

HIGHLIGHTS TO THE 2025 EDITION

Issues resulting from police officers' use of body cameras continue to arise, including admissibility, hearsay questions and confrontation clause considerations. The videos (without audio) are generally admissible under the same standards as still photos and other videos, are not hearsay unless they have content which is intended to be an assertion, and do not violate Confrontation Clause rights in being admitted in evidence. See Sections 4:20 and 21:8.

Confrontation Clause issues continue to arise in criminal trials, including questions of joinder, statements to third parties, and use of experts. Statements by a codefendant to third parties are generally not testimonial, unlike statements to police, and accordingly their potential admission is not problematic in deciding whether to conduct a joint trial. Analysts who are last-minutes substitutes for the analyst who conducted a scientific analysis may not be able to testify over Confrontation Clause objection. See Section 4:20.

Jury instruction issues continue to arise in civil and criminal trials. The Court of Appeals has clarified that a party proffering a jury instruction is not required to argue the specific grounds and relevant facts supporting the granting of the instruction at the time of the proffer, and failing to do so is not grounds for refusing the instruction, nor a waiver of the right to appeal the refusal to grant the instruction. The trial court is aware of the facts and the law, and should grant an instruction properly based on the law and supported by the evidence, particularly if the court is aware of the legal theory of the party proffering the instruction. See section 37:6. A court's response to a jury question is a form of instruction, and a response to a jury question about an instruction which correctly amplifies an instruction given at the close of trial supplements that instruction, and can correct any omission or ambiguity in the original instruction. See Section 37:1.