

## PERSPECTIVE:

CLAMPING DOWN ON  
FAULTY FORENSICS

By Asst. Prof. Maneka Sinha

**T**V DRAMAS OFTEN paint—and jurors often perceive—forensic methods like fingerprint, firearms, bite mark, and hair comparison analysis as cutting edge, unquestionably reliable science. But these depictions and perceptions, particularly with respect to pattern matching disciplines, in which examiners attempt to “match” markings between items, misapprehend the reality of forensics, which is far more complex. Many forensic methods lack robust scientific underpinning. Labs sometimes produce faulty work, and forensic analysts have exaggerated their conclusions or been influenced by bias. Some have even falsified evidence or lied under oath, leading to disturbing miscarriages of justice.

Yet, problematic forensic evidence continues to be admitted in criminal cases where liberty is at stake. This leaves open the question: how have we allowed such evidence to get past judges and into jurors ears? Among many other theories, researchers have posited that judges have simply not done a good enough job scrutinizing forensic evidence before allowing it to be admitted at trial. But with the recent adoption of a new standard to screen out unreliable scientific or specialized evidence at trials, Maryland has a new opportunity to do better.

Before specialized evidence like forensics can be admitted at a trial, it must first satisfy certain

relevance and reliability criteria. For decades, those criteria required only that scientific evidence be generally accepted by the relevant scientific community. This standard, established in the 1923 case, *Frye v. United States*, fails to require judges to meaningfully evaluate the reliability of evidence presented and instead allows that evaluation to be outsourced to whomever is construed to constitute the “relevant” scientific community.

In 1993, in federal jurisdictions, the Frye standard was supplanted by the Daubert standard, which mandates that judges take a more hands-on approach to determining admissibility of scientific or specialized evidence. Daubert requires judges to act as gatekeepers to determine whether or not scientific or specialized evidence is relevant and reliable before admitting it at trial. In the intervening years, the vast majority of states have followed suit in adopting the Daubert standard. Maryland, despite drifting towards Daubert for many years, did not formally abandon Frye in favor of the federal standard until just last year in *Rochkind v. Stevenson*.

However, Maryland has gone further than other jurisdictions in giving judges guidance on how to assess admissibility. The Daubert case offers several factors to help judges determine reliability of scientific evidence. In *Rochkind*, the Court of Appeals made clear that additional factors may be relevant to the admissibility determination, explicitly adding



additional tools for judges to analyze admissibility.

Maryland has now adopted a standard that requires judges to take a more critical look at purportedly scientific evidence offered at trials, and it has added clarity on how judges are to conduct admissibility assessments. The move has the potential to curb the admission of faulty forensics in criminal trials and prevent future miscarriages of justice. *Rochkind* came down in the midst of a global pandemic, so admissibility challenges were slowed. But as courts open back up and challenges are heard with greater frequency, time will tell if our judges meet the challenge. ■

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