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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

House Order #1
COMMITTEES
JUDICIARY, CHAIRMAN

CODE OF EVIDENCE SB 176

Wednesday, September 8, 1993

Room 140 Main Capitol 11:00 AM

Michael Eakin, Esq.
Pennsylvania District Attorneys' Association

James Lillis, Esq.
Berks County Bar Association
Common Pleas Court Rules Committee

David Zuckerman, Esq.
Philadelphia Defenders' Association



HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE

Handout #2
BILL ANALYSIS

BILL NO: SB 176
COMMITTEE: Judiciary

P.N. 1349

SPONSOR: Lewis
DATE: June 9, 1993

Proposal: To adopt a Pennsylvania Code of Evidence substantially similar to the Federal Rules of Evidence.

Existing Law: The various rules of evidence for the Pennsylvania Courts are culled from a wide assortment of statutes (primarily collected in Chapters 59 through 61 of the Judicial Code) and appellate case law decisions. Since 1975, practitioners in the Federal courts have generally found it convenient to rely upon a statutory code of evidence, the Federal Rules of Evidence. While it is of course impossible to draft a code of evidence which integrally collects into a statutory compendium all of the evidentiary rules applicable to every conceivable fact situation as well as the exceptions to those rules, it is certainly convenient to have as many as possible of the rules of evidence collected together in one statutory code.

Analysis: The envisioned Pennsylvania Code of Evidence would follow the general structure and numbering sequence of the Federal Rules of Evidence. The major substantive differences from the Federal rules would be as follows:

1. Scope - The proposed Code would apply to all civil and criminal proceedings in the courts of this Commonwealth, including compulsory arbitration hearings conducted in the Common Pleas court (with certain exceptions noted in the following sentences) except as otherwise provided by statute or rules of procedure. The Code would not apply to proceedings before administrative agencies and tribunals, Grand Juries, proceedings for the issuance of arrest or search warrants, or proceedings for criminal summonses. The Code would not attempt to incorporate, at least at present, specific statutory provisions dealing with most of the subject matters (especially confidential communications) dealt with in Chapter 59 of the current Judicial Code. This is because §6202(c) of the proposed Code states that, "Privileges created by statutes and decisional law shall apply at all stages of all actions, cases and proceedings." A problem may

be determining which of the various sections in Chapter 59 of the Judicial Code constitutes "privileges" for the purposes of §6202(c) of the proposed Code. The so-called Dead Man's Act, a staple of Pennsylvania law since 1887, is set forth in §5930 through §5933 of the Judicial Code. Its premise is that the surviving party to a "transaction" (including collision) with a since deceased party cannot in fairness be allowed to personally make a case against the deceased party when the latter obviously is in no position to testify in his own behalf and support. There is a general understanding that the proposed Code abolishes the Dead Man's Act on the basis that §6241 establishes a general rule of competency to testify unless disqualified from doing so by some provision of proposed PCE §601 through PCE §615, and because the repealer clause includes repeal of §5930.

2. Judicial Notice - The proposed Code provides for judicial notice of adjudicated facts in a fashion similar to the Federal Rules of Evidence. A new section provides for judicial notice of law, a provision not contained in the Federal rules. Such section incorporates and expands upon §6107 of the present Judicial Code.

3. Presumptions and Privileges - The proposed Code retains current Pennsylvania statutes, rules and decisional law relating to presumptions and privileges. PCE §301 provides that, "In applying the law presumptions, except as otherwise required by the Constitutions of the United States and of Pennsylvania, the court shall be governed by Pennsylvania Statutory and decisional law and by rule, of procedure described by the Pennsylvania Supreme Court."

So too, PCE §501 provides that, "Except as otherwise required by the Constitutions of the United States and of Pennsylvania, or as provided by state statute or decisional law and except as provided in this chapter or in other rules adopted by the Supreme Court, no person has a privilege to do any of the following:

- (1) Refuse to be a witness.
- (2) Refuse to disclose any matter.
- (3) Refuse to produce any object or writing.
- (4) Prevent another from being a witness or disclosing any matter or producing any object or writing."

4. Relevancy - Changes from the Federal Rules of Evidence include prohibitions on the use of prior crimes or bad acts of an accused to prove habit and habitual acts of a party to prove negligence. Subsequent remedial measures taken would be admissible for certain purposes, including proof of defects in products liability actions.

5. Witnesses - Section 609.1 of the proposed Code is not included in the Federal Rules of Evidence, but is contained in the so called Uniform Rules Evidence which had been proposed for many years by the graybeards of the legal profession. PCE §609.1 provides that, except as provided in the code section relating to compromise and offers to compromise, the credibility of a witness may be attacked by evidence of bias, interest, prejudice, corruption or motive. Extrinsic evidence of a witness' bias, interest, prejudice, corruption or motive would not be admissible unless, on cross examination, the matter is brought to the attention of the witness and the witness is afforded an opportunity to explain or deny the matter.

6. Hearsay evidence - One hearsay exception proposed by the Code does not appear in the Federal Rules of Evidence. This exception, contained in PCE §803(24), states that an oral deposition of a medical witness other than a party may be used at trial for any purpose.

7. Sex offense cases - An examination of pages 14 through 16 of SB176, PN 1349, reveals that the Senate had problems with proposed PCE §412. Ultimately, the Senate modified proposed PCE §412 to say that evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence thereof shall not be admissible in any civil or criminal proceeding except where evidence of the alleged victim's past sexual conduct with the defendant is involved and where the consent of the alleged victim is at issue and such evidence is otherwise admissible under Chapter 62 (the entire Code). The revised PCE §412 further provides that a defendant who proposed to offer evidence of the alleged victim's past sexual conduct must file a written motion and offer proof at the time of trial. If, at the time of trial, the court determines that the motion and offer of proof are sufficient on their faces, then the court must order an in camera hearing and shall make findings on the record as to the relevance and admissibility of the proposed evidence.

There are "official comments" appended at pages 51 and 52 of PN 1349 which add to and hopefully clarify the "scope" discussion set forth at pages 2 and 3 of PN 1349. Such comments indicates that the proposed Code applies to all proceedings conducted by courts of the Commonwealth except those court proceedings to which it is made inapplicable by statute or by Pennsylvania Supreme Court rules of procedure. The comments state that there is no intent to supplant existing rules that supplement the manner of proof in the Philadelphia Municipal Court, the Pittsburgh Magistrate Courts, the Philadelphia Traffic Court, or civil cases within the jurisdiction of the district and community courts or in compulsory arbitration hearings in the Common Pleas Courts where, as in Pa. R. Civ. P. 1305, the Supreme Court has already seen fit to prescribe certain procedures of evidence deemed appropriate where there is less financially at stake than at the judge and jury trial levels. Further, the "comments"

indicate that there is no intent to replace other existing local rules of practice and procedure, duly promulgated by local Common Pleas courts pursuant to authorization from the Pennsylvania Supreme Court, and which are not inconsistent with the proposed Code.

The proposed Code confidently assumes that the provisions of Article 5, Section 10 (c) of the Pennsylvania Constitution present no barrier to such a thorough-going statutory codification of evidentiary rules. Certainly, the statutory rules already adopted in Chapter 59 of the Judicial Code have never been ruled to run afoul of Article 5, Section 10 (c).

As indicated previously, the Federal Rules of Evidence became effective in the Federal courts, including those of the Western, Middle and Eastern Districts of Pennsylvania, in 1975. Since that year, virtually every law school in the nation has taught evidence based upon the Federal Rules of Evidence, they having achieved the greatest degree of acceptance throughout the length and breadth of the United States. At this time, some 38 states of the Union have adopted the Federal Rules of Evidence or close facsimiles with occasional variations (as proposed by the proposed PCE).

Effective date: SB 176 currently contemplates an effective date of September 1, 1993.

Prepared by: Edward A. Mihalik, Esq.
House Judiciary Committee

Handout #3

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 176

Session of
1993

INTRODUCED BY LEWIS, MELLOW, BELAN, PORTERFIELD, DAWIDA, HART
AND REIBMAN, JANUARY 12, 1993

AS AMENDED ON THIRD CONSIDERATION, MAY 26, 1993

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, creating the Pennsylvania
3 Code of Evidence.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 62

9 PENNSYLVANIA CODE OF EVIDENCE

10 Subchapter

- 11 A. General Provisions
- 12 B. Judicial Notice
- 13 C. Presumptions
- 14 D. Relevancy and Its Limits
- 15 E. Privilege
- 16 F. Witnesses
- 17 G. Opinions and Expert Testimony
- 18 H. Hearsay and Its Exceptions

- 1 I. Authentication and Identification
- 2 J. Contents of Writings, Recordings and Photographs
- 3 K. Miscellaneous Provisions

4 SUBCHAPTER A

5 GENERAL PROVISIONS

6 Sec.

- 7 6201. Short title of chapter (PCE 100).
- 8 6202. Scope of chapter (PCE 101).
- 9 6203. Purpose and construction (PCE 102).
- 10 6204. Rulings on evidence (PCE 103).
- 11 6205. Preliminary questions (PCE 104).
- 12 6206. Limited admissibility (PCE 105).
- 13 6207. Remainder of related writings or recorded statements
- 14 (PCE 106).

15 § 6201. Short title of chapter (PCE 100).

16 This chapter shall be known and may be cited as the
17 Pennsylvania Code of Evidence. Each section may be referred to
18 as (PCE).

19 § 6202. Scope of chapter.

20 (a) Courts.--This chapter shall govern proceedings in all
21 courts of this Commonwealth's unified judicial system, including
22 the Supreme Court, Superior Court, Commonwealth Court, Courts of
23 Common Pleas, Philadelphia Municipal Courts, Pittsburgh
24 Magistrates Courts, proceedings before District Justices,
25 Community Courts and Compulsory Arbitration Hearings, except as
26 otherwise provided by statute or rule of procedure prescribed by
27 the Supreme Court of Pennsylvania.

28 (b) Proceedings.--This chapter shall apply generally to
29 civil and criminal proceedings.

30 (c) Privileges.--Privileges created by statutes and

1 decisional law shall apply at all stages of all actions, cases
2 and proceedings.

3 (d) Rules applicable in part.--In the following proceedings
4 these rules apply to the extent that matters of evidence are not
5 provided for in the statutes which govern procedures therein or
6 in other rules prescribed by the Pennsylvania Supreme Court or
7 by Pennsylvania decisional law:

- 8 (1) Extradition or Rendition hearings.
- 9 (2) Preliminary Hearings.
- 10 (3) Bail Hearings.
- 11 (4) Probation and Parole Revocation Hearings.
- 12 (5) Sentencing Hearings.

13 (e) Chapter inapplicable.--Except as otherwise provided by
14 Pennsylvania statute or decisional law or by rule of procedure
15 prescribed by the Pennsylvania Supreme Court, other than with
16 respect to privileges, this chapter does not apply to the
17 following:

18 (1) Preliminary questions of fact.--The determination of
19 questions of fact preliminary to admissibility of evidence
20 when the issue is to be determined by the court under section
21 6205 (relating to preliminary questions (PCE 104)).

22 (2) Administrative agencies and tribunals.--Other than
23 with respect to privileges, this chapter does not apply to
24 administrative proceedings or hearings except as otherwise
25 provided by statute, rule of procedure or decisional law or
26 unless the agency concerned chooses to apply it.

27 (3) Grand jury.--Proceedings before grand juries.

28 (4) Miscellaneous proceedings.--Proceedings for the
29 issuance of arrest warrants, criminal summonses and search
30 warrants.

1 Section 6203. Purpose and construction (PCE 102).

2 This chapter shall be construed to secure fairness in
3 administration, elimination of unjustifiable expense and delay
4 and promotion of growth and development of the law of evidence
5 to the end that the truth may be ascertained and proceedings
6 justly determined.

7 Section 6204. Rulings on evidence (PCE 103).

8 (a) Effect of erroneous ruling.--Error may not be predicated
9 upon a ruling which admits or excludes evidence unless a
10 substantial right of the party is affected and one of the
11 following apply:

12 (1) Objection.--In case the ruling is one admitting
13 evidence, a timely objection, motion in limine or motion to
14 strike appears of record, stating the specific ground of
15 objection, if the specific ground was not apparent from the
16 context.

17 (2) Offer of proof.--In case the ruling is one excluding
18 evidence, the substance of the evidence was made known to the
19 court by offer or motion in limine or was apparent from the
20 context within which questions were asked.

21 (b) Record of offer and ruling.--The court may add any other
22 or further statement which shows the character of the evidence,
23 the form in which it was offered, the objection made and the
24 ruling thereon. It may direct the making of an offer in question
25 and answer form.

26 (c) Hearing of jury.--In jury cases, proceedings shall be
27 conducted to the extent practicable so as to prevent
28 inadmissible evidence from being suggested to the jury by any
29 means, including, but not limited to, making statements or
30 offers of proof or asking questions in the hearing of the jury.

1 (d) Motion in limine.--A ruling on a motion in limine that
2 evidence subject to the motion is admissible shall be sufficient
3 to preserve the issue for appeal without any further objection
4 by the losing party during trial, unless the court specifically
5 notifies the parties that its ruling is tentative and the motion
6 should be renewed at trial. During trial, the court can change
7 any in limine ruling for good cause shown.

8 § 6205. Preliminary questions (PCE 104).

9 (a) Questions of admissibility generally.--Preliminary
10 facts, upon which the admissibility of evidence depends, such as
11 the qualification of a person to be a witness or the existence
12 of a privilege, shall be determined by the court, subject to the
13 provisions of subsection (b). In making its determination, the
14 court is not bound by this chapter except with respect to
15 privileges.

16 (b) Relevancy conditioned on fact.--When the relevancy of
17 evidence depends upon the fulfillment of a condition of fact,
18 the court shall admit it upon or subject to the introduction of
19 evidence sufficient to support a finding of the fulfillment of
20 the condition.

21 (c) Hearing of jury.--Hearings on the admissibility of
22 confessions shall in all cases be conducted out of the hearing
23 of the jury. Hearings on other preliminary matters shall be so
24 conducted when the interests of justice require or when an
25 accused is a witness and so requests.

26 (d) Testimony by accused.--The accused does not, by
27 testifying upon a preliminary matter as defined in subsection
28 (a), become subject to cross-examination as to other issues in
29 the case.

30 (e) Weight and credibility.--The provisions of this section

1 do not limit the right of a party to introduce before the jury
2 evidence relevant to weight or credibility.

3 § 6206. Limited admissibility (PCE 105).

4 When evidence which is admissible to one party or for one
5 purpose but not admissible to another party or for another
6 purpose is admitted, the court, upon request, shall restrict the
7 evidence to its proper scope and instruct the jury accordingly.

8 § 6207. Remainder of related writings or recorded statements
9 (PCE 106).

10 When a writing or recorded statement or part thereof is
11 introduced by a party, an adverse party may require the
12 introduction at the time of any other part or any other writing
13 or recorded statement which ought in fairness be considered
14 contemporaneously with it to establish context.

