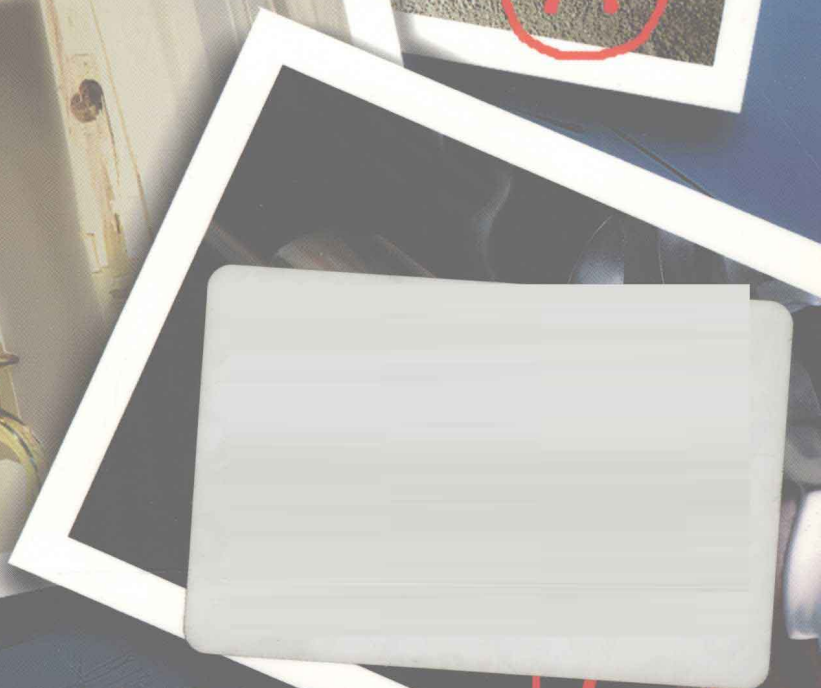
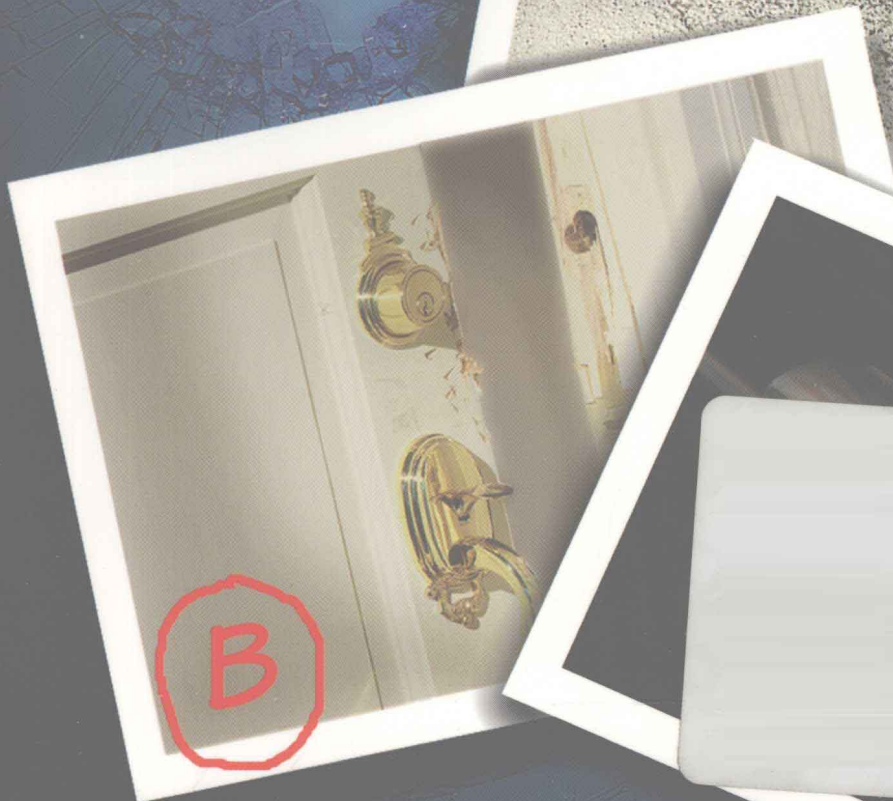
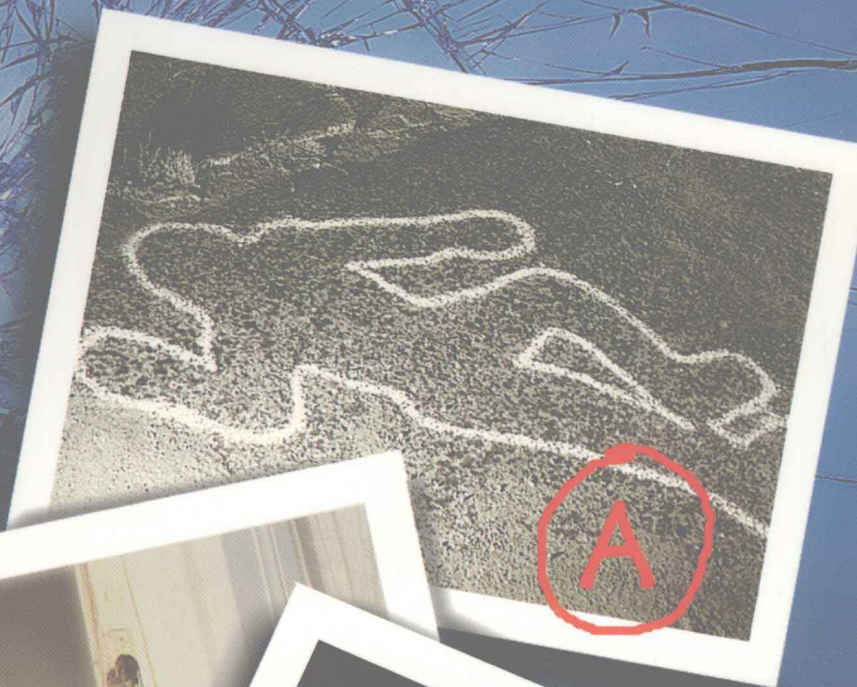


