

# Producing a Reliable Family History - An Appellate Judge Discusses Genealogical Evidence

## 1. Introduction

## 2. Thinking Like a Judge

### a. The probable cause model

1. The mind set: why should I believe what I'm hearing?

2. The questions to ask:

- how new is the information?
- how detailed is the information?
- how trustworthy is the informant?
- how does the informant know?
- does informant have an axe to grind?
- is the information logical & does it make sense?
- does the information fit with other information?

### b. Relating the probable cause model to genealogical research

1. Mental shift – why should I believe this source?

2. Judge Each Item of Evidence - Test of the Four "Cs":

- Closeness (in place and time).
- Credibility (of the person who made the record)
- Causality (why the record was made)
- Corroboration (with other evidence).

(from Examining Evidence to Prove a Pedigree by Myra Vanderpool Gormley, C.G., )

## 3. The Best Evidence Rule

A rule of evidence that demands that the original of any document, photograph or recording be used as evidence at trial, rather than a copy. A copy will be allowed into evidence only if the original is unavailable.

## 4. Direct vs. Circumstantial Evidence

a. Direct Evidence - evidence that stands on its own to prove a fact

b. Circumstantial Evidence - evidence inferred from other facts

## 5. Hearsay Evidence Rule and Its Many Exceptions

- a. Definition: "Hearsay" is a statement, other than one made by the declarant, offered in evidence to prove the truth of the matter asserted.
- b. "The red car hit the blue car" vs. "George told me the red car hit the blue car"
- c. Most everything written is hearsay; so, many exceptions developed.
- d. Common hearsay exceptions relevant to genealogy
  1. Public Records Exception
  2. Absence of Public Records
  3. Records of Religious Organizations
  4. Marriage, Baptismal and Similar Certificates
  5. Business Records Exception
  6. Absence of Business Records
  7. Family Records Exception  
"Statements of fact containing personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tomb stones, or the like."
  8. Residual Hearsay Exception

## 6. Documenting and Justifying Conclusions

- a. Why judges write opinions
- b. Why genealogists must write
  1. to document sources of information
  2. to explain conclusions
  3. to alert others to research problems
- c. Genealogical "justification"- documenting sources
- d. Genealogical "opinions" - writing a factual statement and conclusions

## **7. The Hierarchy of Standards of Proof**

- a. Proof to a Mathematical Certainty - attainable in science
- b. Proof Beyond a Reasonable Doubt - the criminal law standard
- c. Proof by Clear and Convincing Evidence
  1. The civil law standard – when loss of important interests are at stake
  2. “Substantially more likely than not”
- d. Proof by a Preponderance of the Evidence
  1. The civil standard used in most civil cases
  2. “More likely than not”

## **8. Evolution of Standards of Proof for Genealogy**

1. Until 1979 – no generally accepted standards
2. Noel Stevenson’s book “Genealogical Evidence” (1979)
3. “Preponderance of the Evidence” – until 1997
4. “Genealogical Proof Standard” (GPS) - since 1997 (actually, a methodology)

### Five Elements of the GPS:

- a. a reasonably exhaustive search
- b. complete and accurate source citations
- c. analysis and correlation of the collected information
- d. resolution of any conflicting evidence
- e. a soundly reasoned, coherently written conclusion

## **9. Conclusion**

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14 October 2017

# Genealogical Standards & Guidelines

## Standards For Sound Genealogical Research

*Recommended by the National Genealogical Society*

Remembering always that they are engaged in a quest for truth, family history researchers consistently—

- record the source for each item of information they collect.
- test every hypothesis or theory against credible evidence, and reject those that are not supported by the evidence.
- seek original records, or reproduced images of them when there is reasonable assurance they have not been altered, as the basis for their research conclusions.
- use compilations, communications and published works, whether paper or electronic, primarily for their value as guides to locating the original records, or as contributions to the critical analysis of the evidence discussed in them.
- state something as a fact only when it is supported by convincing evidence, and identify the evidence when communicating the fact to others.
- limit with words like "probable" or "possible" any statement that is based on less than convincing evidence, and state the reasons for concluding that it is probable or possible.
- avoid misleading other researchers by either intentionally or carelessly distributing or publishing inaccurate information.
- state carefully and honestly the results of their own research, and acknowledge all use of other researchers' work.
- recognize the collegial nature of genealogical research by making their work available to others through publication, or by placing copies in appropriate libraries or repositories, and by welcoming critical comment.
- consider with open minds new evidence or the comments of others on their work and the conclusions they have reached.

