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Chain of Custody

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Forensic Science: Chain of Custody

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Authentication or identification of real evidence[1] refers to the requirement that an item of evidence be proved to be genuine, that is, that it is what its proponent claims it to be. McCormick expressed the requirement this way: "[W]hen real evidence is offered an adequate foundation for admission will require testimony first that the object offered is *the* object which was involved in the incident, and further that the condition of the object is substantially unchanged."[2] Federal Evidence Rule 901(a) codifies this requirement.[3]

Condition of Evidence

As the passage from McCormick indicates, sometimes the condition of an object is as important as its identity. Alteration of the item may reduce or negate its probative value and may mislead the jury. Thus, before physical objects are admissible in evidence the proponent must establish that they are in "substantially the same condition as when the crime was committed."[4]

Determining what changes are "substantial" depends on how the changes affect the relevance of the evidence: "It should, however, always be borne in mind that foundational requirements are essentially requirements of logic, and not rules of art. Thus, for example, even a radically altered item of real evidence may be admissible if its pertinent features remain unaltered."[5] For example, in *United States v. Skelley*[6] counterfeit bills were admissible even though they apparently changed color because of tests

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[1] The term "real evidence" is used to describe tangible evidence that is historically connected with a criminal case, as distinguished from evidence, such as a model, that is merely illustrative.

[2] 2 McCormick, Evidence § 212, at 8 (4th ed. 1992).

[3] Fed. R. Evid. 901(a) ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.").

[4] Gallego v. United States, 276 F2d 914, 917 (9th Cir. 1960). Accord United States v. Zink, 612 F2d 511, 514 (10th Cir. 1980) ("condition is materially unchanged").

[5] 2 McCormick at 8–9.

[6] 501 F2d 447 (7th Cir.), cert. denied, 419 US 1051 (1974).

for fingerprints. According to the court, the change in color did not "destroy the relevance of the bills to show their counterfeit character from the identity of serial numbers, and their competence as evidence for this purpose [was] unimpaired by the . . . possibility of a change in color."[7]

Identity of Evidence

In criminal trials, it is often necessary to show that the item seized, such as drugs, was the same item analyzed at the crime laboratory and introduced at trial. There are two principal methods of proving the identity of real evidence: first, establishing that the evidence is "readily identifiable," and second, establishing a "chain of custody."

Readily Identifiable Evidence

If an object is easily identified, "unique and readily identifiable",[8] there may be no need to establish a chain of custody. As one court has noted:

> If an exhibit is directly identified by a witness as the object which is involved in the case, then that direct identification is sufficient. Such is the case with many objects which have special identifying characteristics, such as a number or mark, or are made to have such identifying characteristics by special marks.[9]

The Federal Rules recognize this method of identification. Rule 901(b)(4), entitled "Distinctive characteristics and the like," provides that "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances" may satisfy the authentication requirement.[10] This method of proof is merely an application of the first-hand knowledge[11] and opinion rules[12]—the opinion of a lay witness based on personal observation.

Numerous examples of authenticating readily identifiable objects are found in the cases. All of these examples involve objects whose characteristics somehow make them unique.

Serial Numbers

Any item imprinted with a serial number, such as a weapon[13] or dol-

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[7] Id. at 451. See also Duke v. State, 58 So. 2d 764, 769 (Ala. 1952) (shell admissible although sheriff scratched initials on it); Davidson v. State, 69 SE2d 757, 759 (Ga. 1952) (victim's clothing admissible although washed); Bruce v. State, 375 NE2d 1042, 1073 (Ind. 1978) (contamination "in no way vitiated the evidentiary value of the exhibits").

[8] 2 McCormick at 8.

[9] State v. Conley, 288 NE2d 296, 300 (Ohio App. 1971). See also United States v. LePera, 443 F2d 810, 813 (9th Cir.) ("Counterfeit notes . . . printed from a single plate, are unique and identifiable without proof of chain of custody"), cert. denied, 404 US 958 (1971).

[10] See United States v. Clonts, 966 F2d 1366, 1368 (10th Cir. 1992) ("If the evidence is unique, readily identifiable and resistant to change, the foundation for admission need only be testimony that the evidence is what it purports to be.").

[11] Fed. R. Evid. 602.

[12] Fed. R. Evid. 701.

[13] E.g., United States v. Douglas, 964 F2d 738, 742 (8th Cir. 1992) ("Smith and Wesson with serial number

lar bill,[14] may be identified by that number.

Police Markings

An object that is inscribed with the initials or markings of a police officer or other person may be readily identifiable. In such cases, the person converts a nonunique object into a readily identifiable one by placing distinctive markings on it. This practice, recommended in crime scene and evidence collection manuals,[15] is well accepted in the cases. Firearms,[16] bullets,[17] currency,[18] laboratory slides,[19] and sundry other objects[20] have been admitted into evidence, at least in part, on this basis.

Natural Marks

An object may possess distinctive natural characteristics that may make it readily identifiable.[21] For example, in *United States v. Logan*[22] a "gun—the only .25 Titan automatic with a scratched-off serial number that Officer Grimes had ever seized—was admitted into evidence only after Officer Grimes identified it by make, model, size, color, style of its grip, and its scratched-off serial number. We find the government made a prima facie showing of authenticity."[23]

In *United States v. Briddle*[24] the prosecution introduced evidence that a button top found at the scene of a burglary came from the defendant's coat. The police officer described the button as follows:

> It had a picture of a whale on the front of it. It was leather. . . . And

79515"); State v. Kroeplin, 266 NW2d 537, 540 (N.D. 1978).

[14] E.g., Calderon v. United States, 269 F2d 416, 419 (10th Cir. 1959); State v. Conley, 288 NE2d 296, 300–301 (Ohio App. 1971).

[15] See Federal Bureau of Investigation, Handbook of Forensic Science 113 (rev. ed. 1994).

[16] E.g., United States v. Madril, 445 F2d 827, 828 (9th Cir. 1971) (pistol), vacated on other grounds, 404 US 1010 (1972); Lilly v. State, 482 NE2d 457, 459 (Ind. 1985).

[17] E.g., Sims v. State, 252 SE2d 501, 503 (Ga. 1979); State v. Ross, 169 SE2d 875, 878 (NC 1969), cert. denied, 397 US 1050 (1970). See also Almodovar v. State, 464 NE2d 906, 911 (Ind. 1984) (initials scratched on shell casing).

[18] E.g., United States v. Capocci, 433 F2d 155, 157 (1st Cir. 1970) (counterfeit bill); United States v. Bourassa, 411 F2d 69, 72–73 (10th Cir.) (coin), cert. denied, 396 US 915 (1969).

