

Expert Testimony Incorporating Technology  
McGeorge School of Law  
University of the Pacific  
Fall of 2022  
Professor Annie Deets

## Course Syllabus

### 1. GENERAL COURSE INFORMATION

Class Day/Time: Monday 6:15 to 9:15 p.m.

Class Location: Courtroom

Class Web Page: TWEN

Office Hours: Deets: TBD

Contact Info: Deets: [adeets@pacific.edu](mailto:adeets@pacific.edu)

### 2. REQUIRED TEXTS

Case File: *State v. Davis*- Annie Deets, Dr. Peggy Flanagan

**Additional required readings** (will be supplemented during the semester)

Note: all readings will be available through TWEN and/or on-line links

### 3. GOALS OF COURSE

Students will learn substantive law regarding evidentiary issues surrounding the admissibility of expert testimony and then apply that knowledge in simulated advocacy skill workshops. Students will learn through reading, discussion, extensive role-playing, and self-reflection. Students will conduct simulated expert interviews, expert preparation, prepare and use technology-based demonstrative evidence, conduct direct examination and cross examination of expert witnesses, and give a closing argument based on the testimony elicited.

**4. LEARNING OUTCOMES AND ASSESSMENT:**

**A.** The goals of the course are to have you:

1. Understand the how and when to seek an expert witness.
2. Learn how to locate and vet the most appropriate expert witness.
3. Explore the ethical pitfalls of hiring and preparing an expert witness.
4. Learn pretrial tools to help vet and prepare expert witnesses.
5. Develop the ability to qualify an expert witness.
6. Gain proficiency in conducting the direct and cross examination of an expert witness.
7. Learn process of mounting and surviving a Daubert challenge.
8. Learn how to effectively present expert testimony at trial.
9. Learn how to incorporate technology driven demonstratives exhibits into the testimony of your expert to explain the concepts.

**B.** The Pacific McGeorge Student Learning Outcomes you will achieve from this course are to:

1. Acquire the ability to engage in critical thinking about expert witness testimony.
2. Apply knowledge and critical thinking skills to perform competent legal analysis, reasoning and problem solving.
3. Demonstrate the ability to conduct successful direct and cross-examinations of expert witnesses in State and Federal Court.
4. Demonstrate communication skills, including effective listening and critical reading and analytical skills in order to successfully examine expert witnesses.
5. Collaborate effectively with others.
6. Apply knowledge of professional ethics to witness examination.
7. Demonstrate professional judgment and professionalism through conduct consistent with the legal profession's value and standards.
8. Demonstrate how to apply the relevant legal ethics rules in state and federal cases.
9. Develop and improve proficiency in use of technology in the courtroom.

## 5. COURSE POLICIES

- A. You are responsible for **all** reading assignments, written assignments, and role-play assignments in your Syllabus and for any additional assignments given in class, sent by you via email, or posted on the TWEN website.
- B. You must check the class TWEN website and your email on a **regular basis** for this course to be aware of any changes, additions, substitutions, or any other information we provide. You are accountable for any information posted on the class website and for any information provided via email.
- C. This course will call on each of you to engage in active class discussion, role-plays and simulations and classroom presentations. *Preparation before class is key to your success in this “learning by doing” course.*

## 6. ATTENDANCE & PUNCTUALITY

Class attendance is required by the ABA and Pacific McGeorge. Therefore, attendance will be taken for each class by means of a visual check at the start of class. Please try your hardest not to miss class but if you must, let us know in advance of class. Part of your final course grade is based on class participation and in-class expert witness exams; thus, one absence is permitted during the semester without penalty. Additional absences during the semester will factor into your final grade barring extraordinary circumstances approved by your professors.

## 7. GRADED ASSIGNMENTS AND WEIGHT

- A. 25% Midterm
- B. 50% Final
- C. 20% Applied learning exercises (10% each)
- D. 5% Attendance and participation

- 8. **Disability Policy:** The Americans with Disabilities Act (ADA) is a federal anti-discrimination statute that provides comprehensive civil rights protection for persons with disabilities. Among other things, this legislation requires that all students with disabilities be guaranteed a learning environment that provides for reasonable accommodation of their disabilities. If you believe you have a disability requiring an accommodation, please contact the Assistant Dean for Student Affairs at 916-739-7089 or [sacstudentaffairs@pacific.edu](mailto:sacstudentaffairs@pacific.edu). Due to the law school’s policy of testing anonymity, students should not discuss their disabilities with professors. For additional information visit [http://www.mcgeorge.edu/Disabled\\_Student\\_Services](http://www.mcgeorge.edu/Disabled_Student_Services).

