

**Course Syllabus**  
**Antonin Scalia Law School**

**Course** Evidence (Law 222) | Spring 2024 | 3 Credits

**Professor** Richard Quadrino

Email: [RJQuadrino@Gmail.com](mailto:RJQuadrino@Gmail.com)

Office Hours: by appointment (send a request *via* email)

**Class Schedule** Tuesdays and Thursdays, 1:50 pm to 3:15 pm in Hazel Hall.

**Course Materials**

1. Textbook:

Mueller, Kirkpatrick and Richter  
Evidence Under the Rules: Text, Cases and Problems,  
Tenth Edition (2023 Aspen Publishing)  
ISBN 978-1-5438-5908-9  
Connected eBook: ISBN 9781647084936

2. Rules of Evidence:

Federal Rules of Evidence, 2023-2024 Ed.  
West Academic Publishing  
ISBN 979-8-88786-013-8  
Prepared by Daniel J. Capra

**Overview**

Unfortunately, in most circumstances in our daily lives there are no guideposts, rules or formal truth-seeking procedures to assess the reliability of the information we come in contact with. Hopefully, we each do our best to seek and rely upon whatever sources of information we believe are credible.

When important decisions must be made in business, government, educational and other institutions, there may be standards imposed by these institutions to ascertain “the facts” upon which decisions will be based. These standards are varied and tailored to the circumstances to which they apply.

In our legal system, however, it is imperative – indeed critical – that our adversarial dispute resolution proceedings include a uniform set of strict rules for ascertaining what constitutes

proof in the fact-finding aspect of such proceedings. These rules provide our justice system with credible tools to be deployed in our search for the facts to be relied upon in rendering judgments. Without such uniform strictures, the credibility, validity and reliability of all legal judgments, both civil and criminal, would be drawn into serious question. Indeed, without such rules, our entire system of dispute resolution would likely crumble. Hence: the rules of evidence.

### **Course Description**

We will study the statutory and common law rules of evidence in civil and criminal proceedings in the United States. The Federal Rules of Evidence are the gold standard, i.e., a widely recognized set of rules that are at the core of American jurisprudence in the law of evidence. Forty-Five states have adopted the Rules (with some minor variations) and thus the Rules are at the core of our studies in this course.

You will learn how all sources of evidence — witness testimony, physical objects, documents, data, images, demonstrative evidence and summaries — can be introduced and accepted as the formal body of information that can be considered by a judge or jury when making a determination as to what the facts are in a disputed matter. If the court does not accept the introduction of testimony, a document or a physical object because it is not in compliance with the Rules or applicable common law, it is thus “inadmissible” and will not be considered by the trier of fact as evidence. Thus, a proffered source of evidence is not “evidence” in the truest sense until: (a) a court rules that it is admissible, (b) is received without objection or (c) introduced by counsel for the parties pursuant to a stipulation.

We will apply these rules to real world situations in the courtroom, reviewing the various processes in a trial and how the rules are implicated and employed. There will be mock courtroom class exercises that give you the opportunity to apply the rules in a trial setting. Students will be playing the roles of a judge, direct examiner, cross examiner or member of a jury (who will provide a critique). Voluntary participation in these sessions will be considered toward the class participation portion (15%) of your final grade.

Our topics of study will include the rules concerning relevance, hearsay, competency of witnesses, opinion and expert testimony, laying foundations, presumptions, burdens of proof, authentication, privileges, judicial notice, motions *in limine*, objections and preservation of the record for appeal.

### **Learning Outcomes**

At the end of the semester, it is expected that you will be able to explain the origins and rationales for the rules of evidence. You will have gained experience in thinking on your feet, recognizing evidentiary issues and problems and how to navigate the scenarios that arise in

proceedings when evidence is proffered. Critically, you will learn the value of careful planning and preparation that is required to both introduce and oppose proffered evidence.

### **Attendance, Preparation, Class Participation, and Classroom Behavior**

#### A. Attendance

Academic Regulation 4-1.1, entitled “Absences,” reads as follows:

If a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session.

For this class, that means six or more absences will disqualify a student from receiving credit for this course. To reverse the recording of an absence, Academic Regulation 4-1.2 states:

#### Substituted Work

In cases that the instructor believes have merit, the instructor may permit the substitution of work equivalent to class attendance if the work is designed to achieve approximately the purpose of class attendance. Substitution is solely at the instructor’s discretion, and no instructor is compelled to permit it.

Attendance credit for substituted work cannot exceed 10 percent of scheduled class sessions.

#### B. Preparation

It will be presumed that students attending class have reviewed the readings and are prepared to engage in some level of discussion. If, for some reason, you are unable to be prepared for a particular class, please notify me in advance and I will not call upon you.