15 SUBCHAPTER B

16 JUDICIAL NOTICE

17 Sec.

18 6211. Judicial notice of adjudicative facts (PCE 201).

19 6212. Judicial notice of law (PCE 202).

20 § 6211. Judicial notice of adjudicative facts (PCE 201).

21 (a) Scope.--This section governs only judicial notice of
22 adjudicative facts.

23 (b) Kinds of facts.--A judicially noticed fact must be one
24 not subject to reasonable dispute in that it is one of the
25 following:

26 (1) Generally known within the territorial jurisdiction
27 of the trial court.

28 (2) Capable of accurate and ready determination by
29 resort to sources whose accuracy cannot reasonable be
30 questioned.

1 (c) When discretionary.--A court may take judicial notice,
2 whether requested or not.

3 (d) When mandatory.--A court shall take judicial notice if
4 requested by a party and supplied with the necessary
5 information.

6 (e) Opportunity to be heard.--A party is entitled, upon
7 timely request, to an opportunity to be heard as to the
8 propriety of taking judicial notice and the tenor of the matter
9 noticed. In the absence of prior notification, the request may
10 be made after judicial notice has been taken.

11 (f) Time of taking notice.--Judicial notice may be taken at
12 any stage of the proceeding.

13 (g) Instructing jury.--In a civil action or proceeding, the
14 court shall instruct the jury to accept as conclusive any fact
15 judicially noticed. In a criminal case, the court shall instruct
16 the jury that it may, but is not required to, accept as
17 conclusive any fact judicially noticed.

18 § 6212. Judicial notice of law (PCE 202).

19 (a) Scope.--This section governs only judicial notice of
20 law.

21 (b) Mandatory judicial notice of law.--The court shall take
22 judicial notice of the following:

23 (1) The public laws of this Commonwealth.

24 (2) All duly enacted ordinances of counties, cities,
25 municipalities or other subdivisions of this Commonwealth.

26 (3) Municipal corporations of this Commonwealth.

27 (4) All duly published rules and regulations of
28 administrative bodies of this Commonwealth.

29 (5) All rules adopted by the Supreme Court.

30 (6) The Pennsylvania Code.

1 (7) The Pennsylvania Bulletin.

2 (c) Optional judicial notice of law.--Upon reasonable notice
3 to adverse parties, a party may request that the court take, and
4 the court may take, judicial notice of the following:

5 (1) The constitutions and statutes of the United States
6 and of every state, territory and other jurisdiction of the
7 United States.

8 (2) All duly adopted Federal and State rules of court.

9 (3) All duly enacted ordinances of municipalities or
10 other government subdivisions of other states.

11 (4) The laws of foreign countries, international law and
12 maritime law.

13 (d) Determination by court.--All determinations of law made
14 under this section shall be made by the court and not by the
15 jury, and the court may consider any relevant material or
16 source, including testimony, whether or not submitted by a party
17 or admissible under this chapter. The determination of the court
18 is subject to review on appeal as a ruling on a question of law.

19 SUBCHAPTER C

20 PRESUMPTIONS

21 Sec.

22 6216. Application (PCE 301).

23 § 6216. Application (PCE 301).

24 In applying the law of presumptions, except as otherwise
25 required by the Constitutions of the United States and of
26 Pennsylvania, the court shall be governed by Pennsylvania
27 statutory and decisional law and by rule of procedure prescribed
28 by the Pennsylvania Supreme Court.

29 SUBCHAPTER D

30 RELEVANCY AND ITS LIMITS

- 1 Sec.
2 6221. Definitions (PCE 401).
3 6222. Admissibility of evidence (PCE 402).
4 6223. Exclusion of relevant evidence on grounds of prejudice,
5 confusion or waste of time (PCE 403).
6 6224. Character evidence; methods of proving character (PCE
7 404).
8 6225. Other crimes, wrongs or acts (PCE 405).
9 6226. Habit or routine practice (PCE 406).
10 6227. Subsequent remedial measures (PCE 407).
11 6228. Compromise and offers to compromise (PCE 408).
12 6229. Payment of medical and similar expenses (PCE 409).
13 6230. Inadmissibility of pleas, plea discussions and related
14 statements (PCE 410).
15 6231. Liability insurance (PCE 411).
16 6232. Sex offense cases (PCE 412).
17 § 6221. Definitions (PCE 401).

18 The following words and phrases when used in this subchapter
19 shall have the meanings given to them in this section unless the
20 context clearly indicates otherwise:

21 "Relevant evidence." Evidence having any tendency to make
22 the existence of any fact that is of consequence to the
23 determination of the action more probable or less probable than
24 it would be without the evidence.

25 § 6222. Admissibility of evidence (PCE 402).

26 All relevant evidence is admissible, except as otherwise
27 provided by the Constitutions of the United States and of
28 Pennsylvania, by statute, by this chapter or by other rules
29 prescribed by the Supreme Court. Evidence which is not relevant
30 is not admissible.

1 § 6223. Exclusion of relevant evidence on grounds of prejudice,
2 confusion or waste of time (PCE 403).

3 Although relevant, evidence may be excluded if its probative
4 value is substantially outweighed by the danger of unfair
5 prejudice, confusion of the issues or misleading the jury, or by
6 considerations of undue delay, waste of time or needless
7 presentation of cumulative evidence.

8 § 6224. Character evidence; methods of proving character (PCE
9 404).

10 (a) Character evidence generally.--Evidence of a person's
11 character or a trait of character is not admissible for the
12 purpose of proving action in conformity therewith on a
13 particular occasion, except for the following:

14 (1) Character of accused in criminal cases.--Evidence in
15 a criminal case of a trait of character, pertinent to the
16 charge, offered by an accused, or by the prosecution to rebut
17 the same.

18 (2) Character of alleged victim in criminal cases.--
19 Evidence in a criminal case of a trait of character of the
20 alleged victim of the crime, pertinent to the charge, offered
21 by an accused, or by the prosecution to rebut the same, or
22 evidence of a character trait of peacefulness of the alleged
23 victim offered by the prosecution in a homicide case to rebut
24 evidence that the alleged victim was the first aggressor.

25 (3) Civil cases.--Evidence in a civil case of the
26 character of a witness is not admissible, except as provided
27 in paragraph (4).

28 (4) Evidence of the character of a witness as provided
29 in sections 6247 (relating to witness impeachment (PCE 607)),
30 6248 (relating to character and conduct of witness (PCE

1 608)), 6249 (relating to evidence of conviction of crime (PCE
2 609)), 6250 (relating to bias, interest prejudice or corrupt
3 motive (PCE 609.1)) or in a civil action for assault and
4 battery, evidence of a character trait of violence of the
5 plaintiff offered by the defendant to rebut evidence that the
6 defendant was the first aggressor.

7 (b) Reputation or opinion.--In all cases in which evidence
8 of character or a trait of character of a person is admissible,
9 proof may be made by testimony as to reputation or by testimony
10 in the form of an opinion. On cross-examination, inquiry is
11 allowable into relevant specific instances of conduct.

12 (c) Specific instances of conduct.--In cases in which
13 character or a trait of character of a person is an essential
14 element of a charge, claim or defense, proof may also be made of
15 specific instances of that person's conduct.

16 § 6225. Other crimes, wrongs or acts (PCE 405).

17 (a) General rule.--Evidence of other crimes, wrongs or acts.
18 is not admissible to prove the character of a person in order to
19 show action in conformity therewith. Such evidence may, however,
20 be admissible for other purposes, such as proof of motive,
21 opportunity, intent, preparation, plan, knowledge, identity or
22 absence of mistake or accident. Evidence of other crimes, wrongs
23 or acts is not admissible, however, to prove solely either modus
24 operandi or common plan, scheme or design.

25 (b) Criminal cases.--In criminal cases, evidence that the
26 accused committed such acts is admissible only where the court
27 determines that the probative value of the evidence
28 substantially outweighs the danger of unfair prejudice,
29 confusion of the issues or misleading of the jury and that its
30 admission would not unduly delay the proceeding, waste time or

1 provide needlessly cumulative evidence. Upon the request of the
2 accused, the prosecution shall provide reasonable notice in
3 advance of trial, or during trial if the court excuses pretrial
4 notice on good cause shown, of the general nature of any such
5 evidence it intends to introduce at trial.

6 § 6226. Habit or routine practice (PCE 406).

7 (a) Admissibility.--Evidence of the habit of a person or of
8 the routine practice of an organization, whether corroborated or
9 not and regardless of the presence of eyewitnesses, is relevant
10 to prove that the conduct of the person or organization on a
11 particular occasion was in conformity with the habit or routine
12 practice. As used in this section, "habit" means a person's
13 behavior approaching fixed regularity to a repeated specific
14 situation.

15 (b) Method of proving.--Habit or routine practice shall be
16 proved by testimony in the form of testimony describing behavior
17 approaching fixed regularity or by specific instances of conduct
18 sufficient in number to warrant a finding that the habit existed
19 or that the practice was routine.

20 § 6227. Subsequent remedial measures (PCE 407).

21 When, after an event, measures are taken which, if taken
22 previously, would have made the event less likely to occur,
23 evidence of the subsequent measures is not admissible to prove
24 negligence or culpable conduct in connection with the event.
25 This section does not require the exclusion of evidence of
26 subsequent measures when offered for another purpose, such as
27 proving ownership, control, defect in strict liability cases
28 brought under § 402A of the Restatement 2d of Torts, or
29 feasibility of precautionary measures, if controverted, or
30 impeachment.

1 § 6228. Compromise and offers to compromise (PCE 408).

2 (a) Civil cases.--Evidence of furnishing or offering or
3 promising to furnish, or accepting or offering or promising to
4 accept a valuable consideration in compromising or attempting to
5 compromise a claim which was disputed as to either validity or
6 amount is not admissible to prove liability for or invalidity of
7 the claim or its amount. Evidence of conduct or statements made
8 in compromise negotiations is likewise not admissible. This
9 section does not require the exclusion of any evidence otherwise
10 discoverable merely because it is presented in the course of
11 compromise negotiations. This section also does not require
12 exclusion when the evidence is offered to negate a contention of
13 undue delay or to prove an effort to obstruct a criminal
14 investigation or prosecution.

15 (b) Criminal cases.--This section does not require the
16 exclusion of any evidence in criminal prosecutions.

17 § 6229. Payment of medical and similar expenses (PCE 409).

18 In civil cases evidence of furnishing or offering or
19 promising to pay medical, hospital or similar expenses
20 occasioned by an injury is not admissible to prove liability for
21 the injury.

22 § 6230. Inadmissibility of pleas, plea discussions and related
23 statements (PCE 410).

24 (a) General rule.--Except as otherwise provided in this
25 section, evidence of the following is not, in any civil or
26 criminal proceeding, admissible against the defendant who made
27 the plea or was a participant in the plea discussions:

- 28 (1) A plea of guilty which was later withdrawn.
29 (2) A plea of nolo contendere.
30 (3) Any statement made in the course of any proceedings

1 under Rules 59 and 319 of the Pennsylvania Rules of Criminal
2 Procedure.

3 (4) Any statement made in the course of plea discussions
4 with an attorney for the prosecuting authority which does not
5 result in a plea of guilty or which results in a plea of
6 guilty later withdrawn.

7 (b) Exception.--A statement is admissible in any proceeding
8 wherein another statement made in the course of the same plea
9 discussions has been introduced and the statement ought in
10 fairness to be considered contemporaneously with it, or in a
11 criminal proceeding for perjury or false statement if the
12 statement was made by the defendant under oath, on the record
13 and in the presence of counsel.

14 § 6231. Liability insurance (PCE 411).

15 In civil cases, evidence that a person was or was not insured
16 against liability is not admissible upon the issue whether the
17 person acted negligently or otherwise wrongfully. This section
18 does not require the exclusion of evidence of insurance against
19 liability when offered for another purpose, such as proof of
20 agency, ownership or control, or bias, prejudice, interest or
21 motive of a person.

22 § 6232. Sex offense cases (PCE 412).

23 ~~(a) General rule. Evidence of past sexual behavior or~~
24 ~~predisposition of an alleged victim of sexual misconduct is not~~
25 ~~admissible in any civil or criminal proceeding except as~~
26 ~~provided in subsections (b) and (c).~~

27 ~~(b) Exceptions. The past sexual behavior or predisposition~~
28 ~~of an alleged victim of sexual misconduct may be admitted only~~
29 ~~if it is otherwise admissible under this chapter and is evidence~~
30 ~~of the following or otherwise constitutionally required:~~

1 ~~(1) Specific instances of sexual behavior with someone~~
2 ~~other than the person accused of the sexual misconduct when~~
3 ~~offered to prove that the other person was the source of~~
4 ~~semen, other physical evidence or injury.~~

5 ~~(2) Specific instances of sexual behavior with the~~
6 ~~person accused of the sexual misconduct, when offered to~~
7 ~~prove consent by the alleged victim.~~

8 ~~(3) Evidence of sexual behavior or predisposition of the~~
9 ~~alleged victim, when such evidence is offered in a civil case~~
10 ~~in circumstances where the evidence is essential to a fair~~
11 ~~and accurate determination of a claim or defense and where~~
12 ~~its probative value substantially outweighs the danger of~~
13 ~~unfair prejudice to the parties and harm to the alleged~~
14 ~~victim.~~

15 ~~(c) Procedure to determine admissibility. Evidence must not~~
16 ~~be offered under this section unless the proponent obtains leave~~
17 ~~of court by a written motion filed under seal, specifically~~
18 ~~describing the evidence and stating the purposes for which it~~
19 ~~will be offered. The motion must be served, (i) in a civil case,~~
20 ~~on the alleged victim's attorney or on the alleged victim if not~~
21 ~~represented, or (ii) in a criminal case, on the prosecutor and~~
22 ~~on all other defendants and must be filed at the time of trial~~
23 ~~unless the court directs an earlier filing or the court may~~
24 ~~allow the motion to be made at a later date, including during~~
25 ~~trial, for good cause shown, if the court determines either that~~
26 ~~the evidence is newly discovered and could not have been~~
27 ~~obtained earlier through the exercise of due diligence or that~~
28 ~~the issue to which the evidence relates has newly arisen in the~~
29 ~~case. After giving the parties and the alleged victim an~~
30 ~~opportunity to be heard in chambers, the court must determine~~

1 ~~whether under what conditions and in what manner and form the~~
2 ~~evidence may be admitted. The motion and the record of any~~
3 ~~hearing in chambers must, unless otherwise ordered, remain under~~
4 ~~seal.~~

5 ~~(d) Definition. As used in this section, the term "past~~
6 ~~sexual behavior" means sexual behavior other than the sexual~~
7 ~~behavior with respect either to which an offense under 18~~
8 ~~Pa.C.S. Ch. 31 (relating to sexual offenses) is alleged or to~~
9 ~~which a civil complaint is alleged.~~

10 (A) GENERAL RULE.--EVIDENCE OF SPECIFIC INSTANCES OF THE
11 ALLEGED VICTIM'S PAST SEXUAL CONDUCT, OPINION EVIDENCE OF THE
12 ALLEGED VICTIM'S PAST SEXUAL CONDUCT, AND REPUTATION EVIDENCE OF
13 THE ALLEGED VICTIM'S PAST SEXUAL CONDUCT SHALL NOT BE ADMISSIBLE
14 IN ANY CIVIL OR CRIMINAL PROCEEDING EXCEPT EVIDENCE OF THE
15 ALLEGED VICTIM'S PAST SEXUAL CONDUCT WITH THE DEFENDANT WHERE
16 CONSENT OF THE ALLEGED VICTIM IS AT ISSUE AND SUCH EVIDENCE IS
17 OTHERWISE ADMISSIBLE UNDER THIS CHAPTER.

