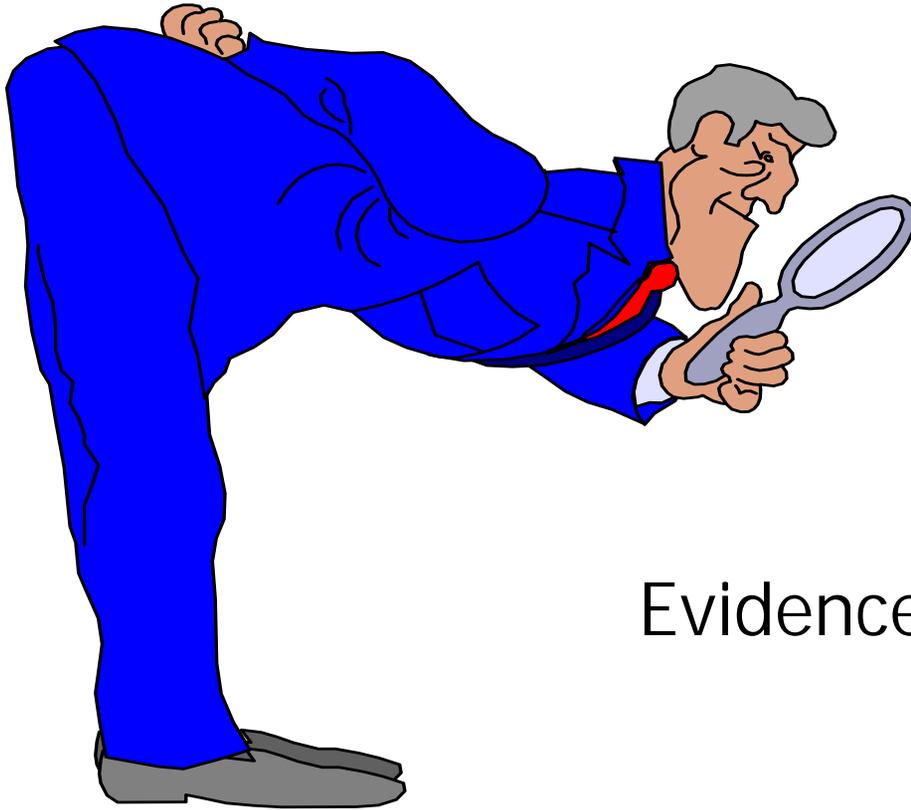
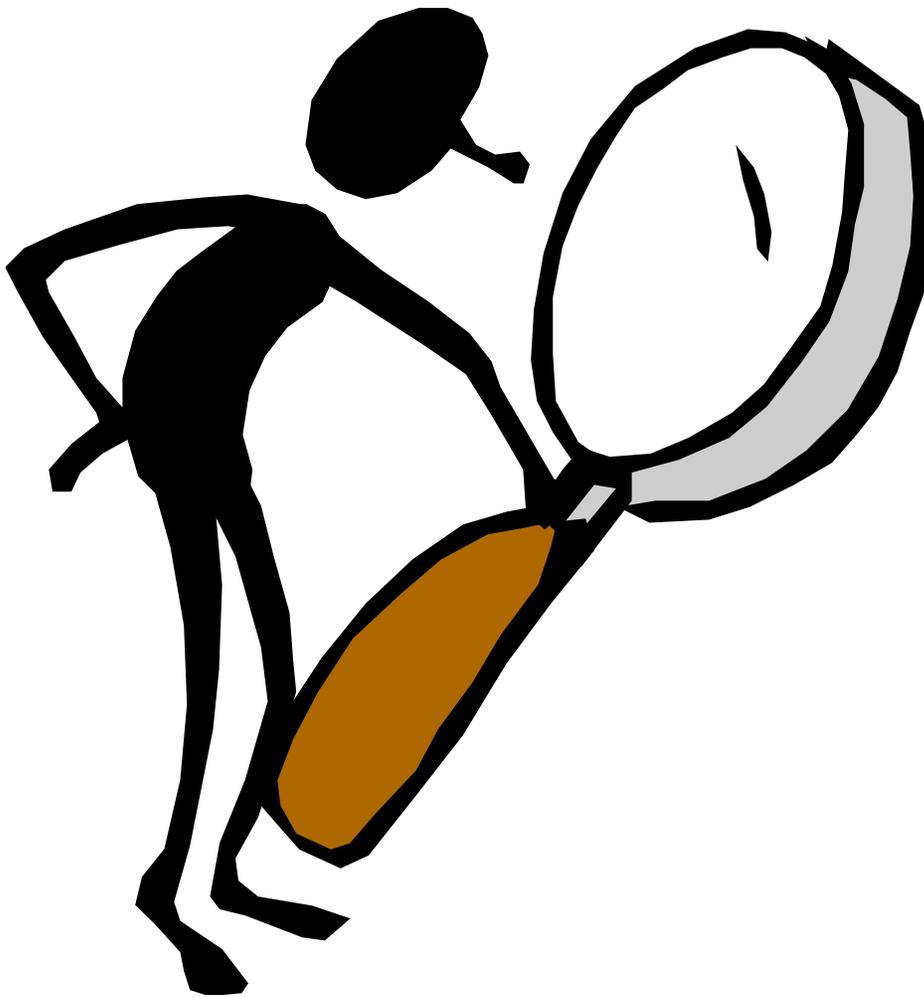