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[http://www.ngsgenealogy.org/cs/standards\\_for\\_sound\\_genealogical\\_research](http://www.ngsgenealogy.org/cs/standards_for_sound_genealogical_research)

## Ten Commandments of Genealogy

In the course of writing this newsletter, I get to see a lot of genealogy information. Most of what I see is on the Web, although some information is in books or in e-mail. Some of what I see is high-quality research. However, much of it is much less than that. Even the shoddiest genealogy work could be so much more if the compiler had simply spent a bit of time thinking about what he or she was doing.

Creating a first-class genealogy work is not difficult. In fact, it is expected. It should be the norm. Please consider the following "rules." If you follow these guidelines, you, too, can produce high-quality genealogy reports that will be useful to others:

1. Never accept someone else's opinion as "fact." Be suspicious. Always check for yourself!
2. Always verify primary sources (see Footnote #1); never accept a secondary source (see Footnote #2) as factual until you have personally verified the information.
3. Cite your sources! Every time you refer to a person's name, date and/or place of an event, always tell where you found the information. If you are not certain how to do this, get yourself a copy of "Evidence Explained" by Elizabeth Shown Mills. This excellent book shows both the correct form of source citation and the sound analysis of evidence.
4. If you use the works of others, always give credit. Never claim someone else's research as your own.
5. Assumptions and "educated guesses" are acceptable in genealogy as long as they are clearly labeled as such. Never offer your theories as facts.
6. Be open to corrections. The greatest genealogy experts of all time make occasional errors. So will you. Accept this as fact. When someone points out a possible error in your work, always thank that person for his or her assistance and then seek to re-verify your original statement(s). Again, check primary sources.
7. Respect the privacy of living individuals. Never reveal personal details about living individuals without their permission. Do not reveal their names or any dates or locations.
8. Keep "family secrets." Not everyone wants the information about a court record or a birth out of wedlock to be posted on the Internet or written in books. The family historian records "family secrets" as facts but does not publish them publicly.
9. Protect original documents. Handle all documents with care, and always return them to their rightful storage locations.
10. Be prepared to reimburse others for reasonable expenses incurred on your behalf. If someone travels to a records repository and makes photocopies for you, always offer to reimburse the expenses.

The above "commandments" apply to online data as well as to printed information. Following the above "commandments" will increase the value of your work and make it valuable to others.

**Footnote #1:** A primary record is one created at or immediately after the occurrence of the event cited. The record was created by someone who had personal knowledge of the event. Examples include marriage records created by the minister, census records, death certificates created within days after the death, etc. Nineteenth century and earlier source records will be in the handwriting of the person who recorded the event, such as the minister, town clerk or census taker.

**Footnote #2:** A secondary record is one made years after the original event, usually by someone who was not at the original event and did not have personal knowledge of the participants. Most published genealogy books are secondary sources; the authors are writing about events that occurred many years before they wrote about the event. Transcribed records are always secondary sources and may have additional errors created inadvertently by the transcriber(s). Most online databases are transcribed (secondary) sources.

## The Genealogical Proof Standard

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Proof is a fundamental concept in genealogy. In order to merit confidence, each conclusion about an ancestor must have sufficient credibility to be accepted as "proved." Acceptable conclusions, therefore, meet the Genealogical Proof Standard (GPS). The GPS consists of five elements:

- a reasonably exhaustive search;
- complete and accurate source citations;
- analysis and correlation of the collected information;
- resolution of any conflicting evidence; and
- a soundly reasoned, coherently written conclusion.

Each element contributes to a conclusion's credibility in a different way, described in the table below, but all the elements are necessary to establish proof.

<b>Element of the GPS</b>	<b>Contribution to Credibility</b>
Reasonably exhaustive search	<ul style="list-style-type: none"> <li>• Assumes examination of a wide range of high quality sources</li> <li>• Minimizes the probability that undiscovered evidence will overturn a too-hasty conclusion</li> </ul>
Complete and accurate citation of sources	<ul style="list-style-type: none"> <li>• Demonstrates the extent of the search and the quality of the sources</li> <li>• Allows others to replicate the steps taken to reach the conclusion. (Inability to replicate the research casts doubt on the conclusion.)</li> </ul>
Analysis and correlation of the collected information	<ul style="list-style-type: none"> <li>• Facilitates sound interpretation of the data contributed by <i>each</i> source</li> <li>• Ensures that the conclusion reflects <i>all</i> the evidence</li> </ul>
Resolution of conflicting evidence.	<ul style="list-style-type: none"> <li>• Substantiates the conclusion's credibility. (If conflicting evidence is not resolved, a credible conclusion is not possible.)</li> </ul>
Soundly reasoned, coherently written conclusion.	<ul style="list-style-type: none"> <li>• Eliminates the possibility that the conclusion is based on bias, preconception, or inadequate appreciation of the evidence</li> <li>• Explains how the evidence led to the conclusion</li> </ul>

- from the Board for the Certification of Genealogists web site at <http://www.bcgcertification.org/resources/standard.html>