18 (B) EVIDENTIARY PROCEEDINGS.--A DEFENDANT WHO PROPOSES TO
19 OFFER EVIDENCE OF THE ALLEGED VICTIM'S PAST SEXUAL CONDUCT
20 PURSUANT TO SUBSECTION (A) SHALL FILE A WRITTEN MOTION AND OFFER
21 OF PROOF AT THE TIME OF TRIAL. IF, AT THE TIME OF TRIAL, THE
22 COURT DETERMINES THAT THE MOTION AND OFFER OF PROOF ARE
23 SUFFICIENT ON THEIR FACES, THE COURT SHALL ORDER AN IN CAMERA
24 HEARING AND SHALL MAKE FINDINGS ON THE RECORD AS TO THE
25 RELEVANCE AND ADMISSIBILITY OF THE PROPOSED EVIDENCE PURSUANT TO
26 THE STANDARDS SET FORTH IN SUBSECTION (A).

27 SUBCHAPTER E

28 PRIVILEGE

29 Sec.

30 6236. Privilege (PCE 501).

1 § 6236. Privilege (PCE 501).

2 Except as otherwise required by the Constitutions of the
3 United States and of Pennsylvania, or as provided by State
4 statute or decisional law and except as provided in this chapter
5 or in other rules adopted by the Supreme Court, no person has a
6 privilege to do any of the following:

7 (1) Refuse to be a witness.

8 (2) Refuse to disclose any matter.

9 (3) Refuse to produce any object or writing.

10 (4) Prevent another from being a witness or disclosing
11 any matter or producing any object or writing.

12

SUBCHAPTER F

13

WITNESSES

14 Sec.

15 6241. Competency (PCE 601).

16 6242. Lack of personal knowledge (PCE 602).

17 6243. Oath or affirmation (PCE 603).

18 6244. Interpreters (PCE 604).

19 6245. Competency of judge as witness (PCE 605).

20 6246. Competency of juror as witness (PCE 606).

21 6247. Witness impeachment (PCE 607).

22 6248. Character and conduct of witness (PCE 608).

23 6249. Evidence of conviction of crime (PCE 609).

24 6250. Bias, interest, prejudice, corruption or motive (PCE
25 609.1).

26 6251. Religious beliefs or opinions (PCE 610).

27 6252. Interrogation and presentation (PCE 611).

28 6253. Writing used to refresh memory (PCE 612).

29 6254. Prior statements of witnesses (PCE 613).

30 6255. Calling and interrogation of witnesses by court (PCE

1 614).

2 6256. Exclusion of witnesses (PCE 615).

3 § 6241. Competency (PCE 601).

4 (a) General rule.--Every person is competent to be a witness
5 except as otherwise provided in this subchapter.

6 (b) Disqualification.--A person is disqualified to be a
7 witness if the person is incapable of the following:

8 (1) Expressing himself so as to be understood either
9 directly or through interpretation by one who can understand
10 him.

11 (2) Understanding the duty of a witness to tell the
12 truth.

13 (3) Remembering the event about which the witness is
14 called to testify.

15 § 6242. Lack of personal knowledge (PCE 602).

16 A witness may not testify to a matter unless evidence is
17 introduced sufficient to support a finding that the witness has
18 personal knowledge of the matter. Evidence to prove personal
19 knowledge may, but need not, consist of the witness' own
20 testimony. Against the objection of a party, personal knowledge
21 must be shown before the witness may testify concerning the
22 matter. This section is subject to the provisions of section
23 6263 (relating to the bases of expert testimony (PCE 703)).

24 § 6243. Oath or affirmation (PCE 603).

25 Before testifying, every witness shall be required to declare
26 that the witness will testify truthfully, by oath or affirmation
27 administered in a form calculated to awaken the witness'
28 conscience and impress the witness' mind with the duty to do so.

29 § 6244. Interpreters (PCE 604).

30 An interpreter is subject to the provisions of this chapter

1 relating to qualification as an expert and the administration of
2 an oath or affirmation to make a true translation.

3 § 6245. Competency of judge as witness (PCE 605).

4 The judge presiding at the trial may not testify in that
5 trial as a witness. No objection need be made in order to
6 preserve the point.

7 § 6246. Competency of juror as witness.

8 (a) At trial.--A member of the jury may not testify as a
9 witness before that jury in the trial of the case in which the
10 juror is sitting. If the juror is called to testify, the
11 opposing party shall be afforded an opportunity to object out of
12 the presence of the jury.

13 (b) Inquiry into validity of verdict or indictment.--Upon an
14 inquiry into the validity of a verdict or indictment, a juror
15 may not testify as to any matter or statement occurring during
16 the course of the jury's deliberations or to the effect of
17 anything upon that or any other juror's mind or emotions as
18 influencing the juror to assent to or dissent from the verdict
19 or indictment or concerning the juror's mental processes in
20 connection therewith, except that a juror may testify on the
21 question whether extraneous prejudicial information was
22 improperly brought to the jury's attention or whether any
23 outside influence was improperly brought to bear upon any juror.
24 A juror's affidavit or evidence of any statement by the juror
25 concerning a matter about which the juror would be precluded
26 from testifying may not be received for these purposes.

27 § 6247. Witness impeachment (PCE 607).

28 The credibility of a witness may be attacked by any party,
29 including the party calling the witness.

30 § 6248. Character and conduct of witness (PCE 608).

1 (a) Opinion and reputation evidence of character.--The
2 credibility of a witness may be attacked or supported by
3 evidence in the form of opinion or reputation, but subject to
4 the following limitations:

5 (1) the evidence may refer only to character for
6 truthfulness or untruthfulness; and

7 (2) evidence of truthful character is admissible only
8 after the character of the witness for truthfulness has been
9 attacked by opinion or reputation evidence or otherwise.

10 (b) Extrinsic evidence.--Specific instances of the conduct
11 of a witness, for the purpose of attacking or supporting the
12 witness' credibility, may not be proved by extrinsic evidence
13 other than (i) conviction of crime as provided in section 6249
14 (PCE 609) (relating to evidence of conviction of crime), or (ii)
15 bias, prejudice, interest or motive as provided in section 6250
16 (PCE 609.1) (relating to bias, interest, prejudice or corrupt
17 motive).

18 (c) Cross-examination.--In the discretion of the court, a
19 witness may be cross-examined about specific instances of
20 conduct which are probative of either (i) the witness' character
21 for truthfulness or untruthfulness or (ii) the character for
22 truthfulness or untruthfulness of another witness as to whose
23 character the witness being cross-examined has testified. A
24 witness may not be asked whether third parties have accepted as
25 true, relied or acted upon allegations of a specific instance of
26 this type of conduct.

27 (d) Document.--A witness may be shown and examined about a
28 document which was made, adopted or approved by the witness
29 where the document itself comprises the witness' specific
30 instance of such conduct as defined in subsection (c).

1 (e) Nonwaiver provision.--The giving of testimony, whether
2 by an accused or by any other witness, does not operate as a
3 waiver of the accused's or the witness' privilege against self-
4 incrimination when examined with respect to matters which relate
5 only to credibility.

6 § 6249. Evidence of conviction of crime (PCE 609).

7 (a) General rule.--For the purpose of attacking the
8 credibility of a witness, evidence that a witness has been
9 convicted of a crime shall be admitted if it involved dishonesty
10 or false statement.

11 (b) Time limit.--Evidence of a conviction under this section
12 is not admissible if a period of more than ten years has elapsed
13 since the date of the conviction or of the release of the
14 witness from the confinement imposed for that conviction,
15 whichever is the later date, unless the court determines, in the
16 interests of justice, that the probative value of the conviction
17 supported by specific facts and circumstances substantially
18 outweighs its prejudicial effect. However, evidence of a
19 conviction more than ten years old as calculated in this section
20 is not admissible unless the proponent gives to the adverse
21 party sufficient advance written notice of intent to use that
22 evidence to provide the adverse party with a fair opportunity to
23 contest the use of that evidence.

24 (c) In limine rulings.--When presented with a pretrial or in
25 limine motion concerning the impeachment of the accused with
26 evidence of a conviction under this section, the court shall
27 rule as early as practicable and no later than when the
28 defendant is called as a witness. If the ruling in limine admits
29 the impeachment evidence, the merits of the evidentiary issue
30 shall be preserved for appeal even if the witness-defendant

1 personally testifies to the impeaching facts on direct
2 examination, or does not testify at all, as a result of the
3 ruling, if the defendant stated to the court an intention to
4 testify at trial and made known the substance of the proposed
5 testimony on the record before the court ruled on the
6 admissibility of the impeachment.

7 (d) Effect of pardon or other equivalent procedure or
8 successful completion of rehabilitation program.--Evidence of a
9 conviction is not admissible under this section if the
10 conviction has been the subject of one of the following:

11 (1) a pardon or other equivalent procedure based on a
12 finding of innocence and where that person has not been
13 convicted of a subsequent crime which was punishable by death
14 or imprisonment of one year or more; or

15 (2) where the charges have been dismissed as a result of
16 a finding of the successful completion of an Accelerated
17 Rehabilitative Disposition or other equivalent rehabilitation
18 program.

19 (e) Cross-examination of accused concerning prior
20 convictions.--An accused shall not be asked on cross-examination
21 any question tending to show that he has been convicted of a
22 crime, unless he has done one of the following:

23 (1) Offered evidence tending to prove a trait of
24 character under section 6224(a)(1) (relating to character
25 evidence; methods of proving character (PCE 404)).

26 (2) Testified at trial against a codefendant charged
27 with the same offense.

28 (f) Juvenile adjudications.--Evidence of juvenile
29 adjudications is not admissible under this section.

30 (g) Pendency of appeal.--The pendency of an appeal therefrom

1 does not render evidence of a conviction inadmissible. Evidence
2 of the pendency of an appeal is admissible.

3 § 6250. Bias, interest, prejudice, corruption or motive (PCE
4 609.1).

5 (a) General rule.--Except as provided in section 6228
6 (relating to compromise and offers to compromise (PCE 408)), the
7 credibility of a witness may be attacked by evidence of bias,
8 interest, prejudice, corruption or motive.

9 (b) Extrinsic evidence of bias, interest, prejudice,
10 corruption or motive.--Extrinsic evidence of a witness' bias,
11 interest, prejudice, corruption or motive is not admissible
12 unless, on cross-examination, the matter is brought to the
13 attention of the witness and the witness is afforded an
14 opportunity to explain or deny the matter.

15 § 6251. Religious beliefs or opinions (PCE 610).

16 Evidence of the beliefs or opinions of a witness on matters
17 of religion is not admissible for the purpose of showing that by
18 reason of their nature the witness' credibility is impaired or
19 enhanced.

20 § 6252. Interrogation and presentation (PCE 611).

21 (a) Control by court.--The court shall exercise reasonable
22 control over the mode and order of interrogating witnesses and
23 presenting evidence so as to make the interrogation and
24 presentation effective for the ascertainment of the truth, avoid
25 needless consumption of time and protect witnesses from
26 harassment or undue embarrassment.

27 (b) Scope of cross-examination.--Cross-examination, except
28 of the party witness in civil cases, should be limited to the
29 subject matter of the direct examination and matters affecting
30 credibility. The court may, in the exercise of discretion,

1 permit inquiry into additional matters as if on direct
2 examination.

3 (c) Leading questions.--Leading questions should not be used
4 on the direct examination of a witness except as may be
5 necessary to develop the witness' testimony. Leading questions
6 should be permitted on cross-examination subject to subsection
7 (d).

8 (d) Hostile witness--When a party calls a hostile witness,
9 an adverse party or a witness whose testimony is identified with
10 an adverse party, interrogation may be by leading questions. A
11 witness examined by a party under this subsection may be
12 examined by all other parties who are not adverse to the witness
13 only as if under redirect examination.

14 § 6253. Writing used to refresh memory (PCE 612).

15 If a witness used a writing to refresh memory for the purpose
16 of testifying either while testifying or before testifying and
17 if the court in its discretion determines it is necessary in the
18 interests of justice, an adverse party is entitled to have the
19 writing produced at the hearing, to inspect it, to cross-examine
20 the witness on it and to introduce in evidence those portions
21 which relate to the testimony of the witness. If it is claimed
22 that the writing contains matters not related to the subject
23 matter of the testimony, the court shall examine the writing in
24 camera, excise any portion not so related and order delivery of
25 the remainder to the party entitled to it. Any portion withheld
26 over objections shall be preserved and made available to the
27 appellate court in the event of an appeal. If a writing is not
28 produced or delivered pursuant to order under this section, the
29 court shall make any order justice requires, except that in
30 criminal cases when the prosecution elects not to comply, the

1 order shall be one striking the testimony or, if the court in
2 its discretion determines that the interests of justice so
3 require, declaring a mistrial.

4 § 6254. Prior statements of witnesses (PCE 613).

5 (a) Examining witness concerning prior statement.--In
6 examining a witness concerning a prior statement made by the
7 witness, whether written or not, the statement need not be shown
8 nor its contents disclosed to the witness at that time, but on
9 request the statement or contents shall be shown or disclosed to
10 opposing counsel.

11 (b) Extrinsic evidence of prior inconsistent statement of
12 witness.--Extrinsic evidence of a prior inconsistent statement
13 by a witness is not admissible unless, on direct or cross-
14 examination, the witness has been informed of:

- 15 (1) the circumstances of the statement;
16 (2) asked whether he made the statement; or
17 (3) inconsistent accounts, where evidence of the
18 witness' prior inconsistent statement has been admitted for
19 the purpose of attacking the witness' credibility, and the
20 consistent statement was made before the inconsistent
21 statement.

22 This provision does not apply to admissions of a party-opponent
23 as defined in section 6271 (relating to definitions (PCE 801)).