CRIMINAL EVIDENCE

for the LAW ENFORCEMENT OFFICER

Fourth Edition

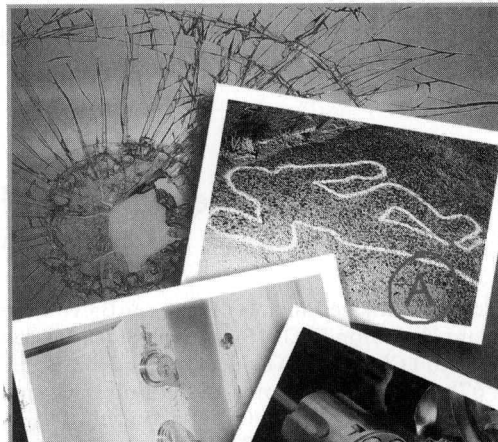


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CRIMINAL EVIDENCE LAW ENFORCEMENT OFFICER

FOURTH EDITION



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Criminal Evidence for the Law Enforcement Officer, Fourth Edition
Student Text

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Preface

The fourth edition of *Criminal Evidence for the Law Enforcement Officer* presents the basic concepts of criminal evidence applied to the criminal justice workplace. *Criminal Evidence for the Law Enforcement Officer*, Fourth Edition, includes a description of the trial process, types of evidence, the rules relating to relevance, hearsay, documentary evidence, qualifications of witnesses, privileges, presumptions, judicial notice, photographs, and character. The text also presents the principles relating to the impact of the Constitution of the United States on the admissibility of evidence (i.e., search and seizure, admissions and confessions, the right to counsel, and identification procedures). Finally, the text presents those principles relating to the law enforcement officer as a witness.