[19] E.g., Gass v. United States, 416 F2d 767, 770 (DC Cir. 1969); Wheeler v. United States, 211 F2d 19, 22–23 (DC Cir. 1953), cert. denied, 347 US 1019 (1954).

[20] E.g., O'Quinn v. United States, 411 F2d 78, 80 (10th Cir. 1969) (jar); People v. Horace, 9 Cal. Rptr. 43, 44 (App. 1960) (crowbar); State v. Engberg, 708 P2d 935, 939 (Idaho App. 1985) (seizing officer placed initials on poker machine); People v. Sansone, 356 NE2d 101, 103 (Ill. App. 1976) (stolen record albums); Johnson v. State, 370 NE2d 892, 894–895 (Ind. 1977) (knife); State v. Coleman, 441 SW2d 46, 51 (Mo. 1969) (box, watch, and bolt).

[21] E.g., United States v. Reed, 392 F2d 865, 867 (7th Cir.) ("very unusual looking hat"), cert. denied, 393 US 984 (1968); Reyes v. United States, 383 F2d, 734, 734 (9th Cir. 1967) (holdup note "was unique and readily identifiable").

[22] 949 F2d 1370 (5th Cir. 1991), cert. denied, 503 US 925 (1992).

[23] Id. at 1378.

[24] 443 F2d 443 (8th Cir.), cert. denied, 404 US 942 (1971).

> it had a sticky substance on the back, as though it might have been stuck to something. . . . [I]t was a dark brown in color. Had a whale or fish on it. The tail was up in the air. Split. And I believe it was the left eye of the animal that was up.[25]

The Eighth Circuit held this identification sufficient: "Given the uniqueness of the buttons on Briddle's coat, we think this identification evidence established that the exhibit . . . was the button top found at the scene of the burglary."[26] Thus, the issue is whether the distinctive characteristics are sufficient to make it unlikely that another object would have the same characteristics.[27]

Witness's Uncertainty

A witness's uncertainty in identifying an exhibit, however, affects the weight, not the admissibility, of the evidence. For example, the Ninth Circuit has written:

> [A]lthough the trial record reveals the identification of the ax made by Papse may not have been entirely free from doubt, the witness did state that he was "pretty sure" this was the weapon Johnson had used against him, that he saw the ax in Johnson's hand, and that he was personally familiar with this particular ax because he had used it in the past. Based on Papse's testimony, a reasonable juror could have found that his ax was the weapon allegedly used in the assault. Papse's ability or inability to specify particular identifying features of the ax, as well as the evidence of the ax's alleged changed condition, should then go to the question of weight to be accorded this evidence, which is precisely what the trial court ruled. In other words, although the jury remained free to reject the government's assertion that this ax had been used in the assault, the requirements for admissibility specified in Rule 901(a) had been met.[28]

Chain of Custody

The use of a chain of custody to authenticate evidence is well established. Nevertheless, two commentators have written that the governing federal rule "can easily be read as doing away with any chain of custody requirement."[29] This seems unwise. If anything, there is a need for more stringent requirements. The mass processing of immunoassay tests and the increasing volume of DNA testing heightens the importance of proper handling procedures. Indeed, improper labeling has been found to be the cause of an error in a DNA proficiency test.[30]

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[25] Id. at 448.

[26] Id. at 449.

[27] See 2 Wigmore, Evidence § 411 (Chadbourn rev. 1979).

[28] United States v. Johnson, 637 F2d 1224, 1247–1248 (9th Cir. 1980). Accord United States v. Drumright, 534 F2d 1383, 1385 (10th Cir.), cert. denied, 429 US 960 (1976); United States v. Capocci, 433 F2d 155, 157 (1st Cir. 1970); United States v. Rizzo, 418 F2d 71, 81 (7th Cir. 1969), cert. denied, 397 US 967 (1970).

[29] 2 Saltzburg & Martin, Federal Rules of Evidence Manual 478 (5th ed. 1990) (citing Fed. R. Evid. 901(a)).

Need for Chain of Custody

In some situations the proponent must establish a chain of custody. Such proof may be necessary either because the item of evidence is not readily identifiable, or because more than simple identification is necessary to establish the item's relevance.

Fungible Items

A chain of custody is often required for fungible evidence because these items have no unique characteristics. The inability to distinguish between fungible items makes positive identification by observation alone impossible.[31] In addition, the nature of these items frequently makes them particularly susceptible to tampering or loss.[32] Nevertheless, the proper handling of fungible evidence—using lock-sealed envelopes[33] or containers that custodians then mark and initial—makes the evidence readily identifiable and eliminates most problems of misidentification and contamination.[34]

Lab Analysis

If the relevance of an exhibit depends on its subsequent laboratory analysis, identification by police markings made at the scene does not provide a sufficient foundation. The markings establish that the exhibit in court was the item seized by the police, but a chain of custody may be necessary to establish that the item seized was the item analyzed at the crime laboratory. For example, in *Robinson v. Commonwealth*,[35] the court reversed a rape conviction due to a break in the chain of custody: "The mere fact that the blouse and the panties were identified [by the victim at trial] did not prove the chain of possession necessary to validate the F.B.I. analysis of them."[36]

Condition

If the condition of the object, not merely its identity, is the relevant

[30] Thompson, "The Myth of DNA Fingerprints," 9 Cal. Law. 34 (Apr. 1989) (Cellmark official admitted that the "error occurred because a lab technician incorrectly labeled a vial.").

[31] See State v. Conley, 288 NE2d 296, 300 (Ohio App. 1971) ("One white pill looks much like any other white pill and hence positive identification simply by observation is usually impossible.").

[32] The "danger of tampering, loss, or mistake with respect to an exhibit is greatest where the exhibit is small and is one which has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives." Graham v. State, 255 NE2d 652, 655 (Ind. 1970).

[33] Lock-sealed envelopes "can be opened only by destroying the seals." United States v. Santiago, 534 F2d 768, 770 (7th Cir. 1976).

[34] See United States v. Pressly, 978 F2d 1026, 1028 (8th Cir. 1992) ("The officer who seized the substances [cocaine] testified that he marked them at the time of the seizure and that the packages admitted into evidence still bore his marks."); People v. Rivera, 592 NYS2d 697 (App. Div. 1993) (failure of arresting officer to mark six fungible glassine envelopes of heroin at time of seizure resulted in a gap in the chain of custody that required a reversal).

