CONTACT INFORMATION:

My office is in room 417 of Wolf Law; my office telephone extension is 2-7547 (303-492-7547 from off-campus). My e-mail address is wesson@colorado.edu. Teaching is by far my most important job at the Law School, but it is not my only job. I do not maintain designated office hours every week: my schedule is far too busy and unpredictable for that. I will be very happy to make an appointment to meet with you, and if you find me in my office but do not have an appointment, I am happy to talk with you on a drop-in basis unless I have some other serious and inflexible obligation at the same moment. (As far as I am concerned, if you are on your way to see me, even if without an appointment, you may ignore those weird signs on the 4th floor of Wolf that say you shouldn’t be there unless you have an appointment to see staff or faculty.)

You may always communicate with me via e-mail, and I’ll do my best to keep up with your messages and reply to your questions posed on email. On occasion, I may ask you to speak with me in person if I think that would be a better way of responding to your email inquiry.

A TWEN site has been established for the course, and you should consult it for daily and weekly updates on assignments, additional course materials, and announcements.

SOMewhat UNfriendly Introduction:

This course is very labor-intensive and challenging. If experience is any guide, some of you will think this class is too much work for three credit hours. I don’t want to make your lives miserable-- rather the opposite, but I do have high expectations. If you think this is not the sort of class experience you want, now is the time for you to drop the class.

I do have expectations concerning attendance and preparation. I expect you to sign in on an attendance sheet as “present and prepared” at the beginning of each class meeting, unless you wish to attend without participating. (You must be present at the very beginning of class to take advantage of this credit, and must plan to stay until the end. For my part, I will make every effort to start and end class precisely on time.) It is permissible to attend class without participating, and I encourage this practice if you are unable to prepare but can attend, or if you must arrive late or leave early. You may not, however, sign in as “Present and Prepared” unless you are prepared to participate if called upon, and you plan to be present during the entire class. If you need to leave during class for a job interview or arrive late because of a parent-teacher conference at
your daughter’s school, or any other important appointment, you may of course do so, but you may not claim “Present and Prepared” credit for that day.

At the end of the semester, I will tabulate the number of “P&P’s” you have accumulated, and give three extra examination points to students who have been present and prepared for 75% or more of the classes. (As soon as any last minute adjustments in the schedule are made, I’ll let you know exactly how many classes this will be.) I want to make clear right now that there will be no exceptions to this requirement. If you are on target to be at 75% of the classes, but fall ill or have a family emergency or religious obligation toward the end of the semester and miss the goal, I will be sympathetic but cannot give you credit for meeting the requirement, as to do so would be unjust to those who have met it. I’m sure you’ve figured out that this system, although phrased in terms of reward and not penalty, will operate to place those who do not compile sufficient “P&P’s” at a disadvantage relative to those who do. The penalty for any instance of obvious failure to be prepared after signing in “P&P” is a two-point deduction from the examination grade. Apart from adjustments related to this “P&P” system, your grade will be based on your performance on the final examination.

One last thing. I expect that if you are in class and have signed in as present and prepared, you will be prepared to stay and participate throughout the entire class (one hour and twenty minutes) without taking a break. If you have a medical issue or some other unavoidable personal reason that renders you unable to maintain your presence and attention for this stretch of time, please see me or the office of Disability Services (contact information below) during the first week of class for an assessment of the need for an accommodation. If you are in class but have not signed in as present and prepared, you may leave class before I have declared it over for the day, but you may not return, and I ask that you depart in a quiet and nondisruptive fashion. In the same vein, if you must arrive late, please do so quietly and without disrupting the class, and without seeking to register as present and prepared.

I do not wish to discourage any of you from staying in this class and participating. Indeed, I hope all of you will stay, but past experience suggests the wisdom of clarity about my expectations from the beginning. And I hope this advisory introduction doesn’t sound too grim. I think we will have a lot of fun and learn a great deal, but this class is not a low-maintenance experience; it’s intended as preparation for the professional life of a lawyer.

