

EMPIRE COLLEGE OF LAW
EVIDENCE CLASS
SPRING 2025
Prof. V. Dewan

FINAL EXAMINATION

INSTRUCTIONS

This examination is timed for 3 hours. It is closed-book. You are not permitted to use study aides, codes, case law, or online research of any kind.

ESSAY INSTRUCTIONS:

Read each essay carefully before beginning work. If the essay calls for the California Evidence Code (CEC) analysis, do not include a Federal Rules of Evidence (FRE) analysis; and vice versa.

If an essay prompt does not indicate whether the issues should be analyzed under CEC or FRE, assume you are to analyze both.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

I AM FAR MORE INTERESTED IN SEEING YOUR FULL ISSUE-SPOTTING THAN ESSAY ELOQUENCE. Therefore, you should make sure your thought process for issue-spotting and pros/cons list on each issue you spot is complete before you move on to writing the essay.

Essay Question 1

UNITED STATES v. MICHAEL MARTINEZ

Michael Martinez is on trial for conspiracy to distribute controlled substances and money laundering. The prosecution's case centers around Michael's alleged role as a mid-level distributor in a drug trafficking operation. The following evidence has emerged at trial:

1. During a search of Michael's apartment, police recovered a phone containing text messages between Michael and a contact named "Tony." Messages refer to "product," "deliveries," and "clean money." One message reads, "Got the stuff from Carlos. Quality is good but price went up." Another reads, "Need to move clean \$ through the shop."
2. The prosecution seeks to call Sarah, Michael's former girlfriend. She wants to testify that she once overheard Michael on the phone saying, "The lawyers said we're fine as long as we keep the auto shop books clean and use the code words." She was in the apartment, but Michael didn't know she was present.
3. The prosecution wants to introduce testimony from a confidential informant that Michael said, "My lawyer is helping me figure out how to hide the money." The government also wants to introduce records showing Michael met with his attorney multiple times before arrest.
4. The defense plans to call Daniel, Michael's former employer, to testify that Michael was always "honest and trustworthy" while employed at a bank. The prosecution intends to cross-examine Daniel about Michael's termination from a prior job for suspected inventory theft.
5. The prosecution seeks to introduce evidence that Michael was arrested eight years ago for drug possession, though the charges were dismissed after a suppression motion.

Analyze the admissibility of each item under the Federal Rules of Evidence. Identify potential objections and arguments for both sides, and explain how the court should rule on each evidentiary issue.

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Essay Question 2

RODRIGUEZ v. PACIFICA MEDICAL CENTER

Maria Rodriguez is suing Pacifica Medical Center (PMC) and Dr. Leo for medical malpractice, alleging Dr. Leo caused nerve damage during her spinal surgery, resulting in partial paralysis. The following items are at issue:

1. The day after surgery, Dr. Leo emailed PMC's Risk Management Department: "Maria's surgery was more complicated than expected. I followed proper procedures, but there's a chance some nerve damage occurred during the cauterization to stop bleeding."
2. Maria has text messages between her and Nurse Julia, who was present for the surgery. When asked if Dr. Leo made a mistake, Julia replied, "Let's just say I've seen him struggle with bleeding before. You should talk to a lawyer." Julia later denied remembering the message.
3. Maria's lawyer wants to admit PMC's surgical protocol manual, which states: "In cases of unexpected bleeding, the surgeon must immediately call for assistance before proceeding near nerve clusters." Dr. Leo admits he didn't follow this but says he couldn't find the manual. The manual was produced in discovery but not authenticated by a custodian.
4. Maria's expert, Dr. Nina (a neurosurgeon from San Francisco), reviewed Maria's records and imaging. She concluded the nerve damage was likely caused by excessive cauterization and said standard care required calling for help. She's never worked at PMC or seen Dr. Leo operate.
5. PMC wants to admit evidence that five years ago Maria filed a workers' compensation claim stating she had permanent nerve damage and numbness in the same leg. Dr. Nina did not know about this claim.

Analyze the admissibility of each item under the California Evidence Code. Identify objections and arguments for both sides, and explain how the court should rule on each.

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Essay Question 3

PEOPLE v. ALEX & BEN

Alex and Ben are jointly charged with the first-degree murder of Victor, who was shot during an alleged drug deal. The prosecution alleges Alex was the shooter and Ben the getaway driver. Both plead not guilty.

The following issues arise:

1. While in jail, Alex allegedly told cellmate Troy: "I didn't mean to kill him. It was supposed to be a robbery, but he reached for something, and I panicked." In exchange for testifying, Troy received reduced charges. The defense moves to exclude his testimony.
2. Alex, knowing that Eduardo was a licensed attorney also in custody, asked for legal advice. Their conversation was recorded and includes Eduardo suggesting Alex claim self-defense. The prosecution wants to admit the recording.
3. After arrest, Ben told police, "Alex said it was just a weed sale. I didn't know about a robbery or gun. When I heard the shot, I panicked and drove off." The prosecution wants to introduce this at trial. Alex objects, citing his right to confrontation.
4. The defense wants to call witnesses to testify about Victor's reputation for violence and prior threats he made to Alex over drug territory. They also want to introduce evidence that Victor had methamphetamine in his system at death and call an expert to testify about its behavioral effects.
5. During jury selection, a prospective juror said an unknown man approached her and told her to "make sure Alex walks." She told two others before reporting it. The prosecution wants to strike the entire jury panel.

Analyze the admissibility of each item under the California Evidence Code. Address objections and arguments from both sides. Explain how the court should rule on each.

EVIDENCE
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ANSWER KEY

PROF. DEWAN

ESSAY 1

UNITED STATES v. MARTINEZ

POINT DISTRIBUTION (100 POINTS TOTAL)

I. TEXT MESSAGES (Item 1) - 18 POINTS

A. Authentication (FRE 901) - 6 POINTS

1. **Issue:** Whether the text messages can be properly authenticated
2. **Analysis:**
 - Authentication requires sufficient evidence that the item is what the proponent claims
 - Prosecution must establish that Martinez authored the texts
 - Authentication methods:
 - Distinctive characteristics (FRE 901(b)(4)): Content, internal patterns, use of slang/code words
 - Forensic testimony about phone ownership, account information
 - Circumstantial evidence connecting Martinez to "Big T"
 - Defense arguments: Possibility of someone else using Martinez's phone, lack of direct evidence of authorship

B. Relevance (FRE 401, 402, 403) - 5 POINTS

1. **Issue:** Whether the text messages are relevant and not unfairly prejudicial
2. **Analysis:**
 - Relevance standard (FRE 401): Evidence is relevant if it has any tendency to make a fact of consequence more or less probable
 - Text messages discussing "product," "deliveries," and "payments" are relevant to conspiracy charges
 - Reference to "clean \$" and "too much cash" relevant to money laundering charges
 - FRE 403 balancing: Probative value vs. unfair prejudice, confusion, or misleading the jury
 - Defense could argue terms are ambiguous and prejudicial
 - Prosecution will argue high probative value to core elements of charges

C. Hearsay (FRE 801, 803, 804) - 7 POINTS

1. **Issue:** Whether the text messages constitute inadmissible hearsay
2. **Analysis:**
 - Messages sent by Martinez are party-opponent statements (FRE 801(d)(2)(A)) - not hearsay
 - Messages from "Big T" could be offered for:
 - Non-hearsay purpose (effect on listener/context for Martinez's responses)
 - As co-conspirator statements (FRE 801(d)(2)(E)) if prosecution establishes:
 - Existence of conspiracy
 - "Big T" and Martinez were members
 - Statements made during and in furtherance of conspiracy (Bourjaily v. United States)
 - Defense will challenge foundation for co-conspirator exception

II. DETECTIVE WILSON'S TESTIMONY (Item 2) - 16 POINTS

A. Multiple Hearsay (FRE 805) - 10 POINTS

1. **Issue:** Whether Detective Wilson can testify about what Carlos said Thomas told him
2. **Analysis:**
 - Multiple hearsay layers: Wilson → Carlos → Thomas → Content about Martinez
 - Each layer requires its own hearsay exception (FRE 805)
 - Layer 1 - Thomas to Carlos: Potential exceptions:
 - Co-conspirator statement (FRE 801(d)(2)(E)) if foundation established
 - Statement against interest (FRE 804(b)(3)) if Thomas is unavailable (which he is)
 - Layer 2 - Carlos to Wilson: Potential exceptions:
 - Statement against interest (FRE 804(b)(3)) if Carlos is unavailable (which he is)
 - However, Confrontation Clause concerns (Crawford v. Washington)
 - Not a business record or public record exception
 - Most likely outcome: Testimony excluded as hearsay within hearsay without sufficient exceptions

B. Confrontation Clause - 4 POINTS - 6 POINTS

1. **Issue:** Whether admission violates Martinez's Sixth Amendment confrontation rights
2. **Analysis:**
 - Crawford v. Washington established right to confront testimonial statements
 - Statements to law enforcement during investigation are testimonial
 - Both Carlos and Thomas unavailable for cross-examination
 - No prior opportunity for cross-examination existed
 - Likely conclusion: Testimony violates Confrontation Clause

III. VALERIE CHEN'S TESTIMONY (Item 3) - 17 POINTS

A. Personal Knowledge (FRE 602) - 5 POINTS

1. **Issue:** Whether Chen has sufficient personal knowledge to testify
2. **Analysis:**
 - FRE 602 requires witness to have personal knowledge of the matter
 - Chen personally heard Martinez's side of the conversation
 - Chen lacks personal knowledge of:
 - Who was on the other end of the call
 - What the other person said
 - Whether "the lawyers" actually said what Martinez claimed
 - Chen can testify to what she personally observed and heard

