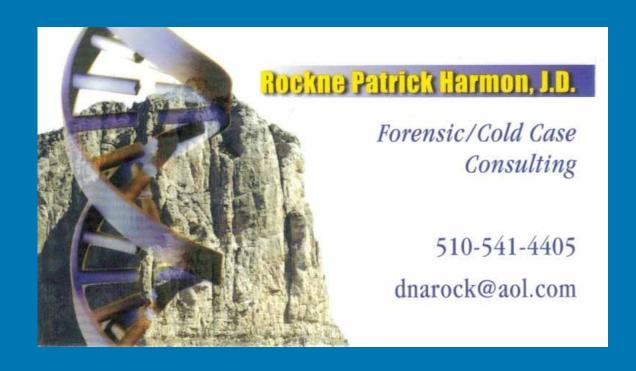
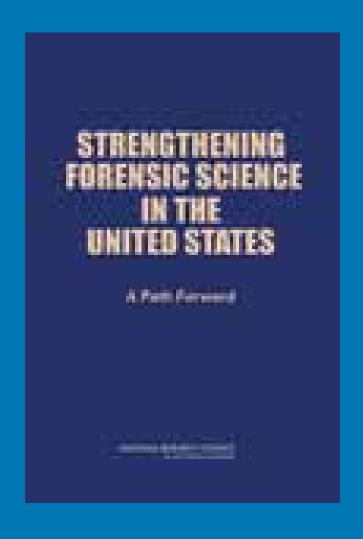
Pattern Symposium- Daubert Exercise



Overview

- Materials online –
- Brief- Generic Daubert
- Daubert vs. Frye
- Daubert exercise
 - Argument
 - Testimony
 - Argument

New Challenges to Old Evidence



Recent Challenges

- s Fingerprints
- S Handwriting
- Firearms
- s Pattern

Bases for Challenge- Daubert

- Testability
- s Peer review
- Error rate unknown, too high
- Standards
- General acceptance never should have been

Daubert-Frye Elements Compared

Daubert

- S Testability
- s Peer review
- Error rate/Standards
- General acceptance

Frye

General acceptance

Legal Precedent

"...a legal decision that may serve as a justification for a later one."

People v. Kelly (1976)17 Cal.3d 24

"...once a trial court has admitted evidence based upon a new scientific technique, and that decision is affirmed on appeal by a published appellate decision, the precedent so established may control subsequent trials, at least until new evidence is presented reflecting a change in the attitude of the scientific community."

Bases for Challenge- Daubert

- Testability
- s Peer review
- Error rate unknown, too high
- Standards
- General acceptance never should have been

Procedural Differences

Daubert

- Perpetual right to challenge
- Live testimony/not

Frye

- General acceptance
- Unless change in attitude
- Defense burden

People v. Kelly (1976)17 Cal.3d 24

- "... at least until new evidence is presented reflecting a change in the attitude of the scientific community."
- See Cole, "Out of the Daubert Fire and into the Fryeing Pan?"

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