CHAPTER 1

Introduction

1.1 Overview
1.2 Historical Development of the Rules of Evidence
1.3 Ethics and Advocacy
1.4 Reasons for the Rules of Evidence
1.5 What Is Evidence?
1.6 Role of the Paralegal
1.7 Direct and Circumstantial Evidence
1.8 How Is Evidence Obtained?
1.9 Interviewing Witnesses
1.10 Discovery Devices
1.11 Evidentiary Procedures
1.12 In Summary

End of Chapter Review Questions
Applications

1.1 Overview

This textbook is intended to assist nonlawyers, specifically those studying to become paralegals or legal assistants, with the study of the law of evidence. It will focus on the practical application of the rules of evidence, referring primarily to the Federal Rules of Evidence, but also noting variations in the states. The authors have attempted to concentrate on, and provide insight into, those areas specifically relevant to paralegal practice.

Like all law, the rules of evidence gain far more meaning when viewed as how they work in "real life." Therefore, this book will not only explore the meaning of the rules, but will provide examples, hypothetical situations, and applications. Since the ability to under-

stand the law corrdates to the ability to extract the law from cases, examples of case law are provided thrOughOUL Th.ls book will ask the student to think and to solve problems with the information learned. We hope this will advance the student's analytical skills while gaining insight into this exciting area of substantive law.

1.2 Historical Development of the Rules of Evidence

Until the 1970s, almost all rules of evidence were made by the courts through case law. There was wide resistance to unifo:::.:. evidentiary rules being imposed on the judiciary in the early ~ of. ':::::z=:x::c= jurisprudence. The absence of evidence codes allowed a great deal of flexibility for the courts, but inconsistencies abounded. In July 1975, Congress adopted the first set of Federal Rules of Evidence, and these rules have been revised and refined since then. They are found in Title 28 of the United States Code. Most states ~ now adopted their own evidence codes, using the Federal Rules as a guideline. These are found in the various state statutes.

Since this is a textbook geared to practical application, there will not be a substantial amount of time spent providing historical analysis of the rules of evidence. However, there are times when such historical information is critical to understanding and applying the evidentiary rules as they exist today. Rules of evidence evolved from and have been interpreted by the courts, and many cases include terms that can only be understood in terms of their historical context.

FRE 401, P. 222

On a practical note, when the authors refer to speci&:_ rules in the Federal Rules of Evidence, they use the citation FRE ~- the rule number. For example, rdevaney is defined in FRE 40 1. Notes in the margin will appear each time a Federal Rule is cited, and the notes will refer the reader to the page in the appendix where the full :a:: of the rule can be found.

Although the authors consistently refer to the rules "#~ the "FRE" notation, the courts do not necessarily use the same format. In the cases cited, you may see citations to the federal rules using the notation Fed.R.Evid., or F. R. Evid. Each of these notations rei:r: to the Federal Rules of Evidence.

Advisory Committee
Committee that proposed first FRE.

Throughout the book, the authors refer to the Advisory Committee and the Advisory Notes. The Advisory Commirree w"s first appointed in 1965 by Chief Justice Warren, to draft Rnk:s o-[.b:-dence for the federal courts. The Advisory Committee p:u:xxsed rules and circulated comments along with the propOsed rules. ~ comments are referred to as the Advisory Notes. The Adviso.ry ~res provide historical context and explanation of the rules, and thq are discussional in nature. They are quoted throughout this book.

Advisory Notes
Comments accompanying the FRE proposals.

1.3 Ethics and Advocacy

We caution that if the authors appear irreverent at times with regard to the rules and their application, this is never our intention. It is important to keep in mind that the paralegal or legal assistant works in an adversarial system of justice, where each side attempts to present evidence in the manner most favorable to its client. Our approach for the paralegal, then, is to explore all avenues and to consider all desirable evidence as potentially admissible and all undesirable evidence as potentially excludable, while keeping in mind the constraints in the rules.

