

Federal Rule 702: What Is the Meaning and Implications of this Rule for the Forensic Rehabilitation Consultant

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Federal Rule of Evidence 702 is the foundation of the admissibility rulings (Daubert, Joiner, & Kumho) by the US Supreme Court. This paper examines, line by line, the meaning and implications of FRE 702 for the forensic rehabilitation consultant. By examining each phrase of FRE 702, and high-lighting the language with relevant case law, it becomes particularly apparent that this rule was and continues to be the guiding principle in the Daubert trilogy rulings, and in determining admissibility of testimony on an ongoing basis in federal courts.

With the onset of the *Daubert* ruling in 1993, and the subsequent rulings of the US Supreme Court (*Joiner*, 1997; *Kumho Tire*, 1999), the general issue of admissible testimony has been a major concern in many areas of expertise. The application of the “*Daubert* ruling and criteria” have been both misunderstood and misapplied when employed in cases of the social sciences, and especially in the forensic rehabilitation field. For both the plaintiff and defense attorneys, it is both critical and essential that reliable testimony be offered on behalf of their client in order to avoid a successful challenge to admissibility. Attorneys for either side may use the opportunity of submitting an *in limine* challenge to prevent the plaintiff’s expert from testifying. In the field of forensic rehabilitation consulting, there has been some debate as to the applicability of the *Daubert* criteria to social science testimony (Field & Stein, 2002). This paper examines the US Supreme Court rulings on the issue of admissible testimony, and sets forth a case for the relevance of Federal Rule of Evidence 702 as a guideline for expert testimony in the social sciences. The *Daubert* ruling was largely predicated on the language set forth in FRE 702. When the trilogy of the federal rulings is considered, with a clear understanding of FRE 702, along with the modifications and clarifications of the *Daubert* ruling by the *Kumho* and *Joiner* decisions, it becomes apparent that the 702 rule is of paramount importance in determining admissibility of social science testimony (i.e., rehabilitation, economics, life care planning, etc.). This analysis and discussion will address the several important phrases and wording of FRE 702.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

If scientific, technical, or other specialized knowledge . . .

What is the intent and meaning of the *Daubert* decision with regard to these three areas of knowledge? Did the Court (hereafter refers to the US Supreme Court unless otherwise specified) intend to specify three types of knowledge as might be suggested by the proposition “or” which is placed between technical and other specialized knowledge. The answer seems to suggest *maybe* since the Court noted that “our discussion is limited to the scientific context because that is the nature of the expertise offered here” (in *Daubert vs. Merrill Dow*, see Note 8). Chief Justice Rehnquist, joined by Justice Stevens, in dissenting in Part II-B of the *Daubert* Ruling, raises questions about experts seeking to “testify on the basis of ‘technical or other specialized knowledge’ — the other types of expert knowledge to which Rule 702 applies - or are the ‘general observations’ limited only to ‘scientific knowledge?’” Rehnquist then pointedly asks, “What is the difference between scientific knowledge and technical

knowledge?" Adding to the confusion is the Court's emphasis on scientific knowledge and whether it can be tested, with the "criterion of the scientific status of a theory is its falsifiability, or refutability, or testability." Rehnquist then states in his dissent "I am at a loss to know what is meant when it is said that the scientific status of a theory depends on its 'falsifiability.'"

Perhaps the word "knowledge" is the operative concept - not the separate concepts of "science," or "technical," or "other specialized." First, as already noted above, the issue in the *Daubert* ruling involved science. Science is no longer defined by the "general acceptance" rule as noted in the long-standing *Frye* ruling, but rather, as the *Daubert* court noted "scientific implies a grounding in the methods and procedure of science . . . an inference or assertion [that] must be derived by the scientific method." To determine the falsifiability of a scientific approach, the Court suggested that four factors that "might be used in assessing reliability (falsifiability), i.e., whether proffered evidence can be allowed and has been tested, the known or potential error rate, peer review and publication, and in a nod to *Frye*, acceptance in the relevant community (Haack, 2005).

