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# Evidence

# in a nutshell

PAUL F. ROTHSTEIN  
MYRNA S. RAEDER  
DAVID CRUMP

6TH EDITION

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# **EVIDENCE IN A NUTSHELL**

**SIXTH EDITION**

By

**PAUL F. ROTHSTEIN**

Professor of Law

Georgetown University Law Center

**MYRNA S. RAEDER**

Professor of Law

Southwestern Law School

**DAVID CRUMP**

Newell H. Blakely Professor of Law

University of Houston Law Center

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# **PREFACE: USING THIS BOOK**

## **Sixth Edition**

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Legions of law students have successfully used *Evidence in a Nutshell* (1) to study for exams, (2) as optional outside reading during the Evidence course, or (3) as a course-book assigned by the professor. The book is designed to promote understanding and remembering of any Evidence course you might be taking in any law school today. Student-friendly features include:

- copious sign-post-type headings;
- informative black letter summaries as you go along;
- a table of contents that is actually a comprehensive course outline;
- the entire text is sequentially keyed to the Federal Rules of Evidence;
- sections and subsections are labeled conspicuously with the applicable rule number;
- each section first succinctly describes the main features of the rule, then gives pithy examples of its application, and finally explores issues like you might get on an exam;
- the important cases you studied in the course are included and easy to find;

## PREFACE

—A CONVENIENT COPY OF THE FEDERAL RULES OF EVIDENCE, AS RESTYLED, IS AT THE BACK.

This edition includes, *inter alia*, a number of recent developments: The revolution in constitutional confrontation law accomplished by the Supreme Court in *Crawford* and its progeny; new amendments to the Federal Rules including their complete restyling; and some matters concerning the constitutional “right to defend” and privileges, to name a few.

Is there one key concept that can unlock all the complexities of Evidence? Maybe not entirely, but here we turn to the world’s leading cultural anthropologist, who, as part of his examination of legal institutions, concluded this about the rules of evidence, quoting an earlier edition of this Nutshell:

[T]he rules of evidence...are motivated... by a distrust of juries as “rational triers of fact”... The judge’s job in admissibility questions is to decide, as Rothstein’s Nutshell finely puts it, when “the trial will be better off without the evidence.”<sup>1</sup>

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### ***About the Authors and the Genesis of This Book (For those who like to know such things)***

This is the sixth edition of the original ROTHSTEIN’S EVIDENCE IN A NUTSHELL, which

1. Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, 172 (1983).

## PREFACE

proved enormously successful. Rothstein, a law professor at Georgetown University in Washington, D.C., is nationally known for his ability to make difficult points of law clear through his writings, lectures, and media appearances. For the most recent editions, Prof. Rothstein has been joined by an equally talented team: law professors Myrna Raeder and David Crump, prolific writers and award winners in their own right.

The aim of the book, as always, is to provide a simple text and roadmap through the Evidence thicket, with plenty of guideposts along the way. Over the course of the various editions, new subjects and developments have been added. A few have been shortened, such as "Burdens of Proof and Presumptions." A student who wants a really definitive but still pithy treatment of that subject is referred to the Second Edition. A few subjects that are no longer essential have been jettisoned altogether.

The three authors first met on an American Bar Association committee. Rothstein, the chairperson, had formerly advised Congress during the drafting of the Federal Rules of Evidence. He now felt a study should be instituted by the committee, critiquing the Rules' first decade of operation in the courts. The study lasted several years, with the three present authors in active roles along with other members. At its conclusion, the committee published the results in an influential report appearing at 120 F.R.D. 299 (1987). A number of its

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suggestions have been incorporated into the Federal or Uniform Rules.

The present authors individually went on to other Evidence and Evidence reform efforts, like the panel amending the Uniform Rules of Evidence. The three combine experience teaching law students, lawyers, bar review courses, and judges; writing books and articles; trying both sides of civil and criminal cases; briefing and arguing cases on appeal (including to the Supreme Court); and drafting and amending evidence rules on the state and federal level. First and foremost, however, the authors are very experienced teachers of Evidence to *law students*, the people for whom this book is primarily written, and who have contributed valuable insights over the years into how students come to understand things. These insights have helped enormously to make the book a staple at the nation's law schools.

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