This text is written in a clear, lively, and personal style to appeal to criminal justice professionals and students. Special attention is given to helping students understand the legal aspects of the principles relating to the admissibility of evidence at a criminal hearing or trial. Students often perceive the law as a complex of incomprehensible rules with uncertain application in the workplace. In *Criminal Evidence for the Law Enforcement Officer*, Fourth Edition, when an evidence principle is presented, an example or application to the real world of law enforcement immediately follows. Relevant court decisions that affect the admissibility of evidence are discussed in the text, but only to the extent necessary to illustrate the rules. All program components fit into an integrated learning system that helps students learn and apply important course concepts.

Integrated Learning System

Each chapter has been completely revised and expanded to promote effective instructional practices and increased student comprehension of the concepts presented. **New** to this edition are **chapter learning objectives**, **bold-faced key terms**, and **key terms definitions** in the margins. An **integrated learning system** ties the chapter objectives from the chapter opener to the chapter heading structure through to the **expanded end-of-chapter exercises**. These learning aids help students focus on the important concepts to

be learned. Within the chapter, content is broken down into appropriately sized sections that students can absorb with ease.

For maximum flexibility, the content material is divided into 15 chapters that can be easily customized for quarter or semester study. New to this edition are chapters on the law of evidence and the pre-trial process (Chapter 1) and line-ups, other identification procedures, and the exclusionary rule (Chapter 10).

Visual Learning Aids

Included in the fourth edition of *Criminal Evidence for the Law Enforcement Officer* is a totally new visual learning program. The chapter-opening photograph sets the stage for the new visual learning program, while photographs and artwork within the chapter help students visualize the concepts presented. All new two-color charts, tables, and figures provide students with the latest relevant information. New maps clearly show the student which states have adopted the various rule of evidence. The text is further supported by multimedia materials in the *Instructor's Presentation and Student Assessment Software CD-ROM* and the *Study Guide With Applications and Landmark Cases CD-ROM*.

High-Interest Boxed Features

New to this edition are high-interest boxed features that enhance the instructional impact of the content. These features reinforce and extend the chapter concepts and provide practical connections for the law enforcement officer.

- **Application Case** boxes present a short description and analysis of a key case applying the concept discussed in the text. These cases illustrate an application or extension of the rule being discussed in the text.
- **On the Job** boxes highlight no-nonsense, practical pointers from the field that will assist students when they join the law enforcement team.
- **FYI** (For Your Information) boxes contain interesting sidelights related to the chapter content.
- **Myth-Fact** boxes juxtapose common misconceptions about pertinent issues and the true story behind them.

Critical Thinking Exercises

The **expanded end-of-chapter exercises** include a series of **real-world critical thinking exercises** that are divided into three categories—**Thinking About Evidence**, **Workplace Applications**, and **Ethics**. These exercises are correlated to the SCANS (Secretary's Commission on Achieving Necessary Skills) competency guidelines as applied to the job of a law enforcement officer.

- **Thinking About Evidence** exercises help students develop an understanding of evidence issues that can be used on the job. They include scenarios that focus on the practical evaluation of evidence during an investigation or in preparation for a hearing or a trial.
- **Workplace Applications** exercises present students with law enforcement scenarios in which they must analyze a situation and make a choice, solve a problem or decide on a course of action.
- **Ethics** exercises confront students with situations presenting ethical dilemmas that can arise in the workplace in which they must make a decision or propose a course of action.

Additional Program Components

Criminal Evidence for the Law Enforcement Officer, Fourth Edition, consists of a complete teaching/learning program suitable for a variety of instructional and learning styles. The program includes the following components:

- Study Guide With Applications and Landmark Cases CD-ROM
- Instructor's Presentation and Student Assessment Software CD-ROM
- Instructor's Resource Manual
- Glencoe Criminal Evidence for the Law Enforcement Officer Study Center Web Site

Study Guide With Applications and Landmark Cases CD-ROM

This electronic study guide contains reinforcement questions, simulation applications utilizing the concepts in the text, and a selection of case materials covering 51 landmark cases. The case materials are housed in a Landmark Cases section on the CD-ROM and are also integrated into the chapter simulations where appropriate. Depending on the nature and application of the case, either a headnote (one-paragraph synopsis of the case), a syllabus (very brief description of the key elements of the case), a brief (longer summary of the case with key material directly from the case), or the full majority opinion is provided.