24 (c) Evidence of prior consistent statement of witness.--
25 Evidence of a prior consistent statement by a witness is
26 admissible for rehabilitative purposes if the witness testified
27 at the trial or hearing and is subject to cross-examination
28 concerning the statement and the statement is offered to rebut
29 an expressed or implied charge of:

- 30 (1) intentional fabrication at the time of trial as a

1 result of bias or other motive which did not exist at the
2 time the consistent statement was made; or

3 (2) inaccurate memory, and the consistent statement was
4 made when the event was recent and the witness' memory fresh;
5 OR

6 (3) INCONSISTENT ACCOUNTS, WHERE EVIDENCE OF THE
7 WITNESS'S PRIOR INCONSISTENT STATEMENT HAS BEEN ADMITTED FOR
8 THE PURPOSE OF ATTACKING THE WITNESS'S CREDIBILITY, AND THE
9 CONSISTENT STATEMENT WAS MADE BEFORE THE INCONSISTENT
10 STATEMENT.

11 § 6255. Calling and interrogation of witnesses by court (PCE
12 614).

13 (a) Calling by court.--Consistent with its function as an
14 impartial arbiter, the court may on its own motion or at the
15 suggestion of a party and with notice call witnesses, and all
16 parties are entitled to cross-examine witnesses called.

17 (b) Interrogation by court.--The court may interrogate
18 witnesses, whether called by itself or by a party.

19 (c) Objections.--Objections to the calling of witnesses by
20 the court or to interrogation by the court may be made at the
21 time or at the next available opportunity when the jury is not
22 present.

23 § 6256. Exclusion of witnesses (PCE 615).

24 At the request of a party or on its own motion, the court may
25 order witnesses excluded so that they cannot hear the testimony
26 of other witnesses. This section does not authorize exclusion of
27 the following:

28 (1) A party who is a natural person.

29 (2) An officer or employee of a party which is not a
30 natural person designated as its representative by its

1 attorney.

2 (3) A person whose presence is shown by a party to be
3 essential to the presentation of the party's cause.

4 SUBCHAPTER G
5 OPINIONS AND EXPERT TESTIMONY

6 Sec.

7 6261. Opinion testimony by lay witnesses (PCE 701).

8 6262. Testimony by experts (PCE 702).

9 6263. Bases of expert testimony (PCE 703).

10 6264. Opinion on ultimate issue (PCE 704).

11 6265. Disclosure of facts or data underlying expert opinion
12 (PCE 705).

13 6266. Court-appointed experts (PCE 706).

14 § 6261. Opinion testimony by lay witnesses (PCE 701).

15 If the witness is not testifying as an expert, the witness'
16 testimony in the form of opinions or inferences is limited to
17 those opinions or inferences which are rationally based on the
18 perception of the witness and helpful to a clear understanding
19 of the witness' testimony or the determination of a fact in
20 issue.

21 § 6262. Testimony by experts (PCE 702).

22 If scientific, technical or other specialized knowledge will
23 assist the trier of fact to understand the evidence or to
24 determine a fact in issue, a witness qualified as an expert by
25 knowledge, skill, experience, training or education may testify
26 thereto in the form of an opinion or otherwise. Expert testimony
27 on the credibility of a witness is not admissible.

28 § 6263. Bases of expert testimony (PCE 703).

29 (a) General rule.--The facts or data in the particular case
30 upon which an expert bases an opinion or inference may be those

1 perceived by or made known to the expert at or before the
2 hearing. If of a type reasonably relied upon by experts in the
3 particular field in forming opinions or inferences upon the
4 subject, ~~as determined by the court,~~ the facts or data need not ←
5 be admissible in evidence.

6 (b) Admissibility of basis.--Where such evidence is
7 otherwise inadmissible, the evidence may be admitted only for
8 the limited purpose of evaluating the opinion or inference
9 unless the court determines that the probative value is
10 substantially outweighed by the danger of unfair prejudice,
11 confusion of the issues or misleading the jury.

12 § 6264. Opinion on ultimate issue (PCE 704).

13 Testimony in the form of an opinion or inference otherwise
14 admissible is not objectionable because it embraces an ultimate
15 issue to be decided by the trier of fact.

16 § 6265. Disclosure of facts or data underlying expert opinion
17 (PCE 705).

18 The expert may testify in terms of opinion or inference and
19 give reasons therefor without prior testimony as to the
20 underlying facts or data, unless the court requires otherwise.
21 The expert may in any event be required to testify to the
22 underlying facts or data on cross-examination.

23 § 6266. Court-appointed experts (PCE 706).

24 (a) Appointment.--In civil cases where otherwise authorized
25 by statute or rule of procedure prescribed by the Pennsylvania
26 Supreme Court and in criminal cases, the court may on its own
27 motion or on the motion of any party enter an order to show
28 cause why expert witnesses should not be appointed and may
29 request the parties to submit nominations. The court may appoint
30 any expert witnesses agreed upon by the parties and may appoint

1 expert witnesses of its own selection. An expert witness shall
2 not be appointed by the court unless the witness consents to
3 act. A witness so appointed shall be informed of the witness'
4 duties by the court in writing, a copy of which shall be filed
5 with the clerk or prothonotary, or at a conference in which the
6 parties shall have opportunity to participate. The witness
7 appointed shall advise the parties of the witness' findings, if
8 any. The witness may be called to testify by the court or any
9 party. The witness shall be subject to cross-examination by each
10 party, including a party calling the witness. In civil cases,
11 the witness' deposition may be taken by any party.

12 (b) Compensation.--Expert witnesses so appointed are
13 entitled to reasonable compensation in whatever sum the court
14 may allow. The compensation thus fixed is payable from funds
15 which may be provided by law in criminal cases and civil actions
16 and proceedings involving just compensation under the fifth
17 amendment of the Constitution of the United States. In other
18 civil actions and proceedings the compensation shall be paid by
19 the parties in a proportion and at a time as the court directs
20 and thereafter charged in like manner as other costs.

21 (c) Disclosure of appointment.--In the exercise of its
22 discretion, the court may authorize disclosure to the jury of
23 the fact that the court appointed the expert witness.

24 (d) Parties' experts of own selection.--Nothing in this
25 section limits the parties in calling expert witnesses of their
26 own selection.

27 SUBCHAPTER H

28 HEARSAY AND ITS EXCEPTIONS

29 Sec.

30 6271. Definitions (PCE 801).

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1 6272. Hearsay rule (PCE 802).

2 6273. Hearsay exceptions where availability of declarant
3 immaterial (PCE 803).

4 6274. Hearsay exceptions where declarant unavailable (PCE
5 804).

6 6275. Hearsay within hearsay (PCE 805).

7 6276. Attacking and supporting credibility of declarant (PCE
8 806).

9 § 6271. Definitions.

10 (a) Definitions.--The following words and phrases when used
11 in this subchapter shall have the meanings given to them in this
12 section unless the context clearly indicates otherwise:

13 "Declarant." A person who makes a statement.

14 "Hearsay." A statement, other than one made by the declarant
15 while testifying at the trial or hearing, offered in evidence to
16 prove the truth of the matter asserted.

17 "Statement." An oral or written assertion or nonverbal
18 conduct of a person, if it is intended by the person as an
19 assertion.

20 (b) Statements which are not hearsay.--The following
21 statements are not hearsay:

22 (1) Prior statement by witness.-- The declarant
23 testifies at the trial or hearing and is subject to cross-
24 examination concerning the statement and the statement is:

25 (i) Prior inconsistent statement by witness.--A
26 statement is inconsistent with the declarant's testimony
27 and offered in compliance with section 6254(b) (relating
28 to prior statements of witnesses (PCE 613)), and the
29 statement was:

30 (A) given under oath subject to the penalty of

1 perjury at a trial, hearing or other proceeding, or
2 in a deposition;

3 (B) reduced to writing and signed or otherwise
4 adopted or approved by the declarant; or

5 (C) audio or video tape-recorded in
6 substantially verbatim fashion, contemporaneously
7 with the making of the statement.

8 (ii) Prior consistent statement by witness.--A
9 statement is consistent with the declarant's testimony,
10 the statement is offered in compliance with section
11 6254(c) (relating to prior consistent statements (PCE
12 613)) and the statement was:

13 (A) given under oath subject to the penalty of
14 perjury at a trial, hearing or other proceeding, or
15 in a deposition;

16 (B) reduced to writing and signed or otherwise
17 adopted or approved by the declarant; or

18 (C) audio or video tape-recorded in
19 substantially verbatim fashion, contemporaneously
20 with the making of the statement.

21 (iii) Prior identification.--The statement is one of
22 identification of a person made after perceiving the
23 person.

24 (2) Admissions.--The statement is offered against a
25 party and is one of the following:

26 (i) The party's own statement in either an
27 individual or a representative capacity.

28 (ii) A statement of which the party has manifested
29 an adoption or belief in its truth.

30 (iii) A statement by a person authorized by the

1 party to make a statement concerning the subject.

2 (iv) A statement by the party's agent or servant
3 concerning a matter within the scope of the agency or
4 employment, made during the existence of the relationship
5 and accompanied by sufficient indicia of reliability.

6 (v) A statement by a coconspirator of a party during
7 the course and in furtherance of the conspiracy where
8 there is other evidence which establishes the existence
9 of the conspiracy.

10 § 6272. Hearsay rule (PCE 802).

11 Hearsay is not admissible except as provided by this chapter
12 or by other rules prescribed by the Supreme Court or by statute.

13 § 6273. Hearsay exceptions where availability of declarant
14 immaterial (PCE 803).

15 The following are not excluded by the hearsay rule, even
16 though the declarant is available as a witness:

17 (1) Present sense impression.--A statement describing or
18 explaining an event or condition made while the declarant was
19 perceiving the event or condition or immediately thereafter.

20 (2) Excited utterance.--A statement relating to a
21 startling event or condition made while the declarant was
22 under the stress of excitement caused by the event or
23 condition.

24 (3) Then existing mental, emotional or physical
25 condition.--A statement of the declarant's then existing
26 state of mind, emotion, sensation or physical condition, such
27 as intent, plan, motive, design, mental feeling, pain and
28 bodily health, but not including a statement of memory or
29 belief to prove the fact remembered or believed unless it
30 relates to the execution, revocation or identification of

1 declarant's will.

2 (4) Statements for purposes of medical diagnosis or
3 treatment.--Statements made for purposes of medical diagnosis
4 or treatment and describing medical history, or past or
5 present symptoms, pain or sensations, or the inception or
6 general character of the cause or external source thereof
7 insofar as reasonably pertinent to diagnosis or treatment.

8 (5) Recorded recollection.--A memorandum or record
9 concerning a matter about which a witness once had knowledge
10 but now has insufficient recollection to enable the witness
11 to testify fully and accurately, shown to have been made or
12 adopted by the witness when the matter was fresh in the
13 witness's memory and to reflect that knowledge correctly. If
14 admitted, the memorandum or record may be read into evidence,
15 but may not itself be received as an exhibit unless offered
16 by an adverse party.

17 (6) Records of regularly conducted activity.--A
18 memorandum, report, record or data compilation, in any form,
19 of acts, events, conditions or diagnoses made at or near the
20 time by or from information transmitted by a person with
21 knowledge, if kept in the course of a regularly conducted
22 business activity, and if it was the regular practice of that
23 business activity to make the memorandum, report, record or
24 data compilation, all as shown by the testimony of the
25 custodian or other qualified witness, unless the source of
26 information or the method or circumstances of preparation
27 indicate lack of trustworthiness. If the person supplying the
28 information to the recorder is not acting in the regular
29 course of business or pursuant to a business duty to report,
30 the information is admissible only if it is not hearsay or if

1 it qualifies under another hearsay exception. The term
2 "business," as used in this paragraph, includes business,
3 institution, association, profession, occupation and calling
4 of every kind, whether or not conducted for profit.

5 (7) Absence of entry in records kept in accordance with
6 the provisions of paragraph (6).--Evidence that a matter is
7 not included in the memoranda, reports, records or data
8 compilations, in any form, kept in accordance with the
9 provisions of paragraph (6), to prove the nonoccurrence or
10 nonexistence of the matter, if the matter was of a kind of
11 which a memorandum, report, record or data compilation was
12 regularly made and preserved, unless the sources of
13 information or other circumstances indicate lack of
14 trustworthiness.

15 (8) Public records and reports.--Records, reports,
16 statements or data compilations, in any form, of public
17 offices or agencies, setting forth the following:

18 (i) the activities of the office or agency;

19 (ii) matters observed pursuant to duty imposed by
20 law as to which matters there was a duty to report,
21 excluding, however, against the defendant in criminal
22 cases, matters observed by police officers and other law
23 enforcement personnel; or

24 (iii) in civil actions and proceedings and against
25 the government in criminal cases, factual findings
26 resulting from an investigation made pursuant to
27 authority granted by law, unless the sources of
28 information or other circumstances indicate lack of
29 trustworthiness.

30 (9) Records of vital statistics.--Records or data

1 compilations, in any form, of births, fetal deaths, deaths or
2 marriages, if the report thereof was made to a public office
3 under requirements of law.

4 (10) Absence of public record or entry.--To prove the
5 absence of a record, report, statement or data compilation,
6 in any form, or the nonoccurrence or nonexistence of a matter
7 of which a record, report, statement or data compilation, in
8 any form, was regularly made and preserved by a public office
9 or agency, evidence in the form of a certification in
10 accordance with section 6282 (relating to self-authentication
11 (PCE 902)) or testimony, that diligent search failed to
12 disclose the record, report, statement or data compilation or
13 entry.

14 (11) Records of religious organizations.--Statements of
15 births, marriages, divorces, deaths, legitimacy, ancestry,
16 relationship by blood or marriage or other similar facts of
17 personal or family history, contained in a regularly kept
18 record of a religious organization.

19 (12) Marriage, baptismal and similar certificates.--
20 Statements of fact contained in a certificate that the maker
21 performed a marriage or other ceremony or administered a
22 sacrament, made by a clergyman, public official or other
23 person authorized by the rules or practices of a religious
24 organization or by law to perform the act certified and
25 purporting to have been issued at the time of the act or
26 within a reasonable time thereafter.

27 (13) Family records.--Statements of fact concerning
28 personal or family history contained in family bibles,
29 genealogies, charts, engravings on rings, inscriptions on
30 family portraits, engravings on urns, crypts or tombstones or

1 the like.

2 (14) Records of documents affecting an interest in
3 property.--The record of a document purporting to establish
4 or affect an interest in property, as proof of the content of
5 the original recorded document and its execution and delivery
6 by each person by whom it purports to have been executed, if
7 the record is a record of a public office and an applicable
8 statute authorizes the recording of documents of that kind in
9 that office.

10 (15) Statements in documents affecting an interest in
11 property.--A statement contained in a document purporting to
12 establish or affect an interest in property if the matter
13 stated was relevant to the purpose of the document, unless
14 dealings with the property since the document was made have
15 been inconsistent with the truth of the statement or the
16 purport of the document.

17 (16) Statements in ancient documents.--Statements in a
18 document in existence 20 years or more, the authenticity of
19 which is established.

