Trace Symposium- Daubert Exercise

Rockne Patrick Harmon, J.D.
Forensic/Cold Case Consulting

510-541-4405
dnarock@aol.com
Overview

▲ Materials online - Briefs-
  Williams
  Generic Daubert
▲ Daubert vs. Frye
▲ Daubert exercise
▲ Melendez-Diaz
New Challenges to Old Evidence
Recent Challenges

▲ Fingerprints
▲ Handwriting
▲ Firearms
Bases for Challenge- Daubert

- Testability
- Peer review
- Error rate/Standards
- General acceptance
Bases for Challenge - Issues

▲ Never scientifically validated
▲ Scientists should never accepted in the first place
▲ Error rate unknown
Daubert-Frye Compared

Daubert

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

Frye

- General acceptance
“...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 - Issues

- Never scientifically validated
- Scientists should never accepted in the first place
- Error rate unknown
In short, under our decision in *Crawford the analysts* affidavits were testimonial statements, and the analysts were witnesses for purposes of the Sixth Amendment.

We turn now to the various legal arguments raised by respondent and the dissent.