B. Hearsay (FRE 801, 803) - 6 POINTS

1. **Issue:** Whether Martinez's statement on the phone constitutes hearsay
2. **Analysis:**
 - Statement by Martinez is admissible as statement of party-opponent (FRE 801(d)(2)(A))
 - Statement about what "the lawyers said" is hearsay within hearsay
 - First layer: Martinez's statement - party admission (FRE 801(d)(2)(A))
 - Second layer: What "lawyers said" - requires separate exception
 - Could argue state of mind exception (FRE 803(3)) if offered to show Martinez's understanding, not truth of lawyers' advice
 - Prosecution would argue statement shows consciousness of guilt

C. Attorney-Client Privilege - 6 POINTS

1. **Issue:** Whether the statement regarding "what lawyers said" is protected
2. **Analysis:**
 - Elements of attorney-client privilege:
 - Communication between client and attorney
 - Made in confidence
 - For purpose of obtaining legal advice
 - Voluntary disclosure to third party typically waives privilege
 - Crime-fraud exception may apply if communications were to further criminal activity
 - Martinez didn't know Chen was listening, so no intentional waiver
 - Court would need to determine if crime-fraud exception applies

IV. EVIDENCE OF ATTORNEY MEETINGS AND INFORMANT TESTIMONY (Item 4) - 14 POINTS

A. Attorney-Client Privilege - 5 POINTS

1. **Issue:** Whether the fact of meetings with attorney is privileged
2. **Analysis:**
 - Generally, fact that meetings occurred is not privileged (only content)
 - Dates and times of meetings typically not covered by privilege
 - However, pattern of meetings could reveal strategy and potentially be protected
 - Prosecution can argue meetings are relevant to timeline of criminal activity

B. Hearsay and Informant Testimony - 4 POINTS

1. **Issue:** Whether informant can testify about Martinez's statement regarding his lawyer
2. **Analysis:**
 - Martinez's statement to informant is party admission (FRE 801(d)(2)(A))
 - No hearsay issue for this specific statement
 - Statement reveals potential crime-fraud exception to privilege

C. Crime-Fraud Exception - 5 POINTS

1. **Issue:** Whether communications with attorney lose privilege protection
2. **Analysis:**
 - Communications made to further crime/fraud not protected
 - Government must make prima facie showing that:
 - Client was committing/intending to commit crime/fraud
 - Attorney-client communications were in furtherance of that crime/fraud
 - Martinez's statement to informant could establish prima facie case
 - Court would likely conduct in camera review before ruling

V. CHARACTER EVIDENCE FROM FORMER EMPLOYER (Item 5) - 13 POINTS

A. Character Evidence - Defense Witness (FRE 404, 405) - 5 POINTS

1. **Issue:** Admissibility of testimony about Martinez's honesty and trustworthiness
2. **Analysis:**
 - FRE 404(a)(2)(A) allows defendant to offer evidence of pertinent trait
 - Honesty/trustworthiness relevant to charges involving deception
 - Only admissible in form of reputation or opinion testimony (FRE 405(a))
 - Cannot include specific instances of conduct on direct examination
 - Defense can introduce this evidence

B. Cross-Examination on Character (FRE 405(a)) - 5 POINTS

1. **Issue:** Whether prosecution can cross-examine about prior termination
2. **Analysis:**
 - FRE 405(a) allows inquiry into relevant specific instances on cross-examination
 - Must have good faith basis for questions about prior termination
 - Questions about termination for suspected theft directly relevant to honesty trait
 - No charges filed is irrelevant to admissibility of questions (though affects weight)
 - Court should allow cross-examination on this topic

C. Prior Bad Acts (FRE 404(b)) - 3 POINTS

1. **Issue:** Whether termination evidence is improper propensity evidence
2. **Analysis:**
 - Not being offered as 404(b) evidence but as 405(a) cross-examination
 - Even under 404(b) analysis:
 - Could be relevant to motive, intent, plan, or absence of mistake
 - 10-year timeframe affects probative value
 - 403 balancing would still apply

VI. BUSINESS PARTNER'S STATEMENT (Item 6) - 12 POINTS

A. Hearsay (FRE 801, 803, 804) - 5 POINTS

1. **Issue:** Whether Torres's statement to police is admissible hearsay
2. **Analysis:**
 - Statement is classic hearsay - out-of-court statement offered for truth
 - Potential exceptions:
 - Statement against interest (FRE 804(b)(3))
 - Torres is unavailable (refusing to testify)
 - Statement exposed Torres to criminal liability (being involved in scheme)
 - Corroborating circumstances must indicate trustworthiness
 - Not a present sense impression, excited utterance, or business record

B. Confrontation Clause

1. **Issue:** Whether admission violates Sixth Amendment confrontation rights
2. **Analysis:**
 - Statement to police during investigation is testimonial under Crawford
 - Torres is unavailable but Martinez has no prior opportunity to cross-examine
 - Violates Confrontation Clause regardless of hearsay exception
 - Statement should be excluded

C. Co-Conspirator Statement (FRE 801(d)(2)(E)) - 3 POINTS

1. **Issue:** Whether statement qualifies as co-conspirator statement
2. **Analysis:**
 - Statement made to police after arrest, not during conspiracy
 - Not made "in furtherance of conspiracy"
 - Does not qualify under this exemption

VII. PRIOR ARREST EVIDENCE (Item 7) - 10 POINTS

A. Prior Bad Acts (FRE 404(b)) - 7 POINTS

1. **Issue:** Whether evidence of prior drug arrest is admissible
2. **Analysis:**
 - FRE 404(b)(1) prohibits evidence of crimes/wrongs to prove character/propensity
 - Potential non-propensity purposes (FRE 404(b)(2)):
 - Knowledge of drug trade
 - Intent to distribute
 - Absence of mistake
 - FRE 403 balancing required:
 - Probative value diminished by:
 - 8-year time gap
 - Charges dismissed
 - Different circumstances (possession vs. distribution conspiracy)
 - Substantial prejudice risk
 - Prosecution must provide notice and specify purpose

B. Effect of Dismissed Charges - 3 POINTS

1. **Issue:** Impact of dismissal on admissibility
2. **Analysis:**
 - Dismissal after suppression doesn't bar 404(b) use per se
 - Affects probative value in 403 balancing
 - Court may require prosecution to establish by preponderance that conduct occurred
 - Most courts would likely exclude given dismissal and time gap

VIII. OVERALL STRATEGIC CONSIDERATIONS - EXTRA CREDIT (0-5 POINTS)

A. Prosecution Strategy

1. Focus on text messages as strongest evidence
2. Argue crime-fraud exception for attorney-related communications
3. Use 404(b) arguments strategically for prior incidents

B. Defense Strategy

1. Challenge multiple hearsay and Confrontation Clause issues
2. Raise attorney-client privilege objections
3. Emphasize 403 balancing for prejudicial evidence
4. Present character evidence through former employer

ESSAY 2

ANSWER KEY

RODRIGUEZ v. PACIFICA MEDICAL CENTER

POINT DISTRIBUTION (100 POINTS TOTAL)

I. DR. CHEN'S EMAIL TO RISK MANAGEMENT (Item 1) - 15 POINTS

A. Party Admission (Cal. Evid. Code § 1220) - 5 POINTS

1. **Issue:** Whether Dr. Chen's email constitutes an admissible party admission
2. **Analysis:**
 - Dr. Chen is a party to the lawsuit
 - Section 1220 provides that evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party
 - The email contains Dr. Chen's own statements regarding the surgery
 - Admissible against Dr. Chen as a party admission

B. Authorized Admission (Cal. Evid. Code § 1222) - 5 POINTS

1. **Issue:** Whether the email is admissible against PMC as an authorized admission
2. **Analysis:**
 - Section 1222 allows statements by authorized representatives to be admitted against the principal
 - Dr. Chen was likely authorized to communicate with Risk Management about surgical outcomes
 - Communication was made during employment relationship concerning a matter within the scope of employment
 - Email should be admissible against PMC as well as Dr. Chen

C. Business Records Exception (Cal. Evid. Code § 1271) - 5 POINTS

1. **Issue:** Whether the email qualifies as a business record
2. **Analysis:**
 - Elements for business records exception:
 - Writing made in the regular course of business
 - Made at or near the time of the event
 - Source of information and method/time of preparation indicate trustworthiness
 - Risk management communications likely part of regular hospital procedures
 - Made contemporaneously (day after surgery)
 - PMC may challenge that risk management communications are not "regular course of business"

- Even if not a business record, still admissible as party/authorized admission?

