



LEGAL EVIDENCE & APOLOGETICS

INDEPENDENT STUDY

CSAP 680 (2 Units) • Course Outline • Spring 2017 • Kevin Lewis

I. PROFESSOR & CLASS INFORMATION

<u>Course Title:</u>	Legal Evidence & Apologetics	<u>Credit Hours/Units:</u>	2 Units
<u>Course Code:</u>	CSAP 680 & 695	<u>Class Days & Time:</u>	Independent Study
<u>Term:</u>	Spring 2017	<u>Dept. Secretary:</u>	Megan Stricklin (562) 906-4570
<u>Location:</u>	Biola Campus	<u>Secretary Email:</u>	megan.stricklin@biola.edu
<u>Office Phone:</u>	562-903-6000 X5506	<u>Office Location:</u>	Biola Professional Building
<u>Office Hours:</u>	By Appointment	<u>Office Mailing Address:</u>	Biola University, Christian Apologetics Program, 13800 Biola Avenue, La Mirada, CA 90639
<u>E-Mail:</u>	kevin.lewis@biola.edu	<u>ITL Website:</u>	www.itlnet.org
<u>Course Website:</u>	www.theolaw.org		
<u>Dept. Website:</u>	http://biola.edu/apologetics		
<u>School Website:</u>	www.biola.edu		

II. COURSE DESCRIPTION

An exploration of legal reasoning, legal evidence, and legal advocacy tactics with respect to how these concepts and methods may be employed in polemical theology and apologetics. Attention is given to the analysis and critique of important legal concepts such as the nature of jurisprudence, presumptions, precedent, types of evidence, admissibility of evidence, direct examination, and cross examination.

III. OBJECTIVES

After satisfactorily completing course requirements, students should be able to:

1. Articulate and defend the essential doctrines of the Christian religion using legal reasoning and rules of evidence.
2. Analyze arguments using standard legal reasoning and rules of evidence.

IV. TEXTBOOKS

A. REQUIRED TEXTS

1. Best, Arthur. *Evidence: Examples & Explanations*. Tenth Edition. New York: Wolters Kluwer Law & Business, 2016.
2. Broughton, William P. *The Historical Development of Legal Apologetics With an Emphasis on the Resurrection*. Xulon Press, 2009.
3. Greenleaf, Simon. *The Testimony of the Evangelists: The Gospels Examined by the Rules of Evidence*. Grand Rapids: Kregel Classics, 1995.
4. Montgomery, John Warwick. *History, Law and Christianity*. Canadian Institute of Law, Theology & Public Policy, 2002.

B. RECOMMENDED TEXTS

1. Clifford, Ross. *Leading Lawyers' Case for the Resurrection*. Edmonton, Alberta: Canadian Institute for Law, Theology & Public Policy, 1996.
2. Emanuel, Steven L. *Evidence*. Eighth Edition. In the Emanuel Law Outlines Series. New York: Aspen Law & Business, 2013.
3. Garner, Bryan A., Ed. *Black's Law Dictionary*. Tenth Edition. West Publications, 2014.
4. Muller, Richard A. *Dictionary of Latin & Greek Theological Terms*. Grand Rapids: Baker, 1985.
5. Neumann, Richard K. *Legal Reasoning and Legal Writing*. Seventh Edition. New York: Aspen Law & Business, 2013.

V. COURSE REQUIREMENTS

A. COURSE OUTLINE & PROFESSOR CONTACT

1. The student *must* carefully read the entire course outline prior to the commencement of the course.
2. After reading the course outline, the student must send a confirmation email to the professor at kevin.lewis@biola.edu indicating the student has read the entire course outline.
3. The "Subject" line of this email *must* read (exactly) "Confirmation Email LECA M SPR17."
4. The student may ask for clarification of any part of the course outline in the confirmation email.
5. **The due date for the confirmation email is February 6, 2017.**

B. READING & ASSIGNMENTS

You will complete the assigned reading for the course as listed in the course schedule. You will also complete certain written assignments in connection with your reading. (See discussion of these assignments, *infra*.)¹

C. READ ONLY ASSIGNMENT (GREENLEAF TEXT)

1. Students shall read Simon Greenleaf's, *The Testimony of the Evangelists: The Gospels Examined by the Rules of Evidence*.
2. There are no written assignments assigned to this text.
3. Students shall report the reading % through an email to the professor at Kevin.Lewis@biola.edu by the due date listed below.

