



California Bar Examination

**Performance Test
and
Selected Answers**

February 2026



PERFORMANCE TEST AND SELECTED ANSWERS

FEBRUARY 2026

CALIFORNIA BAR EXAMINATION

This publication contains the performance test from the February 2026 California Bar Examination and two selected answers.

The selected answers are not to be considered “model” or perfect answers. The answers were assigned high grades and were written by applicants who passed the examination after the First Read. They are reproduced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. These answers were written by actual applicants under time constraints without access to outside resources. As such, they do not always correctly identify or respond to all issues raised by the question, and they may contain some extraneous or incorrect information. The answers are published here with the consent of the authors.

CONTENTS

- I. Performance Test: STATE OF COLUMBIA v. DAVIS
- II. Selected Answers for Performance Test



February 2026

**California
Bar
Examination**

**Performance Test
INSTRUCTIONS AND FILE**

STATE OF COLUMBIA v. DAVIS

Instructions.....

FILE

Memorandum to Applicant from Armando Gomez

Internal Memorandum to File from Armando Gomez

Excerpts from Transcript of Testimony of Officer Robert Powers.....

Transcript of Text Messages on Sally Cameron's Cellular Phone.....

PERFORMANCE TEST INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem.
2. The problem is set in the fictional State of Columbia, one of the United States. In Columbia, the intermediate appellate court is the Court of Appeal and the highest court is the Supreme Court.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File consists of source documents containing all the facts of the case. The first document in the File is a memorandum containing the directions for the task you are to complete. The other documents in the File contain information about your case and may include some facts that are not relevant. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or supervising attorney's version of events may be incomplete or unreliable. Applicants are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.
5. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant to the assigned lawyering task. The cases, statutes, regulations, or rules may be real, modified, or written solely for the purpose of this performance test. If any of them appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references. Applicants are expected to extract from the Library the legal principles necessary to analyze the problem and perform the task.
6. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

7. This performance test is designed to be completed in 90 minutes. Although there are no restrictions or parameters on how you apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response before you begin writing it. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.
8. Do not include your actual name or any other identifying information anywhere in the work product required by the task memorandum.
9. Your performance test answer will be graded on its responsiveness to and compliance with directions regarding the task you are to complete, as well as on its content, thoroughness, and organization.

BRIGGS COUNTY OFFICE OF THE PUBLIC DEFENDER
502 Alleghany Street
Martinsville, Columbia 12345

MEMORANDUM

To: Applicant
From: Assistant Public Defender Armando Gomez
Date: February 24, 2026
Re: State of Columbia v. John Davis, et al.

In two weeks, we begin the trial of our client John Davis, who has been charged with conspiracy to distribute cocaine. At the trial, the State plans to introduce a handwritten transcript of text messages between Mr. Davis and his former girlfriend, Sally Cameron, to show that they were arranging sales of the drug.

We will file a motion *in limine* seeking to exclude the transcript on the grounds that Columbia's "original documents rule" (i.e., Columbia Rule of Evidence 1002) requires the original text messages to be submitted into evidence. Please prepare a brief in support of Mr. Davis's motion *in limine* in which you address the applicability of the original documents rule and present legal arguments supporting our request to exclude the handwritten transcript of text messages between Mr. Davis and Ms. Cameron. Do not prepare a statement of the facts, but please do use the facts in your argument as necessary.

BRIGGS COUNTY OFFICE OF THE PUBLIC DEFENDER
502 Alleghany Street
Martinsville, Columbia 12345

INTERNAL MEMORANDUM

To: File
From: Assistant Public Defender Armando Gomez
Date: August 24, 2025
Re: State of Columbia v. John Davis, et al.

Defendant John Davis has been charged with conspiracy to distribute cocaine. One of Mr. Davis's alleged co-conspirators is Sally Cameron, his former girlfriend. Mr. Davis was arrested based on a tip from a police informant named Betty, who claims she arranged to buy cocaine through Ms. Cameron.

In order to obtain a conviction for conspiracy, the State must show that a conspiracy existed and that Mr. Davis agreed to participate in it, intending to commit the underlying substantive offense of distributing cocaine. The elements of a conspiracy are an agreement between two or more persons to commit a crime and an overt act by one of them in furtherance of the agreement.

The State plans to rely on a series of text messages between Mr. Davis and Ms. Cameron to prove that they conspired together to distribute cocaine. The State believes that the text messages will show that Ms. Cameron routinely connected Mr. Davis with individuals wishing to purchase cocaine, and that Mr. Davis then met with the buyers at a predetermined location to carry out the sale.