II. NURSE KIM'S TEXT MESSAGES (Item 2) - 15 POINTS

A. Authentication (Cal. Evid. Code §§ 1400-1421) - 5 POINTS

1. **Issue:** Whether the text messages can be properly authenticated
2. **Analysis:**
 - Section 1401 requires authentication of writings before they are admitted
 - Authentication methods under Section 1410-1421 include:
 - Testimony of a witness with knowledge (§ 1413)
 - Distinctive characteristics and circumstances (§ 1421)
 - Rodriguez can authenticate her side of conversation
 - Nurse Kim's denial of recollection creates authentication challenge
 - Court would likely require additional evidence linking phone to Kim (e.g., phone records)

B. Party Admission by Agent (Cal. Evid. Code § 1222) - 5 POINTS

1. **Issue:** Whether Nurse Kim's statements are admissible against PMC
2. **Analysis:**
 - As PMC employee, Nurse Kim's statements may be admissible as authorized admissions
 - Must establish statement was:
 - Made during employment relationship
 - Concerning a matter within scope of employment
 - Defense would argue she was not authorized to discuss surgical outcomes with patients
 - Courts typically construe scope of employment broadly in medical contexts

C. Adoptive Admission (Cal. Evid. Code § 1221) - 5 POINTS

1. **Issue:** Whether Nurse Kim's statements implicate Dr. Chen through adoptive admission
2. **Analysis:**
 - Section 1221 allows statements that a party "has by words or other conduct manifested his adoption or his belief in its truth"
 - No evidence Dr. Chen heard or responded to Kim's statement
 - Without showing Dr. Chen knew of and failed to deny the statement, not admissible as adoptive admission against him
 - Court would likely reject admission against Dr. Chen on this theory

III. SURGICAL PROTOCOL MANUAL (Item 3) - 15 POINTS

A. Authentication (Cal. Evid. Code §§ 1400-1401) - 6 POINTS

1. **Issue:** Whether the manual can be properly authenticated

2. Analysis:

- Manual lacks custodian certification
- Section 1401 requires authentication before admission
- Possible authentication methods:
 - PMC produced it during discovery (judicial admission)
 - Dr. Chen acknowledged existence (though claimed couldn't locate it)
 - Under Section 1414, a writing may be authenticated by evidence that it was produced from custody of the adverse party
- Court would likely find sufficient authentication through production in discovery

B. Relevance and Standard of Care (Cal. Evid. Code §§ 210, 351) - 5 POINTS

1. **Issue:** Whether the manual is relevant to establish standard of care

2. **Analysis:**

- Section 210 defines relevant evidence as having "any tendency in reason to prove or disprove any disputed fact"
- Internal protocols are relevant to establish standard of care in medical malpractice
- Shows hospital's expected procedures for the specific situation that occurred
- Dr. Chen's admission he didn't follow protocol is highly relevant
- Defense may argue protocol is merely guideline, not legal standard of care

C. Subsequent Remedial Measures (Cal. Evid. Code § 1151) - 4 POINTS

1. **Issue:** Whether protocol could be excluded as subsequent remedial measure

2. **Analysis:**

- Section 1151 excludes evidence of subsequent measures that would have made injury less likely
- Only applies if protocol was implemented after similar incidents
- No evidence protocol was created after a prior incident
- Protocol appears to predate Rodriguez's surgery
- Section 1151 likely doesn't apply; manual should be admissible

IV. DR. MEHTA'S EXPERT TESTIMONY (Item 4) - 15 POINTS

A. Expert Qualification (Cal. Evid. Code §§ 720-721) - 5 POINTS

1. **Issue:** Whether Dr. Mehta is qualified as expert witness

2. **Analysis:**

- Section 720(a): Person is qualified to testify as expert if they have "special knowledge, skill, experience, training, or education"
- Dr. Mehta is a neurosurgeon with experience in similar procedures (500+ surgeries)
- Not having worked at PMC or observed Dr. Chen is not disqualifying
- Court would likely find Dr. Mehta qualified as expert

B. Basis of Expert Opinion (Cal. Evid. Code § 801) - 5 POINTS

1. **Issue:** Whether Dr. Mehta's opinions have proper foundation
2. **Analysis:**
 - Section 801 allows expert opinion based on matter:
 - Perceived by or personally known to the witness or
 - Made known to the witness at or before the hearing
 - Dr. Mehta reviewed medical records, surgical notes, and imaging
 - This is typical and proper foundation for medical expert testimony
 - Medical experts routinely base opinions on review of records rather than direct observation

C. Ultimate Issue Opinion (Cal. Evid. Code § 805) - 5 POINTS

1. **Issue:** Whether Dr. Mehta can testify about standard of care
2. **Analysis:**
 - Section 805 allows testimony on ultimate issue
 - Standard of care and breach are ultimate issues in medical malpractice
 - Dr. Mehta can properly testify that standard of care required calling for assistance
 - Defense may cross-examine regarding lack of familiarity with PMC's specific practices
 - Testimony should be admitted, with weight determined by jury

V. CARLOS RODRIGUEZ'S TESTIMONY (Item 5) - 10 POINTS

A. Hearsay Analysis (Cal. Evid. Code §§ 1200-1204) - 6 POINTS

1. **Issue:** Whether Carlos's testimony about overheard statements is admissible hearsay
2. **Analysis:**
 - Classic hearsay: out-of-court statement offered for truth of matter asserted
 - Potential exceptions:
 - Authorized admission (§ 1222) if staff members were PMC employees
 - But Carlos cannot identify speakers, creating foundation problem
 - Statement of party's agent requires proof of employment relationship
 - Without establishing speakers were PMC employees, exception doesn't apply
 - Cannot authenticate or establish foundation for statement

B. Multiple Hearsay (Cal. Evid. Code § 1201) - 4 POINTS

1. **Issue:** Whether statement contains multiple levels of hearsay
2. **Analysis:**
 - Section 1201 requires each hearsay statement to fall within exception
 - Statement references "third time Dr. Chen has had this complication this month"
 - This implies speaker had knowledge of other cases
 - Would need separate hearsay exception for this embedded statement

- Most likely inadmissible due to multiple hearsay issues and lack of foundation

VI. JUROR MISCONDUCT (Item 6) - 15 POINTS

A. Independent Research (Cal. Code Civ. Proc. § 611) - 6 POINTS

1. **Issue:** Whether Juror #8's internet research constitutes misconduct
2. **Analysis:**
 - Jurors are instructed not to conduct independent research (CACI 100)
 - Researching medical terminology online constitutes outside research
 - Violates prohibition against considering information outside evidence presented
 - Courts uniformly consider independent research to be juror misconduct
 - Creates presumption of prejudice (People v. Holloway)

B. Sharing Personal Experience (Cal. Evid. Code § 1150) - 4 POINTS

1. **Issue:** Whether sharing sister's surgery experience constitutes misconduct
2. **Analysis:**
 - Section 1150 governs admissibility of evidence concerning jury deliberations
 - Jurors may rely on common knowledge and experience
 - Personal experience with similar medical procedures goes beyond common knowledge
 - Particularly problematic when shared with other jurors
 - Courts distinguish between general life experience (permissible) and specific similar experiences (potentially improper)

C. Judicial Remedies - 5 POINTS

1. **Issue:** How court should address the juror misconduct
2. **Analysis:**
 - Court must investigate scope of misconduct through juror examination (Evid. Code § 765)
 - Options include:
 - Curative instruction if misconduct is minor
 - Removal of Juror #8 (Cal. Code Civ. Proc. § 233)
 - Mistrial if prejudice cannot be cured by other means
 - Court should conduct questioning of all jurors exposed to information
 - Determine extent information was shared and potential influence
 - If information was technical/educational rather than prejudicial, removal and curative instruction may be sufficient
 - If prejudicial information about success rates was shared, mistrial may be necessary

VII. PRIOR WORKERS' COMPENSATION CLAIM (Item 7) - 10 POINTS

A. Relevance and Impeachment (Cal. Evid. Code §§ 210, 780) - 5 POINTS

1. **Issue:** Whether prior workers' compensation claim is admissible
2. **Analysis:**
 - Highly relevant to causation of current injuries
 - Section 780 allows evidence of prior inconsistent statements to attack credibility
 - Prior claim of "permanent nerve damage" in same leg directly relevant to damages
 - May show pre-existing condition rather than surgical negligence
 - Court would likely admit for both impeachment and as substantive evidence

B. Effect on Expert Opinion (Cal. Evid. Code § 721) - 5 POINTS

1. **Issue:** Impact on Dr. Mehta's expert testimony
2. **Analysis:**
 - Section 721 allows cross-examination of expert about matter upon which opinion is based
 - Dr. Mehta's opinion on causation was formed without knowledge of prior injury
 - Defense can cross-examine Dr. Mehta about how this information would affect opinion
 - May significantly undermine expert's causation opinion
 - Court would allow cross-examination on this point
 - May also create basis for defense expert testimony on alternative causation

VIII. DR. CHEN'S RECORDED STATEMENT (Item 8) - 5 POINTS

A. Party Admission (Cal. Evid. Code § 1220) - 2 POINTS

1. **Issue:** Whether recording is admissible as party admission
2. **Analysis:**
 - Statement by Dr. Chen is admissible as party admission against him
 - Content is relevant to standard of care and possible systemic issues at PMC
 - Context objection goes to weight, not admissibility
 - Admissible under Section 1220 despite objection

B. Privacy and Recording Consent (Cal. Penal Code § 632) - 3 POINTS

1. **Issue:** Whether recording was legally obtained
2. **Analysis:**
 - California is a two-party consent state for recordings (Penal Code § 632)
 - Recording private conversation without all-party consent is illegal
 - Section 632(d) makes recordings obtained in violation inadmissible
 - Exception exists for communications where parties had no reasonable expectation of privacy

- Dinner party setting may not constitute "confidential communication"
- Court would need to determine if Dr. Chen had reasonable expectation of privacy during dinner party conversation
- If no reasonable expectation of privacy, recording may be admissible despite lack of consent

ESSAY 3

ANSWER KEY

PEOPLE v. RAMIREZ & DIAZ

POINT DISTRIBUTION (100 POINTS TOTAL)

I. JAILHOUSE INFORMANT TESTIMONY (Item 1) - 12 POINTS

A. Reliability of Informant Testimony (Cal. Penal Code § 1111.5) - 5 POINTS

1. **Issue:** Whether Wilson's testimony is admissible under California's jailhouse informant rules
2. **Analysis:**
 - Penal Code § 1111.5 requires corroboration of testimony from in-custody informants
 - Court must consider:
 - Any benefits offered to the informant
 - Informant's criminal history, especially deception crimes
 - History of providing information to authorities
 - Whether informant has previously testified for benefits
 - Wilson received reduced charges in exchange for testimony
 - Wilson has three prior fraud convictions suggesting untrustworthiness
 - Prosecution needs corroborating evidence to satisfy § 1111.5
 - Defense will argue testimony is inherently unreliable and benefits create bias

