

SUL ROSS STATE UNIVERSITY
DEL RIO * EAGLE PASS * UVALDE & CAMPUSES
DEPARTMENT NATURAL AND BEHAVIORAL SCIENCES
CRIMINAL JUSTICE PROGRAM
COURSE SYLLABUS
SUMMER I 2022

COURSE TITLE: CRIM 3308: Law of Evidence (WEB Course)
COURSE PERIOD: Online/Web Course (June 1-day1/July -5-last day)
PROFESSOR: Dr. Sergio J. Gonzalez
Email: All correspondence should be made using Sul Ross State University email to sjg17iz@sulross.edu

BIOGRAPHY:

January 1, 1999-Present: Court-At-Law Judge, Val Verde County.

August 2017 – Present: Adjunct Professor at Sul Ross State University Rio Grande College

November 2, 1990-1998: General Practice of Law with Law Offices of Gonzalez, Gonzalez & Gonzalez, 313 Pecan Street, Del Rio, Texas. Criminal Felony & Misdemeanor, Juvenile, Divorce & Child Custody, Protective Orders, Child Protective Services, Probate, Guardianships & Civil Matters.

May 4, 1986: Juris Doctorate Degree, O.W. Coburn School of Law, Oral Roberts University, Tulsa, Oklahoma.

August 14, 1981: Bachelor of Arts Degree, St. Mary's University, San Antonio, Texas.

May 2, 1976: Del Rio High School Graduate, Del Rio, Texas.

CONTINUING LEGAL EDUCATION STUDY HOURS: January 1, 1999-Present: 699.00 Total CLE; 105.75 Total Ethics, State Bar of Texas.

August 2017-Present: Adjunct Professor – Sul Ross State University – RGC -Criminal Justice

COURSE DESCRIPTION: Rules which govern the admissibility of evidence at hearings and trials. This course provides a thorough study of the evidence rules, with specific emphasis on the application of these rules in preparing and presenting evidence. This includes a discussion of the history and approach of the study of evidence; proof by evidence and substitutes; general admissibility tests, including relevance and materiality; opinions and expert testimony, and the hearsay rule; evidence by way of witness testimony; documents, scientific and real evidence; and exclusion of evidence on Constitutional grounds. For a better understanding of the evidence rules, judicial decisions are cited and included for discussion.

COURSE MATERIALS: This course will require MindTap for Criminal Procedure, 10th Edition by Samaha (2018 Cengage). It is important to note that MindTap is required. Do not be scammed by purchasing a used textbook without a new, current MindTap access.

Purchase Options (pick one): MindTap Access Only (eBook is included) – either of the following ISBNs will grant you access to online materials, including the required reading.

Printed Access Code ISBN: 9781305969056

Instant Access Code ISBN: 9781305969063

MindTap Access + Loose-leaf – either of the following ISBNs will grant you access to MindTap and provide a loose-leaf copy of the textbook.

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Printed Access Code Bundle ISBN: 9781337502450

Instant Access Code Bundle ISBN: 9781337502443

ACADEMIC SUCCESS: Students enrolling in online Web Courses at Rio Grande College must be aware that such courses are not self-paced and require considerable vested time in order to meet requirements. Students should be prepared to devote a considerable amount of time to accomplish the requisites in this course described below.

Chapters 1-3

Chapter 1: Preview of Criminal Procedure in the Age of the Digital Revolution

Learning Objectives

- 1Describe the read-about-talk-about-write-about approach to “interrogating” criminal procedure in the Digital Age.
- 2Describe the five ideals of criminal procedure in the Digital Age.
- 3Interpret the balancing ideal as it is applied to the real world of criminal procedure.

Chapter 2: Criminal Procedure and the Constitution

Learning Objectives

- 1Explain and contrast the two components of case facts: (a) the government official acts that the defendant claim violated the Constitution, and (b) the objective basis or facts and circumstances that back up the government actions.
- 2Discuss the importance of prior case decisions (precedent) and understand the obligation to follow prior decisions (stare decisis) in judicial reasoning and decision making.
- 3Explain the importance, prevalence, and shortcomings of social scientific research regarding: (a) the effectiveness of crime control practices and their effect on individual liberty and privacy and; (b) how accurately the criminal justice system sorts the guilty from the innocent.
- 4Recognize and explain how the dualistic, political nature of the U.S. Supreme Court reflects society’s commitment to two opposing principles—fundamental law and the will of the people.
- 5Recognize and explain how all criminal procedures have to answer to the U.S. Constitution, but it is up to the courts to interpret the meaning of the Constitution. Ultimately, the U.S. Supreme Court’s interpretation trumps the decisions of all other courts.

