPORATIONS

Privileged communications see Physician-Patient Privilege, this index

MEDICAL DIAGNOSIS AND TREATMENT

Autopsy report as nonhearsay, **8:6**, **8:42**

Expert testimony, 7:6

MEDICAL DIAGNOSIS AND TREATMENT—Cont'd

Physician-Patient Privilege, this index

Reports concerning examinations subject to disclosure, 5:17 statements, hearsay exception, 8:29, 8:33

federal rules, 8:38

Unauthorized practice, proof of negligence, **5:18**

Unauthorized treatment, evidence or prior similar acts, **4:29**

MEDICAL EXAMINER'S OFFICE

Reports as nonhearsay, 8:6, 8:41

MEDICAL EXPENSES

Payment, admissibility, **4:60** federal rules, **4:61**

MEMORY

Credibility of witnesses, **6:28 et seq.**Hypnotically induced, competency of witnesses, **1:7**, **6:9**federal rules, **6:17**

Impeachment due to impairment of, **6:47**

Lack of, basis for declarant unavailability, **8:79**

Past recollection recorded, hearsay exception, 8:39

federal rules, 8:40

Refreshing Memory, this index

MENTAL CAPACITY

Administrative proceedings self-incrimination, privilege against, **5:46**

Commitment proceedings self-incrimination, privilege against, **5:46**

Credibility of witness, 6:28 et seq.

Dead Man's Statute, this index

Expert testimony, 7:6

Impeachment value, **6:17**, **6:46**, **6:47** federal rules, **6:48**

Interested observer testimony for impaired witnesses, 7:7

MENTAL CAPACITY—Cont'd

Leading questions permissible on direct examination, **6:70**

federal rules, 6:78

Presumption, 3:19

Psychiatric evaluation of witness, power to order, **6:47**

federal rules, 6:48

Sanity, this index

Unsworn testimony due to infirmity, **6:7**

Witnesses, competency, **6:7** federal rules, **6:17**

MILITARY SECRETS

Privilege, 5:54

MINISTERS

Privileged communications, **5:36** federal rules, **5:37**

MINORS

Children, this index Juvenile Delinquency, this index Parent and Child, this index

MIRANDA WARNINGS

Violations, suppressed confession used to impeach, **6:50**

MISCONDUCT

Prior Crimes or Misconduct, this index

MISSING DOCUMENTS

Relevancy considerations, **4:6** federal rules, **4:9**

MISSING PERSONS PRESUMPTION

Public records, hearsay exception, 8:55

MISSING WITNESSES RULE

Relevancy considerations, **4:5** federal rules, **4:9**

MISTAKE

Accident or Mistake, this index

MODELS

Demonstrative evidence, as, 11:6 federal rules, 11:7

MODUS OPERANDI Uncharged crimes as proof of, 4:23 MORTALITY TABLES Hearsay exception, 8:71 MOTION PICTURES AND VIDEOTAPES Documentaries or filming statements, iournalists privilege 5:44

journalists privilege, **5:44**Person's conduct involved in litigation, no work product immunity, **5:14**

Real and demonstrative evidence, as, 11:4, 11:12, 11:17 federal rules, 11:13, 11:17

MOTIONS

Motions in limine, 1:7
federal rules, 1:13
Motions to strike, 1:4
failure to "connect up" evidence,
1:6
federal rules, 1:12
federal rules, 1:10
"Sandoval motion," 6:63
"Ventimiglia" motion, 4:18

MOTIVE

Uncharged crime evidence to prove, 4:19, 4:29

MOTOR VEHICLE ACCIDENTS

Accidents, this index

MOTOR VEHICLES

Negligent operation, exception to dead man's statute, **6:14**Speed, lay opinion regarding, **7:2** federal rules, **7:3**Weapons in, presumption of possession, **3:31**

MURDER

Affirmative defenses shifting burden of production, **3:14**

NARCOTICS

Drugs, this index

NARRATIVE TESTIMONY

Within court's discretion, **6:69** federal rules, **6:78**

NEGLIGENCE

See also Accidents, this index Burdens of proof, 3:2 Expert testimony, 3:24 Habit and custom federal rules, 4:49 non-workplace situations, 4:44 workplace situations, 4:43 Insurance coverage, relevancy, 4:64 Operation or ownership of vehicle dead man's statute, exception, 6:14 Prima facie case, 3:24, 3:25 Res ipsa loquitur inference, 3:24, 3:25 Standard of care in industry or trade, 4:46 federal rules, 4:50 Subsequent remedial measures federal rules, 4:57 Unauthorized practice of medicine, proof, **5:18**

NEGOTIATIONS

Admissions
inculpatory words used during
compromise negotiations,
8:16
made during negotiating compromise, 4:58
Compromises and Offers to Compromise, this index
Contracts, 4:59
Impeachment statements made during plea negotiations, 4:62
Pleas and Plea Discussions, this

NEWSPAPERS AND PERIODICALS

index

Advertisements, actions for nonpayment; secondary evidence, 10:9 Self-authenticating, 9:24 federal rules, 9:25

NEWS REPORTERS

Privileged communications, **5:44** federal rules, **5:45**

NOLO CONTENDERE

Plea, 4:62

NONCOLLATERAL MATTERS

Bias and interest of witness, **6:44** Contradiction of witness on, **6:30** Mental or sensory impairment of witness, **6:47**

Prior inconsistent statements on material issues, **6:52**

NONSCIENTIFIC EVIDENCE

"Daubert" standard, applicability of federal rules, 7:11

NOTARY PUBLIC

Acknowledged documents, selfauthenticating, **9:24** federal rules, **9:25**

NOTICE

Opponent, to, production of original evidence, for, 10:8
Residual hearsay exception, 8:93

NURSES

Physician-Patient Privilege, this index

OATHS AND AFFIRMATIONS

Competency of witnesses, 6:20 federal rules, 6:21
Unsworn testimony child testifying, 6:6 corroboration, 3:4 failure to object to, 6:20 federal rules, 6:21 mentally infirm witness, 6:7

OBJECTIONS

Generally, 1:4 et seq.
federal rules, 1:9 et seq.
Appeal, preserving error for
generally, 1:4, 1:9, 1:10
general and specific objections,
1:5, 1:11
harmless error, 1:8, 1:14
in limine rulings, 1:7, 1:13
offer of proof and offer "to connect
up," making, 1:6, 1:12
Continuing objections, 1:4
federal rules, 1:10
Federal rules, 1:9 et seq.

Form of question, to, 6:69

OBJECTIONS—Cont'd

General objections, 1:5 federal rules, 1:11 Judicial questioning, to, 6:85 federal rules, 6:87 Lay opinion, 7:2 Motion in limine, use of, 1:7 federal rules, 1:13 Motion to strike, use of, 1:4, 1:6 federal rules, 1:10 Multiple parties, 1:4 Offer of proof and offer "to connect up," making, 1:6 federal rules, 1:9, 1:12 Partially improper evidence, 1:4 Rulings on evidence, 1:4 federal rules, 1:10 Specific objections, 1:5 federal rules, 1:11 Timeliness, 1:4

OFFER AND ACCEPTANCE

federal rules, 1:10

Telegram rule, 10:3

OFFER OF PROOF

General discussion, 1:6 Federal rules, 1:12

OFFERS TO COMPROMISE

Compromises and Offers to Compromise, this index

OFFER "TO CONNECT UP"

General discussion, 1:6 Federal rules, 1:12, 1:18

OFFICIAL INFORMATION

Privilege, 5:53 federal rules, 5:54

OFFICIAL PUBLICATIONS

Self-authenticating, **9:24** federal rules, **9:25**

OPINION TESTIMONY

General discussion, 7:1 et seq.
Bad reputation for truthfulness, 6:57
Character of accused, 4:13
federal rules, 4:17
Conclusory opinions, 7:14

OPINION TESTIMONY—Cont'd

Expert Testimony, this index Interested observer, 7:7 Lay Opinion, this index Prior inconsistent statements, impeachment by, 6:51 Ultimate issues, 7:14 federal rules, 7:15 lay person, 7:2 Voice identification, 9:12

OPTICALLY IMAGED DOCUMENTS

Electronic data imaging, best evidence rule, 10:3

ORDER OF TRIAL

General discussion, **6:68**, **6:76**Closed circuit television, **6:77**Control by the court, **6:77**Federal rules, **6:76**, **6:77**Live audio or video transmission, **6:77**

ORIGINAL WRITINGS RULE

Best Evidence Rule, this index

OTHER ACTS

Habit and Custom, this index Similar Occurrences, this index Uncharged Crimes, this index

