NOTES:
1) **Office Hours:** 30 minutes after each class. Office: room 235 - drop in or by appointment: speak2kess@yahoo.com
2) **Laptops** are permitted. Those using laptops will be expected to be able to look back through their class notes to explain what has been said in prior classes and also may be asked to do quick legal research during the class.
3) **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.
4) **Final Examination:** Closed book.
5) **Assignments:** The schedule identifies specific Federal Rules of Evidence that are to be read in conjunction with the assignments.
   1) 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. **In other words, students are expected to have memorized the rules that are assigned for each class!**
   2) The major cases that will be discussed in class are specifically noted in the assignment to facilitate class preparation.
6) **Class Participation:** Class participation is critical to learning. Preparation to answer questions 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 learned. If you are not called on, think of what your own answer would be and compare it to the students who are responding. **To ease the burden of preparation for class participation, students will have advance notice when they will or may be called on.** Further, to enable preparation for class, the specific cases and rules that will be the topic of each class are noted in the assignments.
EVIDENCE ASSIGNMENTS

1st Class
Judicial Notice +:
FRE 201; 1238-1247; 237-246; 333-339; 316-333

Witness Examination

2nd Class
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

3rd Class
Refreshing (Rule 612 (a - c) -- 340-352
US v. Riccardi
Past Recollection Recorded (Rule 803(5) -- 539-540
US v. Porter

Cross -- (Rule 607,611(a)(b)(c)) -- 362-381
Finch v. Weiner
People v. Sallis

Redirect -- 381-385
Commonwealth v. O’Brien

Real

4th Class
Factual Relevance (Rule 104 (b), 401, 901) -- 97-122
McAndrews v. Leonard
Almeida v. Correia
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
5th Class
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

6th Class
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

Writings

7th Class
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

8th Class
Best Evidence (Rule 1002, 1004, 1006, 1007) -- 211-237
Myers v. US
Davenport v. Ourisman-Mandell Chevrolet, Inc.
Amoco v. US Relevance and

Sufficiency

Circumstantial Proof -- 35-51
Regina v. Onufrejczyk
Statistical Proof -- 51-79
People v. Collins
Smith v. Rapid Transit, Inc.
State v. Rolls

9th Class
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

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

10th Class
Dead Man’s Statute – FRE 601 – 274 - 277
Zeigler v. Moore

Infancy -- 297-305; 563;

Mental Disease – 305-316

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

11th – 13th Class
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

Cross Examination
14th Class  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
15th Class  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)

16th Class  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)

Circumstantial

Proof
17th & 18th Class

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

19th Class

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

19th Class

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

20th Class
Hanson v. Johnson
Koury v. Follo
US v. Jackson
Betts v. Betts
Bridges v. State
State v. Galvan
Rex v. Wysochan

21st Class
Wright v. Doe D. Tatham
Kinder v. Commonwealth

22nd Class
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
Mahanldt 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

23rd Class
Rule 804
Unavailability - Rule 804(a)(1-5)
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

24th Class
Former Testimony - Rule 804 (b)(1)-- 723-737; 747-752
Fleury v. Edwards
State v. Ayers
Commonwealth v. Canon --- US. v. Napoli

Rule
803
   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
26th Class  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

27th Class  Constitutional Limitations -- Confrontation
   Handout:
   Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011)

28th Class  Review
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.