Instructor's Presentation and Student Assessment Software CD-ROM

The new Instructor's Presentation and Student Assessment Software Package allows the instructor to conduct a multimedia interactive classroom presentation of the concepts in *Criminal Evidence for the Law Enforcement Officer*, Fourth Edition, as well as evaluate students' grasp of the concepts presented. The CD-ROM contains the following components:

- **Lecture Presentation and Enhancement Package in PowerPoint Format** This presentation package contains 1200 lecture screen, graphics, and color images that can be used to introduce or reinforce the chapter content. The PowerPoint viewer is included on the CD-ROM so the instructor does not need to have the full PowerPoint software package installed to use the presentation in class.
- **ExamView Test Generator Program** This software package enable instructors to quickly and easily create tests, enter new questions, and customize the appearance of tests.

Glencoe Criminal Evidence for the Law Enforcement Officer Study Center Web Site

This unique study center site, available free of charge to any adopter, contains a wealth of current event material, links to CJ sites, a CJ bulletin board, and multiple reinforcement tools. The study center site can be accessed at www.glencoe.com/ps/cj/evidence. The Web site contains the following components:

- **What's New**—Links to newly posted articles-information and criminal justice related Web sites on each chapter resources page, that are updated regularly, appear here.
- **Chapter Resources—In the News** presents new articles and information correlated by chapter section and CJ Web Links contains relevant annotated Web links organized by textbook section headings.
- **Knowledge Checkpoint**—Students can test their grasp of concepts through a variety of reinforcement tools including **Practice Tests**, **Homework**, **Crossword Puzzles**, and **Concentration Game**.
- **CJ Weblinks by Topic** group all Web links by topic.

Additional link buttons on the homepage will take users to **Library**, a powerful online library available on a special subscription basis, and to the **Shockwave** site. Students can download Shockwave, free-of-charge, which is required to run some of the reinforcement tools in Knowledge Checkpoint.