[35] 183 SE2d 179 (Va. 1971).

[36] Id. at 181. See also Graham v. State, 255 NE2d 652, 655–656 (Ind. 1970) (wrapper containing white powder was initialed at time police took possession but break in chain of custody prior to chemical analysis resulted in reversal).

issue, a chain of custody may be required to establish that the object was not altered during police custody. This requirement is a necessary safeguard for evidence that is susceptible to undetected contamination or deterioration, such as blood samples[37] and substances subjected to neutron activation analysis.[38]

Length of Chain

When a chain of custody is required, either to show the identity of the item or its unchanged condition, it is necessary to determine where the chain begins and ends. Only breaks in possession that occur within the period included in the chain of custody affect admissibility.

Initial Link

Disputes over the initial link in the chain of custody focus on whether the continuous possession requirement should apply at the time of the incident at issue or at the time when the evidence comes into possession of its proponent. According to one position, a "chain-of-custody foundation is not required . . . for periods before the evidence comes into the possession of law enforcement personnel."[39] The theory underlying this rule is that "the State cannot be charged with the responsibility of accounting for the custody of the exhibit" when it is not in its possession.[40] This rule has been applied in two different types of cases: first, those in which a third party had possession of the object prior to the time it was turned over to the police,[41] and second, those in which the object was not discovered at the crime scene until sometime after the commission of the crime.[42]

This position misconceives the purpose of the chain of custody rule. The rule is not designed to hold the police accountable, but rather to ensure that evidence is relevant. Police accountability is a means to this end. If the relevance of an object depends on its use in a crime, the

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[37] See Ritter v. State, 462 SW2d 247, 249 (Tenn. Crim. App. 1970) ("Blood specimens . . . should be handled with the greatest of care and all persons who handle the specimen should be ready to identify it and testify to its custody and unchanged condition"). See also Glendening & Waugh, "The Stability of Ordinary Blood Alcohol Samples Held Various Periods of Time Under Different Conditions," 10 J. Forensic Sci. 192, 199 (1965) (showing instability of alcohol content in blood samples for different temperatures and storage periods).

[38] See Comment, "The Evidentiary Uses of Neutron Activation Analysis," 59 Cal. L. Rev. 997, 1013 (1971) ("If two unknowns that are compared to determine whether they came from a common source have both been contaminated in a similar way, it is clear that completely false points of similarity can result"); State v. Johnson, 539 SW2d 493, 505 (Mo. App. 1976) (control sample used to establish that Neutron Activation Analysis sample was uncontaminated), cert. denied, 430 US 934 (1977).

[39] Williams v. State, 379 NE2d 981, 984 (Ind. 1978).

[40] Zupp v. State, 283 NE2d 540, 543 (Ind. 1972).

[41] E.g., Zupp v. State, 283 NE2d 540, 543 (Ind. 1972); Love v. State, 383 NE2d 382, 384 (Ind. App. 1978).

[42] See Williams v. State, 379 NE2d 981, 984 (Ind. 1978) (three-hour delay in discovery of revolver); Thornton v. State, 376 NE2d 492, 494 (Ind. 1978) (knife discovered in open field subsequent to arrest).

offering party must establish, through a chain of custody or otherwise, a connection between that object and the crime.[43] For example, if a third party finds a rifle near a crime scene and turns it over to the police several hours or days after the crime, it would be necessary to "account" for the rifle during the time it was in the third party's possession in order to tie the rifle to the place where the crime occurred.[44]

Final Link

Disagreement over the point at which the chain of custody ends focuses on whether the chain ends when the item is introduced at trial or at an earlier stage, for example, when a laboratory analyzes the item. Some commentators have read several cases as requiring the prosecution to trace the chain of custody from the time of seizure until the time of trial in all cases.[45] There may be some support for this view in the Advisory Committee's Note to Federal Rule 901, where the drafters refer to "establishing narcotics as taken from an accused and accounting for custody through the period until trial, including laboratory analysis."[46]

The "length" of the chain of custody, however, depends on the purpose for which the evidence is offered. This point is illustrated by *State v. Conley*,[47] which involved a prosecution for the illegal sale of LSD. The drugs were purchased with marked bills whose serial numbers had been recorded. The defendant objected to both the admissibility of the bills and the LSD. The court wrote:

> To identify a particular item . . . as being part of a pertinent incident in the past usually requires the showing of a continuous chain of custodians up to the material moment. When a chemical analysis is involved . . . the material moment is the moment of analysis, since this provides the basis for the expert testimony and makes that testimony relevant to the case. In the case of many other items, the material moment occurs at the trial.[48]

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[43] In United States v. White, 569 F2d 263 (5th Cir.), cert. denied, 439 US 848 (1978), the court noted: "This is not a routine chain of custody situation in which the chain is broken between seizure of the evidence from the accused and a subsequent trial. Rather, the alleged break occurred before the government came into possession of the heroin." Id. at 266. After citing the rule in the "typical chain of custody cases," the court wrote: "We apply the same rule in the instant case." Id.

[44] See United States v. Gelzer, 50 F3d 1133, 1141 (2d Cir. 1995) ("The government concedes that there was not a 'full' chain of custody established for the revolver alleged to have been used during the robberies and to have been discarded during the car chase. At trial, Officer Staub testified that he found the revolver on Scranton Avenue near the intersection of Picadilly Downs and gave it to Officer Curtis.") (evidence admitted).

[45] See Annotation, "Proof of identity of person or thing where object, specimen, or part is taken from a human body, as basis for admission of testimony or report of expert or officer based on such object, specimen, or part," 21 ALR2d 1216, 1236 (1952).

[46] Fed. R. Evid. 901, advisory committee note.

[47] 288 NE2d 296 (Ohio App. 1971).

[48] Id. at 300.

