

Limitations on Liberty
...Says Who?
Judicial Decisions Wanted
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Limitations on the Person

- 4.11 Isolation and Quarantine
- 4.12 Civil Commitment
- 4.13 Mandatory Testing and Treatment
- 4.14 Writs of Habeas Corpus

Searches of Persons

- 3.31 Procurement of Physical Evidence from an Individual's Body
- 3.32 Medical Testing

Information Collection and Sharing

- 3.41 Public Health Surveillance
- 3.42 Disease Reporting/Disease Notification
- 3.43 Disease Investigation and Contact Tracing
- 3.44 Sexual Partner Notification and the Duty to Warn

What are we talking about?

- Public health vocabulary contains words that sound like the law but they do not always mean the same.
- Older cases may use quarantine interchangeably with isolation.



isolation

The separation, for the period of communicability, of known infected persons in such places and under such conditions as to prevent or limit the transmission of the infectious agent.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW:

POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

quarantine

The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW:POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

Epidemics

IC 16-19-3-10

Sec. 10. The state department may order schools and churches closed and forbid public gatherings when considered necessary to prevent and stop epidemics.

Is holding court a public gathering?

Courts

- For What
 - Quarantine
 - Isolation
 - Screening and diagnosis
- From Whom
 - State Department of Health

The Court may order

individual taken into custody by a health or law enforcement officer and transported to an appropriate facility for testing, treatment, and/or temporary detention if:

(A) The individual presents a serious and present danger to health; and

(1) “**Serious and present danger.**” An individual infected with a communicable or dangerous disease is deemed a serious and present danger to the health

Hypothetical Case 1

- Man has been traveling all week and is looking forward to getting home. His daughter has a big ball game and he has promised to stand for treats for the team- win or lose. Plane lands and does not taxi to terminal. Plane stops and steps are pulled up to the plane. A bunch of moon suits are waiting for crew and passengers. They are informed that a diagnosed case has violated the isolation order and is on the plane.

What now?

- The order for isolation is from another jurisdiction. The respondent says not notice of hearing was received and no attorney was provided.
- An order of quarantine has been issued by the county health officer.
- No orders of quarantine have been issued for the crew or passengers by a court.

Focus on State Courts

- Judicial Role
- Important that the courts be trusted to balance individual rights with the protection of the public health



From the Street to the Courts

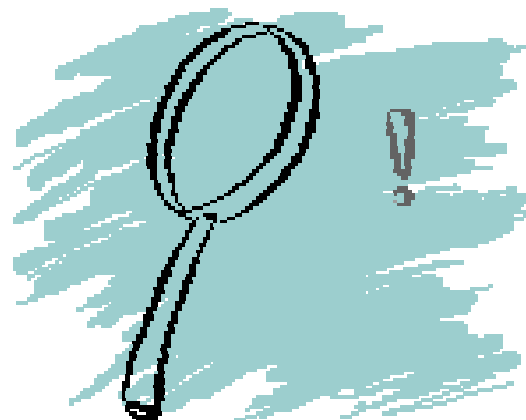


Admissibility of Evidence

What proof is needed of the
danger of an emerging disease?

Objectives :

- Review rules of evidence
- Clarify the judicial role as gatekeeper
- Recognize the most frequent errors in qualifying witnesses



Expert Testimony in Public Health

- Experts will be multidisciplinary
- Disciplines from which expertise is required are relatively unknown in the courts.