Chapter 3: Searches and Seizures

Chapter Introduction

Cases Covered

- *U.S. v. Lichtenberger*, 786 F.3d 478 (2015)
- *Illinois v. Caballes*, 543 U.S. 405 (2005)
- *U.S. v. White*, 401 U.S. 745 (1971)
- *U.S. v. Miller*, 425 U.S. 435 (1976)
- *Kyllo v. U.S.*, 533 U.S. 27 (2001)
- *U.S. v. Jones*, 132 S Ct 945 (2012)
- *U.S. v. Warshak*, 631 F.3d 266 (Ohio 2010)
- *State v. Patino*, 202-263-C.A. (2012)
- *U.S. v. Stavros Ganiias*, 755 F.3d 125 (2014)

Learning Objectives

- **1** Discuss that Fourth Amendment analyses follow a three-step process based on the answers to three questions in the following order: (1) Was the law enforcement action a “search” or “seizure”? (2) If the action was a search or seizure, was it reasonable? (3) If the search/seizure was unreasonable, does the Fourth Amendment ban its use as evidence?
- **2** Discuss that the original purposes for searches and seizures were to enforce sedition and customs laws, not the ordinary crimes that concern law enforcement today.
- **3** Explain that the Fourth Amendment bans only “unreasonable” searches and seizures made by law enforcement in order to balance the government’s power to control crime and the liberty and privacy rights of individuals.
- **4** Discuss that if government actions don’t invade an expectation of privacy that society is prepared to recognize, it’s not a search, and the Fourth Amendment doesn’t apply. In other words, the actions are left to the discretion of individual officers.
- **5** Articulate how the Fourth Amendment doesn’t protect information voluntarily conveyed to a third party, even though some of these third parties provide services essential to our quality of life.
- **6** Examine the SCOTUS’s difficult job of balancing government power to control crime with individual liberty and privacy in the Digital Age, and discuss how SCOTUS has yet to decide if there is a reasonable expectation of privacy in some common forms of communication, such as text messages and emails.

- 7 Recall that property is seized whenever the government meaningfully interferes with an individual's possession of something, and describe the unique challenges of defining "property," such as files on a computer, in the Digital Age.

On November 26, 2011, in the afternoon, Lichtenberger was with Karley Holmes, his girlfriend, at their shared home in Cridersville, Ohio. They lived there with Holmes's mother, who owned the residence. That day, two friends of Holmes's mother came over to the residence and told both Holmes and her mother that Lichtenberger had been previously convicted of child pornography offenses.

One of the mother's friends then called the police. Several officers, including Douglas Huston, from the Cridersville Police Department, came to the residence. Holmes requested that the police escort Lichtenberger off the property because she did not want him living there anymore. Officer Huston determined that Lichtenberger had an active warrant for his arrest for failing to register as a sex offender, arrested him, and removed him from the property.

Later that day, Holmes went into the bedroom she shared with Lichtenberger and retrieved his laptop. At the suppression hearing, she testified that she wanted to access his laptop because defendant "would never let me use it or be near him when he was using it and I wanted to know why." The laptop was password protected, but Holmes hacked the laptop by running a password recovery program. She then changed the password.

Once she accessed the laptop, she clicked on different folders and eventually found thumbnail images of adults engaging in sexual acts with minors. She clicked on one of the thumbnails to see the larger image. When she found the first image, she took the laptop to the kitchen to show her mother. There, they clicked through several more sexually explicit images involving minors. She closed the laptop and called the Cridersville Police Department.

Officer Huston returned to the residence. In the kitchen, Holmes told the officer that she found child pornography on the defendant's laptop. She also told him that the laptop belonged to the defendant and that he was the only one who would access and use it. She explained that one time she tried to use the laptop and the defendant immediately became upset and told her to stay away from it. Lastly, Holmes told Officer Huston that she hacked the laptop to access it because it was password protected.