Admissible
Evidence allowed to be considered by rhe trier-of-fact.

Excludable
Evidence that may not be presented to the trier–of-faer.

Although at times it may appear "unethical" when the authors talk about getting evidence in through the "back door," when it is inadmissible through the "front door," keep in mind that ultimately it is the court's decision whether to admit it. The job of the paralegal is to assist in considering all the options and to aggressively pursue avenues that help the attorney zealously represent the client.

There is one ethical consideration, however, that underlies everything presented in this textbook. It is never the job of the legal assistant or the attorney to fabricate evidence or to change a witness's testimony. It is unethical and unlawful to ask witnesses to lie, or to corrupt or destroy evidence. It is the paralegal's job to help present the evidence as it exists, in the manner most favorable to the client. It is within this context that the authors present the material.

1.4 Reasons for the Rules of Evidence

When a child gets into trouble, usually a parent or caregiver is called on to ascertain truth and assign blame. Generally this "trial" process involves the child's giving his or her "side of the story" and the truth-seeker/parent's deciding a reasonable outcome. In assessing the situation. the parent generally considers some or all of the following factors:

1. Statements made by the child;
2. Statements made by others;
3. The circumstances surrounding the event;
4. Physical things at the scene;
5. Parental insight into the nature and past conduct of the child involved.

The margin of error in this system is wide. As children, we probably all experienced being blamed for conduct of which we were innocent because of negative conduct in our own past, or the unsubstantiated accusations of a hostile adversary (usually our obnoxious kid brother or sister). The parent has been diverted from the truth in

such circumstances and has made a mistake in assigning blame. Luckily, the consequences of such mistakes are minimal and tolerable because they are generally made in an atmosphere of love, by people whose overall interests are the same as the child's.

In a judicial system serving an entire society, where the consequences of incorrect outcomes can be catastrophic to individuals and groups of individuals, we must depend on a more formalized and reliable method of assessing truth. All sides need to be able to present their "side of the story," but to avoid injustice, the system must constrain the presentation of information in such a way as to both promote truth and avoid mistakes to the greatest extent possible. Rules of evidence exist to safeguard, as much as possible, against injustice. The Federal Rules of Evidence, by their own statement of purpose and construction, seek to secure "fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law ... to the end that the truth may be ascertained." FRE 102.

FRE 102, P. 219

Since the way in which all sides present the "truth" to the trier-of-fact is with the use of evidence, the remainder of this chapter will focus on

- What constitutes "evidence";
- What forms it may take; and
- What should be considered when preparing a "trial strategy."

1.5 What Is Evidence?

Before studying the rules as to the admissibility or excludability of evidence, it is important to understand in general what constitutes evidence in a court of law. This may be easier to understand by first looking at what does not qualify as evidence:

- Statements, arguments, questions, or objections made by the attorneys are not evidence.
- Information obtained outside the courtroom by the judge or jurors, which is not part of the proceedings, is not evidence.
- Testimony that the court specifically strikes or excludes is not evidence.
- Testimony or exhibits admitted for limited purposes by the court are not evidence for anything other than the limited purpose for which the court admitted them.
- Jury instructions given to the jury by the judge are not evidence.

Testimony
The statements of a witness made under oath in court, or in a deposition.

Jury Instruction
Statement by the court to the jury instructing the jury on the law.

Now that we have identified what evidence is not, we will undertake the more difficult task of identifying what evidence is.

Evidence comes in four different types, each of which is explained in more detail below. Evidence includes

1. Witness testimony, given under oath.
2. Exhibits that are tangible items admitted at the proceeding.
3. Stipulated facts to which the lawyers have agreed.
4. Judicial notice of facts that are common knowledge.

Exhibits
Physical items that ate shown to the trier-of-face.

Tangible
Something physically material, i.e., something you can touch.

Stipulated
Facts that ate agreed to.

Judicial Notice
Faers the court admits ate true without evidence, because mey ate common knowledge.

