

Evidence Final Issue Outline  
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## Essay #1

Expert testimony: Whether NTF basis for expert testimony is speculative, considering Ed's testimony, *Daubert* and *Sargon*; .

Ollie as expert: suitable training for expert opinion; background hearsay vs case specific hearsay: *Sanchez*; whether O relied on material that experts in the same field would rely on. Opinions re Louis reliability and honesty, Ace guilt and drugs possessed for sale: subjects of expert testimony or invasion of jury's decisions.

Louis statements: hearsay, testimonial hearsay, non-hearsay basis for expert opinion; proper basis for expert opinion, plea discussion with police. Confrontation: *Crawford*, *Sanchez*, *Melendez-Diaz*

Ed's testimony: relevance; qualification as expert; proper test for admissibility (reasonable reliance, *Kelly*, *Daubert*, *Sargon*).

Wilma: Spousal privilege not to testify against Louis: holder, waiver. Marital confidential communication: presumption; exception for crime fraud?; if no exception, completeness doctrine, Constitutional argument for admissibility. If not barred by privilege: hearsay exception for declaration against interest.

Walt: relevance; character evidence, non character purpose: impeachment of hearsay declarant in CA but not FRE for moral turpitude acts; knowledge, intent

## Essay #2

Tapes of witness interviews: attorney-client privilege: interviews of non-client lay wits and experts not using confidential info. Work product: absolute vs conditional, waiver when calling wits who have been interviewed. Privacy: vs compelling state interest. Waiver by supplying summary, completeness doctrine.

Louise testimony: lay opinion and character evidence re Ace's swimming ability; character evidence for non character purpose: Ace's swimming knowledge. Ace's statement re strong river current: hearsay, exception for excited utterance, dying declaration(?), contemporaneous statement(?). Cross exam: prior inconsistent statement as CA hearsay exception, and CA and FRE impeachment; opportunity to explain answer. "Wimp swimmer" character evidence for limited purpose. Conversations with Sally attorney-client privilege(?), work product vs waiver when called as witness. L crush on Ace: relevance, bias and motive impeachment, 352/403.

Dan testimony: physician-patient privilege, waiver, privacy, relevance/hearsay re A not complaining about any inability to swim. 352/403. Holder with standing to claim privilege? Cross re Sally threats re D credibility as threatened witness, waiver re work product privilege.

Jane testimony: Ace behavior: character evidence for limited purpose re absence of suicidal, etc thoughts. Family testimony non responsive to the question sets up *impeachment by contradiction* on cross re Tom dui and AA program. Spousal privilege not to testify against Tom waived? Tom dui: character evidence of non-felony in CA civil, impeachment for non dishonest act or false statement? 352/403.