Officer Huston then asked Holmes if she could boot up the laptop to show him what she had discovered. Holmes opened the laptop lid and booted it up to take it out of sleep mode. She then reentered the new password she created. Officer Huston asked her to show him the images. Holmes opened several folders and began clicking on random thumbnail images to show him. Officer Huston recognized those images as child pornography. He then asked Holmes to shut down the laptop.

After consulting with his police chief over the phone, Officer Huston asked Holmes to retrieve other electronics belonging to Lichtenberger. She gave him

Lichtenberger's cell phone, flash drive, and some marijuana. Officer Huston then left the premises with those items, the laptop, and its power cord.

Chapters 5-8

Chapter 5: Seizure of Persons: Arrest

Learning Objectives

- 1 Articulate that arrests are a vital tool that can help law enforcement officers catch the guilty and free the innocent, but that the noble end of crime control doesn't justify unreasonable arrests.
- 2 Discuss that the Fourth Amendment's reasonableness requirement requires both probable cause before, and a reasonable execution during and after, arrest.
- 3 Discuss how the probable cause requirement balances the societal interest in crime control and the individual right to free movement.
- 4 Explain how officers can use both direct information and hearsay to build probable cause.
- 5 Describe how arrest warrants are required to enter homes to arrest except when the need to act immediately exists at the time of the arrest.
- 6 Explain that officers can use only the amount of force that is necessary to get and maintain control of suspects they have probable cause to arrest.
- 7 Discuss how after an arrest, felony suspects usually are taken to the police station for booking, photographing, and possible interrogation and identification procedures; misdemeanor suspects usually are released.

Chapter 6: Searches for Evidence

Learning Objectives

- 1 Articulate the Criminal Procedure Ideal of balancing crime control and individual privacy as it applies to searches for evidence.
- 2 Explain that searches hardly ever require warrants, except when officers want to search homes, and discuss how officers can execute warrants to search homes "reasonably."
- 3 Explain that search warrants require both particularity and probable cause, and that, with some exceptions, officers have to knock, announce their presence, and give occupants an opportunity to open the door, before forcible entry of homes. Describe the radical changes in the use of search warrants in the Digital Age.
- 4 Articulate that the knock-and-talk technique is a powerful investigative tool that SCOTUS has not yet interrogated.
- 5 Explain and evaluate how the millions of searches incident to arrest are reasonable without warrants, because they protect officers, prevent escape, and preserve evidence. Describe the scope of incident searches, and know the types of crime and circumstances that can be subject to these searches.

- **6** Discuss how the millions of consent searches allow officers to search without warrants or probable cause, and how, without consent, officers couldn't conduct the search.
- **7** Discuss how to determine the scope of consent; when consent can be withdrawn; and when one person can consent for another. Evaluate the Criminal Procedure ideal of evidence-based decision making and the empirical research of consent searches.
- **8** Explain that the searches of vehicles without warrants are constitutional because of their mobility and the reduced expectation of privacy in vehicles. Discuss that searches of containers and persons within the vehicles without warrants are "reasonable" as long as they're based on probable cause.
- **9** Explain that emergency searches are based on the idea that it's sometimes impractical to require officers to obtain warrants before they search. Discuss the four major types of emergency searches.

Chapter 7: "Special Needs" Searches

Learning Objectives

- **1** State that special needs searches are directed at people generally, can result in criminal prosecution, and don't require warrants or probable cause.
- **2** Discuss that following routine, department-approved procedures allows law enforcement to conduct inventory and container searches without probable cause or warrants to protect the owners' belongings, to prevent lawsuits against law enforcement departments, and to protect law enforcement agents.
- **3** Discuss that the special need of the United States to control who and what comes into its borders makes international border searches reasonable without warrants or probable cause. Examine that some objective basis is required to justify strip and body cavity searches.
- **4** Explain that the special need to maintain airport security and safety outweighs the minimal invasions of walking through metal detectors and allowing luggage to be observed by X-ray.
- **5** Appraise how the special needs to maintain safety, security, and discipline over people locked up in jails and prisons, probationers, and parolees outweigh the reduced expectation of privacy that society grants to people in the custody of the criminal justice system. Articulate that individuals can be subject to these special needs searches before being convicted of a crime.
- **6** Articulate that the reasonableness of a public college's or university's entry and inspection of dormitory rooms requires balancing the institution's responsibility to provide a suitable learning environment against the students' right not to have unreasonable searches of their "home."
- **7** Explain how SCOTUS has applied the balancing ideal to drug testing of (1) employees in the workplace, (2) pregnant women in hospitals, and (3) high school students.