B. Hearsay and Admissions (Cal. Evid. Code §§ 1200, 1220) - 4 POINTS

1. **Issue:** Whether Ramirez's alleged statement qualifies as admissible hearsay
2. **Analysis:**
 - Statement qualifies as party admission under § 1220
 - Admissions are exempted from the hearsay rule
 - No hearsay objection would be successful
 - Foundational requirement that Wilson actually heard the statement

C. Due Process Concerns - 3 POINTS

1. **Issue:** Constitutional concerns with informant testimony
2. **Analysis:**
 - Court should conduct reliability hearing outside jury presence
 - Consider totality of circumstances around how information was obtained
 - Deal for testimony creates significant incentive for fabrication
 - Court would likely admit with cautionary instruction to jury about reliability

II. ATTORNEY-CLIENT PRIVILEGE (Item 2) - 15 POINTS

A. Formation of Attorney-Client Relationship (Cal. Evid. Code § 950-955) - 5 POINTS

1. **Issue:** Whether attorney-client relationship existed between Ramirez and Vargas
2. **Analysis:**
 - Section 951 defines "client" as one who consults a lawyer for legal advice
 - Relationship formed when person consults lawyer with reasonable belief of attorney-client relationship
 - Ramirez knew Vargas was licensed attorney and sought legal advice
 - Fact that Vargas was in custody doesn't negate attorney-client relationship
 - Court would likely find relationship was established

B. Expectation of Privacy in Jail (Cal. Evid. Code § 952) - 5 POINTS

1. **Issue:** Whether there was reasonable expectation of privacy for jail conversations
2. **Analysis:**
 - Section 952 requires communication be made in confidence
 - Jail setting generally lacks expectation of privacy - notices typically warn of monitoring
 - In re Navarro held that jail inmates have reduced expectation of privacy
 - However, conversations with attorneys are typically given special protection
 - Burden on prosecution to show Ramirez was on notice that attorney conversations would be recorded
 - If no specific warning about attorney conversations being recorded, privilege may still apply

C. Crime-Fraud Exception (Cal. Evid. Code § 956) - 5 POINTS

1. **Issue:** Whether crime-fraud exception applies to conversations with Vargas
2. **Analysis:**
 - Section 956 creates exception for communications to enable or aid in criminal conduct
 - Advising client to fabricate self-defense claim could constitute subornation of perjury
 - Prosecution must make prima facie showing that:
 - Client was committing/intending to commit crime/fraud
 - Attorney-client communications were in furtherance of that crime/fraud
 - Standard requires reasonable cause to believe crime-fraud exception applies
 - Court would need to conduct in camera review of recordings
 - If Vargas was actively helping craft false testimony, exception likely applies
 - If merely discussing potential defenses, privilege likely holds

III. ARANDA-BRUTON ISSUE (Item 3) - 13 POINTS

A. Confrontation Clause and Bruton Doctrine - 5 POINTS

1. **Issue:** Whether admission of Diaz's statement violates Ramirez's confrontation rights
2. **Analysis:**
 - Bruton v. United States (and People v. Aranda) prohibit admission of co-defendant's confession that implicates non-confessing defendant in joint trial
 - Crawford v. Washington requires confrontation for testimonial statements
 - Diaz's statement directly implicates Ramirez as shooter and having planned robbery
 - If Diaz doesn't testify, Ramirez cannot cross-examine
 - Clear Aranda-Bruton violation if admitted in joint trial as is

B. Possible Remedies - 4 POINTS

1. **Issue:** How court should address the Aranda-Bruton problem
2. **Analysis:**
 - Options include:
 - Redaction of references to Ramirez (if possible without distortion)
 - Separate trials for the defendants
 - Exclusion of the statement entirely
 - Effective redaction must remove all references to Ramirez's existence
 - Gray v. Maryland prohibits obvious redactions that still indicate co-defendant
 - Court should assess whether effective redaction is possible
 - If not, severance of trials would be appropriate remedy

C. Admissibility Against Diaz - 4 POINTS

1. **Issue:** Whether statement is admissible against Diaz himself
2. **Analysis:**
 - Statement is Diaz's own admission (§ 1220)
 - Admissible as to Diaz's knowledge and intent
 - May qualify as declaration against penal interest (§ 1230)
 - No hearsay barrier to admission against Diaz himself
 - Court should give limiting instruction if used in joint trial with redaction

IV. WITNESS STATEMENTS & CONSISTENCY (Item 4) - 15 POINTS

A. Prior Inconsistent Statement (Cal. Evid. Code § 770, 1235) - 5 POINTS

1. **Issue:** Admissibility of Lopez's preliminary hearing testimony
2. **Analysis:**
 - Section 1235 allows prior inconsistent statements for impeachment and truth
 - Preliminary hearing testimony under oath differs materially from trial testimony
 - Section 770 requires witness opportunity to explain or deny inconsistency

- Inconsistency is clear: from "couldn't identify faces" to "100% certain"
- Defense can introduce preliminary hearing testimony as substantive evidence
- Court should allow impeachment with prior inconsistent statement

B. Prior Consistent Statement (Cal. Evid. Code § 791, 1236) - 5 POINTS

1. **Issue:** Admissibility of Lopez's statement to therapist
2. **Analysis:**
 - Section 1236 allows prior consistent statements if:
 - Statement is consistent with testimony, and
 - Offered in compliance with Section 791
 - Section 791 permits prior consistent statements when:
 - (a) Statement offered to rebut charge of recent fabrication or improper influence, or
 - (b) Statement made before alleged bias, motive to lie, or other improper motive arose
 - Statement to therapist was made before trial but after preliminary hearing
 - If defense alleges recent fabrication, statement may be admissible under 791(a)
 - Timing is critical - must have been made before alleged motive to fabricate

C. Hearsay Analysis of Therapist Statement - 5 POINTS

1. **Issue:** Whether statement to therapist falls under hearsay exception
2. **Analysis:**
 - Statement to therapist could potentially qualify under:
 - Statement of mental or physical state (§ 1250)
 - Statement for purposes of medical diagnosis/treatment (§ 1253)
 - However, identification of perpetrator not necessary for therapy
 - Extends beyond scope of mental state exception
 - Admissibility primarily depends on prior consistent statement analysis
 - Court should assess whether defense opened door through impeachment

V. CHARACTER AND PRIOR ACTS EVIDENCE (Item 5) - 15 POINTS

A. Prior Uncharged Acts (Cal. Evid. Code § 1101) - 5 POINTS

1. **Issue:** Admissibility of Ramirez's prior gun brandishing incident
2. **Analysis:**
 - Section 1101(a) generally prohibits character evidence to prove conduct
 - Section 1101(b) allows evidence of prior acts for non-character purposes:
 - Motive, opportunity, intent, preparation, plan, knowledge, identity, etc.
 - Prosecution will argue gun brandishing shows:
 - Knowledge of firearms
 - Intent to threaten or intimidate
 - Absence of mistake or accident
 - Defense will argue:

- Charges were dismissed
- Incident is too dissimilar to current charges
- More prejudicial than probative under § 352
- Court should conduct 352 balancing (probative value vs. prejudice)
- Three-year timeframe is relatively recent
- Court would likely admit with limiting instruction

B. Gang Evidence and Tattoos - 5 POINTS

1. **Issue:** Admissibility of "Death Before Dishonor" tattoo
2. **Analysis:**
 - Gang evidence generally admissible under § 1101(b) for motive or intent in appropriate cases
 - However, prosecution must establish:
 - The tattoo actually indicates gang membership
 - Gang membership is relevant to issues in case
 - Connection between motto and crime charged
 - Defense will argue:
 - Tattoo is common among non-gang members
 - Highly prejudicial with minimal probative value
 - Creates risk of guilt by association
 - People v. Albarran limits admission of gang evidence without sufficient nexus to crime
 - Court should require foundation linking tattoo to relevant case issues
 - Likely excluded unless prosecution can tie to motive for killing

C. Prior Convictions for Impeachment (Cal. Evid. Code § 788) - 5 POINTS

1. **Issue:** Admissibility of Diaz's prior misdemeanor conviction
2. **Analysis:**
 - Section 788 allows impeachment with prior felony convictions
 - Misdemeanors generally not admissible for impeachment
 - Exception: misdemeanors involving moral turpitude under People v. Wheeler
 - Receiving stolen property likely involves moral turpitude (dishonesty)
 - Court must conduct § 352 balancing:
 - Five years is relatively remote
 - Misdemeanor less probative than felony
 - Different nature than current charge
 - Only admissible if Diaz testifies
 - Court would likely admit with limiting instruction if Diaz testifies

VI. VICTIM CHARACTER EVIDENCE (Item 6) - 10 POINTS

A. Victim Propensity for Violence (Cal. Evid. Code § 1103) - 5 POINTS

1. **Issue:** Admissibility of evidence about Ortega's reputation for violence
2. **Analysis:**
 - Section 1103(a) creates exception to character evidence prohibition
 - Allows evidence of victim's violent character when relevant to self-defense claim
 - Reputation evidence is specifically permitted form of character evidence
 - Prior specific acts of violence also potentially admissible
 - Requires foundation that defendants knew of reputation/prior acts
 - Court would likely admit if defendants assert self-defense
 - Defense must first introduce at least some evidence supporting self-defense claim

B. Victim Toxicology and Expert Testimony (Cal. Evid. Code §§ 801-803) - 5 POINTS

1. **Issue:** Admissibility of methamphetamine evidence and expert testimony
2. **Analysis:**
 - Toxicology reports showing methamphetamine are relevant to victim's behavior
 - Expert testimony admissible under § 801 if:
 - Based on matter experts reasonably rely upon
 - Would assist trier of fact
 - Foundation required showing:
 - Expert qualified in effects of methamphetamine
 - Opinion based on proper data (toxicology levels)
 - Connection between drug levels and behavior
 - Court would likely admit toxicology evidence and expert testimony
 - Particularly relevant if defendants claim self-defense based on victim's behavior

