

HISTORY 320.101: LAW & EVIDENCE

Fall 2025

Professor: Professor John Flynn
Email: john.flynn@njit.edu
Room: Cullimore Lecture Hall 2
Time: Mondays, 6:00-8:50 p.m.
Office: Cullimore 321
Office Hours: I will be available for office hours on Mondays from 5:00-5:45 p.m. and 9:00 to 9:30 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 and American systems. After this brief introduction, we will consider the modern American system with a survey of essential case law on evidence and scholarly sources on the development of modern forensic 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: ENGL 102 with a grade C or higher and a course fulfilling the History and Humanities GER 200 level course with a grade of C or higher

REQUIRED TEXTS

All texts are available for download on Canvas. **Please bring all texts to class, either on paper or electronically**, as you may need to refer to them during discussion or be asked to use them for class activities. I will also post PowerPoint presentations that will be used during each class about 15 minutes prior to the start of class.

For case law (legal opinions from courts) listed on the syllabus, please be sure to use the versions posted on Canvas. I have abridged some of the opinions to make them more accessible for this course.

LEARNING OUTCOMES

- a) Examine the origins of questions of evidence and justice in the American legal system
- b) Study case law on constitutional principles and rules of evidence
- c) Develop written and oral arguments on evidential issues
- d) Analyze current examples of the use of evidence in legal proceedings, including the use of forensic evidence
- e) Demonstrate information literacy by using appropriate source material and original research and the ability to cite properly.

COURSE POLICIES

Syllabus Updates: It is likely that I will update the syllabus during the semester. I will notify

students of updates to the syllabus by email and post only the most recently updated syllabus on Canvas. The header of the syllabus will indicate the date the syllabus was last updated. Students are responsible for ensuring they are referring to the updated syllabus.

Attendance: Students are expected to attend all course meetings on time, unless they have received prior authorization or are absent due to illness. 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. 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 count as excused, you must receive permission from the instructor in advance, receive authorization from the Dean of Students for an unexpected absence, or otherwise notify the instructor of unexpected circumstances.

Per NJIT policy, students must notify their instructors in writing of any conflicts between course requirements and religious observances, ideally by the end of the second week of classes and no later than two weeks before the anticipated absence.

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.

Technology Use: Students may use laptops in this course for class-related activities. Please do not distract yourself during class by using your cellphone or laptop for unrelated activities.

Eating and Drinking in Class: Because this is a long, evening course, students are permitted to eat and drink during class. I will also provide a 20-minute break in the middle of class.

Office hours/student appointments: I will be available for office hours on Mondays 5:00-5:45 p.m. and 9:00 to 9:30 p.m., and by appointment. Please feel free to email me to set up a meeting or to ask a question regarding the course.

Student Alerts: If a student is regularly failing to attend and participate in class or performs very poorly on the group assignment or first test, I may issue an “Alert” to notify the student’s academic instructor. Alerts are intended to identify issues when the student still has time to improve their grade in the course.

Students Requiring Accommodations: Students who need academic accommodations in connection with a disability must initiate the request with NJIT Office of Accessibility and Resources (OARS). Students need to register with the Office of Accessibility in order to officially disclose their disability status to the College and to determine eligibility for appropriate reasonable accommodations (including any prior IEPs or 504s). Please contact OARS at the start of the semester (or as soon as possible) to coordinate any accommodation requests: <https://www.njit.edu/accessibility/> Room 201 (Kupfrian Hall) or email OARS@NJIT.EDU.

Extenuating Circumstance & Other Situations: When a student invokes extenuating circumstances for any reason (late withdrawal from a course, request for a make-up exam, request for an incomplete grade, request for accommodation due to illness, etc.), I am required to refer the student to the Office of the Dean of Students. The Dean of Students will make the determination of

whether extenuating circumstances exist and will notify the instructor accordingly. I cannot accept medical or other documents from students; all documents should be submitted by the student to the Office of the Dean of Students.

Academic Integrity Policy: 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 Office of the Dean of Students. 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 Office of the Dean of Students at dos@njit.edu.