The State contends that the original text messages between Mr. Davis and Ms. Cameron no longer exist. I have attached a portion of an earlier motion to suppress in which Officer Robert Powers gave testimony relevant to the original documents issue. Officer Powers executed a search warrant and reviewed the contents of Ms. Cameron's cell phone shortly after Mr. Davis was arrested. Officer Powers claims that he prepared a handwritten verbatim transcript of the content of Ms. Cameron's text messages with Mr. Davis, including the date of each message. Officer Powers is prepared to testify at trial as to the accuracy of the transcript, as well as the disappearance of the text messages from Ms. Cameron's cell phone. I have placed a copy of the transcript of the text messages in the file.

The State subpoenaed text message records from Ms. Cameron's cell phone service provider, but the service provider no longer had the messages stored in its servers. Mr. Davis destroyed his own cell phone shortly before he was arrested. There is no indication that the State has subpoenaed Mr. Davis's text messages from any other source.

**EXCERPTS FROM THE TRANSCRIPT OF
TESTIMONY OF OFFICER ROBERT POWERS
January 24, 2026**

Assistant Public Defender Armando Gomez: Good morning, Officer Powers. I'm Assistant Public Defender Armando Gomez.

Officer Robert Powers: Nice to meet you.

Gomez: I wanted to ask you a few questions about the John Davis case.

Powers: Sure.

Gomez: I understand that you're the officer who examined the cell phone of Sally Cameron. Is that correct?

Powers: Yes, that's right. After Davis was arrested, we got a warrant to search and seize Ms. Cameron's phone. I executed the warrant myself.

Gomez: And what did you find?

Powers: I found a series of text messages between Davis and Cameron that appeared to be talking about drug deals they were setting up. They were arranging to sell cocaine to a couple of different buyers.

Gomez: Can I see the text messages?

Powers: We don't have them anymore.

Gomez: What do you mean, you don't have them anymore?

Powers: A couple of weeks after I examined Cameron's phone, I went back to have another look at it, and I discovered that all the text messages had been deleted.

Gomez: Where was the phone during that time?

Powers: It was in our evidence locker at the police station.

Gomez: How were the texts deleted if the phone was in police custody?

Powers: It looks like Cameron had her phone set up so that it would automatically delete all her text messages two weeks after she sent or received them. Pretty smart.

Gomez: Do you have any notes or records about what the text messages said?

Powers: Yes. When I examined the phone the first time, I made a transcript of all the messages between Cameron and Davis. I wrote down each of the messages word for word, and I noted the date of each message.

Gomez: Do you have a copy of the transcript with you?

Powers: Yes, here it is. (Hands transcript to Gomez.)

Gomez: Can you testify to the accuracy of this transcript?

Powers: Well, I think it's pretty accurate, yeah. I worked on it over the course of two days, in between a couple of witness interviews and some other things that were happening.

Gomez: What sorts of other things?

Powers: Oh, you know – phone calls, meetings, people coming by my desk to ask me about something or other. But I tried to keep track and make sure I didn't miss anything that seemed like it might be important.

Gomez: Did you print out the messages or make an electronic copy of them?

Powers: No, we never do that when we are looking at text messages.

Gomez: Why not? Isn't that part of your standard procedures?

Powers: We don't have any way of printing out texts from a cell phone or making copies of them. It's not like looking at someone's laptop, where you can copy things onto a flash drive. I wouldn't even know how to do that with a phone.

Gomez: Have you had any training on how to handle electronic evidence like computer files and text messages?

Powers: No, not really. Everyone in my department pretty much has to figure these things out for themselves. These new technologies change so often, you know.

Gomez: Thank you, Officer Powers. No further questions, Your Honor.

**TRANSCRIPT OF TEXT MESSAGES ON
SALLY CAMERON'S CELLULAR PHONE
Prepared by Officer Robert Powers**

May 24, 2025

Sally Cameron: Hey John, do you have any C on you?

John Davis: Why do you want to know?

Cameron: I just heard from Harry and he's looking to buy some. He wants \$100 worth.

Davis: Let me see what I can do.

May 27, 2025

Davis: I got that blow your friend is looking for.

Cameron: Great. Can you meet him this afternoon?

Davis: Where?

Cameron: In the grocery store parking lot on Oak Street. He said around 4.

Davis: Will do.

June 3, 2025

Davis: Hey, I just got a big shipment of stuff from down south. You know anyone who might be interested?

Cameron: Let me talk to some of my friends.

June 4, 2025

Cameron: I got a couple people who want to talk to you. Jay and Frieda both said they were in.

Davis: Cool. Set it up for me.

Cameron: Will do. Jay said he can meet you tomorrow and he'll bring cash.

Davis: Tell Jay I'll see him at the usual place tomorrow afternoon.

Cameron: Frieda wants to know if she can have a loan till she gets paid next Friday? She says she's desperate.

Davis: Forget Frieda – no loans. I'm not a bank.

