

DAUBERT – THE EVOLUTION OF A PROFESSION?

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DAUBERT. No other word conjures up an equivalent degree of mental anguish or foreboding for the financial expert preparing to proffer trial testimony. Professional commentators frequently herald ominous warnings of concealed disaster. Has the High Court placed a circuitous labyrinth before the financial expert? Is *Daubert* the vanguard of a revolution or merely thunder absent the storm? To understand the implications of *Daubert* we must first explore its genesis and then the analogous public accounting practice standards and canons of ethics.

General Acceptance Test

Prior to 1993, the judicial standard for determining the admissibility of novel scientific evidence, including expert testimony, was the general acceptance test as articulated in *Frye v. United States*.¹ The Court's opinion did not so much establish a standard as it announced a legal precept.

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential forces of the principle must be recognized, and while the courts will go a long way in admit-

ting expert testimony deduced from well recognized scientific principle or discovery, **the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.**² (Emphasis added.)

During the intervening seventy years, the admissibility of evidence rested with the Court's discretion and within the common law rules. The Court's decision in *Frye* predated the codification, in 1975, of the Federal Rules of Evidence (Fed.R.Evid.) by a half-century. However, Congress and the legislative committee reports omitted the phrase "general acceptance" or any similar reference to the prevailing *Frye* standard from the language of Fed.R.Evid. Rule 702. This exclusion, whether by design or omission initiated diametrically opposing opinions as to perceived conflict of laws or complements provided between the *Frye* standard and the Fed.R.Evid.³ Legal commentary was, also, similarly divided.⁴ The propounded argument for dispensing with an

² *Ibid.*, p. 1014.

³ *United States v. Williams*, 583 F.2d 1194 (CA2 1978), cert. Denied, 439 U.S. 1117, 99 S.Ct. 1025, 59 L.Ed.2d 77 (1979); *Frye* is superseded by the Fed.R.Evid. *Chrisropherson v. Allied-Signal Corp.*, 939 F.2d 1106, 111, 1115 - 1116 (CA-5 1991) (en banc), cert. denied, 503 U.S. 912, 112 S.Ct. 1280, 117 L.Ed.2d 506 (1992); *Frye* and the Fed.R.Evid. coexist.

¹ 54 App. D.C. 46, 293 F. 1013 (1923).

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