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U.S.

White House Advisory Council Report Is Critical of Forensics Used in Criminal Trials

U.S. Attorney General says Justice Department won't adopt recommendations



The President's Council of Advisors on Science and Technology's final report on forensics concluded that much of the bite-mark, hair, footwear, firearm and tool-mark analysis used as evidence in trials doesn't meet scientific standards. *PHOTO: ASSOCIATED PRESS*

By **GARY FIELDS**

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WASHINGTON—The President's Council of Advisors on Science and Technology released a final report Tuesday on forensics, concluding that much of the most common analysis used in criminal trials doesn't meet scientific standards.

The final document nearly mirrored a draft report reviewed by The Wall Street Journal that raised questions about the use of bite-mark, hair, footwear, firearm and tool-mark analysis as evidence in thousands of trials annually in state and federal courts.

It sets the stage for criminal-defense challenges of long-held evidentiary methods and promises increased courtroom battles with prosecutors over the use of expert witnesses.

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In a statement, Attorney General Loretta Lynch said the Justice Department had taken unprecedented steps to strengthen forensic science, including investments in research,

draft guidance to lab experts when they testify in court and “reviews of forensic testimony in closed cases.”

“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,” Ms. Lynch said. “While we appreciate their contribution to the field of scientific inquiry, the department will not be adopting the recommendations related to the admissibility of forensic science evidence.”

In assessing some of the most-used examinations, which also included DNA and latent fingerprint analysis, the science panel found a number of them either weren’t scientifically valid or hadn’t been independently scrutinized by science-based agencies.

Tuesday’s report places an increased emphasis on how federal judges, which it called “gatekeepers,” determine if expert testimony and evidence should be admissible.

The report said legal standards in cases involving scientific evidence should be “based upon scientific validity.” It added that “neither experience, nor judgment, nor good professional practices (such as certification programs and accreditation programs, standardized protocols, proficiency testing, and code of ethics) can substitute for actual evidence of foundational validity and reliability.”

Barry Pollack, president of the National Association of Criminal Defense Lawyers, said in a statement that defense lawyers “have known for years now that law enforcement has overstated the validity and accuracy of forensic science and has obtained convictions based on these overstatements, including the convictions of innocent people.” He added the report “offers further evidence of the pervasive use of flawed analysis erroneously presented as grounded in science.”

Law-enforcement officials have said the report would likely lead to numerous unwarranted challenges in cases where the verdicts were correct.

The report itself stopped short of suggesting widespread challenges of past cases.

“PCAST expresses no view on the legal question of whether any past cases were ‘erroneously decided,’” the report said. “However, PCAST notes that, from a scientific standpoint, subsequent events have indeed undermined the continuing validity of conclusions that were not based on appropriate empirical evidence.”

The FBI in a statement said it “disagrees with many of the scientific assertions and conclusions of the report” and said the report “makes broad, unsupported assertions regarding science and forensic science practice.”

The FBI also takes the report to task for not mentioning “numerous published research studies, including recent studies on firearms and DNA complex mixture analysis” which seem to meet the panel’s criteria. “That omission discredits the PCAST report as a thorough evaluation of scientific validity.”

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