D. PRECIS ASSIGNMENTS (BEST, BROUGHTON & MONTGOMERY TEXTS)

The student will write a précis for each assigned text. For each précis, please observe the following procedure:

1. **Paper Guidelines**

¹ *Infra* is Latin for "below." It is a common signal in scholarly works.

- a. The word count for each précis should be 1,500 words (+ or – 100). Place the word count on the first page of your report.²
 - b. Note that the student may elect to include or exclude the headers, footnotes, and student information in the reported word count.
 - c. The paper must be typed, double-spaced with one inch margins, using a 12 point font. It must have page numbers at the bottom of each page.
 - d. **Important:** Use appropriate headings to make your paper’s structure evident at a glance.
 - e. **Format**
 - (1) The student *must* submit papers in the format specified in this course outline.
 - (2) At the top of the page, type the title of the assignment, your name, student number, course information (e.g., LECA Spring 2017, *et al.*), and the word count (e.g., 1,499).
 - (3) See the example, *infra*, for formatting details.
 - f. Spelling and grammar count. See the explanation, *infra*, for details.
 - g. Be certain to *footnote* your work. That is, when you directly quote or allude to a portion of the book, properly reference your material.
2. **Substantive Content of the Précis**
- a. Write a concise summary (i.e., a précis) of the book.
 - b. Do not analyze or comment on the material presented. Simply summarize the essence of the book.

E. TRIAL OBSERVATION PAPER

1. Overview

- a. After the student reads all the assigned materials for this course, the student will observe the presentation of evidence and legal arguments during a trial in a courtroom for one hour. Note that the student does not need to view a trial for one continuous hour. If it is more convenient for the student to observe shorter segments (e.g., 10 minute segments), which total to one hour, this is permitted.
- b. The goal of this exercise is to spot the rules of evidence and types of legal reasoning employed during the trial.

2. Paper Guidelines

- a. *Word Count:* The word count for the paper shall be 1,500 words (+ or – 100). Place the word count on the first page of your paper.³
- b. Note that the student may elect to include or exclude the headers, footnotes, and student information in the reported word count.
- c. *Typed & DS:* It must be typed, double-spaced, 1” margins, using a 12 point font.
- d. *Page Numbers:* It must have page numbers at the bottom or the top of each page.
- e. *Headings:* Use appropriate headings and subheadings to make your paper’s structure evident at a glance.
- f. *Required Information & Formatting*
 - (1) The student must submit papers in the format specified in this course outline.

² Note that most word processors have a word count function located on the “Tools” menu.

³ Note that most word processors have a word count function located on the “Tools” menu.

- (2) At the top of the page, type the title of the assignment, your name, student number, course information (e.g., LECA, SPR17 *et al.*), and the word count (e.g., 1,499).
- (3) See the example, *infra*, for formatting details.
- g. *Spelling & Grammar*: Spelling and grammar count. See the explanation, *infra*, for details.
- h. *References*
- (1) Note that there are no references or Bibliography required for this paper. However, the student must document specific elements of the trial.
3. **Substantive Content of the Paper**
- a. At the beginning of the paper, the student must state the following:
- (1) The Court Location
 - (2) The Judge's name
 - (3) The case name (e.g. People v. Arius)
 - (4) The Charges
 - (5) The date and time of the trial observed
 - (6) The total amount of time the student observed argument and the presentation of evidence.
- b. In the remainder of the paper, the student will identify:
- (1) The types of evidence presented, such as, testimonial evidence, real evidence, or hearsay evidence.
 - (2) The types of legal arguments and tactics employed during the presentation of evidence, such as, objections and impeachment.
- c. When identifying the evidence and arguments, the student must state the facts presented in the specific case and not simply state the conclusion.
- d. See the example student paper below.

VI. IMPORTANT COURSE DATES

Date	Events & Assignments Due
2/7	Confirmation Email Due
2/27	Best Precis Due
3/13	Testimony of the Evangelists Reading Due
4/3	Best Precis Due
4/24	Broughton Precis Due
5/15	Montgomery Precis Due
5/22	Trial Observation Paper Due

VII. GRADING

A. GRADING CHART

The value of each assignment as it relates to your final grade can be seen in the following scale:

Assignment	% of Final Grade
Greenleaf Reading	5%
Broughton Precis	25%

Best Precis	25%
Montgomery Precis	25%
Trial Observation Paper	20%

B. GRADING CRITERIA

1. Quality of Student Work

- a. In order for a student to receive an “A” grade on any assignment, the student must do *outstanding*, graduate level work.
- b. If the student submits *failing, below average, average, or above average* graduate level work, the assigned letter grade will reflect the quality of the work submitted.