OVERVIEW AND ORGANIZATION OF BOOK

General discussion, 1:1

OWN WITNESS

Contradiction of permitted, **6:32**Credibility, attack prohibited, **6:32**Hostile, leading questions permitted, **6:32**

Impeachment, **6:31**federal rules allow, **6:34**general prohibition, **6:32**exception for prior inconsistent
statements, **6:33**

Refreshing memory, use of prior inconsistent statements for, **6:32** Rehabilitation, **6:31**

PARENT AND CHILD

Blood tests to prove relationship,
expert testimony regarding, 7:6
Character of parent in issue, child
custody, 4:11
Competency of witnesses, dead
man's statute, 6:11
Family history, hearsay exception,
8:90
federal rules, 8:91
Family records, hearsay exception,
8:73
federal rules, 8:76
Paternity Proceedings, this index
Privileged communications, 5:32
federal rules, 5:35

PAROLE OFFICER'S REPORT

Hearsay exception, 8:42

PARTIES

Admissions, this index
Adverse Party, this index
Competency as witnesses, 6:3
dead man's statute, 6:11
Interested witnesses, 6:44
Statements given to opponent, no
work product immunity, 5:14
Witnesses, as; sequestration, 6:88
federal rules, 6:89

PARTNERSHIPS

Admissions by partner, **8:21**Self-incrimination, privilege against, partners, **5:49**Surviving member, protected by dead man's statute, **6:12**

PAST RECOLLECTION RECORDED

Distinguished from refreshing memory, **6:80**Hearsay exception, **8:39**federal rules, **8:40**

PATERNITY PROCEEDINGS

Burden of persuasion, clear and convincing evidence, **3:10**Witnesses, competency of spouses as, **6:4**

PECUNIARY INTEREST

Declarations against, 8:87

PEDIGREE

Hearsay exception, **8:90** federal rules, **8:91**

PENSIONS

Dead man's statute, standing, 6:12

PERJURY

Conviction of crime offered to impeach, **6:63** federal rules, **6:64**

Plea bargaining statements, admissible in prosecution for perjury, **4:63**

Prior instances of perjury, impeachment value, **6:60**

PERSONAL HISTORY

Hearsay exception, **8:90** federal rules, **8:91**

PERSONAL INJURY ACTIONS

See also Accidents, this index Photographs of injuries, 11:4 federal rules, 11:5 Physician-patient privilege, 5:20 X-rays, 11:10 federal rules, 11:15

PERSONAL KNOWLEDGE

Authentication and identification testimony, 9:3
Competency of witnesses, 6:18 federal rules, 6:19
Expert testimony, basis of, 7:12 federal rules, 7:13
Hearsay, personal knowledge of outof-court statement, 6:18 federal rules, 6:19
Lay opinion, 7:2

PERSONS

Real or demonstrative evidence, as, 11:4 federal rules, 11:5

PHARMACISTS

Physician-patient privilege not applicable, **5:19**

PHOTOGRAPHS

Authentication and identification, 9:3, 11:9
federal rules, 11:14
Best Evidence Rule, this index
Demonstrative evidence, as, 11:8, 11:9

federal rules, 11:14

Gruesome photographs

relevance-prejudice balancing federal rules, 11:5

Gruesome photographs, relevancy, **4:8, 11:4**

Injuries, of, 11:4

federal rules, 11:5

Person's conduct involved in litigation, no work product immunity, 5:14

Prior identification, using evidence of, 8:12 federal rule. 8:13

PHYSICAL CONDITION

Expert testimony regarding, 7:6
Hearsay exception, 8:32
federal rules, 8:37
Lay opinion regarding, 7:2
federal rules, 7:3
Physician-patient privilege, condition in controversy, 5:20
Real evidence, as, 11:4
federal rules, 11:5

PHYSICAL EVIDENCE

Real and Demonstrative Evidence, this index

PHYSICAL EXAMINATION

Medical Diagnosis and Treatment, this index

PHYSICIAN-PATIENT PRIVILEGE

General discussion, **5:18 et seq.**Addicts, reporting requirement, **5:21**AIDS, **5:18, 5:21**Child abuse, disclosure required, **5:18, 5:21, 5:22**Chiropractors, **5:18**Confidentiality, **5:19**

PHYSICIAN-PATIENT PHYSICIAN-PATIENT PRIVILEGE—Cont'd PRIVILEGE—Cont'd Dangerous client of psychologist, Suicide, privilege applicable despite lack of consent to treatment, reporting, 5:22 5:19 Death, effect, 5:18 et seq. Dental records for identification of Third person present, effect, 5:19 persons, privilege inapplicable, Unauthorized practice of medicine, proof of negligence, 5:18 5:21 Dentists, 5:18 Victims Eavesdroppers, 5:19 disclosing identity of, 5:21 Elements of the privilege, 5:19 privilege may not be asserted by criminal defendant, 5:19 Emergency medical technicians, privilege only if physician's agent, Waiver, 5:18, 5:20 5:19 Will contests, 5:18 Exceptions, 5:21 **PHYSICIANS** crime-fraud, 5:23 Malpractice, Medical, this index psychologist-patient privilege, Medical Diagnosis and Treatment, 5:22 this index Factors to sustain claim of, 5:19 Physician-Patient Privilege, this Federal law not recognizing, 5:23 index Fraudulent Medicaid practices, exception, 5:21 PLEAS AND PLEA DISCUSSIONS Guardianship and custody, mentally General discussion, 4:9, 4:62 ill parents, 5:21, 5:22 Agreement with government, admis-Gunshot and knife wounds, reporting sibility to show bias, 6:45 requirement, 5:21 Consent judgment between federal Hospital records, 5:18, 5:19 agency and private corporation, admissibility, 4:63 Incapacitated persons, exception, 5:21 Federal rules, 4:63 Grand jury testimony against others Insanity plea, 5:20 induced by plea bargain, admis-Life insurance, contractual waiver sibility, 4:62 enforceable, 5:20 Guilty pleas Nurses, 5:18 admission in related litigation, Personal injury actions, 5:20 used as, 8:16 Physical or mental condition in withdrawn, 4:62, 8:14 controversy, 5:20 federal rules, 4:63 psychologist's privilege, 5:22 Nolo contendere, 4:62 Podiatrists, 5:18 federal rules, 4:63 Psychologists, 5:22 Perjury, statements admissible in federal cases, 5:23 prosecution for, 4:63 Psychotherapist-patient privilege, Statements made during negotiations 5:23 used to impeach, 4:62 federal rules, 5:23 Traffic court, withdrawn guilty pleas, social workers in course of impeachment, 8:14 psychotherapy, 5:23 Reporting requirements, 5:21, 5:22 **PODIATRISTS**

Privileged communications, 5:18

Scope, 5:19

POLICE OFFICERS

Law enforcement privilege, 5:54

POLICE RECORDS OR REPORTS

Hearsay exception, 8:41, 8:42, 8:65 Rape victim's report to police, nonhearsay, 8:12

POLICE SKETCHES

Nonhearsay, 8:12, 8:13

POLITICAL VOTE

Privileges, 5:55, 5:56

POLYGRAPH

Scientific evidence, expert testimony, 7:5, 7:6

POLYGRAPHS

Court martial proceedings, exclusion, 7:6, 7:11

POPULATION CERTIFICATES

Hearsay exception, 8:59

PRACTICALITY AND **CONVENIENCE**

Burden of proof allocation, factors influencing, 3:2

Presumptions creation, reasons for, 3:19

PREDECESSORS IN INTEREST

Competency as witnesses, dead man's statute, 6:11 Former testimony, 8:83

PREJUDICE

Limiting instructions, of, 1:20 Relevancy considerations, 4:8 character evidence, 4:10 conviction of crime offered to impeach, 6:63 federal rules, 6:64 federal rules, 4:9

liability insurance, 4:64, 4:65 subsequent remedial measures, 4:51

uncharged crimes, 4:18 Third-party culpability, probative value-prejudicial effect test, 4:7

PRELIMINARY HEARINGS

Dead man's statute inapplicable, 6:16

PRELIMINARY RULINGS

General discussion, 1:15 et seq. Admissions, 1:17 Agent's out-of-court statement, 1:17 Allocation of fact-finding responsibility, **1:16** federal rules, 1:18