AI Usage Policy. This course expects students to work without generative artificial intelligence (AI) assistance to better develop their critical thinking and writing skills. **Therefore, you are not permitted to use AI to generate content for your group case presentation or when writing your final brief. In short, all written assignments must be your own and not generated by AI.**

Students are discouraged, but not strictly prohibited, from using AI during the two open-book tests. As described in the “Grading and Assignments” section below, the questions on the tests will require students to demonstrate careful consideration of concepts discussed during the course and to cite or quote specific pages of the course texts. As such, these questions are designed to be difficult to answer correctly and adequately using AI. Moreover, although AI can sometimes assist in researching legal topics, publicly available AI is often unreliable in providing accurate legal analysis.

GRADING AND ASSIGNMENTS

Students will be graded on the following scale, without any curve:

90–100% = A

85–89% = B+

80–84% = B

75–79% = C+

70–74% = C

65–69% = D

64% and below = F

Students will be graded in the following assignments:

1. Participation and careful reading of the assigned texts (150 points)

This class will include lecture and discussion. You will be graded on whether you actively

participate in discussion. 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. 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 reading 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.

If you are not actively participating in class and are at risk of receiving a poor participation grade, I will email you to encourage you to participate in class more or to meet with me to discuss any problems that may be preventing you from participating more fully. I also encourage all students to check in with me over the course of the semester regarding their class participation performance, or if you are falling behind or having trouble understanding course content.

2. Group Presentations during classes from September 29 to October 20 (150 points)

In pairs of two, 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 or society in general. Presentations should be about 10-15 minutes long. You are encouraged to use a PowerPoint or Prezi as part of your presentation. A sign-up sheet for case assignments and a rubric for the assignment will be posted on Canvas on September 15. **All students must sign up for a case by September 22.** On September 22, as a demonstration for your presentations, I will present the first four assigned cases.

3. Test #1, October 27 (200 Points)

This test will cover course materials from September 8 through October 20. The test must be taken in-person in class on October 27 unless the student receives authorization for a make-up test. The test is open-book and will be completed on a computer or tablet. You are permitted to use the Internet during the test. The format of the test, however, will require you to engage closely with course materials. Therefore, you should make sure you have all course materials easily accessible on your device or printed out.

The test will include open-ended questions of varying lengths, which may require between a sentence and several paragraphs of response. The test will assess your understanding of the historical sources, case law, and rules of evidence covered in this portion of the course. It will also require you to apply and analyze legal principles discussed in this case law. Some questions will require you to cite or quote specific portions of the course texts. The test should take about 90 minutes to complete, but you will have the entire class period, until 8:50 p.m., to complete the test.

4. Test #2, December 3 (200 Points)

This test will cover course materials from November 3 through November 24. It will be same open-book format as Test #1, and all the same rules apply. The test will assess your understanding of the aspects of forensic science in the legal system covered in this portion of the

course. The test should take about 90 minutes to complete, but you will have the entire class period, until 8:50 p.m., to complete the test.

5. 6–8-Page Final Brief. (300 Points Total)

- A. A proposal is due on Canvas by 11:00 p.m. on Tuesday, November 25 (50 Points).**
- B. The final brief is due on Canvas by 11:00 p.m. on Friday, December 12 (250 points).**

In this paper, you will be responsible for writing a modified legal brief based on a real case, which I will provide you with. The prompt and the rubric for this assignment, as well as a sample brief addressing a different case, will be posted on Canvas on November 3. Your task is to write a brief advocating for one of the parties regarding whether specific evidence should be admitted. This assignment does not require you to write a full, formal legal brief. Instead, you will rely on rules of evidence and legal opinions we have covered in class to demonstrate your ability to employ legal reasoning to address specific issues.

You will also be required to cite two secondary sources (i.e., not legal opinions) that are relevant to your arguments on the issues presented in this case. One secondary source may be a source contained on the course syllabus, but at least one secondary source must be uncovered by your own outside research. Overall, I will grade on whether you fulfill each of the assignment's specific requirements and demonstrate an understanding of legal principles we have covered in class.