CLASS MATERIALS AND TEXTS:

The required text for Spring 2009 will be EVIDENCE: THE OBJECTION METHOD, by Prater, Capra, Saltzburg, and Arguello (3d edition LexisNexis 2007). You must also purchase a copy of the FEDERAL RULES OF EVIDENCE. These rules were last amended on April 12, 2006, so be sure that the edition you purchase was published after that date, and contains the Advisory Committee Notes and legislative history. Otherwise it does not matter what version you use, and there are editions of these materials available from several
publishers. (The Rules and the Advisory Committee Notes also appear, in separate appendices, at the end of the textook, but their placement makes them very inconvenient to use and consult in the course of class. I can’t really recommend that alternative, even for economy’s sake; it would be much better to find a used copy of the Rules in a separate booklet.) We will frequently look at the Colorado Rules of Evidence when they differ from the Federal Rules, but you need not buy a copy of them. When study of a Colorado rule becomes necessary, I will post it at the course TWEN site.

**RESCHEDULED CLASSES:**

I do not at the moment know of any conflicts that will require rearranging class, although of course it is possible that I will be sick and unable to teach once or twice. I hope not, but if so we will talk about rescheduling. I know that rescheduled classes are a hardship for busy law students, and I will try my utmost to avoid scheduling any conflicting professional or personal engagements during our class hours.

**PROSPECTUS OF ASSIGNMENTS:**

It is not possible for me to say in advance what the precise reading and preparation assignments will be for every class. The amount of time we spend on each subject will vary depending on your interest, the difficulty it presents, and the ever-present possibility that there will be some new development in the law in the course of the semester. What follows is the best description I can give in advance of the material we will cover, and in what order. It is not a warranty or guarantee. I do undertake to post, at the course TWEN site, a more dependable assignment announcement by the end of each week, for the week that follows.

Below, the abbreviation PCSA refers to PRATER, CAPRA, SALZBURG & ARGUELLO, EVIDENCE: THE OBJECTION METHOD (3d ed. 2007), FRE to the Federal Rules of Evidence, and CRE to the Colorado Rules of Evidence. Most provisions of the CRE are identical to the corresponding FRE section. On the occasions when this is not the case, I will post the pertinent provisions of the CRE, and a few relevant Colorado statutes, at the TWEN site.

- First day of class: Please read and prepare to discuss pages 1-26 in PRATER, CAPRA, SALZBURG & ARGUELLO, EVIDENCE: THE OBJECTION METHOD (3d ed. 2007) (hereafter PCSA). After discussion, we will work our way through Problem 1-1 on pages, so you must also prepare to play both roles (Plaintiff’s or Defendant’s counsel) in that exercise if called upon to do so (that is, I will only ask you to play one of the roles, but you will not know which, and so must be prepared for either one).
- Please read pages 31-53 in PCSA. **Here and for every assignment, please study carefully the text of any of the Federal Rules referred to in the assignment.** Also, concerning witness competence, please take a look at FRE 601 (reproduced
on page 55 of PCSA) and 602 (reproduced on page 82). We will not discuss these two rules in any great detail but it is important that you be aware of them.