The court went on to hold that the chain of custody for the marked bills ran from the time the bills were marked until the trial, at which time they were identified. The chain of custody for the drugs differed; it ran from the time of seizure to the time of chemical analysis.[49]

As a matter of relevance, this approach is sound. The loss or destruction of the drugs *after* chemical analysis would not affect the relevance of the expert's testimony concerning the nature of the drugs.[50] Moreover, the prosecution generally is not required to introduce real evidence to prove its case:

> It is not always necessary that tangible evidence be physically admitted at a trial. . . . Even when evidence is available it need not be physically offered. Thus, the grand larceny of an automobile may be established merely on competent testimony describing the stolen vehicle without actually producing the automobile before the trier of fact.[51]

The so-called "best evidence" rule applies only to writings, recordings, and photographs, not to real evidence.[52]

Nevertheless, the Florida Supreme Court has adopted a contrary position. According to the court, "when a defendant is charged with possession of a controlled substance, that substance, if available, must be introduced into evidence."[53] In support of this rule, the court wrote:

> An absolute rule that a substance may be introduced or not at the discretion of the prosecutor is practically undesirable because of its potential for abuse. For example, such prosecutorial discretion could deliberately or unwittingly be used to confuse defense counsel and thwart the ability to make certain objections, particularly objections to chain of custody. . . .
>
> The state's failure to introduce the substance in evidence against the defendant might put the defendant in the awkward position of introducing it himself should he wish to challenge its authenticity where there has been testimony of its existence as here. . . .[54]

In addition, the loss or destruction of the evidence after laboratory

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[49] See United States v. Grant, 967 F2d 81, 83 (2d Cir. 1992) ("In order for the chemist's testimony to be relevant, there must be some likelihood that the substance tested by the chemist was the substance seized at the airport."), cert. denied, 507 US 924 (1993).

[50] See United States v. Bailey, 277 F2d 560, 565 (7th Cir. 1960) ("Even if the exhibits, including the heroin, had not been introduced in evidence the testimony of the witnesses and the stipulation as to the chemical analysis were sufficient. . . ."); United States v. Sears, 248 F2d 377, 378 (7th Cir. 1957), cert. denied, 355 US 602 (1958).

[51] Holle v. State, 337 A2d 163, 166 (Md. App. 1975) (stolen marked currency). Accord United States v. Kelly, 14 F3d 1169, 1176 (7th Cir. 1994) ("The government is not required to introduce narcotics in evidence to obtain a narcotics conviction."); United States v. Figueroa, 618 F2d 934, 941 (2d Cir. 1980) (heroin); Chandler v. United States, 318 F2d 356, 357 (10th Cir. 1963) (whiskey bottles).

[52] See Fed. R. Evid. 1002.

[53] G.E.G. v. State, 417 So. 2d 975, 977 (Fla. 1982).

[54] Id. at 977–998.

analysis may affect the defendant's right to reexamine the evidence, which could result in the exclusion of expert testimony based on the prior laboratory examination.[55]

Links in Chain

The "links" in the chain of custody are those persons who have had *physical* custody of the object. Persons who have had access to, but not possession of, the evidence generally need not be accounted for. Such persons are not *custodians*. As noted by one court: "There is no rule requiring the prosecution to produce as witnesses all persons who were in a position to come into contact with the article sought to be introduced in evidence.[56]

Failure to account for the evidence during possession by a custodian may constitute a critical break in the chain of custody.[57] Some courts have indicated that all the links in the chain of custody must *testify* at trial.[58] The prevalent view, however, is that "the fact of a 'missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be.' "[59] Thus, while a custodian in the chain of possession need not testify under all circumstances, the evidence should be accounted for during the time it was under that custodian's control. Several recurrent examples of "missing link" cases are discussed in this article.

Informants

The authentication of evidence by means other than the testimony of custodial links frequently arises in drug cases where an informant who has handled the drugs does not testify at trial. In this situation, an undercover officer who had accompanied the informant can testify about the informant's handling of the drugs. Thus, a noncustodian with

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[55] See 1 Giannelli & Imwinkelried, Scientific Evidence § 3-7 (2d ed. 1993) (constitutional duty to preserve evidence).

[56] Gallego v. United States, 276 F2d 914, 917 (9th Cir. 1960). Accord United States v. Fletcher, 487 F2d 22, 23 (5th Cir. 1973) (fact that "fifteen persons had access to the evidence room" affects weight, not admissibility), cert. denied, 416 US 958 (1974).

[57] E.g., United States v. Panczko, 353 F2d 676, 679 (7th Cir. 1965) ("There is no evidence as to where or from whom Lieutenant Remkus got the keys"), cert. denied, 383 US 935 (1966); Novak v. District of Columbia, 160 F2d 588, 589 (DC Cir. 1947) (evidence failed "to identify the sample from which the analyses were made as being that sample taken from the appellant"); Smith v. United States, 157 F2d 705 (DC Cir. 1946) (witness testified that watch presented in court had been handed to him by police officer at scene but he did not see where officer obtained watch); United States v. Lewis, 19 MJ 869 (AFCMR 1985) (prosecution failed to show that urine sample analyzed at lab was the sample taken from the defendant).

[58] E.g., People v. Connelly, 316 NE2d 706, 708 (NY 1974) ("Admissibility generally requires that all those who have handled the item 'identify it and testify to its custody and unchanged condition' ").

[59] United States v. Howard-Arias, 679 F2d 363, 366 (4th Cir.), cert. denied, 459 US 874 (1982). See also United States v. Harrington, 923 F2d 1371, 1374 (9th Cir.) ("[T]he prosecution was not required to call the custodian of the evidence"), cert. denied, 502 US 852 (1991).

firsthand knowledge may supply evidence of the object's handling while in the custody of the nontestifying informant.[60]

The testimony of a custodial link also may be dispensed with when circumstantial evidence sufficiently connects a defendant with drugs purchased from him by an informant, that is, a "controlled drug buy." For example, in *Peden v. United States*[61] an informant was searched prior to a drug transaction and provided with marked money. While under surveillance, she met the defendant, and both were immediately arrested and searched. The informant had morphine and the defendant had the marked money. Although the informant did not testify, the court held the chain sufficient to connect the defendant to the morphine.[62]

Postal Employees

Postal employees who handle evidence sent to a crime laboratory by mail are custodial links. Postal employees rarely, if ever, testify at trial, however. A rule requiring every custodian to testify would necessitate calling all postal employees who handled the evidence. This would "place an impossible burden upon the state."[63] Therefore, courts invoke the presumption that "articles transported by regular United States mail and delivered in the ordinary course of the mails are delivered in substantially the same condition in which they were sent."[64]

Many law enforcement agencies recommend registered mail or other similar means for sending evidence.[65] Furthermore, the FBI recommends stringent packaging requirements for items mailed to its laboratory.[66] Proof that these procedures were followed, and not the presumption of due delivery, assures the reliability of the evidence.

Minor Links

Another category of cases involves what may be called "minor links"—intermediate custodians who have possession for a short period of time and merely passed the evidence along to another link. For example, in one case a chief chemist, who had received a sealed enve-

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[60] E.g., United States v. Jones, 404 F. Supp. 529, 542 (ED Pa. 1975) (undercover agent observed defendant giving drugs to informant; informant did not testify), aff'd, 538 F2d 321 (3d Cir. 1976).

