Child Abuse in the Courtroom
An Introduction to the Law

Professor Joëlle Anne Moreno
Florida International University
College of Law
The Child Abuse Trial

- Evidence rules control the admissibility of all evidence in criminal and civil trials.
- All states have evidence rules.
In all courts, judges act as gatekeepers deciding:

- Expert witness qualifications
- The relevance of expert testimony
- The admissibility of expert testimony
The “Expert” Witness

ABSOLUTELY! WHERE THERE’S SMOKE THERE’S FIRE.
Every state has adopted a Frye or Daubert approach to the admission of expert evidence.

Under **Frye** – Evidence should be “sufficiently established to have gained general acceptance in the particular field in which it belongs.”

Under **Daubert** – Judges should also consider:

- Can theory be tested?
- Error rates
- Peer-reviewed publications
Expert Testimony

Will this expert’s scientific knowledge help the jury to understand the evidence or determine a fact in issue?

Is her opinion:

- Based on sufficient facts or data?
- The product of reliable principles and methods? and
- Has she reliably applied the principles and methods to the facts of this case?
Other Factors

› Judges should also:
  › Decide whether the expert is a hired gun
    • Is testimony based on research conducted independent of litigation?
    • Does expert engage in regular professional work in the field outside of paid litigation consulting?
  › Decide whether expert is biased
    • Has expert extrapolated from a accepted premise to an unfounded conclusion?
    • Has expert adequately accounted for obvious alternative explanations?
Irresponsible Experts

- Misstating qualifications
- Misrepresenting prior expert experience
- Advancing unique theories of causation unsupported by evidence and medical literature
- False or misleading statements about the evidence or medical literature
- Misstatements, mischaracterizations, or omissions of the medical literature
The judge didn’t disqualify the expert witness for his marginal credentials, but did mandate mouse ears.

©10CharlesFincher01.10 Scribble-in-Law at LawComix.com
What Happens in Court?

- Qualifications
- Direct Examination
- Cross-Examination
- Testimony by experts for defense or state
- Re-Direct (with permission from judge)
- Re-Cross (with permission from judge)
“In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him.”

U.S. Const. amend. VI

“The importance of scientific accuracy . . . reaches well beyond the case itself.”

- Justice Stephen Breyer