- Please read pages 93 (beginning at “Recollection”) - 113 in PCSA.
- Please begin our study of relevance by reading pages 119 - 136 and the notes at 140 - 143 in PCSA. **Be sure for this and all assignments to study carefully the text of any provisions of the Rules mentioned.** (This is the last time this annoying warning will be repeated.)
- We’ll conclude, for now, our consideration of relevance with a brief discussion of Holmes v. South Carolina (U.S. 2006) and Old Chief v. United States (U.S. 1997) and associated notes and commentary, pages 169 - 187 in PCSA.
- We will now jump forward to consideration of the hearsay rule. On this subject please read pages 557 - 576 in PCSA. Note with care the provisions of FRE 801(a)-(c) and FRE 802.
- We’ll continue our study of the “basic” definition of hearsay, reading pages 577 - 589 in PCSA, keeping an eye on the definitions in FRE 801(a)-(c). We’ll give some particular thought to Baron Parke’s ship captain example, the facts of Wright v. Doe d. Tatam, and United States v. Zenni.
- We’ll then move on to prior inconsistent statements as impeachment and as substantive evidence. Reading on the latter topic is in PCSA, pages 591 - 598. Please consider CRE 801(d)(1)(A) (posted at the Course Materials link) and how it differs from FRE 801(d)(1)(A).
- We’ll discuss the process of impeachment with prior inconsistent statements. Please read pages 973 through 979 in PCSA (through the Note on 979), and study carefully FRE 613. Then consider the text of CRE 613 (posted at the Course Materials link) and try to understand the difference between federal and Colorado practice when it comes to impeaching a witness with a prior inconsistent statement. If time permits, we’ll assign roles and do some exercises to test your mastery of the important concepts related to, and techniques for, impeaching a witness with a prior inconsistent statement.
- Concerning prior consistent statements, read pages 599 - 609 in PCSA. Study carefully the language of FRE 801(d)(1)(B). (The Colorado version of this rule is identical.)
- Concerning statements of identification, read pages 609 - 615 in PCSA and study FRE 801(d)(1)(C). (The Colorado rule is identical.)
- Concerning admissions of a party, read pages 615 - 624 in PCSA (through Adoptive Admissions), and study carefully FRE 801(d)(2)(A) and (B). (The Colorado rules are identical.)
- Concerning other varieties of admissions, including authorized admissions and admissions by agents, read pages 624 - 635 in PCSA, and study FRE 801(d)(2)(C) and (D)(Colorado versions substantially identical).
- Concerning co-conspirator’s statements, please read pages 636 - 653 in PCSA.
- We’ll move on now to the hearsay exceptions of FRE 804; please study the definition of “unavailability” in FRE 804(a) (the Colorado rule is substantially identical). This definition is the gateway to the hearsay exceptions of FRE 804. Also please take a look also at FRE 805 (Colorado rule identical), concerning double or multiple hearsay.
We will begin our study of the hearsay exceptions of FRE 804 with FRE 804(b)(1)(former testimony) and (b)(2)(dying declarations). Concerning former testimony, please read pages 670-679 in PCSA. Concerning dying declarations, read pages 679-684. I know the text of FRE 804(b)(1) is rather baffling at first (and maybe even longer than that), so please study it carefully. FRE 804(b)(2) is somewhat less challenging, but note that in Colorado, the admissibility of dying declarations is governed by a statute (CRS 13-25-119, posted at Class Materials), and that its requirements differ somewhat from those of the federal rule.

Continuing our consideration of the FRE 804(b) exceptions to the hearsay rule, read pages 684-703 in PCSA, concerning statements against pecuniary, proprietary, and penal interest.

Please read PCSA at 703 and FRE 804(b)(4) concerning statements of personal or family history, but we won’t discuss this rather seldom-invoked rule. We’ll consider in more detail the exception concerning forfeiture by wrongdoing (FRE 804(b)(6), first enacted in 1997). Please read pages 704-709 in PCSA. Then return to the definition of unavailability in FRE 804(a), looking carefully at its language, especially the last clause, sometimes known as the “procurement” clause. Consider the relationship between the forfeiture by wrongdoing exception and the procurement clause.

If time permits, we’ll devote a day to some exercises testing what we have learned so far about the hearsay rule and its exceptions, including those on pages 709-716.

We will begin to consider the FRE 803 hearsay exceptions; please read pages 717-734 in PCSA.

Continuing our study of the Rule 803 exceptions, please read pages 735-750 of PCSA.

Moving right along through the FRE 803 hearsay exceptions, read PCSA, pages 751-758 (statements for treatment or diagnosis) and 761-776 (business records exception).

Consider the public records exception (and its exceptions), by reading PSCA 776-792 and reading carefully the text of 803(8).

We will conclude our study of the hearsay rule with brief looks at FRE 803(10) and FRE 803(18). Please study the text of these rules carefully. If time permits, we will work through Problem 13-3 on pages 802-806.

We next take up the subject of character evidence under FRE 404 and 405. I’m not assigning any prolonged reading on these rules, but in exchange for this mercy you must read and re-read, with extreme care, the language of Rules 404(a), 404(b), and 405. A slide show will test and (I hope) enlarge your understanding.

We will focus with more clarity on FRE 404(b) and how its provisions relate to the others concerning character evidence. Please read, in PCSA, pages 264-286. We will consider some surprising additional wrinkles on pages 294-302, and learn how habit differs from character on pages 304-319.

We will next consider “rape shield” laws, and evidence of prior acts in sexual assault and child molestation cases. Please read, in PCSA, pages 319-340.

Reconsidering impeachment. In general, please read and consider pages 925-930. We’ll discuss how Rule 607 and the rule of Morlang (discussed in note 3, p. 927)
might complicate the task of using a witness’s prior inconsistent statement. Then we’ll consider impeachment for bias; please read PCSA 995-1002.