June 9, 2025

Cameron: This girl Betty just called me. Do you know her? She's looking for some snow real fast.

Davis: She's in luck. Just had a big snow storm here. How much does she want? \$\$\$

June 11, 2025

Cameron: Just heard from Jay. Can you meet him today?

Davis: Where and when?

Cameron: Same place. He said around 2:30.

Davis: Got it.

June 12, 2025

Davis: I like your friend Jay. He shows up on time, pays his money, and no argument about the goods. We need some more customers like him.

Cameron: (Smiley face emoji)

June 14, 2025

Davis: What happened to Betty? I thought she was in a hurry.

Cameron: Don't know. She sort of disappeared after that phone call.

June 16, 2025

Cameron: Finally heard from Betty. Can you do tonight at 11:30, across the street from the movie theater?

Davis: Sure, I'll be there.



February 2026

**California
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**Performance Test
LIBRARY**

STATE OF COLUMBIA v. DAVIS

LIBRARY

State of Columbia Rules of Evidence (Selected).....

State of Columbia v. Susan Jones

Columbia Supreme Court (2016)

State of Columbia v. Brian Grimes

Columbia Court of Appeal (2018)

**STATE OF COLUMBIA
RULES OF EVIDENCE (SELECTED)**

Rule 1001:

In this article, the following definitions will apply:

- (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A “photograph” means a photographic image or its equivalent stored in any form.
- (d) An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout—or other output readable by sight—if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.
- (e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Advisory Committee Note

Paragraph (1). Traditionally, the rule requiring the original centered upon accumulations of data and expressions affecting legal relations set forth in words and figures. This meant that the rule was one essentially related to writings. Present-day techniques have expanded methods of storing data, yet the essential form which the information ultimately assumes for usable purposes is words and figures. Hence the considerations underlying the rule dictate its expansion to include computers, photographic systems, and other modern developments.

Paragraph (2). In most instances, what is an original will be self-evident and further refinement will be unnecessary. However, in some instances a particularized definition is required. A carbon copy of a contract executed in duplicate becomes an original, as does a sales ticket carbon copy given to a customer. While strictly speaking the original of a photograph might be thought to be only the negative, practicality and common usage

require that any print from the negative be regarded as an original. Similarly, practicality and usage confer the status of original upon any computer printout.

Rule 1002:

An original writing, recording, or photograph is required in order to prove its content, unless these rules provide otherwise.

Rule 1004:

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) All the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) An original cannot be obtained by any available judicial process;
- (c) . . . ; or
- (d) The writing, recording, or photograph is not closely related to a controlling issue.

STATE OF COLUMBIA v. SUSAN JONES
Columbia Supreme Court (2016)

This case comes to us on appeal from the trial court in the County of Gaston. Defendant Susan Jones was convicted of conspiracy to traffic in counterfeit watches. Jones appealed her conviction on the grounds that the lower court erred in admitting Detective Peter Barrett's handwritten notes and testimony about a series of emails Jones exchanged with her alleged co-conspirator (not a party to this action) during the relevant time period, because the emails themselves were not introduced into evidence by the prosecution. The Columbia Court of Appeal agreed with the disposition of the trial court and affirmed. Because Detective Barrett's notes and testimony were admitted solely to establish the fact that Jones was in communication with the co-conspirator, and not to prove the content of the emails, we agree with the Court of Appeal and affirm.

Columbia Rule of Evidence 1002 provides, "An original writing, recording or photograph is required in order to prove its content, unless these rules provide otherwise." Here, Jones objects that the trial court erred by admitting a police detective's notes and testimony about her emails with her co-conspirator because the original emails themselves were not in evidence.

Application of the "original document rule" requires a resolution of the question whether the contents of the documents are sought to be proved. Thus, an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved by oral testimony, without producing the written receipt that was given. If, however, reference to the written receipt is relied upon by a witness, the receipt must be produced or properly excused under *Columbia Rule of Evidence 1004*. Similarly, earnings may be proved without producing books of account in which they are entered. Nor does the rule apply to testimony that books or records have been examined and found not to contain any reference to a designated matter.

The purpose of the rule is to prevent inaccuracy and fraud when attempting to prove the contents of a writing. The exact wording of a document is often of great importance, and a slight variation in wording can sometimes result in a substantial change in meaning. Oral testimony about the contents of a writing may also be subject to greater risk of error than testimony about the writing, such as its existence, creation, and delivery. As a result, if testimony attempts to prove the contents of the document, such testimony is not admissible unless the original document is provided or an acceptable explanation for its absence is given. Conversely, where the testimony merely states a fact about the writing, then the challenged testimony is admissible.

