

**HISTORY 320. 02: LAW & EVIDENCE**  
**SPRING 2024**

**Professor:** Professor Nicole A. Casciola  
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**Room:** **Mechanical Engineering Building, 224**  
**Time:** Monday and Wednesday, 10:00-11:20 a.m.  
**Office:** Cullimore 324  
**Office Hours:** I will be available for office hours on Mondays 11:30 a.m.-12:30 p.m. and by appointment.

**Course Description:**

In this course, we will consider the philosophical and technical question of what constitutes evidence in the US legal system. We will begin with origins- what was considered evidence in the early modern British system before the Enlightenment fundamentally reordered both government and science. After this brief introduction, we will then shift into a consideration of the American system where we will focus on the development of modern forensics, changing philosophies on justice, the evolving case law, and a survey of modern jurisprudence on evidence. What has the state allowed into consideration and why? How have scientific advances expanded or contracted allowable evidence? Who is able to present evidence and in what circumstances? What remedies are available when problems arise? How have individual jury members and the public at large wrestled with these changes? What values do these changes reflect? Prerequisites: HUM 102 with a grade of C or higher, and one History and Humanities GER 200 level course with a grade of C or higher.

**Required Texts:**

All texts are available for download via Canvas. **BRING ALL TEXTS TO CLASS (ON PAPER OR ELECTRONICALLY)** as you may need to refer to them during discussion or be asked to use them for class activities.

**Learning Outcomes:**

- a) Examine the origins of questions of evidence and justice in the American legal system and their effects on today's system.
- b) Master the major points of consensus and debates over constitutional protection against evidence obtained or presented improperly.
- c) Make written and oral arguments on evidence in the legal system.
- d) Demonstrate information literacy through the use of appropriate source material and original research and the ability to cite properly. To excel in this course, you are expected to be able to locate and use web AND library resources effectively and cite them correctly. The History Department librarian can be an excellent resource for you. The following assignments will gauge students' success with these learning outcomes. Students will be graded on a scale as follows:

- 1. 90-100 percent is an A;
- 2. 85-89 is a B +;
- 3. 80-84 is a B;

4. 75-79 is a C+;
5. 70-74 is a C;
6. 69-65 is a D,
7. 64 and below is an F.

- 1) Participation and careful reading of the assigned texts. This class will mix lecture and discussion. You will be graded on attendance and in addition, whether you actively participate in discussion. (150 points)
- 2) Quizzes. Three scheduled quizzes will be administered over the course of the semester on the material covered during that portion of the course. The quizzes are not cumulative. (100 each for 300 points; FEB. 23, MARCH 30, APR. 25)
- 3) 2–3-page short paper on the historical foundations of our modern understandings of law and evidence. (150 points; DUE FEB 16)
- 4) Group presentation. In pairs, you will present one of the assigned cases to the class. The presentation should include not only a summary of the case, but also some analysis of its background and the significance of the case to course questions and/or your life. (100 points)
- 5) 6–8-page brief. In this paper, you will be responsible for writing a brief on a recent US Supreme Court Case that you will select from options that I provide you. Your aim is to use legal research and reasoning to support one side of the case. (250 points) You will first turn in a proposal stating what case, which side, what sources, and what legal vantage point you will be using. (50 points; DUE APRIL 4) (final paper; DUE MAY 6)

a) Examine the origins of questions of evidence and justice in the American legal system and their effects on today's system.	Participation; Quizzes; Short paper; Presentation; Brief.
b) Master the major points of consensus and debates over constitutional protection against evidence obtained or presented improperly.	Participation; Quizzes; Presentation; Brief.
c) Make written and oral arguments on evidence in the legal system.	Participation; Quizzes; Short paper; Presentation; Brief.
d) Demonstrate information literacy through the use of appropriate source material and original research and the ability to cite properly.	Participation; Quizzes; Short Paper; Presentation; Brief.

## Week 1: Introductions

### Introductions

Orrin S. Kerr, "How to Read a Legal Opinion: A Guide for New Law Students," *Green Bag* 11 (2007), 51-63.

## **Week 2: The Origins of Evidence in Strange Places**

James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial*, chapter 4.

Orna Alyagon Darr, “Experiments in the Courtroom: Social Dynamics and Spectacles of Proof in Early Modern English Witch Trials,” *Law and Social Inquiry* (Winter 2014), 152-175.