Conditional relevancy, 1:16 federal rules, 1:18

Confessions, 1:17

federal rules, 1:18

Conviction of crime, admissibility to impeach, 6:63

Fourth amendment rights, 1:17

Judge, responsibilities, 1:16

federal rules, 1:18

Jury, responsibilities, 1:16

federal rules, 1:18

Motions in limine, 1:7

federal rules, 1:13

Prior crimes or misconduct used in cross-examination of criminal defendant, 6:59

Privileges, 1:17

Speaking agent rule, 1:17

Uncharged crimes, admissibility determination, 1:18, 4:18

PRENUPTIAL AGREEMENTS

Burden of proof, allocation, 3:2

PRESENT SENSE IMPRESSIONS

Hearsay exception, 8:30 federal rules, 8:35

PRESUMPTIONS

General discussion, 3:16 et seq. Bailment, conversion or loss of property, 3:19 Burden of persuasion, 3:30 Burden of production effect on, 3:16 meeting, 3:3 "Bursting bubble" rule, 3:21, 3:23 Conclusive, 3:18 Conflict of presumptions, 3:19

PRESUMPTIONS—Cont'd	PRESUMPTIONS—Cont'd
Continuation of status or condition,	Federal proceedings—Cont'd
3:19	criminal cases, 3:32
Creation, reasons for	Hybrid approach rule, 3:23
access to proof, 3:19	Inference
probability, 3:19	distinguished, 3:17
procedural convenience, 3:19	res ipsa loquitur as inference, 3:24
social policy, 3:19	statutory permissive inference,
Criminal proceedings, 3:29 et seq.	3:31
constitutional restraints, 3:30	rational connection test, 3:30
federal rules, 3:15, 3:32	Intent, natural consequences of
innocence, presumption of, 3:31	person's acts, 3:30, 3:31
court's failure to instruct not	Jury will follow judge's instructions,
reversible error, 3:32	1:19
motor vehicles, weapons in	Legitimacy of children, 3:19
presumption of possession, 3:31	Limiting instruction, jury's compli-
permissive aspect of presumptions,	ance with, 1:20
3:30, 3:31	Mailing, presumption of receipt, 3:19
federal rules, 3:32	Marriage, validity of, 3:19
receiving stolen property, possession, 3:31	Mental competency, 3:19
statutory permissive inference,	Missing documents, 4:6
3:31	Missing persons, public record
rational connection test, 3:30	hearsay exception, 8:55
Death, of	Missing witnesses, 4:5
absence for more than three years,	Morgan rule, 3:22 , 3:23
3:19	Motor vehicle accidents, driver
public records, hearsay exception,	presumed to have owner's
8:55	permission, 3:19
simultaneous death in common	Possessor is owner, 3:19
disaster, 3:19	Presumption of receipt upon proof of mailing, 3:19
Defined, 3:17	•
Distinguishing presumption of law	Prima facie evidence distinguished, 3:17
and presumption of fact, 3:17	Promissory note, signature valid,
Effect of	3:23
general discussion, 3:20	Public officials perform tasks in
federal proceedings, in, 3:26-3:28	accordance with lawful proce-
Morgan rule, 3:22, 3:23	dure, 3:19
Thayer rule ("bursting bubble"	Reasons for, 3:19
rule), 3:21, 3:23, 3:27	Rebuttable, 3:18, 3:31
Employment discrimination, presumption rebutted when	Release, due execution, 3:23
nondiscriminatory reason	Res ipsa loquitur, inference
introduced, 3:23	distinguished from presumption,
Federal proceedings	3:24
general discussion, 3:26	Spousal confidentiality, 5:28
cases governed by federal law,	Suicide, against, 3:19 , 3:23
3:27	Thayer rule, 3:21 , 3:23 , 3:27
cases governed by state law, 3:28	Uniform Commercial Code, 3:23

PRESUMPTIONS—Cont'd	PRIOR CRIMES OR
Witnesses	MISCONDUCT—Cont'd
failure to call, 4:5	Pretrial ruling as to acts used in
incompetency, 6:2	cross-examination of criminal
•	defendant, 6:59
PRIESTS	Truthfulness
Privileged communications, 5:36	bad character for, use to impeach,
federal rules, 5:37	6:56
PRIMA FACIE EVIDENCE	evidence of, use to rehabilitate,
Ancient maps and real property	6:40
records, 8:52	Uncharged Crimes, this index
Burden of production, shifting, 3:25	PRIOR INCONSISTENT
Certificate of public officer, 8:50	STATEMENTS
Certified business records, 8:43	Adverse party, by, 6:50 , 6:52
Corporate seal, 9:21	Denial, prior consistent statements to
Res ipsa loquitur, 3:24	corroborate, 6:41
Weather records, 8:57	federal rules, 6:42
ŕ	Explanation admissible to
PRIOR CONSISTENT	rehabilitate, 6:39
STATEMENTS	Form of statement, 6:50
Rehabilitation of credibility with,	Impeachment by, 6:49 , 6:50
6:37, 6:41	declarant unavailable, 6:52
federal rules, 6:42	extrinsic evidence, admissibility to
statements not hearsay, 8:9	prove, 6:52
federal rules, 8:11	federal rules, 6:53
Statements not considered hearsay,	federal rules, 6:53
8:9	foundation requirements, 6:52
federal rules, 8:11	federal rules, 6:53
Substantive evidence, as, 6:42	nature of inconsistency, 6:51
PRIOR CRIMES OR	own witness
MISCONDUCT	
Advance accreditation of witnesses,	federal rules allow impeachment, 6:34
6:37	impeachment generally
Character evidence	prohibited, 6:32
criminal cases, 4:13	exception, 6:33
not admissible to rehabilitate, 6:40	Omissions in prior statements, 6:51
	Refreshing memory, use for, 6:32
Competency of witnesses, 6:5	Silence as, 6:51
Conviction of Crime, this index	, , , , , , , , , , , , , , , , , , ,
Explanation admissible to	federal rules, 6:53
rehabilitate, 6:39	Statements not considered hearsay, 8:8
Impeachment value, 6:58, 6:59	federal rules, 8:10
conviction of Crime, this index	
federal rules, 6:60	Substantive evidence, as
Intent, 4:29	statements by adverse party, 6:50 Truth of matter asserted, not offered
federal rules, 4:30	to prove, 6:50
Juvenile delinquency adjudications,	•
impeachment value, 6:61	PRIVILEGES
Limited admissibility, 1:19	General discussion, 5:1 et seq.

PRIVILEGES—Cont'd	PRIVILEGES—Cont'd
Accountants	Self-Incrimination, Privilege Against
taxpayer-accountant privilege, 5:2	this index
Adverse inference from, 5:59	Social worker privilege, 5:38
federal rules, 5:60	federal rules, 5:39
Attorney-Client Privilege, this index	psychotherapist-patient privilege
Choice of law, 5:1 , 5:2	social workers in course of
Clergy, 5:36	psychotherapy, federal
federal rules, 5:37	rules, 5:23
Comment upon, 5:59	Spiritual advisor, 5:36
federal rules, 5:60	Spousal Privileges, this index
Custodians privilege as to preexisting	State secrets, 5:54
documents, 5:49	Trade secrets, 5:57
Electronic communications, 5:1	federal rules, 5:58
E-mail communications, 5:1	Voir dire of witnesses regarding,
Exclusion of relevant evidence, basis	6:74
for, 4:8	Waiver, document used to refresh
Family privilege, rejection of, 5:35	memory, 6:81 federal rules, 6:82
Federal Rules, this index	Work Product Immunities, this index
Fifth amendment	
see Self-Incrimination, Privilege	PRIVITY
Against, this index	Admissions, statements of persons in
Government communications, 5:53	as, 8:18
federal rules, 5:54	PROBABILITY
Incompetency of spouses	General discussion, 4:3
see Spousal Privileges, this index	Burden of proof, factor influencing
Informer privilege, 5:51	allocation of, 3:2
federal rules, 5:52	Failure to call witness, 4:5
Journalist privilege, 5:44	Flight and suppression of evidence,
federal rules, 5:45	4:4
Law enforcement privilege, 5:54	Missing documents, 4:6
Library records, 5:42	Presumptions, reason for creation of,
federal rules, 5:43	3:19
Military secrets, 5:54	Third-party culpability, 4:7
Official information, 5:53	PROBATIVE VALUE
federal rules, 5:54	General discussion, 4:3
Parent-child, 5:32	Relevancy considerations
federal rules, 5:35	character evidence, 4:10
Physician-Patient Privilege, this	conviction of crime offered to
index	impeach, 6:63
Political vote, 5:55	federal rules, 6:64
federal rules, 5:56	failure to call witness, 4:5
Preliminary rulings, 1:17	federal rules, 4:9
Psychologist, 5:22	flight and escape evidence, 4:4
Psychotherapist, 5:23	hearsay, residual exception, 8:93
Rape crisis counselor, 5:40	liability insurance, 4:64 , 4:65
federal rules, 5:41	missing documents, 4:6
1000101110105, 5.71	missing documents, T.V

