

Jennifer Lackey  
Fall Semester/Fall Quarter, 2022  
M, 4:10-6:00 PM  
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Office Hours: M, 2:00-4:00 PM  
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## **PHIL 410/LAWSTUDY 511 LEGAL EPISTEMOLOGY**

### ***Course Description:***

In this course, we will examine central issues that arise in evaluating the probative force of evidence in criminal law, especially when it involves an assessment of the credibility of participants in judicial proceedings. Topics to be discussed include the legal concept of evidence, character evidence, confession evidence, eyewitness testimony, race, gender, and the law, plea deals, the beyond a reasonable doubt standard, alternative approaches to legal evidence and proof, punishment, and remorse. The course will be run as a seminar.

### ***Required Work:***

Students are required to write two papers during the course of the semester/quarter. Students may choose their own topics for these papers, but they must be on the topics assigned for this course and draw upon some of the readings on the syllabus. The first is a paper of at least 1,250 words, including footnotes, on any one set of readings from the weekly topics. For instance, it may be on character evidence, or eyewitness testimony, and so on. This paper must be submitted via Canvas prior to the start of class on the day the readings are due. The second paper, which can build on the first one, needs to be at least 7,000 words, including footnotes. A full draft of the second paper will be the basis for an in-class presentation and must be submitted to the professor for feedback. A final version of the second paper, which needs to be revised based on the feedback received, is due at the end of the semester/quarter. The final grade for the course will be determined as follows:

- Class discussion and seminar leader presentations, worth 10% of the final grade.
- One 1,250-word paper, worth 20% of the final grade.
- One draft and presentation of 7,000-word paper, worth 30% of the final grade.
- One final 7,000-word paper, worth 40% of the final grade.

### ***Seminar Leaders:***

Each week, I will ask students to be seminar leaders for the required readings. Since there are 2–3 required readings each week, there will be 2–3 seminar leaders. This will involve providing a brief summary of the article and having a few prepared questions to generate and/or facilitate discussion.

### ***Students with Disabilities:***

Any student requesting accommodations related to a disability or other condition is required to register with [AccessibleNU](mailto:accessiblenu@northwestern.edu) (accessiblenu@northwestern.edu; 847-467-5530) and provide professors with an accommodation notification from AccessibleNU, preferably within the first two weeks of class. All information will remain confidential.

## ***Schedule of Readings and Assignments* (\*=RECOMMENDED READING)**

### **08/29 INTRODUCTION**

- Goldman, Alvin. 1999. "Law," Chapter 9 of *Knowledge in a Social World*. Oxford: Oxford University Press.
- Ho, Hock Lai. 2015. "The Legal Concept of Evidence" in Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*.

### **09/05 No class**

### **09/12 CHARACTER EVIDENCE**

- Anderson, Barrett J. 2012. "Recognizing Character: A New Perspective on Character Evidence." *Yale Law Journal* 121: 1912–1968.
- Orenstein, Aviva. 1998. "No Bad Men! A Feminist Analysis of Character Evidence in Rape Trials." *Hastings Law Journal* 49: 663–716.
- Laudan, Larry and Ronald J. Allen. 2011. "The Devastating Impact of Prior Crimes Evidence and Other Myths of the Criminal Justice Process." *The Journal of Criminal Law and Criminology* 101: 493–528.

### **09/19 CONFESSION EVIDENCE**

- Fricker, Miranda. 2007. "Testimonial Injustice" and "Prejudice in the Credibility Economy," Chapters 1 and 2 of *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press.
- Kassin, Saul M., Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo, and Allison D. Redlich. 2010. "Police-Induced Confessions: Risk Factors and Recommendations." *Law and Human Behavior* 34: 3–38.
- Lackey, Jennifer. Forthcoming. "False Confessions and Testimonial Injustice," Chapter 2 of *Criminal Testimonial Injustice*. Oxford: Oxford University Press.

### **09/26 EYEWITNESS TESTIMONY**

- Armbrust, Shawn. 2008. "Reevaluating Recanting Witnesses: Why the Red-Headed Stepchild of New Evidence Deserves Another Look." *Boston College Third World Law Journal* 28: 75–104.
- Lackey, Jennifer. Forthcoming. "Eyewitness Testimony and Epistemic Agency," Chapter 3 of *Criminal Testimonial Injustice*. Oxford: Oxford University Press.
- Loney, Danielle M. and Brian L. Cutler. 2016. "Coercive Interrogation of Eyewitnesses Can Produce False Accusations." *Journal of Police and Criminal Psychology* 31: 29–36.

