

Instructor: Harold Peterson, JD  
Class Location: MQH 523  
Office: MacQuarrie Hall 521  
Office Hours: Tuesdays, 4:15pm to 6:15pm, Thursdays, 4:15pm to 5:15pm  
or by appointment  
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Class time: Tues/Thurs 3:00 to 4:15pm

## **CRIMINAL EVIDENCE AND PROCEDURES**

*Justice Studies 16, San Jose State University*

*Spring Semester 2011*

*Section 2*

**Course Description:** This course is an introduction to criminal evidence and the historical, constitutional, statutory, administrative and judicial rules and procedures that govern and often limit its admissibility into the criminal courts of the United States. In addition, this course will examine the process by which prosecutors and defense attorneys collect and introduce evidence as proof or exculpation of a crime and the reasons courts ultimately admit or exclude such evidence.

### **Course Requirements:**

**Text: Criminal Evidence: Principles and Cases** (7<sup>th</sup> ed.), *Thomas J. Gardner and Terry M. Anderson* is available at the campus bookstore with supplemental readings held on e-reserve at the library as assigned by topic. In addition, the textbook publisher provides supplementary internet resources at [www.wadsworth.com](http://www.wadsworth.com).

**Supreme Court Cases:** Specific Supreme Court Cases will be available online and assigned by topic.

**Reading Assignments:** Students are expected to complete all reading assignments prior to their discussion in class.

**Briefing Cases:** In addition to the reading assignments, students are required to submit written briefs for specific Supreme Court cases assigned throughout the semester. The briefs must be written in the proper format and submitted at the beginning of class on their respective due dates. The Briefs will be worth up to 10 points for each successfully completed brief and consist of 20% of a student's total grade.

**Class Participation:** Students are encouraged to participate in class discussion. Participating students who demonstrate they are prepared for class and provide a positive contribution to the class discussions may expect as much as a half grade increase in their final evaluation at the end of the semester.

**Examination and Evaluation:** A student's final evaluation shall consist of two in-class midterm examinations, ten written briefs and a final examination. Points and percentage of overall evaluation:

*Midterm Examination (October 5, 2010) - 125 points, 25% of overall evaluation*  
*Midterm Examination (November 9, 2010) - 125 points, 25% of overall evaluation*  
*Written Case Briefs (Due pursuant to Course Schedule prior to class) - 100 points, 20% of overall evaluation*  
*Final Examination (December 15, 2010) - 150 points, 30% of overall evaluation*  
*Class Participation - up to 25 points extra credit*

Examinations consist of multiple choice and essay questions derived from the reading assignments (including the assigned Supreme Court cases and class lectures and discussions. Missed exams or assignments may only be made-up with proper documentation of illness, incapacity and/or prior and valid notification and reason for absence. 10 points will be deducted from late assignments without valid excuse. Points for class participation are at the discretion of the instructor and may be added or withdrawn at any time prior to a student's final evaluation.

**+/- Grading:** This course will be using the +/- system on final grades based on the following percentages:

95-100:	A	74-76:	C
90-94:	A-	70-73:	C-
87-89:	B+	67-69:	D+
84-86:	B	64-66:	D
80-83:	B-	60-63:	D-
77-79:	C+	0-59:	F

In order to receive a grade for this course, all course requirements must be completed. Failure to complete any of them may result in a failing grade for the course. Paper and course grades may be disputed at the instructor's convenience (or during office hours). It is important to note, however, that upon review, the instructor reserves the right to increase as well as decrease the grade in question. Late assignments and papers will not be accepted nor any extra credit provided.