PROBATIVE VALUE—Cont'd

Relevancy considerations—Cont'd subsequent remedial measures, 4:51

third-party culpability, **4:7** uncharged crimes, **4:18** Residual hearsay exception, **8:93**

PRODUCTS LIABILITY

Court-appointed expert witnesses, 7:18

"Daubert" standard, expert testimony

federal rules, 7:11

Experiments and demonstrations, 11:18

federal rules, 11:19

Feasibility issue, subsequent design change, **4:54**

federal rules, 4:57

Insurance coverage, relevancy, 4:64

Similar occurrences, 4:35

federal rules, 4:38

Subsequent remedial measures, **4:53**

federal rules, 4:57

Warnings, subsequent remedial measures, **4:53**

PROFESSIONAL SERVICE CORPORATIONS

Medical practice privileged communications See Physician-Patient Privilege, this index

PROPERTY

Sales, evidence of similar transactions

federal rules, 4:40

PROPRIETARY INTEREST

Statements against, 8:87

PSYCHIATRISTS

Expert testimony by
professional reliance rule, 7:12
ultimate issues, 7:15
Physician-Patient Privilege, this
index

PSYCHOLOGISTS

Privileged communications, **5:22** federal cases, **5:23**

PSYCHOTHERAPIST-PATIENT PRIVILEGE

Federal rules, 5:23

PUBLIC OFFICIALS

Certificate or affidavit of facts or acts performed authentication purpose, 9:15 hearsay exception, 8:50 Judicial notice adjudicative facts, 2:4

PUBLIC POLICY CONSIDERATIONS

Compromises and offers to compromise, 4:58, 4:59

Exception to attorney-client privilege, **5:9**

Exclusion of relevant evidence, **4:8** Subsequent remedial measures, **4:51**

PUBLIC RECORDS

General discussion, **8:48 et seq.**Absence of, hearsay exception, **8:46, 8:62**

federal rules, 8:69

Agriculture inspection certificates, hearsay exception, **8:58**

Authentication and identification, 9:15, 9:24

federal rules, 9:16, 9:25

Baptismal certificates, hearsay exception, **8:64**

federal rules, 8:70

Best evidence rule, 10:10

federal rules, 10:11

Birth certificates, hearsay exception, 8:56

federal rules, 8:66

Business records hearsay exception, 8:49

Common law hearsay exception, 8:47, 8:49

Criminal judgments of conviction, hearsay exception, **8:63**

Death certificates, hearsay exception, 8:56, 8:66

PUBLIC RECORDS—Cont'd PUBLIC RECORDS—Cont'd Defined, 10:10 Religious organizations records, hearsay exception, 8:64 federal rules, 10:11 Federal rules, hearsay exception federal rules, 8:70 general discussion, 8:65 Reports made pursuant to duty, hearsay exception absence of public record, 8:69 documents affecting interests in federal rules, 8:65 property, 8:67 Vital statistics, hearsay exception judgments, 8:68 birth and death certificates, 8:56 religious organizations records, federal rules, 8:66 8:70 marriage certificates, 8:54, 8:66, vital statistics, 8:66 8:70 Foreign Public Records, this index population certificates, 8:59 Investigatory reports by Vital statistics as authentication governmental agencies, 8:51 method, 9:21 federal rules, 8:65 Weather records, hearsay exception, Judgment of previous conviction 8:57 federal rules, hearsay exception, **PUBLIC SAFETY** 8:68 Ongoing emergency situation state-Judgments as to personal family, genments as hearsay, 8:6 eral history, or boundaries federal rules, hearsay exception, PUNITIVE DAMAGES 8:68 Preponderance of evidence to support Judicial notice of adjudicative facts, award, 3:10 2:4 PURPOSE OF RULES OF federal rules, 2:7 **EVIDENCE** Maps, ancient, hearsay exception, 8:52 Generally, 1:2 Marriage certificates, hearsay excep-QUESTION, FORM OF tion, 8:54 General discussion, 6:69 federal rules, 8:66, 8:70 Argumentative questions, 6:69 Missing persons, hearsay exception, federal rules, 6:78 8:55 Population certificates, hearsay Federal rules, **6:78** exception, 8:59 Harassing questions, 6:70 Presumption of death, hearsay excepfederal rules, 6:78 tion, 8:55 Leading questions, 6:70 Public officer's certificate of affidavit federal rules, 6:78 authentication purpose, 9:15 hostile witnesses, 6:32 hearsay exception, 8:50 Narrative testimony within court's Real property, hearsay exception, discretion, 6:69 8:52 federal rules, 6:78 documents affecting interests in Repetitive questioning, 6:70 federal rules, 8:67 federal rules, 6:78 statements contained in **RABBIS** federal rules, 8:77 Privileged communications, 5:36 out-of-state, 8:53

federal rules, 5:37

surveyor standard, 8:60

RACIAL DESEGREGATION	REAL AND DEMONSTRATIVE EVIDENCE—Cont'd
Judicial notice of legislative facts, 2:8	Jury—Cont'd
	experiments by jury, 11:23
RADAR	federal rules, 11:24
Scientific evidence, expert testimony,	views, 11:21
7:6	federal rules, 11:22
RAPE	Lists matching exhibits with corre-
Sex Offenses, this index	sponding count of indictment,
RAPE CRISIS COUNSELORS	11:23
Privilege, 5:40, 5:41	Maps, 11:6
Privilege, 5:40, 5:41	federal rules, 11:7
RAPE TRAUMA SYNDROME	Models, 11:6
Expert testimony regarding	federal rules, 11:7
homosexual male assault,	Motion pictures and videotapes, 11:4
applicability, 7:6	11:12
REAL AND DEMONSTRATIVE	federal rules, 11:13, 11:17
EVIDENCE	Persons, physical features and
General discussion, 11:1 et seq.	injuries, 11:4
Authentication and Identification, this	federal rules, 11:5 Photographs, 11:4, 11:9
index	federal rules, 11:5, 11:14
Chain of custody, 9:3 , 11:2	Relevance-prejudice balancing, 11:5
federal rules, 9:4, 11:3	Silent witness theory of authentica-
Charts, 11:6	tion, 11:9, 11:10, 11:12
federal rules, 11:7	federal rules, 11:14, 11:15, 11:17
Clothing and jewelry, 11:3	Sound recordings, 11:11
Computer-generated graphics, 11:20	federal rules, 11:16
Definitions, 11:1	Summaries, 10:13
Diagrams, 11:6	Tangible objects, 11:2
federal rules, 11:7	federal rules, 11:3
Drawings, 11:6	Transcripts of recordings, 11:11
federal rules, 11:7	federal rules, 11:16
Drugs, 11:2	Weapons, 11:3
Exhibits in jury room, 11:23	X-rays and analogous medical picto-
federal rules, 11:24 Experiments and demonstrations,	rial processes, 11:10
11:18	federal rules, 11:15
federal rules, 11:19	REAL PROPERTY
jury conducting experiments,	Adverse possession, burden of
11:23	persuasion
federal rules, 11:24	clear and convincing evidence,
Federal rules, 11:1 et seq.	3:10
Fungible items, 11:2	Ancient Documents, this index
Injuries, 11:4	Conveyances of foreign property,
federal rules, 11:5	self-authenticating, 9:24
Jury	Documents affecting interests in,
exhibits in jury room, 11:23	hearsay exception
federal rules, 11:24	federal rules, 8:67

REAL PROPERTY—Cont'd

Documents affecting interests in, hearsay exception—Cont'd statements contained in federal rules, **8:77**

Forfeiture action, character of occupant in issue, **4:11**

Gifts, decedent's pre-death transfer by

burden of persuasion, clear and convincing evidence, 3:10

Implied easements, burden of persuasion

clear and convincing evidence, 3:10

Joint ownership, surviving spouse competent to testify, **6:14**

Maps, this index

Public records, hearsay exception, 8:52

Ancient Documents, this index Maps, this index

out-of-state property, **8:53** surveyor's standard, certificate, **8:60**

Sales, evidence of similar transactions, **4:37**

federal rules, 4:40

Title documents

authentication, 9:17

best evidence rule, 10:1, 10:10

REASONABLE DOUBT

Burden of Proof, this index Character evidence raising, **4:14** federal rules, **4:17**

Court's failure to define not constituting reversible error, **3:15**

REBUTTAL

Burden of production, 3:5
Certificate of public officer as, 8:50
Character evidence, prosecution's rebuttal, 4:13
Defendant's evidence of good character, 4:10, 4:13
federal rules, 4:17