2. Grading Standards for All Written Work

Whereas Biola University desires to maintain the highest standards with respect to the composition of all written work, any student paper exhibiting poor grammar, spelling errors, typographical errors, or other substandard academic expression shall have the overall grade for that paper reduced accordingly. Generally, a paper will be deemed substandard and ineligible to receive an “A” grade when it averages three or more compositional errors per page. Moreover, at the discretion of the professor, the substandard paper may be returned to the student for correction and resubmission with appropriate grade penalties. Graduate papers are expected to demonstrate a higher level of academic expression than undergraduate papers. Students deficient in writing skills may seek assistance at the Biola Writing Center.

3. Formalities & Mechanics of Assignments

- a. **Format & Required Information:** At the top of the first page of all written assignments the student *must* have the:
 - (1) Title of the assignment,
 - (2) Student’s name,
 - (3) Student’s identification number,
 - (4) Title of the course,
 - (5) Date of the course (e.g., Spring 2017),
 - (6) Name of the professor, and
 - (7) Additional information requested for that specific assignment (e.g., word count). The student may examine the sample outline of the assignment given at the end of this Course Outline for further clarification.
- b. **Following Instructions & Grade Penalties**
 - (1) The grade for student papers and assignments will be reduced if the student fails to follow the directions listed in this course outline. Please consult the course outline when completing your assignments.
 - (2) Note that the grade for all assignments will be *reduced one point* for each instance of a failure to conform to the guidelines. For example, if you are five sources short for your bibliography, you will receive a five point reduction, one for *each* of those five omissions, *not* a single point reduction for a “deficient bibliography.” Thus “each instance” should be understood as “each particular instance.”
 - (3) Note that all of the requirements listed in the course outline are mandatory, not discretionary, for students. All assignments will be graded according to the criteria listed in this course outline.

(4) Please check your work carefully before you submit it for grading.

4. Late Work

- a. All assignments, including Confirmation Emails, Reading Reports, and Paper Topic Requests, must be submitted on time. All late assignments will *be reduced one percentage point* for each calendar day they are tardy.
- b. Written assignments must be mailed and postmarked on or before the due date.
- c. Only in the case of *extreme* emergencies will an exception to this policy be granted. If you believe you meet the requirement for an exception, submit a detailed explanation to the professor via email.

5. Academic Dishonesty

- a. *University Policy:* Biola University is committed to ethical practice in teaching, scholarship, and service. As such, plagiarism and other forms of academic dishonesty will not be tolerated. Please see the graduate student handbook and/or the departmental/program/school policy on academic honesty. It is imperative that you present all written, oral, and/or performed work with a clear indication of the source of that work. If it is completely your own, you are encouraged to present it as such, taking pleasure in ownership of your own created work. However, it is also imperative that you give full credit to any and all others whose work you have included in your presentation via paraphrase, direct quotation, and/or performance, citing the name(s) or the author(s)/creator(s) and the source of the work with appropriate bibliographic information. To do otherwise is to put oneself in jeopardy of being sanctioned for an act or acts of plagiarism that can carry serious consequences up to and including expulsion from the university.
- b. Biola University regards all forms of plagiarism and cheating on exams as serious problems with serious consequences.
- c. *Professor's Policy:* Any student who represents the words or ideas of another as his or her own without giving credit for the source (i.e. plagiarism) or who cheats on an exam will not receive credit for the course and will be referred for additional disciplinary action.

6. Guidelines for Citations in Written Assignments

- a. The student must cite the source (e.g., have a footnote) for any idea found in the student's paper that is not the student's original idea or a matter of common knowledge.
- b. Secondary source citations must be properly cited with reference to the primary text. Thus, if an author cites another author, the footnote must reflect this citation-in-a-citation relationship. See the footnote below for an example.⁴

7. Additional Grading Criteria for Written Work

The student must examine and employ the criteria listed in the Written Assignment Code Key when preparing written assignments. See the Code Key at the end of this course outline,

⁴ Bruce R. McConkie, *Mormon Doctrine*, first ed. (Salt Lake City: Bookcraft, 1966), 109, cited in Walter Martin, *The Maze of Mormonism*, revised and enlarged edition (Ventura: Regal Books, 1978), 178-179. [Example of a secondary source citation]

infra. The quality of the written assignments will be measured by the applicable criteria in the Code Key.

