

**San José State University  
CASA/Department of Justice Studies  
JS143, Criminal Evidence & Procedure, Section 1  
Fall 2014**

<b>Instructor:</b>	Harold W. Peterson, JD
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<b>Office Hours:</b>	Tuesdays – Thursday 9:00 am to 10:15 am
<b>Class Days/Time:</b>	Tuesday – Thursday 1:30 pm to 2:45 pm
<b>Classroom:</b>	Sweeny Hall, Room 242
<b>JS Competency Area:</b>	A: Theories

**Course Catalog Description**

Origin, development, philosophy and constitutional basis of evidence; administrative and judicial rules and procedures that govern admissibility; examination of judicial decisions interpreting individual rights; exploration of process by which attorneys introduce evidence as proof or exculpation of crime.

**Instructor's 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 reason courts ultimately admit or exclude such evidence.

**Goals and Student Learning Objectives**

Upon successful completion of this course, students will be able to:

**SLO 1** – understand the historical and constitutional rights and limitations relating to the admission and/or exclusion of criminal evidence.

**SLO 2** – understand the historical and constitutional rules and procedures governing the rights and limitations of defendants in federal and state criminal courts in America.

**SLO 3** – brief and recite the material cases defining the rights and limitations relating to the admission and/or exclusion of criminal evidence and procedure.

## **Required Texts/Readings/Assignments/Expectations**

### **Textbook**

**Criminal Evidence: Principles and Cases (8<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 before their discussion in class.

**Justice Studies Reading and Writing Philosophy:** The Department of Justice Studies is committed to scholarly excellence. Therefore, the Department promotes academic, critical, and creative engagement with language (i.e., reading and writing) throughout its curriculum. A sustained and intensive exploration of language prepares students to think critically and to act meaningfully in interrelated areas of their lives—personal, professional, economic, social, political, ethical, and cultural. Graduates of the Department of Justice Studies leave San José State University prepared to enter a range of careers and for advanced study in a variety of fields; they are prepared to more effectively identify and ameliorate injustice in their personal, professional and civic lives. Indeed, the impact of literacy is evident not only within the span of a specific course, semester, or academic program but also over the span of a lifetime.

**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 online before class on their respective due dates and a paper copy submitted in class.

**Case Recitation:** Students must prepare to summarize the facts, identify the pertinent questions or issues and discuss (with fellow students and the instructor) the court's analysis or reasoning of a specific case during class. The instructor will call on individual students on the day of class scheduled for recitation of that case. Students unprepared or otherwise refusing to recite a case may “pass” on the recitation and make it up during another class. However, the instructor will allow only one “pass” per semester without consequence. Additional “passes” will receive a 10% grade deduction per “pass”.

**Written Assignments:** All writing assignments must adhere to the *10 Rules of Formal Writing* located on the **Canvas** website under the **Modules** menu – *Information Related to the Course*. Written Assignments not conforming to these rules will receive a significant reduction in 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 points toward their class participation evaluation.

**Examination and Evaluation:** A student’s final evaluation shall consist of two (2) midterm examinations, ten (10) written brief assignments, case recitation and a cumulative final examination. Each assignment/examination shall consist of 100 point and is weighted as follows:

Grade Item	Weight
<b>First Midterm Examination</b> (SLO’s 1-3, 5)	20%
<b>Second Midterm Examination</b> (SLO’s 1-5)	20%
<b>10 Written Case Briefs</b> (SLO 6)	25%
<b>Case Recitation/Class Participation</b>	5%
<b>Final Examination</b> (SLO’s 1-6)	30%
<b>Total</b>	100%

Examinations consist of multiple choice, short answer and essay questions derived from the reading assignments and class lecture. The second midterm will be take-home. 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.

**+/- 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

Please note, a “C” or higher is required to receive credit for this course toward a Justice Studies or Forensic Science Major.

Students must submit all assignments online at the **Canvas** website and submit a paper copy in class.

