

**San José State University**  
**CASA/Department of Justice Studies**  
**JS143, Criminal Evidence & Procedure, Section 1**  
**Fall 2017**

<b>Instructor:</b>	Harold W. Peterson, JD
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<b>Email:</b>	<a href="mailto:harold.peterson@sjsu.edu">harold.peterson@sjsu.edu</a>
<b>Office Hours:</b>	Tuesday/Thursday 9:30 am to 10:30 am
<b>Class Days/Time:</b>	Tuesday/Thursday 1:30 pm to 2:45 pm
<b>Classroom:</b>	MacQuarrie Hall 520
<b>JS Competency Area:</b>	B: Methodologies

**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.

**Prerequisites:**

Any 100W Note: Must achieve a grade of "C" or better to fulfill Justice Studies major requirements.

**Goals and Course Learning Outcomes**

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

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

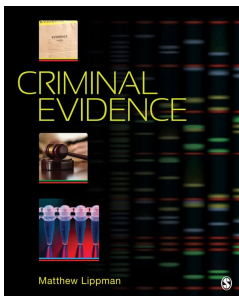
**CLO 2** – understand the historical and constitutional rules and procedures governing the rights and limitations of defendants in federal and state criminal courts in America.

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

### **Course Requirements**

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.

### **Textbook**



Lippman, M. R. (2015) *Criminal Evidence*. Thousand Oaks, CA: Sage Publications Inc. The text is available at the campus bookstore. Supplemental readings assigned by topic and posted on the **Canvas** website. **ISBN: 978-1-4833-5955-7**

**Appellate Court Cases:** Specific 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 court cases assigned throughout the semester. To receive credit for a written brief, it must be written in the proper format, completed in good faith, and submitted online on time.

**You Decide Question/Case Recitation:** Students must prepare to summarize the facts, identify the pertinent questions or issues and discuss (with fellow students and the instructor) the analysis or reasoning of two (1) specific You Decide Question (YDQ) or one of the assigned cases during class. Students may volunteer, or the instructor will call on individual students on the day of class scheduled for recitation of the (YDQ)/case. Students are required to brief the underlying You Decide case they volunteer or are called upon to recite. Students unprepared or otherwise refusing to recite a case may “pass” on the recitation; however, “passes” will receive a 50% grade deduction per “pass”. To receive full credit for a recitation, students must turn in the brief no later than the next class period following the recitation.

**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 points and is weighted as follows:

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

More details can be found from [University Syllabus Policy S16-9](http://www.sjsu.edu/senate/docs/S16-9.pdf) at <http://www.sjsu.edu/senate/docs/S16-9.pdf>.

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.

- [University Syllabus Policy S16-9](http://www.sjsu.edu/senate/docs/S16-9.pdf) (<http://www.sjsu.edu/senate/docs/S16-9.pdf>)
- [University Policy F15-12](http://www.sjsu.edu/senate/docs/F15-12.pdf) (<http://www.sjsu.edu/senate/docs/F15-12.pdf>)

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

93-100:	A	74-76:	C
90-93:	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, pages, 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**

Per University Policy S16-9, university-wide policy information relevant to all courses, such as academic integrity, accommodations, etc. will be available on Office of Graduate and Undergraduate Programs' [Syllabus Information web page](http://www.sjsu.edu/gup/syllabusinfo/) at <http://www.sjsu.edu/gup/syllabusinfo/>

#### **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 in the College of Applied Sciences and Arts (CASA) provides advising for undergraduate students majoring or wanting to major in programs offered in CASA Departments and Schools. All CASA students and students who would like to be in CASA are invited to stop by the Center for general education advising, help with changing majors, academic policy related questions, meeting with peer advisors, and/or attending various regularly scheduled presentations and workshops. If you are looking for academic advice or even tips about how to navigate your way around SJSU, check out the CASA Student Success Center. Location: MacQuarrie Hall (MQH) 533 - top floor of MacQuarrie Hall. Contact information: 408.924.2910.

Website: <http://www.sjsu.edu/casa/ssc/>. The CASA Student Success Center also provides study space and laptops for checkout.