[61] 223 F2d 319 (DC Cir. 1955), cert. denied, 359 US 971 (1959).

[62] Id. at 321. See also United States v. Amaro, 422 F2d 1078, 1080 (9th Cir. 1970).

[63] Trantham v. State, 508 P2d 1104, 1107 (Okla. Crim. App. 1973).

[64] Schacht v. State, 50 NW2d 78, 80 (Neb. 1951). See also Pasadena Research Lab., Inc. v. United States, 169 F2d 375, 382 (9th Cir.) (presumption of regularity applies to postal employees' handling of vials during shipment), cert. denied, 335 US 853 (1948).

[65] F.B.I., supra note 15 at 103 (citing U.S. Postal Service, United Parcel Service, Federal Express). See also United States v. Godoy, 528 F2d 281, 283 (9th Cir. 1975) (narcotics sent by registered mail to laboratory); United States v. Jackson, 482 F2d, 1254, 1266 (8th Cir. 1973) (registered, special delivery, air mail).

[66] F.B.I., supra note 15 at 92 (use suitable containers, package each item separately, and seal securely).

lope of heroin and then turned it over to the examining chemist, did not testify. The court upheld the admisibility of the evidence because the seal was "unbroken when the latter received it."[67] The category of minor links whose testimony is not required to establish a chain of custody includes not only laboratory personnel,[68] but also police officers who receive evidence from a seizing officer and mail[69] or transport[70] it to a laboratory for analysis.

In short, "accounting for" all the links in the chain of custody does not necessarily mean all the links need testify at trial.

Burden and Standard of Proof

The burden of proving the chain of custody rests with the party offering the evidence.[71] Prior to the adoption of the Federal Rules of Evidence, the courts described the standard of proof in various ways. The most common expression of the standard was that the offering party had to establish the identity and condition of the exhibit by a "reasonable probability."[72] Phrases such as "reasonable certainty"[73] and "reasonable assurance"[74] seem only variants of this standard. The reasonable probability standard appears to require no more than the "preponderance of evidence" or "more probable than not" standard,[75] and some

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[67] United States v. Picard, 464 F2d 215, 216 n.1 (1st Cir. 1972).

[68] E.g., United States v. Williams, 809 F2d 75, 89–90 (1st Cir. 1986) (lab technician need not testify), cert. denied, 482 US 906 (1987); United States v. Glaze, 643 F2d 549, 552 (8th Cir. 1981) (nontestifying chemist received and transported narcotics to testifying chemist).

[69] E.g., United States v. Gelzer, 50 F3d 1133, 1141 (2d Cir. 1995) ("At trial, Officer Staub testified that he found the revolver on Scranton Avenue . . . and gave it to Officer Curtis. Next, Postal Inspector Morrison testified that he received the revolver from Detective Curtis and sent it to Washington, D.C., for forensic testing."); United States v. Jones, 404 F. Supp. 529, 543 (ED Pa. 1975) (testimony of officer who mailed heroin to lab not necessary where sealed packages initialed and return receipt introduced), aff'd 538 F2d 321 (3d Cir. 1976); United States v. Marks, 32 F. Supp. 459, 460 (D. Conn. 1940) (police officer who mailed heroin died prior to trial; officer's handwriting on sealed envelopes identified and package sent by registered mail).

[70] E.g., United States v. Lampson, 627 F2d 62, 65 (7th Cir. 1980) (deputy sheriff who transported evidence did not testify); Bay v. State, 489 NE2d 1220, 1223 (Ind. App. 1986) (detective who transported marijuana to lab did not testify).

[71] See United States v. Santiago, 534 F2d 768, 770 (7th Cir. 1976); 1 Wigmore, Evidence § 18, at 841 (Tillers rev. 1983).

[72] E.g., United States v. Brown, 482 F2d 1226, 1228 (8th Cir. 1973) ("reasonable probability the article has not been changed in any important respect"); United States v. Capocci, 433 F2d 155, 157 (1st Cir. 1970).

[73] See United States v. Jones, 404 F. Supp. 529, 543 (ED Pa. 1975); Sorce v. State, 497 P2d 902, 903 (Nev. 1972).

[74] See State v. Cress, 344 A2d 57, 61 (Me. 1975); State v. Baines, 394 SW2d 312, 316 (Mo. 1965), cert. denied, 384 US 992 (1966); People v. Julian, 360 NE2d 1310, 1313 (NY 1977).

[75] See People v. Riser, 305 P2d 1, 10 (Cal.) ("The requirement of reasonable certainty is not met when some vital link in the chain of possession is not accounted for, because then it is as likely

courts have explicitly expressed the standard in those terms.[76] This standard is the typical standard in evidence law.[77] Under this view, chain of custody "requirements go to the competency of the evidence, not merely to its credibility."[78] Under this view, the trial court determines whether this standard has been satisfied.[79]

Federal Rules

In contrast, Federal Rule 901(a) requires only that the offering party introduce "evidence sufficient to support a finding that the matter in question is what its proponent claims." Thus, the trial court does not decide whether the item has been identified by a preponderance of the evidence; rather, the court decides only whether sufficient evidence has been introduced from which a reasonable jury could find the evidence identified.[80] In other words, the offering party need only make a "prima facie"[81] showing of authenticity to gain admissibility, and the jury decides finally whether the evidence has been sufficiently identified.[82]

Not only is the prima facie standard less stringent than the "more probable than not" standard, but it also results in a different rule concerning the application of the rules of evidence. Federal Rule 104(a) provides that in deciding preliminary questions of admissibility the trial court "is not bound by the rules of evidence except those with respect to privileges."[83] Accordingly,

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as not that the evidence analyzed was not the evidence originally received"), appeal dismissed, 358 US 646 (1959); State v. Serl, 269 NW2d 785, 788–789 (SD 1978).

[76] See State v. Henderson, 337 So. 2d 204, 206 (La. 1976); State v. Williams, 273 So. 2d 280, 281 (La. 1973) ("clear preponderance").

[77] See Bourjaily v. United States, 483 US 171, 175 (1987) ("We have traditionally required that these [preliminary] matters be established by a preponderance of proof."). See also Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S. Ct. 2786) (1993) (preponderance of evidence standard applies to the admissibility of expert testimony under Fed. Evid. R. 104(a)).

[78] State v. Serl, 269 NW2d 785, 789 (SD 1978).