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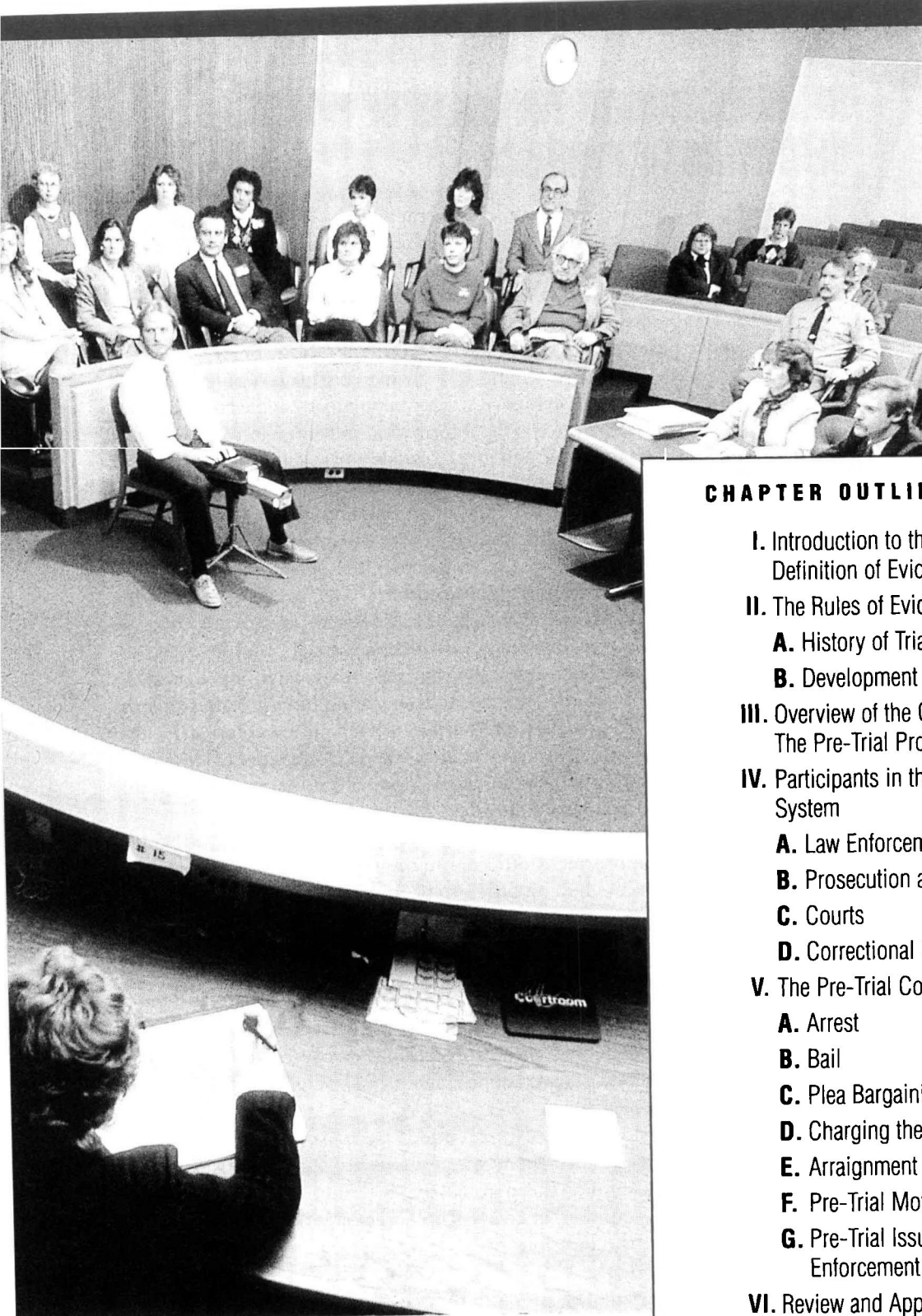
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CHAPTER OUTLINE

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- II. The Rules of Evidence**
 - A. History of Trial by Jury**
 - B. Development of the Rules of Evidence**
- III. Overview of the Court Process:**
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- IV. Participants in the Criminal Justice System**
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- VI. Review and Application**

INTRODUCTION TO THE RULES OF EVIDENCE:

DEFINITION OF EVIDENCE

Law of evidence

The rules that govern what a jury can hear and see during the trial of a case in an American courtroom.

Evidence

Information that people base decisions on. In a legal sense, evidence is the information presented in court during a trial which enables the judge and jury to decide a particular case.

Contraband

An object or material that it is illegal to possess.

Most Americans are aware that there are rules that govern what a jury can hear and see during the trial of a case in an American courtroom. These rules are defined in what is called the **law of evidence**. In this text we will explore why there is a law that restricts what a jury may hear, the details of the law, and its importance to the effective performance of the law enforcement officer. Before exploring those questions, the reader should know what constitutes evidence.

Most simply stated, **evidence** is information that people base decisions on. In a legal sense, evidence is the information presented in court during a trial which enables the judge and jury to decide a particular case. Technically, evidence consists of testimony or physical items presented to the judge and jury that they use to decide the truth of an assertion, the existence of a fact, and ultimately the guilt or innocence of the accused in a criminal case.

In the American judicial system, a criminal defendant is entitled to have a jury decide his or her guilt or innocence. The jury in all trials makes its final decision based on what it believes the facts are that are involved in the case. Evidence is the means by which those facts are proved or disproved. If this definition were taken literally, then anything that sheds some light on the truth of a fact in question should be revealed during the trial. Perhaps, if the creators of the law trusted juries completely, that would be the way the law of evidence worked. However, the creators of the law believe that juries need some guidance and protection from undue manipulation by competing attorneys during a trial. Therefore, the law limits what constitutes admissible evidence.