In this case, the prosecution relied upon the detective's notes and his testimony about the emails between Jones and her co-conspirator solely to prove that the two women were in communication with one another during the relevant period of time. The notes and testimony of the detective were not used for purposes of showing that Jones and her co-conspirator discussed the sale of counterfeit watches, or any other topic for that matter. That is, the notes and testimony at issue were not admitted to prove the content of the emails exchanged between Jones and her co-conspirator.

Affirmed.

STATE OF COLUMBIA v. BRIAN GRIMES
Columbia Court of Appeal (2018)

This matter is before the court on Defendant Brian Grimes' emergency appeal from the trial court's denial of his motion *in limine* seeking to exclude photographs of certain documents taken by the police. For the following reasons, the court concludes that the trial court erred in denying Grimes' motion *in limine*.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant Grimes is charged with robbery and wire fraud relating to the theft of certain negotiable instruments, including travelers checks that can be converted to cash. Grimes was stopped late at night by the Columbia State Police while he was driving south through Briggs County, Columbia. The police found 72 travelers checks in a briefcase in the back seat of his car. They took five photographs of the travelers checks in the briefcase while it was still sitting in the car at the scene, but copies of the individual travelers checks were not made. Further, because it was late at night, the photographs are dark and somewhat blurry. The travelers checks were placed in a secure vault at the central police station, but they subsequently disappeared and no explanation has been offered for their loss.

The State wishes to introduce the five photographs as part of its case against Grimes. Grimes moved to exclude the photographs because the travelers checks themselves were no longer available.

DISCUSSION

Columbia's original documents rule, codified in *Columbia Rule of Evidence 1002*, requires production of the original to prove the content of a writing, recording, or photograph, except as otherwise provided in the Rules. In this case, the best evidence to prove the existence and content of the travelers checks is the documents themselves. However, the travelers checks are unavailable. As a result, the State relied on *Columbia Rule of Evidence 1004(a)*, which provides that the original is not required, and other evidence of the contents of a writing is admissible, if "[a]ll the originals are lost or destroyed, and not by the proponent acting in bad faith." Grimes objected to the use of the photographs as secondary evidence because he claims the travelers checks were lost or destroyed due to bad faith.

This case presents the opportunity to state certain controlling rules where evidence has been lost or destroyed in a criminal case. Loss or destruction of evidence probative in a

criminal case occurs in circumstances so variant that applicable rules cannot be set forth for every situation, but certain principles of broad application may be stated.

When criminal evidence is lost or destroyed, the court must protect a number of interests. The main concern is to provide the accused an opportunity to produce and examine all relevant evidence, to ensure a fair trial. The degree of prejudice to the defendant from loss or destruction of the evidence must be weighed, along with any intentional or culpable government action that has caused the loss or destruction. The degree of government fault is relevant. In many cases the government's responsibility for loss or destruction of evidence is caused by actions that are negligent or inadvertent, or done intentionally but with an element of good faith, in which case a greater degree of prejudice may be tolerated. In cases of severe prejudice, suppression is appropriate without regard to the good faith or culpability of the government.

The court must balance the quality of the government's conduct against the degree of prejudice to the accused. The government bears the burden of justifying its conduct, and the defendant bears the burden of demonstrating prejudice. In reviewing the conduct of the government, the court should consider whether the evidence was lost or destroyed while in its custody, whether the government acted in disregard for the interests of the accused, whether it was negligent in failing to adhere to reasonable standards of care for police and prosecutorial functions, and, if the acts were deliberate, whether they were taken in good faith or with reasonable justification. In analyzing the degree of prejudice to the defendant, the court must consider a wide number of factors, including (1) the centrality of the evidence to the case and its importance in establishing the elements of the crime, including motive or intent; (2) the reliability of secondary or substitute evidence; and (3) the probable effect on the jury from absence of the evidence.

Here, the State sought to prove the existence and content of negotiable instruments allegedly found in Grimes' car through the use of photographs of those documents, because the original documents inexplicably disappeared while in police custody. The State was unable to meet its burden of justifying its conduct, since it offered no explanation for when or how the travelers checks disappeared.

Grimes, on the other hand, amply meets his burden of demonstrating prejudice based on the unavailability of the original documents. The travelers checks are central to the theft charges against Grimes. The five photographs on which the State relies are neither probative nor reliable. The photographs show groups of documents sitting in an open briefcase. The low lighting conditions at the scene resulted in poor resolution of several of the images. The State does not have a clear, readable image of each document allegedly found in Grimes' possession. Grimes will be severely prejudiced if the State is

permitted to use the five photographs to prove the existence and the content of the 72 travelers checks allegedly found in Grimes' car.

The order appealed from is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

PT: SELECTED ANSWER 1

In the case of State of Columbia v. John Davis, et al.