FRE 201, 221

1. Witnesses come in two varieties: They can be either lay witnesses or experts. A lay witness is one who testifies as to matters of which the witness has personal knowledge. An expert witness gives testimony about conclusions he has drawn based on his expertise.
2. Exhibits come in three varieties.
   a. Exhibits can consist of "real evidence," such as an actual gun or a torn piece of clothing.
   b. Exhibits can be demonstrative. Demonstrative exhibits are created evidence, as opposed to "real" evidence. Examples of demonstrative evidence include photographs, charts, and diagrams. An intersection where an accident occurred cannot be brought into the courtroom as real evidence. However, photographs of that intersection may be admitted, which provide the trier-of-fact with a visualization of the accident scene.
   c. Exhibits can be documentary. Business records, diaries, letters, and court transcripts are just a few of the types of documents that may be used as exhibits in the course of a proceeding. Documentary exhibits are something of a hybrid in that they contain testimony, bur they are "tangible" and available for the trier-of-fact to scrutinize.
3. Stipulated facts are evidence. When there is no factual dispute about certain information, the proper way for the information to be offered is by stipulation. Stipulations are entered into between parties through counsel and are reviewed by the court. Stipulated facts are provided in writing or are read to the trier-of-fact.
4. Judicial notice is taken of those items the court believes are "common knowledge." Such information is presented to the trier-of-fact, without any prooE The court does not take judicial notice often, but it does occur. The following example illusttates the use of judicial notice.

Demonstrative Exhibits
Exhibits that illustrate or demonstrate something, but are not the "real" thing.

Documentary Evidence
Evidence in the form of documents.

Sharkey met some foreign students at a bar. The students seemed fascinated with the Chicago Cubs. Sharkey encouraged them to place bets with him on an "upcoming" Cubs National League playoff game between the Cubs and the Yankees. Sharkey gave the students great odds, allowing them to win if the Cubs lost to the Yankees by less than 10 runs. The students agreed to make the bet and Sharkey told them he would hold the money until payoff time.

In the case against Sharkey for fraud, the court took judicial notice that the Chicago Cubs play for the National League, while the Yankees play for the American League. This allowed the inference to be drawn that Sharkey knew there was no upcoming game at the time he took the bet money, since teams from the different leagues do not play against each other during the National League playoffs.

Judicial notice is a method used only rarely. "Common knowledge" that may be noticed judicially includes only that information generally known by society as a whole, and not merely information commonly known by members of the judicial system. For the most part, to introduce evidence, there must be either a qualified witness to talk about it, a way to display it, or a stipulation from the opposing counsel agreeing to it. These types of evidence will be discussed throughout this textbook..

1.6 Role of the Paralegal

How to present evidence in coun can involve some of the most creative aspects of trial work,, and will be the subject of further discussion throughout this book..

As a paralegal, you may be called on to help determine which evidence is needed before a case goes to trial. You may be asked to assist in gathering the evidence, researching its admissibility, and developing arguments for admissibility. Likewise, you may be asked to assist in assessing the opposition's evidence, researching its excludability, and developing arguments for excludability.

In a later section of this chapter we will discuss gathering evidence by interviewing witnesses. Paralegals are otten asked to assist in preparing a "trial book," which is an orderly presentation of the witnesses, testimony, and exhibits in a case. Paralegals are otten also asked to assist in the preparation of pretrial evidentiary motions and memoranda in support of such motions.

Memoranda
Brief legal essays that provide [he coun with facts, law, and argument as to why the legal point being argued should be decided in the favor of the parry on whose behalf the memorandum is written.

Understanding the rules of evidence allows a paralegal to prepare for trial knowledgeably and to accumulate evidence that is admissible. If evidence is not admitted, then lawyers cannot argue the evidel1Ce before the jury. Juries are instructed by the judge that the arguments of the attorneys are not evidence, but that the lawyers are permitted to make reasonable inferences from the evidence. Obviously, if the evidence is not admitted at trial,, it cannot be used to draw reasonable inferences by the attorneys during closing argument.

