



Winning The Election but Losing the Litigation

A Prognosis Of Nigerian Judicial Attitudes Toward Evidence Produced From 'E-accreditation Machines'

2 Outline

- Motivation
- Research Problem & Question
- Research Methods and Theoretical Framework
- Findings
- “Computer Evidence produced from ‘ E-accreditation Machines(CEEM)”, Hearsay, and the power-mix
- A theoretical Argument: The Relative Plausibility Theory(RPT)
- Implications and Recommendations

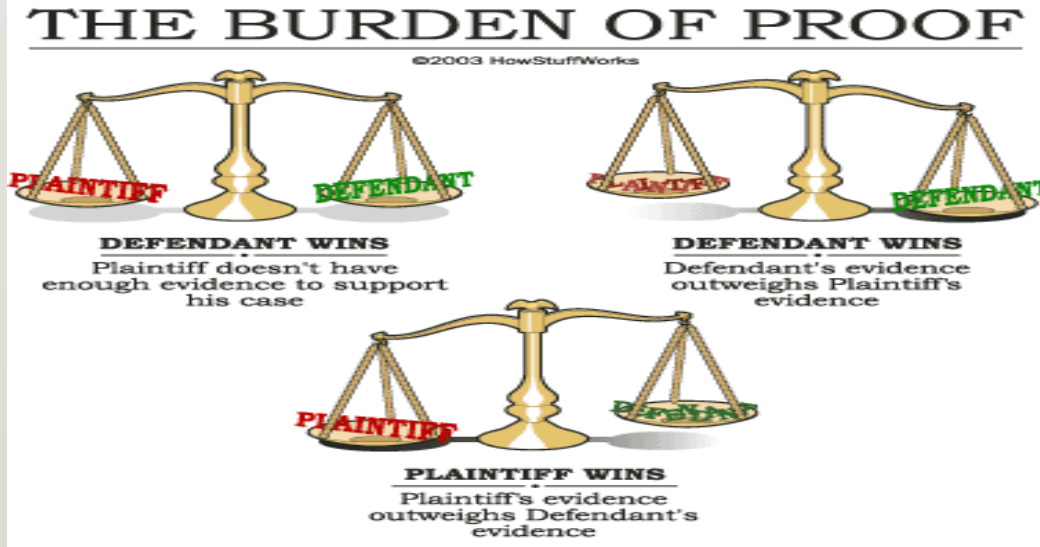
3 Abbreviations

- CEEM: Computer Evidence produced from “ E-accreditation Machines
- RPT: Relative Plausibility Theory
- CR: Card Readers
- PVC: Permanent Voters’ Card
- INEC: Independent National Electoral Commission

4 Are Parties To Electoral Litigations Equally Treated When Tendering “CEEM”?



Then = Hearsay



5 Motivation

- Courts often play a vital role in electoral outcomes(Maurer, A.D., Barrat, J. Eds., 2016, p. 2)
- Card Readers(CR) used to accredit voters in 2015 elections, but only INEC(Independent National Electoral Commission)'s officer determines weight of CEEM
- This situation create a power-mix in electoral litigation that favours the INEC and respondents
- Does the rules on hearsay & others occasion justice in these litigations?

Research Problem(Literature Review)

6

The Problem

- CEEM in issue: Non-hearsay evidence permissible (*Emma. v. Umana*; Sec. 126; 37; 84; Evi. Act)
- What happens where maker is unavailable?

Existing Solutions

- Admissible where “maker” cannot be found (Sec. 39, E.A.); made in the course of business(Sec. 41, E.A); entry in public record(Sec. 52)

The Need

- If admissible, can a “Hearsay Witness” testify and give weight to the CEEM?

7 Research Question

How does the current interpretation of the hearsay rules with respect to CEEM-in Nigeria-satisfy the need for justice in electoral litigation?



