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Evidence & Admissibility

PIRFO Debriefing Workshop

18 – 22 November 2019

SPC Conference Center

NOUMEA

New Caledonia

PIRFO



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Objective of presentation

- At end of session, you will be able to:
 - Identify the different types of evidence.
 - Understand the concept of the admissibility of evidence,
 - How to apply this knowledge in your role as debriefers when analysing incident reports.



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Types of Evidence

- Real Evidence
- Documentary Evidence
- Demonstrative Evidence
- Testimonial Evidence



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What is real evidence?.

- Real evidence describes a physical object which has a direct connection to a crime or civil action.
- E.g. the dollar notes used in a bribery case





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Another example of real evidence

- ❑ The actual fish aggregating device being used during a FAD closure



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What is documentary evidence?

- Any evidence introduced at a trial which is in the form of writings, or documents.
- Example – a catch report form.

Form 1040A Department of the Treasury - Internal Revenue Service U.S. Individual Income Tax Return (99) 2011 IRS Use Only - Do not write or staple in this space.

OMB No. 1545-0047

Your first name and middle name _____ Last name _____ Your social security number _____

If a joint return, spouse's first name and middle name _____ Last name _____ Spouse's social security number _____

Home address (number and street). If you have a P.O. box, see instructions _____ Apt. no. _____

City, town or post office, state, and ZIP code. If you have a foreign address, see instructions below (see instructions) _____

Foreign country name _____ Foreign province/county _____ Foreign postal code _____

Filing status Check only one box.

1 Single

2 Married filing jointly (even if only one had income)

3 Married filing separately. Enter spouse's SSN above and full name here ▶

4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here ▶

5 Qualifying widow(er) with dependent child (see instructions)

Exemptions 6a Yourself. If someone can claim you as a dependent, do not check box 6a.

b Spouse

Dependents: (c) First name Last name (d) Dependent's social security number (e) Dependent's relationship to you (f) if child under age 17 qualifying for child tax credit (see instructions)

Boxes checked on 6a and 6b: No. of children on 6c who: • lived with you _____ • did not live with you due to divorce or separation (see instructions) _____ Dependents on 6c not entered above _____ Add numbers on lines above ▶ _____

d Total number of exemptions claimed _____

Income

7 Wages, salaries, tips, etc. Attach Form(s) W-2 _____ 7

Attach Form(s) W-2 here. Also attach Form(s) 1099-R if tax was withheld. If you do not get a W-2, see instructions. (Income, but do not attach, any payment. Also, please use Form 1040-V.)

8a Taxable interest. Attach Schedule B if required _____ 8a

b Tax-exempt interest. Do not include on line 8a. 8b _____

9a Ordinary dividends. Attach Schedule B if required _____ 9a

b Qualified dividends (see instructions). 9b _____

10 Capital gain distributions (see instructions). _____ 10

11a IRA distributions. 11a _____ 11b Taxable amount (see instructions). 11b _____

12a Pensions and annuities. 12a _____ 12b Taxable amount (see instructions). 12b _____

13 Unemployment compensation and Alaska Permanent Fund dividends. _____ 13

14a Social security benefits. 14a _____ 14b Taxable amount (see instructions). 14b _____

15 Add lines 7 through 14b (far right column). This is your total income. ▶ 15 _____

Adjusted gross income

16 Educator expenses (see instructions). _____ 16

17 IRA deduction (see instructions). _____ 17

18 Student loan interest deduction (see instructions). _____ 18

19 Tuition and fees. Attach Form 8917. _____ 19

20 Add lines 16 through 19. These are your total adjustments. _____ 20

21 Subtract line 20 from line 15. This is your adjusted gross income. ▶ 21 _____

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Cat No. 11327A Form 1040A (2011)



What is demonstrative evidence?

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- Evidence introduced directed to the senses without using testimonial evidence.