Popper (1959), cited in the *Daubert* ruling, in a discussion of the nature of science and knowledge, is referenced by Haack (2005), and "describes his philosophy of science [as the] key theme that scientific statements can never be shown conclusively to be true, but can sometimes be shown to be false." Popper affirmed that "scientific knowledge is continuous with common-sense knowledge" with the task in searching for scientific truth to be able to "test knowledge to determine when and if it is true (if it is true), and false (when it is false)." The implication might be that knowledge from any source — scientific, technical, or other specialized — cannot be established as an absolute truth. Rather, knowledge that is "reliable" and can be "reliably" applied to the facts of a case is the more important consideration. The facts of the case, therefore, will dictate the nature of the knowledge that would assist the trier of fact in making a determination on issues of admissibility. In *Daubert*, the facts of the case (determining whether Bendectin was the cause of birth defects in a child) required an answer that could be derived only through the scientific method. In *Kumho*, the task of determining if a tire was defective in the tragic crash involving a family required more emphasis on a particular method used in making such a determination. And with the *Joiner* ruling, gatekeepers now possess significant discretion in determining what criteria would be used in deciding admissibility of opinion, contingent on the nature of knowledge (as defined by the facts of the case).

... will assist the trier of fact to understand the evidence or to determine a fact in issue ...

General Electric v. Joiner (1997) is often referred to as the "abuse of discretion" rule. Following the *Daubert* decision, the Court revisited the issue of admissibility to determine "what standard an appellate court should apply in reviewing a trial court's decision to admit or exclude expert testimony." The Court held that "the abuse of discretion is the appropriate standard." The District Court in *Joiner* disallowed four epidemiological studies presented by the respondent (*Joiner*) who had acquired small cell cancer. Since *Joiner's* job as an electrician included exposure to dielectric fluid which had been contaminated with PCB, furans and dioxins, there was a probable link to the cancer. The District Court found that the four studies were so dissimilar to the facts of the case that there was "not a sufficient basis for the experts' opinions." Citing *Daubert*, the Court observed that the "focus must be solely on principles and methodologies, not on the conclusions that they generate."

In a review of selected cases, admissibility decisions by a trial court are not always easy to understand. It would appear that in following the "abuse of discretion" doctrine a judge can lean too far one way or the other (admissible or not admissible). For example, in *Kinnaman v. Ford Motor Company* (2000), the trial judge rejected the testimony of a vocational expert by strictly applying the four *Daubert* factors. The issue revolved around the use of an on-line computer resource as part of the vocational expert's (VE) methodology in presenting an opinion. Perhaps there was missing information about the computer resource, but, on the other hand, the methodology did not lend itself appropriately to a scientific scrutiny of the *Daubert* factors. In this case, the judge seemed to over-reach in applying these standards to this type of testimony.

In *Jenson v. Eveleth Taconite Company* (1997), a class action was initiated by several female employees against the employer for sex harassment and discrimination. Damages sought were for back pay, front pay, and for past and future mental anguish. Six experts, including psychiatrists and psychologists, with reputable backgrounds in education and experience, were restricted or rejected in their testimony for the failure of the experts being able to "present a validated theory which furnishes a scientific basis for distinguishing between the causal effect of multiple psychological stresses and trauma." The Appeals Court found the Trial Court, which relied on the *Daubert* ruling, in error in rejecting the testimony of the six experts. Further the Appeals Court noted that "there is some question as to whether the *Daubert* analysis should be applied at all to 'soft' sciences such as psychology, because there are social sciences in which the research,

theories and opinions cannot have the exactness of hard science methodologies.”

A similar case involving medical testimony (*Moore v. Ashland Chemical, Inc.*, 1997) observed that “the *Daubert* factors, which are hard scientific methods selected from the body of hard scientific knowledge and methodology, generally are not appropriate for use in assessing the relevance and reliability of clinical medical testimony. Instead the trial court should determine whether the doctor’s proposed testimony as a clinical physician is soundly grounded in the principles and methodology of his field of clinical medicine.” The same process should be employed in determining admissibility in the field of rehabilitation consulting which also involves a clinical judgment approach (Choppa et al., 2004). It appears that the courts are beginning to realize that the important ingredient is the knowledge base of a case, and the proper approach to assess the reliability and relevance of admissible testimony is to consider the appropriate factors that are both germane and relevant to the facts of the case.

