Federal Rules of Evidence, Rule 702

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In 1975, more than a half-century after Frye was decided, the Federal Rules of Evidence were adopted for litigation in federal courts. They included rules on expert testimony. Their alternative to the Frye Standard came to be used more broadly because it did not strictly require general acceptance and was seen to be more flexible.

The first version of Federal Rule of Evidence 702 provided that a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- the testimony is based on sufficient facts or data;
- the testimony is the product of reliable principles and methods; and
- the expert has reliably applied the principles and methods to the facts of the case.

While the states are allowed to adopt their own rules, most have adopted or modified the Federal rules, including those covering expert testimony.

In a 1993 case, Daubert v. Merrell Dow Pharmaceuticals, Inc., the United States Supreme Court held that the Federal Rules of Evidence, and in particular Rule 702, superseded Frye's "general acceptance" test.

SUPREME COURT OF THE UNITED STATES

Syllabus

DAUBERT et ux., individually and as guardians and litem for DAUBERT, et al. *V.* **MERRELL DOW PHARMACEUTICALS, INC.**

certiorari to the united states court of appeals for the ninth circuit

No. 92-102. Argued March 30, 1993 -- Decided June 28, 1993

Petitioners, two minor children and their parents, alleged in their suit against respondent that the children's serious birth defects had been caused by the mothers' prenatal ingestion of Bendectin, a prescription drug marketed by respondent. The District Court granted respondent summary judgment based on a well credentialed expert's affidavit

concluding, upon reviewing the extensive published scientific literature on the subject, that maternal use of Bendectin has not been shown to be a risk factor for human birth defects.

Although petitioners had responded with the testimony of eight other well credentialed experts, who based their conclusion that Bendectin can cause birth defects on animal studies, chemical structure analyses, and the unpublished "reanalysis" of previously published human statistical studies, the court determined that this evidence did not meet the applicable "general acceptance" standard for the admission of expert testimony.

The Court of Appeals agreed and affirmed, citing *Frye* v. *United States,* 54 App. D. C. 46, 47, 293 F. 1013, 1014, for the rule that expert opinion based on a scientific technique is inadmissible unless the technique is "generally accepted" as reliable in the relevant scientific community.

Held: The Federal Rules of Evidence, not *Frye,* provide the standard for admitting expert scientific testimony in a federal trial. Pp. 4-17.

(a) *Frye*'s "general acceptance" test was superseded by the Rules' adoption. The Rules occupy the field, *United States* v. *Abel,* 469 U.S. 45, 49, and, although the common law of evidence may serve as an aid to their application, *id.,* at 51-52, respondent's assertion that they somehow assimilated *Frye* is unconvincing. Nothing in theRules as a whole or in the text and drafting history of Rule 702, which specifically governs expert testimony, gives any indication that "general acceptance" is a necessary precondition to the admissibility of scientific evidence. Moreover, such a rigid standard would be at odds with the Rules' liberal thrust and their general approach of relaxing the traditional barriers to "opinion" testimony. Pp. 4-8.

(b) The Rules--especially Rule 702--place appropriate limits on the admissibility of purportedly scientific evidence by assigning to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. The reliability standard is established by Rule 702's requirement that an expert's testimony pertain to "scientific . . . knowledge," since the adjective "scientific" implies a grounding in science's methods and procedures, while the word "knowledge" connotes a body of known facts or of ideas inferred from such facts or accepted as true on good grounds. The Rule's requirement that the testimony "assist the trier of fact to understand the evidence or to determine a fact in issue" goes primarily to relevance by demanding a valid scientific connection to the pertinent inquiry as a precondition to admissibility. Pp. 9-12.

(c) Faced with a proffer of expert scientific testimony under Rule 702, the trial judge, pursuant to Rule 104(a), must make a preliminary assessment of whether the

testimony's underlying reasoning or methodology is scientifically valid and properly can be applied to the facts at issue. Many considerations will bear on the inquiry, including whether the theory or technique in question can be (and has been) tested, whether it has been subjected to peer review and publication, its known or potential error rate, and the existence and maintenance of standards controlling its operation, and whether it has attracted widespread acceptance within a relevant scientific community. The inquiry is a flexible one, and its focus must be solely on principles and methodology, not on the conclusions that they generate. Throughout, the judge should also be mindful of other applicable Rules. Pp. 12-15.

(d) Cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof, rather than wholesale exclusion under an uncompromising "general acceptance" standard, is the appropriate means by which evidence based on valid principles may be challenged. That even limited screening by the trial judge, on occasion, will prevent the jury from hearing of authentic scientific breakthroughs is simply a consequence of the fact that the Rules are not designed to seek cosmic understanding but, rather, to resolve legal disputes. Pp. 15-17.
951 F. 2d 1128, vacated and remanded.

Blackmun, J., delivered the opinion for a unanimous Court with respect to Parts I and II-A, and the opinion of the Court with respect to Parts II-B, II-C, III, and IV, in which White, O'Connor, Scalia, Kennedy, Souter, and Thomas, JJ., joined. Rehnquist, C. J., filed an opinion concurring in part and dissenting in part, in which Stevens, J., joined.