Wisconsin Department of Health & Family Services
Bureau of Quality Assurance

Building a Defensible Case



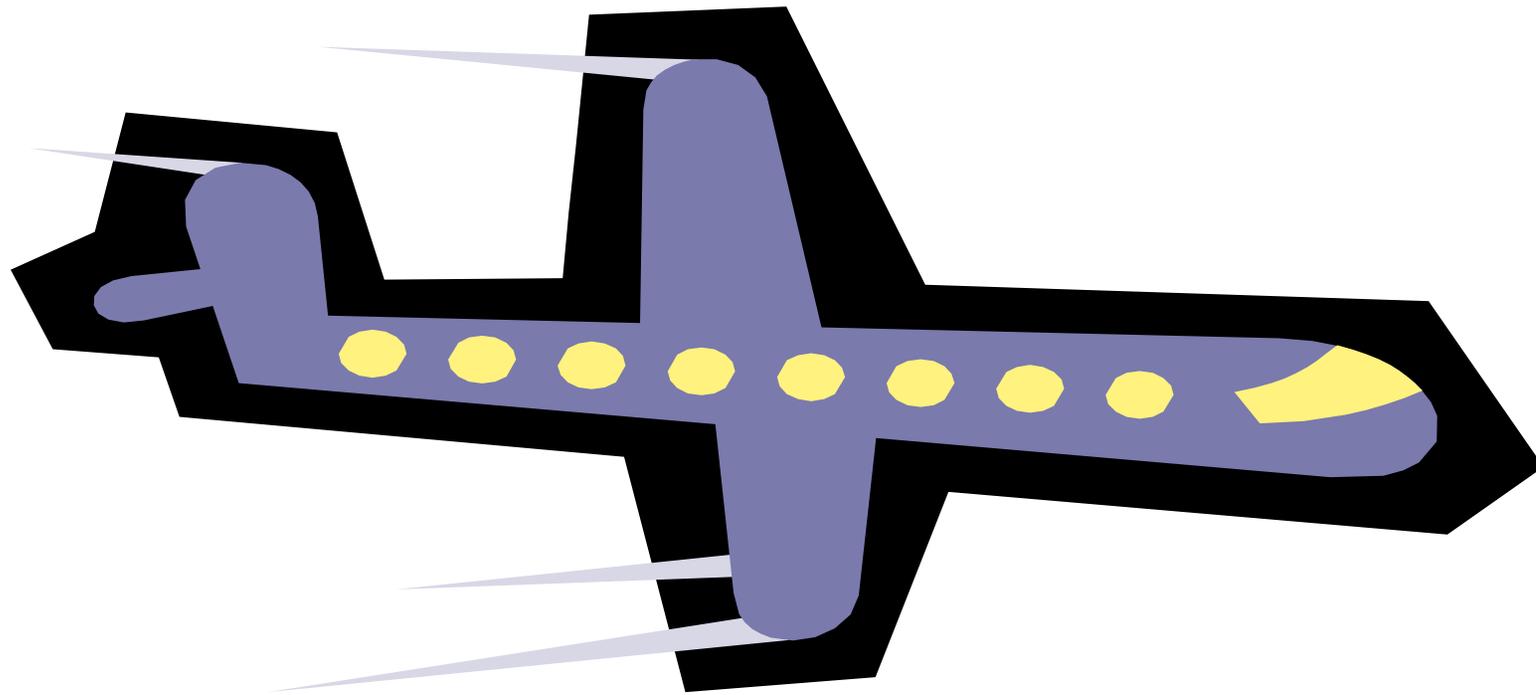
Evidence: What is it?



