1) **Office Hours**: Half an hour before and after each class. Also, available by appointment.

2) **Attendance**: Good and regular attendance is mandatory. Attendance will be taken and an excessive number of absences may lead to involuntary withdrawal from the class.

3) **Final Examination**: Closed book.

4) **Assignments**: The schedule identifies specific Federal Rules of Evidence that are to be read in conjunction with the assignments.
   - 1) The assignment for each class will be no more than 75 pages
   - 2) Students will be expected to have carefully read the assigned Federal rule prior to class and to be able to explain each such rule during the class session. If the rule contains elements, students must be able to identify those elements.
   - 3) The major cases that will be discussed in class are specifically noted in the assignment to facilitate class preparation.

5) **Class Participation**: Class participation is critical to learning. Students are expected to be prepared for class. Preparation requires more than simply reading the assignment. To be prepared students must both have read and spend time trying to understand the cases before class. In this class, hypotheticals will be used extensively. The purpose of a hypothetical is to give students an opportunity to assess their knowledge of the materials. Students who do not try to answer hypotheticals will deprive themselves of critical feedback. If you are not called on, think of what your answer would be and compare it to the students who are responding.

   This feedback mechanism is solely designed to assist students in evaluating their knowledge of the materials. Each class is an informal examination. Each class is designed to provide a measure of how much you have learning.

   Failure to provide an answer to a class question that shows that you have some familiarity with the assigned reading and are making an effort to answer the question may lead to a reduction in your final grade.
CASEBOOK: EVIDENCE, CASES AND MATERIALS, 9TH EDITION
WEINSTEIN, MANSFIELD, ABRAMS & BERGER

Federal Rules of Evidence - 2015 Version
(You may download them from many web cites including . http://federalevidence.com/downloads/rules.of.evidence.pdf)

1 - Know the assigned Federal Rule of Evidence cold.
2 - Know the facts of the specifically listed cases, below.
3 - You will be asked to use these specifically assigned rules to solve problems. There is no “wrong”
answer to these questions except silence.

FIRST & SECOND CLASS  (64 PAGES)
Judicial Notice:
   **FRE 201; 1238-1247; 237-246; 333-339; 316-333**

Witness Examination

Direct (**Rule 611 (a) (b) (c)**-- 333-339
    Straub v. Reading Co.;
    - 335-339 (important pages)
Preparation of Witnesses -- 316-333; 237-246
Resolution Trust Corp. v. Bright
Opinion NO. 79, Legal Ethics Committee
Refreshing (**Rule 612 (a - c)** -- 340-352
    US v. Riccardi
Past Recollection Recorded (**Rule 803(5)** -- 539-540
    US v. Porter

THIRD AND FOURTH CLASS (56 pages)
Cross -- (**Rule 607,611(a)(b)(c)**) -- 362-381
    Finch v. Weiner
    People v. Sallis
Redirect -- 381-385
    Commonwealth v. O’Brien

Real Proof/Relevance
Factual Relevance (**Rule 104 (b), 401, 901**)-- 94-122

    McAndrews v. Leonard
    Almeida v. Corriea
Bruce’s Juices v. US
Miller v. Pate - Add the following facts:
   The “blood” was Type A
   The decedent had Type A blood
   40% of the population has Type A blood
   The shorts were found 3 days after the crime

Anderson v. Berg
Preliminary Issues of Fact (Rule 104 (a) & (b)) - 169-172
Sliker v. US

FIRTH AND SIXTH CLASS  (70 Pages)
Logical Relevance (Rule 401)-- 1-15
   People v. Adamson
Prejudice -- (Rule 403) -- 15-35
   State v. Poe
   US v. Zimeri-Safie
   State v. Bray
   Robbins v. Whelan
   Old Chief v. US
Reproductions/Photographs -- (Rule 901) -- 150-176
   Knihal v. State
   Loftin v. Howard
   Bannister v. Town of Noble
   US v. Carbone
Diagrams -- 176-181
Views -- 136-139
   People v. Crimmins
Demonstrations -- 139-150
   Larramendy v. Myres
   Hall v. GM

