History Syllabi   NJIT Syllabi

Fall 2024

HIST 320-101: Law & Evidence , Fall 2024

John Flynn

HISTORY 320.101: LAW & EVIDENCE
Fall 2024

Professor: Professor John Flynn
Email: john.flynn@njit.edu
Room: CKB 314
Time: Mondays, 6:00-8:50 p.m.
Office: Cullimore 321
Office Hours: I will be available for office hours on Mondays from 5:15-5:45 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 system, before the Enlightenment fundamentally reordered both government and science. After this brief introduction, we will consider the American system and 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 courses 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.

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.

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.

GRADING AND ASSIGNMENTS

90-100 percent is an A;

85-89 is a B +;

80-84 is a B;

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

Students will be graded in the following areas and 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 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. I am here to help!

2. **2-3-Page Short Paper, due on Canvas on Thursday, October 17 by 11:00 p.m. (150 points)**

   This short paper should address the historical foundations of our modern understandings of law and evidence. Specifically, citing to at least two of the assigned texts covered thus far in the course and at least one source that you uncover with your own research, your paper should analyze how a historical foundation of evidence influenced an aspect of our modern understanding of evidence. Outside sources may include scholarly articles from any relevant discipline or news articles about relevant legal events. **(150 points)**

3. **Quizzes (2 Quizzes for 150 points each, 300 total)**

   Two 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. The quizzes are closed-book and will include multiple-choice questions and short answer questions, which will require up to a few paragraphs as a response. Each quiz is worth 150 points.

   1) **November 4** – covering materials from September 30 through October 28 **(150 points)**

   2) **December 2 –** covering materials from November 4 through November 25 (**150 points)**

   If you are unable to attend a quiz due to an unexpected illness, please reach out to me so that we can schedule a make-up exam.

4. **Group Presentations during classes from October 14 to November 4 (100 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 will be posted on Canvas on September 16. **All students must sign up for a case by September 23**. On September 23, as a demonstration for your presentations, I will present the first four assigned cases.

5. **6–8-Page brief. A proposal is due on Canvas by 11:00 p.m. on November 26 (50 Points). The final brief is due on Canvas by 11:00 p.m. on December 11 (250 points).**

   In this paper, you will be responsible for writing a brief on a hypothetical case, which you will choose from two case options that I provide you. The hypothetical cases will be derived from actual cases. The case options and a sample brief will be provided on November 4.

   Your aim is to use legal research and reasoning to support one side of the case. You will first turn in a short proposal (maximum length one page) stating what case, which side, what sources, and what legal vantage point you will be using. Sources must include at least one case and one other text we have discussed in this course. You should also include outside sources,

which can include scholarly articles from any relevant discipline, news articles about relevant legal events, or judicial opinions from cases that we have not covered in this course.

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 skills as it relates to the historical foundations of evidence and our modern understanding of evidence. **Therefore, you are not permitted to use generative AI when writing either your short paper and your final brief. Likewise, you are not permitted to use generative AI to generate content for your PowerPoint or Prezi for your group case presentation.** In short, all written assignments must be your own and not generated by AI.

Students are also discouraged from using generative AI to assist in studying for the quizzes and in preparing for classroom discussions. Although AI can sometimes assist in researching legal topics, publicly available AI is often unreliable in providing accurate legal analysis.

COURSE POLICIES

Attendance: Students are expected to attend all course meetings on time unless receiving prior authorization or 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 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 count as excused, you must receive permission from the instructor in advance or notify the instructor of an unexpected illness.

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.

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 at least two ten-minute breaks during class.

Office hours/student appointments: I will be available for office hours on Mondays 5:15-5:45 p.m. and 9:00 to 9:30 p.m. and by appointment. Please feel free to email to me to set up a meeting or to ask a question regarding the course.

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

COURSE SCHEDULE

September 9: Introduction
- Introductions and Syllabus Review
- 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 14**

September 16: The Origins of Evidence in Strange Places
- James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial*, chapter 4, 91-124
- 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.
- 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
- **Sign-up Sheet for Case Presentations Posted on Canvas**

September 23: The Birth of Modern American Evidence and Forensics
- Edward J. Imwinkelried, "A New Era in the Evolution of Scientific Evidence - A Primer on Evaluating the Weight of Scientific Evidence," 23 *William & Mary Law Review* 2 (1981-82), 261-290
- 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
- **All students must be signed up for a case presentation on Canvas by this date.**

September 30: 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)

- **SHORT PAPER DUE ON CANVAS BY THURSDAY, OCTOBER 4 AT 11:00 P.M.**

October 7: 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.

October 14: Relevancy, Unfair Prejudice, Character Evidence, and the *Brady* Rule (Week #2 of Presentations)
- *Old Chief v. U.S.*, 519 U.S. 172 (1997)
- *State v. Williams* (Supreme Court of New Jersey 2019) and *Huddleston v. US* (1988)*** One pair will present both of these cases because the opinions are shorter than the other opinions.
- *Kyles v. Whitley* (1995)
- *State ex rel. Robinson v. Vannoy* (Supreme Court of Louisiana 2024)

October 21: 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 28: The Daubert Trilogy and Expert Evidence (Week #4 of Presentations)
- Thomas D Albright, "A scientist's take on scientific evidence in the courtroom," 120 *PNAS* 41 (2023)
- *Daubert v. Merrell Dow Pharmaceuticals* (1993)
- *General Electrical Co. v. Joiner* (1997)
- *Kumho Tire Co. v. Carmichael* (1999)
- *State v. Cotto*, (New Jersey Appellate Division 2022)
- Brandon L. Garrett and M. Chris Fabricant, "The Phillip D. Reed Lecture Series Advisory Committee on Evidence Rules: The Myth of the Reliability Test" 86 *Fordham Law Review* 1559 (2018), 1559-1599

November 4: QUIZ #1 and Introduction to DNA Evidence
- **QUIZ #1:** The quiz will span about the first 90 minutes of class. Then, after a break, I will cover *Maryland v. King* and the other DNA-related materials listed below. To allow you to study for the quiz, you are not required to read *King* or the other materials prior to this class, but you should read these materials at some point before the final quiz.
- *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 two prompts for final brief, a sample brief, and a rubric will be posted on Canvas. I will introduce the final assignment during this class.

November 11: Introduction to Forensic Science in the Criminal Justice System
- "General Principles for Forensic Evidence," *Principles of the Law, Policing* § 9.01
- 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
- Kashmir Hill, "Imagine Being on Trial. With Exonerating Evidence Trapped on Your Phone," *The New York Times* (November 24, 2019)
- Erin Murphy, "Forensic Evidence, Chapter 3 in *Reforming Criminal Justice* (Erik Luna, ed., Academy for Justice, 2017), 171-192

November 18: 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 *McCrory v. Alabama* (2024)
- **Guest speaker: Tamar Lerer, Deputy, Forensic Science Unit, New Jersey Office of the Public Defender.**

November 25: 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 Conlusions?"48 *Seton Hall Law Review* 773 (2018), 1-29

- **FINAL BRIEF PROPOSAL DUE ON CANVAS BY 11:00 P.M. ON TUESDAY, NOVEMBER 26**

December 2: Quiz # 2

- **QUIZ #2.** The quiz will span about 90 minutes. Afterwards, I will be available for office hours for students who wish to discuss their final briefs.

December 9: Crash Course on Direct and Cross-Examination

- Selected excerpts from Thomas A. Mauet, *Fundamentals of Trial Techniques*

- **FINAL BRIEF DUE ON CANVAS BY 11:00 P.M. ON THURSDAY, DECEMBER 12**