tion. *See In re Cendant Corp. Sec. Litig.*, 343 F.3d 658, 662 (3d Cir. 2003) (''work product protection extends to both tangible and intangible work product'').

[During the legislative process by which Congress enacted legislation adopting Rule 502 (Pub. L. 110–322, Sept. 19, 2008, 122 Stat. 3537), the Judicial Conference agreed to augment its note to the new rule with an addendum that contained a ''Statement of Congressional Intent Regarding Rule 502 of the Federal Rules of Evidence.'' The Congressional statement can be found on pages H7818–H7819 of the Congressional Record, vol. 154 (September 8, 2008).]

COMMITTEE NOTES ON RULES—2011 AMENDMENT

Rule 502 has been amended by changing the initial letter of a few words from uppercase to lowercase as part of the restyling of the Evidence Rules to make style and terminology consistent throughout the rules. There is no intent to change any result in any ruling on evidence admissibility.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (b)(3), are set out in this Appendix.

EFFECTIVE DATE

Pub. L. 110–322, §1(c), Sept. 19, 2008, 122 Stat. 3538, provided that: ''The amendments made by this Act [enacting this rule] shall apply in all proceedings commenced after the date of enactment of this Act [Sept. 19, 2008] and, insofar as is just and practicable, in all proceedings pending on such date of enactment.''

ARTICLE VI. WITNESSES

Rule 601. Competency to Testify in General

Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.

(Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1934; amended Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

This general ground-clearing eliminates all grounds of incompetency not specifically recognized in the succeeding rules of this Article. Included among the grounds thus abolished are religious belief, conviction of crime, and connection with the litigation as a party or interested person or spouse of a party or interested person. With the exception of the so-called Dead Man's Acts, American jurisdictions generally have ceased to recognize these grounds.

The Dead Man's Acts are surviving traces of the common law disqualification of parties and interested persons. They exist in variety too great to convey conviction of their wisdom and effectiveness. These rules contain no provision of this kind. For the reasoning underlying the decision not to give effect to state statutes in diversity cases, see the Advisory Committee's Note to Rule 501.

No mental or moral qualifications for testifying as a witness are specified. Standards of mental capacity have proved elusive in actual application. A leading commentator observes that few witnesses are disqualified on that ground. Weihofen, Testimonial Competence and Credibility, 34 Geo. Wash.L.Rev. 53 (1965). Discretion is regularly exercised in favor of allowing the testimony. A witness wholly without capacity is difficult to imagine. The question is one particularly suited to the jury as one of weight and credibility, subject to judicial authority to review the sufficiency of the evidence. 2 Wigmore §§501, 509. Standards of moral qualification in practice consist essentially of evaluating a person's truthfulness in terms of his own answers about it. Their principal utility is in affording an opportunity on voir dire examination to impress upon the witness his moral duty. This result may, however, be accomplished more directly, and without haggling in terms of legal standards, by the manner of administering the oath or affirmation under Rule 603.

Admissibility of religious belief as a ground of impeachment is treated in Rule 610. Conviction of crime as a ground of impeachment is the subject of Rule 609. Marital relationship is the basis for privilege under Rule 505. Interest in the outcome of litigation and mental capacity are, of course, highly relevant to credibility and require no special treatment to render them admissible along with other matters bearing upon the perception, memory, and narration of witnesses.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 93–650

Rule 601 as submitted to the Congress provided that ''Every person is competent to be a witness except as otherwise provided in these rules.'' One effect of the Rule as proposed would have been to abolish age, mental capacity, and other grounds recognized in some State jurisdictions as making a person incompetent as a witness. The greatest controversy centered around the Rule's rendering inapplicable in the federal courts the so-called Dead Man's Statutes which exist in some States. Acknowledging that there is substantial disagreement as to the merit of Dead Man's Statutes, the Committee nevertheless believed that where such statutes have been enacted they represent State policy which should not be overturned in the absence of a compelling federal interest. The Committee therefore amended the Rule to make competency in civil actions determinable in accordance with State law with respect to elements of claims or defenses as to which State law supplies the rule of decision. Cf. *Courtland v. Walston & Co., Inc.*, 340 F.Supp. 1076, 1087–1092 (S.D.N.Y. 1972).