VII. JURY TAMPERING (Item 7) - 10 POINTS

A. Prejudice to Jury Panel - 5 POINTS

1. **Issue:** Whether tampering incident requires dismissal of entire panel
2. **Analysis:**
 - Code of Civil Procedure § 223.5 and case law provide court discretion to ensure fair trial
 - Court must determine:
 - Extent of information shared among prospective jurors
 - Whether prejudice can be cured through voir dire
 - If remaining panel has been tainted beyond rehabilitation
 - Court should individually question all prospective jurors about:
 - Knowledge of incident
 - Impact on ability to be fair
 - Discussions with other jurors

- Courts generally reluctant to dismiss entire panel absent widespread contamination

B. Remedial Measures - 5 POINTS

1. **Issue:** Appropriate court response to tampering attempt
2. **Analysis:**
 - Options include:
 - Dismissal of affected jurors only
 - Additional peremptory challenges for prosecution
 - Extensive voir dire on potential bias
 - Complete restart of jury selection
 - Change of venue if incident receives publicity
 - Court should make record of investigation and findings
 - Criminal investigation of tampering incident separate from evidentiary ruling
 - Least drastic remedy sufficient to ensure fair trial is appropriate
 - Most likely outcome: dismissal of affected jurors, extensive voir dire of remaining panel

VIII. BODY CAMERA EVIDENCE (Item 8) - 10 POINTS

A. Authentication and Foundation (Cal. Evid. Code §§ 1401, 1553) - 3 POINTS

1. **Issue:** Authentication requirements for body camera footage
2. **Analysis:**
 - Section 1401 requires authentication of writings before admission
 - Section 1553 creates presumption of authenticity for computer/digital records
 - Officer can authenticate through testimony about:
 - Camera was functioning properly
 - Standard procedures for operation were followed
 - Chain of custody of digital footage
 - Court would likely find sufficient authentication by officer testimony

B. Hearsay Analysis of Statements on Video - 4 POINTS

1. **Issue:** Admissibility of statements captured on body camera
2. **Analysis:**
 - Lopez's statement "shooter wearing red hoodie" is hearsay if offered for truth
 - Potential exceptions:
 - Present sense impression (§ 1240) - statement describing event while perceiving it
 - Excited utterance (§ 1240) - statement made under stress of excitement
 - Prior inconsistent/consistent statement (§§ 1235, 1236) if Lopez testifies
 - Timing is critical - how soon after shooting was statement made?
 - If made while under stress of event, likely admissible as excited utterance
 - Officer's "gang hit" comment is irrelevant opinion lacking foundation

- Court should admit witness statement with proper foundation but exclude officer speculation

C. Relevance and Prejudice (Cal. Evid. Code §§ 210, 352) - 3 POINTS

1. **Issue:** Balancing probative value against prejudice
2. **Analysis:**
 - Section 210 defines relevant evidence as having tendency to prove/disprove disputed fact
 - Crime scene footage relevant to establish:
 - Condition of scene
 - Context of investigation
 - Contemporaneous witness statements
 - Officer's speculation about gang involvement highly prejudicial
 - Court should redact officer's speculative comments under § 352
 - Alternatively, admit with limiting instruction that officer's opinions are not evidence

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US v. Michael Martinez

I. Text Messages

Assuming that the police recovered Michael's phone and text messages lawfully, the Prosecution will face several evidentiary issues trying to admit these into evidence.

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D

First, the text messages themselves are hearsay. Hearsay is an out of court statement, offered to prove the truth of the matter asserted. These text messages were certainly not made in court, and thus satisfy the first hearsay requirement. In order to meet the second prong of hearsay, the statements must be offered for the truth of the matter asserted. To determine whether these are being offered for the truth of the matter asserted, there must be a nexus between the reason these text messages are being offered, and what the text messages state. Here, the Prosecution is most likely trying to use these text messages to show that Michael was indeed a mid-level distributor in a drug trafficking operation. Thus, these messages are offered to prove the truth of the matter asserted. However, the prosecution may try to argue that the messages are being admitted for another purpose and therefore do not constitute hearsay. If the Prosecution can assert a valid reason why they are not being asserted for the truth of the matter asserted, they may have a shot at getting them in, but it is unlikely.

Hearsay statements are generally inadmissible; however, they may be admitted via an exception to or exclusion from the hearsay rule. Here, the party opponent exception to the hearsay rule would apply. The party opponent exception allows hearsay statements to be admitted when they are offered against the party who said them. The facts do not specify whether these messages are from Michael, himself, or from the alleged "Tony." If they are Michael's texts then party opponent would apply.

+10

Statement Against Interest?

The second evidentiary issue the Prosecution must overcome to have these admitted is authenticity. Authenticity requires that the attorney show that these text messages are what they claim them to be, messages from Michael's phone. There are several ways that authenticity may be established, one of which is through a witness with personal knowledge. The prosecution could try and have "Tony" authenticate them, or they could be even bolder and try to get Michael to authenticate them, but that is probably unlikely. The Prosecution could subpoena Michael's phone records and text messages, then they would have to have an affidavit from the custodian of records who obtained them, or have the custodian of records testify at trial to their authenticity.

(scribble)

Even after establishing that the messages are Michael's, the Prosecution will have to overcome the additional hurdle that it was indeed Michael who sent these messages. The Defense could argue that someone else had possession of his phone during that period of time and the messages can't be attributed to Michael.

+10

If the Defense is unable to keep these messages out under hearsay or authenticity, then they should object under relevance. Evidence is relevant if it makes a fact of consequence more or less likely here. The Defense may argue that the messages referring to "product," "deliveries,"

and "clean money" are about an entirely different subject not about a drug deal. At that point then the messages would not be relevant to the case, and the Defense could keep them out that way.

If the relevancy objection doesn't work, the Defense should always try to KILL under FRE 403. FRE 403 allows for the exclusion of evidence when it's probative value is outweighed by one of the following factors: confusing the issues, undue delay, misleading the jury, unfairly prejudicial, needlessly cumulative and wasting time. The Defense could argue that these messages may mislead the jury into thinking that these are about a drug deal and would be unduly prejudicial, warranting exclusion under FRE 403.

The court will likely rule that under the stated facts the text messages without further authenticity or established foundation, are inadmissible.

II. Sarah's Testimony

The prosecution seeks to call Sarah, Michael's former girlfriend. In order for a lay witness to testify, they must have personal knowledge. Therefore, in order for Sarah to testify, the Prosecution must demonstrate that Sarah has personal knowledge of Michael's drug trafficking. The Defense should object to Sarah's lack of personal knowledge during motions in limine to exclude her testimony. The Prosecution would need to show how Sarah has personal knowledge. The Defense should inquire into how long ago they dated, did they end their relationship on bad terms, why is she testifying, etc.

Since Sarah is a **former** girlfriend, she may have a motive to lie about Michael's involvement to punish him for past relationship woes. The defense should inquire into Sarah's credibility as a witness during motions in limine and on cross-examination if she is permitted to testify.

Sarah seeks to testify that she once overheard Michael on the phone saying, "the lawyers said we're fine as long as we keep the auto shop books clean and use the code words." What Michael said would constitute hearsay. Hearsay, *supra*. The Prosecution will likely try to argue that this is a party opponent statement. Party opponent, *supra*. However, the issue is the fact that Sarah did not directly hear Michael make this statement, she overheard him. This means that Sarah wasn't actually present to hear the conversation, again another point for the defense to raise in motions in limine regarding her lack of personal knowledge. Thus, there is a huge reliability issue with this statement that is not yet accounted for and needs to be fleshed out during MIL for further determination.

Finally, the Defense should object under FRE 403. FRE 403, *supra*. Since, Sarah only overheard the call, she did not know the surrounding context of the call. The statement that she overheard and now wishes to testify to could have been taken entirely out of context. This would make it prejudicial to just introduce this snippet that clearly serves the Prosecution. If the judge sides with the Prosecution and permits Sarah to testify to this statement, then the Defense could seek to introduce the rest of the transcript of the call under rule of completeness to show the statement was taken out of context.

The court will likely rule that Sarah's testimony is inadmissible if she is not able to demonstrate that she has sufficient personal knowledge.

III. Confidential Informant/ Attorney Meetings

A. Confidential Informant

The Prosecution wants to introduce testimony from a confidential informant that Michael said, "My lawyer is helping me figure out how to hide the money." Hearsay, *supra*. This statement would constitute hearsay, and as such, must have an applicable exception to be admitted. The prosecution will again try to argue that this statement is admissible under the party opponent exception. +5

The facts do not state whether the confidential informant will be testifying at trial or not. If they are not testifying, this statement may be excluded under *Crawford* if the statement was testimonial because the defendant would not have the opportunity to cross examine the informant. Further, facts about the surrounding circumstances would be needed to determine whether Michael's statement was made in a testimonial setting. However, given the statement was made to a confidential informant, Michael wouldn't have known that he was being investigated and would fail to meet the testimonial prong of *Crawford*. +5

The court will likely rule that

B. Evidence that Michael Met With His Attorney Multiple Times Before The Arrest

- Relevance: the fact that Michael met with his attorney does not make it more or less probable that he was part of a conspiracy to distribute controlled substances or money laundering.
- If judge finds relevant, then move to exclude as unfairly prejudicial under FRE 403 to KILL because it makes him look like he was meeting with his lawyer for shady reasons.
- His meetings with his attorney would be covered under attorney/client privilege if they were for the purpose of securing legal advice and it wasn't just him hanging out with his lawyer. Lawyer has a moral/ethical obligation to report if he was assisting Michael with a crime. +10

The court will likely rule that

IV. Daniel - Michael's Former Employer

He plans to testify that Michael was always "honest and trustworthy." This would be a character witness. As DF, he is opening the door which would allow the Prosecution the opportunity to rebut this claim and introduce other character evidence that shows Michael is not honest or trustworthy. Since the Defense is introducing this witness, he would be allowed to testify. +5

-Cross examination re: termination from prior job. Allowed to ask about specific instances of behavior on cross examination, so the prosecution would be able to ask this. The Defense should muster a relevancy objection, but it will likely be overruled since they opened the door to Michael's character.

