

SCIENTIFIC EVIDENCE AND EXPERT TESTIMONY

(LAW 878-001)

INSTRUCTOR:

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COURSE INFORMATION:

Meeting: Thursdays, 6:00pm-8:50pm

Prerequisite: Evidence (LAW-633)

Number of Credit Hours: 3 Credit Hours

TEXTBOOK/COURSE MATERIALS:

All course materials will be provided electronically through MyWCL.

COURSE OVERVIEW:

Scientific Evidence and Expert Testimony is a practical course designed to enrich students' understanding of the interaction between the Federal Rules of Evidence and science in a trial setting. Through a series of exercises, which simulate introduction of advanced scientific evidence and expert witness examinations, students develop the skills to advocate for or against the admissibility of evidence at trial and for or against the position that the evidence has persuasive power. In addition to these trial simulation exercises, the course will have an instructional component, which includes presentations by guest lecturers who are specialists in various scientific fields such as latent prints, digital information, DNA evidence, and/or psychology.

The trial simulation exercises will introduce students to particular scientific disciplines and technologies and their role in trial. Students will master laying foundations for various types of scientific and expert evidence, making evidentiary proffers, qualifying expert witnesses, and objecting to the admissibility of such evidence. Students will gain an appreciation of the evidentiary skills needed to be a successful advocate at trial, especially within the crucial area of scientific evidence and expert testimony. Additionally, students will prepare their own witnesses to testify,

learn how evidentiary rules can be used both strategically and tactically, and reconcile any ethical issues in discovery.

LEARNING OUTCOMES AND ASSESMENT:

A substantial amount of out-of-class preparation is required for in-class exercises. Grading is based on the following:

GOALS	OUTCOMES	ASSESSMENTS
Effectively Offer Expert Evidence and Testimony in Litigation	Draft and Argue Motions Related to Expert Testimony, Offer Expert Testimony at Trial in Direct Examination, Display a Broad Understanding of Interaction Between the Federal Rules of Evidence and Expert Evidence in a Litigation	In-Class Discussion, <u>Daubert</u> Motions Exercise, Motions to Compel Exercise, Expert Witness Interviews, Expert Disclosure Letter, Qualifications Exercise, Direct Examination Exercise, Final Exam
Effectively Oppose Expert Evidence and Testimony in Litigation	Draft and Argue Motions Related to Expert Testimony, Cross-Examine Expert Testimony at Trial	In-Class Discussion, <u>Daubert</u> Motions Exercise, Motions to Compel Exercise, Voir Dire Exercise, Cross Examination Exercise, Final Exam
Learn New Scientific Disciplines and Technologies and How They Relate to Criminal and Civil Litigation, both Pre-Trial, and in Trial	Display Proficiency in Translating “Science into English,” Convey Complex Scientific Principles to Lay Jurors	In-Class Discussion, In-Class Presentations on Different Scientific Disciplines

COURSE STRUCTURE, ASSINGMNETS, AND EVALUATION:

A substantial amount of out-of-class preparation is required for in-class exercises. Grading is based on the following:

In-Class Participation, Attendance, Oral Arguments, and Examinations 70%

Written Motions and Discovery Letter	15%
Final Exam	15%

COURSE POLICY ON ATTENDANCE:

We expect you to attend and to be prepared for each class session. Classroom participation is a fundamental component of this course. Your contributions play a significant role in the learning process, without which the integrity of the course is compromised. Failure to attend class is a detriment both to your ability to master the material and to your classmates, and leads to a general reduction in the quality of the course.

Accordingly, at the start of each class, we will distribute a sign-in sheet. Please sign your name to confirm your attendance (please be aware that signing the attendance sheet on someone else’s behalf is a violation of the Honor Code).

Each student is allowed one absence. Any subsequent absence will affect your final grade in the following manner: each additional absence will reduce your overall letter grade by one-third. An A will be reduced to an A-, A- to B+, and so on.

In the event of a medical emergency, personal emergency, or contagious disease (in which situation, please do not come to class), we will provide students with the opportunity to perform make-up assignments so as not to reduce their overall grade. Consistent with basic standards of professionalism, you are responsible for communicating with us about any absences you contemplate occurring.

