

# Court cases



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Ron Steele John Smith Legal Studies 500 22 August This paper will examine four different legal cases brought before the Supreme Court of the United States. Each of the cases is noteworthy for what can constitute the admissibility of expert evidence in court cases. First, I will examine the basic facts of each of the four cases, followed by a brief summary of the precedents each case set. Finally, I will look at how these precedents could affect either an accident investigation, or the work of an occupational safety and health professional in their course of work.

The first case setting precedent was the *A. Frye v United States* ruled on in 1933. In this case, Frye was convicted of 2nd degree murder. Attorneys for the defendant proposed an expert witness to testify as to results he discovered using a 'deception test', which is similar to modern day lie detector tests. The expert witness elaborated on how blood pressure is monitored by this device. The expert felt that scientific experiments showed that negative emotions, such as fear or anger, produces a rise in blood pressure. The expert then deduced that the same would occur for someone who is lying, since there would be a fear of detection of the lie. It was further reasoned that speaking truth would be natural, and so no emotion such as guilt or fear would enter the picture, and hence no rise in blood pressure.

(FRYE V UNITED STATES)

The Supreme Court ruled that there is a difference between (1) expert testimony gained through training and lengthy work experience in the field versus (2) expert testimony that is based on experimental research that has not yet gained solid scientific backing in the science community at large. As a result, the proposed testimony of the expert was not upheld as admissible evidence (FRYE V UNITED STATES). The 'Frye Standard' thus became a well

known basis for future court cases to allow scientific techniques as admissible evidence only if it is already ‘ generally accepted’ in the relevant scientific community.

The second case is Daubert v Merrell Dow Pharmaceuticals, Inc. (DAUBERT V MERRELL DOW PHARMACEUTICALS, INC) Daubert was a 1993 product liability case where the Supreme Court had to determine what type of scientific evidence is admissible in court. Daubert sued Merrell Dow due to birth defects that occurred in two of their children. The mother was taking the drug Bendectin, which was manufactured by Merrill Dow.

Science did not provide a direct link between the drug and any birth defects. Statistical data was proposed as an alternate solution, but statistics can be subject to manipulation, and did not produce consistent results. Merrell Dow felt it has a solid case since no “ generally accepted” scientific evidence could be easily found. Daubert argued for a more liberal approach, where other standards could be used instead of the long standing ‘ Frye Standard’ as earlier discussed.

Both sides called a long list of experts in various fields of medicine, science, history, and sociology to testify their opinions. The Daubert group was led by Professor Ronald Bayer who argued that traditional views of science, which believed progress occurred along well defined and predictable patterns of flow, was not always in reality the case. It was proposed that more liberal decision making was needed by the Court. The Merrell Dow group was led by Professor Nicolas Boenberg who advocated that a strict standard, as in the Frye case was correct.

After deliberation, Justice Blackman recommended a “ gatekeeping role” as a new precedent. By this, Blackman directed judges to evaluate the

reliability of the evidence in terms of the validity of the scientific methodology used, and not on general acceptance of the conclusions.

Hence, the Daubert case trumped the Frye Standard and allowed judges in the future to have more discretion as a “ gatekeeper” to what scientific evidence should be allowed as admissible evidence (DAUBERT V MERRELL DOW PHARMACEUTICALS, INC).

The third case examined is General Electric v Joiner. This case involves plaintiff Joiner who worked for his employer around dangerous chemicals. Joiner was eventually diagnosed with small-cell lung cancer and sued his employer, General Electric, by stating that the exposure to the work chemicals caused his cancer. Joiner provided expert witnesses to state that the chemicals at his work was likely responsible for his cancer. It should be noted however, that Joiner was a smoker for eight years, along with his parents, and there was a history of lung cancer in his family.