A short proposal, 1-2 paragraphs in length, is due on Canvas by 11:00 p.m. on Tuesday, November 25. The proposal should mention which side you have chosen and what two secondary sources you plan to use. **(50 points)**

The final brief is due on Canvas by 11:00 p.m. on Friday, December 12. The final brief should be 6-8 pages, double-spaced, in Times New Roman Font. 25 points (10 % of the total grade for the brief) will be deducted per day for each day that the brief is late. Because final grades are due on December 22, I will not be able to accept the paper after 11:00 p.m. on December 21 and will be forced to assign a "0" for any papers that are not received by that time. **(250 points).**

6. Extra Credit Assignment (15 points)

During the final class period on December 8, I will screen portions of the documentary *The Staircase*. For up to 15 points of extra credit (out of the course total of 1000), you may write 2-3 paragraphs about how aspects of the crime scene investigation, prosecution strategy, defense strategy, or other aspects of the case are related to concepts we discussed in class. I encourage you to write these 2-3 paragraphs during class or right after class (which will end early) and to submit them right away. **This extra credit assignment is due, at the latest, by 11:00 p.m. on Tuesday, December 9.**

COURSE SCHEDULE

September 8: Introduction

- Introductions
- Syllabus Review, including sample test questions
- American Bar Association, “The American Legal System Made Easy,” *American Law* 101, 11-23
- Cornell Legal Information Institute, Introduction to Federal Rules of Evidence (2 pages)
- Orrin S. Kerr, “How to Read a Legal Opinion: A Guide for New Law Students,” *Green Bag* 11 (2007), 51-63.
- **Verification of Attendance Assignment Due on Canvas by September 13**

September 15: The Origins of Evidence in the Legal System

- 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. (***You should skip over the footnotes in this article)
- John H. Langbein, “The Historical Foundations of the Law of Evidence: A View from the Ryder Source,” 96 *Columbia Law Review* (June 1996), 1168-1202 (***You should skip over the footnotes in this article)
- Thomas P. Gallanis, “Reasonable Doubt and the History of the Criminal Trial,” 76 *University of Chicago Law Review* (Vol. 76 2009), 941-949
- **Sign-up Sheet and Rubric for Case Presentations Posted on Canvas**

September 22: Introduction to Case Law on Admissibility of Evidence

- *Katz v. United States* (1967)
- *Frye v. United States* (1923)
- *Brady v. Maryland* (1963)
- Federal Rules of Evidence 401-404
- Roger C. Park and Richard D. Friedman, *Evidence: Case and Materials* (Thomson Reuters, 2013), 197-207
- *Crawford v. Washington* (2004)
- **All students must be signed up for a case presentation on Canvas by this date.**

September 29: Constitutional Limits on Evidence Collection (Week #1 of Presentations)

- *Kyllo v. United States* (2001)
- *Jones v. United States* (2012)
- *Riley v. California* (2014)
- *Carpenter v. United States* (2017)
- *State v. Henderson* (N.J. Supreme Court 2011) ***This will not be a student presentation. I will present this case. Prior to class, please read the “Introduction” and “Legal Conclusions” sections of the opinion. You may skim the rest of the opinion.

October 6: Relevancy, Unfair Prejudice, Character Evidence, and the *Brady* Rule (Week #2 of Presentations)

- *Old Chief v. U.S.*, 519 U.S. 172 (1997)
 - *Kyles v. Whitley* (1995)
 - *State ex rel. Robinson v. Vannoy* (Supreme Court of Louisiana 2024)
 - *Huddleston v. US* (1988) and *State v. Williams* (Supreme Court of New Jersey 2019)
- ***One pair of students will present on both of these cases because the opinions are much shorter than the other opinions.

October 13: Hearsay and the Confrontation Clause (Week #3 of Presentations)

- *Ohio v. Clark* (2015)
- *Melendez-Diaz v. Massachusetts* (2009)
- *Bullcoming v. New Mexico* (2011)
- *Smith v. Arizona* (2024)
- *Federal Rules of Evidence* 701-704, Tables of Contents to Article VIII (FRE 801-807)

October 20: The Daubert Trilogy and Rules on Expert Evidence (Week #4 of Presentations)

- *Daubert v. Merrell Dow Pharmaceuticals* (1993)
- *General Electrical Co. v. Joiner* (1997)
- *Kumho Tire Co. v. Carmichael* (1999)
- *Diaz v. United States* (2024)
- Thomas D Albright, “A scientist’s take on scientific evidence in the courtroom,” 120 *PNAS* 41 (2023)
- **During the second portion of this class, I will field questions on subjects covered on Test #1.**

October 27: TEST #1

- As detailed above in the “Grading and Assignments” section of the syllabus, this test will cover course materials from September 8 through October 20. The test should take about 90 minutes to complete, but you will have the entire class period, until 8:50 p.m., to complete the test.

