

INCREASING FORENSIC EVIDENCE'S RELIABILITY AND MINIMIZING WRONGFUL CONVICTIONS: APPLYING *DAUBERT* ISN'T THE ONLY PROBLEM*

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I. INTRODUCTION

The U.S. Supreme Court decided *Daubert v. Merrell Dow Pharmaceuticals* fifteen years ago.¹ During the intervening years, the judiciary has failed to apply *Daubert's* "exacting standards"² to forensic evidence offered by the prosecution. This unwillingness is disturbing by itself, and only compounded by recognizing that, during the same period, 216 people have been exonerated with DNA technology and scores of others have been exonerated via traditional, non-DNA evidence. It appears from the initial social science and anecdotal research that unreliable forensic evidence has played a moderate to significant role in many of these injustices.³

Many suggest that unreliable forensic evidence undermined the criminal process and presumably played a role in several wrongful convictions because the judiciary has not applied *Daubert* to prevent prosecutorial reliance on unreliable or "junk" forensic evidence in the courtroom. While this claim is partially true, there are other factors at play. The judiciary is merely a single star in a constellation of legal *and* forensic science shortcomings that have contributed to wrongful convictions. Thus, to minimize the

* The authors extend particular thanks to the Innocence Project, 100 Fifth Avenue, 3rd Floor, New York, New York, 10011, which provided significant material and support that underlie this article. The views and opinions expressed by the authors do not necessarily reflect the Innocence Project's views and opinions.

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1. 509 U.S. 579 (1993).

2. *Weisgram v. Marley Co.*, 528 U.S. 440, 442 (2000).

3. For example, in a comprehensive review of the first 200 convictions overturned with DNA evidence:

One hundred and thirteen cases (57%) involved introduction of forensic evidence at trial, with serological analysis of blood or semen the most common (79 cases), followed by expert comparison of hair evidence (43 cases), soil comparison (5 cases), DNA tests (3 cases), bite mark evidence (3 cases), fingerprint evidence (2 cases), dog scent identification (2 cases), spectrographic voice evidence (1 case), shoe prints (1 case), and fiber comparison (1 case).

Brandon L. Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55, 81 (2008).