### ***COURSE SCHEDULE***

- Week 1**      **Thursday, January 27, 2011**  
Assignment: *None*  
Lecture & Discussion: *Introduction, Class Policy and Procedures; Brief Writing*
- Week 2**      **Tuesday, February 1, 2011**  
Assignment: *Text - Chapter 1 - History and Development of Criminal Evidence; Read and Brief: Shiriro v. Landrigan, 127 S.Ct 1933 (2007)*

Lecture & Discussion: *Early Developments of Trial & Evidence; Magna Carta; Habeas Corpus; Declaration of Independence; US Constitution; Bill of Rights; Modern Developments Regarding Evidence*

**Thursday, February 3, 2011**

Assignment: *Text - Chapter 2 – Important Aspects of the American Criminal Justice System*

Lecture & Discussion: *Federalism; State & Federal Jurisdiction; Law Enforcement; Adversary System; Admissible Evidence; “Accusatorial” System; Disclosure; Due Process; Bad Evidence*

**Week 3**

**Tuesday, February 8, 2011**

Assignment: *Text – Chapter 3 – Using Evidence to Determine Guilt or Innocence; Read and Brief: Miranda v. Arizona, 384 U.S. 436 (1966)*

Lecture & Discussion: *Evidence Evaluation; Criminal Procedure; Pleas at Arraignment; Plea Bargaining; The Guilty Plea; Pretrial Litigation; Prima Facie Case; Conviction*

**Thursday, February 10, 2011**

Assignment: *Text - Chapter 4 – Direct and Circumstantial Evidence and the Use of Inferences*

Lecture & Discussion: *Evidence Definition Revisited; Proof and Its Burden; Beyond a Reasonable Doubt; Direct Evidence versus Circumstantial Evidence; Inferences; Presumptions*

**Week 4**

**Tuesday, February 15, 2011**

Assignment: *Text – Chapter 5 – Witnesses and the Testimony of Witnesses; Read and Brief: State v. Kelbel: 648 N.W.2d 690 (2002)*

Lecture & Discussion: *Qualification of Witnesses; Credibility of Witnesses; Witness Rights; Expert & Opinion Evidence; Examination of Witnesses; Further Examination of Witnesses*

**Thursday, February 17, 2011**

Assignment: *Text - Chapter 6 – Judicial Notice and Privileges of Witnesses*

Lecture & Discussion: *Judicial Notice; Privileges (Self-incrimination, Attorney-Client, Husband-Wife, Physician-Patient, Psychotherapist-Patient, Counselor, Clergy-Penitent, National Security, Presidential, Grand Jury); Witness Privileges; Shield Laws; Immunity*

**Week 5**

**Tuesday, February 22, 2011**

Assignment: *Text – Chapter 7 – The Use of Hearsay in the Courtroom* Lecture & Discussion: *History of Hearsay; Definition of Hearsay; Not Hearsay*

**Thursday, February 24, 2011**

Assignment: *Text – Chapter 8 – Exceptions to the Hearsay; Read and Brief: Crawford v. Washington, 541 U.S. 36 (2004)*

Lecture & Discussion: *Confrontation Clause; Exceptions to Hearsay Rule; Indicia of Reliability Test;*

- Week 6**      **Tuesday, March 1, 2011**  
 Assignment: *Text* – Chapter 8 - Exceptions to the Hearsay  
 Lecture & Discussion: *The New Rule (Crawford v. Washington); Fresh Complaint Exception; Modern Exception in Child Sex Abuse Cases*
- Thursday, March 3, 2011**  
 Assignment: *Review Chapters 1 through 8 of Text*  
 Lecture & Discussion: *First Midterm Review*
- Week 7**      **Tuesday, March 8, 2011**  
 First Midterm Examination
- Thursday, March 10, 2011**  
 Assignment: Chapter 9 – *The Exclusionary Rule*; **Read and Brief: Mapp v. Ohio, 81 S.Ct. 1684 (1961)**  
 Lecture & Discussion: *Warrant Requirement; Definition of Exclusionary Rule; Fruit of the Poisonous Tree; Miranda Revisited; Modification of the Exclusionary Rule*
- Week 8**      **Tuesday, March 15, 2011**  
 Assignment: *Text* – Chapter 10 – *Where the Exclusionary Rule Does Not Apply*; **Read and Brief: United States v. Johnson, [380 F.3d 1013 (7<sup>th</sup> Cir. 2004)] [Docket Nos. 03-3192][03-3195]**  
 Lecture & Discussion: *Exclusionary Rule Does Not Apply When ...; After Government Intrusion; US v. Dunn*
- Thursday, March 17, 2011**  
 Assignment: *Text* – Chapter 11 – *Evidence is Admissible if Obtained During an Administrative Function Under the “Special Needs” of Government*  
 Lecture & Discussion: *Special Needs Exception to Warrant Requirement; Special Needs Exceptions; Correctional Programs and the Privilege Against Self-incrimination; Other Special Needs Exceptions; Evidence Obtained in Foreign Countries*
- Week 9**      **Tuesday, March 22, 2011**  
 Assignment: *Text* – Chapter 12 – *Obtaining Statements and Confessions for Use as Evidence*  
 Lecture & Discussion: *Confessions versus Incriminating Statements; Corpus Delicti; Voluntary Statements; Miranda Revisited – “In Custody”;*
- Thursday, March 24, 2011**  
 Assignment: *Text* – Chapter 12 – *Obtaining Statements and Confessions for Use as Evidence*  
 Lecture & Discussion: *Massiah Doctrine; Bruton Rule*
- Week 10**     **Spring Recess – No Class**