The court will likely rule that Daniel is permitted to testify since the Defense is opening the door.

V. Prior Conviction: Drug Theft

The prosecution seeks to introduce evidence that Michael was arrested 8 years ago for drug possession. Since the charge was for drug possession, the judge will likely find that these are relevant. +5

For prior convictions, FRE doesn't have the opening to object under FRE 402 like CEC does so his past charges will likely be admitted.

Why isn't this prejudicial?

Since the charges were dismissed, his attorney should definitely bring that to the jury's attention. The Defense should also ask for a jury instruction to remind them that this conviction can't be the basis for finding him at fault here in this case.

2)

Rodriguez v. Pacifica Medical Center

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I. Dr. Leo's email to PMC Risk Management Department

Following the surgery, Maria's doctor, Dr. Leo emailed PMC's Risk Management Department: "Maria's surgery was more complicated than expected. I followed proper procedures, but there's a chance some nerve damage occurred during the cauterization to stop bleeding."

Hearsay is an out of court statement, offered to prove the truth of the matter asserted. This email was not made in court, and thus satisfy the first hearsay requirement. In order to meet the second prong of hearsay, the statements must be offered for the truth of the matter asserted. To determine whether these are being offered for the truth of the matter asserted, there must be a nexus between the reason these text messages are being offered, and what the text messages state. Here, Maria is most likely trying to introduce this email to show that Dr. Leo made a mistake, and knew about it. Thus, this email is offered to prove the truth of the matter asserted. However, Maria may try to argue that the messages are being admitted for another purpose and therefore do not constitute hearsay. For example, Maria might argue that this email is being offered to show that he contacted the Risk Management department; however, this will likely not fly with the judge and would certainly require a limiting instruction.

Hearsay statements are generally inadmissible; however, they may be admitted via an exception to or exclusion from the hearsay rule. Maria has a motivation to get this email in, and therefore her attorney should lobby any possible exception they can muster to the hearsay rule. One such exception is the business records exception. The business records exception requires that the business has a regular practice of recording this information, it was made in the course of business, and there is a proper custodian of records. If it was found that it was part of PMC's practice to have their doctors email the risk management department after every surgery, then, maybe Maria might be successful, but it is not likely.

X10

Maria may also try to argue that this statement is a party opponent statement by Dr. Leo. The party opponent exception allows hearsay statements to be admitted when they are offered against the party who said them. Here, Maria is suing PMC and Dr. Leo so it would be admissible as a party opponent statement. It could also be argued that Dr. Leo is an agent of PMC. Under party opponent exception, this statement may be admissible.

X10

If the judge finds that Maria's party opponent exception is applicable, then Maria will need to establish the authenticity of this message. In other words, she will need to show that this is actually the message Dr. Leo sent to the risk department. The CEC sets forth several ways authenticity may be established: through a witness with personal knowledge, through a custodian of records, by subpoena, etc. Maria should be prepared to show how this is the authentic email.

X10

* Come back if time, copy of email would be sufficient under Best Evidence Rule since there is no "original" of an email.

There may be a potential issue with Doctor/Patient confidentiality - but Maria is the one seeking to introduce this evidence so she would be waiving her own privilege making it inapplicable.

The court will likely rule that if established as authentic, Dr. Leo's email is admissible as a party opponent statement.

II. Text Messages with Nurse Julia

Maria seeks to introduce messages with Nurse Julia who was present for the surgery. Nurse Julia's messages suggest that Dr. Leo has a history of causing excessive bleeding in patients. Hearsay, *supra*. These texts were out of court statements, and are being offered to prove the truth of the matter asserted: that Dr. Leo was liable for malpractice.

+10
Maria may try to argue that Julia was an agent of Dr. Leo since she was present during the surgery and therefore the statement is admissible under party opponent. However, for party opponent to apply here, it would need to be a statement made during the scope of her employment with PMC. It is highly unlikely, they were texting during Julia's role as a nurse; however, the facts do not specify. For this reason, the party opponent exception would likely not apply.

+10
Maria may also try to argue that this was statement made for the purpose of medical care since she was talking to Julia as a nurse. However, this exception would make only Maria's statements to Julia admissible, not Julia's statement. Also, under CEC this is not a valid exception unless Maria was under the age of 12 and this was a sexual assault case, which it is not. Good

Character evidence: Maria is likely trying to introduce these messages to say, see Dr. Leo has been negligent before, therefore, he was negligent now. This would also be improper character evidence. Character evidence is inadmissible to show that a person acted in accordance with a particular trait on a particular occasion.

Improper opinion testimony. Julia has not been established as an expert and therefore, can't testify about her opinion of Dr. Leo's practices.

If somehow, some way, the judge was feeling spicy and wanted to let these messages in, the Defense should object under CEC 352. CEC 352 allows for the exclusion of evidence when it's probative value is outweighed by one of the following factors: confusing the issues, undue delay, misleading the jury, unfairly prejudicial, needlessly cumulative and wasting time. The Defense has a strong argument these messages would be prejudicial and that their prejudicial value outweighs their probativeness.

The court will likely rule that Julia's text message are inadmissible.

III. PMC's Surgical Protocol Manual

Maria seeks to introduce PMC's surgical protocol manual that states "in cases of unexpected bleeding, the surgeon must immediately call for assistance before proceeding near nerve clusters."

First, the defense should object on the grounds that this manual is hearsay. Hearsay, *supra*. Maria's lawyer would then need to produce a valid exception to or exclusion from the hearsay rule in order to be admissible. The most fruitful exception would be for Maria's lawyer to argue that this manual falls under the business records exception, *supra*. To establish that this manual is a business record, Maria's lawyer would need to show that PMC has a practice of keeping a manual, that this was maintained within the regular course of business, and have a custodian of records testify or sign an affidavit declaring that this is indeed the correct and true protocol manual.

Second, the defense should also object that the manual is not relevant. For evidence to be relevant, it must make a fact of consequence more or less probable. Here, the issue is whether PMC and/or Dr. Leo committed medical malpractice. Thus, the defense may try to argue that the manual itself doesn't go to whether Dr. Leo actually committed medical malpractice, and is therefore irrelevant. However, given the fact that it is in dispute whether Dr. Leo followed the protocols laid out in the manual, Maria can demonstrate that the manual is indeed relevant to the case. The judge will likely find the manual is relevant to the case.

The Defense should try one last effort to kill under CEC 352, *supra*. The Defense could argue that the medical jargon could confuse the jury if there isn't a witness to make sense of the confusing language to the jury. However, given this is a case about medical malpractice, there will likely be lots of medical jargon and that reasoning probably won't fly to exclude it under 352.

The court will likely rule that the protocol manual is admissible, if Maria can demonstrate it is a business record.

IV. Dr. Nina, Expert Neuro Surgeon From SF

To testify as an expert, Maria's attorney's would need to establish Dr. Nina is indeed an expert. To qualify as an expert, Dr. Nina must have special knowledge, training or experience, more than a lay person. Given, she's a neurosurgeon, Maria shouldn't have any issues there. Maria should disclose Dr. Nina's CV to the other side, prior to Motions in Limine. Dr. Nina must also establish that she has is using reliable methodology, that is accepted in the field. She will also need to show how she uses her methods to arrive at her conclusions. As an expert, she doesn't have to disclose everything she relies on to form her opinion, but she can be asked about them further on cross-examination.

Under California law, and *Sanchez*, an expert cannot testify to case specific hearsay. Therefore, Dr. Nina's testimony would be limited to non-case specific hearsay which would include journals, research articles, etc. This means that Dr. Nina could not testify about Maria's records and imaging unless they have already been properly admitted into evidence.

Expert issue: she can't testify to the ultimate issue: whether or not Dr. Leo committed medical malpractice. But, Dr. Nina would be able to testify based on hypotheticals that in her expert opinion the nerve damage was likely caused by excessive cauterization.

She can certainly be asked on cross examination whether she has worked at PMC or seen Dr. Leo operate, but neither of those factors will exclude her testimony as an expert.

The court will likely rule that Dr. Nina is permitted to testify as an expert and render her

expert opinion.

V. Maria's Workers Comp Claim 5 Years Ago

PMC seeks to introduce evidence that 5 years ago, Maria filed a worker's comp claim stating she had permanent nerve damage and numbness in the same leg. The Defense is likely trying to introduce this evidence to show there was a prior injury and therefore, it wasn't Dr. Leo's fault she has partial paralysis. The defense would need to be prepared to show why this is relevant to the claim, and have a §52 hearing on it before admitting it at trial.

This prior claim is highly relevant to this case, and will most likely be admitted.

3)

People v. Alex & Ben

I. Alex's Jail Cell Chat With Cellmate Troy

In jail, Alex allegedly told cellmate Troy: "I didn't mean to kill him. it was supposed to be a robbery, but he reached for something, and I panicked"

Hearsay is an out of court statement, offered to prove the truth of the matter asserted. This statement was not made in court, and thus satisfy the first hearsay requirement. In order to meet the second prong of hearsay, the statements must be offered for the truth of the matter asserted. To determine whether these are being offered for the truth of the matter asserted, there must be a nexus between the reason this statement is being offered, and the content of the statement itself. Here, the statement is being offered to show that Alex did kill Victor, but that it was a mistake. This constitutes hearsay.