Most law enforcement officers use the term "evidence" with special meaning, since so much of an officer's efforts are concerned with ensuring that physical evidence is usable at trial. So, although the law enforcement officer knows that testimony is important, officers often refer to evidence as the articles collected at a crime scene, on a suspect, or in the suspect's car or home that are connected to the crime, such as weapons, fruits of a crime, or **contraband** (an object or material that it is illegal to possess). Additionally, evidence may mean those things discovered during investigation, such as blood stains, latent fingerprints, or plaster casts of shoe impressions in the earth.

These items of evidence, once found, are transported to the station and taken to the evidence room where items are logged in and tagged. On the evidence tag are the date of the booking, the incident report number, offense, number of items (pieces), cash, from whom the evidence was taken, the location, owner, and signature of the officer who booked in the evidence. The property room officer signs in the evidence and the date received. The property room officer deposits the evidence in

a secure location known as the “**evidence locker.**”

Evidence can be checked out (or released) from the evidence locker to the defense attorney, or the prosecutor, or be sent to a laboratory as long as the chain of custody remains intact and each piece of evidence is logged in and out each time it is examined. The last entry in the log is usually the release for the purpose of taking it to court. Some items, such as drugs, blood, or other substances, must be carefully weighed or counted on the initial booking date, and weighed or counted again before being checked out, and finally, again when returned. Laboratory technicians must also weigh the amount of any substance or material they use for testing purposes.

Unless released for the purposes just described, items remain in the evidence locker, free from illegal tampering, until they can be utilized as exhibits and admitted into evidence during trial proceedings. Legally, these articles found and retained do not become “evidence” until they are introduced in court during trial and become exhibits. However, if the law enforcement officer does not take the proper precautions with these articles, they cannot be introduced in evidence at trial. This is so because, generally, no item of physical evidence can be introduced at trial unless the law enforcement officer has maintained the proper “chain of custody” of the item. The **chain of custody** refers to how evidence is handled, and by whom, from the moment it is found until the moment it is offered in evidence. It is the maintenance of custody and control over an object to such a degree that the custodian can prove the object is in the same condition as it originally was when custody was obtained.

The testimony of any person with personal knowledge pertaining to the case is simply another form of evidence. A good definition of what constitutes evidence is as follows: Evidence is any information about the facts of a case, including tangible items, testimony, documents, photographs, or tapes, which, when presented to the jury at trial, tends to prove or disprove these facts.

Evidence may be classified many different ways. There is a classification of evidence as real or demonstrative. There is direct evidence and circumstantial evidence. Evidence may be physical or intangible. Testimony of experts often relates to scientific evidence. The differences between these classifications of evidence is fully discussed in Chapter 3.

FYI

Remember the famous white Bronco in the 1994 O.J. Simpson trial? One of the big problems for the prosecution was the “chain of custody” of the Bronco. It was towed to a privately maintained storage lot and was not properly secured. During the time the Bronco was there, an employee broke into the vehicle and took some papers. Judge Ito, presiding at the trial of O.J. Simpson, ruled that the blood stains later discovered on the Bronco’s front console were admissible, but the defense, in its attack on the blood stain evidence, made much of the fact that the Bronco was not properly stored. A proper “chain of custody” would have reduced or eliminated the impact of the defense’s argument.

Evidence locker

A place, usually in a police station, where evidence gathered by law enforcement officers is deposited and kept safe from tampering pending its use in court.

Chain of custody

The maintenance of custody and control over an object to such a degree that the custodian can prove the object is in the same condition as it originally was when custody was obtained.