8. Disabled Students & Disability Services

Students desiring accommodations for this class on the basis of physical, learning, psychological, or emotional disability are to contact The Learning Center, which houses both learning assistance and disability services. The Learning Center is located in the Biola Library, upper level, Room U-137, and the office can be reached by calling 562.906.4542 or x4542 when on campus.

C. GRADING SCALE

Final grades will be awarded according to the following scale:

Graduate		Scale	
A = 96-100 points (Excellent)	C = 78-80 points (Average)		
A- = 93-95 points	C- = 75-77 points		
B+ = 90-92 points	D+ = 73-74 points		
B = 87-89 points (Above Average)	D = 71-72 points (Below Average)		
B- = 84-86 points	D- = 69-70 points		
C+ = 81-83 points	F = 0-68 points (Fail)		

D. THE PRIVACY ACT

In order to comply with the Privacy Act, professors are not able to leave graded papers and exams in offices or designated areas for the purpose of returning those items to students.

VIII. GENERAL COURSE RULES & PROFESSOR POLICIES

A. DOCTRINAL EXPECTATIONS FOR STUDENTS:

BIOLA'S Doctrinal Statement & Explanatory Notes

1. Since its inception, Biola has been a conservative evangelical protestant institution. Biola's theological distinctives are affirmed in its Doctrinal Statement and Explanatory Notes (DSEN), which function as the doctrinal standard for the university. Both Talbot School of Theology and the M.A. Christian Apologetics Program expect all graduate students to affirm all of the precepts in the DSEN. The only exception to this policy is for those students who have requested and received an exception on the DSEN's Eschatology and Spiritual Gifts statements. This decision for an exception is made at the time of admission. And if an exception is granted in the aforementioned areas, the student may not actively argue against Biola's teaching position while they are students. Biola's DSEN can be viewed at <http://www.biola.edu/about/doctrinal-statement/>.
2. Since Biola's DSEN does not address every possible theological issue, the university permits a diversity of opinion on issues not covered by the DSEN, such as the doctrines involved in the Calvinism-Arminianism debate. However, apart from the exceptions listed above, Talbot School of Theology and the M.A. Christian Apologetics Program do not permit students to hold views contrary to the DSEN, such as Theistic Evolution, Open Theism, any view that rejects the full inspiration and inerrancy of Scripture, any view that rejects the full deity or full humanity of Jesus Christ, or any view that rejects eternal conscious punishment for the unsaved.
3. Given the school's policies on these matters, it is an expectation for this course that enrolled students affirm the required views of the DSEN. The purpose for this requirement is to establish true unity and avoid unnecessary dissention on these important theological issues in our university community. As well, this policy helps to foster the best possible discipleship experience for all students in Biola's diverse conservative evangelical protestant learning environment.

B. LECTURES, SYLLABUS & COPYRIGHT

1. The course syllabus, handouts, Power Point presentations, and class lectures are the intellectual property of the professor. As such they are subject to the protections of Federal Copyright Law (Title 17 of the United States Code).
2. Students desiring to copy course materials, printed or electronic, or record lectures must first obtain permission from the professor. The professor reserves all rights unless explicitly waived.

C. MISCELLANEOUS POLICIES

1. *Fairness to All Students*
 - a. Please do not request an exemption from the rules or to have a deadline extended unless there is an unanticipated emergency. It is presumed that all students and faculty are busy with jobs, church, family and other issues. Students must adjust their schedules to meet the deadlines. If not, they will receive the appropriate grade penalty.
 - b. Please do not ask me to change your grade unless I have made an error in calculating the grade. There is a single grading standard for all students. I will not create a different grading standard for any individual student.

2. *Email Etiquette*

- a. Please treat your emails as formal communications. Use complete sentences. Do not use a “texting” style for your messages.
- b. Be certain to include your full name and the course name in each email until I direct you to do otherwise.
- c. Be certain to include the program in which you are enrolled such as Talbot, or the M.A. Apologetics Program.