#### C. Class Participation

This is an elective class and thus it is presumed that since you have chosen to learn about the law of evidence, you may have an interest in conducting or judging evidentiary proceedings. The concepts in the law of evidence can be best understood through discussion and participation in the exchange of ideas. We will have mock trial exercises in this class to simulate courtroom activity, but regular class participation in discussions is expected. If students are not raising their hands, I may elect to call on people.

#### D. Classroom Behavior

It is anticipated that I will bring current events into the classroom, i.e., high profile or newsworthy litigation that involves interesting evidentiary issues. To the extent that any of

these cases have a political or controversial dimension, it should not be presumed that I have an opinion on the merits of the controversial aspects of the case. The purpose of introducing these matters into the classroom environment is strictly for a discussion of the evidentiary aspects and not to foster discussion of the merits of these matters.

Students are urged to be mindful of the law school’s “Commitment to Open Dialogue & Debate.” See [https://www.law.gmu.edu/about/commitment\\_to\\_open\\_dialogue/](https://www.law.gmu.edu/about/commitment_to_open_dialogue/)

**Office Hours & Other Out-of-Classroom Communications Between Us**

My office hours are by appointment only. Please contact me by email to set up a virtual appointment.

Prior to contacting me regarding any general questions, please go back and review the syllabus (many of your questions might be answered by a more detailed review). If you need to speak with me on a time sensitive basis, you can call me on my mobile phone or text me first. When you first text me, please identify yourself so I can add you to my contacts.

**Assignments and Testing: Assigned Points and Percentages**

The chart below contains the method by which your final grade will be calculated.

<b>Assignments/Tests/Factors</b>	<b>Points/Percentage</b>	<b>Due Date</b>
Class Participation	One increment adjustment to the final grade, per Academic Regulation (AR) 4-4.2	
Assignment 1: Short Essay	75 Points (15 % of the final grade)	<b>February 8</b>
Midterm Exam	100 Points (20% of the final grade)	<b>February 29</b>
Assignment 2: Short Essay	75 Points (15 % of the final grade)	<b>March 26</b>

Final Exam	250 Points (50% of the final grade)	<b>May 4</b>
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### **Descriptions – Tests and Assignments**

Descriptions of the above exams and assignments, along with the grading rubric, will be posted on Blackboard. Unless otherwise stated in a notice from me posted or transmitted to you *via* Blackboard, all assignments are due at 11:59 PM on the day of the deadline.

### **Document Submissions**

For the assignments that require the submission of a document, all such documents shall be submitted in both Microsoft Word format and PDF. Documents shall be in Times New Roman font, 11 pt. Margins shall be one inch and line spacing shall be 1.15 inches.

### **Late Assignments – Extensions**

Please read Academic Regulation 4-5.1 entitled “Permission to Delay Sitting for an Examination or Submitting a Final Paper.” The regulations can be found [here](#). For all other assignments, you must contact me by email, prior to the deadline, requesting an extension. Extensions will be granted for good cause and will be for a period of three days. If a paper or other assignment is submitted late without having first contacted me, for each 24-hour period after the deadline, the student will receive a 10% reduction in points for each such successive 24-hour period.

### **School Policies**

#### A. Students with Disabilities

Disability Services at George Mason University is committed to upholding the letter and spirit of the laws that ensure equal treatment of people with disabilities. Under the administration of University Life, Disability Services implements and coordinates reasonable accommodations and disability-related services that afford equal access to university programs and activities. Students can begin the registration process with Disability Services at any time during their enrollment at George Mason University. If you are seeking accommodations, please visit <https://ds.gmu.edu> for detailed information about the Disability Services registration process. If you are uncertain as to whether any physical, mental or emotional condition qualifies as a disability, please contact Disability Services. Disability Services is located in the Student Union Building I (SUB I), Suite 2500. Email: [ods@gmu.edu](mailto:ods@gmu.edu) | Phone: (703) 993-2474.

## B. Academic Regulations

If you have not already done so, please become familiar with the “Academic Regulations (Juris Doctor Students)” adopted on August 17, 2023. The Regulations can be found [here](#). There are numerous school policies that guide your conduct both in general and in this class.

Please pay particular attention to the new Academic Regulation AR 4-3 entitled “Limitations on the Use of Generative Artificial Intelligence (GAI) in Academic Work.” Generally, use of generative AI is disallowed. Please see the rules for specifics. Note that subparagraph (f) of the rule states:

If not expressly identified as permissible in writing by the instructor, any use of GAI will be considered academic dishonesty involving cheating in violation of Section 1.01.1 and/or 1.01.5 of the Honor Code, and violators may be subject to the disciplinary sanctions set forth in Section 3.01 of the Honor Code. Law School instructors and administrators reserve the right to use AI detection software to find instances of GAI in student submissions.

