



# Office of the Ohio Public Defender

Timothy Young, State Public Defender

## Bringing the Scientific Method into the Courtroom

Presented by Stephen Goldmeier

### Useful Cases, Rules, Studies, Etc.

#### Cases

- *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993): United States Supreme Court: defining the criteria a judge must consider when determining whether to exclude an expert's testimony or a piece of scientific evidence. Adopted by Ohio.
- *Kumho Tire Company, Ltd. v. Carmichael*, 526 U.S. 137 (1999): United States Supreme Court: providing further guidance on the application of the *Daubert* standard.
- *State v. Nemeth*, 82 Ohio St.3d 202, 207, 694 N.E.2d 1332 (1998): Ohio Supreme Court: explaining and adopting the *Daubert* standard.
- *Hinton v. Alabama*, 571 U.S. \_\_\_\_ (2014): United States Supreme Court: positively citing the NAS report.
- *Lee v. Glunt*, 667 F.3d 397 (3rd Cir. 2012): illustrating a way of raising junk-science issues as a due-process violation under the U.S. Constitution.

#### Rules

- Ohio Evidence Rule 702: regarding what kind of expert testimony is permitted. Also governs the admissibility of results of scientific testing.

#### Studies

- The NAS, *Strengthening Forensic Science in the United States: A Path Forward*. Regarding the problems in forensic science in America. Also includes recommendations for fixing those problems. <http://www.nap.edu/catalog/12589/strengthening-forensic-science-in-the-united-states-a-path-forward>
- NIST and NCFS, *Policy Recommendations*. Includes a recommendation that the term "reasonable degree of scientific certainty" not be used, as it has no basis in science. <https://www.justice.gov/ncfs/work-products-adopted-commission>
- PCAST, *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods*. Presented to the President in September of 2016. [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast\\_forensic\\_science\\_report\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf)

## Litigation Tips

### *Discovery and Trial Preparation*

- Discovery: get State's expert's CV and start thinking about limitations in the State's expert's experience and ability to offer opinions. Get all reports prepared by the expert, but also get all lab notes and underlying information used to prepare those reports. Get it as raw data so your expert can use it to do their own analysis and report.
- Get your own expert: make sure you contact the right kind of expert. You might get both a consulting expert and a testifying expert. Think about funding your experts.
- Certifying and accrediting bodies: look into which bodies govern that area of forensic science. Learn their guidance documents so you can challenge experts who didn't use them. Learn lab standard practices.
- Read up: get a basic understanding of the scientific discipline (NAS report, case law, etc.). Ask around: get other attorneys' perspectives and recommendations on experts.

### *Pre-Trial*

- Carefully choose what law to cite in your pre-trial motions: cases and rules, but also the United States and Ohio Constitutions where you can. Consider the 6th Amendment if the State's strategy forecloses cross-examination, confrontation, due process, etc.
- Tell the right story: use the specific facts of your case to highlight the problems the testimony will create.
- Be creative: file *Daubert* motions to exclude, but also motions to limit what experts can say, motions to guide the scientific story in the direction that helps your client, etc.

### *During Trial*

- Renew objections: strategies on appeal depend on what trial attorneys preserve. Set up big change through appellate litigation by making small strategic moves at trial.
- Keep it simple: work closely with your experts to bring the science to a level jurors will understand. Be sure your scientific story makes more sense to jurors than the state's scientific story.
- Keep telling your story: Build the scientific story into every part of trial: jury selection, examination of your own witnesses, cross-examination, and closing.

