

**EVIDENCE**  
**Fall 2019**

**Professor David S. Schwartz**

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Office Hours: T 3:30 - 5:00  
(or by appointment)

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Class meeting time: T, Th: 1:10-3:10 Rm. 5240

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**Course materials:**

- 1) *An Analytical Approach to Evidence: Text, Problems & Cases* (6th ed. 2016), by Ronald Allen, Eleanor Swift, David Schwartz, Michael Pardo & Alex Stein
- 2) *Assignments and Supplemental Readings booklet*. I will send out a notice when and in what format this is available.
- 3) *Canvas Course web page*: All other class materials will be posted to the Canvas course web page.

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Assignment for first class meeting, Thursday, September 5

Reading: *United States v. Douglas* case file

Discussion questions:

**Problem 0.0: Introduction to evidence**

If you were to design an evidence system (or set of evidence rules) from scratch, what would it look like? Consider the following prompts to structure your thinking, and make notes or an outline of your answers.

- 1) Please **do not** read the Federal Rules of Evidence in thinking about that question, and disregard them if you have read any of them.

2) What is the purpose of an evidence system or rule set?

3) Be sure to consider the following sub-questions:

- what counts as evidence?
- are there things that do count as evidence but should not be considered (admissible) anyway?
- how much weight should evidence get and who does the weighing
- how much certainty is needed to justify a conclusion, and what do we do if that level of certainty not attained?

### **Problem 0.1 – Case theory: Douglas case file**

a) What is the prosecution's theory of the case?

b) What is the defense's theory of the case?

### **Problem 0.2 – Relevance: Douglas case file**

“Relevance” is one of the most fundamental rules of Evidence. Its formal definition is provided in FRE 401, which we will examine in our next class. Relevance might be defined more loosely as the logical connection between an item of testimony (or other evidence) and the theory of the case. Relevance is the answer to the question “how will you use the evidence in your case?” Using that loose definition, and without considering FRE 401, try to explain the relevance, if any, of as many of the following items of evidence as you can. The evidence may be relevant to the prosecution's case, the defense's case, both or neither.

1) Bank teller, Cindy Curtain: “I was very scared, more scared than I've ever been in my life.”

2) Detective Oliver Simmons: “Cindy Curtain picked out a man who was neither Smith nor Douglas. (He was one of our undercover police officers). She said that that was “probably” the man who pointed the gun at her, but she was not absolutely certain.”

3) Detective Oliver Simmons: “David Douglas ... has a criminal record.”

4) Ricardo Herrera: “Martin Smith and David Douglas ... are close friends.... They know each other's business like they are married or something.”

5) Ricardo Herrera: “In exchange for my cooperation in the case against Douglas, the state prosecutor allowed me to plead guilty to a reduced charge of simple possession of cocaine...”

6) James Grundy: “Exhibit 2 is the shotgun stolen from my store.”

- 7) Officer Mayberry: “On the surveillance tape, Smith is carrying the canvas gym bag and Douglas is carrying the gun. You can’t really see Douglas’s face on the surveillance tape because he is turning away from the camera the whole time.”
- 8) Officer Mayberry: “After a search of Smith’s trailer, I found the shotgun, identified as Exhibit #2.”
- 9) Jack Gianelli: “I told him [Detective Simmons] what I knew about Hanlon and about running into Douglas the day of the robbery.”
- 10) David Douglas: “I have met Ricardo Herrera a couple of times in the past, but have never had a conversation with him.”
- 11) David Douglas: “I hate guns.”
- 12) Dr. Saul Cotton: “Confidence, when assessed in a timely and unbiased manner, is only modestly associated with identification accuracy”
- 13) Exhibit 3: Police Report of Grundy’s Pawn Shop burglary