20 (17) Market reports or commercial publications.--Market
21 quotations, tabulations, lists, directories or other
22 published compilations, generally used and relied upon by the
23 public or by persons in particular occupations.

24 (18) Learned treatises.--To the extent called to the
25 attention of an expert witness upon cross-examination or
26 relied upon by the expert witness in direct examination,
27 statements contained in published treatises, periodicals or
28 pamphlets on a subject of history, medicine or other science
29 or art, established as a reliable authority by the testimony
30 or admission of the witness or by other expert testimony or

1 by judicial notice. If admitted, the statements may be read
2 into evidence but may not be published to the jury.

3 (19) Reputation concerning personal or family history.--
4 Reputation among members of a person's family by blood,
5 adoption or marriage, or among a person's associates, or in
6 the community, concerning a person's birth, adoption,
7 marriage, divorce, death, legitimacy, relationship by blood,
8 adoption or marriage, ancestry or other similar fact of his
9 personal or family history.

10 (20) Reputation concerning boundaries or general
11 history.--Reputation in a community, arising before the
12 controversy, as to boundaries of or customs affecting lands
13 in the community and reputation as to events of general
14 history important to the community or state or nation in
15 which located.

16 (21) Reputation as to character.--Reputation of a
17 person's character among associates or in the community.

18 (22) Judgment of previous conviction.--Evidence of a
19 final judgment, entered after a trial or upon a plea of
20 guilty but not upon a plea of nolo contendere, adjudging a
21 person guilty of a felony or misdemeanor, to prove any fact
22 essential to sustain the judgment, but not including, when
23 offered by the Commonwealth in a criminal prosecution for
24 purposes other than impeachment, judgments against persons
25 other than the accused. The pendency of an appeal may be
26 shown but does not affect admissibility.

27 (23) Judgment as to personal, family or general history
28 or boundaries.--Judgments as proof of matters of personal
29 family or general history or boundaries, essential to the
30 judgment, if the same would be provable by evidence of

1 reputation.

2 (24) Oral depositions of medical witnesses in civil
3 cases.--An oral deposition of a medical witness other than a
4 party may be used at trial for any purpose.

5 (25) Trial testimony.--In civil cases, videotaped trial
6 testimony preserved in advance of trial which is otherwise
7 provided for by statute or rule of procedure prescribed by
8 the Pennsylvania Supreme Court.

9 (26) Other exceptions.--A statement which is not
10 specifically covered by any other hearsay exception but has
11 equivalent circumstantial guarantees of trustworthiness,
12 where the court determines that:

13 (i) the time, content and circumstances of the
14 statement provide sufficient indicia of reliability; and

15 (ii) the general purposes of this chapter and the
16 interests of justice will best be served by admission of
17 the statement into evidence. However, a statement may not
18 be admitted under this exception unless the proponent of
19 it makes known to the adverse party sufficiently in
20 advance of the trial or hearing to provide the adverse
21 party with a fair opportunity to prepare to meet it, the
22 proponent's intention to offer the statement and the
23 particulars of it, including the name and address of the
24 declarant. A statement which is specifically covered by
25 one of the categories in this paragraph is not admissible
26 under this exception.

27 § 6274. Hearsay exceptions where declarant unavailable (PCE
28 804).

29 (a) General rule.--Unavailability as a witness includes the
30 following situations in which the declarant:

1 (1) Is exempted by ruling of the court on the ground of
2 privilege from testifying concerning the subject matter of
3 the declarant's statement.

4 (2) Persists in refusing to testify concerning the
5 subject matter of the declarant's statement despite an order
6 of the court to do so.

7 (3) Testifies to a lack of memory of the subject matter
8 of the declarant's statement.

9 (4) Is unable to be present or to testify at the hearing
10 because of death or then-existing physical or mental illness
11 or infirmity.

12 (5) Is absent from the hearing and the proponent of
13 statement has been unable to procure the declarant's
14 attendance (or in the case of a hearsay exception under
15 subsection (b)(2), (3) or (4), the declarant's attendance or
16 testimony) by process or other reasonable means. A declarant
17 is not unavailable as a witness if exemption, refusal, claim
18 of lack of memory, inability or absence is due to the
19 procurement or wrongdoing of the proponent of a statement for
20 the purpose of preventing the witness from attending or
21 testifying.

22 (b) Hearsay exceptions.--The following are not excluded by
23 the hearsay rule if the declarant is unavailable as a witness:

24 (1) Former testimony.--Testimony given as a witness at
25 another hearing of the same or a different proceeding or in a
26 deposition taken in compliance with law in the course of the
27 same or another proceeding, if the party against whom the
28 testimony is now offered or in a civil action or proceeding,
29 a predecessor in interest, had an opportunity and similar
30 motive to develop the testimony by direct or redirect

1 examination or cross-examination.

2 (2) Statement under belief of impending death.--A
3 statement made by a declarant while believing that the
4 declarant's death was imminent, concerning the cause or
5 circumstances of what the declarant believed to be his
6 impending death.

7 (3) Statement against interest.--A statement which was
8 at the time of its making so far contrary to the declarant's
9 pecuniary or proprietary interest, or so far tended to
10 subject the declarant to civil or criminal liability, or to
11 render invalid a claim by the declarant against another, that
12 a reasonable person in the declarant's position would not
13 have made the statement unless believing it to be true. A
14 statement tending to expose the declarant to criminal
15 liability and offered to exculpate the accused is not
16 admissible unless corroborating circumstances clearly
17 indicate the trustworthiness of the statement.

18 (4) Statement of personal or family history.--

19 (i) a statement concerning the declarant's own
20 birth, adoption, marriage, divorce, legitimacy,
21 relationship by blood, adoption or marriage, ancestry or
22 other similar fact of personal or family history, even
23 though the declarant had no means of acquiring personal
24 knowledge of the matter stated; or

25 (ii) a statement concerning the foregoing matters,
26 and death also, of another person, if the declarant was
27 related to the other by blood, adoption or marriage or
28 was so intimately associated with the other's family as
29 to be likely to have accurate information concerning the
30 matter declared.

1 § 6275. Hearsay within hearsay.

2 Hearsay included within hearsay is not excluded under section
3 6272 (relating to hearsay rule (PCE 802)), if each part of the
4 combined statements conforms with an exception to the hearsay
5 rule provided in this chapter.

6 § 6276. Attacking and supporting credibility of declarant (PCE
7 806).

8 When a hearsay statement or a statement defined in section
9 6271 (relating to definitions (PCE 801)) has been admitted in
10 evidence, the credibility of the declarant may be attacked, and
11 if attacked may be supported by any evidence which would be
12 admissible for those purposes if the declarant had testified as
13 a witness. Evidence of a statement or conduct by the declarant
14 at any time, inconsistent with the declarant's hearsay
15 statement, is not subject to any requirement that the declarant
16 may have been afforded an opportunity to deny or explain. If the
17 party against whom a hearsay statement has been admitted calls
18 the declarant as a witness, the party is entitled to examine the
19 declarant on the statement as if under cross-examination.

20 SUBCHAPTER I

21 AUTHENTICATION AND IDENTIFICATION

22 Sec.

23 6281. Requirement of authentication or identification (PCE
24 901).

25 6282. Self-authentication (PCE 902).

26 6283. Subscribing witness' testimony unnecessary (PCE 903).

27 § 6281. Requirement of authentication or identification (PCE
28 901).

29 (a) General rule.--The requirement of authentication or
30 identification is a condition precedent to admissibility.

1 Authentication is proving that the evidence is what it appears
2 to be and is satisfied by evidence sufficient to support a
3 finding that the matter in question is what its proponent claims
4 or by any other means provided by law. Nothing in this
5 subchapter shall be construed to limit the means by which
6 evidence may be authenticated or proved.

7 (b) Illustrations.--By way of illustration only, and not by
8 way of limitation, the following are examples of authentication
9 or identification conforming with the requirements of this
10 subchapter:

11 (1) Testimony of witness with knowledge.--Testimony that
12 a matter is what it is claimed to be.

13 (2) Nonexpert opinion on handwriting.--Nonexpert opinion
14 as to the genuineness of handwriting, based upon familiarity
15 not acquired for purposes of the litigation.

16 (3) Comparison by trier or expert witness.--Comparison
17 by the trier of fact or by expert witnesses with specimens
18 which have been authenticated.

19 (4) Distinctive characteristics and the like.--
20 Appearance, contents, substance, internal patterns or other
21 distinctive characteristics, taken in conjunction with
22 circumstances.

23 (5) Voice identification.--Identification of a voice,
24 whether heard firsthand or through mechanical or electronic
25 transmission or recording, by opinion based upon hearing the
26 voice at any time under circumstances connecting it with the
27 alleged speaker.

28 (6) Telephone conversations.--Telephone conversations,
29 by evidence that a call was made to the number assigned at
30 the time by the telephone company to a particular person or

1 business, if in the case of a person, circumstances,
2 including self-identification, show the person answering to
3 be the one called, or in the case of a business, the call was
4 made to a place of business and the conversation related to
5 business reasonably transacted over the telephone.

6 (7) Public records or reports.--Evidence that a writing
7 authorized by law to be recorded or filed and in fact
8 recorded or filed in a public office, or a purported public
9 record, report, statement or data compilation, in any form,
10 is from the public office where items of this nature are
11 kept.

12 (8) Ancient documents or data compilation.--Evidence
13 that a document or data compilation, in any form, is in a
14 condition as to create no suspicion concerning its
15 authenticity, was in a place where it, if authentic, would
16 likely be, and has been in existence 20 years or more at the
17 time it is offered.

18 (9) Process or system.--Evidence describing a process or
19 system used to produce a result and showing that the process
20 or system produces an accurate result.

21 (10) Methods provided by statute or rule.--Any method of
22 authentication or identification provided by statute, by
23 decisional law or by other rules prescribed by the Supreme
24 Court.

25 § 6282. Self-authentication (PCE 902).

26 Extrinsic evidence of authenticity as a condition precedent
27 to admissibility is not required with respect to the following:

28 (1) Domestic public documents under seal.--A document
29 bearing a seal purporting to be that of the United States, or
30 of any state, district, commonwealth, territory, or insular

1 presumptively authentic without final certification or permit
2 them to be evidenced by an attested summary with or without
3 final certification.

4 (4) Certified copies of public records.--A copy of an
5 official record or report or entry therein or of a document
6 authorized by law to be recorded or filed and actually
7 recorded or filed in a public office, including data
8 compilations, in any form, certified as correct by the
9 custodian or other person authorized to make the
10 certification, by certificate complying with paragraph (1),
11 (2) or (3) or complying with any statute or rule prescribed
12 by the Supreme Court.

13 (5) Official publications.--Books, pamphlets or
14 publications purporting to be issued by public authority.

15 (6) Newspapers and periodicals.--Printed materials
16 purporting to be newspapers or periodicals.

17 (7) Trade inscriptions and the like.--Inscriptions,
18 signs, tags or labels purporting to have been affixed in the
19 course of business and indicating ownership, control or
20 origin.

21 (8) Acknowledged documents.--Documents accompanied by a
22 certificate of acknowledgment executed in the manner provided
23 by law by a notary public or other officer authorized by law
24 to take acknowledgments.

25 (9) Commercial paper and related documents.--Commercial
26 paper, signatures thereon and documents relating thereto to
27 the extent provided by general commercial law.

28 (10) Presumptions under statute.--Any signature,
29 document or other matter declared by statute to be
30 presumptively or prima facie genuine or authentic.

1 § 6283. Subscribing witness' testimony unnecessary (PCE 903).

2 The testimony of a subscribing witness is not necessary to
3 authenticate a writing unless required by the laws of the
4 jurisdiction whose laws govern the validity of the writing.

5 SUBCHAPTER J

6 CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

7 Sec.

8 6291. Definitions (PCE 1001).

9 6292. Requirement of original (PCE 1002).

10 6293. Admissibility of duplicates (PCE 1003).

11 6294. Admissibility of other evidence of contents (PCE 1004).

12 6295. Public records (PCE 1005).

13 6296. Summaries (PCE 1006).

14 6297. Testimony or written admission of party (PCE 1007).

15 6298. Functions of court and jury (PCE 1008).

16 § 6291. Definitions (PCE 1001).

17 The following words and phrases when used in this subchapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Duplicate." A counterpart produced by the same impression
21 as the original, or from the same matrix, or by means of
22 photography, including enlargements and miniatures or by
23 mechanical or electronic rerecording, or by chemical
24 reproduction, or by other equivalent technique which accurately
25 reproduces the original.

26 "Original." The writing or recording itself or any
27 counterpart intended to have the same effect by a person
28 executing or issuing it and includes the negative or any print
29 therefrom. If data are stored in a computer or similar device,
30 any printout or other output readable by sight, shown to reflect

1 the data accurately, is an original.

2 "Photographs." Includes still photographs, X-ray films,
3 videotapes, radiographs and motion pictures.

4 "Writings" and "recordings." Consist of letters, words or
5 numbers or their equivalent, set down by handwriting,
6 typewriting, printing, photostating, photographing, magnetic
7 impulse, mechanical or electronic recording or other form of
8 data compilation.

9 § 6292. Requirement of original (PCE 1002).

10 To prove the content of a writing, recording or photograph,
11 the original writing, recording or photograph is required,
12 except as otherwise provided in this chapter or by statute.

13 § 6293. Admissibility of duplicates (PCE 1003).

14 A duplicate is admissible to the same extent as an original
15 unless a genuine question is raised as to the authenticity of
16 the original or in the circumstances it would be unfair to admit
17 the duplicate in lieu of the original.

18 § 6294. Admissibility of other evidence of contents (PCE 1004).

19 The original is not required, and other evidence of the
20 contents of a writing, recording or photograph is admissible if:

21 (1) Originals lost or destroyed.--All originals are lost
22 or have been destroyed, unless the proponent lost or
23 destroyed them in bad faith.

24 (2) Original not obtainable.--No original can be
25 obtained by any available judicial process or procedure.

26 (3) Original in possession of opponent.--At a time when
27 an original was under the control of the party against whom
28 offered, that party was put on notice, by the pleadings or
29 otherwise, that the contents would be a subject of proof at
30 the hearing, and that party does not produce the original at

1 the hearing.

2 (4) Collateral matter.--The writing, recording or
3 photograph is not closely related to a controlling issue.

4 § 6295. Public records (PCE 1005).

5 The contents of an official record, or of a document
6 authorized to be recorded or filed and actually recorded or
7 filed, including data compilations in any form, if otherwise
8 admissible, may be proved by copy, certified as correct in
9 accordance with section 6282 (relating to self-authentication
10 (PCE 902)) or testified to be correct by a witness who has
11 compared it with the original. If a copy which complies with the
12 foregoing cannot be obtained by the exercise of reasonable
13 diligence, then other evidence of the contents may be given.

14 § 6296. Summaries (PCE 1006).