Case number: -

Brief in Support of Motion *in Limine*

I. Preliminary statement

We represent the defendant, John Davis (“defendant”). The defendant has been charged with conspiracy to distribute cocaine. The State plans to introduce a handwritten transcript of text messages (“transcript”) between the defendant and Sally Cameron, his former girlfriend, who is one of the defendant’s alleged co-conspirators. We strongly submit that the transcript should be excluded pursuant to the original documents rule provided in Columbia Rule of Evidence 1002.

II. Arguments

1. THE ORIGINAL DOCUMENT RULE - COLUMBIA RULE OF EVIDENCE 1002

Columbia Rule of Evidence 1002 provides that “An original writing, recording or photograph is required in order to prove its content, unless these rules provide otherwise.” Rule 1004 provides several exceptions to the original document rule, including where “(a) All the originals are lost or destroyed, and not by the proponent acting in bad faith.”

Columbia Rule of Evidence 1001(a) defines a “writing” as one consisting of letters, words, numbers, or their equivalent set down in any form. Paragraph (1) of the Advisory Committee Note explains that the original document rule applies not only to traditional writings but those generated by computers and other modern developments. Text messages therefore fall under the definition of “writing.”

Columbia Rule of Evidence 1001(d) provides that an “original” of a writing means the writing itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout - or other output readable by sight - if it accurately reflects the information. Paragraph (2) to the Advisory Committee Note explains that what is an original will ultimately be determined by practicality and common usage. Since text messages are electronically stored information, any printout would be an original.

In this case, the State is trying to introduce a handwritten transcript of text messages,

which is not within the meaning of “original” under the rules above. Officer Powers, who executed a search warrant and reviewed the contents of Ms. Cameron’s phone, prepared the transcript by handwriting. We strongly submit that it is in violation of the original document rule to admit the transcript into evidence because 1) the State is offering the transcript to prove the content of the text messages, and 2) no exceptions to the rule apply.

2. THE ORIGINAL DOCUMENT RULE APPLIES AS LONG AS THE STATE IS PLANNING TO PROVE THE CONTENT OF THE TEXT MESSAGES WITH THE TRANSCRIPT

For the original document rule to apply, the proponent must be offering the non-original evidence to prove the content of the writing.

The State may cite *State of Columbia v. Susan Jones* (Columbia Supreme Court, 2016), and argue that the original document rule does not apply because the transcript is not offered to prove the contents of the writing. In *Jones*, the State offered handwritten notes and testimony about a series of emails that Jones, who was convicted of conspiracy, exchanged with her alleged co-conspirator, and the court found that there was no violation of the original document rule because the State offered the evidence not to prove the content of the emails but solely to prove that the two women were in communication with one another during the relevant period of time. The court explained that the purpose of the original document rule is to prevent inaccuracy and fraud when attempting to prove the contents of a writing. The exact wording of a document is often of great importance, and a slight variation of wording can result in substantial change in meaning. Hence, if testimony attempts to prove the contents of the document, such testimony is inadmissible unless an exception applies. Conversely, if the testimony merely states a fact about the writing, then the challenged testimony is admissible.

In our case, however, it is clear that the State is offering the transcript to prove the content of the original text messages. The State believes that the transcript will show that Ms. Cameron routinely connected the defendant with individuals wishing to purchase cocaine, and that the defendant met with the buyers at a predetermined location to carry out the sale. Such allegations are not merely facts about the messages but can be inferred only from the contents of the messages.

Hence, the original document rule applies.

3. THE LOSS OR DESTRUCTION EXCEPTION DOES NOT APPLY

The State will argue that the Columbia Rule of evidence 1004(a) exception applies because the original text messages were lost or destroyed not by the State’s bad faith.

However, we submit that the loss or destruction exception does not apply to our case because while the government failed to meet its burden of justifying the loss or

destruction, the defendant will be severely prejudiced by the introduction of non-original document.

In *State of Columbia v. Brian Grimes* (Columbia Court of Appeal, 2018), the court formulated a standard for the loss or destruction exception under Columbia Rule of Evidence 1004(a). The court held that when criminal evidence is lost or destroyed, the court must balance the quality of the government's conduct against the degree of prejudice to the accused and in case of severe prejudice, suppress the non-original evidence without regard to the good faith or culpability of the government. It is because the main concern of the court is to provide the accused an opportunity to produce and examine all relevant evidence, to ensure a fair trial. The government bears the burden of justifying its conduct, and the defendant bears the burden of demonstrating prejudice.

The court further noted that in reviewing the conduct of the government, the court should consider 1) whether the evidence was lost or destroyed while in its custody, 2) whether the government acted in disregard for the interests of the accused, 3) whether it was negligent in failing to adhere to reasonable standards of care for police and prosecutorial functions, and, 4) if the acts were deliberate, whether they were taken in good faith or with reasonable justification.

