



Jurisprudence Section - 2016

F23 How the Trial Judge's Gatekeeping Function Can Be Better Utilized to Bar the Admission of Unreliable and Exaggerated Opinion Testimony From Traditional Forensic Science Disciplines

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After attending this presentation, attendees will better understand the current case law and rules of evidence that govern the gatekeeper's obligation to exclude proffered opinion evidence that is exaggerated or unreliable. Attendees will learn about the factors relevant to assessing the reliability of expert testimony and the methods by which lawyers and judges can more effectively scrutinize, evaluate, and challenge proffered expert testimony.

This presentation will impact the forensic science community by illustrating how lawyers and judges can become more proactive and effective in challenging the reliability of proffered expert testimony and how the failure to challenge poor and marginal evidence from traditional forensic science disciplines can lead to fraudulent and exaggerated opinion testimony.

The 2009 National Academy of Sciences (NAS) Report, *Strengthening Forensic Science in the United States: A Path Forward*, recommended that the handling of forensic science evidence in court be vastly improved, emphasizing the need to challenge poor and marginal evidence from traditional forensic science disciplines and to prevent fraudulent and exaggerated opinion testimony. The Supreme Court's *Daubert* and *Kumho* decisions, together with Rule 702 of the Federal Rules of Evidence (FRE), vests trial judges with the responsibility of acting as gatekeepers to exclude unreliable expert testimony. The 1993 *Daubert* decision recognized that "vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." In deciding whether or not to admit proffered expert testimony, FRE 702 (as amended in 2011) requires the trial court to ascertain "if: (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and, (4) the expert has reliably applied the principles and methods to the facts of the case."

To improve the reliability of expert testimony, trial judges must become more proactive in evaluating the reliability of proffered expert testimony and more proficient in identifying circumstances when the reasoning used in forming an expert opinion is not properly grounded or illogical. Recognizing that the trial court's role as gatekeeper is not intended to supplant the adversarial system, a third-generation board-certified forensic document examiner and former state prosecutor will address the current case law and rules of evidence that govern the gatekeeper's function to distinguish between evidence that is shaky but admissible from that which is unreliable and inadmissible. This presentation will also illustrate how lawyers and judges can become more proactive and effective in challenging the reliability of proffered expert testimony.

Judicial Gatekeeping, FRE 702, *Daubert*