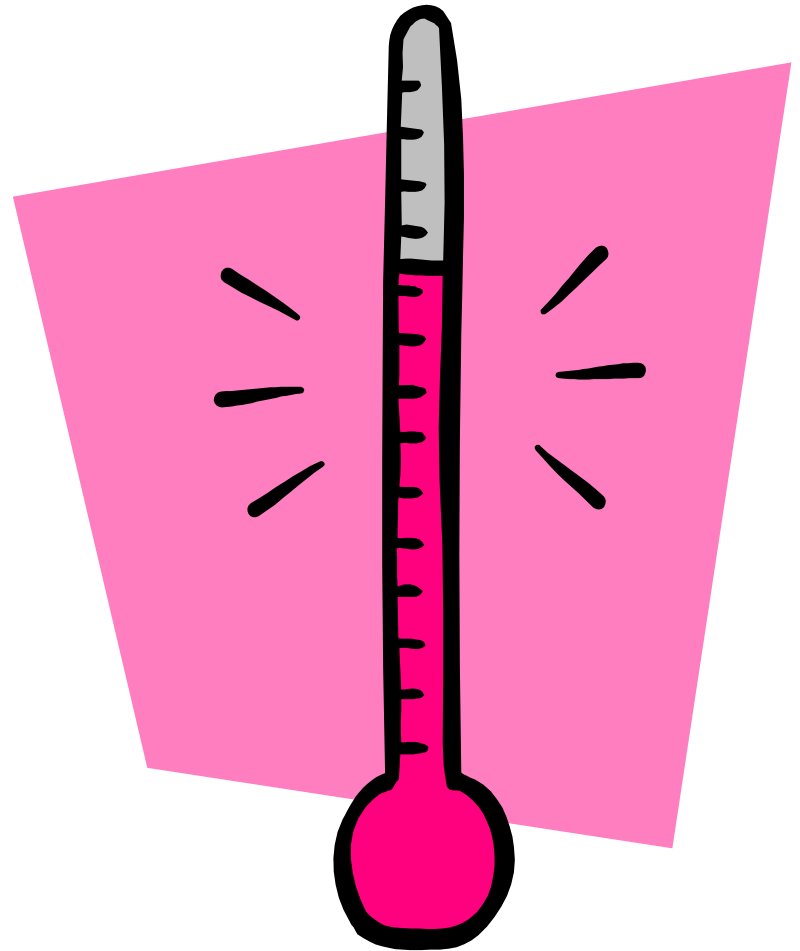
The Expert's Testimony

- An erroneous ruling:
 - AT Risk: public health
 - AT Risk: individual liberty interests and property rights



Avoiding the Hot Response

- Federal Rules of Evidence
- State Rules of Evidence
- Daubert hearings?



Rule 702

Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,

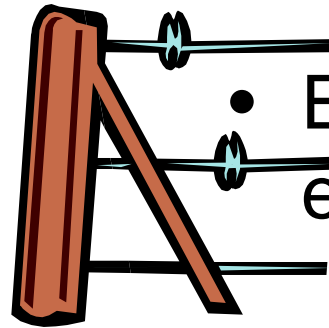
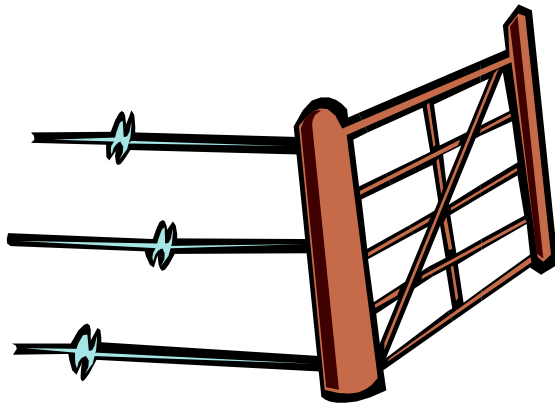
Rule 703

- The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence

Key conclusions

- Court is the gatekeeper
- Federal and state caselaw will be emerging and applicable

Expert Testimony



- Expert must be an expert

- Science must be validated

- New science will be in unfamiliar territory



What must the proponent of the Expert show to the court?

The expert has knowledge, skill, experience, training, or education.

Simple Checklist

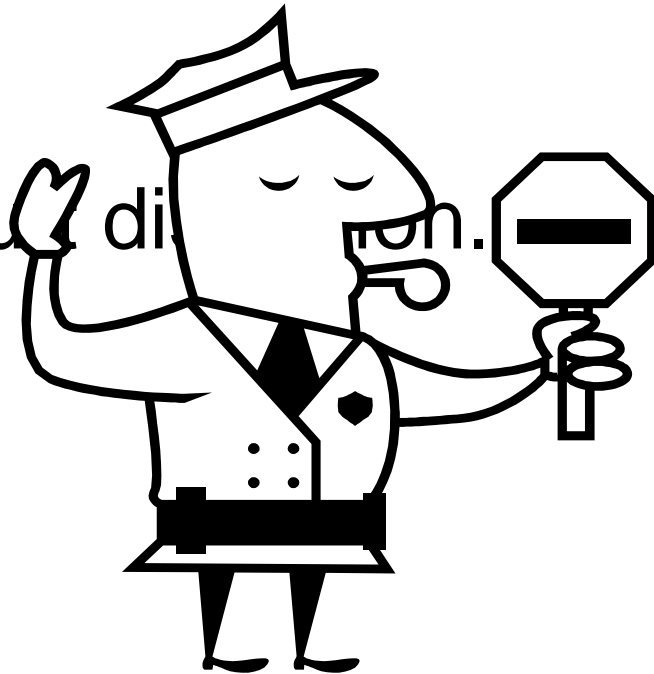
- Education and Specialized Training
- Licenses and Certifications
- Time in Field (Experience)
- Publications
- Professional Organizations
- Previous Expert Testimony

Daubert v. Merrell Dow

[509 U.S. 579, 125 L. Ed. 2d 469, 113 S. Ct. 2786 \(1993\)](#)

The Court is the gate keeper.

Appellate deference to trial court decisions.



Kumho Tire Co. v. Carmichael,

526 U.S. 137, 143 L. Ed. 2d 238, 119 S. Ct.
1167 (1999)

Daubert applies not only to scientific evidence, but also applies to "technical, or other specialized knowledge" listed in Rule 702.

General Elec. Co. v. Joiner,

522 U.S. 136 (1997),

held the standard of appellate review of the trial court's rulings on admissibility of expert testimony to be abuse of discretion.

Key Points:

Must have reasonable relationship to the case at hand.

No great leaps of logic

Not a checklist nor formalistic approach

- whether the theory or technique can be or has been tested,
- has been subjected to peer review or publication,
- has a known rate of error and standards governing the technique's operation,
- and could also include a consideration of whether the theory or technique has gained general acceptance in the relevant scientific field.

Publications

- Which ones?
 - Peer reviewed
 - Reputation
- So What?
- What do they say?
- Can you tell if the science is good?