IX. EXAMPLE OUTLINES

A. EXAMPLE OF FORMAT FOR THE PRECIS

Evidence: Examples & Explanations

By Arthur Best

Student Name: Student Name

Student Number: Student ID #

LECA-Modular

Spring 2017 –Lewis

Word Count: e.g., 1,499

Main Heading (Follow Chapter Headings) 1

Subheading (if necessary for clarity)

Precis begins here! Write well!

B. SAMPLE HIGH QUALITY STUDENT PRECIS EXCERPT**[TEXTBOOK NOT FOR THIS COURSE]**

Note the qualities of this précis excerpt that earned the student a high grade. (1) It is complete, easy to read, and well organized. (2) It is well documented and referenced. The student explained where each section summary originated. (3) It is written in a carefully well-worded manner and is grammatically correct. (4) It truly condenses the author's ideas in the student's prose without resorting to random selections of the author's direct quotes.

PRINCIPALITIES & POWERS¹

by John Warwick Montgomery

Student Name: Mad Eye Moody

Student Number: 8675309

Demonology & The Occult

Spring 2017 - Lewis

Word Count: 1,543²

Chapter One: But Is It Real?

Discussion of the occult must not be trivialized or made meaningless.³ References to the occult should not be offhandedly vague, nor should the credibility of the existence of the supernatural be dismissed on an *ad hoc* basis.⁴

While almost impossible to capture the myriad of phenomena fitting within the scope of “the occult” with a single definition or description, it is dangerous error to permit the three broad categories into which occult activity are categorized – (1) the paranormal, (2) the supernatural, or (3) the “secret” or “hidden” – to become vehicles for simple reductionism.⁵

One of the real dangers of the occult is that the elements often overlap or appear in combination when considering any specific occult phenomena.⁶ It is the supernatural (the immaterial, spiritual, or other-worldly) that is foremost in thought when the “occult” is mentioned⁷ – probably because those who claim to have, or those who desire and pursue the knowledge and power linked with, special abilities are generally not deterred by consideration of

¹ John Warwick Montgomery, *Principalities and Powers* (Edmonton, AB, Canada: Canadian Institute for Law, Theology, and Public Policy, Inc., 2001)

² Based on text only, without counting headers and footnotes.

³ Montgomery, p. 25.

⁴ *Ibid.*, pp. 25, 43-46

⁵ *Ibid.*, pp. 25-26

⁶ *Ibid.*, pp. 26, *et seq.*, synthesized and summarized

⁷ *Ibid.*, p. 26

the hazy line between the supernatural and the paranormal⁸ (powers and abilities possibly part of the genetic makeup of all human beings, accessible by some).⁹ The failure of rational explanations based on rules governing the material world to explain actual recorded incidents makes “hidden” or “secret” not merely a catch-all category of specialized practitioners or organizations justifies the application of the term “occult” -- whose historic root meant “hidden” – to all these phenomena generally.¹⁰

Concealment (usually intentional) of knowledge and practices to a select few so as to preclude the ability to verify of truth claims is the key distinction between the occult and legitimate scientific inquiry and the truth claims of religion. The life, death, and resurrection of Jesus is not so different in type from occult phenomena, but the broad exposure of the occurrence to public scrutiny is quite distinct.¹¹

Denial of the reality of the occult rejects the truth claims of the Bible. Worse, it is inherently illogical to reject all the non-biblical recorded data on a preconception against the reality of such phenomena.¹²

⁸ *Ibid.*, pp. 26-27

⁹ *Ibid.*, p. 26

¹⁰ *Ibid.*, pp. 27-29 synthesized and summarized..

¹¹ *Ibid.*, pp. 27-28 [footnote applies to entire paragraph of my text]

¹² *Ibid.*, pp. 30-46 synthesized and summarized [while some guidelines regarding writing a precis permit inclusion of examples provided in the text, this precis follows the simple rule of summarizing argument presented and offers examples, which filled most of this text, only when directly necessary to explain development of the underlying argument]

C. EXAMPLE: TRIAL OBSERVATION PAPER***TRIAL OBSERVATION PAPER***

Student Name: Student Name
Student Number: Student ID #
Legal Evidence & Apologetics
Spring 2017 – Lewis
Word Count: e.g., 1,499

COURT OBSERVATION #1

Court: Los Angeles Court-La Mirada

Judge: K.A. Lewis, Dept. KAL, Room 867-5309

Case: Alleged Drive by Shooting, Case # CA066677
People of the State of California vs. Sumgh Myung Gai

Charges: CTS. 1,3,5, & 7-664/187 A
Attempted willful, deliberate, pre-meditated murder
CTS. 2,4,6, & 8-245 (A) (2)
Assault with Firearm and special allegations

Time Estimate of trial: 3-5 days, Criminal Jury Trial

Prosecuting Attorney: Harold Callahan, ADA.