On the other hand, the court held that in analyzing the degree of prejudice to the defendant, the court must consider a wide number of factors, including 1) the centrality of the evidence to the case and its importance in establishing the elements of the crime, including motive or intent, 2) the reliability of secondary or substitute evidence, and 3) the probable effect on the jury from absence of the evidence.

As a result of balancing all these factors, the court found that the trial court erred in denying Grimes' motion to exclude secondary evidence, which was photographs of evidence of crime found in Grimes' car, because the evidence was central to the charges against Grimes, but the photographs were neither probative nor reliable because they were in poor resolution. The court explained that Grimes would be severely prejudiced if the State was permitted to use the photographs to prove the existence and the content of the evidence.

We submit that following the standards set out in *Grimes*, the balancing of the quality of the State's conduct against the degree of prejudice to the defendant favors the defendant.

Quality of government conduct

The State has failed to meet its burden of justifying its conduct regarding the disappearance of the original text messages.

First, Ms. Cameron's phone was clearly in the State's custody when the text messages disappeared. Officer Powers testified on January 24, 2026, that the phone was in the evidence locker at the police station when the messages disappeared.

Second, the State disregarded the defendant's interests by not making any attempts to preserve the original messages. Officer Powers testified that he did not print out the

messages or make an electronic copy of the text messages, which would have been “original” for the purpose of the original document rule if they had been produced.

Third, the State was negligent in failing to preserve the original. According to Officer Powers’s testimony, police officers at the station including Officer Powers himself, were not trained to handle electronic evidence like computer files and text messages. As a result, Officer Powers did not know of any way to preserve the contents of the original text messages other than making a handwritten transcript of them. This clearly falls behind the reasonable care expected to be exercised by law enforcement personnel in terms of preservation of evidence. There is no reasonable justification for the failure to preserve the original.

Prejudice to the defendant

In contrast, it is evident that the defendant will be severely prejudiced if the transcript is admitted to evidence.

First, the contents of the text messages are central and important to the charge of conspiracy. The elements of a conspiracy are an agreement between two or more persons to commit a crime and an overt act by one of them in furtherance of the agreement. The State must show that a conspiracy existed and that the defendant agreed to participate in it, intending to commit the underlying substantive offense of distributing cocaine. The contents of the communication between the defendant and Ms. Cameron is pivotal evidence to the agreement element and overt act element of conspiracy.

Second, the transcript is neither reliable nor probative. Although Officer Powers claims that the transcript is accurate, even Officer Powers himself is not perfectly certain that the transcript is accurate. In response to our question during cross-examination, “Can you testify to the accuracy of this transcript?”, Officer Powers testified that “Well, I think it’s pretty accurate, yeah.”, which is not certification of perfect accuracy. Moreover, he further testified that he worked on the transcript over the course of two days, in between carrying out his other duties such as witness interviews, phone calls, meetings, and responding to questions. All these circumstances would have undermined Officer Powers’s concentration and hence the accuracy of the transcript. Since a slight difference in wording can prejudice the defendant, the accuracy issue must be considered seriously.

Third, the transcript will be deemed as true by the jury, because the contents of the transcript rather conclusively show that the defendant conspired with Ms. Cameron to distribute cocaine. This will be detrimental to the defendant.

In sum, since the State failed to justify that it acted in good faith without negligence in handling the original text messages so as to prevent their loss, and since the defendant will be severely prejudiced by introduction of the transcript, the transcript shall not fall under the Columbia Rule of Evidence 1004(a) exception.

4. NO OTHER EXCEPTIONS TO THE RULE APPLY

The State may further argue that other exceptions to the original document rule such as Rule 1004(b) and Rule 1004(d) apply.

Rule 1004(b) provides an exception for a situation where an original cannot be obtained by any available judicial process. The State did subpoena text message records from Ms. Cameron's cell phone service provider, and the service provider no longer had the messages stored in its servers. The defendant destroyed his own cell phone shortly before he was arrested. However, there is no indication that the State has subpoenaed the defendant's text messages from any other source. Had they timely subpoenaed text message records from the defendant's cell phone service provider as well, there is a possibility that the original text messages could have been obtained. Hence, Rule 1004(b) does not apply.

Rule 1004(d) provides an exception for a situation where the writing is not closely related to a controlling issue. As discussed above, the text messages are clearly related to a controlling issue in this case, whether the defendant conspired with Ms. Cameron to distribute cocaine. Hence, Rule 1004(d) does not apply either.

Since there are no applicable exceptions to the original document rule, the State is not excused from offering the transcript instead of the original text messages.

III. Conclusion

Admitting the transcript into evidence would be in violation of Columbia's original document rule because the State is offering the transcript to prove the contents of the original text messages, and although the original text messages have been lost, the State has failed to prove that it acted in good faith and not negligently in preventing such loss, when balanced against the potential prejudice the admission of the transcript would have on the defendant. Other exceptions, including inability to obtain by any available judicial process or no relevance to a controlling issue, are clearly not applicable to our case. Hence, we strongly submit that the court exclude the transcript from evidence.