THE RULES OF EVIDENCE

“Rules of evidence,” or the “law of evidence,” as they are also known, are a set of regulations that act as guidelines for judges, attorneys, and law enforcement officers who may be involved in the trials of cases. These guidelines determine how the trial is to be conducted; what persons may be witnesses; the matters about which they can testify; the method by which articles at a crime scene (physical evidence) are collected and preserved; what is admissible; and what is inadmissible. These rules make for the orderly conduct of the trial, promote efficiency, and enhance the quality of evidence. They are the product of many years of judicial evolution and, more recently, legislative study. They were developed by trial and error, through logic and sound judgment, following the basic needs of society. They make for the orderly conduct of the trial and ensure that evidence is properly presented at the trial. For example, the rules prevent one spouse from testifying against another, except in certain instances. The rules also generally forbid the use of hearsay as evidence and prohibit the admission of illegally obtained evidence. Law enforcement officers should not look upon these rules as roadblocks in their efforts to secure convictions. Instead, they must realize that the objective of these rules is to ensure the integrity of all evidence, protect a defendant’s rights, and ensure a fair trial.

History of Trial by Jury

In the days before jury trials, proof of guilt or innocence was decided by ordeal, battle, or compurgation. For the most part, trial by ordeal was an appeal to the supernatural. An example of an ordeal used to determine guilt or innocence consisted of forcing an accused person to remove a rock from the bottom of a boiling pot of water. Any accused whose hands became blistered was found guilty. If the hands did not blister, the accused was acquitted. Acquittals under this system were, not surprisingly, rare.

Another kind of trial was introduced in England as a result of the Norman Conquest in 1066. This was trial by battle or combat, also known as “wager of battle.” In this system the victim of a crime and the accused would be forced into hands-on combat. Even litigants in civil matters were often required to ascertain who was right and who was wrong by this method of proof, the one who was right being the winner. It was assumed that God would give victory to the one who was right. In criminal matters, if the accused won, the accused was acquitted. Judicial combat became a prevalent way to establish justice and continued to hold sway for a period of time, but eventually died out as a means of establishing right and wrong.

A more humane method of ascertaining guilt or innocence utilized from time to time was trial by compurgation, also known as “wager of

law.” In this system the accused would testify in his or her own behalf, pleading innocence. The accused would be supported by helpers known as “compurgators,” or oath helpers, often twelve in number. These supporters or helpers would testify to the good character of the accused and particularly his or her reputation for veracity. These persons would not necessarily know anything about the facts of the case, but merely came forth to tell how good the accused was. This system provided fertile grounds for perjury and proved to be as ineffective at determining the truth as the ordeal and combat methods. But it is considered to be the forerunner of our use of character witnesses.

Later a trial by jury system began to make its appearance. It was in no way like the trial by jury as we know it. The first juries had the function of charging the accused with a crime, acting in much the same capacity as a grand jury of today. They served to substantiate an accusation, leaving the test of innocence or guilt to be decided by some other means, such as trial by ordeal, battle, or wager of law. As time passed and these methods lost favor, the accusatory jury was given a dual function. Jury members would gather information from the countryside, mostly hearsay (unsworn, out-of-court statements), concerning the alleged crime and, later, would decide whether the accused should be held for trial. If a trial was ultimately held, the same jury would try the accused and render a verdict.

Later it was decided that the accusatory jury, known by then as the grand jury, should not also try the accused. Therefore a separate jury, known as the petit jury, was selected for that function. This jury, like the accusatory jury, relied upon evidence from the countryside. Later this petit jury was composed of persons with personal knowledge about the case. As time passed, witnesses who had information about the case were called to testify before the jury. However, much of the testimony of the witnesses was based upon hearsay information. Finally, around 1700 the trial by jury as we know it today was becoming a reality, signified by the swearing in of witnesses and the right to cross-examine those witnesses. Additionally, hearsay evidence began to disappear from the judicial process. It was then that our rules of evidence began to develop into what they are today.