15 The contents of voluminous writings, recordings or
16 photographs which cannot conveniently be examined in court may
17 after giving reasonable notice to the other party be presented
18 in the form of a chart, summary or calculation. The originals or
19 duplicates shall be made available for examination or copying,
20 or both, by other parties at a reasonable time and place. The
21 court may order that they be produced in court. The burden shall
22 be on the moving party to show the fairness and accuracy of the
23 summary.

24 § 6297. Testimony or written admission of party (PCE 1007).

25 Contents of writings, recordings or photographs may be proved
26 by the testimony or deposition of the party against whom offered
27 or by that party's written admission, without accounting for the
28 nonproduction of the original.

29 § 6298. Functions of court and jury (PCE 1008).

30 When the admissibility of other evidence of contents of

1 writings, recordings or photographs under this chapter depends
2 upon the fulfillment of a condition of fact, the question
3 whether the condition has been fulfilled is ordinarily for the
4 court to determine in accordance with the provisions of section
5 6205 (relating to preliminary questions (PCE 104)). However,
6 when an issue is raised whether the asserted writing ever
7 existed, or whether another writing, recording or photograph
8 produced at the trial is the original, or whether other evidence
9 of contents correctly reflects the contents, the issue is for
10 the trier of fact to determine as in the case of other issues of
11 fact.

12 SUBCHAPTER K

13 MISCELLANEOUS PROVISIONS

14 Sec.

15 6299. Jury instructions with comment on evidence prohibited
16 (PCE 1101).

17 6299.1. Inconsistent laws (PCE 1102).

18 § 6299. Jury instructions with comment on evidence prohibited
19 (PCE 1101).

20 The court shall instruct the jury regarding the law
21 applicable to the facts of the case, but shall not comment upon
22 the evidence. It shall also inform the jury that they are the
23 exclusive judges of all questions of fact and the credibility of
24 witnesses.

25 § 6299.1. Inconsistent laws (PCE 1102).

26 If any other provision of law or rule prescribed by the
27 Supreme Court of Pennsylvania is inconsistent with this chapter,
28 this chapter shall govern unless this chapter or the
29 inconsistent provision of law specifically provides otherwise.

30 Section 2. (a) The following acts and parts of acts are

1 repealed:

2 18 Pa.C.S. § 3104.

3 42 Pa.C.S. § 5912.

4 42 Pa.C.S. § 5913.

5 42 Pa.C.S. § 5917.

6 42 Pa.C.S. § 5918.

7 42 Pa.C.S. § 5922.

8 42 Pa.C.S. § 5924.

9 42 Pa.C.S. § 5930.

10 42 Pa.C.S. § 5934.

11 (b) This act shall not affect:

12 20 Pa.C.S. § 2209.

13 42 Pa.C.S. § 5985.1.

14 59 Pa.C.S. § 8323.

15 Section 3. This act shall take effect September 1, 1993. The
16 Pennsylvania Code of Evidence shall apply to actions, cases and
17 proceedings brought to trial on or after September 1, 1993. The
18 code shall also apply to cases and proceedings then pending
19 except to the extent that application of the code would not be
20 feasible or would work injustice, in which event former
21 evidentiary rules or principles shall apply.

OFFICIAL COMMENTS

1
2 42 Pa.C.S. § 6202 (PCE 101): This section makes the
3 Pennsylvania Evidence Code applicable to all proceedings
4 conducted by courts of this Commonwealth except those court
5 proceedings to which it is made inapplicable by statute or
6 Pennsylvania Supreme Court rule of procedure. There is no intent
7 to supplant existing rules which supplement the manner of proof
8 in the Philadelphia Municipal Court (see Phila.M.C.R.Civ.P. No.
9 121), the Pittsburgh Magistrate Courts (see 42 Pa.C.S. Ch. 11
10 Subch. C), the Philadelphia Traffic Court (see 42 Pa.C.S. Ch. 13
11 Subch. C), civil cases within the jurisdiction of the district
12 and community courts (see Pa. R.C.P.D.J. No. 321 and No. 512)
13 and in compulsory arbitration hearings (see Pa. R.C.P. No.
14 1305). There is also no intent to replace other existing local
15 rules of practice and procedure, promulgated by Boards of Judges
16 or Courts, specifically authorized by the Pennsylvania Supreme
17 Court to do so, which are not inconsistent with this code. All
18 existing rules shall be read to be consistent with this code and
19 shall yield only where there is a direct collision and
20 unavoidable clash with the sections of this code. Finally, there
21 is no intent to impose a formal evidence code on proceedings
22 other than those listed here where the law of evidence does not
23 now apply as a result of statute, rule of procedure or
24 decisional law.

25 42 Pa.C.S. § 6203 (PCE 102): Where the Pennsylvania Evidence
26 Code does not prescribe a section governing the admissibility of
27 evidence or the conduct of a trial or other judicial proceeding,
28 the court shall be governed, except as otherwise required by the
29 Constitutions of the United States or of Pennsylvania, by
30 statute or by the principles of decisional law as they may be

1 interpreted in the light of reason and experience. Where
2 sections of the Pennsylvania Evidence Code are identical or
3 similar to the Federal Rules of Evidence, Federal decisional law
4 construing these sections may be applied as an aid in
5 construction and in understanding the code. There are no
6 provisions yet governing presumptions or privileges. In such
7 instances, the Pennsylvania Evidence Code provides that the
8 court shall be governed by statute, rule prescribed by the
9 Pennsylvania Supreme Court and decisional law.

Handout #4

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DIRECT DIAL NO.

412-553-7103

August 27, 1993

Thomas R. Caltagirone, Chairman
House Judiciary Committee
House of Representatives
House Post Office Box 210
Room 106, South Office Building
Harrisburg, PA 17120-0028

Dear Representative Caltagirone:

On behalf of the Pennsylvania Defense Institute, I write with some comments about the proposed Code of Evidence being evaluated by your committee and which is also the subject of a public hearing on September 7, 1993.

Generally, the Pennsylvania Defense Institute is encouraged by the efforts of the legislature to codify rules of evidence which have to this point been the subject of a variety of decisional law incorporated and interpreted with existing statutes. Attempting to provide a uniform set of guidelines for the admissibility of evidence should assist in the issuance of consistent rulings and decisions on issues relating to evidence.

Specifically, after review of Senate Bill 176, Printers No. 1349, the following are the language of the proposed code:

1. The provisions at PCE407 regarding subsequent remedial measures are of a concern as they relate to introduction of evidence for certain purposes including the use of a subsequent remedial measure as proof of a defect in a product liability action. This provision as to 402A cases is not found in the federal rules and raises possibly and troubling issues.
2. The rules relating to competency, particular PCE601 are overly broad. The provisions under PCE601(b)(1) indicate that simply because a witness is difficult to understand, his testimony may be excluded. This is extremely vague and could be utilized in a very offensive manner which would be unfair to witnesses and parties. Perhaps clarifying or defining the terms used in that subpart would be helpful.

Page Two
August 27, 1993

3. PCE602 regarding the lack of personal knowledge of a witness apparently requires the personal knowledge to be proven after objection. That provision of the rule which is different from the federal rule is of concern as relates to the quantum of proof of such knowledge.

4. With regard to the bases for expert testimony, subsection (b) of PCE703 introduces into the federal rules a new requirement and also changes existing Pennsylvania law. To the extent that expert testimony is deemed inadmissible, admitting it for the limited purpose of evaluating the opinion may be something that should be done by the court in camera rather than, as appears from their language of this rule in front of the jury. That additional provision regarding the bases for the experts testimony and the admissibility of that bases may be unnecessary.

These comments are provided with an eye towards those rules of evidence relating to civil cases rather than criminal cases. To the extent that we can discuss these issues with you further or you would like any additional information from Pennsylvania Defense Institute, please feel free to contact me.

Very truly yours,



MARIE MILIE JONES
Committee Chair,
PA Defense Institute

MMJ/kmd



JUDGE'S CHAMBERS
THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA
WAYNESBURG, PENNSYLVANIA
(412) 552-MRX5212

H. TERRY GRIMES
PRESIDENT JUDGE

RECEIVED JUL 07 1993

June 30, 1993

The Honorable Thomas R. Caltagirone
Chairman, House Judiciary Committee
House Post Office Box 210
Room 106 South Office Building
Harrisburg, PA 17120-0028

IN RE: Senate Bill 176
Code of Evidence

Dear Mr. Caltagirone:

Thank you for forwarding me a copy of Senate Bill 176 and inviting my comments. Upon reviewing the bill, I have no specific recommendations other than to state that codified rules of evidence should be welcomed by all judges and practicing attorneys.

Thank you for your consideration.

Very truly yours,


H. Terry Grimes

HTG/ssr



RECEIVED JUL 13 1993

COURT OF COMMON PLEAS
SIXTIETH JUDICIAL DISTRICT
MILFORD, PENNSYLVANIA 18337

AREA CODE 717-296-6216
FAX 717-296-6054

HAROLD A. THOMSON, JR.
PRESIDENT JUDGE

PIKE COUNTY

July 7, 1993

The Honorable Thomas R. Caltagirone
Chairman, House Judiciary Committee
House Post Office Box 210
Harrisburg, PA 17120-0028

Dear Chairman Caltagirone:

Thank you very much for your letter of June 22, 1993 with an enclosed copy of Senate Bill 176.

I do not have any specific criticism in the Bill, and I think it's a good idea to have codified evidentiary rules similar to those now used in the federal courts.

Yours very truly,

HAROLD A THOMSON, JR.

HAT:mls



RECEIVED JUL 07 1993

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

ERNEST D. PREATE, Jr.
ATTORNEY GENERAL

July 6, 1993

Reply To:

15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 787-6348

Rep. Thomas R. Caltagirone
Chairman, House Judiciary Committee
House of Representatives
Commonwealth of Pennsylvania
House Post Office Box 210
Room 106, South Office Building
Harrisburg, PA 17120-0028

**RE: Proposed Pennsylvania Code of Evidence, Senate Bill
No. 176, Session of 1993, Printer's No. 1349,
as amended May 26, 1993**

Dear Rep. Caltagirone:

This letter is in follow-up to the discussion meetings held June 15-17, 1993, with respect to the above-referenced bill which proposes a Pennsylvania Code of Evidence. The present version of the code presents several areas of concern.

To begin with, Section 6225, proposed PCE 405, purportedly codifies current Pennsylvania law on the rule against introducing evidence of other crimes committed by the defendant. The last sentence of subsection (a), however, would eliminate "common plan, scheme, or design" as an independent exception to this rule. During the discussion meeting on June 16, committee members asked for specific examples of how this proposal would change Pennsylvania law.

To date, our Supreme Court has explicitly recognized the following exceptions to the rule against other crimes evidence: (1) to prove motive; (2) to prove intent; (3) to prove absence of mistake or accident; (4) to prove a common scheme, plan or design embracing commission of two or more crimes so related to each other that proof of one naturally tends to prove the others; (5) to establish the identity of the person charged with the commission of the crime on trial where there is such a logical connection between the crimes that proof of one will naturally tend to show that the accused is the person who committed the other; (6) to impeach the credibility of a defendant who testifies in his trial; (7) in situations where the defendant's prior criminal history has been

used by him to threaten or intimidate the victim; and (8) in situations where the distinct crimes were part of a chain or sequence of events which formed the history of the case and were part of its natural development. Commonwealth v. Billa, 521 Pa. 168, 555 A.2d 835, 840 (1989). The fourth exception (common scheme or plan) and the fifth exception (identity) are similar but distinct. The identity exception is generally used when a defendant concedes that someone committed the crime but denies he is the perpetrator. In contrast, the common plan exception is used when the defendant denies that the crime itself actually occurred. See Wigmore on Evidence § 300 at 249 (Chadbourn Rev. 1970).

For example, suppose a serial killer has murdered five women over the span of three years. Each murder has been a ritualistic killing with characteristics so unique that they may be described as the perpetrator's signature. He attempts to murder a sixth victim, but she miraculously survives and identifies her killer. Because of the similarities between these crimes, proof that the defendant committed the last crime is also admissible evidence that he committed the five previous murders. This is commonly referred to as the identity exception. To understand the common plan exception, suppose that a serial rapist is on the loose. All of his victims can identify the perpetrator if he is ever caught. Each time, the perpetrator holds a gun to the victim's head and forces his victim to paint her toenails black. Then he rapes her, using a condom so that he does not leave physical evidence behind. The rapist commits five of these offenses over the span of three years. When he rapes the sixth victim, he is caught and identified. At trial, rather than conceding that a rape occurred and denying he was the perpetrator, the defendant claims the victim made the whole thing up. In other words, the rape never even happened. The fact that the defendant did the exact same thing to five other victims, including forcing them to paint their toenails black, tends to establish that the sixth victim is telling the truth and the rape actually occurred. The circumstances between all six crimes are so similar and unique that proof of one rape tends to prove the others happened as well. Two fairly recent cases illustrate this point. See Commonwealth v. Newman, 528 Pa. 393, 598 A.2d 275 (1991) and Commonwealth v. Frank, 395 Pa. Super. 412, 577 A.2d 609 (1990). In both cases, evidence of the defendant's other crimes was found admissible solely on the basis of the defendant's common design. The Newman case also illustrates how the proposed change would effect application of Pa.R.Crim.P. 1127 (joinder of offenses). If PCE 405, as proposed, had been the law, the outcome of both Newman and Frank would probably have been different.

During the discussion on June 16, Professor Ohlbaum stated that the list of exceptions in Rule 405(a) is not meant to be exclusive. Contrary to that intent, the last sentence of that subsection would actually promote "pigeonholing" of other crimes evidence into a set list of exceptions. That practice has been frowned on by courts and commentators alike. See Commonwealth v.

Rozanski, 289 Pa. Super. 531, 433 A.2d 1382, 1386-87 (1981) (quoting McCormick on Evidence § 190 at 488) (the wiser opinions recognize that the problem is not merely one of pigeonholing but one of balancing); United States v. Woods, 484 F.2d 127, 134 (1973) (pigeonholing has been widely criticized and evidence of other crimes may be received, if relevant, for any purpose other than merely to show the defendant's criminal disposition or propensity).

Another unwarranted change in current practice appears in proposed PCE 410, section 6230, which provides that a plea of nolo contendere is not admissible in any civil or criminal proceeding. Although a plea of nolo contendere is not admissible to prove facts underlying a conviction, Eisenberg v. Commonwealth, Department of Welfare, 512 Pa. 181, 186, n.6, 516 A.2d 333, 335, n.6 (1986), it may be used to impeach a defendant's credibility to the same extent as any other conviction. Commonwealth v. Snyder, 408 Pa. 253, 182 A.2d 495 (1962), Commonwealth v. Jones, 375 Pa. Super. 194, 198, n.1, 544 A.2d 54, 56, n.1 (1988), Commonwealth v. Washington, 274 Pa. Super. 560, 418 A.2d 540 (1980). If a defendant testifies at trial and he has been convicted of a crimen falsi offense within the last ten years, that conviction should be admissible for impeachment purposes regardless of whether it is based on a guilty plea, plea of nolo contendere, or trial verdict. Accordingly, the words "except as provided for in PCE 609" should be added to subsection (a)(2).