In a more recent case, *Cummins v. BIC, Inc.* (2011), the court’s discretion was to allow the testimony of a life care planner who testified as to the costs of future medical treatments with no reliance on medical foundation data from a physician. The life care planner did rely on the opinions of a physician’s assistant (PA), who later recanted his opinion and claimed himself to be unqualified to offer [medical opinion]. The court ruled that the life care planner was “retained to testify as to the cost of treatments if treatments are required - she will not be testifying as to the necessity or extent of future medical treatments.” It would appear in this case that the trial judge, in the role of gatekeeper, exercised great *leeway* (a term from the *Kumho* ruling) in allowing opinion without proper medical foundation – perhaps too much *leeway*. (See also *Paoli Railroad Yard PCB Litigation*, 1994 for a discussion of additional criteria that can be used in deciding admissibility.)

... a witness qualified as an expert by knowledge, skill, experience, training, or education ...

The essence of this part of FRE 702 has been addressed by multiple publications, standards and ethics statement of various professional associations, and finally, as an initial step in qualifying a witness or expert during hearings, depositions and trials. For the rehabilitation provider, the professional certification programs and educational requirements for practice in the forensic rehabilitation field are usually considered adequate for qualifying a person to testify in their field of expertise (Field, Choppa, Johnson, Jayne & Fountaine, 2007). While challenges *in limine* to a professional’s credentials are infrequent, occasionally a challenge does occur which can be instructive. The case of *Davis & Duke v. USA Truck* (1999) involved a challenge to the credentials of a very experienced vo-

cational expert. In defense of the expert’s credentials, material and information were supplied to the court addressing each of the issues noted above – namely, knowledge, skills, experiences, training and education of the expert’s qualifications which were readily accepted by the court with the challenge being dismissed. On the other hand, in *Dollman v. Mast Industries* (2011), an economist was precluded from testifying on the issue of a job search for the plaintiff in the case. Dollman had completed a very limited effort in learning about and surveying jobs in the fashion industry (regarding the “job” information about which he testified). The real issue, however, was that the economist had no knowledge, skill, experience and training in the area of job searches and matching. Just because someone may be qualified in one area does not mean that they are also qualified in another area.

... may testify thereto in the form of an opinion or otherwise ...

Opinion (clinical impressions or judgment presented by a practicing professional) is different than conclusions drawn from science, or the scientific method (Field, Choppa & Weed, 2009; Barros-Bailey & Neulicht, 2005). Based on the facts of the case, coupled with proper foundation evidence and the use of reliable procedures and methodologies, the professional formulates an opinion regarding the issue at hand. In *Moore v. Ashland Chemical* (1997), the court assumed that the “expert’s opinion [would] have a reliable basis in the knowledge and experience of his discipline . . . and that the trial judge must determine whether the reasoning or methodology underlying the testimony is valid under the principles of the discipline involved.” The gatekeeper *may*, with considerable *leeway*, consider multiple criteria (which may or may not include the *Daubert* factors) in determining admissibility. The facts of the case will determine the knowledge area (science, technical, or other specialized) for which the most appropriate criteria will be applied in order to result in reliable and relevant testimony.

... if (1) the testimony is based upon sufficient facts or data ...

It is imperative that a witness follow the facts of the case as the basis for any conclusions. As in *Boucher v. US Suzuki Motor* (1996), a VE’s testimony was accepted, in part, (a conclusion based on the wide acceptance of Department of Labor tables on worklife expectancy), and rejected, in part, because the VE tended to speculate about the rather restricted postinjury earning capacity of the plaintiff. Apparently the court felt that the facts were somewhat embellished which resulted in an unwarranted opinion of the plaintiff’s postinjury capacity - resulting in a questionable estimate (speculative) of future lost earnings.

In *Mulligan v. Chevron USA, Inc.* (2007), the court did not consider the VE's testimony because some of the VE's comments and observations differed so greatly from the gatekeeper's observation that the court "cannot in good conscience accept the VE's conclusion." The court also rejected the testimony regarding the VE's methodology which felt that the reasoning and methodology were not "properly applied to the facts of the case." In a rather harsh conclusion, the court stated: "At the end of the day, it doesn't make a rat's — what the expert comes up with if his methodology is not sound." Following the facts of the case, with sufficient foundation data and information, utilizing reliable procedures and methodology in assessment and evaluation, while keeping the conclusion relevant, are all important aspects of the development of opinion and testimony by an expert.