Order of trial, **6:68** federal rules, **6:77**

Prior identification evidence as, 8:13

REBUTTAL—Cont'd

Rape victim's evidence, **4:66** federal rules, **4:67** Scope, **6:68** federal rules, **6:77** Uncharged crimes, **4:28**

RECEIVING STOLEN PROPERTY

Presumptions, possession, 3:31

RECENT FABRICATION

Defined, 6:41

Prior consistent statement to rehabilitate credibility, **6:37**, **6:41**

federal rules, 6:42

RECOLLECTION

Memory, this index
Past recollection recorded, hearsay
exception, 8:39
federal rules, 8:40
Refreshing Memory, this index

RECORDED RECOLLECTION

Hearsay exception, **8:39** federal rules, **8:40**

RECORDINGS

Authentication and Identification, this index

Best Evidence Rule, this index Completion evidence, 1:21 federal rules, 1:22

Composite, 10:13

Criminal cases, burden of proof of authentication, 9:1

Demonstrative evidence, as, 11:11 federal rules, 11:16

Distinguished from fungible material, 9:3

Journalists privileged, 5:44

Person's conduct involved in litigation, no work product immunity, 5:14

RECORDS AND REPORTS

Absence of, hearsay exception, **8:45**-**8:47**, **8:62**

federal rules, **8:47**, **8:69**

Ancient Documents, this index

RECORDS AND REPORTS	RECORDS AND REPORTS
—Cont'd	—Cont'd
Autopsy reports as nonhearsay, 8:6, 8:42	Market reports, hearsay exception, 8:71
Business Records, this index	federal rules, 8:72
Certified records, hearsay exception, 8:43	Medical records, hearsay exception, 1:7, 8:43
Commercial publications	autopsy report, 8:6 , 8:42
federal rules, hearsay exception,	federal rules, 8:44
8:72	Missing documents, relevancy
Completion evidence, 1:21	considerations, 4:6
federal rules, 1:22	Mortality tables, hearsay exception, 8:71
Court records	
judicial notice, adjudicative facts,	Prison logs, hearsay exception federal rules, 8:44
2:4	Public Records, this index
Crime laboratory reports, hearsay	Real property records, 8:52, 8:53
exception, 8:6 , 8:41	Regularly kept records, hearsay
Dental records, physician-patient privilege inapplicable, 5:18 ,	exception, 8:41
5:22	accidents, 8:41
DNA analysis, hearsay exception,	federal rules, 8:44
8:6, 8:41, 8:43	certification of records, 8:43
Drug dealer's customer book	DNA reports, 8:6, 8:41, 8:43
federal rules, 8:44	federal rules, 8:44
Family records, hearsay exception,	genetic markers, 8:6, 8:43
8:73	law enforcement records in crimi-
federal rules, 8:76	nal cases, 8:42
Fingerprint comparison reports, 8:6	medical records, 8:43
Foreign Public Records, this index	federal rules, 8:44
Government records, hearsay excep-	MRIs, 8:43
tion, 8:43	parole officer's reports, 8:42 police reports, 8:41 , 8:42
investigatory reports, 8:51, 8:65	prison logs, 8:44
Health care providers reporting of	state department records, 8:43
crime victims, 5:18	x-rays, 8:43
Hospital records	Religious institutions, hearsay excep-
certification of, 8:43	tion, 8:64
hearsay exception, 8:43 privileged communications, 5:18 ,	federal rules, 8:70
5:19	State department records, hearsay
In limine motions, 1:7	exception, 8:43
Laboratory reports, hearsay excep-	State health inspections, hearsay
tion, 8:6, 8:41	exception, 8:51
Law enforcement laboratory reports,	Weather records, hearsay exception, 8:57
hearsay exception, 8:6 , 8:41 Law enforcement records in criminal	RECROSS EXAMINATION
cases, hearsay exception, 8:42	General discussion, 6:75
Library Records, this index	Federal rules, 6:79
Listary records, and mach	1 200101 10100, 01/2

REDIRECT EXAMINATION

General discussion, **6:75** Federal rules, **6:79**

REFRESHING MEMORY

General discussion, **6:80**Adversary's right of inspection, **6:81**Best evidence rule inapplicable, **10:2**Federal rules, **6:82**Hypnosis, **6:9**expert testimony, **7:6**

federal rules, **6:17**Leading questions permissible to

refresh, **6:70** federal rules. **6:78**

Past recollection recorded distinguished, **6:80**

Prior inconsistent statements used for, **6:32**

Privileged or immune communications, 5:10, 5:16, 6:81 federal rules, 5:11, 6:82

REHABILITATION AND SUPPORT OF CREDIBILITY OF WITNESS

General discussion, 6:35 et seq. Advance accreditation, 6:36, 6:37

federal rules, 6:42

Convictions, revelation to soften blow of cross-examination, 6:32, 6:37

federal rules, **6:42**

Explanation of impeaching facts, **6:39**

federal rules, 6:42

Federal rules, **6:28**, **6:42**

Good character for truthfulness, **6:40** federal rules, **6:42**

Prior consistent statements used for, 6:37, 6:41

federal rules, 6:42

statements not considered hearsay, **8:9**

Prior crimes or misconduct explanation admissible to rehabilitate, **6:39**

REHABILITATION AND SUPPORT OF CREDIBILITY OF WITNESS—Cont'd

Prior identification of persons under nonsuggestive circumstances, **6:37**

federal rules, 6:42

Prior inconsistent statements explanation admissible to rehabilitate, **6:39**

Recent fabrication, prior consistent statement to rehabilitate, **6:41**

federal rules, 6:42

Sexual assault cases, prompt complaint doctrine, **6:37**

Techniques, generally, **6:38**Truthfulness, evidence of good character for, **6:40**

federal rules, 6:42

RELEVANCY

General discussion, 4:1 et seq.

Abandonment of evidence, 4:4

Adverse inference, failure to produce relevant evidence

federal rules, 4:9

Authentication and Identification, this index

Balancing test

federal rules, 11:5

Character Evidence, this index

Circumstantial evidence, 4:3, 4:4

Coercion of witness, 4:4

Collateral matters, 4:8, 4:20

Completeness doctrine, 1:21

Compromises and Offers to Compromise, this index

Concealment of evidence, 4:4

Conditional relevancy, 1:16

federal rules, 1:18

Confusing evidence, 4:8

federal rules, 4:9

Consciousness of guilt evidence, 4:4

Conviction of crime offered to

impeach, 6:63

federal rules, 6:64

Cumulative evidence, 4:8

federal rules, 4:9

Definition, 4:2

RELEVANCY—Cont'd RELEVANCY—Cont'd Demonstrative evidence, 11:6 Pleas and Plea Discussions, this index Destruction of evidence, 4:4, 4:6 federal rules, 4:9 Postcrime conduct, 4:4 Direct evidence, 4:3 Prejudice, this index Direct inferences, 4:1 Preliminary question exclusively for Discretion of trial court, 4:2, 4:4., trial judge, 1:16 4:7, 4:8 Privileges, basis for exclusion, 4:8 federal rules, 4:9 Probability, 4:3-4.7 Exclusionary rules, 4:8 Probative Value, this index federal rules, 4:9 Public policy, exclusion as further-Experiments and demonstrations. ing, **4:8** 11:18 Sexual history, generally. Sex Offenfederal rules, 11:19 ses, this index Expert testimony, generally, 7:11 Shield Laws, this index False statements and alibis, 4:4 Similar Occurrences, this index Federal rules, 4:9 Spoliation of evidence, 4:4, 4:6 Flight evidence, 4:4 federal rules, 4:9 federal rules, 4:9 Subsequent Remedial Measures, this Fourth amendment violations, basis index for exclusion of relevant evi-Sufficiency distinguished, 4:3, 4:4 dence, 4:8 Suppression of evidence, 4:4 Gruesome photographs, balancing Tangible objects, 11:2 test, federal rules, 11:5 federal rules, 11:3 Habit and Custom, this index Trustworthiness, lack of; basis for Harassment of witness, 4:4 exclusion, 4:8 Impeachment, this index Ultimate fact, materiality, **4:3** Insurance coverage, 4:64 Uncharged Crimes, this index Intimidation of witness, 4:4 Wealth, 4:8 Judicial discretion, 4:2, 4:4, 4:7, 4:8 Witness coercion or harassment, 4:4 federal rules, 4:9, 7:11 Witness not called, 4:5 Liability Insurance, this index Materiality of ultimate fact, 4:3 RELIGIOUS BELIEFS Medical expenses, payment of, 4:60 Clergy, privileged communications, federal rules, 4:61 5:36 Misleading the jury exclusion, 4:8 federal rules, 5:37 federal rules, 4:9 Competency of witness, 6:2 Missing documents, 4:6 Witness, effect of on credibility, 6:65 federal rules, 4:9 federal rules, 6:66 Missing witnesses rule, 4:5 federal rules, 4:9 RELIGIOUS ORGANIZATIONS Offer of proof "subject to connec-Records, hearsay exception, 8:64 tion," 1:6, 1:12, 1:18 federal rules, 8:70 "Old Chief" rule, 4:9 Photographs, 11:9 REMEDIAL MEASURES federal rules, 11:14 Subsequent Remedial Measures, this gruesome, 4:8, 11:4 index

