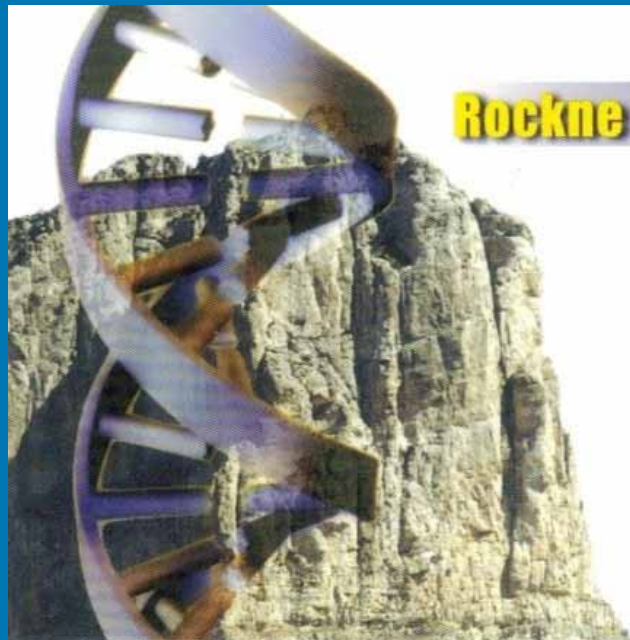


Pattern Symposium- Daubert Exercise



Rockne Patrick Harmon, J.D.

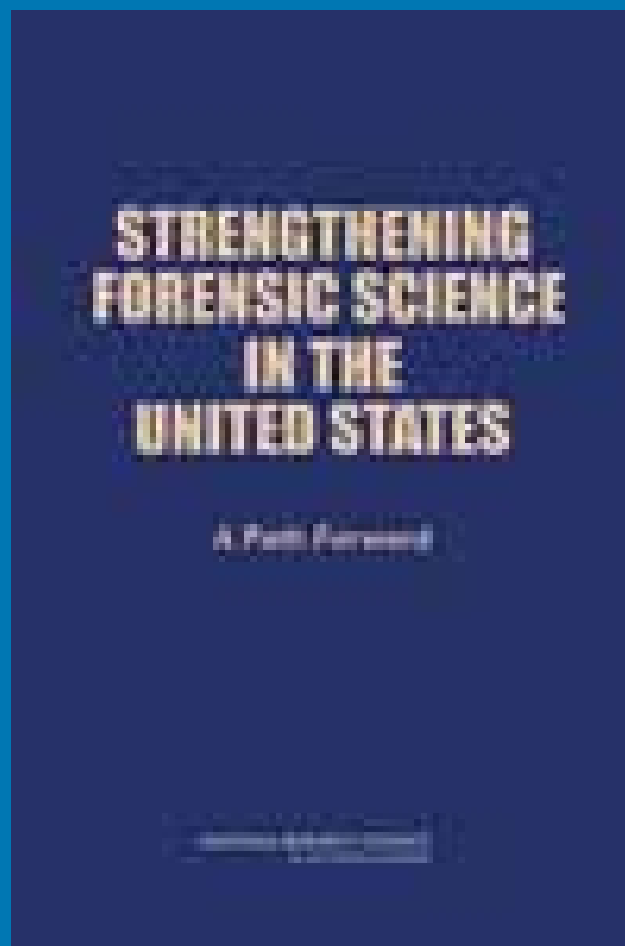
*Forensic/Cold Case
Consulting*

510-541-4405
dnarock@aol.com

Overview

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

New Challenges to Old Evidence



Recent Challenges

- s Fingerprints
- s Handwriting
- s Firearms
- s Pattern

Bases for Challenge- Daubert

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

Daubert-Frye Elements Compared

Daubert

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

Frye

- s General acceptance

Legal Precedent

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

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

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s "...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

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

Procedural Differences

Daubert

- s Perpetual right to challenge
- s Live testimony/not

Frye

- s General acceptance
- s Unless change in attitude
- s Defense burden

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

24

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