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Spring 2020

## HIST 320-002: Law and Evidence (Revised for Remote Learning)

Alison Lefkovitz

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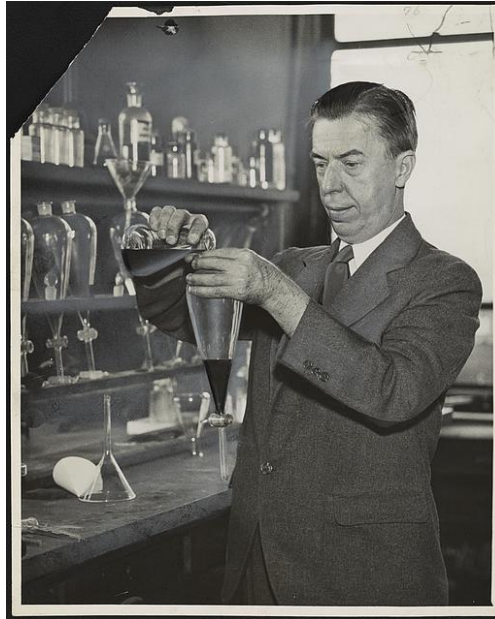
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# HIST 320: Law & Evidence

Dr. Alison Lefkowitz  
Spring 2020



Tuesday & Thursdays, 11:30-12:50pm  
CKB 226  
alefkovi@njit.edu

Office Hours: TR 10:00-12:00 am and  
by appointment, Cullimore 327

This course considers 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 had fundamentally reordered both government and science. We will then shift into a consideration of the American system, philosophy on justice, and a survey of modern jurisprudence on evidence. What has the state allowed into consideration? How have scientific advances expanded or contracted allowable evidence? How have individual juries and the public at large wrestled with these changes? Prerequisites: Hum 101, Hum 102 and one from among Hum 211, Hum 212, and Hum 213 or their equivalents with a grade C or better.

## **Code of Conduct:**

--Though I hope we disagree on many different issues, I expect you to treat the class, your fellow students, and me with respect at all times.

-- *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)*

**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. Davida Scharf is an expert researcher and our librarian for the History Department. She has prepared online research guides that you may find useful. She is available for help during her office hours, or by appointment. Her contact information, calendar, and research guides are available here: <http://researchguides.njit.edu/scharf>. Please take advantage of her expertise.

The following assignments will gauge students' success with these learning outcomes. Students will be graded on a scale where 100-90 percent is an A; 89.9-80 is a B; 79.9-70 is a C; 69.9-60 is a D; and 59.9 and below is an F.

- 1) Participation, careful reading of the assigned texts, and pop quizzes if necessary. This class will mix lecture and discussion. You will be graded on whether you actively participate in discussion. (150 points)
- 2) Midterm. A midterm will be administered over the course of the semester on the material covered during that portion of the course. (100 points; FEB 25)
- 3) Forum posts. Four forum posts reflecting on the readings of the week and the posted lectures over the course of the semester. (200 points)
- 4) 2-3 page short paper on the historical foundations of our modern understandings of law and evidence. I will deduct points for late papers. You also must turn late papers in online **and** as a hard copy. (150 points; DUE FEB 13)
- 5) 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. You should use PPT or Prezi for the presentation. (100 points)
- 6) 5-6 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 I provide

you. Your aim is to use legal research and reasoning to support one side of the case. (300 points)

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

Jan. 21: Introductions

Jan. 23: Orrin S. Kerr, "How to Read a Legal Opinion: A Guide for New Law Students," *Green Bag* 11 (2007), 51-63.

The Federal Rules of Evidence, Introduction and Articles I, II, and III:

<https://www.rulesofevidence.org/>

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

Jan. 28: James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial*, chapter 4.

Jan. 30: 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

Feb 4: Deborah Blum, *Poisoner's Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Introduction and Chapter 1-2.

Feb 6: Blum, Deborah. *Poisoner's Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Chapter 3-4.

#### Week 4: Technological Advances and Evidence

Feb 11: Deborah Blum, *Poisoner's Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Chapter 7.

*Frye v. United States* (1923)

Feb 13: Deborah Blum, *Poisoner's Handbook: Murder and the Birth of Forensic Medicine in Jazz Age New York*. Chapter 10-11.  
*People v. Collins* (1968)  
SHORT PAPER DUE

Week 5: The Daubert Trilogy

Feb 18: Federal Rules of Evidence, Article VII  
Paul C. Giannelli, "Forensic Science," *Journal of Law, Medicine, and Ethics* (Fall 2005), 310-319.

*Daubert v. Merrell Dow Pharmaceuticals* (1993)

Feb 21: *General Electrical Co. v. Joiner* (1997)

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

Week 6: Unfair Prejudice and Character Evidence

Feb 25: MIDTERM

Feb 27: Federal Rules of Evidence, Article IV

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

*Huddleston v. US* (1988)

Week 7: Relevancy and Privileges

March 3: Federal Rules of Evidence, Article V and VI

*Knapp v. State* (2014)

March 5: Honorable Marion Blank Horn, "A Trial Judge's Perspective—Promoting Justice and Fairness While Protecting Privilege," *Fordham Urban Law Journal* 26 (1999), 1429-1456.

Week 8: Evolving Constitutional Limits to Evidence Collection

March 10: *Olmstead v. United States* (1928)

*Riley v. California* (2014)

March 12: *Brady v. Maryland* (1963)

*Kyllo v. United States* (2001)

SPRING BREAK

Week 9: Hearsay

March 24: Federal Rules of Evidence, Article VIII

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

March 26: *Ohio v. Clark* (2015)

Week 10: The Search for Truth and Justice

March 30: Review

Apr 2: Susan Haack, *Evidence Matters: Science, Proof, and Truth*. Chapter 2.

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

Week 11: Abuse and Bad Science Today

Apr 7: *In re. Investigation of the West Virginia State Police Crime Lab, Serology Division*, 438 S.E.2d 501 (1993).

Apr 9: 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>

Rebecca Trager, "Forensics in Crisis," *Chemistry World* (15 June 2018),

<https://www.chemistryworld.com/features/forensics-in-crisis/3009117.article>

Week 12: Ethics and Procedures Today

Apr 14: Peter D. Barnett. *Ethics in Forensic Science: Professional Standards for the Practice of Criminalistics*, introduction and chapter 2.

Apr 16: Federal Rules of Evidence Rule 702

Barry Scheck, Peter Neufield, and Jim Dwyer, *Actual Innocence: When Justice Goes Wrong and How to Make it Right*, chapter 7.

Week 13: The Continuing Problem of Juries

Apr 21: Jasanoff, Sheila. "The Eye of Everyman: Witnessing Data in the Simpson Trial," *Social Studies of Science*.

Apr 23: 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: Living Law on Law and Evidence

Apr 28: *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009)

*Bullcoming v. New Mexico*, 131 S. Ct. 62 (2010)

*Maryland v. King* (2013)

Apr 30: Review

Week 15: Presentations

May 5: Poster Presentations

May 12: FINAL BRIEF DUE ON MOODLE