

Preface

The idea for this book was born out of my frustration with both my own legal education and the textbooks that were on the market when I began teaching evidence. Evidence is something that can only be learned by doing and seeing by example. In law school, evidence was taught in just the opposite fashion—through a series of cases and memorizing rules. As I began to practice criminal law, I soon realized that my legal education had prepared me little for the practical reality of the courtroom. Knowing the verbiage of the hearsay rule and understanding how to apply it are two totally different types of knowledge. Law school gave me the former; trial by fire in the district attorney’s office gave me the latter. After years of practicing law and seeing different situations arise, I finally began to have a good handle on the law of evidence.

Years later when I began teaching criminal justice, I sensed that same frustration carrying over in my students. College textbooks on evidence seemed either too advanced for a beginning college student or stripped bare of any meaningful explanation of the law. Another criticism I had of other evidence textbooks is that many of them included several chapters on criminal procedure that I thought were better saved for a specific course in that subject. The texts also focused on either the legal aspects of evidence law or the practical application for law enforcement. Most failed to combine the two.

The admissibility of evidence is a by-product of the two concepts, however. Evidence that is improperly handled, unlawfully seized, or not timely disclosed is often useless since it will likely be declared inadmissible by the court. Of course, students also need to understand the rules of evidence and what makes certain types of evidence admissible or inadmissible. Without a sufficient knowledge of the rules, a law enforcement officer would not know which kinds of evidence to collect or what types of questions to ask. Thus, students need to understand both the proper process for obtaining and handling evidence and the rules that govern its admissibility in court.

In writing this textbook, first and foremost, I have tried to explain the concepts relating to evidence law in a way that is understandable for students who do not have a background in law. I have included practical examples of how the evidentiary concepts are applied in the real world. In addition, I have included Evidence in Action articles that are exposés

on famous cases or current events, illustrating some of the concepts discussed. I hope these will inform and entertain students as well as spark discussion in class.

The chapters include a listing of chapter topics and objectives to give students and instructors a roadmap of what is being taught in each chapter. At the end of the chapter, I have included review questions covering the basic terminology and concepts of each chapter. There are also application problems that contain more lengthy factual scenarios.

The book uses the Federal Rules of Evidence as the starting point of analysis for many of the concepts. Students should keep in mind that each state also has its own set of evidence rules that may differ from the Federal Rules. I have tried to point out significant differences where possible, but instructors should still draw students' attention to their particular state's evidence code.

I have tried to organize this textbook in as logical a manner as possible. To do so, I have arranged the topics into four parts: introductory matters such as the trial process and common evidence terminology; investigatory matters such as the collection of physical evidence and obtainment of confessions; pretrial matters such as discovery and the exclusionary rule; and finally, the presentation of evidence at trial. I have found that this organizational structure has helped my students stay engaged in the material from the outset since they are more familiar with evidence collection methods and less familiar with trials. Instructors are, of course, free to vary the presentation of material in this book as they see fit.

Chapter 1 introduces the topic of evidence by focusing on the definition of evidence, the sources of evidence law, and the development of the Federal Rules of Evidence. It also contains an overview of the state and federal court systems and introduces students to the players in the criminal justice system. Chapter 2 discusses the various stages of the criminal justice process and how evidence is used during them. It also briefly discusses how evidence is used at trial. Chapter 3 introduces many of the common terms that concern evidence and its admissibility, such as relevancy and circumstantial evidence. Chapter 4 is devoted to the process of evidence identification and collection at the crime scene as well as maintenance of the chain of custody. It also covers collection of digital forms of evidence. Chapter 5 involves eyewitness identification of suspects, including a discussion of how false identifications may occur. Chapter 6 deals with the process of obtaining statements from the defendant and what must be done in order to introduce them at trial. The chapter also discusses the issue of false confessions.

Chapter 7 focuses on the pretrial discovery process. Chapter 8 briefly discusses search and seizure concepts and concludes with a discussion of the exclusionary rule as it applies to the Fourth, Fifth, and Sixth Amendments.

The last eight chapters focus on how evidence is handled at trial. Chapters 9, 10, 11, and 12 deal with the law relating to witnesses. Chapter

9 focuses on the differences between lay and expert witnesses. Chapter 10 examines the reliability of forensic evidence, including how specific types of expert testimony on forensic comparison evidence are treated by the courts. Chapter 11 discusses the concepts of competency and privilege. Chapter 12 focuses on the impeachment of witnesses. Chapter 13 discusses character evidence and explains how the character of the defendant and/or the victim can be supported or attacked. Chapter 14 discusses the hearsay rule and reviews its many levels and exceptions. It also features an in-depth discussion of testimonial hearsay and how the Supreme Court has changed the landscape on this issue in recent years. Chapter 15 details the requirements for authentication of evidence as well as for introducing documentary and demonstrative evidence. It discusses challenges concerning authentication of digital evidence. Finally, Chapter 16 provides tips for mock trial competitions such as how to cross-examine a witness or make an objection. It also provides suggestions on how to deliver testimony as a witness.

NOTE ON THE FOURTH EDITION

The fourth edition updates several areas of law that have evolved since the third edition was published. Rule 702 was amended in late 2023 to make the judge's gatekeeping role more explicit on the admission of expert testimony. The new edition discusses some recent caselaw dealing with this change. It also continues to track how courts are treating the admission of expert testimony surrounding forensic experts in light of government reports in 2009 and 2016 that attacked the reliability of many branches of forensic science. The fourth edition discusses a recent Supreme Court case on testimonial hearsay, *Smith v. Arizona*, on whether replacement experts may testify in lieu of the original technician who tested the evidence. The collection, preservation, and authentication of digital evidence has become a significant issue as the digital age has matured. The fourth edition discusses how to identify and collect digital evidence, such as cellphones, computers, and files stored on the Cloud. Issues relating to the authentication of digital evidence have arisen due to the presence of Deepfakes and other AI-assisted technology. The new edition discusses how to navigate this potential minefield.

The discussion of material has been condensed or clarified in several chapters, most notably the discussion of identification evidence in Chapter 5 and hearsay evidence in Chapter 14. The fourth edition is about 15 percent shorter than the third edition as a result. Practical examples have been updated and new ones have been added where needed. Finally, I have updated Evidence in Action articles on the Harvey Weinstein trial and added several new articles, including the cases of Luigi Mangione, Bryan Kohberger, and Alec Baldwin.