SYLLABUS/COURSE SCHEDULE:

Class 1, January 9, 2020: Introduction, Course Expectations, Nature and Purpose of Expert Opinion Evidence, Introduction to Forensic Science

Required Reading Posted on MyWCL:

- Affidavit in Support of Arrest Warrant in United States v. Seth Tebow
- Lab Reports in United States v. Seth Tebow
- FRE 701-706

Subject Matter:

- Introduction, Class Outline, and Expectations
- Nature and Purpose of Expert Opinion Evidence
- U.S. v. Tebow Case Introduction
- Review of Case Affidavit and Lab Reports

Class 2, January 16, 2020: Admissibility of Scientific Evidence, Persuasive Motions and Arguments, Explanation of Daubert Motions Exercise

Required Reading Posted on MyWCL:

- Daubert v. Merrell Dow Pharmaceutical, 509 U.S. 579 (1993)
- General Electric Co v. Joiner, 522 U.S. 136 (1997)
- Kumho Tire v. Carmichael, et.al., 526 U.S. 137 (1999)
- In re Prime, 220 F. Supp 1203, (D.C. Wash, 2002)
- In re Prime, No. 02-30375, (9th Cir., April 16, 2004)
- Expert Testimony, Chapter 1, Part. D: Admissibility

Subject Matter:

- How to Read a Lab Report
- Quality Controls in Forensic Science
- Admissibility of Scientific Evidence

Class 3, January 23, 2020: Forensic Discipline Under Scrutiny

Required Reading Posted on MyWCL:

- Trial Motion Advocacy, Chapter 4: Persuasively Arguing a Motion or Response.
- Maryland v. Rose, Memorandum Decision.
- U.S. v. Llera Plaza I, 179 F. Supp.2d 492 (E.D. Pa. 2002).
- U.S. V Llera Plaza II, 188 F.Supp.2d 549 (E.D. Pa. 2002).
- D.H. Kaye, *The NonScience of Fingerprinting: U.S. v Llera-Plaza*, presented at the Association of American Law Schools Conference on Evidence, Washington D.C., 2002.

Subject Matter:

- Persuasive Motions and Arguments
- Development and Transition of Latent Prints
- The Role of Probability Statements
- Guest Lecture

Receive Assignment:

- Receive Assignment of Teams and Topics for Written Daubert Motions and Oral

Arguments

Class 4, January 30, 2020: Arguments on Motion to Admit or Exclude Evidence in Accordance with Daubert

Required Reading Posted on MyWCL:

- Review Daubert Caselaw

Subject matter:

- Moving to Exclude an Expert on Daubert Grounds
- Defending Against a Daubert Challenge to Your Expert

Written Assignment Due at 12:00pm:

- Written Motion to Admit or Exclude Evidence Under Daubert

Assignment Due:

- Oral Argument Presentations on Daubert Motions

Class 5, February 6, 2020: Constitutional Obligations Regarding Discovery

Required Reading Posted on MyWCL:

- Brady v. Maryland, 373 U.S. 83 (1963).
- Kyles v. Whitley, 514 U.S. 419 (1995).
- Federal Rule of Criminal Procedure 16
- Ex Parte Coty, NO. WR-79,318-02, 180th District, Harris County (2014).
- In re Brown, 17 Cal.4th 873, 72 Cal.Rptr.2d 698, 952 P.2d 715 (1998).

Subject matter:

- Constitutional Obligations Regarding Discovery
- Federal Rule of Criminal Procedure 16 Discussion
- Writing and Arguing Motions to Compel Discovery

Class 6, February 13, 2020: Access to Evidence/Motions to Compel

Required Reading Posted on MyWCL:

- California v. Trombetta, 467 U.S. 479 (1984).
- Arizona v. Youngblood, 488 U.S. 51 (1998).