Cabin??



Cabin...



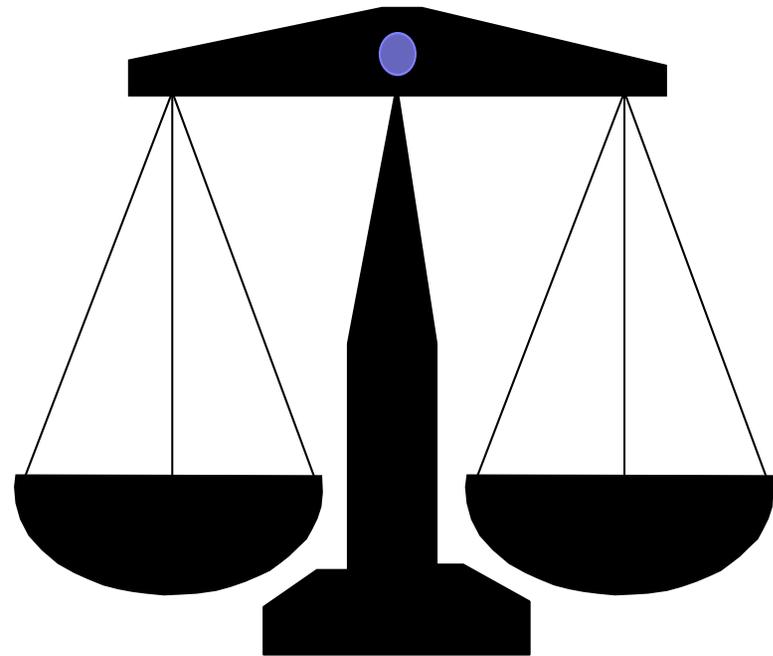
Evidence



- ❖ The means or process by which any matter of fact that is being investigated may be proved or disproved
- ❖ Any information or proof which clarifies or helps establish the truth of the fact or point in issue

Laws of Evidence ~

- ❖ Rules used to determine which evidence is to be admitted or not admitted in hearings or trials, and
- ❖ What weight to be given to evidence which is admitted



