Evidentiary Standards in the State of Illinois:
The Interpretation and Implementation of Supreme Court Opinions

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Criminal cases are often won or lost on a theory. A theory of how the crime occurred, a theory about the defendant's motive, and more recently, a theory regarding forensic evidence. The role of expert witnesses, particularly in the realm of forensic science, has become a principal character in a courtroom drama, rather than a supporting role. In the O.J. Simpson case, for example, the DNA evidence, its method of collection, and the ability of a jury to give proper weight to the evidence proved to be the key in acquitting the defendant. More recently, the case against Scott Peterson, for the alleged murder of his wife and unborn son, revolves around the use of yet another type of DNA technology – this time, mitochondrial DNA (mtDNA). A number of cases have hinged on whether the expert is credible, whether or not his or her theory is plausible, and, legally speaking, whether or not the scientific or expert theory relied upon meets the necessary standards of admissibility in the courtroom.

A Legal History of Expert Testimony

Throughout the twentieth century, appellate courts in the United States have made numerous rulings regarding the admissibility of expert and scientific testimony, as well as the admissibility of evidence from specific forensic fields. The United States Supreme Court has handed down three opinions since 1923 that define the standards that must be met by expert witnesses in order for their testimony to be given any sort of weigh by federal courts. In 1923, the Supreme Court created the standard of general acceptance, with its decision in *Frye v. United States* 54 App. D.C. 46, 47, 293 F. In *Frye*, the Court ruled that:

> Expert opinion based on a scientific technique is inadmissible unless the technique is "generally accepted" as reliable in the relevant scientific community.

Under the *Frye* ruling, so long as it could be illustrated that a particular technique or theory was indeed generally accepted in the expert's field, it was admissible in a court of law. The Supreme Court did not make another landmark ruling with regard to the admissibility of expert testimony until 1993, in *Daubert v. Merrell-Dow Pharmaceuticals, Inc* 509 U.S. 579 (1993). The Supreme Court used the *Daubert* case to establish four specific standards of admissibility, which effectively superceded the *Frye* test of general acceptance. In *Daubert*, the Court identified five basic principles by which to determine the admissibility of evidence. Those five questions are:

1. Can the expert's theory or technique used to gather evidence be tested?
2. Has the expert's work been subjected to peer review and/or publication?
3. Is there a known potential rate of error with regard to the expert's theory or technique?
4. Are there standards and controls set forth by which to evaluate the expert's work?
5. Is the expert's technique or theory generally accepted in the expert's field?

After the *Daubert* decision, Rule 702 of the Federal Rules of Evidence was amended to reflect this new ruling. Whereas prior to 1993 Rule 702 had stated

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence of to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The rule after the *Daubert* criteria stated:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence of to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is sufficiently based upon reliable facts or data. (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

In 1999, the United States Supreme Court made yet another ruling with regard to the admissibility of expert testimony, this time to clarify the 1993 *Daubert* decision. The Supreme Court, in *Kumho Tire Co. V. Carmichael*, 119 S.Ct. 1167 (1999), required judges to act as "gatekeepers" in all cases. This, in effect, ordered all judges to allow only reliable expert opinion into the courtroom, but at the same time expanded the meaning of expert opinion. At the time of the *Daubert* decision, the Supreme Court's

rulings encompassed only scientific evidence. The *Kumho* opinion permitted the standards set forth in *Daubert* to be applied to all expert testimony, regardless of the scientific nature, or lack thereof, to the evidence.

Methodology

This study has centered on cases decided by appellate courts in the state of Illinois since 1993, when the United States Supreme Court handed down its decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc*. The cases are located using the database of appellate court decisions maintained by the state of Illinois. Cases that involve expert testimony, *Frye* hearings, or the use of novel forensic technology are used for this particular study. The cases are then read and coded using eighteen characteristic features. Three of the characteristic features are purely for identification purposes, including the case citation, year in which it was decided, and the name of the presiding judge. The other fifteen characteristics, however, are documented to note significant correlations between various factors contained in the judicial opinions. These fifteen factors include: the field in which the witness is an expert, the presence or absence of a *Frye* hearing, the limited or otherwise noted jurisdiction for the decisions, the evidentiary standard prescribed to by the court, and the original crime or issue of litigation that was brought before the court.

