

SCALIA, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 97–1709

KUMHO TIRE COMPANY, LTD., ET AL., PETITIONERS
v. PATRICK CARMICHAEL, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[March 23, 1999]

JUSTICE SCALIA, with whom JUSTICE O'CONNOR and
JUSTICE THOMAS join, concurring.

I join the opinion of the Court, which makes clear that the discretion it endorses— trial-court discretion in choosing the manner of testing expert reliability— is not discretion to abandon the gatekeeping function. I think it worth adding that it is not discretion to perform the function inadequately. Rather, it is discretion to choose among *reasonable* means of excluding expertise that is *fausse* and science that is junky. Though, as the Court makes clear today, the *Daubert* factors are not holy writ, in a particular case the failure to apply one or another of them may be unreasonable, and hence an abuse of discretion.