Chapter 8: Self-Incrimination

Learning Objectives

- 1 Describe the role, nature, and importance of confessions and incriminating statements.
- 2 Discuss the constitutional amendments that impact criminal confessions and the three different approaches to custodial interrogation. Discuss which stages of the criminal process are relevant to each.
- 3 Describe the “bright-line” rule established in *Miranda v. Arizona* and explain its importance to custodial interrogation. Discuss the wide variety of police behavior that can be considered custodial interrogation and the circumstances in which unwarned statements are admissible in trial.
- 4 Name the factors considered when determining if a waiver of the right to remain silent is valid.
- 5 Name the factors considered when determining if a suspect confessed or made incriminating statements voluntarily.
- 6 Explain the evidence-based decision-making ideal as it applies to false confessions and custodial interrogation. Relate the severe losses innocent people experience when they confess to crimes they didn’t commit.

Chapters 9-12

Chapter 9: Identification Procedures

Learning Objectives

- 1 State that courts recognize a violation of due process as a ground for rejecting pretrial identification procedures, but that due process challenges rarely succeed.
- 2 Discuss how identification procedures are rejected by courts only when they’re unnecessarily suggestive and create a very substantial likelihood of misidentification.
- 3 Describe the empirical research regarding human memory and its impact on identification procedures in criminal cases.
- 4 Articulate that empirical research has demonstrated that factors such as lineup composition, neutrality of lineup administrators, pre-lineup instructions, and the way the lineup is presented can be suggestive and affect the accuracy of identification.
- 5 Summarize the recommended reforms for criminal identification procedures and the empirical research supporting these reforms.
- 6 Discuss that DNA technology has prompted the reevaluation of many past convictions and led not only to exonerations of the innocent, but also further proof against the guilty. Articulate that forensic science can provide compelling evidence of guilt but also suffers serious shortcomings.

Chapter 10: Remedies for Constitutional Violations I: The Exclusionary Rule

Learning Objectives

- 1 Discuss that the exclusionary rule bans the use of illegally obtained evidence to prove guilt, and that Fourth, Fifth, Sixth, and Fourteenth Amendment rights can be violated by bad practices in law enforcement.
- 2 Appraise the history of the exclusionary rule, and explain that it is no longer a “bright-line” rule banning all evidence collected illegally.
- 3 Articulate that there’s no constitutional right to have evidence that was collected illegally excluded at trial, explain how courts exclude evidence to preserve judicial integrity and to deter officers from breaking the law, and describe how the deterrent effect of the exclusionary rule must be balanced against the social costs of applying it.
- 4 State that the exceptions to the “fruit of the poisonous tree” doctrine allow more evidence into court to prove guilt.
- 5 Discuss the exceptions under which evidence excluded from the main prosecution can be used in other parts of the legal process.
- 6 Articulate the significance of the knock-and-announce and good-faith exceptions to the exclusionary rule.
- 7 Articulate that the social costs and deterrent effect of the exclusionary rule are based on assumptions, not empirical evidence, and that empirical research suggests that the social costs of the exclusionary rule may not be as severe as we commonly believe; criminal cases are rarely dismissed due to illegally obtained evidence.