- Week 11**      **Tuesday, April 5, 2011**  
Assignment: *Text* – Chapter 13 – *The Law Governing Identification of Evidence*; **Read and Brief Terry v. Ohio, 392 U.S. 1 (1968)**  
Lecture & Discussion: *Evidence Needed for Conviction; Mistaken Identity; Detailed Descriptions; Reliability of Evidence; Police Line-ups & Photograph Arrays; Other Means of Identification; Courtroom Identification*
- Thursday, April 7, 2011**  
Assignment: *Text* - Chapter 14 – *Obtaining Physical and Other Evidence*; **Read and Brief, Davis v. Mississippi, 89 S.Ct. 1394 (1969)**  
Lecture & Discussion: *Voluntary Encounters or Conversations; Terry Stop; Evidence Obtained by Entry into Private Premises; Traffic Stops and Vehicle Searches*
- Week 12**      **Tuesday April 12, 2011**  
Assignment: *Text* - Chapter 15 – *Obtaining Evidence from Computers, or by Use of Search Warrants, Wiretapping, or Dogs Trained to Indicate an Alert*  
Lecture & Discussion: *Computers; Search Warrants; Wiretaps and Electronic Surveillance; Situations Where Court Orders Not Required; Informants; Dogs*
- Thursday, April 14, 2011**  
Assignment: *Review Chapters 9 Through 14*  
Lecture & Discussion: *Second Midterm Review*
- Week 13**      **Tuesday, April 19, 2011**  
Second Midterm Examination
- Thursday, April 21, 2011**  
Assignment: *Chapter 16 - The Crime Scene, The Chain of Custody Requirement, and the Use of Fingerprints and Trace Evidence*  
Lecture & Discussion: *The Crime Scene; Exigent Circumstances; Tracking Devices; Standing; Searching the Crime Scene*
- Week 14**      **Tuesday, April 26, 2011**  
Assignment: *Chapter 16 - The Crime Scene, The Chain of Custody Requirement, and the Use of Fingerprints and Trace Evidence*; **Read and Brief: Kirk v. Louisiana, 536 U.S.635 (2002) AND State v. Kirk, [833 So.2d 418 (La. App. 2002)]**  
Lecture & Discussion: *Chain of Custody Requirement; Finger Prints; Trace Evidence; Other Type of Evidence*
- Thursday, April 28, 2011**  
Film – *12 Angry Men*
- Week 15**      **Tuesday, May 3, 2011**

Finish Film – *12 Angry Men*

**Thursday, May 5, 2011**

Assignment: *Text* – Chapter 17 – *Videotapes, Photographs, Documents and Writings*

Lecture & Discussion: *Photo & Videotapes; Video Surveillance & the Warrant Requirement; Best Evidence Rule; Reasonable Expectation of Privacy; Self-incrimination Considerations*

**Week 16**

**Tuesday, May 10, 2011**

Assignment: *Text* – Chapter 18 – *Scientific Evidence*; **Read and Brief Daubert v. Merrill-Dow Pharmaceuticals Co., 509 U.S. 579 (1993)**