# JS143 / Criminal Evidence & Procedure, Spring 2018

## Course Schedule

Week	Day	Readings, Assignments & Deadlines
1	Thursday 1/25	<b>Assignment:</b> None <b>Lecture &amp; Discussion:</b> Introduction; Syllabus; Class Mechanics; Class Policy and Procedures; the Syllabus; Briefing Cases
2	Tuesday 1/30	<b>Assignment:</b> Text (Lippman) - Chapter 1 – Introduction <b>Lecture &amp; Discussion:</b> Burden of Proof; Judge & Jury; Development – Law of Evidence; The US Constitution; Supreme Court; Other Federal Courts
	Thursday 2/1	<b>Assignment:</b> Text (Lippman) - Chapter 1 – Introduction (continued) <b>Lecture &amp; Discussion:</b> State Constitutions & Courts; State Judicial Systems; Precedent; Development of Due Process; The 14 <sup>th</sup> Amendment; Incorporation; Rules of Evidence; Do we need rules of evidence? <b>Read &amp; Brief:</b> <i>Schiro v. Landrigan</i> , 127 S.Ct 1933 (2007)
3	Tuesday 2/6	<b>Assignment:</b> Text (Lippman) - Chapter 2 – The Criminal Justice Process <b>Lecture &amp; Discussion:</b> The Criminal Complaint; First Appearance; Preliminary Hearing; Grand Jury; Arraignment; Suppression Hearings & Pretrial Motions; Discovery; Plea Bargaining
	Thursday 2/8	<b>Assignment:</b> Text (Lippman) - Chapter 2 – The Criminal Justice Process (continued) <b>Lecture &amp; Discussion:</b> The Trial; The Sentencing Process; Sentencing Guidelines and the Role of Juries; Criminal Appeals; Habeas Corpus
4	Tuesday 2/13	<b>Assignment:</b> Text (Lippman) - Chapter 3 – Types of Evidence <b>Lecture &amp; Discussion:</b> Relevance; Competence; Exclusion of Evidence Based on Relevance and Other Concerns; Direct & Circumstantial Evidence <b>Read &amp; Brief:</b> <i>Dusky v. United States</i> , 362 U.S. 402 (1960)
	Thursday 2/15	<b>Assignment:</b> Text (Lippman) - Chapter 3 – Types of Evidence (continued) <b>Lecture &amp; Discussion:</b> Testimonial & Real Evidence; Substitutes for Evidence; Stipulations; Judicial Notice; Presumptions; Presumptions & Criminal Law <b>You Decide:</b> [3.1 to 3.5]
5	Tuesday 2/20	<b>Assignment:</b> Text (Lippman) - Chapter 4 – Direct & Circumstantial Evidence <b>Lecture &amp; Discussion:</b> Jury Decision-Making; Circumstantial Evidence – Ability to Commit a Crime; Circumstantial Evidence – inferences; Circumstantial Evidence – Victim of Rape; Character Evidence; Other Acts Evidence; Circumstantial Evidence – Identity; Circumstantial Evidence – Intent <b>You Decide:</b> [4.1 to 4.6] <b>Read &amp; Brief:</b> <i>State v. Kelbel</i> , 648 N.W.2d 690 (2002)
	Thursday 2/22	<b>Assignment:</b> Text (Lippman) - Chapter 5 – Witnesses <b>Lecture &amp; Discussion:</b> Intro; Competency Hearings; Hypnosis; Child Testimony; Judges as Witnesses; Jurors as Witnesses; Spousal Competence; Religion; Mental Incapacity; Impeachment; Bias <b>You Decide:</b> [5.1 to 5.4]

