State Courts Must Be Gatekeepers Of Expert Testimony

By **Lorie Gildea** (June 26, 2026)

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The judiciary's vibrancy depends largely on the people's trust and confidence in it.[1]

I served in the state judiciary for 18 years, 13 of which I was Minnesota's chief justice. During my time in the judiciary, I learned firsthand the important role that judges have in building trust and confidence. The processes judges follow and how they make and communicate their decisions play a part. The effectiveness of the jury trial right does as well.[2]

In this article, I will offer state court judges another tool they can use that should help juries function better, and consequently enhance trust and confidence in the justice system. That tool is the effective management of expert testimony, specifically by applying the rigorous gatekeeping standard reflected in Rule 702 of the Federal Rules of Evidence.

Our state court judges, who handle approximately 96% of all cases filed in the U.S., are on the front line of justice.[3] Some of the most complex and often emotionally charged issues are brought to state courts for resolution, including cases about legislative district maps, the opioid crisis, climate change, toxic torts, and social media use.[4]

Judicial decisions in highly contentious cases such as these can add fuel to the fire for those who contend that judges are activists who make decisions based on political leaning and not the law. Bound by the code of judicial conduct, judges are constrained in how they can respond to these attacks.[5] And when those attacks are left unanswered, there is an impact on trust and confidence.

Judges are not, however, without opportunity. Indeed, judges can foster trust and confidence when the public sees them applying rules consistently from judge to judge and case to case. Such uniform application of the law makes it harder to accept the theory that judges are imposing their personal will when deciding cases.[6] An area that could benefit from more uniformity in our state courts is the admission of expert testimony.

Expert testimony is commonly offered in the types of complex cases discussed above, and when it is offered, state court judges decide at the threshold whether such testimony is admissible. This gatekeeper obligation is critical.

Courts, such as the Texas Supreme Court in its 1995 E.I. du Pont de Nemours & Co. v. Robinson decision, have recognized that "a jury more readily accepts the opinion of an expert witness as true simply because of [their] designation as an expert."[7] Because lay juries might prioritize expert evidence over other types of evidence, the testimony offered by experts ought to be subject to rigorous scrutiny before it is admitted into evidence.[8]

These determinations are challenging to be sure, but judges are much better equipped to make decisions about reliability of expert opinion evidence than lay juries.[9] Ensuring that

only reliable and helpful testimony from qualified experts is put before juries ought to ease the jury's fact-finding function, which in the end should make for a more effective justice system. Applying the standards for admission of expert testimony consistently across jurisdictions and case types also helps with predictability and discourages forum-shopping.[10]

State court judges can learn much about consistency in the standards for admitting expert witnesses from the path the federal judiciary has walked. Federal judges follow Rule 702 when they make the threshold decision on admissibility of expert testimony in federal court. The standard courts use under Rule 702 to test the expert's testimony for admissibility has changed over the years.

Significant changes occurred following the U.S. Supreme Court's 1993 decision in Daubert v. Merrell Dow Pharmaceuticals Inc.[11] Daubert solidified the judge's obligation to act as a gatekeeper when it comes to the admission of expert testimony.[12] The judge carries out that function by ensuring, as Rule 702 requires, that the expert's testimony is helpful to the fact-finder and reliable before it can be admitted at trial.

To reinforce fidelity to the judge's gatekeeper role, Rule 702 was amended in 2023.[13] The amendments made three significant clarifications.

First, the rule was amended to make explicit that it is the court (not the jury) that has to make the findings on reliability and helpfulness. Second, the amendment clarified that the proponent of the expert has to prove helpfulness and reliability by a preponderance of the evidence. And third, the 2023 amendments confirmed that the expert's opinion has to reliably apply the principles and methods to the facts of the case. With these changes in place, the federal courts are now more appropriately armed to help ensure that junk science and theories dressed up as expert testimony do not influence juries.[14]

Because the Federal Rules of Evidence are the model for many state court rules of evidence,[15] it makes sense for the judges in both systems to follow the same standard. Not only did many states use the federal rules as their model when they wrote their state rules of evidence, but they also look to federal courts' interpretation of federal rules of evidence when interpreting their own state rules of evidence.[16]

Given the reliance on the federal standards, it is difficult to explain why state court judges do not adhere to the federal standard for determining whether to admit testimony from experts. In my view, state court judges can enhance trust and confidence and help juries if they, like their federal counterparts, strictly adhere to their gatekeeping function when it comes to the admission of expert testimony.

While many states have revised their rules of evidence following changes in the federal rules, not every state immediately embraced the revised federal rule.