REPAIRS

Subsequent Remedial Measures, this index

REPORTERS

Privileged communications, 5:44 federal rules, 5:45

REPRESENTATIVE CAPACITY

Statements made in, as admission, 8:19

REPUTATION

Character Evidence, this index

RES IPSA LOQUITUR

Negligence, inference, 3:24, 3:25 Negligence case, question whether expert testimony required, 3:24, 7:4

RETIREMENT DEATH BENEFITS

Dead man's statute, standing, 6:12

RULINGS ON EVIDENCE

General discussion, 1:3 et seq. federal rules, 1:9 et seq. Completeness rule, 1:21 federal rules, 1:22 "Connecting up," conditional relevance shown later, 1:6 federal rules, 1:12, 1:18 Federal courts, 1:9 et seq. Harmless error, 1:8 federal rules, 1:14 Limited admissibility, 1:19 federal rules, 1:20 Motions, this index Objections, this index

SANITY

Offer of proof, 1:6

federal rules, 1:12

rule, 1:19, 1:21

Preliminary Rulings, this index

Redacted confessions, "Bruton"

See also Mental Capacity, this index Burden of production federal rules, 3:15 Insanity as affirmative defense burden of persuasion, 3:14 expert testimony, 7:12

SANITY-Cont'd

Lay opinion regarding, 7:2 federal rules, 7:3 Psychiatric testimony, 7:6

SCIENTIFIC EVIDENCE

Authentication and identification,

computer-generated graphics, 11:20

federal rules, 9:20

Expert testimony, 7:6

conclusions and methodology,

novel theories and methods, 7:5 federal rules, 7:11

In limine ruling, 1:7

Judicial notice of, 2:3-2:5

Radar gun, 7:6

Reports concerning scientific tests subject to disclosure, 5:17

SECONDARY EVIDENCE

Best Evidence Rule, this index

SELF-DEFENSE

Burden of production, federal rules, 3:15

Character of victim, 4:10, 4:15 federal rules, 4:17

SELF-INCRIMINATION. PRIVILEGE AGAINST

General discussion. 5:46 et sea. Business records, 5:47

Civil cases, 5:46

Codefendants, 5:47

Collective entity rule, 5:49

Commitment proceedings, 5:46

Corporations invoking, 5:47

records of corporation, custodian of, 5:49

Criminal proceedings, 5:47, 5:50

documents, 5:49

prior acts of misconduct used to impeach, 6:59

federal rules, 6:60

testimony, 5:48

Cross-examination, 6:71

SELF-INCRIMINATION, PRIVILEGE AGAINST

-Cont'd

Custodians privilege as to preexisting documents, **5:49**

Documents, criminal cases, 5:49

Impeachment purposes, 5:50

Inference from, 5:59

Instructions to jury

credibility, jury may consider in assessing, **5:47**, **6:71**

Investigation stage, application during, **5:50**

Mental illness, commitment proceedings, **5:46**

Partners, 5:49

Prior misconduct used to impeach, **6:59**

federal rules, 6:60

Question-by-question basis, involving on, **5:46**

Silence, effect of, 5:50

Testimony, criminal cases, 5:48

documents production, custodians privilege, **5:49**

Unavailability, self-incrimination privilege as basis, **8:79**

Waiver, 5:46, 5:47

SENSORY CAPACITY

Impeachment, 6:47

federal rules, **6:48**

SEQUESTRATION OF WITNESSES

Exclusion from the courtroom, **6:88** federal rules, **6:89**

Expert testimony, 6:88

SERVANTS

Statements made by, as admissions, **8:21**

federal rules, 8:26

SETTLEMENTS

Compromises and Offers to Compromise, this index

Pleas and Plea Discussions, this index

SEVERANCE OF TRIALS

Alternative for codefendants, 1:19

SEX OFFENSES

Advance accreditation of victim, prompt complaint doctrine, **6:37**

Child Abuse, this index

Child's testimony from separate room, **6:6**

Identity of rapist in issue, testimony of prior description admissible, **6:37**

Prior sexual encounters with victim, 4:27, 4:31

Prior sexual misconduct by victim, use to impeach, **6:59**

Prompt complaint doctrine, 6:37

Psychiatric evaluation of witness, power to order, **6:47**

Rape crisis counselor, privileged communications, **5:40**

federal rules, 5:41

Rape shield law, 4:66, 4:67

Rape trauma and related syndromes, expert testimony regarding, 7:6

Rape victim's report to police, nonhearsay, **8:12**

Sexual history

defendant's previous relations with rape victim or others, **4:68**

federal rules, 4:68

Rule 414, congressional intent, 4:68

victim's sexual history and reputation, **4:66**, **4:67**

Victim's clothing, generally inadmissible, **4:66**

SEXUAL ACTIVITY OF CHILDREN

Contraceptives distribution to children, law on, **2:8**

SEXUAL HISTORY

Sex Offenses, this index

SHAREHOLDERS

Corporations, this index

SHIELD LAWS

Journalist privilege, 5:44

SHIELD LAWS—Cont'd

Sex-crime victims, 4:66 federal rules, 4:67

SIGNATURE

Handwriting, this index

SILENCE

Admission, as, 8:17, 8:20 Custody, during, 5:50 Hearsay, 8:2 Prior inconsistent statement, as, 6:51 federal rules, 6:53 Silent witness theory of authentication, 11:9, 11:10, 11:12 federal rules, 11:14, 11:15, 11:17

SIMILAR OCCURRENCES

General discussion, 4:34 et seq. Accidents, 4:35 federal rules, 4:38 Business transactions, 4:36 federal rules, 4:39 Federal rules accidents, 4:38 business transactions, 4:39 sales of property, 4:40 Foundation for, 4:35 federal rules, 4:38 Judicial discretion, 4:37 federal rules, 4:40 Real property sales, 4:37 federal rules, 4:40 Relevancy, 4:35

SOBRIETY TESTS

Expert testimony regarding, 7:6 Refusal to submit to as admission, 5:50

SOCIAL POLICY

Burden of proof, allocating, 3:2 Presumptions, reason for creation of. 3:19

SOCIAL WORKERS

Privileged communications, 5:38 federal rules, 5:39

SOCIAL WORKERS-Cont'd

Privileged communications, 5:38 —Cont'd psychotherapist-patient privilege social workers in course of psychotherapy, federal rules, 5:23

SOUND RECORDINGS

Recordings, this index

SPEED

Lay opinion regarding, 7:2 federal rules, 7:3

SPONTANEOUS STATEMENTS

Declarant's availability immaterial, hearsay exception, 8:29 federal rules, 8:34 Excited utterances, hearsay exception, 8:31 federal rules, 8:36 Present sense impressions, hearsay exception, 8:30 federal rules, 8:35

SPOUSAL PRIVILEGES General discussion, 5:24 et seq. Adultery cases, incompetency in, 5:25 Bigamous relationships, 5:29 Cohabitation, no privilege, 5:29 Common-law marriage, 5:29 Communication made during marriage, 5:29 Confidential communications privilege, 5:26 et seq. confidentiality, 5:27 during marriage, communications, 5:29 exceptions, 5:31 federal rules, 5:33 induced by marital relationship, 5:28 waiver, **5:30** Crime/fraud exception, 5:31

parent-child privilege, 5:32 Criminal activity of spouse within marital home, 5:27