## **Classroom Protocol**

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. Students may enrich the learning process by discussion. 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.

**Electronic Devices:** Please turn off all cell phones, pagers, PDA's or any other electronic device that "make noise". No text messaging in class, please turn off these devices, as they are disruptive. Students may take hand written notes during class; however, students may not use computer and/or other recording devices without instructor's permission.

## **Dropping and Adding**

Students are responsible for understanding the policies and procedures about add/drops, academic renewal, etc.

<https://slisweb.sjsu.edu/current-students/registration-and-enrollment/adding-and-dropping-classes>

Students should be aware of the current deadlines for dropping and adding classes. <http://www.sjsu.edu/provost/docs/1314aycalendar.pdf>

## **Required University Policies Statement**

### **Academic Integrity:**

[www.sjsu.edu/studentconduct/docs/Academic\\_Integrity\\_Policy\\_S07-2.pdf](http://www.sjsu.edu/studentconduct/docs/Academic_Integrity_Policy_S07-2.pdf)

Your own commitment to learning, as evidenced by your enrollment at San Jose State University and the University's integrity policy, require you to be honest in all your academic course work. Faculty members are required to report all infractions to the office of Student Conduct and Ethical Development.

The University will not tolerate instances of academic dishonesty. Cheating on exams or plagiarism (presenting the work of another as your own, or the use of another person's ideas without giving proper credit) will result in a failing grade and sanctions by the University. Students must complete all assignments unless otherwise specified. If you would like to include in your assignment any material you have submitted, or plan to submit for another class, please note that the SJSU Academic Policy F06-1 requires approval of instructors.

**Campus Policy in Compliance with the American Disabilities Act:** If you need course adaptations or accommodations because of a disability, or if you need to make special arrangements in case of building evacuation, 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 requesting accommodations must register with the AEC (Accessible Education Center) to establish a record of their disability. For more information call their office at 408-924-6000 (v) or 408-924-5990 (TTY).

**Accommodation to Students' Religious Holidays:** San José State University shall provide accommodation on any graded class work or activities for students wishing to observe

religious holidays when such observances require students to be absent from class. It is the responsibility of the student to inform the instructor, in writing, about such holidays before the add deadline at the start of each semester. If such holidays occur before the add deadline, the student must notify the instructor, in writing, at least three days before the date that he/she will be absent. It is the responsibility of the instructor to make every reasonable effort to honor the student request without penalty, and of the student to make up the work missed. See [University Policy S14-7](http://www.sjsu.edu/senate/docs/S14-7.pdf) at <http://www.sjsu.edu/senate/docs/S14-7.pdf>.

**Expectations of Students' Effort:** "Success in this course is based on the expectation that students will spend, for each unit of credit, a minimum of forty-five hours over the length of the course (normally 3 hours per unit per week with 1 of the hours used for lecture) for instruction or preparation/studying or course related activities including but not limited to internships, labs, clinical practica. Other course structures will have equivalent workload expectations as described in the syllabus."

## **Student Resources**

**Library Liaison:** Silke Higgins *Assistant Librarian, University Library, San Jose State University*

Email: [silke.higgins@sjsu.edu](mailto:silke.higgins@sjsu.edu)

**Student Technology Resources:** Computer labs for student use are available in the Academic Success Center located on the 1st floor of Clark Hall and on the 2nd floor of the Student Union. Additional computer labs may be available in your department/college. Computers are also available in the Martin Luther King Library. A wide variety of audio-visual equipment is available for student checkout from Media Services located in IRC 112. These items include digital and VHS camcorders, VHS and Beta video players, 16 mm, slide, overhead, DVD, CD, and audiotape players, sound systems, wireless microphones, projection screens and monitors.