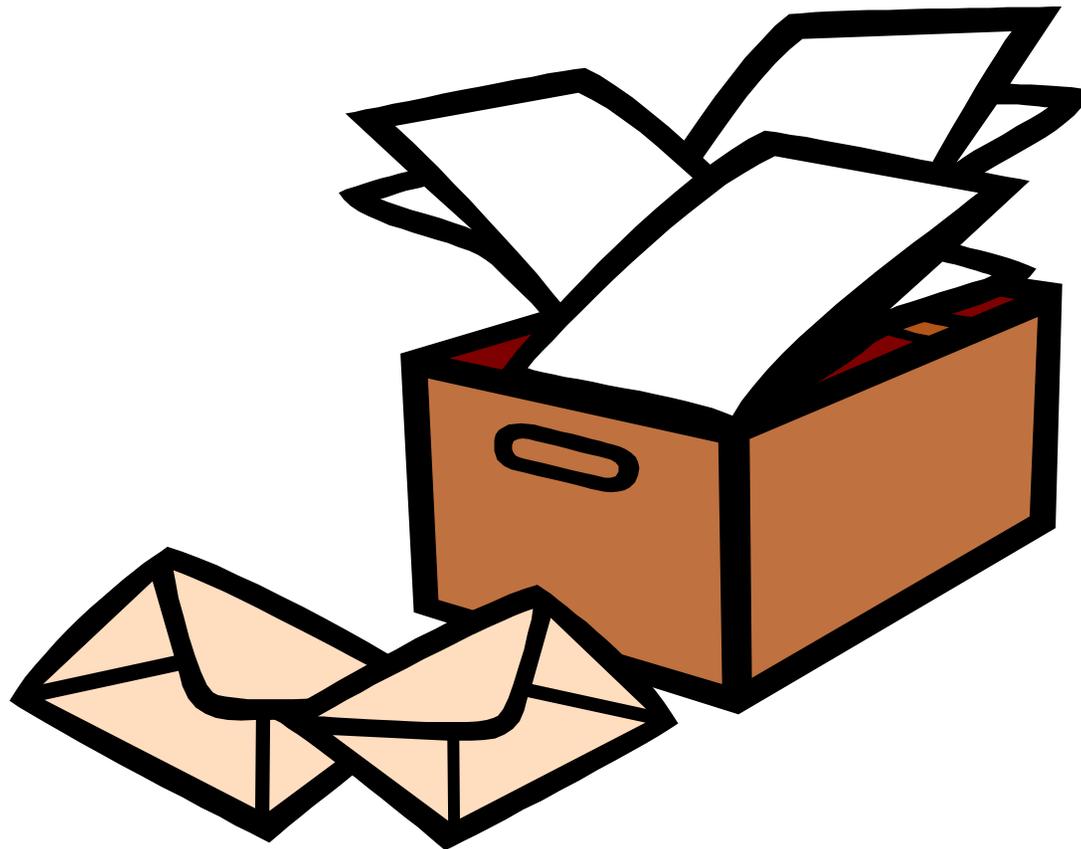
Types of Evidence - Real



Types of Evidence - Testimonial



Types of Evidence: Documentary



E-Mail—are you protected?

- ❖ Write your e-mail as if might be tomorrow's headline
- ❖ Keep e-mail concise and factually correct
- ❖ Write e-mail in report form
- ❖ Avoid being "chatty"



E-Mail—are you protected?