PT: SELECTED ANSWER 2

To: Assistant Public Defender Armando Gomez

From: Applicant

Date: February 24, 2026

Re: Brief for motion in limine, Matter of State v. John Davis

Dear Armando,

You have asked me to prepare a brief in support of our forthcoming motion in limine, discussing the applicability of the “original documents rule” and presenting legal arguments for exclusion of the handwritten transcript of the text messages between our client, Mr. Davis, and his former girlfriend, Sally Cameron. See below for the brief, and let me know if you have any questions.

Best,

Applicant

BRIEF IN SUPPORT OF DEFENDANT’S MOTION IN LIMINE TO EXCLUDE EVIDENCE

I. Introduction

The defense seeks to exclude a transcript, handwritten by a police officer, of text messages allegedly between the defendant Mr. Davis and his former girlfriend where the original documents or satisfactory duplicates of the text messages cannot be produced, and the evidence was lost while in custody of the State. Because of the forthcoming arguments, the defense respectfully requests that this court grant its motion in limine and exclude the evidence the State is seeking to admit.

II. Argument

A. The Original Documents rule applies here because the State is attempting to introduce the transcript of the text messages to prove the contents of the text messages

Under the Columbia Rules of Evidence, “an original writing, recording, or photograph is required in order to prove its content” unless provided otherwise within the rules. *Columbia Rule of Evidence 1002*. Under the statutory definition, a “writing” consists of letters, words, numbers or their equivalent set down in any form. See CRE 1001. Further, an “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it.

For electronically stored information, “original” means any printout-- or other output readable by sight--if it accurately reflects the information. See CRE 1001(d). There are a few narrow instances where an original is not required by the CRE, where other evidence of the content of a writing is admissible, including if all originals are lost or destroyed, and not by the proponent acting in bad faith; where an original cannot be obtained by any available judicial process; or where the writing is not closely related to a controlling issue. See CRE Rule 1004.

Here, we have a “writing” that is at issue -- text messages that consist of words and numbers set down in electronic form. An original of the text messages would be some sort of print out or electronic copy of the texts themselves, not an officer’s handwritten transcription that was completed over multiple days. The legislature intended that these evidentiary rules around original documents are inclusive of modern technology, as even the advisory committee notes in the statute that the considerations underlying the rule dictate its expansion to include computers, photographic systems, and other modern developments. Thus, the text messages here do fall under the statutory definition and what it intends to encompass. Indeed, the whole purpose of the rule is to prevent inaccuracy and fraud when attempting to prove the contents of a writing. See *State of Columbia v. Susan Jones*, Columbia Supreme Court (2016).

Even where something is a writing as contemplated under the CRE, the court must determine whether the “original document rule” applies by answering the threshold question of whether the contents of the documents are sought to be proved. If an event is sought to be proved by the written record, the original documents rule applies. See *State of Columbia v. Susan Jones*, Columbia Supreme Court (2016). Though testimony that merely states a fact about a writing can be admissible, testimony is not admissible where it attempts to prove the contents of a document unless the original document is provided or an acceptable explanation for its absence is given. See *Jones*. In *State v. Jones*, a case where the defendant was convicted of conspiracy to traffic in counterfeit watches, the Columbia Supreme Court held the original documents rule did not apply where evidence of a detective’s notes and testimonies about emails and not the emails themselves were introduced, because the detective’s notes in that case about emails between the defendant and co-conspirator were being relied upon to solely prove they were in communication at the relevant time, not for purposes showing the defendant and her co-conspirator discussed the sale of counterfeit watches.

Unlike the State in *Jones* trying to admit handwritten notes instead of copies of emails to show facts not central to the elements of the crime, the State here is trying to admit the handwritten transcripts of the text messages to prove that Mr. Davis and his girlfriend were discussing the sale of cocaine, which is the underlying crime of the conspiracy charge.

Thus, the original documents rule should be applied here.

B. The transcript should be excluded under the "original documents rule" because the prejudice to Mr. Davis is so severe that suppression is the only just answer to ensure

Mr. Davis's right to a fair trial.

Courts in this jurisdiction have clearly held certain principles apply broadly in all situations where criminal evidence is lost or destroyed. In such circumstances, the court balances interests, but the court's main concern is to ensure a fair trial, meaning they must provide the accused an opportunity to produce and examine all relevant evidence. See *State of Columbia v. Brian Grimes*, Columbia Court of Appeal (2018).