Cases are otten won or lost during preparation. A paralegal competent in assisting with trial preparation can be an invaluable asset. Throughout this textbook, issues specifically relevant to paralegal work in trial preparation will be addressed and discussed.

1.7 Direct and Circumstantial Evidence

Direct Evidence
Evidence that directly pnm:s a point. .

Circumstantial Evidence
Evidence from which inferences call be drawn \o prove a point.

FRE 401 and 402, P~2~

Evidence can be either direct or circumstantial. Direct evidence includes such things as eyewitness tesrimony or the confession of a criminal.. An admi~sion of liability of a defendant i, direCt cyidence in a civil suit.

Much more common than direct evidence is circumstantial evidel1Ce. Circumstantial evidence is indirect and is used to prove facts by implic3.tion or inference. It may surprise the fe'adf't 1o FInn out that pursuant to the Federal Rules of Evidence regarding relevancy (FRE 401 and 402), both types of evidence are fully admissible. Mosr of us have seen "television lavvyers" argue as a "defense" that the evidence against their client is purely "circumstantial.". Such a comment, however, is without legal consequence because either circumstantial or direct evidence can support a verdict of guilty. This makes sense from a policy perspective, since rarely do torts or crimes occur in plain view, and even less frequently are criminals or tortfeasors caught in the middle of commission of the unlawful 3.ct.

Law school professors love the following example regarding persuasive circumstantial evidence.

A mother walks into her kitchen and notices that her freshly baked blueberry pie is missing. Shortly thereafter she sees her young son, whose face and hands are covered with blueberry stains, and who is complaining of a stomach ache. When asked what happened to the pie, the child claims ignorance as to its disappearance.

The evidence that the child stole the pie is purely circumstantial. Nobody saw him take the pie. He didn't admit taking the pie. Nonetheless, the evidence is persuasive of the child's guilt. Such evidence can be equally persuasive in a court of law.

Circumstantial evidence is extremely important as a tool for building a case. Any given item of evidence may have altern3.tive meanings. For example, when you leave a building, and there are puddles outside on the ground, you mighr assume that it has recently rained. However, alternative explanations are possible. A hydrant may have burst. A fire truck m3.Yhave extinguished a fire. Still, the puddles are circumstantial evidence of rain. If you also perceive people walking with wet umbrellas, raincoats, and boots, you have used several indicia of circumstantial evidence to build a stronger case from which yOll can draw reasonable inferences that it has rained.

In a jUty trial,, the judge will generally instruct the jury that no greater weight should be applied to direct evidence than to circumstantial evidence. As noted above, circumstantial evidence is often all there is.

1.8 How Is Evidence Obtained?

Often, much of the evidence in a case is acquired prior to the file ever reaching the paralegal. For learning purposes, however, let us assume that we are "at the scene" of an incident to see what evidence is available from the beginning of a case, through its evolution. Consider the following situation:

You are driving westbound behind several cars, and the traffic light is green in your direction. Suddenly you observe that a car has entered the intersection from the north heading south, and that this car has hit a westbound car in front of you, broadside. You hear the loud screech of tires and the sounds of the collision. You and the other drivers barely avoid the accident. It looks as if there are injured people in both of the vehicles. You dial 911 on your car phone to call for help and wait for police and emergency medical vehicles to arrive. You observe a large bus and several other vehicles caught in the traffic jam around the accident. Police and emergency vehicles arrive and clear up the scene. Just prior to leaving, you overhear an officer comment that he believes the driver of the southbound car is inebriated.

What is the evidence that you need to acquire to prove that the driver of the southbound car was driving under the influence of alcohol? Who are potential witnesses at this accident scene? Obviously, under this hypothetical situation, you are an eyewitness to the accident; however, at this scene there are many other possible witnesses who can offer valuable testimony. They include the bus riders, pedestrians, and other drivers who may have observed part or all of the accident. The police officers and paramedics who arrived at the scene will also be able to give valuable testimony. Although they were not eyewitnesses to the accident, they have observed the positions of the vehicles and the condition of the suspect, and they may have spoken with the suspect and perhaps gotten statements from the other injured parties.