[79] "That determination is to be made by the trial judge, not the jury. . . . " United States v. Brown, 482 F2d 1226, 1228 (8th Cir. 1973). Accord United States v. Daughtry, 502 F2d 1019, 1021–1023 (5th Cir. 1974); United States v. Stevenson, 445 F2d 25, 27 (7th Cir.), cert. denied, 404 US 857 (1971).

[80] See Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 505 F. Supp. 1190, 1219 (ED Pa. 1980) ("The Advisory Committee Note to Rule 104(b) makes plain that preliminary questions of conditional relevancy are not determined solely by the judge, for to do so would greatly restrict the function of the jury. . . . "), rev'd on other grounds, 723 F2d 238 (3d Cir. 1983), rev'd, 475 US 574 (1986).

[81] See United States v. Sparks, 2 F3d 574, 582 (5th Cir. 1993) (Prosecution need only make a "prima facie" showing that bottles of crack seized from accused were the drugs analyzed); United States v. Ortiz, 966 F2d 707, 716 (1st Cir. 1992) (Rule 901(a) "does not erect a particularly high hurdle.").

[82] See United States v. Goichman, 547 F2d 778, 784 (3d Cir. 1976) ("[I]t is the jury who will ultimately determine the authenticity of the evidence, not the court.").

[83] See also United States v. Matlock, 415 US 164, 172–173 (1974) ("[T]he rules of evidence normally applicable in criminal trials do not operate with full force at hearings before the judge to

if the admissibility decision is entrusted to the trial court under the "more probable than not" standard, evidence rules would not be applicable and hearsay could be considered by the court. Rule 104(b), which governs questions of conditional relevancy, is an exception to Rule 104(a). If Rule 104(b) controls, the rules of evidence apply because the jury must share in the authenticity decision:

> [W]hile the court's power to "consider" inadmissible evidence under Rule 104(a) is clear, the substantive determination which the court is required to make on the issue of authentication is whether admissible evidence exists which is sufficient to support a jury finding of authenticity. . . . [O]ur task in ruling on authenticity is limited to determining whether there is substantial admissible evidence to support a finding of authentication by the trier of fact.[84]

Since the Federal Rules treat authentication as a matter of conditional relevance, that is, they adopt the prima facie evidence standard, evidence rules apply in this context.

Whether the Federal Rules of Evidence were intended to effect a major change in the chain of custody requirements is unclear. Two commentators have written that "Rule 901(a) can easily be read as doing away with any chain of custody requirement."[85] Several decisions of the Fifth Circuit contain language that supports this view. For example, the court has written that "chain of custody goes to the weight rather than the admissibility of the evidence, and is thus reserved for the jury."[86] The Second Circuit also appears to have adopted this less stringent standard: "Fed. R. Evid. 901 requires that to meet the admissibility threshold the government need only prove a rational basis for concluding that an exhibit is what it is claimed to be."[87]

Other federal courts of appeal, however, continue to apply the "reasonable probability" standard that applied before the Federal Rules of Evidence were adopted.[88] Moreover,

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determine the admissibility of evidence.").

[84] Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 505 F. Supp. 1190, 1220 (ED Pa. 1980) (emphasis added), rev'd on other grounds, 723 F2d 238 (3d Cir. 1983), rev'd 475 US 574 (1986).

[85] 2 Saltzburg & Martin, Federal Rules of Evidence Manual 478 (5th ed. 1990). But see Analysis, Mil. R. Evid. 901 ("There appears to be no reason to believe that the rule will change present law as it affects chains of custody for real evidence especially if fungible.").

[86] Ballou v. Henri Studios, Inc., 656 F2d 1147, 1154 (5th Cir. 1981). Accord United States v. Johnson, 68 F3d 899, 903 (5th Cir. 1995) ("Any break in the chain of custody affects the weight, not the admissibility of evidence. Thus, if the district court correctly finds that the government has made a *prima facie* showing of authenticity, then the evidence is admissible, and issues of authenticity are for the jury to decide."); United States v. Shaw, 920 F2d 1225, 1229–1230 (5th Cir) ("any break in the chain of custody of physical evidence does not render the evidence inadmissible but instead goes to the weight that the jury should accord that evidence."), cert. denied, 500 US 926 (1991).

[87] United States v. Hon, 904 F2d 803, 809 (2d Cir. 1990), cert. denied, 498 US 1069 (1991).

[88] E.g., United States v. Williams, 44 F3d 614, 618 (7th Cir. 1995) ("reason-

decisions of both the Fifth[89] and Second Circuits[90] also cite the "reasonable probability" standard as the threshold requirement under Rule 901.

The standard on appeal for reviewing a trial court's decision on identification is whether it is an abuse of the court's discretion.[91]

State Rules

Some state adaptations of the Federal Rules specifically require a chain of custody. For example, Alaska Rule 901(a) provides:

> (1) Whenever the prosecution in a criminal trial offers (A) real evidence which is of such a nature as not to be readily identifiable, or as to be susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud, or (B) testimony describing real evidence of the type set forth in (A) if the information on which the description is based was acquired while the evidence was in the custody or control of the prosecution, the prosecution must first demonstrate as a matter of reasonable certainty that the evidence is at the time of trial or was at the time it was observed properly identified and free of the possible taints identified by this paragraph.
>
> (2) In any case in which real evidence of the kind described in subparagraph (1) of this subdivision is offered, the court may require additional proof before deciding whether to admit or exclude evidence under Rule 403.

Application of the Standard of Proof

To satisfy its burden of proof, the prosecution need not eliminate every possibility of substitution, alteration, or tampering. The "mere possibility of a break in the chain does not render the physical evidence inadmissible, but raises the question of weight to be accorded by the jury."[92] Accordingly, discrepancies concerning the weight,[93] number,[94]

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able likelihood"); United States v. Harrington, 923 F2d 1371, 1374 (9th Cir.), cert. denied, 502 US 852 (1991); United States v. Cardenas, 864 F2d 1528, 1532 (10th Cir.), cert. denied, 491 US 909 (1989); United States v. Rans, 851 F2d 1111, 1114 (8th Cir. 1988).

[89] See Ballou v. Henri Studios, Inc., 656 F2d 1147, 1155 (5th Cir. 1981); United States v. Albert, 595 F2d 283, 290 (5th Cir.), cert. denied, 444 US 963 (1979).

[90] United States v. Gelzer, 50 F3d 1133, 1141 (2d Cir. 1995) ("There was sufficient evidence to establish that it is more likely than not that the revolver offered at trial was the same as that recovered by Officer Staub.").