... (2) the testimony is the product of reliable principles and methods ...

The *Daubert* ruling, with the four part criteria consisting of a testable theory, peer reviewed and published, with a known error rate, that is generally accepted by the relevant scientific community, has been viewed in some quarters that the *Daubert* factors apply to all testimony. Part of this perception resulted from the facts of the *Daubert* case which, given the nature of the facts and issue at hand, required an inquiry involving the scientific method. As a result, Rehnquist "anticipated difficulties over whether and if so how *Daubert* should be applied to non-scientific expert testimony, and worried aloud that federal judges were being asked to become amateur scientists" (Haack, 2005, p. 2). In the search for reliable testimony, allegedly an implied search for the truth, it may be far easier to establish that an event or happening may be false long before the truth is discovered. As a matter of discourse, in criminal proceedings everyone is assumed innocent until proven guilty; in the nature of opinion, a reasonable conclusion regarding the facts of a case is generally reached by consensus (i.e., a jury). Haack (2005, pp. 6-7) suggests that:

every kind of empirical inquiry, from the simplest everyday puzzling over the cause of delayed buses or spoiled food to the most complex investigations of detectives, of historians, of legal and literary scholars, and of scientists, involves making an informed guess about the explanation of some event or phenomenon, figuring out the consequences of its being true, and checking how well those consequences stand up to evidence. This is the procedure for all scientists, but not only of scientists.

Knowledge, to continue this line of thought, is not always a result of the scientific method, or of empirical studies; scientific knowledge (and inquiry) may be viewed as "continuous with everyday empirical inquiry", and agreeing with Popper (1959), "science is an

extension of common sense" (Haack, 2005, p.6). Since the works of Popper (1959) were included in the discussion of the majority court and the minority comments by Rehnquist and Stevens, it would appear that the intent of the *Daubert* ruling was to establish an absolute with regard to expert testimony. On the contrary, truth is not easy to establish and may, in fact, be derived from multiple sources and criteria — depending on the nature of the knowledge involved and the facts of the case. What is most critical is not the conclusions of a witness, but rather the methods and procedures that were used to derive at and formulate a reliable opinion.

In *Kumho Tire Co., LTD v. Carmichael* (1999), Patrick Carmichael was driving a vehicle when a tire blew out resulting in a serious accident in which one person died and several were injured. Carmichael then brought suit against *Kumho Tire* for the manufacture of a defective tire which was claimed to be the cause of the accident. The District Court applied the *Daubert* factors to Carlson's opinion and determined that the testimony was unreliable. Under FRE 702, the testimony must be deemed reliable. The Appeals Court agreed with a request for reconsideration and found that:

Daubert should be applied flexibly, that its four factors were simply illustrative, and that other factors could argue in favor of admissibility. In reversing, the Eleventh Circuit held that the District Court had erred as a matter of law in applying Daubert. Believing that Daubert was limited to the scientific context, the court held that the Daubert factors did not apply to Carlson's testimony, which it characterized as skill- or experienced-based.

The Supreme Court (Court hereafter) made three observations in response to the Appeals Court: "(a) The *Daubert* 'gatekeeping' obligation applies not only to 'scientific testimony, but to all expert testimony.'" The key word here is "gatekeeping" — it is not to suggest that all testimony need to be evaluated with the four factors. The Court further noted that, while not distinguishing between "scientific" knowledge as opposed to "technical" or "other specialized" knowledge, in FRE 702 it is the word "knowledge" that is the subject of expert testimony and not necessarily the concept of "scientific." Scientific testimony in the case of *Daubert* was admissible evidence because the facts of the case required knowledge of a scientific nature — thus, the four factors related to science. The word "knowledge" is what "established a standard of evidentiary reliability; the expert's opinion will have a basis in the knowledge and experience of his discipline." (b) The Court made very clear their intent on the admissibility issue with the following language:

A trial judge determining the admissibility of an engineering expert's testimony may consider one or more of the specific Daubert factors. The emphasis

on the word 'may' reflects *Daubert's* description of the Rule 702 as 'a flexible one.' The *Daubert* factors do not constitute a definitive checklist or test, and the gatekeeping inquiry must be tied to the particular facts. Those factors may or may not be pertinent in assessing reliability, depending on the nature of the issue, the expert's particular expertise, and the subject of his testimony.