- Then we’ll turn to impeachment by conviction, for which discussion please read 941-959, and consider carefully the texts of FRE 609 and CRS 13-90-101 (this statute, which is Colorado’s substitute for Rule 609, is posted at the TWEN site under Course Materials).
- More impeachment. PCSA, pages 959-970 (to the bottom of the page) and consider carefully FRE 608 (CRE 608 is identical). Some examples will test your understanding.
- Rehabilitation, or repair of impeachment: please read pages 1003-1009. Then, concerning the impeachment of hearsay declarants, please read and consider carefully FRE 806 (Colorado rule identical).
- The topic is Authentication. Please study FRE 901-903 carefully, and skim pages 343-400 to get an idea of how the authentication requirement works in various contexts. I will lecture briefly on these topics and then, if time permits, we will do some exercises in the authentication of certain items of evidence.
- The topic is the Best Evidence Rule (sometimes, but not often, called by its more accurate name, the Original Documents Rule). Please study FRE 1001-1008 and pages 407-430 in PCSA (I know this is long, but not too difficult, I think).
- Confrontation. Please read in PCSA pages 827-849. If time permits, we will go further into the questions raised by Crawford v. Washington and read and consider pages 849-869. And we will briefly consider the problems created by Bruton v. United States, 391 U.S. 200 (1968).
- The last substantive topics will be Opinion, Expert, and Scientific Evidence, Special Rules of Relevance, and Privileges. These topics will be covered in lecture format and you need not read any material by way of preparation other than the applicable provisions of the FRE, which are FRE 701-706, 407-411, and 501. Some pertinent Colorado provisions will also be noted and posted at the Class Materials link of the TWEN site.

FINAL EXAMINATION:

The final examination in this class will be a three-hour, open-book, open-note examination. You may consult as you take it any written material whatsoever, whether prepared by you or by someone else. You may not consult any on-line source, nor communicate with any other person in the course of taking the examination. I encourage you to take the examination on a computer, but you are not required to do so. If you do, you must comply with any requirements the Dean’s office imposes on the use of computers in taking examinations.

REQUIRED SYLLABUS MATERIAL:

I am apparently required by law and/or University policy to include the following material in this Syllabus:
(1) If you qualify for accommodations because of a disability, please submit to me a letter from Disability Services in a timely manner so that your needs be addressed. Disability Services determines accommodations based on documented disabilities. Contact: 303-492-8671, Willard 322, and http://www.Colorado.EDU/disabilityservices

If you have a temporary medical condition or injury, see guidelines at http://www.colorado.edu/disabilityservices/go.cgi?select=temporary.html

Disability Services' letters for students with disabilities indicate legally mandated reasonable accommodations. The syllabus statements and answers to Frequently Asked Questions can be found at http://www.colorado.edu/disabilityservices

(2) Campus policy regarding religious observances requires that faculty make every effort to deal reasonably and fairly with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. In this class, there is no penalty for missing a class for religious observance. There is, however, no religious exception to the Present and Prepared Policy stated above, as it accommodates the need to miss a quarter of the classes scheduled for any reason. See full details of campus policy at http://www.colorado.edu/policies/fac_relig.html

(3) Students and faculty each have responsibility for maintaining an appropriate learning environment. Those who fail to adhere to such behavioral standards may be subject to discipline. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. See policies at http://www.colorado.edu/policies/classbehavior.html and at http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code

(4) The University of Colorado at Boulder policy on Discrimination and Harassment, the University of Colorado policy on Sexual Harassment and the University of Colorado policy on Amorous Relationships apply to all students, staff and faculty. Any student, staff or faculty member who believes s/he has been the subject of sexual harassment or discrimination or harassment based upon race, color, national origin, sex, age, disability, creed, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550. Information about the ODH, the above referenced policies and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at http://www.colorado.edu/odh
All students of the University of Colorado at Boulder are responsible for knowing and adhering to the academic integrity policy of this institution. Violations of this policy may include: cheating, plagiarism, aid of academic dishonesty, fabrication, lying, bribery, and threatening behavior. All incidents of academic misconduct shall be reported to the Honor Code Council (honor@colorado.edu; 303-735-2273), or to the Office of the Dean of the Law School. Students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member and non-academic sanctions (including but not limited to university probation, suspension, or expulsion). Other information on the Honor Code can be found at http://www.colorado.edu/policies/honor.html and at http://www.colorado.edu/academics/honorcode/