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EVIDENCE

'Voodoo science' is sending people to prison, Kozinski says

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Many people languish in prison based on “voodoo science” that is presented as unassailable by forensic examiners, according to a federal appeals judge.

Writing for the Wall Street Journal (<http://www.wsj.com/articles/rejecting-voodoo-science-in-the-courtroom-1474328199>), Judge Alex Kozinski calls for amending federal law to allow federal courts to grant relief to prisoners who can show they were convicted based on false or overstated expert testimony. Currently the Antiterrorism and Effective Death Penalty Act “severely limits” the ability of federal courts to review state convictions, he says.

Kozinski served as a senior adviser to a report

(https://www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf) (PDF) released Tuesday that finds flaws in forensic evidence and the way it is presented in court. The report from the President’s Council of Advisors on Science and Technology “provides a road map for defense lawyers to challenge prosecution experts,” he writes.

The report concludes that bite mark evidence “is about as reliable as astrology,” Kozinski says. “Mumbo jumbo” that claimed char patterns indicate arson led to the execution of a Texas man. A fingerprint recovered from a Madrid train bombing was said to belong to an American lawyer—until authorities decided it was from another man.

Ars Technica has a summary (<http://arstechnica.com/science/2016/09/obamas-science-advisors-much-forensic-work-has-no-scientific-foundation/>) of the report’s findings. The effectiveness of mixtures of DNA from several people needs more testing. Fingerprint analysis can be subjective and affected by confirmation bias. The experts can’t identify the source of bite marks with reasonable accuracy. A rigorous study of the error rate for firearm tracing found it could be as high as 1 in 46. Studies of worn footwear treads are lacking. The accuracy of hair analysis has been overstated. The Washington Post (https://www.washingtonpost.com/local/public-safety/white-house-science-advisers-urge-justice-dept-judges-to-raise-forensic-standards/2016/09/19/42475c74-7d13-11e6-beac-57a4a412e93a_story.html) and the Wall Street Journal (<http://www.wsj.com/articles/white-house-advisory-council-releases-report-critical-of-forensics-used-in-criminal-trials-1474394743>) (sub. req.) also have stories.

The report recommends adopting standards to validate forensic methods, training forensic examiners, and making forensic labs independent of police and prosecutors. “All should be swiftly implemented,” Kozinski writes.

The FBI criticized the report, saying in a statement that it “makes broad, unsupported assertions regarding science and forensic science practice.”

Attorney General Loretta Lynch also issued a statement. “We remain confident that, when used properly, forensic science evidence helps juries identify the guilty and clear the innocent, and the department believes that the current legal standards regarding the admissibility of forensic evidence are based on sound science and sound legal reasoning,” Lynch said.

Hat tip to the Marshall Project (<http://us3.campaign-archive2.com/?u=a92567c13cca06b470824aead&id=9a6ff73814>).

See also:

ABAJournal.com (http://www.abajournal.com/news/article/reliability_of_forensic_analysis_routinely_used_in_criminal_trials_is_called_into_question): “Validity of forensic analysis routinely used in criminal trials is called into question”

ABA Journal (http://www.abajournal.com/magazine/article/long-held-beliefs_about_arson_science_have_been_debunked_after_decades_of_misuse): “Long-held beliefs about arson science have been debunked after decades of misuse”