Tangible evidence from the accident scene may include the accident debris, the road, and the cars.

As the suspect and other injured victims of the accident are taken away in ambulances and brought to the hospital, more evidence is developed. The admitting clerk, emergency room personnel, doctors, nurses, aides, and laboratory technicians all have the opportunity to observe the suspect and other injured parties, to hear their statements, and to acquire tangible evidence. Tangible evidence of the suspect's clothing, purse or pocket contents, and other items can be relevant. A cocktail napkin from a local tavern left in a pants pocket may take the investigator to a place where the suspect was

drinking just prior to the accident. Perhaps there are medications in the suspect's purse that might provide information about her condition at the time of the accident.

Tangible evidence created at the hospital is also very important. Blood samples taken, other medical tests given, and medical reports can all provide valuable information.

Evidence can be created from other evidence. Demonstrative evidence such as photographs, diagrams, and reconstructions is essentially "created" evidence, which is governed under the rules. Experts can "reconstruct" an accident from the evidence acquired at the accident scene.

Experts can give testimony based on their special knowledge in a variety of areas. Blood analysts can ascertain alcohol or other intoxicants in the blood of a suspect at the time of the accident. Chemists can examine various components in the blood, such as over-the-counter medications and prescription medications, and can testify as to their interactions. Police experts can testify as to symptoms of driving under the influence of an intoxicant.

The purpose for obtaining and developing all this evidence, and trying to ensure its admissibility, is fundamental. The jury was not an eyewitness to the event. The only way the trier-of-fact can determine what occurred is through the evidence admitted. Therefore, the more complete picture you can paint, the more likely a just outcome will result.

Keep in mind that the evidence discussed in this section relates to the hypothetical situation presented. Each case is unique, and the types of evidence you gather will depend on the individual characteristics of the case on which you are working.

1.9 Interviewing Witnesses

It should be clear by now that witnesses, both eyewitnesses and experts, will play an enormous role in the outcome of any case. Properly conducting witness interviews is probably one of the most important jobs that paralegals do. Frequently, you are given a case file with the names of witnesses and their phone numbers. Your job then is to ascertain all the relevant information that the witnesses know and can testify about.

Throughout this textbook, as the rules of evidence are explored, the authors will suggest certain questions or types of questions that should be asked of witnesses during interviews to obtain the necessary information for trial. For purposes of this introduction, there are some general guidelines to good interviewing practice that are worthy of mention.

First, a good interviewer listens more than he or she speaks. Ask open-ended questions and then wait while the witness responds.

Sometimes you may think the witness is going into irrelevant territory, but it is never a good idea to cut him or her off too quickly. You may find that the witness has something to offer in a way you had not anticipated. For example, early in her career one of the authors had the opportunity to interview a police officer who was to testify regarding a DUI (driving under the influence of an intoxicant) case. Through casual discussion, the interviewer discovered that the officer was not only an expert on the symptoms of drunk driving because of his police work, but had worked as a bartender for sixteen years prior to becoming a police officer. This information was valuable in giving credibility to the officer's testimony and allowing him greater breadth to testify as an expert from more than one perspective on the subject of alcohol impairment.

Another caveat to the interviewer is to avoid asking leading questions. If you ask, "You beat your wife, don't you?" you will, at best, be given either a "yes" or "no" answer. You may end up with a witness who refuses to answer altogether. Open-ended questions (which are required during direct examination) allow the interviewee to answer in his or her own words rather than in yours.

Listen closely to the answers. Although you don't want to interrupt your witness, you may note areas that you wish to examine more thoroughly after the interviewee is finished answering a question. If you listen closely, each answer may give rise to more questions.