**Peer (Mentoring) Connections:** Peer Connections offers free mentoring and tutoring services to undergraduate SJSU students. <http://peerconnections.sjsu.edu>

Peer Connections has four locations on the SJSU main campus:

- Student Services Center (SSC) 600, on the corner of 10<sup>th</sup> and San Fernando (inside the 10<sup>th</sup> Street parking garage building)
- Martin Luther King, Jr. Main Library in room LL 67, just off of the elevator lobby on the lower level
- Academic Success Center in Clark Hall, on the first floor next to the Computer Lab
- The Living Learning Center (LLC) in Campus Village B.

**SJSU Writing Center:** The SJSU Writing Center located in Room 126 in Clark Hall offers a variety of resources to help students become better writers, including one-on-one tutoring sessions and numerous writing workshops. All of the services are free for SJSU

students. <http://www.sjsu.edu/writingcenter/>

**CASA Student Success Center:** The Student Success Center located in MacQuarrie Hall, Room 533 (top floor) provides advising for undergraduate students majoring or interested in majoring in programs offered by CASA Departments and Schools. The Student Success Center provides general education advising, assistance with changing majors, answers to academic policy related questions, meetings with peer advisors and/or various regularly scheduled presentations and workshops. 408-924-2910  
<http://www.sjsu.edu/casa/ssc/>

## JS143 / Criminal Evidence & Procedure, Fall 2014

### Course Schedule

Week	Day	Readings, Assignments & Deadlines
1	Tuesday 8/26/14	<b>Assignment:</b> None <b>Lecture &amp; Discussion:</b> Introduction; Syllabus; Class Mechanics; Class Policy and Procedures; the Syllabus, Brief Writing; "Just say no!"
	Thursday 8/28/14	<b>Assignment:</b> Text - Chapter 1 – History and Development of Criminal Evidence <b>Lecture &amp; Discussion:</b> Brief Writing; Early Developments of Trial & Evidence; Magna Carta; Habeas Corpus; Declaration of Independence;
2	Tuesday 9/2/14	<b>Assignment:</b> Text - Chapter 1 – History and Development of Criminal Evidence (continued) <b>Read &amp; Brief:</b> <i>Schriro v. Landrigan</i> , 127 S.Ct 1933 (2007) <b>Lecture &amp; Discussion:</b> US Constitution; Bill of Rights; Modern Developments Regarding Evidence
	Thursday 9/4/14	<b>Assignment:</b> Text - Chapter 2 – Important Aspects of the American Criminal Justice System <b>Lecture &amp; Discussion:</b> Federalism; State & Federal Jurisdiction; Law Enforcement; Adversary System; Admissible Evidence; "Accusatorial" System; Disclosure; Due Process; Bad Evidence
3	Tuesday 9/9/14	<b>Assignment:</b> Text – Chapter 3 – Using Evidence to Determine Guilt or Innocence; <b>Lecture &amp; Discussion:</b> Evidence Evaluation; Criminal Procedure; Pleas at Arraignment; Plea Bargaining; The Guilty Plea; Pretrial Litigation; Prima Facie Case; Conviction
	Thursday 9/11/14	<b>Assignment:</b> Text - Chapter 4 – Direct and Circumstantial Evidence and the Use of Inferences <b>Lecture &amp; Discussion:</b> Evidence Definition Revisited; Proof and Its Burden; Beyond a Reasonable Doubt; Direct Evidence versus Circumstantial Evidence; Inferences; Presumptions
4	Tuesday 9/16/14	<b>Assignment:</b> Text – Chapter 5 – Witnesses and the Testimony of Witnesses <b>Read &amp; Brief:</b> <i>State v. Kelbel</i> , 648 N.W.2d 690 (2002) <b>Lecture &amp; Discussion:</b> Qualification of Witnesses; Credibility of Witnesses; Witness Rights; Expert & Opinion Evidence; Examination of Witnesses; Further Examination of Witnesses
	Thursday 9/18/14	<b>Assignment:</b> Text - Chapter 6 – Judicial Notice and Privileges of Witnesses <b>Lecture &amp; Discussion:</b> 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
5	Tuesday 9/23/14	<b>Assignment:</b> Text – Chapter 7 – The Use of Hearsay in the Courtroom <b>Lecture &amp; Discussion:</b> History of Hearsay; Definition of Hearsay; Not Hearsay