Hearsay statements are generally inadmissible; however, they may be admitted via an exception to or exclusion from the hearsay rule.

The prosecution will argue that this statement is a party opponent statement by Alex and is therefore an exception to the hearsay rule. The party opponent exception allows hearsay statements to be admitted when they are offered against the party who said them. Here, Alex is the defendant so it would be admissible as a party opponent statement.

The facts indicate that Troy received reduced charges in exchange for his testimony against Alex. The defense should definitely inquire into this on cross examination as a way to show Troy's bias: that he has a reason to fabricate this statement so he receives reduced charges.

The court will likely rule that that Alex's statement to Troy is admissible as a party opponent statement.

II. Legal Buddy Eduardo

While in custody, Alex discussed his case with Eduardo, a licensed attorney also in custody.

The attorney-client privilege protects statement made that are made in the context of one's own legal representation. In order to claim this privilege, Alex would need to show that Eduardo was acting as Alex's attorney during this conversation, and it wasn't just two prisoners chatting about each other's cases. Further, Eduardo would need to be qualified as an attorney in order for the

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Question 1: US v. Michael Martinez (FRE - Criminal Case)

1) Text Messages from Michael's Phone

a) Hearsay

- The defense should argue that the text messages on Michael's phone would be hearsay. Hearsay is an out of court statement offered for the truth of the matter asserted. These text messages were made out of court, and are being offered for the truth of the matter asserted, that Michael was texting with business associates of his regarding deliveries/sales.
- **Hearsay Exceptions: Party Opponent Statement.** The prosecution can introduce these hearsay statements based on the fact that they were made by a party opponent, Michael. A party opponent statement is excepted from the hearsay rule when it is made (1) by the party themselves, (2) adopted by the party (such that they acted upon it), (3) made by someone authorized to speak on behalf of the party, (4) made by an employee/agent of the party while in the course and scope of their employment, or (5) made by a co-conspirator in furtherance of the conspiracy. Here, Michael is the party opponent and he made these statements himself. Any messages from Tony, or any other contact other than Michael himself, would generally not be able to come in, as they are hearsay without exception.
- **Hearsay Exception: Business Record.** A business record is a record that is made during or near the time of events, a record made in the regular course of business, and the custodian or record maker is able to certify the business record as true and accurate. The prosecution can introduce these hearsay statements as business records, only if Michael is not available to testify as a witness, and if they are able to get the actual cell phone data from the cell phone company. If the proper custodian produced the text messages in discovery, then the custodian could come in to authenticate and lay the foundation for the text messages. Then the prosecution could get them in as a business record. (Again, this is only if Michael is unavailable to testify, as this is required for all FRE 803 hearsay exceptions.)
- **Court Ruling:** The court should rule that the statements made by Michael via text message can come in by party opponent statements. The statements made by Tony (or any other party besides Michael) are only likely to come in under the Business Records exception, only if Michael is not available to testify (or below under rule of completeness), but we do not have enough facts to determine if that would be applicable.

What about 106?

Good

b) FRE 403 - Unfairly prejudicial

- The defense should argue that these text messages are unfairly prejudicial to Michael, and therefore should not be admitted. The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence. Here, the defense should argue that these text messages are unfairly prejudicial, as the probative value would be very little compared to the risk of unfair prejudice on the defendant.

- **Court Ruling:** The court should rule that these text messages are not unfairly prejudicial and should be admissible in court.
- c) Rule of Completeness
- The defense may also argue that if the Prosecution brings in a portion of the text thread, that the entirety of the text thread be admitted due to the Rule of Completeness. The entire text thread would include both statements made by Michael and statements made by Tony. The Rule of Completeness states that when one part of a statement is brought in, the other party may request that the entirety of the statement be brought in if in fairness it ought to be considered at the same time. If there are other statements in these text messages that the Defense wants in, they should include the entirety of the text messages. *yes!*
 - **Court Ruling:** The court should rule that the Defense has a right to bring in the entirety of the statements or conversations in the text thread pursuant to the rule of completeness.
- d) Authentication
- The prosecution would also need to provide some sort of authentication for these text messages prior to introducing them. They can authenticate these text messages by producing sufficient evidence to show that the messages are what they purport to be.

2) Testimony of Sarah - ex-girlfriend (Prosecution witness)

a) Hearsay

- The conversation Sarah overheard would be hearsay. Hearsay is an out of court statement offered for the truth of the matter asserted. This conversation is being offered for the truth of the matter, which is to prove that Michael was in discussions with his lawyer about potential criminal activity.
- **Hearsay Exceptions: Party Opponent Statement.** The prosecution can introduce this hearsay statement based on the fact that it was made by a party opponent, Michael. A party opponent statement is excepted from the hearsay rule when it is made (1) by the party themselves, (2) adopted by the party (such that they acted upon it), (3) made by someone authorized to speak on behalf of the party, (4) made by an employee/agent of the party while in the course and scope of their employment, or (5) made by a co-conspirator in furtherance of the conspiracy. Here, Michael is the party opponent and he made these statements himself.
- **Court Ruling:** The court should rule that this hearsay statement does fall under an exception to the hearsay rule based on party opponent statement, and therefore would be admissible.

b) FRE 403 - Unfairly prejudicial

- She didn't hear the entirety of the call, only what Michael was saying. She wasn't in the same room as Michael so could have misconstrued. The defense should argue that this statement is unfairly prejudicial to Michael, and therefore should not be admitted. The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the *Personal knowledge issue*

jury, (4) confusing the issues, or (5) cumulative evidence. Sarah was not in the same room as Michael. She could not hear the other end of the call, only what Michael was saying. This only provides a limited context for what the conversation was about and who it was with. There is minimal probative value from this one statement Sarah heard, compared to the risk of unfair prejudice that would arise from the statement being admitted.

- **Court Ruling:** The court should rule that this statement Sarah overheard is not unfairly prejudicial, and the defense can cross-examine her as much as they would like as far as how much she heard.

c) Attack Witness Credibility for Truthfulness/Dishonesty

- Any witness can be attacked based on their credibility for truthfulness/dishonesty, even the party calling the witness. The defense should attack this witness's credibility based on the fact that she is an ex-girlfriend of Michael and may have bad blood with him. They should also bring up when she initially made these allegations, and whether or not it was after they had broken up. Any chance they can get to make her seem dishonest or like she is making these allegations for the wrong reason would be good for the defense.

3) Testimony of Confidential Informant (Prosecution witness)

a) "Hide the Money"

A) Hearsay

- The statement that Michael told the confidential informant would be hearsay. Hearsay is an out of court statement being offered for the truth of the matter asserted. Here, the prosecution seeks to introduce this statement to show that Michael was trying to hide money, which is the truth of the matter asserted.
- **Hearsay Exception: Party Opponent Statement.** The prosecution can introduce this hearsay statement based on the fact that it was made by a party opponent, Michael. A party opponent statement is excepted from the hearsay rule when it is made (1) by the party themselves, (2) adopted by the party (such that they acted upon it), (3) made by someone authorized to speak on behalf of the party, (4) made by an employee/agent of the party while in the course and scope of their employment, or (5) made by a co-conspirator in furtherance of the conspiracy. Here, Michael is the party opponent and he made these statements himself.
- **Court Ruling:** The court should rule that the party opponent exception to the hearsay rule applies and therefore, this statement is admissible.

B) Unfairly Prejudicial

- The statement Michael told the confidential informant was unfairly prejudicial. The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence.

b) Meetings with Attorneys

A) Relevance / Attorney-Client Privilege / Unfair Prejudice

- **Relevance:** Evidence is relevant if it tends to make a fact more or less probable and that fact is material and in dispute. Here, there is no dispute as to whether or not the client had meetings with his attorneys. The fact that he had meetings with them generally is not relevant to this case, as it does not tend to make any fact at issue any more or less probable.
- **Attorney Client Privilege:** Not to mention, the discussions in these meetings would be covered by attorney-client privilege, therefore, none of the information disclosed would be available to discuss in court. The fact that the defendant had meetings with his attorneys is not relevant to this case, and does not assist with making any fact more or less probable. *Good*
- **Unfair Prejudice:** The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence. There is not enough evidence as to what happened in the meetings for them to have any probative value. This can lead the jury to be misled as to the issues of the case. His attorneys are not named as co-conspirators, so this is unfair evidence. *Unfair Prejudice*
- **Court Ruling:** The court should exclude the meetings with the attorneys from being admissible evidence in this case due to their lack of relevance and unfair prejudice.

4) Testimony of Daniel - former employer (Defense Witness)

a) Character Evidence introduced re "honesty and trustworthiness"

- This is proper character evidence introduced by reputation/opinion testimony by the defense. Only the defendant can open the door to his character being at issue. Since this is a defense witness that was asked about the defendant's character, the door has been opened. The prosecution can now attack Michael's character based on what Daniel knows or has heard about.

b) Cross-Examination re Michael's termination for suspected inventory theft

- Prior bad acts - cannot be used to show character trait, but may be used to show intent/knowledge/plan/preparation, etc. (specific instances of conduct - per FRE, can introduce)
- Character Evidence (impeachment) for honesty/dishonesty - theft is inherently a crime that involves dishonesty. If Daniel knows that Michael has a reputation for honesty and trustworthiness, did he know about this theft allegation that led to a termination?

5) Michael's Prior Arrest for Drug Possession - no conviction

a) Prior Crimes/Bad Acts - cannot be used to show character but may be used to show intent/knowledge/plan/preparation, etc. (specific instances of conduct)

b) Unfairly Prejudicial - the defense can argue that this prior arrest would be unfairly prejudicial to the defendant to admit into evidence. The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence.