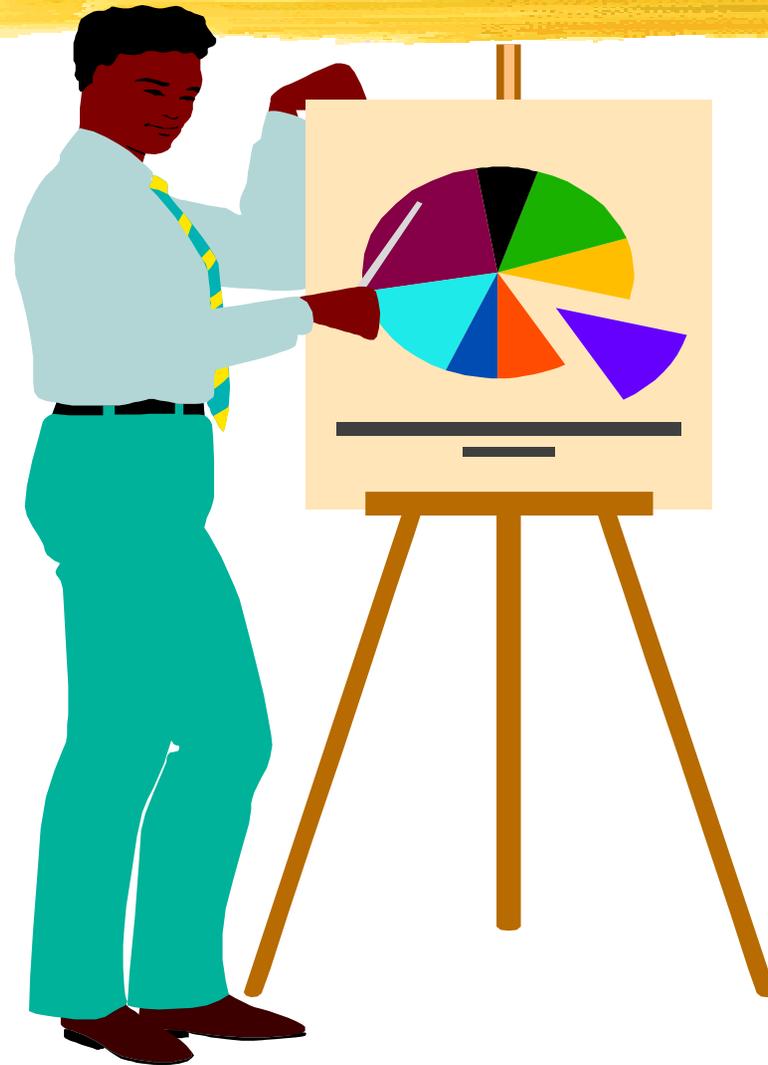


White House Pledges Probe

- “White House staffers on Wednesday scoured their computer files and telephone logs for evidence that would aid a criminal investigation into an apparent leak of classified information. ... With the probe in its early stages, the White House was focused on ensuring that documents, emails, phone logs and other potential pieces of evidence were being preserved.”

Wisconsin State Journal, Curt Anderson, Associated Press, October 2, 2003, p. A3.

Types of Evidence: Demonstrative



Types of Evidence: Judicially Noted



Credibility of Evidence

- ❖ Corroboration
- ❖ Credibility
- ❖ In a position to know
- ❖ Bias
- ❖ Motive
- ❖ Admission of wrongdoing



Evidence: What's all the fuss about?