6	Tuesday 2/27	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 5 – Witnesses (continued)  <b>Lecture &amp; Discussion:</b> <i>Prior Felony Convictions; Crimes Involving Dishonest Acts or Statements; Character for Truthfulness; Uncharged Crimes &amp; Immoral Acts; Prior Inconsistent Statements; Specific Contradictions; Physical &amp; Psychological Incapacity; Rehabilitation; Corroboration; Recorded Recollection</i>  <b>You Decide:</b> [5.5 to 5.7]</p>
	Thursday 3/1	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 6 – The Opinion Rule and Expert Testimony  <b>Lecture &amp; Discussion:</b> <i>Unavailable Witnesses; Opinion Rule; Lay Witnesses; Expert Testimony; Qualifying an Expert Witness; Testimony on Ultimate Issues; Scope of Expert Testimony; Court Appointed Experts</i>  <b>You Decide:</b> [6.1 to 6.4]</p>
7	Tuesday 3/6	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 7 – Crime Scene Evidence and Experiments  <b>Lecture &amp; Discussion:</b> <i>Crime Scene Evidence; Chain of Custody; Scientific Evidence; Laying the Foundation for Scientific Evidence; Right to Defense Experts; Judicially Accepted Scientific Tests; Other Judicially Recognized Tests; Test Not Accepted; Experiments</i>  <b>You Decide:</b> [7.1 to 7.2]  <b>Read &amp; Brief:</b> <i>Daubert v. Merrill - Dow Pharmaceuticals Co., 509 U.S. 579 (1993)</i></p>
	Thursday 3/8	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 8 – Documentary Evidence, Models, Maps, and Diagrams  <b>Lecture &amp; Discussion:</b> <i>Authentication of Documents; Methods of Authenticating Documents; Self-Authenticating Documents; Visual Images; Authentications of Objects; Authentication of Voice Communication; The Best Evidence Rule; Application of the Best Evidence Rule; Models, Maps, Diagrams, and Charts; In-Court Exhibitions</i>  <b>You Decide:</b> [8.1 to 8.5]</p>
8	Tuesday 3/13	<b>First Midterm Examination Review</b>
	Thursday 3/15	<b>First Midterm Examination</b> (Scantron and Blue Book Required)
9	Tuesday 3/20	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 9 – Hearsay  <b>Lecture &amp; Discussion:</b> <i>The Development of the Rule Against Hearsay; The Definition of Hearsay; The Reasons for the Hearsay Rule; Hearsay Objections; The Sixth Amendment and Hearsay</i>  <b>You Decide:</b> [9.1]  <b>Read &amp; Brief:</b> <i>Crawford v. Washington, 541 U.S. 36 (2004)</i></p>
	Thursday 3/22	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 9 – Hearsay (continued)  <b>Lecture &amp; Discussion:</b> <i>Exceptions to the Hearsay Rule; Admissions &amp; Confessions; Prior Statements; Hearsay Exceptions When the Declarant is NOT Required to be Available; Present Sense Impression; Excited Utterance; Then Existing Mental, Emotional, or Physical Condition; Medical Treatment Diagnosis; Business Records; Absence of Business Records; Public Records; Vital Statistics</i>  <b>You Decide:</b> [9.2 to 9.8]</p>
10	Tuesday 3/27	<b>No Class – Spring Break</b>
	Thursday 3/29	<b>No Class – Spring Break</b>