Finally, avoid arguing with the witness. An already hostile witness won't be made less hostile if the interviewer becomes argumentative. More disturbingly, a friendly witness may become hostile if the interviewer argues with her. If the witness does not answer a question directly, try to ask the question a different way, or come back to it later in the interview. It is possible to be persistent without being argumentative.

Ultimately, you depend on your witnesses, and the information they provide you, to win your case.

1.10 Discovery Devices

Discovery
The process by which parties in a lawsuit obtain information and evidence from others, including their opponents.

Acquiring evidence requires knowledge of the **discovery** rules found in statutes relating to civil and criminal procedure. Students using this textbook may not have yet studied the discovery rules; so, although we will not cover discovery procedure in general, which is beyond the scope of this textbook, it is important to list some of the frequently used discovery methods. When discovery terms appear in the cases, you will have a reference here to use for context. In very brief summary, then, the following tools are available to the litigant to compel others to provide evidence or information that may yield evidence:

- Subpoena: A witness can be compelled by subpoena to appear in court and testify.
- Subpoena duces tecum: A witness can be compelled to appear in court and to bring specified documents along.
- Deposition: A witness can be compelled to answer questions in an extrajudicial (our-of-court) proceeding called a deposition, where the witness testifies under penalty of perjury, and the witness's testimony is recorded.
- Orders of examination: A party can be compelled to come to court and provide evidence about the amount and location of the party's assets. The court can use its power to find a party **in contempt of court** for failing to appear or provide the requested information.

Contempt of Court
A finding by a judge that a petson has disobeyed a court order, and is consequently subject to fine and imprisonment.

- Request to produce documents: A party may be requested to produce documents, and to make copies available to the opposing party.
- Disclosure requests: The defendant in a criminal proceeding may request the government to disclose records, exhibits, and certain other items intended for use by the government as evidence at trial, and the government may request disclosure of evidentiary documents and certain other evidentiary items from the defendant.
- Motions to compel production of documents: When a party refuses to produce documents, the court can order the party to do so, and can use contempt proceedings to enforce its will.
- Requests for admissions and denials: A party can be asked to admit or deny certain facts. Facts admitted are considered stipulated facts.
- Interrogatories: Parties may be sent written questions to which they must provide written answers.

Other types of discovery proceedings are available to give access to information and evidence, but are of generally less importance than those listed above.

1.11 Evidentiary Procedures

In the Wizard of Oz, Dorothy asks the scarecrow, "What would you do with a brain, if you had one?" The paralegal might well ask the attorney, "What would you do with an evidentiary problem, if you had one?" Evidentiary procedures provide the answer to that question. Once you have gathered the evidence in a given case, there are a variety of procedures that deal with how to admit, exclude, or limit the use of that evidence in the courtroom. Some of those procedures are described here.

Objection
In court, counsel objects to testimony believed to be inadmissible, and counsel states the basis fot the objection.

Proffered
Evidence tendeted or offered.

Motions in Limine
Morions made before trial on the admissibility or excludability of specific evidence.

Suppress
Keep our of court..

Limiting Instruction
An instruction given by the judge to the jury to restrict their use of a specific item of evidence.

The objection is the most well-known method by which a party asks the court to exclude certain evidence. An objection is made when testimony or other evidence is offered that is inadmissible on one or more legal grounds. The bases for objections will be discussed throughout this textbook. . A party loses his or her right to appeal if an objection is not made when the "bad" evidence is proffered.

Pretrial motions called motions in limine are made to secure rulings on the admissibility or excludability of evidence, before the trial begins. A motion in limine is based on the expectation that the opposing party will offer specific objectionable evidence during the trial. A motion in limine is therefore like an objection made in advance of the evidence actually being proffered. Motions in limine may include motions to suppress evidence for constitutional reasons, or to exclude highly prejudicial evidence. Paralegals often draft motions in limine or responses to motions in limine.