## Course Overview

### Week 1- Overview

#### Read:

- Milroy C. M. (2017). *A Brief History of the Expert Witness*. Academic forensic pathology, 7(4), 516–526. <https://doi.org/10.23907/2017.044>

#### In Class:

- Overview of Class
- Icebreaker Drills on Direct and Cross Examination
- Brainstorming

### Week 2- Finding the Right Expert

#### Read:

- Caroline T. Parrott, Tess M. S. Neal, Jennifer K. Wilson, Stanley L. Brodsky, *Differences in Expert Witness Knowledge: Do Mock Jurors Notice and Does It Matter*, Journal of the American Academy of Psychiatry and the Law Online Mar 2015
- Federal Rule of Civil Procedure 26
- Federal Rule of Criminal Procedure 16

#### In Class

- Lecture: Tools to Vet Your Expert, Consulting and Testifying Expert

### Week 3- What Qualifies as An Expert?

#### Before Class:

#### Read:

- Cases:
  - *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
  - *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)
  - *General Electric Co. v. Joiner*, 522 U.S. 136 (1997)
- FRE 701, 702, 703, 704
- Advisory Committee on Evidence Rules Proposed Amendment to Rule 702 (effective 12/12/2023)

#### In Class:

- Exploded demonstration of qualifying an expert in a Daubert hearing
- Discussion of steps

## **Week 4- Surviving a Daubert Challenge**

### **Before Class:**

#### **Read:**

- *State v. Davis-Case File*

### **In Class:**

- Students will practice direct examination drills on steps of expert witness examination using experts from case file.

## **Week 5- Challenging an Expert under Daubert**

- Hilbert, Jim, *The Disappointing History of Science in the Courtroom: Frye, Daubert, and the Ongoing Crisis of “Junk Science” in Criminal Trials*, 71 Oklahoma Law Review 759 (2019)

### **In Class:**

- Lecture on cross-examining an expert to mount a Daubert challenge
- Students will participate in drills cross-examining expert on data, qualifications, or methodology using experts from case file.

## **Weeks 6-7- Midterm Daubert Hearings**

Daubert Hearings

## **Week 8- Presenting Expert Testimony at Trial Using Technology**

### **Before Class:**

#### **View:**

- [https://trialreadypro.com/crash-reconstruction/?gclid=Cj0KCQjwjN-SBhCkARIsACsrBz44yhLzv0AVPCd6uD9Cv8xmdwScSp04IHUV4oy95fWSRtfctavw3usaAl0xEALw\\_wcB](https://trialreadypro.com/crash-reconstruction/?gclid=Cj0KCQjwjN-SBhCkARIsACsrBz44yhLzv0AVPCd6uD9Cv8xmdwScSp04IHUV4oy95fWSRtfctavw3usaAl0xEALw_wcB)
- <http://infomediatrialsolutions.com/trial-exhibits/>
- <http://infomediatrialsolutions.com/legal-animations-products/>
- <http://infomediatrialsolutions.com/legal-video-overview/>

Read:

- Federal Rules of Evidence 401, 402, 403, 611, 901, 1006
- *Colón-Fontáñez v. Municipality of San Juan*, 660 F.3d 17
- *United States v. Chhibber*, 741 F.3d 852 (7th Cir. 2014)
- *Peat, Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154 (11th Cir. 2004)
- *Burchfield v. CSX Transp., Inc.*, 636 F.3d 1330, 1336 (11th Cir. 2011)
- *Bannister v. Town of Noble, Okl.*, 812 F.2d 1265 (10th Cir. 1987)
- *Gaddy v. Terex Corporation*, 2018 WL 11350314 (2018)

In Class:

- Lecture on Exhibits and Creating Effective Visual Presentations
- Demonstration by Trial Graphics Group

## **Week 9 Financial Experts**

Selected students will conduct a direct and cross examination of financial expert using a simulated problem.

## **Week 10- Medical Experts**

Selected students will conduct a direct and cross examination using a simulated case problem.

## **Week 11- Ethics of Witness Preparation/Presenting Expert Testimony at Trial**

Read:

- Model Rules of Professional Conduct 1.1
- Model Rules of Professional Conduct 1.2
- Model Rules of Professional Conduct 3.3
- Model Rules of Professional Conduct 4.1
- Restatement of the Law Third, §116, comment b (2000)
- Restatement of the Law Third §120, comment d (2000)
- *In re Eldridge*, 82 N.Y. 161 (N.Y. 1880)

Lecture:

- Expert Testimony at Trial

## **Week 12-Social Science Experts**

*Students will meet with and prepare their expert for their final examination.*

## **Weeks 13-14-Final Expert Witness Exam**

**Final Exam:** Students will conduct a direct examination of an expert witness using a technology driven demonstrative aid and then conduct a cross-examination of the opposing expert. Students will then give a closing argument for the case incorporating the demonstrative that they constructed on direct examination and utilizing the points elicited on cross-examination.