Types of Evidence

- All evidence can be placed into two basic categories:
  - Direct Evidence
    - This relies directly on the sense or perception of witnesses actually testifying or being presented. For example:
      - Eyewitness testimony
      - Videotape or audio tape
  - Circumstantial Evidence
    - This is evidence or circumstances that require the trier of fact to **infer** that something happened. For example:
      - Fingerprints at the crime scene
      - Blood and DNA evidence
    - Note that circumstantial evidence is not only admissible, it can often be very strong - often even stronger than direct evidence!

Forms of Evidence

- Testimonial Evidence
  - Can generally only be testified to by someone with first hand information, unless one of the hearsay exceptions apply.
- Physical Evidence
  - E.g., fingerprints, blood, the murder weapon, etc.
- Documentary Evidence
  - Including writings, photographs, etc.
- Demonstrative Evidence
  - Charts and sketches; not really evidence in and of themselves - just visual aids for the trier of fact

Exculpatory Evidence

- This means evidence that tends to show the innocence of the accused in a criminal case.
- In Brady v. Maryland, the Supreme Court ruled that all such exculpatory evidence must be turned over to a criminal defendant if known to the prosecutor.
- Effect of failure to hand over Brady material:
  - Can lead to a reversal of a conviction and even dismissal of a charge.
  - This applies even if the failure to turn over the material was inadvertent.
  - However, the defense must show that if the material were turned over, there is a reasonable likelihood that the result would have been different.

Judicial Notice and Stipulations

- A judge can take "judicial notice" of a fact if the fact is
  - Generally known through sources of high reliability; and
  - Not subject to reasonable dispute
- Once judicial notice is taken, the facts so noticed are presumed to have been conclusively proven.

- A "stipulation" occurs when both parties agree to a fact or circumstances, thereby rendering no need to spend time and effort to prove it.
- Once stipulated, the facts stipulated to are considered conclusively proven.

Gathering Evidence

- Evidence can be gathered prior to trial by the parties or through Discovery.
- Some discovery Devices include:
  - Depositions
  - Interrogatories
  - Physical and Mental Examinations
  - Requests to admit (stipulate)
  - Document Production
- A party can force another party or witness to produce evidence such as:
  - Subpoena to testify
  - Subpoena duces tecum - subpoena to produce documents
  - Motion to compel production of a discovery request

Introducing Evidence at trial

To introduce evidence other than testimony at trial, several steps need to be taken:

- The evidence needs to be prepared and marked as an exhibit. When it is introduced it will be done so through its exhibit number.
  - E.g., "Please take a look at Plaintiff's Exhibit 12."
- The evidence must be identified and authenticated by a witness on the stand (unless stipulated to).
  - E.g., "Yes, I recognize that knife. I saw it in his kitchen on the night of the murder."
- Chain of Custody must be established so that it could not have been contaminated between the time of the incident and now
  - (this can be a boring phase of any trial)

Laying a Foundation

- For any evidence to be admitted it first has to be established that it is what it purports to be.
  - For testimonial evidence, this means that witness explaining how s/he came to know what he or she is about to testify to.
  - For documents or photographs, this means having the witness identify and/or authenticate the object through testimony.
  - For an assumption to be part of a question, the assumption needs to be based on something already in evidence. For example:
    - "After you had your 6th vodka, were you drunk?"
    - "Objection! No foundation! Nothing in the record indicates that the witness had 6 vodkas."

Laying a Foundation Part 2

- The Federal Rules specifically discuss various ways to lay a foundation for evidence:
  - Eyewitness testimony
    - E.g., "I saw it happen."
  - Non-expert handwriting comparisons
  - Expert handwriting comparison
  - Distinctive characteristics
    - E.g., "It was the purple one with orange polka dots."
  - Voice identification
  - Telephone conversations
  - Public records
  - Automatic authentication by reason of being an "ancient document"
  - Commonly used process or system

Original Documents ("Best Evidence") Rule

- This rule states that where there is a dispute over the authenticity of a document, only an original will be admitted.
- This rules applies to:
  - Written documents
  - Movies and videotapes
  - Audio recordings
  - Photographs, Etc.
- What the rule disallows mainly is handwritten copies or a non-witness paraphrasing the original.

Exceptions to the Original Documents Rule

- A machine made duplicate like a photocopy is allowed unless there is a legitimate question regarding its authenticity.
- Non-originals will also be allowed where:
  - The original has been lost or destroyed or cannot be obtained.
    - But remember, a proper foundation must be laid to admit the copy.
  - Very long documents may be summarized in chart form or a written summary.
    - In such a case, the other party needs to be given a copy of the original and the summary to make sure it matches up.

The "Record"

- In any case, the "record" is the sum of all of the pleadings, trial transcripts, exhibits, etc.
- Getting a point "on the record" is very important, because it:
  - Allows the jurors to review it during deliberations; and
  - Allows the appellate court to know that it was discussed during the trial.
- Examples:
  - "Let the record show that the witness identified the defendant."
  - "I understand my objection was overruled but I want it noted for the record."