

JUNK SCIENCE IN THE COURTROOM

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**THE OPINION OF AN EXPERT
WITNESS IS NOTHING MORE THAN
AN ORDINARY GUEST IN EVENING
CLOTHES**

THE JUDGE'S PRIMARY ROLE

- THE JUDGE IS THE GATEKEEPER
- THE EVIDENTIARY FILTER THROUGH WHICH ALL SCIENTIFIC AND MEDICAL EVIDENCE AND OPINIONS MUST PASS

THE PROCESS

- HEARING OUTSIDE PRESENCE OF JURY
- QUALIFICATIONS (CV FIGHT)
- WILL TESTIMONY BE ALLOWED
- ANY RESTRICTIONS OR LIMITATIONS
- ANY NEED FOR SPECIAL INSTRUCTIONS
- (OFTEN NOW CALLED A DAUBERT HEARING)

TWO INITIAL QUESTIONS FOR THE JUDGE

- 1. IS SUBJECT MATTER SOMETHING OUTSIDE THE KNOWLEDGE OF ORDINARY PEOPLE
- WILL THE TESTIMONY SOUGHT TO BE ADMITTED BE OF MATERIAL ASSISTANCE TO THE JURY IN DECIDING THE CASE

TWO DIFFERENT APPROACHES

- DAUBERT
- FRYE-REED
- A COMBINATION OF BOTH

FRYE-REED THE ABSOLUTELY CRITICAL QUESTION

**SUFFICIENTLY ESTABLISHED TO HAVE
GAINED GENERAL ACCEPTANCE IN
THE PARTICULAR FIELD IN WHICH IT
BELONGS – WITHIN THE EXPERT'S
PARTICULAR SCIENTIFIC FIELD**

DAUBERT FACTORS

- OPINION RELEVANT AND RELIABLE
- RELIABLE FOUNDATION
- SCIENTIFICALLY VALID PRINCIPLES
- THEORY OR OPINION BEEN TESTED
- PUBLICATION AND PEER REVIEW
- ERROR RATE IF ANY
- STANDARDS AND CONTROLS

DAUBERT FACTORS CONTINUED

- GENERAL ACCEPTANCE
- EXPERT QUALIFIED
- SUFFICIENT FACTUAL BASIS TO SUPPORT OPINION
- APPROPRIATENESS ON PARTICULAR SUBJECT

THE MAJOR DIFFERENCE

- GENERAL ACCEPTANCE IN THE RELEVANT FIELD IS AN ABSOLUTE REQUIREMENT IN FRYE-REED ANALYSIS
- GENERAL ACCEPTANCE IS ONLY ONE OF SEVERAL FACTORS IN DAUBERT ANALYSIS

CAUSAL CONNECTION

- THE AFFIRMATIVE LINK
- EXPLAINS WHAT HAPPENED
- THE ANALYTICAL FRAMEWORK THAT GETS YOU THERE
- NO PLAUSIBLE CAUSATION – NO RECOVERY/NO ADMISSIBILITY

SCIENTIFIC CAUSATION

- EVIDENCE INADEQUATE TO ACCEPT OR REJECT CAUSAL RELATIONSHIP
- EVIDENCE FAVORS REJECTION OF CAUSAL RELATIONSHIP
- EVIDENCE FAVORS ACCEPTANCE OF CAUSAL RELATIONSHIP
- EVIDENCE ESTABLISHES CAUSAL RELATIONSHIP

CAUTION

- YOU CANNOT QUALIFY THE PROCESS AND OPINION BY QUALIFYING THE EXPERT
- THE QUEST FOR TRUTH IN THE COURTROOM AND THE QUEST FOR KNOWLEDGE IN SCIENCE AND MEDICINE ARE NOT INTERSECTING ENDEAVORS

THE EXPERT CHECKLIST 1

- RELIABLE – BASED ON SCIENTIFIC KNOWLEDGE
- EXPERT QUALIFIED
- HELPFUL TO JURY
- REASONING AND METHODOLOGY SCIENTIFICALLY VALID
- THEORY OR OPINION BEEN TESTED – ESPECIALLY BY OTHER THAN THE EXPERT

EXPERT CHECKLIST 2

- KNOWN OR POTENTIAL ERROR RATE
- SUBJECTED TO PEER REVIEW AND PUBLICATION
- ACCEPTANCE WITHIN RELEVANT SCIENTIFIC OR MEDICAL COMMUNITY
- BASED ON SUFFICIENT FACTS AND DATA

EXPERT CHECKLIST 3

- **PRINCIPLES AND METHODS PROPERLY APPLIED TO FACTS AND DATA (NO CHERRY PICKING!)**
- **SAME LEVEL ON INTELLECTUAL VIGOR APPLIED IN COURTROOM AS IN FIELD**
- **ANY CONFLICTS, PECUNIARY INTEREST, CONFLICTS OR BIAS**