NOTES OF COMMITTEE ON THE JUDICIARY, SENATE REPORT NO. 93–1277

The amendment to rule 601 parallels the treatment accorded rule 501 discussed immediately above.

NOTES OF CONFERENCE COMMITTEE, HOUSE REPORT NO. 93–1597

Rule 601 deals with competency of witnesses. Both the House and Senate bills provide that federal competency law applies in criminal cases. In civil actions and proceedings, the House bill provides that state competency law applies ''to an element of a claim or defense as to which State law supplies the rule of decision.'' The Senate bill provides that ''in civil actions and proceedings arising under 28 U.S.C. §1332 or 28 U.S.C. §1335, or between citizens of different States and removed under 28 U.S.C. §1441(b) the competency of a witness, person, government, State or political subdivision thereof is determined in accordance with State law, unless with respect to the particular claim or defense, Federal law supplies the rule of decision.''

The wording of the House and Senate bills differs in the treatment of civil actions and proceedings. The rule in the House bill applies to evidence that relates to ''an element of a claim or defense.'' If an item of proof tends to support or defeat a claim or defense, or an element of a claim or defense, and if state law supplies the rule of decision for that claim or defense, then state competency law applies to that item of proof.

For reasons similar to those underlying its action on Rule 501, the Conference adopts the House provision.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 601 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

(Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1934; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

''* * * [T]he rule requiring that a witness who testifies to a fact which can be perceived by the senses must have had an opportunity to observe, and must have actually observed the fact'' is a ''most pervasive manifestation'' of the common law insistence upon ''the most reliable sources of information.'' McCormick §10, p. 19. These foundation requirements may, of course, be furnished by the testimony of the witness himself; hence personal knowledge is not an absolute but may consist of what the witness thinks he knows from personal perception. 2 Wigmore §650. It will be observed that the rule is in fact a specialized application of the provisions of Rule 104(b) on conditional relevancy.

This rule does not govern the situation of a witness who testifies to a hearsay statement as such, if he has personal knowledge of the making of the statement. Rules 801 and 805 would be applicable. This rule would, however, prevent him from testifying to the subject matter of the hearsay statement, as he has no personal knowledge of it.

The reference to Rule 703 is designed to avoid any question of conflict between the present rule and the provisions of that rule allowing an expert to express opinions based on facts of which he does not have personal knowledge.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1988 AMENDMENT

The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 602 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

(Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1934; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

The rule is designed to afford the flexibility required in dealing with religious adults, atheists, conscientious objectors, mental defectives, and children. Affirmation is simply a solemn undertaking to tell the truth; no special verbal formula is required. As is true generally, affirmation is recognized by federal law. ''Oath'' includes affirmation, 1 U.S.C. §1; judges and clerks may administer oaths and affirmations, 28 U.S.C. §§459, 953; and affirmations are acceptable in lieu of oaths under Rule 43(d) of the Federal Rules of Civil Procedure. Perjury by a witness is a crime, 18 U.S.C. §1621.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 603 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 604. Interpreter

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

(Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1934; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

The rule implements Rule 43(f) of the Federal Rules of Civil Procedure and Rule 28(b) of the Federal Rules of Criminal Procedure, both of which contain provisions for the appointment and compensation of interpreters.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 604 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 605. Judge's Competency as a Witness

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

(Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1934; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

In view of the mandate of 28 U.S.C. §455 that a judge disqualify himself in ''any case in which he * * * is or has been a material witness,'' the likelihood that the presiding judge in a federal court might be called to testify in the trial over which he is presiding is slight. Nevertheless the possibility is not totally eliminated.

The solution here presented is a broad rule of incompetency, rather than such alternatives as incompetency only as to material matters, leaving the matter to the discretion of the judge, or recognizing no incompetency. The choice is the result of inability to evolve satisfactory answers to questions which arise when the judge abandons the bench for the witness stand. Who rules on objections? Who compels him to answer? Can he rule impartially on the weight and admissibility of his own testimony? Can he be impeached or cross-examined effectively? Can he, in a jury trial, avoid conferring his seal of approval on one side in the eyes of the jury? Can he, in a bench trial, avoid an involvement destructive of impartiality? The rule of general incom-