Here, the defense can argue that the probative value of this prior arrest, that led to no conviction, would be unfairly prejudicial to bring in since the defendant was never convicted of any crime.

Court Ruling: The court will likely allow the prior arrest to come into evidence even though there was no conviction.

2)

Question 2: Rodriguez v. Pacifica Medical Center (CEC - Civil Case)

1) Email from Dr. Leo to Risk Management Department (Plaintiff evidence)

a) Hearsay - Hearsay is an out of court statement offered for the truth of the matter asserted.

- **Hearsay Exception:** Party Opponent Statement. Plaintiff could bring this in as a party opponent statement. Dr. Leo is the party opponent and he made this statement himself, therefore, it would likely be admissible.
- **Hearsay Exception:** Business Record (if Dr. Leo unavailable to testify and can get email records from email company.)
- **Court Ruling:** The email would likely be allowed into evidence solely based on the party opponent statement exception to the hearsay rule.

b) Authentication

- The plaintiff would also need to provide some sort of authentication for this email prior to introducing it. They can authenticate the email by producing sufficient evidence to show that the email is accurate and is what it purports to be.

c) Unfair Prejudice

- The defense will argue that this email is unfairly prejudicial to the defendant and should not be admissible. The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence.
- **Court Ruling:** The probative value substantially outweighs the risk of unfair prejudice, therefore, the email would be admissible.

2) Text messages with Maria and Nurse Julia (Plaintiff evidence)

a) Hearsay - Hearsay is an out of court statement offered for the truth of the matter asserted.

- **Hearsay Exception:** Business Records (from phone company - only if Nurse Julia is unavailable to testify)

- **Court Ruling:** The court may allow the documents for the workers comp claim to come in if it was prepared by the plaintiff herself, as this would be a party opponent statement. If the court does not allow it in, then the defense could still question the witness about it and the plaintiff when she takes the stand. ✓

3)

Question 3: People v. Alex & Ben (CEC - Criminal Case)

100/100

1) Testimony of Cellmate Troy - Defense moving to exclude

a) Hearsay - Hearsay is an out of court statement offered for the truth of the matter asserted.

- The testimony that Troy gives regarding their conversation would be hearsay.
- Hearsay Exception: However, the prosecution can ask about this statement from Troy since Alex is a party opponent and Alex is the one who made the statement. ✓

Good

b) Unfairly Prejudicial

- The defense should argue that this testimony is unfairly prejudicial. The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence. Here, the defense should argue that this testimony is unfairly prejudicial, as the probative value would be small compared to the risk of unfair prejudice on the defendant. ✓

c) Attack witness credibility for honesty/truthfulness

- Witness received reduced charges for testifying to what Alex told him. This gives him a motive to lie about what Alex said. ✓
- This witness was also in jail at the same time Alex was, which inherently makes him seem less truthful. The defense should cross-examine him as to why he was in jail and what his character is for being honest. The defense should also cross-examine him as to the fact that he received lesser charges for testifying in this manner.

c) Prosecution Arguments

- The prosecution is going to argue that this was an inmate discussing something with another inmate, and they knew or should have known that this could be used against them at a later time. The prosecution is going to argue that this is not unfairly prejudicial, as it was not coerced out of the defendant, but was rather a willing statement that he made to another inmate.

Court Ruling: The court will likely rule that this testimony is not hearsay without exception, not unfairly prejudicial, and will allow the witness to testify and the defense to conduct a cross-examination of the witness as to their character for honesty.

2) Alex conversation with Eduardo (licensed attorney who was in custody) - Prosecution moving to admit recording of conversation

a) Hearsay - Audio Recording

- This recording itself would be hearsay. Hearsay is an out of court statement offered for the truth of the matter asserted. *Well ... not really. Still*
- Hearsay Exception: Business Records. If this was recorded in the regular course of business by the jail, and the custodian for the record can testify to it, then this recording may fall under the business records exception. *about party op?*

b) Authentication of the recording

- The prosecution would also need to provide some sort of authentication for this recording prior to introducing it. They can authenticate the recording by producing sufficient evidence to show that the recording is accurate and is what it purports to be.

c) Hearsay - Statements made during conversation

- Any statements made during the conversation would also be hearsay. Hearsay is an out of court statement offered for the truth of the matter asserted.
- Hearsay Exception: Party Opponent Statement. Any statements made by Alex would likely fall under the party opponent statement *see now*

d) Attorney-Client Privilege

- Here, the attorney-client privilege would likely not apply, unless Eduardo specifically told Alex that he would represent him and be his attorney for this case, thus creating the privilege. There are no facts stating that this happened, so it is incredibly unlikely that the attorney-client privilege would apply. *yes!*

e) Unfair Prejudice

- The defense should argue that this testimony is unfairly prejudicial. The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence. Here, the defense should argue that this testimony is unfairly prejudicial, as the probative value would be small compared to the risk of unfair prejudice on the defendant.

Court Ruling: The court will likely rule that Eduardo can come into court and testify to what Alex told him (based on a party opponent statement exception), but that the recording can not be admitted into evidence due to a lack of authentication.

3) Ben's (co-conspirator) statement regarding Alex's involvement

Crawford & Aranda-Bruton!!! Violates confrontation clause. Remedies: (1) exclude entire statement, (2) redact parts of statement that implicate Alex, (3) sever the cases between the defendant's and subpoena Ben to testify to what Alex did.

a) Crawford Issue

- The Crawford case states that a hearsay statement is inadmissible if: (1) the declarant is not present in court to testify, (2) the statement was testimonial in nature, and (3) the opposing party had no chance to question the witness (cross-examine) with regard to the statements made prior to them being introduced into evidence in court. Here, the prosecution is attempting to admit the statements made by Ben regarding Alex's part in the first-degree murder. Ben is not testifying in court, his statement was testimonial in nature (meaning he believed that this statement would be relied upon and used in a criminal investigation for this matter), and the opposing party had no chance to cross-examine Ben about this statement. This further creates an issue with Aranda-Bruton, analyzed below.

b) Aranda-Bruton

- The Aranda-Bruton case states that when a co-conspirator makes a statement regarding the culpability of the other co-conspirator, this is inadmissible hearsay evidence. There are 3 ways to remedy this situation. (1) You can exclude the entire statement from coming in, (2) you can redact any parts of the statement that involve Alex and implicate him in the crime, or (3) you can sever the cases (separating each co-conspirator into their own case) and subpoena Ben to testify at Alex's trial. The statement could be redacted to state "I didn't know about a robbery or gun. When I heard the shot, I panicked and drove off."

Court Ruling: The court would likely redact the statement as I did above to make it compliant with Aranda-Bruton.

4) Defense witnesses re Victor's (deceased victim) reputation & victim's toxicology report with an expert to testify to it.

a) Character Evidence re reputation

- Victor is the deceased victim in this matter. The defense may have witnesses come in to testify to Victor's reputation for violence and threats. This testimony is directly relevant to the self-defense claim made by Alex. If Victor had a reputation for threatening people and being violent towards people, that is important for the jury to know if Alex is claiming self-defense. Character evidence may be shown by reputation or opinion testimony, and even in specific instances of conduct, but only when there was a criminal conviction that stemmed from those instances.
- UNFAIR PREJUDICE: The prosecution should argue that this testimony is unfairly prejudicial: The court can exclude relevant evidence if its probative value is substantially outweighed by any of the following: (1) unfair prejudice, (2) undue delay/wasting time, (3) misleading the jury, (4) confusing the issues, or (5) cumulative evidence. Here, the prosecution should argue that this testimony is unfairly prejudicial, as the probative value would be small compared to the risk of unfair prejudice on the prosecution, since the victim is not here to defend himself or testify as to what happened.

b) Toxicology Report

- Hearsay: Toxicology report would be hearsay. Hearsay is an out of court statement offered for the truth of the matter asserted.
- Hearsay Exception: ~~Business record~~. A business record is a record that is made during or near the time of events, a record made in the regular course of business, and the custodian or record maker is able to certify the business record as true and accurate. Here, the toxicology report could be admissible based on a business record if the custodian of records can come in and testify to the record.

c) Expert Testimony re Toxicology Report

- An expert cannot rely on case-specific hearsay in forming their opinions on the case. Case specific hearsay includes: (1) statements made by a witness who is not testifying, unless those hearsay statements have already been admitted; (2) reports (DNA/toxicology/medical, etc.) cannot be relied on unless they have already been admitted and testified to by a proper witness, and (3) photographs/videos cannot be relied upon unless they have already been admitted. Due to this limitation set by the Sanchez case, if the toxicology report of Victor is already entered into evidence and someone has properly testified to it, then it can be relied upon by the expert in their testimony. However, if this report is not entered into evidence and has not been testified to by a proper witness, then they cannot rely upon this report, making this expert's testimony useless.

d) Authentication of the toxicology report ✓

- The toxicology report would need to be properly authenticated prior to it being admitted into evidence. They can authenticate the toxicology report by producing sufficient evidence to show that the report is accurate and is what it purports to be.

Court Ruling: The court will likely rule that the expert can only discuss the toxicology report if it has already been admitted and discussed by a proper witness, otherwise, the expert's testimony will likely be excluded. The court will also likely rule that the defense can bring in witnesses to testify to the victim's reputation.

5) Striking entire jury panel for threats.

- The court should order a hearing of any jurors who were threatened and/or heard this information. Jurors can testify when: (1) there is an allegation of juror misconduct during the proceedings, or (2) when there is an allegation of threatening or trying to persuade or dissuade a juror. The court should bring the jury in, find out what they were told and who heard this information, and then make a determination as to what to do with regard to those specific jurors.

— what are the possible remedies!

END OF EXAM