### **Class Schedule and Reading Assignments**

The chart below contains the topics that will be covered for each class session, the assigned readings, and any in class activities or assignments that are due for any class. In preparation for each class session, students must read the assigned pages from the *Mueller, et al.* textbook, the assigned Rules from the Federal Rules of Evidence and review any additional required readings or videos posted in Blackboard. Please note that *assigned reading for a particular Federal Rule includes a requirement to read all the Advisory Committee Notes concerning the Rule.*

DATE	TOPIC(S)	READINGS	ACTIVITIES & ASSIGNMENTS DUE
<b>Week 1 Tuesday Jan 16</b>	Introduction: <ul style="list-style-type: none"><li>■ Components of a Trial</li><li>■ The Record</li><li>■ Methods of Admission and Exclusion</li><li>■ Error and Appellate Review</li></ul>	<ul style="list-style-type: none"><li>- <i>Mueller, et al</i>, pp. 1-50</li><li>- FRE 103; 104; 105; 106</li></ul>	

<b>Week 1</b> <b>Thursday</b> <b>Jan 18</b>	Foundational Evidence & Authentication <ul style="list-style-type: none"> <li>■ Tangible Objects</li> <li>■ Writings</li> <li>■ Electronic Evidence and Social Media</li> <li>■ Other   TCs   Self-Auth</li> <li>■ Summaries   Demonstrative Evidence</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 885-924</li> <li>- FRE 901; 902; 903</li> </ul>	
<b>Week 2</b> <b>Tuesday</b> <b>Jan 23</b>	Relevance <ul style="list-style-type: none"> <li>■ Intro</li> <li>■ Logical Relevance</li> <li>■ Pragmatic</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp.51-83.</li> <li>- FRE 401; 402; 403</li> </ul>	
<b>Week 2</b> <b>Thursday</b> <b>Jan 25</b>	Relevance (continued) <ul style="list-style-type: none"> <li>■ Pragmatic (continued)</li> <li>■ Probabilistic Analysis</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 84-107</li> </ul>	
<b>Week 3</b> <b>Tuesday</b> <b>Jan 30</b>	Hearsay <ul style="list-style-type: none"> <li>■ Defined   Closer Look</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 109-130</li> <li>- FRE 801-802</li> </ul>	
<b>Week 3</b> <b>Thursday</b> <b>Feb 1</b>	Hearsay (continued) <ul style="list-style-type: none"> <li>■ Non-Hearsay</li> <li>■ Test Your Understanding</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 131-162</li> </ul>	

<p><b>Week 4</b> <b>Tuesday</b> <b>Feb 6</b></p>	<p>Hearsay (continued)</p> <ul style="list-style-type: none"> <li>■ Intro</li> <li>■ Declarant Testifying</li> <li>■ Prior Inconsistent Statements</li> <li>■ Prior Statements of ID</li> <li>■ Admissions (up to p. 202)</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 163-202</li> <li>- FRE 806</li> </ul>	
<p><b>Week 4</b> <b>Thursday</b> <b>Feb 8</b></p>	<p>Hearsay (continued)   Exceptions</p> <ul style="list-style-type: none"> <li>■ Adoptive Admissions</li> <li>■ Speaking Agents</li> <li>■ Employees and Agents</li> <li>■ Coconspirator</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 203-255</li> <li>- FRE 803; 805</li> </ul>	<p style="text-align: center;"><b>Due:</b> <b>Assignment 1: Short Essay</b></p>
<p><b>Week 5</b> <b>Tuesday</b> <b>Feb 13</b></p>	<p>Hearsay (continued)   Exceptions</p> <ul style="list-style-type: none"> <li>■ State of Mind</li> <li>■ Subsequent Conduct</li> <li>■ Declarant's Will</li> <li>■ Medical Treatment</li> <li>■ Past Recollection Recorded</li> <li>■ Business Records</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 256-305</li> <li>- FRE 803</li> </ul>	
<p><b>Week 5</b> <b>Thursday</b> <b>Feb 15</b></p>	<p>Hearsay (continued)   Exceptions</p> <ul style="list-style-type: none"> <li>■ Public Records</li> <li>■ Minor Exceptions</li> <li>■ Declarant Unavailable</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 306-351</li> <li>- FRE 803; 804</li> </ul>	
<p><b>Week 6</b> <b>Tuesday</b> <b>Feb 20</b></p>	<p>Hearsay (continued)   Exceptions</p> <ul style="list-style-type: none"> <li>■ Declarant Unavailable (continued)</li> <li>■ The Residual Exception</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 351-385</li> <li>- FRE 804; 807</li> </ul>	