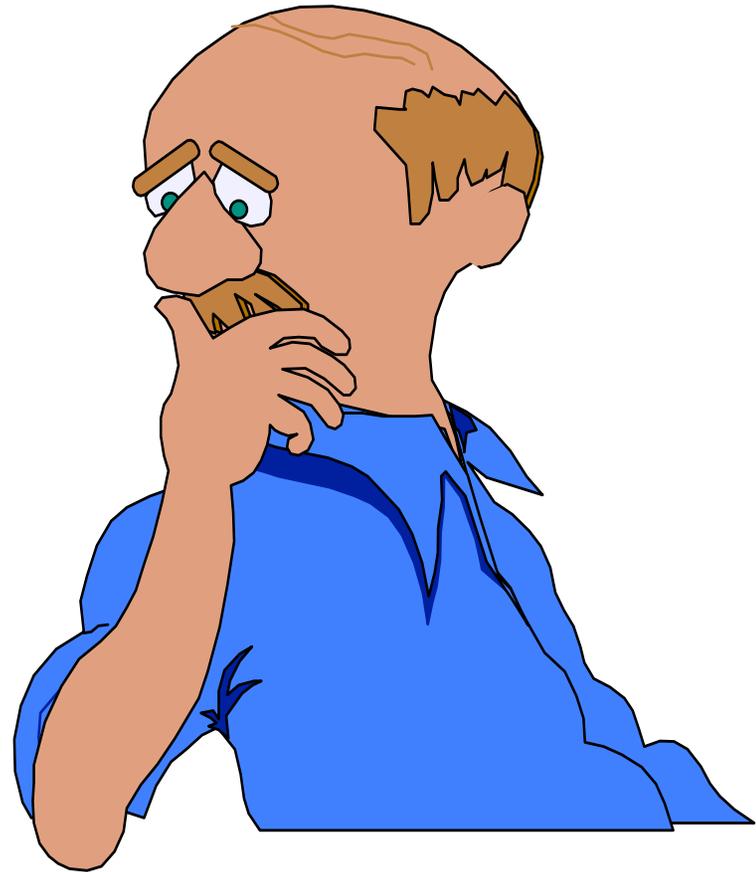


Hurdles for admissible evidence:

-  Authenticity
-  Relevance
-  Foundation

What to collect?

- ❖ It depends ...
- ❖ What is the issue?
 - The law, rule or regulation.
- ❖ What is relevant?
 - Something that tends to prove or disprove the matter in dispute.



What's relevant?



- ❖ Evidence or information must:

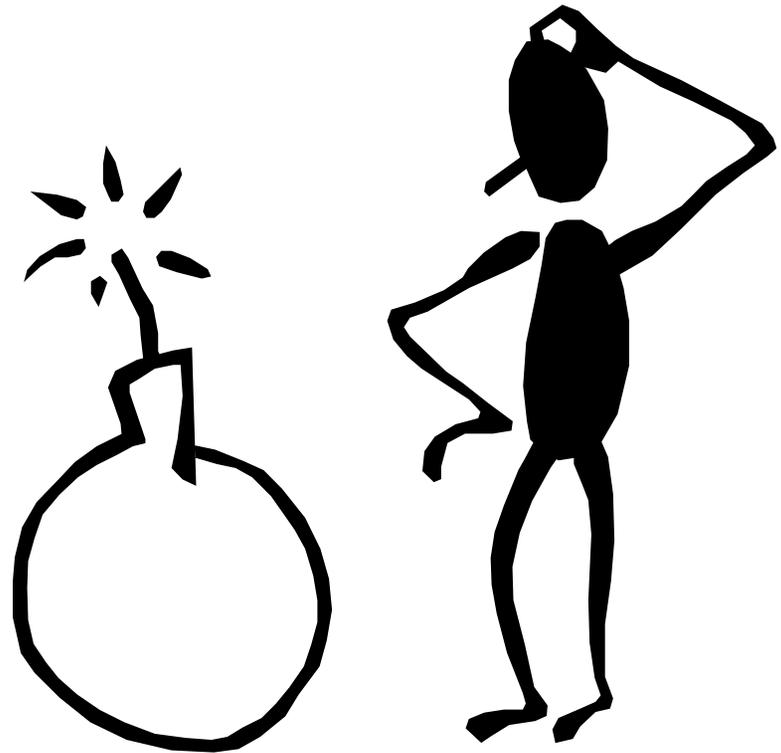
- pertain to a fact in question
- tend to make the existence of the fact either more or less probable than would be the case without the evidence/information

- ❖ SO WHAT????

- Test: Interesting or Relevant?

How do you collect it???

- ❖ Carefully
- ❖ Steps for collecting:
 - Conditions and surroundings
 - Location and time
 - Describe it
 - Relationship of item to others