- U.S. v. Garries, 22 M.J. 288 (1986)
- U.S. v Feria, 9 F3d 990 (1st Cir 1993)
- Fero v. Kirby, 39 (F3d 1462)
- Federal Rule of Civil Procedure 26
- Federal Rule of Civil Procedure 37

Subject Matter:

- Access to Evidence
- Consumption of Evidence
- Motions to Compel Discovery

Receive Assignment:

- Receive Assignment of Teams and Topics for Motions to Compel Discovery

Class 7, February 20, 2020: Arguments on Motions to Compel

Required Reading Posted on MyWCL:

- Review Sample Motions to Compel Discovery

Subject Matter:

- Oral Arguments on Motions to Compel Discovery

Written Assignment Due at 12:00pm:

- Written Motion to Compel Discovery

Assignment Due:

- Presentation of Oral Arguments on Motions to Compel Discovery

Class 8, February 27, 2020: Qualifying and Laying a Proper Foundation for Expert Witness Testimony

Required Reading Posted on MyWCL:

- Expert Testimony, Chapter 2: Finding Experts
- Expert Testimony, Chapter 3: Preparation
- Greg Norman CV
- Defense Expert CVs

Subject Matter:

- Selecting Expert Witnesses

- Expert Interviews
- Expert Qualifications and Voir Dire
- Guest Lecture - Greg Norman

Receive Assignment:

- Receive Assignment of Teams and Topics for Qualification and Voir Dire Exercise

Class 9, March 5, 2020: Qualification and Voir Dire Presentations

Subject Matter:

- Qualification and Voir Dire of Expert Witnesses at Trial

Assignment Due:

- Presentation of Qualification and Voir Dire Examinations

Class 10, March 12, 2020: Melendez-Diaz, Substitution of Expert Witnesses, Depositions of Expert Witnesses in Civil Cases

Required Reading Posted on MyWCL:

- Melendez-Diaz v Massachusettes, 557 U.S. 305 (2009)
- Bullcoming v New Mexico, 131 S.Ct. 2705 (2011)
- Williams v Illinois, 132 S.Ct. 2221 (2012)
- Teresa M. Garvey, *Williams v Illinois and Forensic Evidence: The Bleeding Edge of Crawford*, Strategies Newsletter, Aequitas, Washington DC 2013
- Federal Rule of Civil Procedure 30
- Successful First Depositions, Chapter 6: Expert Depositions
- Playing Hardball in Expert Witness Depositions

Subject Matter:

- Confrontation Clause and Expert Witnesses
- How to Conduct Depositions of Expert Witnesses

Receive Written Assignment:

- Receive Assignment for Expert Witness Disclosure Letter

***** NO CLASS *** March 16-20, 2020 *** SPRING BREAK *****

Class 11, March 26, 2020: Issues Involving DNA and Latent Prints

Required Reading Posted on MyWCL:

- Review Case File Materials – DNA and Latent Prints
- L. Kreeger; D. Weiss, *Forensics DNA Fundamentals; Be Not Afraid*, American Prosecutors Research Institute, Alexandria, VA, 2003.
- *DNA Evidence: Basic of Analyzing*, [NIJ.Gov](#), National Institute of Justice, Types of Forensics, 2012.
- *Effects of Human Factors on the Accuracy of Fingerprints*, [NIJ.Gov](#), National Institute of Justice, Types of Forensics, 2012.
- *A Simplified Guide to Fingerprint Analysis*, National Forensic Science and Technology Center, Largo, FL, 2009.
- Resume, DNA Expert
- Resume, LP Expert

Subject Matter:

- Issues Involving Latent Prints and DNA Evidence
- Guest Lecture

Written Assignment Due at 12:00pm:

- Expert Witness Disclosure Letter due at 12:00pm

Class 12, April 2, 2020: Direct and Cross Examination of Expert Witnesses

Required Reading Posted on MyWCL:

- Expert Testimony, Chapter 5: Direct Examination
- Expert Testimony, Chapter 6: Cross Examination the Basics
- Expert Testimony, Chapter 7: Cross Examination What to Expect
- Expert Testimony, Chapter 8: Cross Examination: How to Cope

Subject Matter:

- Guest Lecture
- How to Conduct Expert Witness Direct Examinations
- How to Conduct Expert Witness Cross Examinations

Receive Assignment:

- Receive Assignment of Teams and Topics for Direct and Cross Examinations

Class 13, April 9, 2020: Direct and Cross of Expert Witnesses

Subject Matter:

- Expert Witness Direct and Cross Examinations

Assignment Due:

- Presentation of Expert Direct and Cross Examinations

Class 14, April 16, 2020: Direct and Cross of Expert Witnesses

Subject Matter:

- Expert Witness Direct and Cross Examinations

Assignment Due:

- Presentation of Expert Direct and Cross Examinations

Date: FINAL TRIAL