<b>Week 6</b> <b>Thursday</b> <b>Feb 22</b>	Hearsay (continued)   Exceptions <ul style="list-style-type: none"> <li>■ Impact of the Confrontation Clause</li> </ul>	- <i>Mueller, et al</i> , pp. 386-428	
<b>Week 7</b> <b>Tuesday</b> <b>Feb 27</b>	Relevance, Revisited <ul style="list-style-type: none"> <li>■ Character Evidence</li> <li>■ Habit and Routine</li> </ul>	- <i>Mueller, et al</i> , pp. 429-479 - FRE 404; 405; 406; 412; 413; 414; 415	
<b>Week 7</b> <b>Thursday</b> <b>Feb 29</b>	Relevance, Revisited (continued) <ul style="list-style-type: none"> <li>■ Remedial Measures</li> <li>■ Settlement Negotiations</li> <li>■ Proof of Payment/Medical/Ins. Coverage</li> <li>■ Competency of Witnesses</li> </ul>	- <i>Mueller, et al</i> , pp. 480-532 - FRE 407; 408; 409; 410; 411; 601; 602; 603; 605; 606; 609	<b>Midterm Exam</b>
<b>Week 8</b> <b>NO CLASS on</b> <b>Tuesday</b> <b>March 5</b>	<u><b>Spring Break</b></u>		
<b>Week 8</b> <b>NO CLASS on</b> <b>Thursday</b> <b>March 7</b>	<u><b>Spring Break</b></u>		
<b>Week 9</b> <b>Tuesday</b> <b>March 12</b>	Relevance, Revisited (continued) <ul style="list-style-type: none"> <li>■ Direct and Cross Exam Revisited</li> <li>■ Impeachment of Witnesses</li> </ul>	- <i>Mueller, et al</i> , pp. 533-565 - FRE 806; 607; 608; 609; 612; 613; 615	

<b>Week 9</b> <b>Thursday</b> <b>March 14</b>	Impeachment of Witnesses (continued)	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 566-595</li> <li>- FRE 608; 609; 611</li> </ul>	<b>Mock Courtroom Exercises:</b> <b>Direct Examinations</b>
<b>Week 10</b> <b>Tuesday</b> <b>March 19</b>	Impeachment of Witnesses (continued)	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 596-644</li> <li>- FRE 610; 613; 801(d)(1)(B)</li> </ul>	<b>Mock Courtroom Exercises:</b> <b>Cross Examinations</b>
<b>Week 10</b> <b>Thursday</b> <b>March 21</b>	Opinion   Experts   Scientific Evidence	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 645-671</li> <li>- FRE 701; 702; 703; 704; 705; 706</li> </ul>	
<b>Week 11</b> <b>Tuesday</b> <b>March 26</b>	Opinion   Experts   Scientific Evidence (continued)	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 672-722</li> </ul>	<b>Due:</b> <b>Assignment 2: Short Essay</b>
<b>Week 11</b> <b>Thursday</b> <b>March 28</b>	Burdens of Proof   Presumptions	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 723-772</li> <li>- FRE 301; 302</li> </ul>	
<b>Week 12</b> <b>Tuesday</b> <b>April 2</b>	Judicial Notice	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 773-799</li> <li>- FRE 201</li> </ul>	
<b>Week 12</b> <b>Thursday</b> <b>April 4</b>	Privileges <ul style="list-style-type: none"> <li>■ Attorney-Client Privilege</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 799-833</li> <li>- FRE 501; 502</li> </ul>	

<b>Week 13</b> <b>Tuesday</b> <b>April 9</b>	Privileges (continued) <ul style="list-style-type: none"> <li>■ Attorney-Client Privilege (continued)</li> <li>■ Psychotherapist-Patient Privilege</li> <li>■ Spousal Privileges</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 834-884</li> <li>- FRE 502</li> </ul>	
<b>Week 13</b> <b>Thursday</b> <b>April 11</b>	Best Evidence Doctrine	<ul style="list-style-type: none"> <li>- <i>Mueller, et al</i>, pp. 925-949</li> <li>- FRE 1001 through 1008</li> </ul>	
<b>Week 14</b> <b>Tuesday</b> <b>April 16</b>	Review Session		
<b>Week 14</b> <b>Thursday</b> <b>April 18</b>	Review Session		
<b>May 4</b>	<b>Final Exam</b>		