Defendant's Attorney: Paul Newman, PVT

Date observed: July 1, 2002, 10:30-11:15

Summary of time: Upon entering the trial, Mr. Smith, a police officer on the scene, was being questioned by Mr. Newman. He gave testimony of seeing the face of the defendant in the window of his apartment building as he was arriving. Mr. Smith thought he saw someone trying to leave through the window. He was asked specific questions regarding the clothing of the defendant and the defendant's brother. Mr. Newman made implications that Mr. Smith could have misidentified the defendant for his brother. Mr. Smith was asked many questions regarding his relationships with the detective on the case, Detective Valquez. The nature of his questioning was an attempt to invalidate the witness of Mr. Smith by insinuating that he would do or say anything to please the detective. Defendant Gai was put on the stand and demonstrative

evidence, exhibit 18, made use of a map to show Gai's apartment in relation to the street. Questioning supplied that the day the officer's arrived, the weather was cold and the lighting was not bright. The defense attorney belabored the details of the officer's arrival with a warrant for Gai's arrest. The door that the officers arrived at was meticulously described. It was developed that Mr. Smith's testimony about the defendant differed from the defendants. Mr. Smith said he saw the boy looking out of the west window and the defendant said he peaked out of the east side. It was established that the only window on the west side was where the defendant's sisters were sleeping.

Types of Evidence Employed: Circumstantial, Testimonial, and Demonstrative

Legal Reasoning and Rules of Evidence:

1. Circumstantial and Testimonial Evidence:

- Mr. Smith's "fuzzy" details on the evening of the arrest. A direct testimony from the arresting police officer was authenticated because he was directly involved in the case. The defense attorney was attempting to discredit the testimony of Mr. Smith by questioning his recollection of details and his motives for arresting the defendant. This evidence was relevant in that his attempts to show that Mr. Smith could not tell the difference between the defendant and his brother may have placed some doubt in the minds of the jury, but it did not seem like overwhelming evidence. The arrest had happened some time ago and it seemed natural that Mr. Smith would not recall all of the details. He claimed that he was sure he had arrested the defendant.

The fact that Mr. Smith and the defendant had completely conflicting stories in regards to the window was somewhat effective in proving that it was a dark evening and perhaps there was some doubt as to which exactly Mr. Smith was there to arrest.

Although the prosecutor did not object, the defendant's lawyer seemed to be attacking Mr. Smith's character with presumptuous questions about his relationship with Detective Valaquez. Questions such as "Do you want to please the detective?" and "Have you ever testified contrary to Detective Valaquez?" seemed to be somewhat leading. They were

probably deemed relevant because the answers would help the jury to validate or invalidate the testimony of this police officer depending on whether he had pure motives.

2. Demonstrative Evidence:

- A map was used to rehearse the evening the officers arrived at the defendant's apartment complex while the defendant was being questioned. Judicial Notice Efficiency was employed by agreement that the maps and streets were as the defendant suggested they were, which would authenticate at least this portion of the evidence. The use of the map was quite effective in rehearsing the evening. It gave a visual to show where the detectives walked up to the complex, where the window allegedly was, and what path the defendant took to answer the door. The prosecutor objected on two accounts to the line of questioning. He found the defendant's question, "Did anyone look out that window?" to be speculative. The prosecutor deemed the question regarding why his sister would go out the 2nd story window as non-relevant. In both cases, they were sustained and the defense attorney resorted to a new line of questioning.

The amount of evidence observed was limited for this trial, thus making it difficult to thoroughly examine the evidence. The Burden of proof rested on the prosecutor. His evidence was presented prior to the portion observed. Thus, it remains up to the jury who saw the complete picture to determine the credibility of these conflicting accounts.