November 3: Introduction to Forensic Science in the Criminal Justice System

- Review of Test #1
- General Principles for Forensic Evidence,” Principles of the Law, Policing § 9.01
- Carrie Leonetti, “The History of Forensic-Science Evidence in Criminal Trials and the Role of Early “Success” in Establishing Its Putative Reliability,” 54 *St. Mary’s Law Journal* 1061 (2023), 1061-1094
- *Maryland v. King* (2013)
- FBI’s Combined DNA Index System (CODIS) Overview
- 34 U.S.C. § 12591 to 12593
- New Jersey DNA Database and Databank Act, N.J.S.A. 53:1-20.17 to 53.1-20.27
- FBI CODIS Statistics, February 2024
- **The prompt for final brief, the rubric, and a sample brief will be posted on Canvas. I will introduce the final brief assignment during this class.**

November 10: Challenges with Forensics in the Justice System

- Erin Murphy, “Forensic Evidence, Chapter 3 in Reforming Criminal Justice (Erik Luna, ed., Academy for Justice, 2017), 171-192
- James M. Anderson et al., “The Unrealized Promise of Forensic Science – A Study of its Production and Use,” 26 *Berkeley Journal of Criminal Law* 121 (2021), 1-44

November 17: Holding the Government Accountable When Science is Used in the Courtroom

- M. Chris Fabricant & Tucker Carrington, “The Shifted Paradigm: Forensic Science’s Overdue Evolution from Magic to Law,” 4 *Virginia Journal of Criminal Law* 1 (2016), 1-36, 93-112 ***Note, you do not have to read pages 37-92.
- Rebecca Trager, “Forensics in Crisis,” Chemistry World (June 15, 2018)
- “The Impact of False or Misleading Forensic Evidence on Wrongful Convictions,” National Institute of Justice (November 28, 2023)
- Justice Sotomayor’s Statement in *McCrary v. Alabama* (2024)
- “Forensics Team from NJIT Uses Cellphone Location Data to Help Free Wrongly Accused” (NJIT Online 2025)
- “How an NJIT Forensic Team Helped Exonerate Two Men Wrongfully Imprisoned for Murder” (NJIT Online 2023)

November 24: The Continuing Problem of Juries

- Jasanoff, Sheila. “The Eye of Everyman: Witnessing Data in the Simpson Trial,” *Social Studies of Science* (October-December 1998), 713-740
- Gordon Eatley et al, “A Meta-Analysis of the CSI Effect: The Impact of Popular Media on Jurors’ Perception of Forensic Evidence” 5 *Politics, Bureaucracy & Justice* 2 (2016), 1-10
- William C. Thompson, “How Should Forensic Scientists Present Source Conclusions?” 48 *Seton Hall Law Review* 773 (2018), 1-29
- **FINAL BRIEF PROPOSAL DUE ON CANVAS BY 11:00 P.M. ON TUESDAY, NOVEMBER 25**

December 1: TEST # 2

- As detailed above in the “Grading and Assignments” section of the syllabus, this test will cover course materials from November 3 through November 24. The test should take about 90 minutes to complete, but you will have the entire class period, until 8:50 p.m., to complete the test.

December 8: Extra Credit Assignment on *The Staircase*

- Review of Test #2
- During this class, I will screen portions of the documentary *The Staircase*. For up to 15 points of extra credit (out of the course total of 1000), you may write 2-3 paragraphs about how aspects of the crime scene investigation, prosecution strategy, defense strategy, or other aspects of the case are related to concepts we discussed in class. I encourage you to write these 2-3 paragraphs during class or right after class (which will end early) and to submit them right away. **This extra credit assignment is due, at the latest, by 11:00 p.m. on Tuesday, December 9.**
- **FINAL BRIEF DUE ON CANVAS BY 11:00 P.M. ON FRIDAY, DECEMBER 12**