Pattern Symposium - Daubert Exercise

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Overview

- Materials online –
- Brief- Generic Daubert
- Daubert vs. Frye
- Daubert exercise
  - Argument
  - Testimony
  - Argument
New Challenges to Old Evidence
Recent Challenges

- Fingerprints
- Handwriting
- Firearms
- Pattern
Bases for Challenge- Daubert

- Testability
- Peer review
- Error rate – unknown, too high
- Standards
- General acceptance – never should have been
## Daubert-Frye Elements Compared

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Legal Precedent

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