

## 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 hearsay rule and understanding what types of situations it applied to were 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.

I have tried to correct these deficiencies in writing this textbook. First and foremost, I have tried to explain the rules and concepts relating to evidence law in a way that is understandable for most students who do not have a background in law. Yet, I have tried not to sacrifice content where

possible. The book uses the Federal Rules of Evidence as the starting point of analysis for many evidentiary 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 to be complete.

To help explain the concepts and rules, I have included practical examples of how evidentiary concepts discussed in the text are applied in the real world. These examples are found at the end of the topics discussed in each chapter. In addition, I have included Evidence in Action articles throughout the text 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 that review the basic terminology and concepts covered in each chapter. In addition, I have included application problems containing factual scenarios to test students' ability to apply the concepts that they have learned in the chapter.

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 legal concepts and terms. 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. Chapter 5 involves eyewitness identification of suspects, including a discussion of how false identifications may occur. The chapter concludes with a discussion of new protocols for how to improve identification procedures to reduce such

errors. 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 discusses the exclusionary rule as it applies to the Fourth, Fifth, and Sixth Amendments. Although I believe topics in criminal procedure are best reserved for a separate course, I think some discussion of the topic is necessary, particularly as to how it may impact the admissibility of evidence in a case.

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. Finally, Chapter 16 provides tips for trial practice such as how to cross-examine a witness or make an objection. It also provides suggestions on how to prepare for and deliver testimony as a witness.

## **NOTE ON THE THIRD EDITION**

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The third edition updates several areas of law that have evolved since the second edition was published. This includes issues surrounding eyewitness identification and admission of confessions, particularly the modification of the *corpus delicti* rule by many state courts. The discussion of the reliability of forensic evidence has been updated to reflect changes since the release of the 2016 report on the issue authored by the President's Council on Science and Technology, including the FBI's rejoinder to that report. New sections on bloodstain pattern analysis and arson investigation have been added to this chapter as well as an expanded discussion of handwriting analysis. A new chapter on trial practice and witness preparation has been added at the end of the book. Existing material from other chapters was moved to this chapter as well as adding new material. Topics such as preparing opening and closing statements, conducting direct and cross-examinations, and making objections are covered. This should help students who are participating in

mock trial competitions prepare to be both witnesses and attorneys. The discussion of material has also been streamlined in several chapters, most notably that on the exclusionary rule and *Miranda* rights in Chapter 8 and rape shield laws in Chapter 13. Practical examples have been updated and new ones added where needed. As a result, the new edition is shorter in length and more readable, despite the added material. Finally, I have updated existing Evidence in Action articles and added several new articles featuring recent events, including the Kyle Rittenhouse trial.