In this particular study, the individual characteristics of each case were coded into the SPSS statistical analysis system. After all data was entered, a linear regression was run on the following factors to determine significant statistical correlation:

1. Were certain types of forensic evidence admitted more often than others?

2. Did the courts adhere to the *Frye* standard of general acceptance, without incorporating any other aspects of the Supreme Court decisions in *Daubert v. Merrell Dow Pharmaceuticals* or *Kumho Tire Company, Inc. v. Carmichael*?

Data Analysis

The types of forensic evidence admitted most often centered around a tangible scientific data for the court to review. Cases in which speculation, such as the medical diagnoses of a patient by a physician other than their doctor, was prevalent tended to be the cases in which the expert's testimony was not admissible. State appellate courts in Illinois statistically correlate the standard of general acceptance with statistical and scientific reports based on factual evidence. Overall, however, nearly half of all evidence presented to the court that contained question regarding admissibility was admitted (see Data Figure 1). The general acceptance standard is quite gracious to petitioners seeking to enter evidence in the form of scientific data.

DATA FIGURE 1

		Percent	Valid Percent	Cumulative Percent
Valid	Admissible	54.5	54.5	54.5
	Inadmissible	45.5	45.5	100.0

One aspect of Illinois courts that this data illustrates is the unwillingness of most courts to apply a rule for a particular type of forensic evidence to all cases. While courts will admit evidence over the objection of opposing counsel, the courts tend to stop short of actually permitting future cases to admit this evidence without arguing their own evidentiary hearing. The exception to this seemingly general rule lies in the Illinois State Supreme Court, a court which at times does provide litigants with a blatant acceptance of a particular type of evidence (see *People v. Basler*, 193 Ill. 2d (2000)). Illinois appellate

courts statistically shy away from declaring a particular form of evidence inadmissible or admissible in all cases (see Data Figure 2).

DATA FIGURE 2

		Percent	Valid Percent	Cumulative Percent
Valid	Admissible for all cases	18.2	18.2	18.2
	Admissible for this case only	9.1	9.1	27.3
	Admissible for some cases with judge's discretion	27.3	27.3	54.5
	Inadmissible for all cases	9.1	9.1	63.6
	Inadmissible for this case only	36.4	36.4	100.0

From this data, it can also be illustrated that appellate courts in Illinois, while subscribing to the *Frye* standard of general acceptance in the vast majority of cases, also incorporate elements of the United States Supreme Court's *Kumho* decision as well. The appellate courts have overwhelmingly left the question of admissibility to the trial judges in individual cases. The trial judge's role becomes one of a gatekeeper, as outlined by the Supreme Court in *Kumho*. The evidentiary standard of the state of Illinois, while governed by the *Frye* standard of general acceptance, is heavily reliant upon the perspectives and opinions of each trial court judge.

Conclusions

Appellate courts in the state of Illinois, while using the *Frye* standard of general acceptance to determine whether or not expert testimony is admissible, embody the role of the gatekeeper set forth by the 1999 *Kumho* decision. Although the *Kumho* decision applies only to federal courts, appellate courts in Illinois have chosen to allow trial court judges to determine the admissibility of evidence in each courtroom.

Future Research

This study leaves much room for expansion in the way of comparison with other states. While it seems apparent that most Illinois courts do indeed prescribe to the *Frye* standard of general acceptance, although certainly some have incorporated *Daubert*-like factors into their decisions, the evidentiary standard used in each state would provide relevant comparison to the federal court system. Additionally, a comparison between states to see if various issues of litigation spark a change in the admissibility of certain evidence would provide an interesting statistical basis by which to judge the federal and state judicial systems.

Finally, due to the fact that the appointment of justices is often commensurate with their political affiliation, it would prove fruitful to determine whether or not any correlation exists between a particular political affiliation and a consistent application of a particular evidentiary standard.