Lecture & Discussion: *Uses of Scientific Evidence; Frye test; Judicial Notice*

**Thursday, May 12, 2011**

Assignment: *Text* – Chapter 18 – *Scientific Evidence*

Lecture & Discussion: *DNA Profiling; Forensic Entomology; Ballistic Fingerprinting; Other Forms of Scientific Evidence*

**Week 17**

**Tuesday, May 17, 2011**

Assignment: *Review Chapters 1 Through 8*

Lecture & Discussion: *Final Exam Review, Parts 1 & 2*

**Week 18**

**Tuesday, May 24, 2011**

*Final Examination (2:45pm to 5:00pm)*

**Academic Dishonesty:** The “I got caught cheating” policy for this class is swift, severe, and certain: that is, if you cheat, chances are very good that you will be caught and punished with a failing grade for the course. In addition, plagiarism is absolutely unacceptable. If you are unsure what constitutes plagiarism, please contact the professor—while many students are ignorant of this offense, ignorance is not an excuse. I have several speeding tickets that prove this point!

**Academic Integrity:** Academic integrity is essential to the mission of San José State University. As such, students are expected to perform their own work (except when collaboration is expressly permitted by the course instructor) without the use of any outside resources. Students are not permitted to use old tests, quizzes when preparing for exams, nor may they consult with students who have already taken the exam. When practiced, academic integrity ensures that all students are fairly graded. Violations to the Academic Integrity Policy undermine the educational process and will not be tolerated. It also demonstrates a lack of respect for oneself, fellow students and the course instructor and can ruin the university’s reputation and the value of the degrees it offers. We all share the obligation to maintain an environment that practices academic integrity. Violators of the Academic Integrity Policy will be subject to failing this course and being reported to the Office of Student Conduct &

Ethical Development for disciplinary action that could result in suspension or expulsion from San José State University. The policy on academic integrity can be found at: [http://sa.sjsu.edu/student\\_conduct](http://sa.sjsu.edu/student_conduct)

To better understand plagiarism and to aid you in making sure that you are not plagiarizing, please see me and/or visit:

<http://tutorials.sjlibrary.org/plagiarism/index.htm>

**Course Add/Drop Statement:** Instructors are permitted to drop students who fail to attend the first scheduled class meeting and who fail to inform the instructor prior to the second class meeting of the reason for any absence and their intention to continue in the class. Some instructors will drop students who do not meet the stated course prerequisites. However, instructors are not required to drop a student from their course. ***It is the student's responsibility to make sure classes are dropped.***

**You, the student,** are responsible for understanding the policies and procedures about add/drops, academic renewal, withdrawal, etc. found at: [http://sa.sjsu.edu/student\\_conduct](http://sa.sjsu.edu/student_conduct)

**ADA:** “If you need course adaptations or accommodations because of a disability, or if you need special arrangements in case the building must be evacuated, please make an appointment with me as soon as possible, or see me during office hours. Presidential Directive 97-03 requires that students with disabilities register with DRC to establish a record of their disability.”

**Electronic Devices:** Please turn off all cell phones, pagers, PDA's or any other electronic device that “makes noise”. While I commend those of you who have mastered text messaging, the use of these devices during class is disruptive and will not be tolerated. If I see you text messaging, I will ask you to leave the room. **The use of computers in the classroom will not be allowed.**

**Classroom Etiquette:** Class motto: “Treat others as you think they would like to be treated”. Yes, this is a spin on the ever popular, but not so empathetic phrase. This is a time to open your minds to new ideas, to explore new concepts, so please take advantage of this opportunity. Further, please be respectful of others and show them common courtesy. I firmly believe that the learning process is enriched by discussion, but damaged by arguments. Respect and professionalism are the guiding principles of this class. Tardiness will not be tolerated, if you are late, do not disturb class—wait until break to enter the classroom.

**Written Work:** I understand that many of our students have very busy lives, filled with work and family obligations. I understand that “school work” is difficult to fit in to an already full schedule. With this said, I do expect quality work from everyone. Write every brief as though it is your best brief and be proud of the work that you complete for this course.

**As a side note:** I am well aware of the websites that offer briefs to students and have software that allows me to compare briefs I receive to the thousands

of databases of canned briefs that exist. Trust me, it is not worth your effort, chances are, I will find out.