Chapter 11: Constitutional Violations II: Other Remedies Against Official Misconduct

Learning Objectives

- 1 State that most police misconduct can also be a crime, and discuss that police are rarely charged or convicted for criminal misconduct.
- 2 Discuss that civil actions against (a) the federal government and its officers; (b) local, county, and state officers, law enforcement agencies, and government units; and (c) other government employees are controlled by different statutes, court decisions, and government units.
- 3 Describe constitutional tort actions (*Bivens* actions) against officers and Federal Tort Claims Act actions against public institutions.
- 4 Discuss the role of Civil Rights Act actions in holding law enforcement officials responsible for violating the constitutional rights of individuals, and explain the limitations of lawsuits brought against states and their officers.
- 5 Discuss that plaintiffs can sue local governments instead of, or in addition to, suing local officers, and describe the complexities and limitations of suing local governments.
- 6 Articulate that the Constitution places no duty on officers to protect individuals from each other, and that it doesn’t create a right of private parties to sue officers for failing to prevent crime, and describe the “special

relationship” and “state-created-danger” exceptions to the no-duty-to-protect rule.

- 7 Explain that judges enjoy absolute immunity, and prosecutors have functional immunity.
- 8 Discuss the role of administrative action in remedying misconduct.

Chapter 12: Court Proceedings I: Before Trial

Learning Objectives

- 1 Explain the prosecutor’s decision to charge and their dual role in criminal procedure.
- 2 Describe the objective basis requirements to detain a suspect and to go to trial. Discuss the difference between criminal complaints, first appearances, and arraignments.
- 3 Discuss the various forms of pretrial release, and articulate the need to balance the right of defendants to be free until proven guilty against keeping the community safe and bringing criminals to justice.
- 4 Discuss the types of defense counsel; describe the scope and limits of the right to counsel; and appreciate the differences between the rights of those who can afford lawyers and those who can’t.
- 5 Explain preliminary hearings and grand jury reviews and how they differ from trials.
- 6 Articulate the importance of pretrial motions and why counsel devote so much time to preparing them. Pretrial motions may include arguments to prove double jeopardy and requests for a speedy trial, a change of venue, and the suppression of evidence

Chapters 13-15

Chapter 13: Court Proceedings II: Trial and Conviction

Learning Objectives

- 1 Articulate that jury trials promote fact-finding and check government power. Discuss the constitutional rights the trial by jury process must protect.
- 2 Discuss the stages of a jury trial and the constitutional amendments that guarantee defendants the right to a public trial.
- 3 Explain the types of verdicts juries can give, the purpose of the unanimous verdict requirement, and the significance of jury nullification.
- 4 Explain the difference between straight guilty pleas, negotiated guilty pleas, charge bargaining, and sentence bargaining. Discuss the circumstances under which guilty pleas and plea bargaining are constitutional and the rights that defendants waive when they enter a guilty plea.
- 5 Describe the empirical research regarding plea bargains in and outside “the shadow of trial.”

Chapter 14: After Conviction: Sentencing, Appeals, and *Habeas Corpus*

Learning Objectives

- 1 Explain how the rights of a defendant differ from those of a convicted offender.
- 2 Articulate how the need for both certainty and flexibility can affect how much discretion judges are given when it comes to sentencing. Discuss the role of sentencing guidelines and how departures from them depend on a crime's seriousness and an offender's criminal history. Describe mandatory minimum sentencing laws and how they impact a judge's sentence.
- 3 Explain the proportionality principle, and how it defines cruel and unusual punishment under the Eighth Amendment.
- 4 Discuss the *Apprendi* bright-line rule and its impact on sentences that are harsher than the relevant guideline.
- 5 Discuss that there's no constitutional right to appeal, but every jurisdiction has created a statutory right to appeal. Explain why habeas corpus is a "collateral attack" and how civil trials are used to determine whether convicts have been unlawfully detained.

Chapter 15: Criminal Procedure in Times of Crisis

Learning Objectives

- 1 Articulate how courts balance government needs against individual Fourth Amendment rights when people are detained to determine their immigration status.
- 2 Describe the role of the FBI in counterterrorism and counterintelligence efforts, and the shift to an emphasis on the prevention of terrorism since the 9/11 attacks.
- 3 State that FISA was enacted to protect the security of all U.S. persons from foreign terrorism. Discuss that the secret FISA court (FISC) oversees counterterrorism and counterintelligence investigations to balance this national security interest against the privacy rights of U.S. citizens.
- 4 Describe the counterterrorism and counterintelligence tools that are part of the USA Patriot Act. Discuss that the Patriot Act didn't create these tools but made it easier for the government to apply them to counterterrorism investigations.
- 5 Explain that the National Security Letters (NSLs) allow the FBI to obtain metadata from all customer records for intelligence-gathering purposes from telephone companies, Internet service providers, and financial institutions.
- 6 Discuss that the Capone approach and sting operations are preventive counterterrorism and counterintelligence efforts not covered by the scope of the USA Patriot Act. Articulate that these proactive approaches pose a challenge to the FBI to decide when individuals move from lawfully expressing radical ideas to engaging in violent extremist acts.
- 7 Describe the controversy over *Miranda* warnings for persons detained on suspicion of terrorist acts. Discuss that the U.S. Department of Justice has