[91] E.g., United States v. Ladd, 885 F2d 954, 956 (1st Cir. 1989); United States v. Jones, 687 F2d 1265, 1267 (8th Cir. 1982); United States v. Howard-Arias, 679 F2d 363, 366 (4th Cir.), cert. denied, 459 US 874 (1982); United States v. Mullins, 638 F2d 1151, 1152 (8th Cir. 1981).

[92] United States v. Jardina, 747 F2d 945, 951 (5th Cir. 1984), cert. denied, 470 US 1058 (1985).

[93] See United States v. Godoy, 528 F2d 281, 283 (9th Cir. 1975); People v. Zipprich, 490 NE2d 8, 10–11 (Ill. App. 1986).

[94] See United States v. Hon, 904 F2d 803, 810 (2d Cir. 1990), cert. denied, 498 US 1069 (1991); United States v.

date,[95] and labeling[96] of evidence often will not result in exclusion. In one case a four-day delay, during which drugs and a gun remained in a police officer's car trunk, did not result in exclusion of the evidence.[97] In another case, the court ruled that "[a]lthough the chain of custody for the bottles may not be perfect, we conclude that the district court did not abuse its discretion in admitting this evidence."[98]

In *United States v. Ladd*,[99] the First Circuit stated the rule as follows:

> In the last analysis, the prosecution's chain-of-custody evidence must be adequate—not infallible. Here, some links in the chain were rusty, but none were missing. Without question, the defense succeeded in showing a certain sloppiness, regrettable in a forensic laboratory. Yet the net effect of any such disarray on the authenticity of the evidence depended on what inferences a reasonable factfinder might choose to draw from it. Where, as in this case, a trier chooses among plausible (albeit competing) inferences, appellate courts should not intrude.[100]

Accordingly, the evidence was admissible. The same court, however, ruled that another item of evidence should have been excluded due to a "missing link" that resulted from a discrepancy between laboratory identification numbers: "In short, there was no competent proof to indicate that the sample extracted from Massey's corpse was the one which CSL tested. An important step in the custodial pavane was omitted."[101]

Presumption of Regularity

In satisfying its burden of proof, the prosecution is frequently aided by the so-called presumption of regularity. As one court has commented:

> In the absence of any evidence to the contrary, the trial judge was entitled to assume that this official would not tamper with the sack and can or their contents.

Clark, 425 F2d 827, 833 (3d Cir.), cert. denied, 400 US 820 (1970).

[95] See United States v. Robinson, 967 F2d 287, 291 (9th Cir. 1992) ("government concedes that there is a discrepancy regarding the date of seizure"); United States v. Barcella, 432 F2d 570, 572 (1st Cir. 1970).

[96] See United States v. Kelly, 14 F3d 1169, 1175–1176 (7th Cir. 1994) (discrepancy in inventory did not preclude admissibility of evidence); United States v. Allocco, 234 F2d 955, 956 (2d Cir.), cert. denied, 352 US 931 (1956); Ingle v. State, 377 NE2d 885, 892 (Ind. App. 1975); State v. Beaudoin, 386 A2d 731, 733 (Me. 1978); Renner v. Commissioner of Pub. Safety, 373 NW2d 628, 632 (Minn. App. 1985).

[97] United States v. Logan, 949 F2d 1370, 1377 (5th Cir. 1991), cert. denied, 503 US 925 (1992).

[98] United States v. Johnson, 977 F2d 1360, 1368 (10th Cir. 1992), cert. denied, 506 US 1070 (1993).

[99] 885 F2d 954 (1st Cir. 1989).

[100] Id. at 957. See also United States v. Scott, 19 F3d 1238, 1245 (7th Cir. 1994) ("[T]he government does not need to prove a 'perfect' chain of custody, and any gaps in the chain go to the weight of the evidence and not its admissibility. In this case there was at most a minor gap in the chain of custody."); Kennedy v. State, 578 NE2d 633, 639 (Ind. 1991).

[101] 885 F2d at 957.

> Where no evidence indicating otherwise is produced, the presumption of regularity supports the official acts of public officers, and courts presume that they have properly discharged their official duties.[102]

Several cases have extended the presumption to hospital personnel.[103] The presumption of regularity, however, has been criticized. As Wigmore notes, the presumption of regularity has "more often [been] mentioned then enforced."[104] Some courts have also objected to its use:

> The presumption of regularity, if it can be dignified as a rule, does not serve as a substitute for evidence when authenticity is, as here, challenged on not insubstantial grounds. At best it may relieve the government of the necessity for offering proof of custody until the integrity of the evidence has been put in issue.[105]

Another has commented that the "Government's burden . . . cannot be diluted by unwarranted presumptions about the evidence it seeks to introduce."[106] In sum, if the prosecution has met its burden of proof, the presumption of regularity is not needed. If the prosecution does not meet its burden, the presumption should not be used to save a deficiency in proof. Therefore, the presumption should be discarded as both misleading and unnecessary.

Methods of Proof

The defense will often stipulate to the chain of custody.[107] As with all stipulations, however, care must be taken in the drafting. In one case, the stipulation failed to state that the material seized from the defendant was the same material tested by the chemist, and the appellate court held that admission was error.[108]

Absent a stipulation, the chain of custody typically is established, at least in part, by the testimony of the persons ("links") who had possession of the object. These witnesses may refresh their recollections by referring to any available documentation.[109]

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[102] Gallego v. United States, 276 F2d 914, 917 (9th Cir. 1960). Accord United States v. Scott, 19 F3d 1238, 1245 (7th Cir.) ("In making this determination, the district court makes a 'presumption of regularity,' presuming that the government officials who had custody of the exhibits discharged their duties properly."), cert. denied, 115 S. Ct. 163 (1994); United States v. Kelly, 14 F3d 1169, 1175 (7th Cir. 1994)("When there is no evidence of tampering, a presumption of regularity attends the official acts of public officers in custody of evidence; the courts presume they did their jobs correctly."); United States v. Miller, 994 F2d 441, 444 (8th Cir. 1993) ("officials are entitled to the presumption of integrity").

[103] Gass v. United States, 416 F2d 767, 770 (DC Cir. 1969); Pasadena Research Lab., Inc. v. United States, 169 F2d 375, 381–382 (9th Cir.), cert. denied, 335 US 853 (1948).

[104] 9 J. Wigmore, Evidence § 2534, at 488 (3d ed. 1940).

[105] United States v. Starks, 515 F2d 112, 122 (3d Cir. 1975).

[106] United States v. Lampson, 627 F2d 62, 65 (7th Cir. 1980).