	Thursday 9/25/14	<b>Assignment:</b> <i>Text</i> – Chapter 8 – Exceptions to the Hearsay <b>Read &amp; Brief:</b> <i>Crawford v. Washington</i> , 541 U.S. 36 (2004) <b>Lecture &amp; Discussion:</b> Confrontation Clause; Exceptions to Hearsay Rule; Indicia of Reliability Test
6	Tuesday 9/30/14	<b>Assignment:</b> <i>Text</i> – Chapter 8 - Exceptions to the Hearsay <b>Lecture &amp; Discussion:</b> <i>The New Rule (Crawford v. Washington)</i> ; <i>Fresh Complaint Exception</i> ; <i>Modern Exception in Child Sex Abuse Cases</i>
	Thursday 10/2/14	<b>Assignment:</b> Review Chapters 1 through 8 of Text <b>Lecture &amp; Discussion:</b> First Midterm Review
7	Tuesday 10/7/14	<b>First Midterm Examination</b> <i>(Scantron and Blue Book Required)</i>
	Thursday 10/9/14	<b>Assignment:</b> Chapter 9 – <i>The Exclusionary Rule</i> <b>Read &amp; Brief:</b> <i>Mapp v. Ohio</i> , 81 S.Ct. 1684 (1961) <b>Lecture &amp; Discussion:</b> <i>Warrant Requirement</i> ; <i>Definition of Exclusionary Rule</i> ; <i>Fruit of the Poisonous Tree</i> ; <i>Miranda Revisited</i> ; <i>Modification of the Exclusionary Rule</i>
8	Tuesday 10/14/14	<b>Assignment:</b> <i>Text</i> – Chapter 10 – <i>Where the Exclusionary Rule Does Not Apply</i> <b>Read &amp; Brief:</b> <i>United States v. Johnson</i> , [380 F.3d 1013 (7 <sup>th</sup> Cir. 2004)] [Docket Nos. 03-3192][03-3195] <b>Lecture &amp; Discussion:</b> <i>Exclusionary Rule Does Not Apply When?</i> ; <i>After Government Intrusion</i> ; <i>US v. Dunn</i>
	Thursday 10/16/14	<b>Assignment:</b> <i>Text</i> – Chapter 11 – <i>Evidence is Admissible if Obtained During an Administrative Function Under the “Special Needs” of Government</i> <b>Lecture &amp; Discussion:</b> <i>Special Needs Exception to Warrant Requirement</i> ; <i>Special Needs Exceptions</i> ; <i>Correctional Programs and the Privilege Against Self-incrimination</i> ; <i>Other Special Needs Exceptions</i> ; <i>Evidence Obtained in Foreign Countries</i>
9	Tuesday 10/21/14	<b>Assignment:</b> <i>Text</i> – Chapter 12 – <i>Obtaining Statements and Confessions for Use as Evidence</i> <b>Read &amp; Brief:</b> <i>Miranda v. Arizona</i> , 384 U.S. 436 (1966) <b>Lecture &amp; Discussion:</b> <i>Confessions verses Incriminating Statements</i> ; <i>Corpus Delicti</i> ; <i>Voluntary Statements</i> ; <i>“Custodial Interrogation”</i>
	Thursday 10/23/14	<b>Film or Make-up Lecture</b> <b>Second Midterm Examination Assigned (take-home):</b>
10	Tuesday 10/28/14	<b>Film or Make-up Lecture</b>
	Thursday 10/30/14	<b>Assignment:</b> <i>Text</i> – Chapter 12 – <i>Obtaining Statements and Confessions for Use as Evidence</i> <b>Lecture &amp; Discussion:</b> <i>Massiah Doctrine</i> ; <i>Bruton Rule</i> <b>Second Midterm Examination Due</b>
11	Tuesday 11/4/14	<b>Assignment:</b> <i>Text</i> – Chapter 13 – <i>The Law Governing Identification of Evidence</i> <b>Read &amp; Brief:</b> <i>Terry v. Ohio</i> , 392 U.S. 1 (1968) <b>Lecture &amp; Discussion:</b> <i>Evidence Needed for Conviction</i> ; <i>Mistaken Identity</i> ; <i>Detailed Descriptions</i> ; <i>Reliability of Evidence</i> ; <i>Police Line-ups &amp; Photograph Arrays</i> ; <i>Other Means of Identification</i> ; <i>Courtroom Identification</i>