Section 6249, proposed PCE 609, allows evidence of a criminal conviction to be used to attack a witness' credibility under certain circumstances. If a defendant testifies at trial, he or she may also be impeached with crimen falsi convictions. However, the Commonwealth must prove the existence of those convictions with extrinsic evidence presented during rebuttal. In contrast, other witnesses can simply be asked about admissible convictions during cross-examination. The reason for this distinction is the prohibition contained in subsection (e), which precludes asking a defendant about prior convictions unless he has either offered character evidence or testified against a co-defendant. Although PCE 609 is simply a recodification of 42 Pa.C.S. § 5918, with the enactment of an entirely new code of evidence, there is no legitimate reason to perpetuate this rule. Prohibiting the Commonwealth's attorney from asking the defendant about otherwise admissible convictions does not prevent the jury from hearing about them. Rather, it requires a cumbersome process of introducing extrinsic evidence of the conviction during rebuttal and presenting witnesses to identify the defendant as the individual who committed the prior crimes. In most cases, the fact of these convictions is not actually disputed, and realistically, the process of proving these convictions places undue emphasis on their existence. Furthermore, PCE 609(c) requires the court, upon request, to make a ruling on admissibility of prior convictions before the defendant testifies. Accordingly, the defendant has the ability to weigh the risks and benefits of taking the stand and will not be caught off-

guard by this line of questioning. Subsection (e) should be amended to add a subsection (3) stating, "testified at trial, in which case the defendant may be cross-examined about any prior convictions which are otherwise admissible under subsections (a) and (b) of this rule."

Subsection (c) of section 6252, proposed PCE 611, eliminates the use of leading questions unless the witness' testimony is adverse to that party. This section unfairly restricts the Commonwealth's ability to cross-examine police officers who are called to testify by the defense. In addition, subsection (b) limits the scope of cross-examination to the scope of direct except when the witness is a party in a civil case. Current Pennsylvania practice permits liberal cross-examination of a criminal defendant. The right to cross-examine the accused extends beyond the subjects testified to in direct testimony and includes the right to examine the accused about any facts tending to refute inferences or deductions arising from matters testified to on direct. Commonwealth v. Petrakovich, 459 Pa. 511, 523, 329 A.2d 844, 850 (1974).

Another area of concern is proposed PCE 801(b)(1)(ii), section 6271, which provides that prior consistent statements are not hearsay when offered in compliance with PCE 613 (to rebut claim of recent fabrication). This hearsay exception requires those prior consistent statements to meet the same test of admissibility as prior inconsistent statements. Subsection (b)(1)(i) (prior inconsistent statements) is a codification of the Supreme Court's decision in Commonwealth v. Lively, 530 Pa. 464, 610 A.2d 7 (1992), which was never meant to apply to prior consistent statements. Of course, current Pennsylvania practice does not permit prior consistent statements to be used as substantive evidence. Commonwealth v. Polston, ___ Pa. Super. ___, 616 A.2d 669 (1992). At the discussion meeting on June 17, 1993, Professor Ohlbaum explained that this provision of PCE 801 is not meant to restrict the use of prior consistent statements for rehabilitative purposes. Instead, PCE 801(b)(1)(ii) would create a new, substantive use for consistent statements meeting certain criteria. I have no objection to adding this exception, but the section should be clarified. I suggest PCE 801(b)(1)(ii) be amended as follows: "Prior consistent statement by witness.--A statement which is consistent with the declarant's testimony, and which otherwise complies with section 6254(c) (PCE 613) (relating to prior consistent statements) may come in both for rehabilitative purposes under PCE 613 and as substantive evidence, provided the statement also meets the following three criteria..."

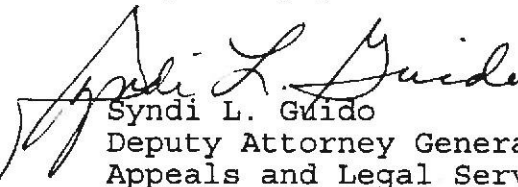
Subsections (a)(ii) and (iii) of proposed PCE 803, section 6273, create new hearsay exceptions which allow a defendant to use police reports and investigative findings as substantive evidence against the Commonwealth. If the rule is enacted, the Commonwealth will not have the ability to cross-examine the individual police officer who wrote the report or made the investigative findings,

creating an unfair advantage for the defendant. Hearsay exceptions should consistently apply to both parties.

Finally, proposed PCE 1102, section 6299.1, repeals, among other provisions, § 5913 of the Judiciary Code (spousal privilege). This repeal will effectively alter the next section, 5914 (confidential communications between spouses), as well. In Commonwealth v. Hancharik, 388 Pa. Super. 337, 565 A.2d 782 (1989), the Superior Court, en banc, ruled that the exceptions delineated in section 5913 are incorporated by reference into § 5914. Accordingly, in certain specified cases such as murder and child abuse, spouses cannot claim their communications are confidential. Unless the exceptions set forth in § 5913 are transferred into § 5914, the repeal of § 5913 will eliminate these exceptions in § 5914. For example, if a husband confesses to his wife that he abused their child, under current law, the wife can testify about that confession at trial. If § 5913 is repealed without transferring its exceptions into § 5914, that confidential communication will no longer be admissible. This type of testimony is often critical in cases of family abuse. (It should be noted that the Supreme Court has granted allocatur in Hancharik and the case is still pending decision.)

I hope these comments and suggestions are helpful to your committee as it considers the proposed code of evidence. During this codification, I trust the legislature will not discard long-standing evidentiary principles which are necessary tools in bringing criminal defendants to justice.

Very truly yours,



Syndi L. Guido
Deputy Attorney General
Appeals and Legal Services Section

SLG/mrb

cc: Fran Cleaver

Senior Deputy Attorney General
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RECEIVED JUL 06 1993

June 18, 1993

Hon. Thomas R. Caltagirone
Chair, House Judiciary
Committee
Pennsylvania House of Representatives
Capitol Bldg.
Harrisburg, PA 17120-0028

RE: SB 176, Printer No. 1349 Pennsylvania Code of Evidence

Dear Rep. Caltagirone:

I am the Director of Skills Education for Widener University School of Law at the Harrisburg and Wilmington, Delaware campuses, and a long time teacher of Evidence and Trial Advocacy, as well as a member of the Pennsylvania Bar.

The proposed new amendments to Title 42 (Judiciary and Judicial Procedure) adding a Pennsylvania Code of Evidence represent a great improvement in Pennsylvania evidence law and all those responsible for assimilating the 1973 edition of the Uniform Rules of Evidence, the case law experience of other jurisdictions under the Uniform Rules, and the great mass of the Pennsylvania common law of evidence into this bill should be commended for doing a great job.

I have read SB 176 with great interest and have a few comments that I would like to pass on to you for consideration. Most of my comments are directed to §§6224-6232, the character evidence sections of the proposed new rules. As your staffers undoubtedly know, I wrote an article on civil character evidence in Pennsylvania which was published in 58 *Temple L. Rev.* 623 (1985). I am enclosing a copy of same for whatever use it may be in reviewing my comments.

I have also finished an article on evidence of other sexual misconduct in sex offender cases which will be appearing in the *American Criminal Law Review* this fall.

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The gist of that article is that evidence of the perpetrator's predisposition to commit similar criminal acts proved by specific similar criminal acts, is usually admitted in criminal cases under Unif.R. 404(b) or its common law counterpart, ostensibly to prove some intermediate issue such as intent, knowledge, plan or design. If it would be helpful, I will send a copy of that piece in typescript to your researchers.

Here are my comments on the character evidence section:

A. §6224. Character evidence; methods of proving character (PCE 404).

The present structure of this section seems to me to be a little awkward and difficult to work with. The gist of the rule states that character evidence is inadmissible to prove that anyone acted in accordance with some prior predisposition to act in that way. The balance of the rule lists the exceptions to the general rule (subsection (a)); the method by which character evidence may be proved when it falls into one of the stated exceptions in (a) (subsection (b)) and a new exception to the general rule against character evidence that permits proof of character by specific acts when "evidence of character or a trait of character of a person is an essential element of a charge, claim or defense" (subsection (c)). These subsections were derived from Unif. R. Evid. 404 and 405.

Subsections (a)(1) and (a)(2) are stock exceptions carried over from Unif. R. Evid. 404(a)(1) and (2). Subsections (a)(3) and (a)(4) are grafted to the main trunk and represent an attempt to combine subsection 404(a)(3) of the Uniform Rules with a limited exception for character evidence in civil cases (assault & battery).

As drafted, PCE 404(a) does away with proof of character evidence in civil cases altogether in anything other than a civil version of a criminal assault case, but subsection (c) brings character evidence back into civil actions where "character is an essential element of a charge, claim or defense."

If I am correct, then subsection (c) would preserve prior Pennsylvania law permitting proof of predisposition or character:

- (1) in dissolution of marriage cases involving custody and visitation rights of minor children where

fitness to act as a custodian or to visit children is an issue;

- (2) a parent's character in termination of parental rights actions;
- (3) the plaintiff's bad reputation to minimize damages in slander and libel cases;
- (4) the defendant's malicious disposition in defamation cases in which the person defamed is a public figure;
- (5) the character of an alleged undue influencer in a will contest, or in a civil action to cancel a deed, trust instrument or contract based on undue influence;
- (6) the actor's mental condition in cases involving a challenge to a will, deed, trust instrument or contract based on the maker's lack of mental capacity; and
- (7) proof of a victim's violent disposition in assault, domestic violence and wrongful death cases in which the defendant claims the victim was the first aggressor.¹

However, subsection (a)(3) and (a)(4) which begin by referring to the character of a witness in a civil case, also include proof of substantive character for violence in civil assault cases. This appears to mix in character evidence that falls under subsection (c) with the anti-character impeachment rule stated in (a)(3).

I am attaching a suggested revision to §6224 that may clear up the confusion and preserve existing Pennsylvania law admitting character evidence in civil cases.

B. §6225. Other crimes, wrongs or acts (PCE 405).

This section was derived from Unif.R. Evid. 404(b). As drafted, subsection (a) states the traditional rule excluding proof of similar acts to prove character and the corollary that similar acts evidence may be introduced to

¹ Reed, *The Pushy Ox: Character Evidence in Pennsylvania Civil Actions*, 58 Temple L. Rev. 623, 624-27 (1985).

prove some other issue such as motive, opportunity, intent, etc. This subsection may preserve existing Pennsylvania case law permitting proof of similar acts in civil actions for such intermediate issues. However, the subsection cuts off the right to prove the nature and extent of a common plan, design² or conspiracy, or to show identity by proof of modus operandi.³ Subsection (c) adds a stringent policy limitation on similar acts evidence in criminal prosecutions that requires the Commonwealth to show the court that the probative value of the similar acts evidence substantially outweighs the danger of unfair prejudice to the defendant.⁴ Section 6223 states the general rule requiring the trial judge to weigh probative value against

² The subsection overrules such cases as *Commonwealth v. Newman*, 528 Pa. 393, 598 A.2d 275 (1991) (two rapes 18 months apart part of common plan or design); *Commonwealth v. Clayton*, 516 Pa. 263, 532 A.2d 385 (1987) (two robbery-murders in same neighborhood followed similar pattern); and *Commonwealth v. Brown*, 489 Pa. 285, 414 A.2d 70 (1980) (robbery and murder part of common plan or design) that permit proof of a common plan or design to commit a particular kind of crime.

³ This would overrule such cases as *Commonwealth v. Hughes*, 521 Pa. 423, 555 A.2d 1264 (1989) (identity of accused established by proof of similar sexual assaults on young girls in same neighborhood) and *Commonwealth v. Shively*, 492 Pa. 411, 424 A.2d 1257 (1981) (authorising proof of "signature crimes" to show identity).

⁴ The current general balancing test is admirably set out in *Packel & Poulin, Pennsylvania Evidence* §405.1 requiring the court to consider six factors before admitting similar acts evidence against the defendant:

- (1) Need for the evidence;
- (2) Convincingness, i.e., the quantum of proof of the similar criminal activity being committed by the defendant;
- (3) Effect of acquittal on the similar charge;
- (4) Similarity in the case of proof of intent, knowledge, motive, plan or design, and identity;
- (5) Remoteness in time of similar acts; and
- (6) Prejudice to the defendant.

The trial judge must make a determination of admissibility weighing these factors under the general rubric that the probative value of the similar acts evidence is not outweighed by prejudice to the defendant.

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prejudice, confusion of the issues and waste of time applicable to all other evidence rules which inferentially applies to all similar acts evidence offered in civil cases and to evidence in criminal cases not offered against the defendant.

I question whether the trial courts should be absolutely precluded from accepting similar acts evidence in civil and criminal cases to prove modus operandi, plan or design or conspiracy. I have very serious reservations about requiring the Commonwealth to prove that the probative value of similar acts evidence offered against the defendant substantially outweighs prejudice to the defendant.

To use an example: a person is arrested and charged with possession of cocaine with intent to sell. The "buy" was made via an undercover police officer. The defendant claims entrapment. A quick check of the record shows the defendant has three prior convictions for possession of cocaine with intent to sell in the past ten years. If these prior convictions are introduced in the Commonwealth's rebuttal case to show the defendant had the requisite criminal intent, the prejudice to the defendant would be very high, although the three priors would be highly probative that the defendant intended to sell cocaine when arrested. Under §6223, the defendant would have to demonstrate that the prejudice to the defendant substantially outweighed the high probative value of the evidence. Under the proposed standard of §6225, the Commonwealth would have to show that the probative value was not outweighed substantially by prejudice to the defendant. In effect, §6225 shifts the burden of proof on the issue of prejudice to the Commonwealth, requiring impossible proof of a negative proposition. In short, under §6223, the three priors would be admitted and the jury would know what to do with the defendant, but under §6225, the priors would probably not be admitted, and the defendant might be acquitted.

I would recommend you consider striking subsection (b) of §6225 and the exclusion of similar acts evidence on the issue of modus operandi, or common plan, scheme or design on policy grounds.

Section 6226 (PCE 406) on proof of habit is an excellent section. It will clarify the mystery of habit evidence or routine practice evidence in the case of corporations.

Section 6227 (PCE 407) on subsequent remedial measures places Pennsylvania on the side of those states that do not preclude proof of subsequent remedial measures in strict liability cases. It might be well to include language in that section that permits proof of subsequent remedial measures to show breach of implied warranty, since many products liability actions include breach of implied warranty counts. Since §6227 requires exclusion on the issues of "negligence or culpable conduct" and breach of warrant might be arguably culpable, the change would be helpful to trial lawyers and trial judges admitting evidence for a limited purpose under a limiting instruction.