Development of the Rules of Evidence

Rules of evidence in jury trials are designed to keep some relevant information from the jury. This is because sometimes relevant information cannot be received by the jury without violating some principle or policy that the law seeks to promote. For example, hearsay evidence (a statement made by a person out-of-court) may be very relevant, but is often unreliable and untrustworthy. Hence, the hearsay rule bans the admission of hearsay at a trial, except in specific, defined situations. Likewise, evidence that has been obtained by a law enforcement officer in violation of a

Federal Rules of Evidence (FRE)

The most common codification of evidence law—the rules that apply in all federal courts throughout the United States and in the 40 states that have relied upon them as a model in adopting their own evidence codes.

suspect's constitutional rights may be declared by the law to be inadmissible in order to deter future misconduct by officers. (The rules governing illegally seized evidence are discussed in detail in Chapter 9.)

Today the rules of evidence in most jurisdictions are in the form of a statute or penal code, meaning that they are laws enacted by a legislative body. These evidence laws have supplanted the rules made by judges that evolved over the centuries during the development of the jury system, though many may be traced back to the judge-made rules. By far the most common codification of evidence law is the **Federal Rules of Evidence (FRE)**. The FRE apply in all federal courts throughout the United States and in the 40 states that have relied upon them as a model in adopting their own evidence codes.

The evolution of the FRE began in 1942 when the American Law Institute adopted the Model Code of Evidence. The drafting and advisory committees for the Model Code included all the great figures in the field of evidence. The Model Code was considered to be reformist and controversial. So, although the Model Code stimulated debate and development of the law, it was not adopted by any jurisdiction. In 1954 the Uniform Rules of Evidence, authorized by the Commissioners on Uniform State Laws, were produced. While these rules were less radical, they were adopted by only two states. Finally, in 1961, the United States Supreme Court Chief Justice Earl Warren appointed a special committee to determine the feasibility and desirability of a federal evidence code. The committee came back with an affirmative response. An Advisory Committee on Rules of Evidence was appointed to draft proposed rules and, in 1972, a revised draft of proposed rules was promulgated by the Supreme Court as the Federal Rules of Evidence, to be effective July 1, 1973. The rules were referred to Congress, which enacted the rules into law, effective July 1, 1975. The rules have been subsequently modified by Congress and the United States Supreme Court in a few instances, but have remained, for the most part, the same since enactment.

Forty state legislatures adopted the FRE as of September 1997 (see Figure 1-1). Those states that have not adopted the Rules, however, are some with heavy population centers that account for a substantial number of the state criminal cases generated in the United States. States that have not yet adopted the Rules include: California, Connecticut, Georgia, Kansas, Maryland, Massachusetts, Missouri, New York, Pennsylvania, and Virginia. Although these states follow rules of evidence based on the same general principles that exist in all of Anglo-American evidence law, their rules differ substantially in many respects from the FRE. Therefore, the rules of evidence of each state must be consulted to learn these differences. Moreover, even those states that have adopted the FRE have some variances from them.

The FRE, and their state counterparts, cover the entire field of judicial procedure. These rules apply equally in civil and criminal matters.

Figure 1-1



Because the rules are complex, the line between what is admissible and what is inadmissible is very fine. Therefore, these rules may create much confusion for the law enforcement officer. Further, the officer will find that it is difficult to abide by some of the rules, primarily because an appellate court may invalidate or modify what was once perfectly legal and proper. The rules themselves, much like judges' interpretations of the rules, are not static and are constantly changing; many times becoming more restrictive on the officer and his or her work.

Despite such problems, the rules of evidence enable officers to know during the investigation what evidence will be admissible at a trial. It is the purpose of this book to concentrate on those rules of evidence most applicable to the work of the law enforcement officer and to help the officer to understand them.

OVERVIEW OF THE COURT PROCESS: THE PRE-TRIAL PROCESS

Figure 1-2 on pages 8-9 is a flow chart of the criminal justice system. It covers the entire process from the observation or report of a crime through investigation, arrest, prosecution, trial, sentencing, appeal, service of