11	Tuesday 4/3	<b>Assignment: Text (Lippman)</b> - Chapter 9 – Hearsay (continued) <b>Lecture &amp; Discussion:</b> Unavailability of Declarant; Former Testimony; Statement under Belief of Impending Death; Declarant Against Interest; Statement of Personal or Family History; Statement Offered Against a Party That Wrongfully Caused the Declarant's Death; Residual Exception; Hearsay within Hearsay <b>You Decide:</b> [9.9 to 9.12] <b>Read &amp; Brief:</b> <i>Michigan v. Bryant</i> , 562 U.S. 344 (2011)
	Thursday 4/5	<b>Assignment: Text (Lippman)</b> - Chapter 10 – Privileges <b>Lecture &amp; Discussion:</b> Attorney-Client Privilege; Clergy-Penitent Privilege; Physician-Patient Privilege; Psychotherapist-Patient Privilege; Husband-Wife Privilege; Government Privileges; News Media Privilege <b>You Decide:</b> [10.1 to 10.4]
11	Tuesday 4/10	<b>Assignment: Text (Lippman)</b> - Chapter 11 – The Exclusionary Rule <b>Lecture &amp; Discussion:</b> The Exclusionary Rule; Debating the Exclusionary Rule; Invoking the Exclusionary Rule; Exceptions to the Exclusionary Rule <b>You Decide:</b> [11.1 to 11.2] <b>Read &amp; Brief:</b> <i>Mapp v. Ohio</i> , 81 S.Ct. 1684 (1961)
	Thursday 4/12	<b>Assignment: Text (Lippman)</b> - Chapter 12 – Searches and Seizures and Privacy <b>Lecture &amp; Discussion:</b> History of the 4 <sup>th</sup> Amendment; Searches; Informants and Electronic Eavesdropping; Plain View; Expectation of Privacy; Open Fields; Curtilage and Aerial Surveillance; Technology and Searches & Seizures; Public Places and Private Businesses; Abandoned Property; Seizure of Persons <b>You Decide:</b> [12.1 to 12.5]
12	Tuesday 4/17	<b>Assignment: Text (Lippman)</b> - Chapter 13 – Stop and Frisk <b>Lecture &amp; Discussion:</b> Reasonable Suspicion <b>Read &amp; Brief:</b> <i>Terry v. Ohio</i> , 392 U.S. 1 (1968)
	Thursday 4/19	<b>Assignment: Text (Lippman)</b> - Chapter 13 – Stop and Frisk (continued) <b>Lecture &amp; Discussion:</b> Informants & Hearsay; Drug Courier Profiles; Race & Reasonable Suspicion; Scope & Duration of Terry Stops; Stop & Identify Statutes; Frisks <b>You Decide:</b> [13.1 to 13.6] <b>Second Midterm Examination (open)</b>
13	Tuesday 4/24	<b>Assignment: Text (Lippman)</b> - Chapter 14 – Probable Cause and Arrest <b>Lecture &amp; Discussion:</b> Arrest; Probable Cause; Reasonableness & Arrest; Probable Cause Warrants, and the Courts; Arrest & Warrants <b>You Decide:</b> [14.1 to 14.3]
	Thursday 4/26	<b>Assignment: Text (Lippman)</b> - Chapter 15 – Searches and Seizures of Property <b>Lecture &amp; Discussion:</b> Search Warrants; Warrantless Searches; Consent Searches; Probable Cause Searches of Motor Vehicles; Other Warrantless Searches <b>You Decide:</b> [15.1 to 15.6] <b>Second Midterm Examination (Due)</b>
14	Tuesday 5/1	<b>Assignment: Text (Lippman)</b> - Chapter 16 – Interrogations and Confessions <b>Lecture &amp; Discussion:</b> Intro; Due Process; Voluntariness
	Thursday 5/3	<b>Assignment: Text (Lippman)</b> - Chapter 16 – Interrogations and Confessions (continued) <b>Lecture &amp; Discussion:</b> The Right Against Self-Incrimination; Miranda v. Arizona; 6 <sup>th</sup> Amendment Right to Counsel <b>Read &amp; Brief:</b> <i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)

15	Tuesday 5/8	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 16 – Interrogations and Confessions (continued)</p> <p><b>Lecture &amp; Discussion:</b> <i>The Right to Remain Silent; Miranda v. Arizona; 6<sup>th</sup> Amendment Right to Counsel</i></p> <p><b>You Decide:</b> [16.1 to 16.6]</p> <p><b>Read &amp; Brief:</b> <b>Salinas v. Texas, 570 U.S. _____ (2013)</b></p>
	Thursday 5/10	<p><b>Assignment:</b> <i>Text (Lippman)</i> - Chapter 17 – Eyewitness Identifications</p> <p><b>Lecture &amp; Discussion:</b> <i>Psychology of Identifications; The 6<sup>th</sup> Amendment – Identification; The 6<sup>th</sup> Amendment – Critical Stages; The 6<sup>th</sup> Amendment – Prearrangement Identifications; The 6<sup>th</sup> Amendment – Photographic Displays; The Due Process Test; Suggestiveness; Requirement of Police Involvement</i></p> <p><b>You Decide:</b> [17.1 to 17.4]</p> <p><b>Final Examination Review</b></p>
	Thursday 5/16	<p><b>Final Examination: (12:15 p.m. to 2:30 p.m.)</b></p>