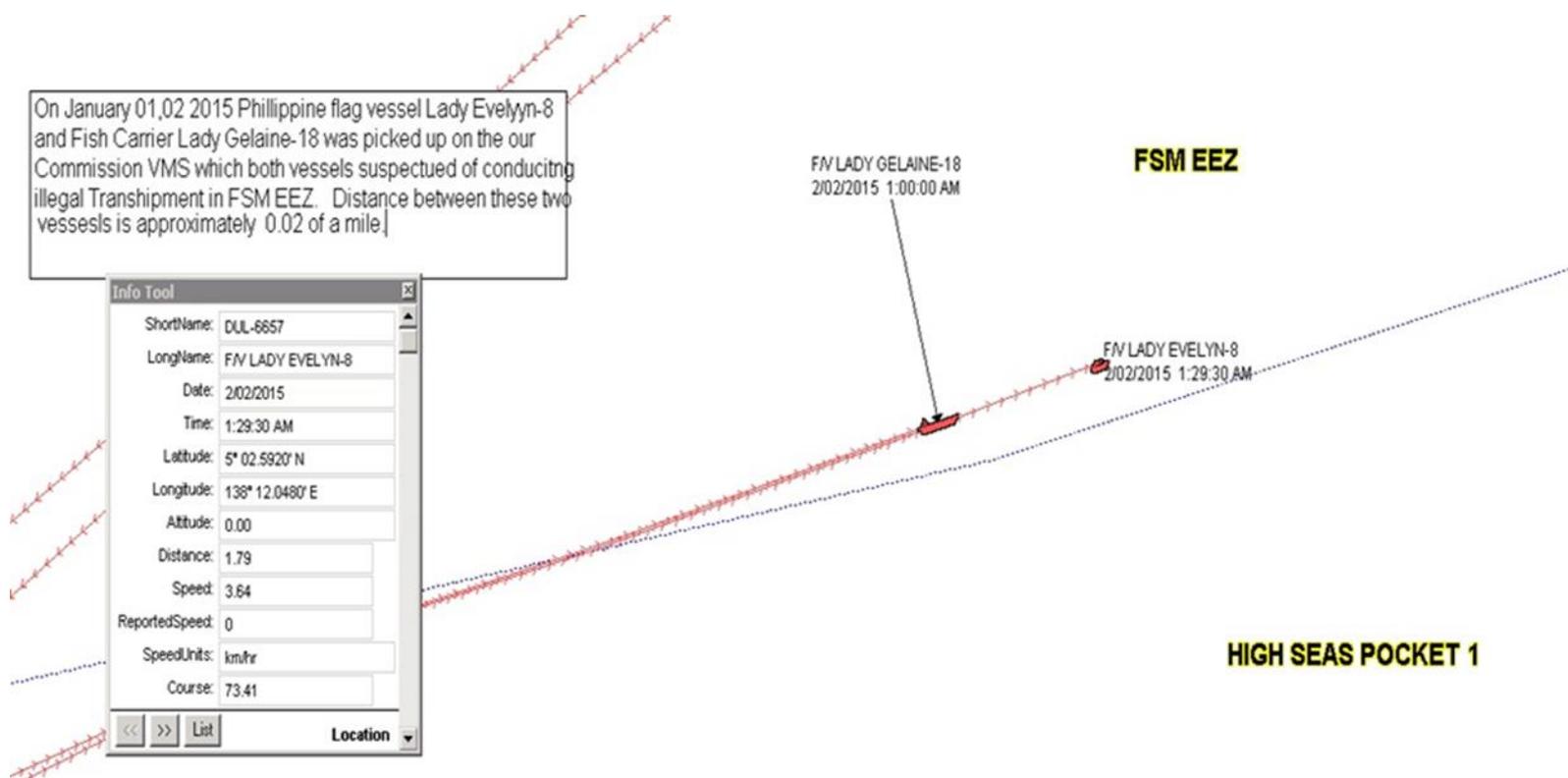
- Example – showing a snapshot of the track of the vessel in the exclusive economic zone.



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Example of demonstrative evidence – VMS snapshot

On January 01,02 2015 Phillippine flag vessel Lady Evelyn-8 and Fish Carrier Lady Gelaine-18 was picked up on the our Commission VMS which both vessels suspected of conducting illegal Transhipment in FSM EEZ. Distance between these two vessels is approximately 0.02 of a mile.





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Another example of demonstrative evidence – photograph of whale shark





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What is testimonial evidence?

- Giving evidence in court.





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Admissibility of Evidence

- In order for:
- Real Evidence*,
- Documentary Evidence*,
- Demonstrative Evidence*, and
- Testimonial Evidence* to be allowed in court,

“MUST be ADMISSIBLE”



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What does this mean?

- ❑ In order for the evidence to be admissible or allowed in court, it has to be:
 - **RELEVANT** and **RELIABLE**.

- ❑ **Relevant** – evidence must prove or disprove a fact so it has to be connected to the offence which a defendant is being charged with.

- ❑ **Reliable** – refers to the credibility of the source of the evidence



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Putting admissible evidence into context

- Chain of custody must be complete.
- To maintain chain of custody, evidence must be preserved from the time it is collected to the time it is presented in court.
- This is in order to establish the reliability of the evidence and the authenticity of the evidence.
- If Chain of custody is **COMPLETE** – evidence will be **ADMISSIBLE**



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Chain of custody

Evidence must:

1. Be exactly the same real evidence from when it was obtained until presented.
2. Exact sequence of events relating to evidence to be shown.
3. Not have been tampered with.

If chain of custody broken – evidence will **NOT** be admissible.



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When does evidence become inadmissible?

- When it is **NOT RELEVANT**
- When it is **NOT RELIABLE**



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Examples of inadmissible evidence

- Hearsay Evidence
- Example using Solomon Island law
- Evidence Act 2009, s. 117
- “A hearsay evidence is not admissible except as provided by this Act or any other law.”



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General admissibility of hearsay

- ❑ Evidence Act 2009, s. 118
- ❑ (1) A hearsay evidence is admissible in any proceeding if –
 - ❑ (a) the circumstances relating to the statement provides reasonable assurance that the statement is reliable; and



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Hearsay continued.

- (b) either –
- (i) the maker of the statement is unavailable as a witness;
or
- (ii) in any case where the court considers that undue expense and delay would be caused if the maker of the statement were required to be a witness.



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Definition of Hearsay

- ❑ A statement made out of court that is offered in court as evidence to prove the truth of the matter asserted.





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Example of hearsay evidence

- ❑ Captain Lee is charged with failing to stow away gear when in the Vanuatu territorial sea on Dec 25, 2016, where he was not authorized to fish.
- ❑ Big Ears, the observer remembers that Captain Lee fished on Christmas day, but he cannot remember the vessel's location. He only heard Sneaky the engineer telling another crew member the vessel was in Vanuatu's territorial sea.
- ❑ Observer Big Ears is called to testify against Captain Lee by saying what he heard Sneaky say.
- ❑ **QUESTION – DO YOU THINK BIG EAR'S EVIDENCE WILL BE ADMISSIBLE?**