SEVENTH nd EIGHTH CLASS  (67 pages)
Writings
Foundation -- (Rule 901-902) -- 181-211
   Keegan v. Green Giant Co.
   US v. Labovitz
   Zenith Radio Corp. v. Matsushita Electric Industries
   University of Illinois. v. Spalding
Best Evidence (Rule 1002, 1004, 1006, 1007)-- 211-237
   Myers v. US
   Davenport v. Ourisman-Mandell Chevrolet, Inc.
   Amoco v. US Relevance and Sufficiency
NINTH AND TENTH CLASS
Circumstantial Proof -- 35-51
  Regina v. Onufrejczyck

Statistical Proof -- 51-79
  People v. Collins
  Smith v. Rapid Transit, Inc.
  State v. Rolls

Review of Relevance
  **Collateral Evidence (Rule 607)** - U.S. v. Abel, p. 406 -- 402-407
  State v. Oswalt
  Stephens v. People
  People v. Pargo
  People v. Terczak
  People v. Wilson

ELEVENTH AND TWELFTH
Competency
  Common Law – (Rule 601) – 255-277
    Rock v. Arkansas
    Zeigler v. Moore
  Truthfulness -- 285-291
    US v. Ward
  Ability to Perceive – (Rule 602) -- 291-297
    State v. Raniere
  Infancy -- 297-305; 563;

  Mental Disease – 305-316

THIRTEENTH AND FOURTEENTH CLASS (134 Pages)
Opinion

  **Lay Opinion -- (Rule 701)** -- 352-362
  Wilson v. Pennsylvania RR Co.
US v. Stamps

Expert Opinion -- (Rule 702-5) -- 954-1067

- Een v. Consolidated Freightways
- People v. Taylor
- Meier v. Ross General Hospital
- Daubert v. Merrell Dow Pharm.
US v. Chischilly
US v. Scop
US v. West (Rule 704)
Rabata v. Dohner
Pelster v. Ray (Rule 703)

People v. Anderson

Learned Treatises -- (Rule 803(18)) -- 766-771
Lie Detectors -- 467-471

FIFTEENTH AND SIXTEENTH CLASS (62 Pages)

Cross

Anticipating Cross -- 385-390
US v. Cosentino

Impeaching Own Witness -- (Rule 607) -- 390-401
Impeachment Subject Matter
Bias -- 406-416
Gordon v. US
US v. Campbell
Henning v. Thomas
Grudt v. City of LA

Crimes -- (Rule 609) -- 416-429
People v. Sandoval, 34NY2d 371 (1974)
US v. Valencia
Cree v. Hatcher

Bad Acts -- (Rule 608) -- 429-438
People v. Sorge
People v. Duffy, 36NY2d258 (1975)

Statements
Prior Inconsistent -- (Rule 613; 801(d)(1)(A)) -- 453-462; 522-530
Denver City Tramway Co. v. Lomovt
Rowe v. Farmers Insurance Company, Inc
Nucci v. Proper, 95NY2d 597 (201)
Letendre v. Hartford Ins Acc & Indemnty Co,
21 NY2d 518 (1968)

Prior Consistent -- (Rule 801 (d)(1) (B)) -- 540-549; 552-554
Tome v. US
Beech Aircraft Corp. v. Rainey (Rule 106)

SEVENTEENTH AND EIGHTEENTH CLASS (60 Pages)
Circumstantial Proof

Character
Other Crimes -- (Rule 404, 405)
-- 808-815; 819-853; 861-875
People v. Molineux, 168NY264 (1901)
People v. Zackowitz
State v. Spraggin
State v. Abercrombie
People v. Steele
Gaddis v. State
People v. Cole
US v. Montalvo
People v. Santarelli (Review 703 & 702 on these facts
State v. Bock
US v. Figueroa
Lyles v. State
Huddleston v.US

NINETEENTH AND TWENTIETH CLASS (44 Pages)
Reputation -- (Rule 803(21); 404 (a); 608(a)) -- 875-887; 438-447;
464-467
Michelson v. US
US v. Dotson
Civil Cases -- 914-921
Dallas Railway & Terminal CO. v. Farnsworth

Habit & Custom -- (Rule 406) -- 921-926
Frase v. Henry

Settlement Offers -- (Rule 408) -- 938-947

TWENTIETH AND TWENTY-FIRST CLASS (50 Pages)
Hearsay  Rule 801

Definition (Rule 801 (a))-- 475-522
Leake v. Haggert
People v. Eady
Brown v. Coca Cola
Kingdon v. Sybant
Safeway Stores Inc. v. Combs
Hanson v. Johnson
Koury v. Follo
US v. Jackson
Betts v. Betts
Bridges v. State
State v. Galvan
Rex v. Wysochan
Wright v. Doe D. Tatham
Kinder v. Commonwealth