In Wisconsin, for example, the court of appeals held in 2000 in Green v. Smith & Nephew AHP Inc. that "[u]nlike in the federal system, where the trial court has a significant 'gatekeeper' function in keeping from the jury expert testimony that is not reliable," Wisconsin trial judges' "gatekeeper role . . . is extremely limited."[17] If expert testimony comes from a qualified expert and is relevant, the testimony was to be admitted unless it is "superfluous or a waste of time."[18] Concerns over reliability were to be addressed through cross-examination. The Wisconsin Legislature later weighed in, however, and revised Wisconsin's expert witness rule so that it is now more closely aligned with the federal rule.[19]

My own state of Minnesota was also reluctant at first to endorse the gatekeeper duty set out in Rule 702. In Goeb v. Tharaldson, also decided in 2000, the Minnesota Supreme Court declined to adopt the standard the U.S. Supreme Court announced in Daubert.[20] But since Goeb, the Minnesota rule has been changed to more closely align with the federal rule.[21]

Other states have been more willing to embrace changes in their state evidence rules so that they mirror the federal rules.[22] Cases in these states have held that, just as in the federal courts, the trial judge has a gatekeeping role in ensuring that only helpful and reliable expert opinion evidence from qualified experts is admitted at trial in state courts.[23] When the trial judge rules on admissibility of expert testimony, the court is not making "credibility determinations that are the province of the jury, but rather legal determinations about the reliability of the expert's methodology," as noted by the New Jersey Supreme Court in 2018 in the In re: Accutane Litigation.[24]

In re: Zantac (Ranitidine) Litigation provides a good illustration of how a state trial court can properly exercise its gatekeeping function.[25] The plaintiffs there alleged that a drug the defendants manufactured and sold caused cancer. The defendants moved to exclude plaintiffs' causation experts. The trial court denied the motions, concluding that the defendants' objections went to the weight not the admissibility of the testimony.

The Delaware Supreme Court disagreed and reversed. The court held that the trial court erred in ruling that Delaware's standards for admissibility of expert testimony varied from federal court standard.

Disputes as to reliability did not present issues of credibility for the jury. Rather, consistent with its gatekeeping function, the court held those disputes had to be resolved by the judge. The court acknowledged "significant challenges" facing trial judges evaluating scientific testimony, but concluded that such challenges reinforce "the need for the court to faithfully apply [Rule 702] so that the jury does not receive unreliable evidence."[26]

Ultimately, the trial court erred because it did not "require Plaintiffs' experts to explain their reliance on [certain] studies and their rejection of" others.[27] Concluding that the expert evidence was admissible because it was a close call and close calls go to the jury, the Delaware Supreme Court held violated the trial judge's gatekeeping role.[28] Delaware is known as the "First State."[29] Other states would do well to follow the First State's lead again and embrace the newly amended Rule 702.

Confidence in the institutions of our government is fragile. Those in government ought to use the tools they have to tend to that fragility. For judges, one of those tools is managing the admission of expert evidence in jury trials. The state court rules of evidence are modeled after the federal rules and state courts frequently cite federal courts as authoritative when interpreting their own rules.

Consistently applying the same standards to rules that ask the same question — is the expert's opinion reliable and helpful to the fact-finder — should help state court judges maintain the appearance of impartiality and assist juries, thus enhancing the overall trust and confidence people have in their justice system and strengthening that system for all.

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[1] David Easton, A Systems Analysis of Political Life 273 (1965) (noting that the judiciary must rely on the people's "reservoir of favorable attitudes or good will" to protect its authority and independence).

[2] As Thomas Jefferson said, the jury trial right is "the only anchor ever yet imagined ... by which a government can be held to the principles of its constitution." Thomas Jefferson, Letter to Thomas Paine (July11, 1789), https://founders.archives.gov/documents/Jefferson/01-15-02-0259.

[3] National Ctr. for State Cts., The Who, What, When & How of State Courts, https://www.ncsc.org/resources-courts/who-what-when-how-state-courts ("State courts play a critical role in our democracy, handling about 96% of all legal cases in the United States.").

[4] See, e.g., Clarke v. Wis. Elections Comm'n, 998 N.W.2d 370 (Wis. 2023). See, e.g., State v. Albertsons Cos., No. S-19048 (Alaska argued Feb.18, 2025). See, e.g., State v. Am. Petroleum Inst., 2026 WL 192130 (Minn. App. Jan.26, 2026), rev. denied, 2026 WL 1040497 (Minn. Apr.15, 2026). See, e.g., In re Zantac (Ranitidine) Litig., 342 A.3d 1131 (Del. 2025). Chris Villani, Meta Must Face Mass. AG's Instagram Addiction Suit, Law360 (Apr.10, 2026), https://www.law360.com/articles/2452971/meta-must-face-mass-ag-s-instagram-addiction-suit (discussing lawsuits in California, New Mexico and Massachusetts state courts involving social media platforms).

[5] See, e.g., Minn. Code of Judicial Conduct R. 2.10 (restricting judges' comments about cases).

[6] See D.J. Tice, The Supreme Court Made the Right Call on Colorado Conversation Therapy, Minn. Star Trib., Apr.9, 2026, https://www.startribune.com/scotus-ruling-first-amendment-free-speech-conversion-therapy/601662822 (discussing Justice Gorsuch's "critique of the suspicious inconsistencies of six of his nine colleagues" in the Court's tariff ruling and stating that "[c]ontortionist contradictions like these do not help Americans believe that Supreme Court justices are impartially applying the law and the Constitution rather than simply imposing their personal policy preferences").