Death, 5:29, 5:31

SPOUSAL PRIVILEGES—Cont'd	STATEMENTS—Cont'd
Eavesdropping, admissibility of	Against interest, generally. Declara-
recordings, 5:27	tions, this index
Exceptions	Agents making, as admission, 8:21
adultery cases, 5:25	Coconspirators, as admission, 1:17, 8:22
confidential communications privilege, 5:31	federal rules, 8:22 , 8:27
crime/fraud exception, 5:31	"Crawford" rule, 8:6
Federal rules	Hearsay, 8:1 , 8:4 , 8:6
general discussion, 5:33	Party's statements as admission, 8:15
marital communications privilege, 5:33, 5:35	Pedigree, hearsay exception, 8:90 federal rules, 8:91
testimonial privilege, 5:33, 5:34	Prior Consistent Statements, this
Fraud, exception, 5:31	index
federal rules, 5:34	Prior Inconsistent Statements, this
Incompetency in adultery cases, 5:25	index
Induced by marital relationship, 5:28	Representative capacity, statements made in as admission, 8:19
Matrimonial communications privilege, 5:33 , 5:35	Testimonial statements as nonhearsay, 8:6
Owner of privilege, 5:30	STATE OF MIND
Parent-child privilege, 5:32	
federal rules, 5:35	Hearsay exception, 8:32 federal rules, 8:37
Preliminary ruling, judge's responsi-	Nonhearsay, 8:4
bilities, 1:16	Victim's state of mind in homicide
Premarital communications not covered, 5:29	prosecution, 4:15
Presumption of spousal confidentiality, 5:28	STATE SECRETS Privilege, 5:54
Suicide by spouse, 5:29, 5:30	STATISTICS
Testimonial privilege, 5:33, 5:34	Statistical abstracts, declarant's avail-
Waiver, 5:30	ability immaterial, 8:71
SPOUSES	Vital Statistics, this index
Adultery, incompetent to testify, 5:25	STIPULATIONS
Competency as witnesses, 6:4	Authenticity, to establish, 9:1
dead man's statute, 6:11	Expert's qualifications, 7:8
joint property ownership,	Intent, stipulation to preclude evi-
survivor competent to	dence of uncharged crimes, 4:20
testify, 6:14	,
Marriage, this index	STRICT LIABILITY
Privileged communications	Products Liability, this index
see Spousal Privileges, this index Social worker privilege inapplicable	SUBSEQUENT REMEDIAL
to client's spouse, 5:38	MEASURES
Spousal Privileges, this index	General discussion, 4:51 et seq. Admissibility
STATEMENTS	failure to warn claim, 4:57
Adoptive admissions, 8:20	Control in issue, 4:55
,	,

SUBSEQUENT REMEDIAL MEASURES—Cont'd

Criminal cases, **4:56**Feasibility issue, **4:53**, **4:54**federal rules, **4:57**

Federal rules, 4:57

Impeachment of witness who denies responsibility, **4:55**

Instructions to jury, 4:55

Negligence, 4:52, 4:53

federal rules, 4:57

Ownership in issue, 4:55

Products liability, 4:53

feasibility issue, 4:53, 4:54, 4:57

federal rules, 4:57

Relevancy, 4:1, 4:51

Warnings, 4:52 et seq.

failure to warn claim, admissibility, **4:57**

federal rules, 4:57

SUCCESSORS IN INTEREST

Dead man's statute, protected by, **6:12**

SUFFICIENCY OF EVIDENCE

Burden of Proof, this index Relevancy distinguished, **4:3**, **4:4**

SUICIDE

Physician-patient privilege applicable despite lack of consent to treatment, **5:19**

SUMMARIES

Best evidence rule, 10:12 federal rules, 10:13

SUMMATION OF ATTORNEY

Party's failure to testify or call witness, comments on, **4:5**

SUPPRESSION OF EVIDENCE

Confession suppressed, admissible to impeach, 5:50, 6:50
Relevancy considerations, 4:4
Suppression hearings regarding informers, 5:51

TANGIBLE EVIDENCE

Real and Demonstrative Evidence, this index

TAPE RECORDINGS

Motion Pictures and Videotapes, this index

Recordings, this index

TARIFF OR CLASSIFICATION

Self-authenticating, 9:24 federal rules, 9:25

TAXES

Assessment cases, comparable sales, 4:37

Nonpayment as basis for impeachment, **6:56**

federal rules, 6:58

TAXPAYERS

Privileges

civil tax proceedings, taxpayeraccountant privilege, **5:2**

TEACHERS

Interested observers, testifying as, 7:7

TELEGRAM RULE

Best evidence rule, offers and acceptances, 10:3

TELEPHONE CONVERSATIONS

Authentication and Identification, this index

Recordings, this index

TESTIMONY

See also Witnesses, this index
Burden of production
guilt and innocence, testimony
pointing to both, 3:4

Cross-Examination, this index Expert Testimony, this index

Former Testimony, this index

Jury, note-taking during, 11:23

federal rules, 11:24

Lay Opinion, this index

Narrative testimony within court's discretion, **6:69**

federal rules, 6:78

Oaths and Affirmations, this index Opinion Testimony, this index

Order of trial, 6:68, 6:76

federal rules, 6:77

TRANSCRIPTS

Best evidence rule, 10:1, 10:3

Certification of, 9:22

TRANSCRIPTS—Cont'd TESTIMONY—Cont'd Order of trial. 6:68, 6:76—Cont'd Partial trial transcript, sending to jury room, 11:24 remote witnesses, 6:77 Recordings, of; as demonstrative evi-Presentation of, 6:67 et seq. dence, 11:11 Question, Form of, this index federal rules, 11:16 Rebuttal, scope, 6:68 federal rules, 6:77 TREATISES Recross examination, 6:75 Hearsay exception, 8:71 federal rules, 6:79 federal rules, 8:72 Redirect examination, 6:75 Impeachment of expert, for, 7:9 federal rules, 6:79 **TRUSTEES** Refreshing Memory, this index Attorney-client privilege, 5:9 Remote location, from, 6:68 federal rules. 6:77 **TRUSTWORTHINESS** Self-incrimination, privilege against, Lack of, basis for exclusion of rele-5:48 vant evidence, 4:8 Sequence of testimony at trial, 6:68 **TRUTHFULNESS** federal rules, 6:77 Character Evidence, this index Unsworn testimony Credibility of Witnesses, this index child testifying, 6:6 Dishonesty, this index burden of production, corrobora-Impeachment, this index tion, 3:4 Prior Crimes or Misconduct, this failure to object to, 6:20 index federal rules, 6:21 Rehabilitation and Support of Credmentally infirm witness, 6:7 ibility, this index Witness with knowledge, authentication, 9:3 **ULTIMATE FACT** federal rules, 9:4 Materiality, relevancy considerations, 4:3 THIRD-PARTY CULPABILITY Probative value-prejudicial effect test, **ULTIMATE ISSUES** 4:7 Opinion testimony, 7:14 federal rules, 7:15 TRADE lay opinion, 7:2 Judicial notice, adjudicative facts, 2:4 UNAVAILABILITY TRADE INSCRIPTIONS Absence caused by party as basis, Self-authenticating, 9:24 8:97 federal rules, 9:25 Absence from jurisdiction as basis, TRADE SECRETS 8:79 Privilege, 5:57 Death or illness as basis, 8:79 federal rules, 5:58 Declarant unavailable see also Exceptions to Hearsay TRAFFIC COURT Rule, this index Withdrawn guilty pleas, impeachimpeachment by prior inconsistent ment, 8:14

statements, 6:52

Documents. Best Evidence Rule, this

Defined, 8:79

index

UNCHARGED CRIMES—Cont'd

UNAVAILABILITY—Cont'd

Lack of memory as basis, 8:79 Intent, 4:20—Cont'd mistake or accidental event, 4:21, Refusal to testify as basis, 8:79 4:29 Self-incrimination privilege as basis, 8:79 Jury instructions, 4:18 Threats and intimidation used against federal cases, 4:31 witness as basis for unavail-Modus operandi, 4:23 ability, 8:97 federal cases, 4:31 Witness unavailable for cross-exami-"Molineux" exceptions, 4:18 et seq. nation, **6:71** Motive, uncharged crime evidence to Wrongdoing against witness as basis prove, 4:19, 4:29 for unavailability, hearsay federal cases, 4:31 exception, 8:97 Multiple counts under one indictment, 4:26 UNCHARGED CRIMES Nature of victim-defendant relation-General discussion, 4:18 et seq. ship, background evidence, 4:24 Absence of accident or mistake, 4:21 Preliminary hearing to determine civil cases, 4:29 admissibility, 1:18, 4:18 Acting in concert with another, federal rules, 4:32 background evidence, 4:24 Pretrial notice, 4:18 Amorous design, 4:27 federal cases, 4:30, 4:32 Background evidence, 4:24 Prior crimes or misconduct, 4:30 federal cases, 4:31 federal rules, 4:31 Burden of proof of involvement in, Probative value, 4:18 4:18 federal cases, 4:31 federal rules, 4:31 Procedural guidelines, 4:18 Civil cases, 4:29 federal practice, 4:30, 4:32 federal rules, 4:33 Rebuttal, 4:28 Common scheme or plan, 4:22 Relationship of defendant and other Criminal negligence, 4:20 persons, background evidence, Dangers of uncharged crimes evi-4:24 dence, 4:18 federal cases, 4:31 Defendant's previous relations with Relevancy, 4:1, 4:8, 4:18 et seq. rape victim or others, 4:68 federal cases, 4:31, 4:32 Double jeopardy, 4:32 Repetitive pattern evidence probative Federal rules, 4:1, 4:30, 4:31 of identity of person charged, civil cases, 4:33 4:23 "Old Chief" rule, limitations, 4:9 Rule against propensity evidence, procedure, 4:30, 4:32 4:18 Identity of person charged, 4:23 Sex cases, 4:27 federal cases, 4:31 federal cases. 4:31 Impeachment value, 6:29, 6:30, 6:59 rebuttal, 4:28 federal rules, 6:60 Standard of proof, 4:18 Inextricably intertwined to crime federal rules, 4:31, 4:32 charged, 4:25 Stipulations, intent, 4:20 Intent, 4:20 Totality of the situation, background civil cases, 4:29 evidence of, 4:24 federal cases, 4:31 federal cases, 4:31

