

Criteria	Issues	Discussion
Preservation: FRE 103	Objection at trial (not motion) on hearsay and CC grounds preserved issue for appeal. Std. of review: fact abuse of disc. Law: de novo. CC: de novo. The objection must be: 1) made 2) timely 3) well-grounded Why Require Objections? 1) To avoid endless litigation 2) To help the court 3) To help the opposing side (And here ...) Four types of error: reversible, harmless, plain and constitutional Here we have constitutional error under 6 th amendment, substantial right effect.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Very Poor (E to D+): 0-07 MAX: 30
FRE 104(a) ONLY Bench Trial	104(a): Predicate facts on admissibility, especially findings of fact for 803(4) and <i>Crawford</i> Doctrine for the judge by a preponderance using <i>Bourjaily</i> . Is it admissible hearsay and testimonial or not? Partial bootstrapping ok, but lots of independent corroborating evidence available to establish reliability of TOMA use as will be discussed in 803(4) section. BENCH TRIAL so no 104(b) discussion.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Very Poor (E to D+): 0-07 MAX: 30
Logical Relevance FRE 401/402	401(a) relevance (hypo: ID of Attacker); 401(b) materiality (“of consequence”) (attack detail—belt—and ID). TOMA: “ Defendant Did it! ” “ He hit me with a belt ” note that ID is critical given D’s defense theory . Logical: HOW JM INJURED “struck repeatedly with a belt,” Tr. 244, and that WHO: “it was her boyfriend Dee Ward” who beat her. Of Consequence because state had to prove that JM was battered/held by Ward. 402[b] irrelevant not admissible; 402[a] relevant potentially (presumed is ok) admissible. Relevance standard of the rules most liberal of possible four	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Very Poor (E to D+): 0-07 MAX: 30
Specific Rule(s) Hearsay: 801(a),(b),(c) Do NOT mention 801(d)	801(a)[1] Oral assertions; 801(b) by victim JM. Questions by nurse prompted responses; 801(c)[start] these “statements”; 801(c)(1) will not be made while testifying at the current trial, victim JM declarant was absent/unavailable; 801(c)(2) prosecution intends to offer JM’s words for TOMA: “Dee hit me with a belt” essentially, and DEE did it is the critical one (“struck repeatedly with a belt,” Tr. 244, and that “it was her boyfriend Dee Ward” who beat her).	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Very Poor (E to D+): 0-07 MAX: 30
FRE 802 Presumptive Inadmissibility Factors related to declarant; here Judge not jury decides credibility	3 Reasons Why Exclude Hearsay? (1) The absence of cross-examination; (2) The absence of demeanor evidence; (3) The absence of the oath. 4 Reasons Why do we distrust Hearsay? Four Risks: (1) Risk of Faulty Memory; (2) Risk of Misperception; (3) Risk of "Ambiguity" or "Faulty Narration"; (4) Risk of Distortion. There is overwhelming evidence of a crime having been committed that severely injured JM. But as to the critical question of how and who, the only evidence is JM’s hearsay statements. The Defense theory makes the how less important but the WHO is critical. There is some circumstantial evidence of ID (relationship, truck), but only direct evidence is JM’s words.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Very Poor (E to D+): 0-07 MAX: 30
FRE 803(4); Independent corroboration, bootstrapping, reliability	Use the caselaw that I gave you in the question to illustrate proper medical and diagnostic purposes. Paramedic and Police Officer provide independent corroboration of the medical needs of JM and of the reasonableness of the Safety Plan for 803(4) purposes. Very neglected issue here. Rule: A statement that: (A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.	Good (A- to A): 45-60 Satisfactory (B- to B+): 30-44 Unsatisfactory (C- to C+): 15-29 Very Poor (E to D+): 0-14 MAX: 60
Confrontation Clause applicable to States, <i>Pointer</i>.	Sixth Amendment; Confrontation Clause; (quote it); Made applicable to states; by 14 th Am.; Due Process Clause; <i>Pointer v. Texas</i> ; quote from <i>Pointer</i> .	MAX: 30
Specific Rule Constitutional: <i>Crawford</i> Doctrine <i>Melendez</i>, etc. to illustrate role of nurse as government “agent”	Crawford: <i>Testimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine.</i> Davis: Testimonial occupies entire field; emergency doctrine; More like <i>Hammon</i> than <i>Davis</i> by the time JM gets to the hospital and to the Forensic Nurse; Forensic Nurse is a police agent under these circumstances (use <i>Melendez</i> , etc), while under 803(4) we can define “medical purpose” liberally, under “primary purpose” we must be narrower. Bryant: Objective totality of the circumstances test for primary purpose of declarant’s statement.	Good (A- to A): 70-90 Satisfactory (B- to B+): 45-69 Unsatisfactory (C- to C+): 22-44 Very Poor (E to D+): 0-21 MAX: 90
403? Need go no further 105? No Jury	The may be some 403 balancing even in a bench trial, HOWEVER, given that the court has decided that there was a 6 th Amendment Confrontation Clause violation, the need go no further. Graded so that you talked yourself out of points rather than earn them.	MAX: 30
	Evidence, Fall 2016, Professor Pedro A. Malavet	360 total points