Section 6232 (PCE 412) has been replaced in this draft by a very terse rule that has several substantive and procedural defects:

- (1) First, defense counsel in a criminal sexual assault prosecution is not required to make advance disclosure of intent to prove the victim's sexual misconduct until the day of trial. The Commonwealth will have very little time to respond to the defendant's motion. Although the trial judge can recess trial for an in camera hearing on the admissibility of the victim's prior sexual activities, the pressure of the trial process may prevent a full in camera review of the issue.
- (2) the present version of the rule bars admissibility of the victim's sexual conduct with third parties when the issue is the source of semen found in the victim or the presence of venereal disease or AIDS. As civil actions between former lovers charging failure to disclose the fact that one lover had a venereal disease or AIDS become more commonplace, the question of the plaintiff's sexual relationship with others becomes much more important than it was in the early 1980's when the original version of F.R. Evid. 412 was drafted. The rape shield rule should not foreclose proof that someone else was the source of venereal disease or AIDS in civil litigation. Former §6232 was preferable to the revised section in this regard.

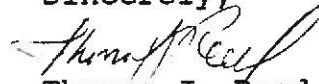
My general view on "character evidence" or evidence showing that an actor had a predisposition to act in predictable fashion, given the right circumstances, would favor admission generally, limited only by judicial control

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over evidence of low probative value and great prejudice to the opposition. Since I am at work on a book on character evidence that deals with the psychological support for my position, as well as legal analysis of present law, I am not ready to urge you to make such a great departure from present practice. I would respectfully ask you to consider amending the rules I have discussed to eliminate the problems that I have identified.

Thank you for reviewing this letter and the attached materials. Please call me if you have any questions at 302-477-2070.

Sincerely,



Thomas J. Reed
Prof. of Law & Director of
Skills Education

cc: Prof. Esther Clark
Prof. James Diehm
Andrew Kraemer, Esq.

REVISED VERSION OF SECTION 6224.

§6224. Character evidence; methods of proving character (PCE 404).

(a) Character evidence generally. Evidence of a person's character or a trait of character is inadmissible for the purpose of proving that the person acted in conformity therewith except as provided for in subsections (b), (c) and (d) below. In all cases in which evidence of character or a trait of character of a person is admissible under this rule, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Character an essential element of charge, claim or defense. Evidence of a person's character or a trait of character is admissible in civil cases or criminal cases in which character or a trait of character is an essential element of a charge, claim or defense. Character may be proved under this subsection by proof of reputation or opinion or by proof of the person's specific instances of conduct demonstrating the character or character trait.

(c) Character evidence in criminal cases. Evidence of a person's character or a trait of character is inadmissible in criminal cases in which character is not an essential element of a charge, claim or defense, except for the following:

(1) Character of accused. Evidence of good moral character offered by the accused, and rebuttal evidence offered by the prosecution;

(2) Character of alleged victim. Evidence of the victim's character or character trait of violent conduct offered by the accused in a prosecution for a violent crime to prove the victim was the first aggressor, and rebuttal evidence offered by the prosecution; and

(3) Character of witness for truthfulness. Evidence of any witness's character or character trait for truthfulness, and rebuttal evidence showing character or character trait of untruthfulness.

(d) Character evidence in civil cases. Evidence of a person's character or a trait of character is inadmissible in civil cases in which character is not an essential element of a charge, claim or defense, except for the following:

(1) Character of alleged victim. Evidence of the victim's character or character trait of violent conduct offered by the defendant in a civil case involving harm caused by violent conduct to prove the victim was the first aggressor, and rebuttal evidence offered by the plaintiff; and

(2) Character of witness for truthfulness. Evidence of any witness's character or character trait for truthfulness, and rebuttal evidence showing character or character trait of untruthfulness.

JUDGE'S CHAMBERS
FORTY-FOURTH JUDICIAL DISTRICT
ONE COURTHOUSE SQUARE
TUNKHANNOCK, PENNSYLVANIA 16657-1216

BRENDAN J. VANSTON, PRESIDENT JUDGE

June 28, 1993

Honorable Thomas R. Caltagirone
House Post Office Box 210
Harrisburg, Pennsylvania 17120-0028

In Re: SB 176 (Pennsylvania Code of Evidence)

Dear Mr. Caltagirone:

Thank you for sending me a copy of Senate Bill 176. I note that in Section 6202, concerning the scope of the Chapter, no reference is made to its applicability to proceedings brought under the Juvenile Act (both delinquencies and dependencies). These are civil and criminal in nature and have traditionally been the subject of somewhat "relaxed" rules of evidence. I express no opinion as to whether SB 176 should or should not apply to juvenile proceedings, but I think it should be clarified, one way or the other.

Very truly yours,



BRENDAN J. VANSTON
President Judge

BJV:dnc

RECEIVED JUN 30 1993



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COURT OF COMMON PLEAS OF CHESTER COUNTY
15TH JUDICIAL DISTRICT OF PENNSYLVANIA
WEST CHESTER, PENNSYLVANIA 19380
(215) 344-6000

LAWRENCE E. WOOD
PRESIDENT JUDGE
LEONARD SUGERMAN
MICHAEL JOSEPH MELODY, JR.
THOMAS G. GAVIN
ROBERT J. SHENKIN

July 7, 1993

PAULA FRANCISCO OTT
JAMES P. MACELREE II
JACQUELINE M. CARROLL
HOWARD F. RILEY, JR.
ALEXANDER ENDY, SENIOR JUDGE

Representative Thomas R. Caltagirone,
Chairman
House Judiciary Committee
House P. O. O. Box 210
Room 106
South Office Building
Harrisburg, Pennsylvania 17120-0028

Dear Chairman Caltagirone:

Thank you for the opportunity to comment on the proposed Pennsylvania Code of Evidence. I think it is a good idea to have such a Code, and the following are my only notable reactions:

1. When you say the chapter will apply generally to civil and criminal proceedings, I presume you include Orphans' Court as a civil proceeding. I wonder if it would be helpful to make that clear.

2. With respect to §6225(a), why do you except evidence of prior acts to prove "modus operandi" or "common plan, scheme, or design"? My recollection is that traditionally prior acts have been admissible for that purpose.

3. With respect to §6247, I think it may be a mistake to allow a party to call a witness and then to attack that party's credibility. Perhaps we ought to relax the rules relating to surprise, but I wonder if we don't invite people to call a witness simply for the purpose of attacking their credibility, rather than for the evidence that that person may offer.

4. I gather that the purpose of §6249(e) is to limit impeachment of a Defendant based on prior crimen falsi offenses. Presently such impeachment is allowed. Is this really what you want to do?

5. With respect to §6252(d), I have always found it difficult to know whether or not to allow parties other than the party calling the hostile witness to ask leading questions of the

witness. I finally decided that they could do so, because they didn't call the witness. Now I think you are saying that the court should decide whether a witness is "adverse" to the party doing the questioning. I don't think that is necessary, and it will no doubt be productive of disputation during the course of the trial. Perhaps it would be better simply to say that all other parties other than the one calling the hostile witness may also ask leading questions, as long as the questioning is limited to matters covered on the witness's direct testimony.

6. With respect to §6254, I have always required that if a witness was going to be impeached on the basis of a prior inconsistent statement, they be shown the statement ahead of time and given the opportunity to read it and say whether or not they recall making that statement on the prior occasion. If they don't, then I require the party wishing to use the statement to authenticate it before using it. The reason I do this is so that a party cannot bring in some sort of manufactured or off the wall statement, and get its contents in front of the jury under the guise of impeachment. I'm not sure whether this what you are requiring or not, but your formulation makes me a little nervous.

7. As to §6261, would it be wise to put something in there to the effect that lay witnesses can give opinions regarding intoxication.

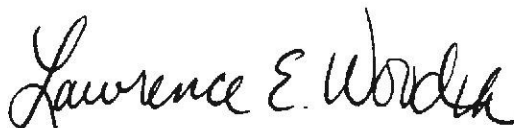
8. With respect to §6263(b), I am not sure what you mean by "admissibility of basis".

9. With respect to §6264, I've got to admit that I just don't like the idea of allowing an expert to give an opinion on the ultimate issues. The next we will have will be witnesses coming in and saying this person or that person was negligent, and that's really a matter for the jury.

10. With respect to §6273(24), I presume that you mean that the oral deposition can be used in the form of a written transcript or a tape record. The point is that you don't want to encourage counsel to blurt out their own versions of what happened at the oral deposition.

Other than that, I think the new Act is a substantial step forward. Thank you for the opportunity to comment.

Very truly yours,



Lawrence E. Wood

LEW/lh

JUDGE'S CHAMBERS
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BRENDAN J. VANSTON, PRESIDENT JUDGE

June 28, 1993

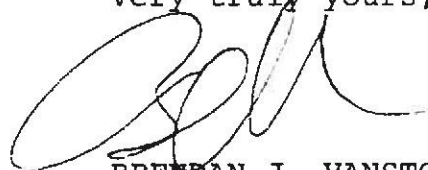
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Very truly yours,



BRENDAN J. VANSTON
President Judge

BJV:dnc

RECEIVED JUN 30 1993



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RECEIVED JUL 30 1993

July 27, 1993

FROM THE OFFICE OF

The Honorable Thomas R. Caltagirone
Chairman House Judiciary Committee
House of Representatives
House Post Office Box 210
Room 106 South Office Building
Harrisburg, Pennsylvania 17120

Dear Tom:

I very much appreciate your advising us and asking the Berks County Bar Association to comment upon the proposed new Pennsylvania Evidence Code. We have referred this matter to the Common Pleas Court Rules Committee for comment and review. We will respond to your request as soon as possible. Thank you for including us in the process and if we can be of help in any capacity to you please do not hesitate to contact us.

I would also like to thank you for your interest in the Bar Association and your supply of Pennsylvania manuals, etc. It is nice to know that we can have a working relationship with the Chairman of the House Judiciary Committee and I certainly look forward to working with you in the future.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom", written over a horizontal line.

Thomas M. Golden
President, Berks County Bar
Association

TMG/mjd

James D. Mc attending 9-8-93



JUDGES' CHAMBERS
FIFTY-NINTH JUDICIAL DISTRICT
OF PENNSYLVANIA
P. O. Box 416
RIDGWAY, PA 15853

GORDON J. DAGHIR
PRESIDENT JUDGE

PAUL B. GREINER
SENIOR JUDGE

July 1, 1993

The Honorable Thomas R. Caltagirone, Chairman
House Judiciary Committee
House Post Office Box 210 - Room 106
South Office Building
Harrisburg, PA 17120-0028

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Thank you for your letter of June 22, 1993, in which was enclosed House Representative's Democratic Committee bill analysis and Senate Bill No. 176, all dealing with the proposed adoption by this Commonwealth of a code of evidence.

I am most pleased that your committee has notified myself, and I am sure the other common pleas judges, in the manner that you have on this very important proposed legislation.

I am also most pleased that Professor Ohlbaum is having input along with the Bar, trial lawyers, district attorneys, public defenders, and particularly the Conference of State Trial Judges.

I am definitely one of the "gray beards" who finds himself quite happy with our existing rules and statutes dealing with evidence.


I have been dismayed that the law schools have seen fit to address the Federal Rules of Evidence as, perhaps, opposed to Pennsylvania's existing system and as a member of the Pennsylvania Board of Law Examiners and a trial judge who has a continuous need for a law clerk, and who also has many younger lawyers appearing before him, I can apprehend the favorable idea of the adoption of a code of evidence along the lines of the Federal rules.

Indeed, I see a need for the PCE even though I personally believe, perhaps because of my "gray beard," that the more desirable system is as it presently exists.

I most certainly concede that better minds than mine are involved in the development, promulgation, and adoption of a Pennsylvania Code of Evidence and I heartily endorse it.

I am also satisfied that better minds than mine will be having continuous input into all of this and I have no doubt but what my views will be entirely consistent with that position of the Pennsylvania Conference of State Trial Judges on this issue.

I assure you that whatever is finally adopted will have my total and unqualified support.



Gordon J. Dagher
President Judge

grk

Chambers of
Jeffrey K. Sprecher
Judge
23rd Judicial District
Berks County Services Center, Fourth Floor
633 Court Street
Reading, Pennsylvania 19601

JUL 1 1993

June 29, 1993

Honorable Thomas R. Caltagirone
State Representative
127 South Tenth Street
Reading, PA 19602

Dear Representative Caltagirone:

I received with great interest the copy of Senate Bill No. 176 concerning a Pennsylvania Code of Evidence.

I strongly support the adoption in Pennsylvania of a statutory code of evidence. A code of evidence will make it easier for practitioners and judges to reach a quick solution to many evidentiary questions. At present, too much time is spent searching for case law which is often contradictory and difficult to interpret. A Pennsylvania Code of Evidence will facilitate predictability and continuity between the various courts of the Commonwealth.

I also support the use of the Federal Code as a basis for a Pennsylvania Code of Evidence. The Federal Code of Evidence has proven very successful and popular in both the Federal courts and the many states which have adopted it. Use of the Federal model will place Pennsylvania in the growing community of jurisdictions whose shared experience advances the logical development of the law of evidence.

Thank you very much for providing me with a copy of the Senate Bill and the opportunity to express my feelings on this topic.

Very truly yours,

Jeffrey K. Sprecher
Jeffrey K. Sprecher

JKS/bz



JOHN A. BOZZA, JUDGE

JUDGES' CHAMBERS

SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

ERIE, PA. 16501

June 9, 1993

89831
JUN 14 1993

Representative Thomas J. Scrimenti
Commonwealth of Pennsylvania
House of Representatives
25B East Wing
P. O. Box 96
Harrisburg, PA 17120

Re: Senate Bill 176
(Pennsylvania Code of Evidence)

Dear *Tom* Mr. Scrimenti:

It is my understanding that Senate Bill 176 is presently before the House of Representatives, awaiting consideration. The passage of the proposed "Pennsylvania Code of Evidence" as embodied in S.B. No. 176 would be of great assistance to the administration of justice. The proposed Bill, for the most part, tracks the Federal Rules of Evidence which have been in place now for many years and represent the most contemporary approach to the introduction of evidence in judicial proceedings.

At the present time, Pennsylvania has no code of evidence and it is an extremely challenging task for litigators and judiciary alike to discern with accuracy and consistency the present state of law concerning a particular evidentiary matter. Placing all evidentiary rules into a single code and revising those rules to reflect current standards as embodied in the Federal rules is a major step toward the more efficient conduct of trials, hearings, and other judicial proceedings.

Therefore, I urge you to vote to adopt S.B. No. 176 and encourage you to take the steps necessary to expedite its consideration by the House and ultimate passage. I would be happy to answer any questions you have concerning this matter and I appreciate very much your attention to this important matter and any assistance you may be able to provide.

Very truly yours,

John A. Bozza
John A. Bozza, Judge

dkp

cc: Honorable Gene D. Cohen

thanks for your help!