TWENTY-SECOND AND TWENTY-THIRD CLASS (95 Pages)
Admissions (Rule 801(d)(2)(A-E))-- 563-605
Bill v. Farm Bureau Life Insurance Co.
Schrffius v. Orr
East Kentucky Rural Electric Co-op. v. Phelps
US v. McKeon
Mahlandt v. Wild Canid Survival & Research Center, Inc.
Brookover v. Mary Hitchcock Memorial Hospital
Wilkerson v. Carnival Cruise Lines, Inc.
Bourjaily v. US
US v. Urbanik

Rule 804
Unavailability - Rule 804(a)(1-
Dying Declaration - Rule 804(b)(2)-- 753-760
People v. Callahan
People v. Nieves

**Declaration Against Interest - (Rule 804(b)(3)) - 605-634**
Potter v. Finan
Carpenter v. Davis
People v. Brown
Williamson v. US

**Former Testimony - Rule 804 (b)(1) - 723-737; 747-752**
Fleury v. Edwards
State v. Ayers
Commonwealth v. Canon --- US v. Napoli

**TWENTY-FOURTH AND TWENTY FIFTH CLASS (95 Pages) + Handouts!**

**Business Records – R.803(6) & 803(8) - 679-723**
Palmer v. Hoffman
US v. Jacoby
Johnson v. Lutz
Beech Aircraft Corp. v. Rainey
Baker v. Elcona Homes Corp.
Commonwealth v. DiGiacomo

**Physical or Mental Condition -- R.803(4) – 645-654; 718-723**
Wadena v. Bush
US v. Tome

**State of Mind -- R.803(3) – 654-679**
US v. Brown
Mutual Life Ins. v. Hillmon
US v. Annunziato
Smith v. Slifer
In re Anderson’s Estate

**Spontaneous or Excited Utterances -- R.801-2) --634-645**
Commonwealth v. Coleman
US v. Obayagbona

**Catchall -- (Rule 807) – 774-796**
Robinson v. Shapiro

**Constitutional Limitations -- Confrontation**

Handout:
Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011)
Williams v. Illinois, 132 S. Ct. 2221, 183 L. Ed. 2d 89

(Evidence Law Learning Objectives

Professor Lawrence Kessler

COURSE DESCRIPTION AND LEARNING OBJECTIVES

Course Description:

This course introduces students to a field of law in which the fundamental policy decisions are based on disdain for the jurors who are not believed to be rational enough to free themselves from their individual and cultural biases. It is based on distrust of lawyers who are not trusted to avoid intentionally deceiving jurors about both the existence and importance of facts. These perceptions have led to the development of a system that seeks to protect the fairness of trial proceedings by systematically concealing information from juries. The system of seeking fairness by concealment is effectuated by the Rules of Evidence. These rules exist solely to keep information away from jurors.
Students will learn the rules and, more importantly, how to use the rules to benefit the client by applying them to exclude information that is bad for the client and evading them when it is good. In this pursuit, students will learn how to develop a Theory of the Case (litigation strategic planning) without which they would not be able to tell what is good and what is bad for their client. The students will acquire a detailed knowledge of the rules of evidence and a basic set of skills in applying those rules. The primary focus of the course will be on the Federal Rules of Evidence. When New York evidence practice is significantly different, the New York rules will be taught as well.
Learning Objectives:

By the end of this course, students should know the:

Category 1 - **Substantive rules of law and policies.**
Each ... student must have demonstrated a thorough knowledge of the basic rules of law and policies that were covered in this course, both the Federal Rules of Evidence and New York State evidence law;

And

- Category 5, **Basic Legal Analysis, fact development and law-finding.**

- Have advanced their proficiency in extracting rules and policies from cases and statutes and in analyzing, interpreting and arguing differing interpretations of how those rules would apply in specific factual settings = fact analysis.

And

Develop an appreciation of the ways in which trial lawyers properly use the rules to circumvent the rules in witness preparation, witness and client interviewing, misrepresentation of purpose in asking questions, and the like. Both legal ethics standards and moral standards will be used in this analysis.

- Develop an appreciation of the role and work of the trial lawyer.