Joiner relied on testimony of experts who stated that the PCB chemicals he was exposed to can promote cancer. They stated the same is true of the other chemicals he was exposed to. The experts concluded that exposure was the likely cause of his cancer. A lower court stated that the testimony of the experts did not show a direct link between the PCB chemicals and cancer. The court stated that it was only “ subjective belief or unsupported speculation” and not admissible.

The ruling was appealed based on the fact that the plaintiffs felt that an “ abuse of discretion” occurred. This is on the fact that the earlier Daubert case does allow judge gatekeeping discretion. The plaintiffs felt an ‘ abuse’ of the Daubert Principle occurred by not allowing the expert opinions to be admissible. It was eventually upheld that no abuse of judge discretion

occurred. This conclusion was based on many factors, including the fact that the expert mentioned that experimentation of his theories never involved humans, but rather laboratory rats. In addition, the expert testimony relied on studies that were limited in scope and did not address well enough or support well enough the idea that the chemicals in this case caused Joiner's cancer. Hence, the Supreme Court upheld that the lower court judge was proper in his role of excluding the expert testimony and no abuse of the exclusion privileges occurred (GENERAL ELECTRIC CO. V JOINER).

The final case is that of Carmichael v. Kumho Tire Company. In this case, a vehicle that Patrick Carmichael was driving had a tire blowout resulting in one death and several injuries. Suit was made against Kumho Tire Company for the defective tire produced. A significance of the case was that key testimony of the prosecution was with a Dennis Carlson, Jr. who claimed to be an expert in knowledge of tires. Mr. Carlson had intent to testify that in his expert opinion, a defect in the tire caused the accident. Mr. Carlson went into good detail in his visual and tactile observations of the tire in question. Mr. Carlson had a theory that without at least two of the four indicators of tire abuse occurred; the tire must have resulted from a defect. Kumho Tire motioned to the judge that they wanted the testimony of Mr. Carlson thrown out based on failure to satisfy the Evidence 702 rule which states: " if scientific, technical, or other specialized knowledge will assist the trier of fact...a witness qualified as an expert...may testify thereto in the form of an opinion."

The court agreed with Kumho Tire and granted a motion to exclude Mr. Carlson's testimony based on the Daubert precedent, where the trial judge acts as a " gatekeeper" where testimony must be both relevant and reliable

to be admissible. The judge looked at the reliability factors in Daubert; namely testing, peer review, error rates, and “acceptability” in the scientific community. The court judge did not find that, so he used his gatekeeper privileges to exclude Mr. Carlson’s testimony (CARMICHAEL V KUMHO TIRE CO).

We can see by examining the above cases where the long standing Frye Rule, where the testimony or evidence of experts is only admissible if it is classified as “generally accepted as reliable in the relevant scientific community” was overruled in 1993 by the Daubert Principle where the trial judge acts as a ‘gatekeeper’ to evaluate whether scientific testimony from an expert should be allowed or not. This idea is based Congress’ Federal Rules of Evidence issued in 1975. Rule 702 of that issuance promotes the idea that scientific expert testimony must proceed from “scientific knowledge”.

A key point that occupational and health care professionals should keep in mind is which standard current state law is presiding by. M. Kaufman in his research showed how 30 states have adopted the Daubert Principle, while 14 states still hold to the stricter Frye Standard. In addition, there are 7 states that have taken no particular stance to either standard (Kaufman 2).

Individuals in the field also need to keep in mind that being an expert in a field does not guarantee under the Daubert principle that scientific evidence presented will be accepted in court. This was the case in Carmichael v Kumbo Tire Co. as the expert testimony of the tire expert was not allowed. This was not based on the question of Mr. Carlson’s expertise in tires, but due to the fact that the methodology presented by Mr. Carlson was not deemed to be both relevant and reliable enough to say that the car accident

was caused by the tire in question (CARMICHAEL V KUMBO TIRE CO.) In summary, both the applicable law that a state uses is important to know, along with realizing that judges may exclude evidence if it the methodology used to gather, test, and use the information is not deemed to be relevant and reliable to the case at hand.

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