Finally, (c) the Court affirmed that the abuse of discretion standard must be applied when reviewing the admissibility of an expert's testimony (*GE v. Joiner*, 1997). "Thus, whether *Daubert's* specific factors are, or are not, reasonable measures of reliability in a particular case is a matter that the law grants the trial judge broad latitude to determine." In order to emphasize this issue, the Court concluded again, relative to the expert's (Carlson) testimony in *Kumho*, that "the test of reliability is 'flexible,' and *Daubert's* list of specific factors neither necessarily nor exclusively applies to all experts or in every case."

With regard to Carlson's expert testimony on the issue of a defective tire manufactured by *Kumho Tire Company*, Carlson relied on a visual and tactile examination of the tire. In explaining his method (there was no issue with respect to his qualifications), Carlson explained that he relied on four factors in opining that the tire was defective:

(a) tread wear on the tire's shoulder is greater than the tread wear along the tire's center; (b) signs of a 'bead groove,' where the beads have been pushed too hard against the bead seat on the inside of the tire's rim; (c) sidewalls of the tire with physical signs of deterioration, such as discoloration, and (d) marks on the tire's rim flange.

Carlson testified that overdeflection (consisting of underinflating the tire, or too much weight which could cause a separation of the tread from the carcass) could be detected if there was a presence of all four of his criteria (a - d above). Since he found only two of the factors present following the inspection of the tire, Carlson concluded that the tire "manufacturing or design defect caused the separation" and the accident.

The District Court, in applying the *Daubert* factors, granted the motion to exclude Carlson's testimony (and methodology). The Eleventh Circuit reversed, noting that the *Daubert* analysis "applied only where an expert relies on the application of 'scientific principles', rather than 'on skill- or experience-based observation.'" The Eleventh Circuit "concluded that Carlson's testimony, which it viewed as relying on experience, falls outside the scope of *Daubert*." The case was remanded for "non-*Daubert*-type consideration under FRE 702." Finally, the US Supreme Court reversed the Eleventh Circuit decision, stating that "the factors identified in *Daubert* may or may not be pertinent in assessing reliability. In searching for a de-

fense of Carlson's methodology, it found no convincing defense." Rather, it found:

(1) that 'none' of the *Daubert* factors, including that of general acceptance in the relevant expert community, indicated that Carlson's testimony was reliable, (2) that its own analysis 'revealed no countervailing factors operating in favor of admissibility which could outweigh those identified in *Daubert*, and (3) that the parties identified no such factors in their briefs. For these three reasons taken together, it is concluded that Carlson's testimony was unreliable.

In support of the District (trial) Court, the *Kumho* decision affirmed that "district courts must scrutinize whether the 'principles and methods' employed by an expert have been properly applied to the facts of the case." Further, the Court ruled that a district court is not required "to admit opinion evidence *ipse dixit* by an expert"; the phrase "*ipse dixit*" is Latin for "he himself said it" (*Black's Law Dictionary*, 2000).

Turning to cases adjudicated in the field of forensic rehabilitation, *Elcock v. K-Mart*, (1998) is a good example of a vocational expert attempting to explain a method which did not exist. Suggesting that there was a Field-Gamboa methodology of estimating lost employment, the VE could not provide an adequate explanation of this method, mostly because there is no such method. There did exist an approach developed by Field (1984), and a separate approach developed by Gamboa (1987), but clearly no "hybrid" method of the two approaches. The expert could not cite any references for the hybrid method. In *Fashauer v. New Jersey Transit Rail Operations* (1995), the VE offered a single job title which he found in the newspaper the day before trial. The court ruled that the "VE's testimony was so ludicrous . . . so laughably ludicrous . . . that it [does not] require rebuttal." Obviously, the VEs in both of these cases clearly presented unreliable testimony with no display of anything resembling a reliable methodology. In *Ollis v. Knecht* (2001) a vocational expert presented testimony on an issue of lost future income for a person deceased. The expert was unable to cite any reference for the "mirror image" method used in estimating the income. The trial judge, at his discretion, disallowed the expert's testimony; the appeals court ruled that there was no abuse of discretion.