UNCONSCIOUS PERSONS

Consent to sobriety tests, 7:6

UNIFORM COMMERCIAL CODE

Authentication provisions, 9:25

USURY

Burden of persuasion, clear and convincing evidence, **3:10**

VACCINATION OF PUBLIC SCHOOL CHILDREN

Judicial notice of law, 2:8

VERDICT

Juror's competency to testify regarding, **6:26** federal rules, **6:27**

VICTIMS OF CRIME

Character of, 4:15

criminal case federal rules, **4:17**

Exclusion of witnesses, exemption, **6:89**

Gruesome photographs

relevance-prejudice balancing, real and demonstrative evidence, 11:5

Homicide victim, character, **4:15** federal rules, **4:17**

Physician-patient privilege, criminal defendant may not assert victim's privilege, **5:19**

Presence in courtroom

federal rules, 6:89

Rape victim, character, 4:66

federal rules, **4:67**Sex Offenses, this index

Sex Offenses, tills findex

Wounds as real evidence, 11:4 federal rules, 11:5

VIDEOTAPES

Motion Pictures and Videotapes, this index

VITAL STATISTICS

Mortality tables, hearsay exception, 8:71

Public Records, this index

VOICES

Authentication and Identification, this index

Real and demonstrative evidence, as, 11:4

federal rules, 11:5

VOIR DIRE

Witnesses, of, 6:74, 9:1

VOLUMINOUS RECORDS RULE

Best evidence, 10:12 federal rules, 10:13

VOTERS AND VOTING

Secrecy of vote privilege, **5:55** federal rules, **5:56**

WAIVER

Attorney-client privilege, 5:3, 5:10

federal rules, 5:10, 5:11

malpractice allegation waives privilege, **5:9**

Cross examination right, 6:71

Dead man's statute, 6:15

Expert witnesses

work product immunities, federal rules, **5:17**

Interpreter, right to obtain in criminal proceedings, **6:22**

Objections, failure to timely object, 1:4

federal rules, 1:10

Physician-patient privilege, 5:20

Self-incrimination, privilege against, 5:46, 5:47

Spousal privileges, 5:30

Work product immunities, 5:16

federal rules, 5:17

WARNINGS

Subsequent remedial measures, **4:52** et seq.

WEAPONS

Motor vehicles, in; presumption of possession, **3:31**

WEATHER

Records, hearsay exception, 8:57

WEBSITES

Judicial notice of government websites, 2:3, 2:7

WILL CONTESTS

Attorney-client privilege disclosure disgracing decedent's memory, 5:3, 5:9 exception to privilege, 5:9 Best evidence rule, 10:4 Competency of witnesses, dead man's statute, 6:11 Physician-patient privilege, 5:18 Subscribing witnesses, 9:26

WIRETAPS

Voice identification, generally. Authentication and Identification, this index

WITNESSES

General discussion. **6:1** et seq. Absence of, as basis for unavailability, 8:82 Advance accreditation, 6:37 federal rules. 6:42 Alibi witnesses, impeachment with prior silence, 6:51 Bias and Interest of Witness, this index Calling by court, 6:84 federal rules, 6:87

judicial questioning by court, 6:85 Character witnesses, testimony, 4:13, 4:16

Civil cases, identity discoverable, 5:14

Coercion of, 4:4 Competency of Witnesses, this index Completion evidence, 1:21 Confrontation, defendant's right cross examination, 6:71 federal rules, 6:79 exposure of biased witness, 6:44 federal rules, 6:45

Control of, 4:5 Credibility of Witnesses, this index Criminal cases, disclosure of statements required, 5:15 Cross-Examination, this index

WITNESSES—Cont'd

Dead Man's Statute, this index Disclosure of identity, 5:14 Exclusion from courtroom, 6:88 federal rules, 6:89 Expert Testimony, this index Failure to call, 4:5

Foundation

business records, hearsay exception, **8:41**

DNA reports, hearsay exception,

law enforcement records in criminal cases, hearsay exception,

Habit evidence, effect of eyewitnesses, 4:45 Harassment of, 4:4 Impeachment, this index

Informer as, 5:51

Interested witnesses, 6:44

Interpreters, 6:22

federal rules, 6:23

Intimidation as admission, 8:16

Intimidation of, relevancy considerations, 4:4

Judicial questioning of, 6:83, 6:85 federal rules, 6:87

Jurors' note-taking, 11:23 federal rules, 11:24

Jurors questioning, 6:83, 6:86

federal rules, 6:87 Lay Opinion, this index

Missing witness rule, 4:5

federal rules, 4:9

Oaths and Affirmations, this index Opinion Testimony, this index

Order of witnesses, 6:68

federal rules. **6:77**

Own Witness, this index

Personal knowledge, 6:18

authentication testimony, 9:3

federal rules, 9:4

federal rules, 6:19

Prior Consistent Statements, this index

Prior Crimes or Misconduct, this index

WITNESSES—Cont'd WORK PRODUCT IMMUNITIES Prior Inconsistent Statements, this -Cont'd index Films, photographs, audio tapes, Question, Form of, this index video tapes Recalling to stand, 6:68 person's conduct involved in liti-Refreshing Memory, this index gation, no immunity, 5:14 Fraud, exception, 5:17 Rehabilitation and Support of Credibility of Witness, this index Insurance claims evaluations, 5:14 Religious beliefs or opinions, 6:65 Investigatory reports, 5:14 Opinion work product, 5:17 federal rules, 6:66 Ordinary work product, 5:17 Remote locations, 6:68, 6:77 Preparation "in anticipation of litiga-Self-Incrimination, Privilege Against, tion," 5:17 this index Refreshing memory of witness with Sequestration, 6:88 immune communication, 5:16 federal rules, 6:89 Statements given by party to Subscribing witnesses, 9:26 opponent not immune, 5:14 Testimony, this index Trial preparation materials, 5:14 Threats and intimidation used Waiver, **5:16** against, hearsay exception, 8:82 federal rules, 5:11, 5:17 Unavailability, this index Witnesses Victim-witnesses, presence in civil cases, identity discoverable, courtroom 5:14 federal rules, **6:89** criminal cases, disclosure of state-Voir dire. 6:74 ments required, 5:15 WORDS AND PHRASES federal rules, 5:17 Definitions, this index WRITINGS WORK PRODUCT IMMUNITIES Authentication and Identification, this General discussion, 5:12 et seq. index Best Evidence Rule, this index Accident report, no immunity, 5:14 Recorded recollection, hearsay Civil cases, 5:13, 5:14 exception, 8:39 Criminal cases, 5:13, 5:15 federal rules, 8:40 federal rules, 5:17 Definition, attorney work product WRONGFUL DEATH ACTIONS protection, 5:11 Burden of persuasion, preponderance Documents inadvertently disclosed, of evidence, 3:9 waiver of immunity, 5:15 noseworthy doctrine, 3:9 federal rules, 5:17 X-RAYS Exceptions, 5:14 Authentication, 9:20, 11:10

Experts, information concerning,

waiver for materials considered in

reaching opinion, 5:17

Federal rules, 5:11, 5:16, 5:17

trial preparation by expert in

5:14

federal rules, 5:17

federal rules, 11:15

Best evidence rule, 10:3

x-rays, **10:6**

federal rules, 11:15

Hearsay exception, 8:43

excusable loss or destruction of

Demonstrative evidence, as, 11:10