

Evidence and Trial Procedure SPRING 2026

Professor David Bernstein

The text for this class is Jeffrey Bellin, *The Law of Evidence* (2d Edition). You can purchase the book from the bookstore, or on Amazon for \$35. Amazon also has a Kindle edition for \$10 if you prefer digital.

You should also get Bellin, *The Federal Rules of Evidence: Including Advisory Committee Notes, Abridged Legislative History, and Editorial Commentary*, which is \$15 on Amazon, \$9.48 on Kindle, or free if you have Kindle unlimited

This course is largely based on the Federal Rules of Evidence. Please read each rule and the accompanying Advisory Committee Notes as each Rule is covered on the syllabus.

I recommend Best, *Evidence, Examples and Explanations*, as a basic review text. However, with the proliferation of review books over the years, I'm sure there are other good options.

If you would like to meet with me, you can email me at dbernste@gmu.edu, I am happy to meet with you, in person or via Zoom, any time my schedule permits.

For those of you who like to review while driving or jogging or are just good at learning from audio, there are two good series available from West that review the evidence rules. One is Goode, *Sum & Substance*. The other is Rossi's *Law School Legends Audio on Evidence*. Both are available for free via your student West study aids subscription. Each is a bit outdated, but fine for reviewing the meat of the class, relevance, character evidence, and hearsay (minus the Confrontation Clause, which is in a state of flux).

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“CB” = Casebook “Rule” = Read Rules and Supplementary Commentary in Rulebook

Jan. 15 <i>Introduction, Stipulations, Judicial Notice</i>	CB 1-21	Rule 102, 201, 1101
Jan. 20 <i>No class</i>		
Jan. 22 <i>Judicial Notice (cont.) and Relevance</i>	CB 21-43	Rule 401, 402, 104
Jan. 27 <i>Unfair Prejudice</i>	CB 43-64	Rule 403
Jan. 29 <i>Character Evidence: Prohibition</i>	CB 65-85	Rule 105, 404
Feb. 3 <i>Character Evidence: Other Purposes 1</i>	CB 86-100	
Feb. 5 <i>Other Purposes 2</i>	CB 101-117	
Feb. 10 <i>Other Purposes 3, Sex Offenses</i>	CB 118-130, 135-145	Rule 413, 414, 415
Feb. 12 <i>Defense Character Evidence, Habit</i>	CB 146-167	Rule 404(a)(2), 405, 406
Feb. 17 <i>Witness Character Evidence</i>	CB 168-177	Rule 404(a)(3), 607, 608,
Feb. 19 <i>Prior Convictions</i>	CB 177-200	Rule 609
Feb. 24 <i>Rape Shield, Non-Expert Opinion</i>	CB 201-220	Rule 412, 602, 701
Feb. 26 <i>Experts, “Helpful,” Ultimate Issue</i>	CB 220-238, 241-244	Rule 702(a), 704(a)
 March 3 <i>Hearsay Definition 1</i>	 CB 279-287, 292-303	 Rule 801(a)-(c), 802
March 5 <i>Hearsay Definition 2</i>	CB 307 (start with problem 6-16)-323	
<i>SPRING BREAK</i>		
March 17 <i>Hearsay Exemptions, Rule 801(d)(1)</i>	CB 324-341	Rule 801(d)(1)(A)-(B)
March 19 <i>ID, Party Statements</i>	CB 342-358	Rule 801(d)(1)(C), (2)

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March 24 <i>Exceptions: Ex. Utterances, PSI, State of Mind</i>	CB 359-378	Rule 803(1)-(3)
March 26 <i>Med. Treat, Rec. Recoll., Bus. Records</i>	CB 378-398	Rule 803(4)-(7)
March 31 <i>Public Records+, 804 Exceptions</i>	CB 399-420	Rule 803(8)+, 804(b)(1)-(3)
April 2 <i>Forfeiture, Residual Exception, Other</i>	CB 421-440	Rule 804(b)(6), 805, 806, 807
April 7 <i>Expert Testimony I</i>	TBA	Rule 702(a)-(d)
April 9 <i>Expert Testimony II</i>	TBA	
April 14 <i>Confrontation Clause</i>	CB 458-76 (skip problem 7-1), 478-91	
April 16 <i>Remedial Measures, Settlements</i>	CB 535-548, 551-559	Rule 407, 408
April 21 <i>Medical Offers, Pleas, etc</i>	CB 560-578	Rule 409, 410, 411

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Course Overview

The purpose of this class is to learn the Federal Rules of Evidence, mostly via reading and discussing cases and problems.

Learning outcomes

Students who complete this course should be conversant in the substance and application of the rules of evidence, including relevance, hearsay and its exceptions, character evidence, expert evidence, and privileges.

Office hours

I am happy to meet with you in person or via Zoom at any mutually convenient time. Please email me for an appointment.

Basis of Evaluation & Assessments

Students' grades will be based on a final exam, consisting of multiple-choice questions and/or essays. There are no pluses or minuses for class participation in this class.

Instructor Expectations

This class deals with many controversial and sometimes sensitive issues. Students are expected to participate and listen respectfully, and express disagreement in a civil manner. Students (and even the professor) sometimes express their views awkwardly, which can happen when one is speaking extemporaneously rather than from a script. We should all be generous in assuming that other participants in the class are well-meaning and do not intend to express animus toward any individual or group.

Course rules

Students are expected to participate in class. The professor will announce class participation rules before the first day of class.

Email Communication

Students must use their MasonLive email account to receive important University information, including communications related to this class.

Attendance

Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial

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number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs.

Class Recordings Prohibited

Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me, or arranged via the dean's office in case of a Covid-related exception.

Exam Conflicts

In accordance with AR 4-4.1, excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination.

Academic Integrity

It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

Classroom Accommodations: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

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University Life

University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>