### **10/03 RACE AND THE LAW**

- Carlin, Amanda. 2016. "The Courtroom as White Space: Racial Performance as Noncredibility." *UCLA Law Review* 63: 452–484.

- Gonzales Rose, Jasmine B. 2016. "Toward a Critical Race Theory of Evidence." *Minnesota Law Review* 101: 2243–2311.
- \*Mills, Charles. "White Ignorance," in Shannon Sullivan and Nancy Tuana (eds.), *Race and Epistemologies of Ignorance*. Albany, NY: SUNY Press: 13–38.

#### 10/10 GENDER AND THE LAW

- Crenshaw, Kimberle. 1989. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." *University of Chicago Legal Forum* 1989: 139–167.
- Tuerkheimer, Deborah. 2017. "Incredible Women: Sexual Violence and the Credibility Discount." *University of Pennsylvania Law Review* 166: 1–58.
- \*Lackey, Jennifer. Forthcoming. "Race, Gender, and the Multi-Directional Model of Credibility Assessments," Chapter 5 of *Criminal Testimonial Injustice*. Oxford: Oxford University Press.

#### 10/17 PLEA DEALS AND RATIONALITY

- Burns, Casey M. 2018. "Plea Bargaining: A Practice of Convenience or a Line-Crossing System of Coercion?" *Stetson Journal of Advocacy and the Law* 99.
- Lackey, Jennifer. Forthcoming. "Plea Deals and Systemic Testimonial Injustice," Chapter 4 of *Criminal Testimonial Injustice*. Oxford: Oxford University Press.
- Wynbrandt, Katie. 2016. "From False Evidence Ploy to False Guilty Plea: An Unjustified Path to Securing Convictions." *The Yale Law Journal* 126: 545–563.

#### 10/24 BEYOND A REASONABLE DOUBT

- Lee, Youngjae. 2015. "Reasonable Doubt and Moral Elements." *Journal of Criminal Law and Criminology* 105: 1–38.
- Laudan, Larry. 2011. "The Rules of Trial, Political Morality and the Costs of Error: Or, Is Proof Beyond a Reasonable Doubt Doing More Harm Than Good?" in Leslie Green and Brian Leiter (eds.), *Oxford Studies in Philosophy of Law*. Oxford: Oxford University Press: 195–227.
- Gardiner, Georgi. 2017. "In Defence of Reasonable Doubt." *Journal of Applied Philosophy* 34: 221–241.

#### 10/31 ALTERNATIVE APPROACHES TO LEGAL EVIDENCE AND PROOF

- Bilz, Kenworthy. 2010. "We Don't Want to Hear It: Psychology, Literature, and the Narrative Model of Judging." *University of Illinois Law Review* 2010: 429–87.
- Griffin, Lisa Kern. 2013. "Narrative, Truth, Trial." *Georgetown Law Journal* 101: 281–335.
- \*Pardo, M.S. and Ronald J. Allen. 2008. "Juridical Proof and the Best Explanation." *Law and Philosophy* 27: 223–268.

**11/07 PUNISHMENT, RATIONALITY, AND KNOWLEDGE**

- Fisher, Talia. 2012. "Conviction Without Conviction." *Minnesota Law Review* 96: 833–885.
- Lackey, Jennifer. 2020. "Punishment and Transformation," in Enoch Lambert and John Schwenkler (eds.), *Becoming Someone New: Essays on Transformative Experience, Choice, and Change*. Oxford: Oxford University Press: 230–253.
- Lee, Youngjae. 2019. "Proportionality in Punishment," in Larry Alexander and Kimberly Kessler Ferzan (eds.), *The Palgrave Handbook of Applied Ethics and Criminal Law*. Springer International Publishing: 549–569.
- \*Littlejohn, Clayton. 2017. "Truth, Knowledge, and the Standard of Proof in Criminal Law." *Synthese* 197: 5253–5286.

**11/14 REMORSE AND KNOWLEDGE**

- Lackey, Jennifer. Forthcoming. "Admissions of Guilt and Expressions of Remorse: Sentencing and Parole Hearings," Chapter 6 of *Criminal Testimonial Injustice*. Oxford: Oxford University Press.
- Tudor, Steven Keith. 2008. "Why Should Remorse be a Mitigating Factor in Sentencing?" *Criminal Law and Philosophy* 2: 241–257.
- Weisman, Richard. 1999. "Detecting Remorse and Its Absence in the Criminal Justice System." *Studies in Law, Politics, and Society* 19: 121–138.

**11/21 PRESENTATIONS**

**11/28 PRESENTATIONS**

**12/10 FINAL PAPERS DUE**