[7] E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 553 (Tex. 1995); see also State v. Phillips, 836 S.E.2d 866, 877 (N.C. App. 2019) ("Our Supreme Court has recognized 'the heightened credence juries tend to give scientific evidence' in the specific context of erroneous admissions of expert testimony.").

[8] Michael J. Saks, Expert Evidence: Evolution of Rules and Practices 2 (Nat'l Civ. Just. Inst. 2023) ("[L]ay factfinders, it has long been feared, are prone to over-weighting the testimony of experts."); see also In re Accutane Litig., 191 A.3d 560, 589 (N.J. 2018) ("Properly exercised, the gatekeeping function prevents the jury's exposure to unsound science through the compelling voice of an expert.").

[9] As the Texas Supreme Court acknowledged in Robinson, judges are "better-equipped" to

understand and evaluate scientific reliability than juries. Robinson, 923 S.W.2d at 558; see also State v. Porter, 698 A.2d 739, 748 (Conn. 1996) ("Although the effect of scientific evidence with regard to both judges and juries is uncertain, we note that, purely as a procedural matter, a judge is in a much better position than a juror to assess accurately the fundamental validity of such evidence.").

[10] The Georgia Legislature recognized that the standards applied to the admission of expert testimony can impact forum shopping. See O.C.G.A. §24-7-702(f) (2022) ("It is the intent of the legislature that, in all proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states.").

[11] 509 U.S. 579 (1993).

[12] Id. at 597.

[13] See Fed. R. Evid. 702; see also Lee Mickus et al., The Early Returns Are In: A Review of the First Two Years of Amended Federal Rule of Evidence 702, 94 U. Cin. L. Rev. 915 (2026); Mark Behrens & Andrew Trask, Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence, 12 Tex. A&M L. Rev. 43 (2024).

[14] See Fed. R. Evid. 702 advisory committee's note to 2023 amendment (describing amendments and rationale for amendments).

[15] See, e.g., Goeb v. Tharaldson, 615 N.W.2d 800, 813 (Minn. 2000).

[16] See, e.g., In re Zantac, 342 A.3d at 1144 ("Because Delaware follows [federal rule 702] and views the official comments to the rule as helpful authority in construing [Delaware evidence rule 702], Delaware courts appropriately look to federal caselaw and commentary in discharging their gatekeeping function regarding expert testimony." (footnote omitted)).

[17] Green v. Smith & Nephew AHP, Inc., 617 N.W.2d 881, 890 (Wis. App. 2000).

[18] Id. (quotation omitted).

[19] Wis. Stat. § 907.02(1) (2025). The Arizona Supreme Court likewise refused initially to endorse the gatekeeper framework reflected in Federal Rule 702. See Logerquist v. McVey, 1 P.3d 113, 132 (Ariz. 2000). But the rules in Arizona have subsequently been amended to make them more similar to the Federal Rule. See Ariz. R. Evid. 702 advisory committee's note to 2012 amendment (noting that the amendment "recognizes that trial courts should serve as gatekeepers in assuring that proposed expert testimony is reliable and thus helpful to the jury's determination of facts at issue"). Effective January1, 2024, the Arizona Supreme Court amended Arizona Rule of Evidence 702 to conform to the 2023 amendment to Federal Rule of Evidence 702.

[20] 615 N.W.2d at 814 (retaining Frye general acceptance standard for novel scientific evidence but noting that all scientific evidence "must be shown to have foundational reliability"); see also Lorie S. Gildea, Sifting the Dross: Expert Witness Testimony in Minnesota After the Daubert Trilogy, 26 Wm. Mitchell L. Rev. 93, 106 (2000) (advocating that Minnesota adopt federal standard for admission of expert evidence).

[21] See Minn. R. Evid. 702 advisory committee's note to 2006 amendment (describing Minnesota Rule 702 amendments).

[22] See Lawyers for Civil Justice, Don't Say Daubert, State Evidentiary Rule Reform, https://dontsaydaubert.com/?page_id=8376 (describing efforts in various states to amend their expert witness admissibility rule).

[23] See, e.g., Sargon Enters. v. Univ. of S. Cal., 288 P.3d 1237, 1250 (Cal. 2012) ("Under California law, trial courts have a substantial 'gatekeeping' responsibility."); In re Accutane, 191 A.3d at 588 (reinforcing "the proper role for the trial court as the gatekeeper of expert witness testimony").

[24] In re Accutane, 191 A.3d at 588.

[25] 342 A.3d 1131.

[26] Id. at 1146.

[27] Id. at 1151.

[28] Id.

[29] The Council of State Governments, Delaware: The First State, https://www.csg.org/2026/01/26/delaware-the-first-state ("Delaware earned itself the nickname 'The First State' when, on Dec. 7, 1787, it became the first of the American colonies to ratify the U.S. Constitution.").