both reaffirmed its commitment to the *Miranda* rule and encouraged agents to interpret the public safety exception broadly in terror cases.

- **8** Discuss that the CIA has to follow the same rules and regulations for counterterrorism operations as the FBI, and that information about U.S. persons is unavoidably collected when gathering foreign intelligence.
- **9** Contrast the two different views of terrorism and evaluate the strengths and weaknesses of each to prosecute people who have committed terroristic acts.
- **10** Describe how counterterrorism and counterintelligence investigations have evolved in the ever-changing Digital Age.

COMPUTER LABS: Rio Grande College computer labs are open Monday – Thursday 8:00AM - 10:00 PM and Friday 8:00AM – 5:00PM. Computer labs are not open weekends. However, students may avail themselves to the SWTJC computer labs with a valid ID. Online web course students should have available a high-speed internet connection on a regular basis for off-campus course work, exams, assignments and research.

DISHONESTY: Academic cheating and plagiarism is not acceptable behavior. It violates university policy and human ethics. If a violation occurs the penalty will result in the grade of “F” for the semester.

EXAMINATIONS & ASSESSMENTS: Exams and assessments have been structured to mandate maximum participation in this self-directed course of study.

- Weekly assignments may be attempted a total of 3 times. Exams may not be copied, saved or returned to later. Exams must be completed in one setting.
- Students are advised NOT to use a cell phone for tests; it may be detrimentally affected by service disruptions. Please note that no exams will be reset due to student omissions and/or mistakes.

NO MAKE-UP EXAMS: If a student for any reason:

- fails to take an exam
- fails to complete an exam
- fails to submit an exam

The professor assumes no responsibility for student omissions or technology issues.

GRADING SCALE:

585 - 675 = A

500 - 584 = B

410 - 499 = C

350 – 409 = D

0 – 349 = F

NOTE: Course is self-paced. Chapter Assignment Activities student engagement, time, scores data is provided to Professor. In order to successfully progress in this course each student **MUST** engage in each chapter assignment activity.

STUDENT LEARNING OUTCOMES (SLO): The graduating student will

(SLO 1) Content Knowledge: Students will demonstrate proficiency in the application of legal concepts, theoretical applications, scientific principles, and historical trends in the criminal justice arena.

(SLO 2) Research Skills: Students will demonstrate competency in the application of basic research methods to include: research design, statistical analysis, and uses of empirical findings and interpretations.

(SLO 3) Critical Thinking Skills: Student will demonstrate the application of organizational principles, cultural, social and behavioral knowledge, critical thinking skills and cognitive thought processes within the criminal justice arena.

Distance Education Statement: Students enrolled in distance education courses have equal access to the university's academic support services, library resources, and instructional technology support. For more information about accessing these resources, visit the SRSU website. Students should submit online assignments through Blackboard or SRSU email, which require secure login information to verify students' identities and to protect students' information. *[If the course requires students to take proctored exams or to purchase additional software or equipment, please describe those requirements here.]* The procedures for filing a student complaint are included in the student handbook. Students enrolled in distance education courses at Sul Ross are expected to adhere to all policies pertaining to academic honesty and appropriate student conduct, as described in the student handbook. Students in web-based courses must maintain appropriate equipment and software, according to the needs and requirements of the course, as outlined on the SRSU website.

ADA (Americans with Disabilities Act)

Sul Ross State University – Rio Grande College is committed to equal access in compliance with the Americans with Disabilities Act of 1973. It is the student's responsibility to initiate a request for accessibility services. Students seeking accessibility services must contact Kathy Biddick, Student Services 830-279-3003 or kbiddick@sulross.edu.