COURT OBSERVATION #2

Court: Los Angeles Superior Court-La Mirada

Judge: K.A. Lewis

Cases: The State of California vs. Horacio De La Vega

Charges: (01): 459 PC, (03): 594 (A) PC, INTPR-SP
Burglary with Vandalizing

Date Observed: February 1, 2017, 11:15-12:00, 1:30-3:30

Summary of Time:

The prosecutor upon entering this trial was questioning the defendant's ex-wife. She was questioned in detail about the night she arrived home from Las Vegas and found that her home had been vandalized. A jacket was presented that was found the following morning in the ex-wife's home. It was identified as the defendant's jacket. The victim noticed missing items from her car and dresser and called the police the next morning. It was established that the specific types of damage were done to items that the former husband and wife had bought together, with the exception of the vacuum cleaner. The prosecutor's questioned whether damaged vacuum cleaner would make it more difficult to clean the mess and she responded in the affirmative. The defendant's attorney cross-examined, with a series of relevant and irrelevant questions, inquiring into the motives of the ex-wife for marrying the defendant, why she has working under another name, and if she was truly happy in living with 8 people in her household. The nature of the defendant's threats was also examined. In this sequence, there seemed to be more objections than there were statements by the witness. A recess was taken for lunch and at 1:30, the trial resumed, with the cross-examiner continuing to question the defendant's ex-wife. It was established that the witness believed the vandalization to be done by her ex-husband because of his "strange religious practices." When the prosecutor redirected, he used the podium and wall to demonstrate precisely where the jacket was found and why it was likely that the jacket wasn't spotted until the next morning by the witness. The prosecutor placed an expert witness, Jesus Javier Cruz, on the stand. This witness testified about the specifics involved in the religion

Santeria and Palo. He established that the specific types of damages that were found seemed to indicate that a curse was being placed on the defendant's ex-wife. Apparently, prior to our observation of the trial, it had already been established that the religion that the defendant practices is Santeria and Palo.

Types of evidence employed: Testimonial, Circumstantial, Demonstrative, and Real.

Legal Reasoning and Rules of Evidence:

1. Testimonial Evidence and Circumstantial:

- The defendant's ex-wife was an authenticated witness as she was the one to whom the damages had occurred. She testified that she believed the damages to have been done by her ex-husband because of his "strange religion." She testified that all of the items that were damaged were items that they had owned or bought together. She was able to verify the extent of the damage and the uniqueness of the damage done (i.e.: a smell of insect repellent, feces found all over her clothing, and a strange powder found on her side of the bed). She was also able to verify that the jacket that was found in her apartment, the morning after the vandalism, was her ex-husband's, testifying that she had seen her ex-husband wear the jacket when they had been married. All of these facts were relevant for the prosecutor to bring out, as the burden of proof does rest on his case. He used an effective line of questioning to bring out these facts. When the defendant's attorney was cross-examining, rules of evidence were used efficiently and with regularity. As stated in the summary, the questions posed by the defendant were designed to question the victim's identity and her motives for being married. Most of these questions were objected to because of the lack of relevance. However, the judge did permit the victim to state why she had been working under another name and if her ex-husband had promised to introduce (before their marriage) to someone in the advertising world, claiming he could help her. One question asked insinuated that she was making the threats out to be more than they really were. The prosecutor objected to this question, claiming it to be argumentative. It was overruled and then followed by another question that the prosecutor objected to based on the same reasoning. The question insinuated that the

threats were not really threats, but desperate pleas for her to come back to him. This objection was sustained. The continual attempt to admit evidence that was not relevant continued after the lunch break. The prosecutor objected many more times on account of relevance. The judge mainly was in agreement with the prosecutor. Several times the defendant's attorney requested a private recess with the judge and the prosecutor to show the relevance of his line of reasoning. At one point, the defendant's attorney tried to ask a complex question and the prosecutor correctly objected on these grounds. The attorney was directed to restate the question as two separate questions. The prosecutor's use of the rules of evidence was successful in allowing only relevant evidence to be expressed and in showing the defendant to look like he was desperately making up scenarios. The prosecutor allowed the facts to stand for themselves, making his case extremely effective. On the other hand, the defendant's attorney made it painfully obvious that he had not thought through how he would make his line of reasoning relevant. His pointed questions were badgering and argumentative. His line of questioning made it more apparent that he was trying to come up with alternative motives, then it did cast a negative light on the victim.