## **Week 3: The Birth of Forensics**

Courtney Thompson, “A Propensity to Murder: Phrenology in Antebellum Medico-Legal Theory and Practice,” *Journal of the History of Medicine and Allied Sciences* 74, no. 4 (October 2019): 416-439.

Deborah Blum, *Poisoner’s Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Introduction and Chapter 1-2.

## **Week 4: Technological Advances and Evidence**

Blum, Deborah. *Poisoner’s Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Chapter 3-4.

Deborah Blum, *Poisoner’s Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Chapter 7.

## **Week 5: The Emergence of Standards for Evidence**

Deborah Blum, *Poisoner’s Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Chapter 10-11.

*Frye v. United States* (1923)

SHORT PAPER DUE

## **Week 6: The Daubert Trilogy**

*Daubert v. Merrell Dow Pharmaceuticals* (1993)

*General Electrical Co. v. Joiner* (1997)

*Kumho Tire Co. v. Carmichael* (1999)

Sir Arthur Conan Doyle, “The Adventure of the Speckled Band,” *The Adventures of Sherlock Holmes*.

QUIZ 1

## **Week 7: Relevancy, Unfair Prejudice, and Character Evidence**

*Knapp v. State* (2014)

*Huddleston v. US* (1988)

Roger C. Park and Richard D. Friedman, *Evidence: Case and Materials* (Thomson Reuters, 2013), 88-108.

## **Week 8: Hearsay**

Roger C. Park and Richard D. Friedman, *Evidence: Case and Materials* (Thomson Reuters, 2013), 197-207.

*Ohio v. Clark* (2015)

## **SPRING BREAK**

### **Week 9: Evolving Constitutional Limits to Evidence Collection**

*Olmstead v. United States* (1928)

*Riley v. California* (2014)

*Brady v. Maryland* (1963)

*Kyllo v. United States* (2001)

### **Week 10: Evidence Informed Criminal Justice**

Brandon L. Garrett, "Evidence-Informed Criminal Justice," 86 *The George Washington Law Review* (2018), 1490-1524.

Howard Kohn, "Karen Silkwood: The Case of the Activist's Death," *Rolling Stone*, January 13, 1977.

QUIZ 2

### **Week 11: Abuse and Bad Science Today**

Peter D. Barnett. *Ethics in Forensic Science: Professional Standards for the Practice of Criminalistics*, introduction, and chapter 2.

Paul C. Giannelli, "Forensic Science," *Journal of Law, Medicine, and Ethics* (Fall 2005), 310-319.

*In re. Investigation of the West Virginia State Police Crime Lab, Serology Division*, 438 S.E.2d 501 (1993).

Rebecca Trager, "Forensics in Crisis," *Chemistry World* (15 June 2018), <https://www.chemistryworld.com/features/forensics-in-crisis/3009117.article>

### **Week 12: Emerging Technology**

Kashmir Hill, "Imagine Being on Trial. With Exonerating Evidence Trapped on Your Phone," *The New York Times* (November 24, 2019), BU 1. <https://nyti.ms/3392wbT>

Peter A Cole, "DNA and the Criminal Justice System: The Technology of Justice," in *Fingerprint identification and the Criminal Justice System: Historical Lessons for the DNA Debate* (2004).

*Maryland v. King* (2013)

PROPOSAL DUE

### **Week 13: The Continuing Problem of Juries**

Jasanoff, Sheila. "The Eye of Everyman: Witnessing Data in the Simpson Trial," *Social Studies of Science*.

Tom R. Tyler, "Viewing CSI and the Threshold of Guilt: Managing Truth and Justice in Reality and Fiction," *Yale Law Journal* (March 2006), 1050-1085.

### **Week 14: Becoming Experts**

*Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009) *Bullcoming v. New Mexico*, 131 S. Ct. 62 (2010)

Michael Hall, "The Science of Murder," *Texas Monthly*  
<https://www.texasmonthly.com/articles/the-science-of-murder/>  
QUIZ 3

### **Week 15-16: Finals**

May 6: FINAL BRIEF DUE ON CANVAS

#### **Assignments**

**Participation:** Students are expected to participate actively in all class discussions and activities, to be respectful to the instructor and their fellow classmates, to arrive to class on time, and to stay focused on what is happening in our classroom, not on chatting or using digital devices. Further, participation will be assessed not just on quantity but also on quality. Quality participation demonstrates knowledge of the issues at hand, completion of that week's assignments, and a willingness to engage in critical assessment of course texts and lectures. The participation grade may also include short writing assignments done in class.

