Evidence and Trial Practice with Professor Wesson is a limited-enrollment five-hour course that covers the material ordinarily covered in Evidence and integrates it with a performance-heavy course in Trial Practice. There are no prerequisites, but you must enroll for all five hours of this class; neither aspect is available separately. (I do sometimes teach a separate, larger, freestanding course in Evidence, but not during a semester when Evidence and Trial Practice is offered.)

My experience has been that the theoretical and doctrinal law of evidence is best understood when one’s learning is put to use in various exercises, short at first, but eventually complex and lengthy. Similarly, trial skills are best learned not merely as forms of debate or rhetoric, but as tools in a performative setting that is rich with both factual and legal complications.

This course is not for everyone; it is especially not for the faint of heart, nor those who are unable to make the sort of commitment in time and energy that it requires. Most weeks we will see each other for five hours (some weeks more, especially toward the end), and that’s a lot. Even though you will get five hours of credit for this class, some of you will believe that it requires too much work for the credit. No doubt some of you will grow tired of seeing and listening to me for so much time every week. If you think this experience will become intolerable, this class is not for you.

Here is another obligation that comes with enrollment in this class: I expect you to sign in as “present and prepared” at the beginning of each class meeting (exclusive of the trials, about which more later) unless you wish to attend without participating. It is permissible to attend class without participating, and I encourage this practice if you are unable to prepare but can attend. You may not, however, sign in as “Present and Prepared” unless you are prepared to participate if called upon. 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 the trial schedule is set and any last minute adjustments in the schedule are made, I’ll let you know exactly how many classes this will be.) 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 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 a single instance of obvious failure to be prepared after signing in “P&P” is a two-point deduction from the examination grade.

Your obligations respecting the trials are independent of the present and prepared rule. (Hours spent at trials do not count toward the 75%, nor are they part of the total from which the 75% is calculated.) Depending on enrollment, there will be either five or six trials, all toward the end of the semester. You are required to participate in four, including the one in which you will be (usually with a partner) attorney for a party. Your
role in the remaining three will be as either juror, witness (if requested by one of the attorneys), or party (occasionally, a party will not be testifying, but will need to be role-played by one of you-- easy duty, just sitting at counsel table and looking silently outraged at the accusations being made against you). Shortly into the semester, I’ll pass out a form that allows you to indicate some preferences about which trials you would like to participate in, what dates you prefer, and whom you would like to partner with. I will try to honor your preferences as I assign you to a trial, but may not be able to honor everyone’s in every case. The obligation to participate in a trial as assigned (including as a juror) is a very serious one, and absence or lateness will be excused only for serious illness or grave family emergency. You may not trade or otherwise negotiate these obligations among yourselves without Professor Wesson’s consent (although she will consent for good cause shown if the result is not disruptive of the trial schedule). Some of these trials may be on Fridays, Saturdays and/or Sundays in November and early December, and others may be held during some of our afternoon classes and immediately afterward, meaning that those who participate in them will be have to be present until about 8:00 on those dates. Each trial is likely to run three hours, and will be followed by jury deliberations, for which all jurors and counsel must remain. The judge will declare a mistrial if the jury cannot reach a verdict after half an hour of deliberation. There will be a critique immediately after the verdict for which the jury and counsel must also stay. (Witnesses are invited, but not required, to remain for jury deliberations and critique.) Although every effort will be made to allow you to make and rely on these trial scheduling arrangements, unexpected events sometimes delay or disrupt trials, and the judge will reschedule or rearrange as necessary. All trial participants are expected to cooperate in any necessary rescheduling. These are, I know, onerous expectations. If any of them seem too onerous to you, you should not enroll in this class. (I should perhaps explain that the extra hours you spend in trials will be compensated for to some extent by some cancelled classes earlier in the semester.)

Your trial preparation will include some written work, typically motions, responses to motions, and/or proposed jury instructions; it will also include witness interviewing and preparation. Your presentation during trial will include opening statement, direct and cross–examination, objections to testimony and responses thereto, offering exhibits and objections thereto, and summation; ordinarily these tasks will be divided between you and your partner at your joint discretion.

You will, from time to time, be given instructions about how to proceed to prepare for exercises, and as you begin to prepare for trial you will be given some “local rules” of Judge Wesson’s courtroom. You are expected to study these rules and directions with care and adhere to them rigorously; this expectation mirrors the professional obligations of trial lawyers everywhere. The judge may rule in ways that disturb or even outrage you, but you must abide by her rulings and will be penalized if you do not. Some of these instructions, rules, and rulings will be highly technical, and many are counterintuitive. Some of them may, to your way of thinking, have no rational justification. If the obligation to comply with them nevertheless seems too burdensome, you will probably not enjoy this class.
There will be an open-book final examination. The course grade will consist 3/5 of the exam grade, augmented by the extra points for P&P when they have been earned, and 2/5 of the grade assigned to the student’s trial performance, both written and performed.

I do not wish to discourage any of you from enrolling in this class, and I hope this advisory introduction doesn’t sound too grim. If these expectations do not daunt you, I think you may find the class enjoyable, and in my experience you will learn a great deal. Evidence and Trial Practice is not, however, a low-maintenance class.

If you do enroll successfully in this class, you may not drop the class after August 1st without incurring a significant penalty (an “F” in the course). This requirement is designed to ensure that the class remains at the right size to assign everyone a trial and a trial partner.