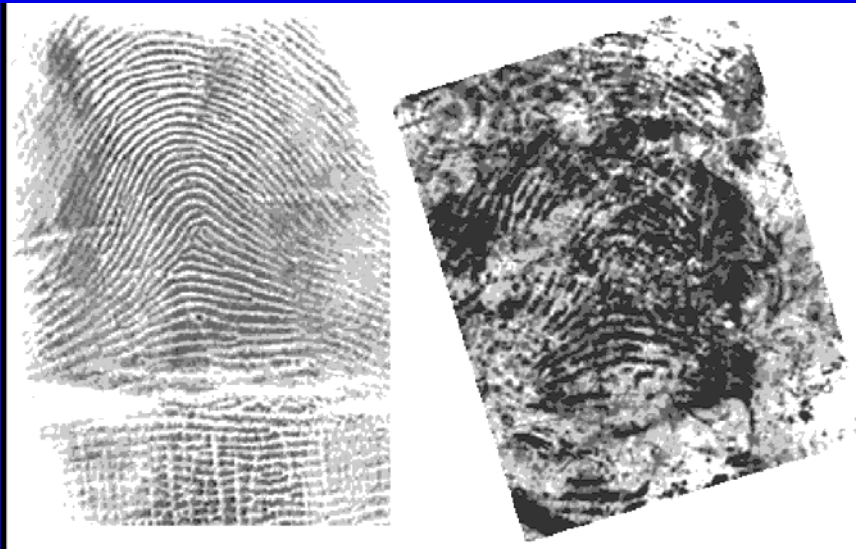


Strengthening Forensic Science: Does the Path Forward Run Through the Courts?



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Judicial regulation of forensic science has been a failure:

- Forensic science “has not done nearly as much as it reasonably could have done to establish either the validity of its approach or the accuracy of its practitioners’ conclusions...”
- and the courts have been ‘utterly ineffective’ in addressing this problem.”
- “Judicial review, by itself, will not cure the infirmities of the forensic science community.”

Explanations for the failure

- Judicial incompetence hypothesis
 - “...judges and lawyers who generally lack the scientific expertise necessary to comprehend and evaluate forensic evidence...”
- Judicial conservatism
 - “many techniques have been relied on so long that courts might be reluctant to rethink their role”
- Judicial wimpiness
 - Judges loath to “demand more by way of validation than the disciplines can presently offer”

But why, then, are admissibility standards enforced rigorously in civil cases?

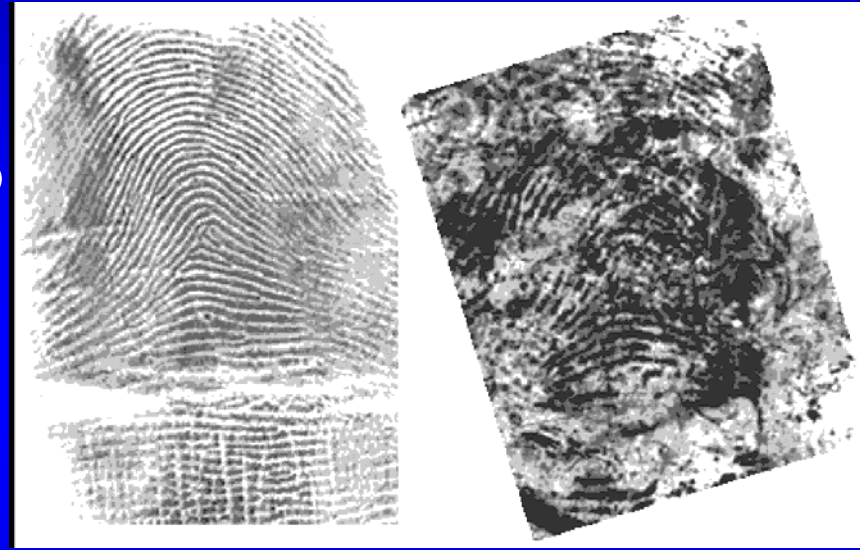
- Incompetence plus a “powerful parties win” heuristic?
- Does “the life of the law” reside not in a logical application of admissibility rules but an expression of judges policy preferences?
- Is there a plausible explanation that casts judges in a more favorable light (and might give us more hope for a positive judicial role in the future)?

When, if ever, have judges excluded forensic science?

- DNA in the early 1990's
 - Positive effects of negative rulings
- LCN recently
- Key factors:
 - Prominent critics (including an NRC panel)
 - Skillful litigators
 - Relative new method?

Did the NRC Panel Underestimate It's Own Potential Influence?

- I predict the report will lead to successful challenges to the admissibility of conclusions that rest on unguided subjective judgment
 - The report itself will undermine claims that subjective procedures are generally accepted



Rhetoric vs. Reality on DNA

- DNA evidence shares some of the very problems the NRC recognized in other areas
 - Subjective elements in interpretation
 - Susceptibility to observer effects
 - Absence of data on error rates, false positive probabilities
- By idealizing DNA testing, has the NRC panel undermined efforts to address these problems?

