



## Jurisprudence Section – 2010

### E22 Rule 702, *Daubert* and *Frye* – Loose Gatekeepers?

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The goal of this presentation is to provide an examination and discussion about whether the scientific standards currently used in the court system today are appropriate for determining whether or not a particular scientific method is good or junk.

This presentation will impact the forensic science community by taking a candid look to determine if the current method for admitting science in the court system needs to be overhauled or not.

Over the years, many presentations have been given explaining and defining the different standards the courts use in determining whether or not particular fields and techniques are scientific, but there does not appear to have been a fundamental examination of the admissibility standards allowing scientific evidence into court. Do *Frye*, *Daubert*, or Rule 702 genuinely allow for and instruct in the rigorous scientific inquiry one would expect when deciding whether a particular scientific method is suitable for a court of law? If not, then the question remains as to what the suitable standard is. There is the additional issue of even if the standard is suitable, do the parties have enough of a scientific background to insure that it is properly applied. This session seeks to explore these issues.

The panel begins with a brief overview of the tension between science and law as well as a look at the legal standards currently in place. Fundamentally the issue boils down to a misunderstanding of the scientific method. Lawyers and laypeople tend to believe that science is there to provide certainty, and scientists believe that science provides answers with an associated level of uncertainty. Even those lawyers who recognize the uncertain nature of scientific inquiry feel penned in by the demands of the legal system.

Next, there will be two presentations from a lawyer and judicial perspective on the presentation of scientific evidence. This presentation will discuss a lawyer's perspective on conducting a *Frye* hearing. Issues such as when to conduct a *Frye* hearing, what to present and what not to present, and how to approach different types of Judges will be discussed.

The confusion among lawyers and judges about what is scientific, what an expert is, and how "gatekeeping" ought to work. The relationship between trial and appellate levels when it comes to reviewing matters of scientific and expert testimony will be explored. Given that there are differing standards between the application of empirical "scientific" disciplines will also be discussed, and expert testimony based on knowledge, training and experience, a discussion of their application and misapplication is intended to both enlighten participants as to the judicial process, and give some ideas as to the pitfalls and problems to be avoided when presenting testimony to the

court. A discussion of what appeals courts look at on appellate review will conclude the presentation.

These issues will be examined from a more scientific viewpoint with presentations from an engineering sciences viewpoint.

The session will end with a roundtable discussion of the issues brought forth by the presentations.

#### **Daubert Frye, Scientific Legal Standard, Scientific Method**