

Evidence
Problems, Cases and Materials
2008-09 Supplement

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Preface

There have been a number of important developments in the law of evidence since my textbook, *Evidence: Problems, Cases and Materials*, and the 2005 Statutory Supplement to the textbook were published. This supplement—which is designed for use in conjunction with both of these publications—incorporates those developments. Highlights include the following:

- ***A new section on the reporter-source privilege*** – Since the textbook was published, a panel of the U.S. Court of Appeals for the D.C. Circuit issued its decision in *In re: Grand Jury Subpoena, Judith Miller*, which addressed the existence and scope of a reporter-source privilege under Federal Rule of Evidence 501. This supplement includes an edited version of the various opinions in that panel decision, which together demonstrate the challenges to applying Rule 501’s “reason and experience” standard.
- ***New decisions regarding hearsay and the Confrontation Clause*** – This supplement includes notes on several post-*Crawford* decisions as well as the edited text of four key post-*Crawford* decisions: the U.S. Supreme Court’s 2006 decision in *Davis v. Washington* elaborating on the distinction between “testimonial” and “nontestimonial” hearsay and its 2008 decision in *Giles v. California* addressing the scope of the forfeiture-by-wrongdoing doctrine; the Illinois Supreme Court’s 2007 decision in *People v. Stechly* addressing the application of the Confrontation Clause outside of police interrogation and where child declarants are involved; and the New York Court of Appeals’ 2008 decision in *People v. Rawlins* addressing the admissibility of laboratory reports. Moreover, this supplement includes recent decisions that have given much greater attention to the definition of hearsay, avoiding *Crawford* by determining that the evidence at issue is either not a “statement” or not offered “to prove the truth of the matter asserted.”
- ***Amendments to the Federal Rules of Evidence*** – Federal Rules of Evidence 404, 408, 606, and 609 were amended effective December 1, 2006. This supplement contains the text of the rules as amended as well as the Advisory Committee Notes to those amendments. In addition, this supplement contains the latest version of a proposed new rule of evidence—Rule 502—that addresses waiver of the attorney-client privilege and the work-product doctrine.
- ***Notes on decisions involving modern technology*** – For most chapters of the textbook, this supplement contains notes on decisions involving the application of the Federal Rules of Evidence to electronic evidence, including e-mail messages, postings on the Internet, information contained on a personal digital assistant (PDA), information generated by a price scanner, and the like.

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