- His knowledge and experience in his own practice of the religion Santeria and Palo authenticated the expert witness. The prosecutor began his questioning of this witness by asking him questions that would establish him as a reliable source of information. The witness claimed that he had been practicing the religion for a number of years and had been initiated as a priest for the last five years. He was allowed to show his credibility by showing he was an average guy with a job at a community college and by allowing him to state his knowledge of the history of the religion. Once established, the prosecutor gave a "hypothetical scenario," and proceeded to describe the condition of the victim's home. The expert was able to state that there would be no question in his mind that whoever had done these damages practiced either Santeria or Palo (Often they are practiced together) and proceeded to explain the "negativity" that someone would be trying to place on another in such a scenario. The prosecutor effectively asked the witness if he would be alarmed if told that the defendant practiced Santeria or Palo. The

expert explicitly denied this. This established that there was no prejudice on the part of the expert towards others in this religion. Another effective use of questioning occurred when the prosecutor asked if the expert had received any money to come and witness, to which the expert responded in the negative. He was only testifying to educate. This showed more authentication of this witness, increasing the belief in his reliability.

Another effective question was, “If someone spit on your windshield, would someone in this religion be trying to put negativity on someone else?” The expert responded that he didn’t know of anything in the religion that would support that premise. The prosecutor was able to establish that the expert was not just seeing all of the “signs” in the hypothetical situation as part of Santeria or Palo to placate the prosecutor, but was genuinely asserting his knowledge of the religion. Overall, the prosecuting attorney was quite effective in his use of legal reasoning. The defendant’s attorney was not able to object once through the course of this testimony, again affirming that the prosecutor did a sufficient job of showing the relevance of this testimony.

Real Evidence:

- The coat was an authenticated piece of evidence that was found in the victim’s home and identified by the victim as her ex-husband’s coat. The prosecutor was prepared for the defendant’s line of questioning regarding the coat. He asked if the jacket was a man or women’s jacket. The victim stated that it looked like a rather large coat to be a woman’s coat and that her ex-husband had a different style. Later, in the cross-examination, the defendant did asked if the jacket was a woman’s style and the same answer was repeated. It made it look like the defendant was not listening the first time around, thus the prosecutor “stole his thunder,” so to speak. The defendant followed this question by inquiring if her ex-husband had given the jacket to her as a present. This question following the one that had already been answered was especially ineffective because it looked as though the defendant was throwing out scenarios to cast doubt on the witness. The defendant’s inquiries regarding why she did not see the jacket the night she arrived seemed reasonable and relevant. If the victim’s house had been vandalized, it might be expected that she would do a complete

search. Because of this doubt cast by the defendant, it was important that the prosecutor address this issue in the redirect. He effectively used the podium and court furnishings to project exactly where the coat had been and to show how it could have been easily overlooked. He also asked the victim about the hour and lighting when she arrived, showing that it might be very reasonable to miss a coat on the floor if one arrived home late at night and it was dark outside.

- A Florida ID of the victim was found on the defendant in his sock. This piece of evidence was referenced to later in the trial, but must have been authenticated earlier when it was presented. Assumably, it was the police report that authenticated this piece of evidence. It only came up briefly when the victim was being questioned by the defendant's attorney. She had commented that the picture on the ID was one that her ex-husband had favored. This evidence proved to be significant when the expert witness testified that in the practices of Santeria one will carry a picture of another in one's sock or shoe if they want to control that person or keep that person submissive. When this was established, it seemed very relevant that the prosecutor had included the picture in the evidence presented.

Demonstrative Evidence:

- As discussed under the real evidence above, the prosecutor used the podium and courtroom furnishings to demonstrate where exactly the coat was in the victim's room. The victim who found the coat authenticated this evidence. Seemingly an insignificant detail, the legitimacy of the victim's testimony was being questioned; thus it was important that the prosecutor clarify why the victim had not seen the coat the night she arrived in her apartment. When the podium was seen as the dresser and the victim showed exactly where the bed was, it seemed quite obvious why the tired victim would not have observed the jacket. This was the prosecutor's reasoning for presenting this evidence; thus he was effective in his demonstration.

When only a portion of the evidence was observed, it is impossible to determine whether every element of the charges was proven beyond a shadow of a doubt. The prosecutor,

holding the burden of proof, was very successful in the evidence that was observed. The facts were allowed to speak for themselves. He clarified points as needed, and did an excellent job of watching what evidence was allowed to be admitted. The defendant will have to present some pretty strong evidence to counter the case that has already been established.