I encourage students to check in with me over the course of the semester regarding their class participation performance. Further, do not wait to contact me if you are falling behind or having trouble understanding course content. I am here to help!

#### **Course Policies**

##### **Attendance:**

Students are expected to attend all course meetings on time unless receiving prior authorization. Missing class will not only adversely affect your class participation grade, but there will be screenings in class that will only be offered during that class period so do your best to attend. If you miss class to attend an NJIT sponsored event, to observe a religious holiday, or due to a documented illness, those absences will be excused. For these absences to be counted as excused, you must receive permission from the instructor in advance or provide a doctor's note in the case of sickness.

##### **Classroom Conduct:**

In this course, we welcome intellectual inquiry and thoughtful discussion of difficult questions but hate speech and disrespectful comments will not be tolerated. We must come to class with an open mind, a willingness to learn, and fundamental respect for the humanity of each person in the room and the historical actors we discuss.

##### **Office hours/student appointments:**

My office hours will be on Mondays from 11:30 a.m.- 12:30 p.m. I am also available to meet by appointment. Feel free to send me an email to set up a meeting if you would like to talk or have any questions.

##### **Academic dishonesty:**

Students are expected to obey the NJIT honor code, and I will enforce this code to its fullest extent. The goal of this course is to evaluate your understanding of course materials and ability to express that understanding. Cheating, plagiarizing or otherwise violating the code of academic integrity not only breaks the trust between professor and student but keeps you from learning course content

and improving writing and critical thinking skills. I am here to help so if you are having trouble, do not cheat, ask me for help.

Please note that you are expected to complete the assignments, discussions, and modules for this course without the use of AI. Any responses provided, which are generated by AI will be deemed to be consistent with plagiarism, cheating and violative of the policies on Academic Dishonesty.

***“Academic Integrity is the cornerstone of higher education and is central to the ideals of this course and the university. Cheating is strictly prohibited and devalues the degree that you are working on. As a member of the NJIT community, it is your responsibility to protect your educational investment by knowing and following the academic code of integrity policy that is found at: <http://www5.njit.edu/policies/sites/policies/files/academic-integrity-code.pdf>.***

*Please note that it is my professional obligation and responsibility to report any academic misconduct to the Dean of Students Office. Any student found in violation of the code by cheating, plagiarizing, or using any online software inappropriately will result in disciplinary action. This may include a failing grade of F, and/or suspension or dismissal from the university. If you have any questions about the code of Academic Integrity, please contact the Dean of Students Office at [dos@njit.edu](mailto:dos@njit.edu)”*

For the tenets of the code or for clarification of what constitutes plagiarism or cheating, please consult: <http://www.njit.edu/academics/honorcode.php>.

Generally speaking, it is a violation of the academic integrity code to:

- Use someone else’s words or ideas without attribution
- Copy content from someone else’s paper, quiz, or exam
- Pay for course assignments to be complete by someone else

#### Cell phones:

Students must turn off and stow their cell phones before class begins. Under no circumstances may students answer their phones, make calls, send text messages, or use their cell phone in any manner during class hours unless approved by me before class begins. If I see a student using a cell phone in class, I will at minimum mark that student absent for the class and reserve the right to ask the student to leave for the remainder of the class. I do not want to interrupt class to ask you to stop texting. It interrupts the flow of discussion, distracts other students, and will inevitably embarrass the texter. I understand that cell phones have become central to many of our lives, but their use in class is a distraction for not just the user but others in class.

#### Laptops and miscellaneous technology rules:

Students may use laptops in this course for class-related activities only. Essentially, you are in class approximately 3 hours a week. Please be present and prepared when you are here. If you would rather text or surf the internet, please do not come to class.

#### Students Requiring Accommodations:

Students who require accommodations should contact NJIT's Student Disability Services to help procure accommodations in completing coursework. The center can be found at <http://www.njit.edu/counseling/services/disabilities.php>.