	Thursday 11/6/14	<b>Assignment:</b> <i>Text - Chapter 14 – Obtaining Physical and Other Evidence</i> <b>Lecture &amp; Discussion:</b> <i>Voluntary Encounters or Conversations; Terry Stop; Evidence Obtained by Entry into Private Premises; Traffic Stops and Vehicle Searches</i>
12	Tuesday 11/11/14	<b>No Class: Veterans Day</b>
	Thursday 11/13/14	<b>Assignment:</b> <i>Text - Chapter 15 – Obtaining Evidence from Computers, or by Use of Search Warrants, Wiretapping, or Dogs Trained to Indicate an Alert</i> <b>Read &amp; Brief:</b> <i>Davis v. Mississippi, 89 S.Ct. 1394 (1969)</i> <b>Lecture &amp; Discussion:</b> <i>Computers; Search Warrants; Wiretaps and Electronic Surveillance; Situations Where Court Orders Not Required; Informants; Dogs</i>
13	Tuesday 11/18/14	<b>Assignment:</b> <i>Chapter 16 - The Crime Scene, The Chain of Custody Requirement, and the Use of Fingerprints and Trace Evidence</i> <b>Lecture &amp; Discussion:</b> <i>The Crime Scene; Exigent Circumstances; Tracking Devices; Standing; Searching the Crime Scene</i>
	Thursday 11/20/14	<b>Assignment:</b> <i>Chapter 16 - The Crime Scene, The Chain of Custody Requirement, and the Use of Fingerprints and Trace Evidence</i> <b>Read &amp; Brief:</b> <i>Kirk v. Louisiana, 536 U.S.635 (2002) and State v. Kirk, [833 So.2d 418 (La. App. 2002)]</i> <b>Lecture &amp; Discussion:</b> <i>Chain of Custody Requirement; Finger Prints; Trace Evidence; Other Types of Evidence</i>
14	Tuesday 11/25/14	<b>No Class</b> – Watch <a href="#">Anatomy of a Murder</a> online.
	Thursday 11/27/14	<b>No Class- Thanksgiving</b>
15	Tuesday 12/2/14	<b>Assignment:</b> <i>Text – Chapter 17 – Videotapes, Photographs, Documents and Writings</i> <b>Lecture &amp; Discussion:</b> <i>Photo &amp; Videotapes; Video Surveillance &amp; the Warrant Requirement; Best Evidence Rule; Reasonable Expectation of Privacy; Self-incrimination Considerations</i>
	Thursday 12/4/14	<b>Assignment:</b> <i>Text – Chapter 18 – Scientific Evidence</i> <b>Read &amp; Brief:</b> <i>Daubert v. Merrill - Dow Pharmaceuticals Co., 509 U.S. 579 (1993)</i> <b>Lecture &amp; Discussion:</b> <i>Uses of Scientific Evidence; Frye test; Judicial Notice; DNA Profiling; Forensic Entomology; Ballistic Fingerprinting; Other Forms of Scientific Evidence</i>
16	Tuesday 12/9/2014	<b>Assignment:</b> <i>Review Chapters 1 Through 18</i> <b>Lecture &amp; Discussion:</b> <i>Final Exam Review, Parts 1 &amp; 2</i>
	Wednesday 12/17/14	<b>Final Examination: (12:15 p.m. to 2:30 p.m.)</b>