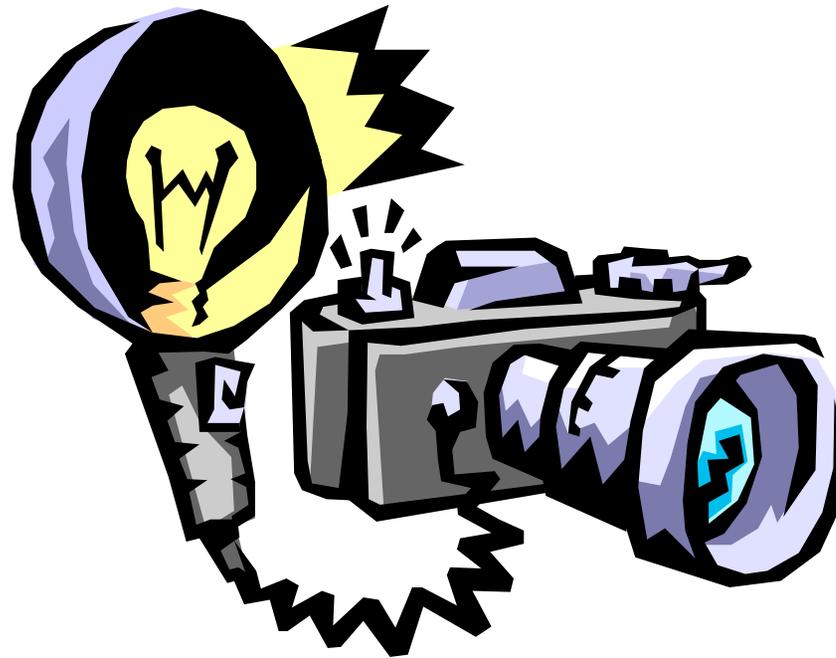
Chain, chain, chain...



❖ Chain of custody

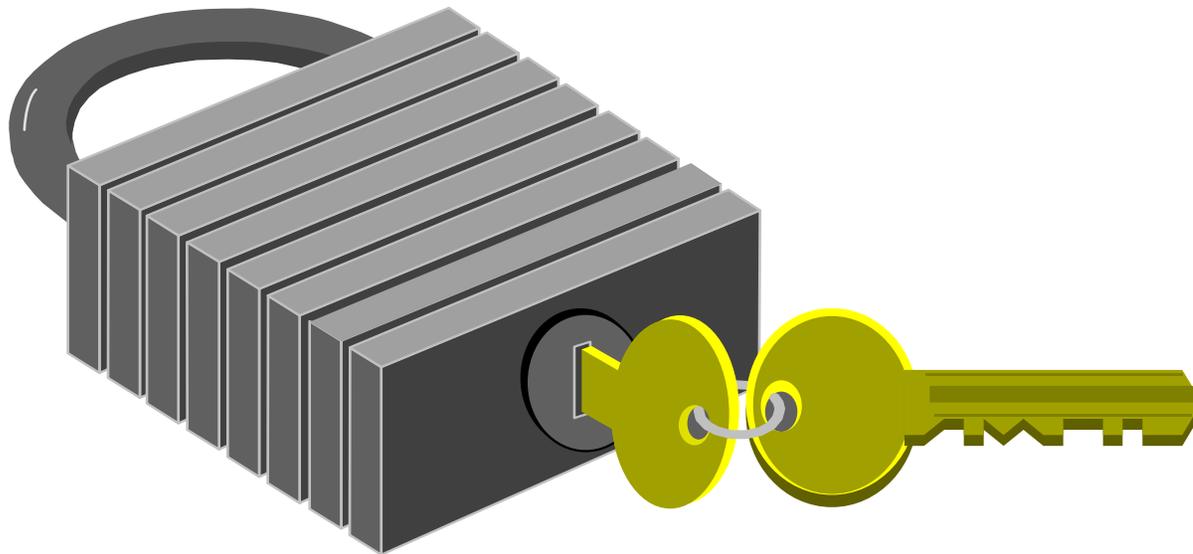
- Show what you got
- Show how you got it
- Show what you did with it until you presented it in the legal proceeding