Fortunately, there are many cases from the rehabilitation field that have been allowed based on a proper methodology or approaches to understanding and opining about the facts of each case. In *Archer v. Warren & Warren* (2001), and *Hanford Nuclear Reservation Litigation* (2004), both involving the work of life care planners, the respective courts ruled that the work of the experts relied on proper medical foundation, took into account the needs and considerations of the plaintiffs, and presented their opinions in a rea-

sonable and reliable manner. Testimony of both of the experts was admitted. The defense challenged the Archer expert based on the *Daubert* factors, but the court considered other factors as well (and correctly so). Finally, in *Minton & Minton v. Savage & Savage* (2004), a VE was allowed to testify following a defense challenge that the expert's methodology was not scientifically reliable. In preparing for trial, the VE relied on government data to evaluate the medical and corresponding restrictions of the plaintiff. The VE was able to show that his approach to evaluating the facts of the case existed within peer reviewed literature, and was generally accepted within the professional community.

... and (3) the witness has applied principles and methods reliably to the facts of the case.

While FRE 702 does not include the word "relevant", both *Daubert* and *Kumho* have placed significant emphasis of the need for testimony to be both reliable and relevant. As discussed above, testimony should be developed through reliable principles and methods, including the appropriate methods consistent with the knowledge base related to the facts of the case. Further, that knowledge may derive from science, or technical, or other specialized areas of inquiry. It follows, then, that whichever knowledge base or domain is relevant to the facts of the case needs to be evaluated by criteria appropriate for that domain.

Opinion testimony, or the conclusions derived by the expert through the use of reliable procedures and methods, is required to be relevant to the facts of the case. FRE 402 states that "evidence that is not relevant is not admissible." In order to determine what is relevant, as required under the *Daubert* ruling, specific guidance is provided by FRE 401 which states:

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The gatekeeper is clearly in the position to make a determination of evidence with regard to its relevance with further guidance provided by FRE 403:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

With regard to the facts of the case, both the *Daubert* and *Kumho* courts are very clear that testimony and opinion by experts must be both relevant and reliable. A trial court possesses a "gatekeeping" responsibility that must be "tied to the facts of a particular case. And where such testimony's factual basis, data, principles,

methods, or their application are called sufficiently into question, the trial judge must determine whether the testimony has a reliable basis in the knowledge and experience of the relevant discipline" (in *Kumho*).

Conclusions

The Federal Rule of Evidence 702 is the essential rule in providing guidance to federal judges in determining the admissibility of expert testimony. The trilogy rulings of the US Supreme Court (*Daubert*, *Joiner* & *Kumho*) are all predicated on FRE 702, and are meant to provide both clarity and direction on admissibility. The following major points of this paper are:

1. *Daubert* applies to all forms of knowledge – scientific, technical, or other specialized.
2. The operative word is "knowledge" and the criteria for admissibility must relate to the knowledge and experience parameters as they relate to the facts of the case.
3. The *Daubert* factors were not intended to apply to all cases, and the trial courts *may* and should be *flexible* in evaluating admissibility. The criteria determining admissibility must meet the "standard of evidentiary reliability."
4. Testimony must be both relevant and reliable.
5. Methods, procedures, and data must be related to the facts of the case, as if to suggest that the case itself will assist to define the necessary criteria for evidentiary reliability.
6. The gatekeeper shall have significant *leeway* and discretion in determining admissibility.

With a better understanding of FRE 702 and how it relates to the US Supreme Court trilogy, all parties in the litigation process should benefit in addressing the issue of admissible testimony. With regard to the work of the rehabilitation consultant, the two most reasonable *Daubert* factors that would be of importance are peer review and general acceptance (Field et al., 2006). With *Kumho*'s emphasis on reliable methods and procedures, and the discretionary *leeway* provided by the Court in *Joiner*, the message is clear: the development of expert testimony, even in the social sciences, needs to at least address these two critical components. FRE 702 (not *Daubert*) is the standard. The US Supreme Court's trilogy of cases provide the needed guidance in implementing proper admissible testimony – both for the trial courts and for the expert.

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