[107] E.g., People v. Perine, 402 NE2d 847, 849 (Ill. App. 1980) (chain of custody stipulated).

[108] People v. Maurice, 202 NE2d, 480, 481 (Ill. 1964).

[109] See Fed. R. Evid. 612 (use of writings to refresh memory); United States

Habit Evidence

The proponent may also introduce evidence of habit or routine practice to establish the chain of custody. Federal Rule 406 provides that evidence of the routine practice of an organization is relevant to prove that the conduct of the organization "on a particular occasion was in conformity with the . . . routine practice." Accordingly, evidence of the standard operating procedures of police departments and laboratories in safeguarding real evidence may be used to establish the chain of custody.[110]

Documentary Evidence

Sometimes the chain of custody has been established by documentary evidence.[111] For example, courts have held that laboratory slides and labels on specimen bottles fall within the federal Business Records Act because they had been prepared by hospital personnel in the regular course of business.[112]

These cases, however, predate the adoption of the Federal Rules of Evidence. Federal Rule 803(8)(B), which governs the public records exception specifically excludes "in criminal cases matters observed by police officers and other law enforcement personnel.[113] According to the legislative history, this exclusion was based on the belief that "observations by police officers at the scene of the crime or the apprehension of the defendant are not as reliable as observations by public officials in other cases because of the adversarial nature of the confrontation between the police and the defendant in criminal cases."[114] The scope of the police records exclusion has divided the courts. Some courts seem to apply a per se rule, under which all police reports are automatically excluded,[115] while others have adopted a more flexible approach. For example, some courts have held that Congress "did not intend to exclude [police] records of routine, nonadversarial matters."[116]

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v. Stevenson, 445 F2d 25, 27 (7th Cir.) (in establishing chain of custody, officers "refreshed their recollection from official records"); cert. denied, 404 US 857 (1971).

[110] See United States v. Jones, 687 F2d 1265, 1267 (8th Cir. 1982) (evidence handled by government according to "established procedures"); United States v. Luna, 585 F2d 1, 6 (1st Cir.) ("normal police procedure"), cert. denied, 439 US 852 (1978); United States v. Burris, 393 F2d 81, 83 (7th Cir. 1968) (chemist testified about standard procedure of laboratory).

[111] E.g., United States v. Luna, 585 F2d 1, 6 (1st Cir.) (police "accounted for the evidence, either by official records or by testimony concerning normal police procedure"), cert. denied, 439 US 852 (1978); Graham v. State, 255 NE2d 652, 654 (Ind. 1970) ("police custody records" may be used to establish chain of custody).

[112] See United States v. Duhart, 496 F2d 941, 944 (9th Cir.), cert. denied, 419 US 967 (1974); Gass v. United States, 416 F2d 767, 771 (DC Cir. 1969); Wheeler v. United States, 211 F2d 19, 22–23 (DC Cir. 1953), cert. denied, 347 US 1019 (1954).

[113] See also Mil. R. Evid. 803(6), 803(8) (specifying that "chain of custody documents" are admissible).

[114] S. Rep. No. 1277, 93 Cong., 2d Sess. 17, reprinted in 1974 USCCAN 7051, 7064.

[115] See United States v. Ruffin, 575 F2d 346, 356 (2d Cir. 1978); United States v. Oates, 560 F2d 45, 67 (2d Cir. 1977).

[116] United States v. Hernandez-Rojas, 617 F2d 533, 535 (9th Cir.), cert. de-

Chain of custody records should be considered routine nonadversarial records. The habitual use of chain of custody documents is the most reliable way to ensure that there is not a break in the chain. Their use should be encouraged. In a civil paternity action filed by the state, the court rejected a chain-of-custody challenge to DNA results because a laboratory supervisor testified:

> The [chain of custody] document was developed in order to allow the supervisor to confirm the chain of custody without having to bring numerous laboratory personnel to court. Dr. Harmon thoroughly discussed the document and its safety devices. She testified in detail as to her laboratory's procedures for drawing blood samples and assuring proper identification of both the individuals having the test and the blood samples drawn from those individuals. She testified that once the blood samples were received by the laboratory they were checked for any sign of tampering.[117]

Another issue concerns the relationship between the public records exception and other hearsay exceptions. Several courts have held that documents subject to exclusion under the public records exception are not admissible under any other hearsay exception.[118] This interpretation would preclude the admissibility of chain of custody documents as business records[119] or as recorded recollection[120] if those documents are inadmissible as police records under Rule 803(8). This view, however, is not accepted by all courts.[121]

United States v. Coleman[122] is one of the few cases dealing with the admissibility of chain of custody documents under the Federal Rules. The defendant contended that police reports are never admissible when offered by the prosecution, and thus DEA forms of chemical analysis and lock-seal envelopes containing notations of the date, time, and location of the sale of heroin and an identification of the seller by a John Doe number were inadmissible. The court rejected this argument, holding that the documents were not unreliable on the ground that they were prepared for the purpose of litigation. Although the court recognized that the forms "have certain indicia of 'police reports,' " it found that the

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nied, 449 US 864 (1980); United States v. Orozco, 590 F2d 789, 793 (9th Cir.), cert. denied, 439 US 1049 (1979).

[117] J.E.B. v. State, 606 So. 2d 156, 157 (Ala. Civ. App. 1992), cert. denied, 1992 Ala. Lexis 1296 (Ala. Oct. 12, 1992), rev'd and remanded, J.E.B. v. Alabama ex rel. T.B., 114 S. Ct. 1419 (1994).

[118] See United States v. Oates, 560 F2d 45 (2d Cir. 1977).

[119] Fed. R. Evid. 803(6).

[120] Fed. R. Evid. 803(5).

[121] Several courts have found the congressional purpose of excluding police reports under Rule 803(8) was intended to apply only when such reports were admitted in lieu of testimony. United States v. King, 613 F2d 670, 673 (7th Cir. 1980); United States v. Sawyer, 607 F2d 1190, 1193 (7th Cir. 1979), cert. denied, 445 US 943 (1980).

[122] 631 F2d 908 (DC Cir. 1980).

forms and lock-sealed envelopes contained "only skeletal information, and are prepared not solely with an eye towards presentation, but towards preserving a record of the chain of custody."[123]

[123] Id. at 912.

Chain of custody documents have also been challenged on confrontation grounds but not succcessfully.[124]

[124] But see Payne v. Janasz, 711 F2d 1305, 1313–1314 (6th Cir. 1983) (admission of evidence tag bearing inscription "10001 Cedar Avenue" did not violate right of confrontation).