Courts must weigh the degree of prejudice to the defendant from loss or destruction of the evidence, along with any intentional or culpable government action that has caused the loss or destruction. The degree of government fault is relevant, where the court is more likely to tolerate a greater degree of prejudice to the defendant if the loss or destruction of evidence is caused by either the government's negligent or inadvertent actions, or intentional actions that are done with an element of good faith. However, a court will disregard good faith or culpability of the government and order suppression in cases of severe prejudice.

i. The State does not satisfy its burden of justifying its conduct here

The government bears the burden of justifying its conduct, and the defendant bears the burden of demonstrating prejudice. See *Grimes*. The factors a court should consider when reviewing the government's conduct is whether the evidence was lost or destroyed while in its custody, whether the government acted in disregard for the interests of the accused, whether the government was negligent in failing to adhere to reasonable standards of care for police and prosecutorial functions, and, if the acts were deliberate, whether they were taken in good faith or with reasonable justification. See *Grimes*. In *Grimes*, the Court found that the State was unable to meet its burden of justifying its conduct where the state offered no explanation for when or how the original documents, travelers checks, disappeared. See *Grimes*.

Even when the State discovered that the texts were no longer on Ms. Cameron's phone, because according to Officer Powers's testimony they autodelete every two weeks, the State was able to subpoena Ms. Cameron's cell phone records, and attempted to do so, but her service provider no longer stores the messages. There is no indication that the State similarly tried to subpoena the text message records from Mr. Davis's provider. The state has not specifically shown that there are no other available judicial processes they can use to obtain the original texts -- they can't show that they attempted any subpoenas of Mr. Davis's provider.

While the State in *Grimes* offered no explanation for the missing travelers checks, it is true that the State here made some attempt at an explanation to why the text messages inexplicably disappeared while the cellphone was in police custody. Officer Powers testifies to an auto deletion feature, but that likely does not absolve the State of negligence because likely a reasonable police department would make copies of the text messages before weeks passed such that the autodelete would not even kick in. The police department here is not trained on basic uses of modern technology, as Office Powers admitted in his testimony. This sort of ignorance demonstrates that the government acted in disregard for Mr. Davis's interests, and also fell well below the

modern technology standards that police and prosecutors should be held to, regardless of how often the technology changes.

While the State may argue that the loss of the original text messages was not intentional, it is clear they were certainly negligent and thus the government is culpable for the loss of the original text messages. The State has not met its burden of justifying its conduct, and the handwritten transcript of the text messages should not be admitted.

ii. Mr. Davis has met his burden of demonstrating prejudice

Even if the Court finds the government acted in some amount of good faith or in such a way that prejudice is more tolerated, the prejudice here is so severe that the court should still rule to exclude the handwritten transcript of the texts here. When analyzing the degree of prejudice to a defendant, courts in this jurisdiction will consider various factors including (1) the centrality of the evidence to the case and its importance in establishing the elements of the crime, including motive and intent; (2) the reliability of the secondary or substitute evidence; and (3) the probable effect on the jury from the absence of the evidence. Mr. Davis has shown a great degree of prejudice in all of these factors.

Here, Mr. Davis is being accused of conspiracy to distribute cocaine. The State must prove all elements of conspiracy beyond a reasonable doubt in order to convict Mr. Davis of this crime, meaning the State must show that a conspiracy existed and that Mr. Davis agreed to participate in it, intending to commit the underlying substantive offense of distributing cocaine. One of the central elements of conspiracy is an agreement between two or more persons to commit a crime. This isn't merely to establish a collateral matter, but to establish culpability and the heart of the crime Mr. Davis is accused of. Without these text messages, the State will have to find some other way to prove intent to enter into a conspiracy to distribute cocaine, and thus the State's case rests on the admission of this improper evidence. The reliability of the secondary evidence here is not reliable -- this is a handwritten transcript, and Officer Powers can only say its "pretty" accurate, and has admitted to being interrupted and distracted by multiple other events while attempting to write down the text messages. It wasn't a side-by-side immediate transcription, but rather something the Officer "tried" to keep track of over multiple days. The transcript of the text messages is not probative - it only shows what Officer Powers wrote down as the content of each individual text, but doesn't note time stamps or any other context. However, the admission of these transcripts would be extremely prejudicial to Mr. Davis, as a jury may be unjustly influenced to find Mr. Davis guilty where the prosecution actually has not met its burden to prove each element of a crime beyond a reasonable doubt. Absent this prejudicial and improper secondary evidence, the jury will be able to clearly see the case laid out by both the State and the Defense without the defendant's fair trial rights endangered.

Thus, Mr. Davis has more than met his burden of showing how admission of this evidence would prejudice him. Thus, the court should not admit the handwritten transcript.

III. Conclusion

Based on the above arguments, and the application of the “original documents rule”, the defense requests that the court grant the attached motion *in limine* and exclude the evidence of the handwritten transcript that the State is attempting to introduce against our client.