“Freezing” Evidence



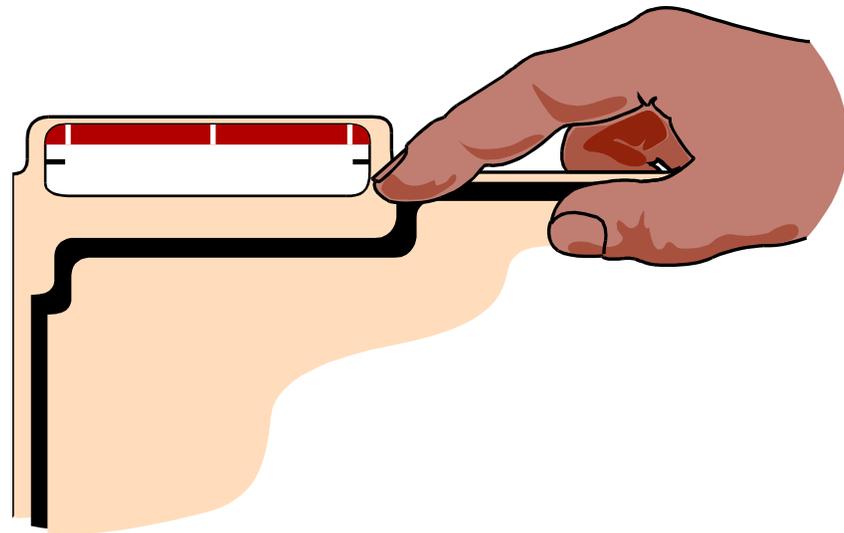
How do you store it?

- ❖ The Case File: A method of organizing and preserving all of the information relevant to the investigation



The Case File

- ❖ Contains all information for the case
- ❖ Is kept intact
- ❖ Preserves evidence
 - notes
 - documents
 - photos



Passing on the Information



- ❖ The case file preserves the information collected so that:
 - It can be reviewed to determine how well the agency fulfills its regulatory mission (open records, etc.)
 - It can be presented as evidence at hearings or in court

How much evidence is enough?



What Proof is Needed?



Burdens of Proof

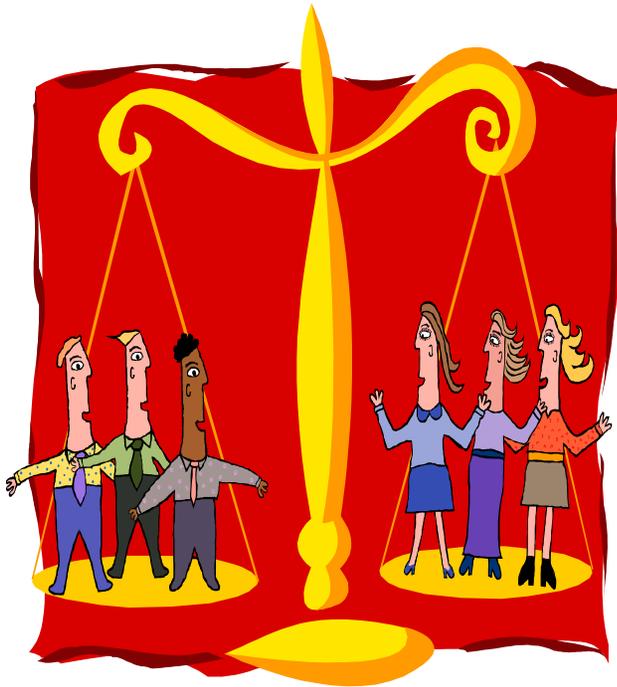
❖ Life Situations:

- Hunch
- Inferences based on information available
- Conclusion

❖ Pros and Cons?

Evidence and the Burden of Proof

In administrative hearings, both parties attempt to prove their positions by a preponderance of evidence.



- ❖ 100 % Complete, undisputed evidence.
- ❖ Beyond a reasonable doubt.
- ❖ Clear and convincing -- Criminal.
- ❖ Preponderance -- Administrative.
- ❖ 0% No Evidence.

Burden of proof ...



❖ Criminal Law:

- Hunch
- Articulable Suspicion
- Probable Cause
- Beyond a Reasonable Doubt

❖ Pros and Cons?

Burden of Proof ...



❖ Civil (Administrative) Law

- Hunch

- Reason to believe

- Clear and convincing; preponderance of the evidence.

❖ Pros and Cons?