Once the trial begins, the paralegal may be asked to research issues regarding jury limiting instructions. Jury instructions, generally, are directions given by the judge to the jury informing the jury of the law it must use when reaching its conclusions. Limiting instructions are given by the judge to limit the jury's use of evidence to the specific purpose for which the evidence was admitted. Limiting instructions are necessary because there are times when evidence is admitted for one purpose, but would be excluded if offered for another purpose. Consider the following example:

Jacko is charged with fraud. He has two prior criminal convictions for the crime of perjury. He testifies in the fraud trial that he did not defraud the alleged victim. His two prior perjury convictions are admissible to show that Jacko is a liar, but not to show that he committed the fraud with which he is currendy charged. (Reasons for this will become clear as you study the material in this textbook.)

Under the circumstances in the above example, the defense may request that the judge give the jury a limiting instruction, ordering the jury to consider the evidence of the prior perjury convictions only for the purpose of assessing Jacko's truthfulness, and not as evidence of whether he committed the charged crime. You may well assume that such a limiting instruction might not have much effect on the manner in which a jury might use the evidence of the prior convictions. Limiting instructions are not necessarily effective; however, they are considered to be better than nothing, and sometimes they are all that is available to mitigate the effects of admissible, prejudicial testimony.

Mitigate
Reduce or lessen.

1.12 In Summary

- Whether a litigant has been able to acquire "good" evidence has an enormous impact on the outcome of a case.
- The potential admissibility or excludability of evidence is a problem to be ultimately reconciled by the coun and should not be allowed to act as a barrier to your investigation.
- A good advocate zealously attempts to admit evidence that *is* favorable and to exclude evidence that is unfavorable; however, it is unethical and unlawful to attempt to change evidence to win a case.
- Evidence consists of witness testimony, exhibits, stipulated facts, and facts of which the court takes judicial notice.
- The federal and state rules of evidence have, for the most parr, replaced the common law rules from which they were derived. However, the common law provides a context in which to understand the rules as they are currently drafted. Not all state rules follow the federal rules.
- Direct evidence and circumstantial evidence bear equal imporranee in the law. Direct evidence is evidence that directly proves a point, such as a confession, or an eyewitness report. Circumsrantial evidence is evidence from which inferences can be drawn.
- Paralegals are important contributors in the litigation field. Paralegals assist in gathering evidence, preparing for trial,, drafting motions, writing memoranda in support of or in opposition to motions, and in other important ways.
- Evidence is freguenrly obtained by interviewing witnesses or by using discovery devices.
- Objections, motions in limine, and jury limiting instructions are the most often used evidentiary procedures when evidence is problematical.

End of Chapter Review Questions

1. What are the limitations of being a good advocate, when gathering evidence?
2. What are the three main types of evidence?
3. What types of informarion do not constitute evidence?
4. What types of things might a paralegal be asked to do in regard to evidence?
5. What is direct evidence?
6. What is circumstantial evidence?
7. How is evidence obtained?
8. What evidentiary procedures are available when evidentiary problems arise?

Applications

Consider the following hypothetical situation:

Veronica went out drinking with a male friend. After several rounds of drinks, her friend left and Veronica walked to her own vehicle, intending to drive home. At her vehicle, a man named Stu, who had been conversing with Veronica and her friend at the bar, assaulted Veronica and then dragged her into his vehicle against her will. Veronica was punched several times in the face, and she bled profusely all over Stu's car, all over herself, and allover Stu. Stu threatened to rape Veronica; however, eventually Veronica was able to persuade Stu to release her, and she was not raped.

Based on this hypothetical, answer the following questions.

1. What tangible "real" evidence would be important to gather?
2. What witnesses might you attempt to interview?
3. Assume you are working on the side of the victim (Veronica) in this case. What demonstrative evidence might you use to assist in presenting your evidence?
4. What direct evidence is available to prove Veronica's story?
5. What circumstantial evidence is available to prove Veronica's story?
6. What experts might you call for this case, and for what reason?
7. What questions would you ask the male friend with whom Veronica was drinking prior to the incident?