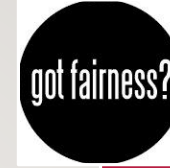
Methods

- Doctrinal Method allows researchers to interpretatively analyze judicial reasoning



Theoretical Framework

- A sound theory should account for : factual accuracy and fairly allocate risk of errors
- The Relative Plausibility Theory (RPT) satisfies both requirements



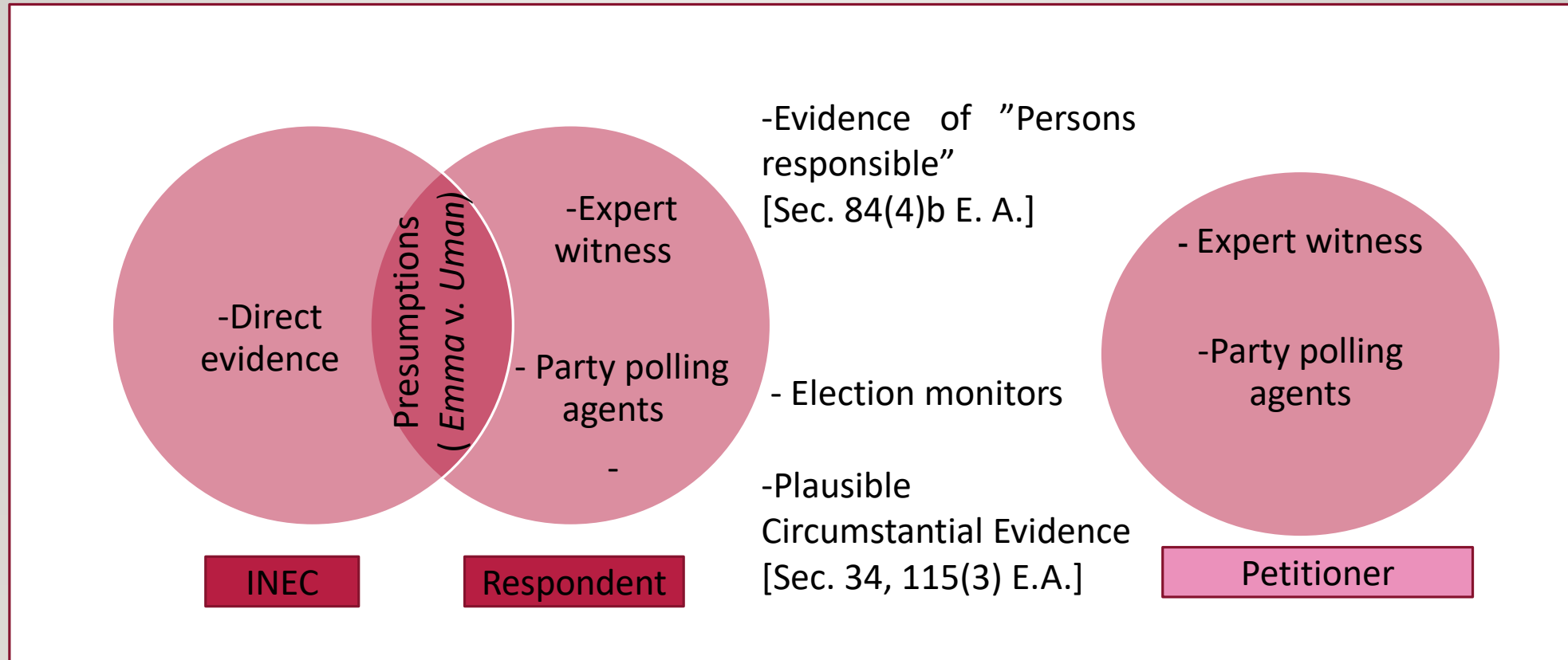
Research Goal

- Show that current standard does not treat parties fairly.
- Argues that CEEM is unique
- Argues for broadened witness base & admissible hearsay.

9 Findings

- E-accreditation's implementation can result in conflict with higher-order Statutes (*Nyesom v. Peterside*)
- Extant evidential provisions permits the broadening of available evidence[Sec. 34 & 84(4)b]
- However, parties and the Courts have been generally limited in the type of witnesses used
- Both the INEC(and the Respondent) enjoys “presumption of regularity” of their CEEM[Sec. 146; 148(e); 168(1) Evidence Act]
- Petitioners' CEEM more impaired by extant hearsay interpretation(*Emmanuel v. Umana*; *Okereke v. Umahi*, etc.)

10 CEEM, Hearsay and the Power-Mix



Voting Technologies for Registration and Accreditation: Broadening the scope of Available Evidence in Electoral Litigation

s
/
n

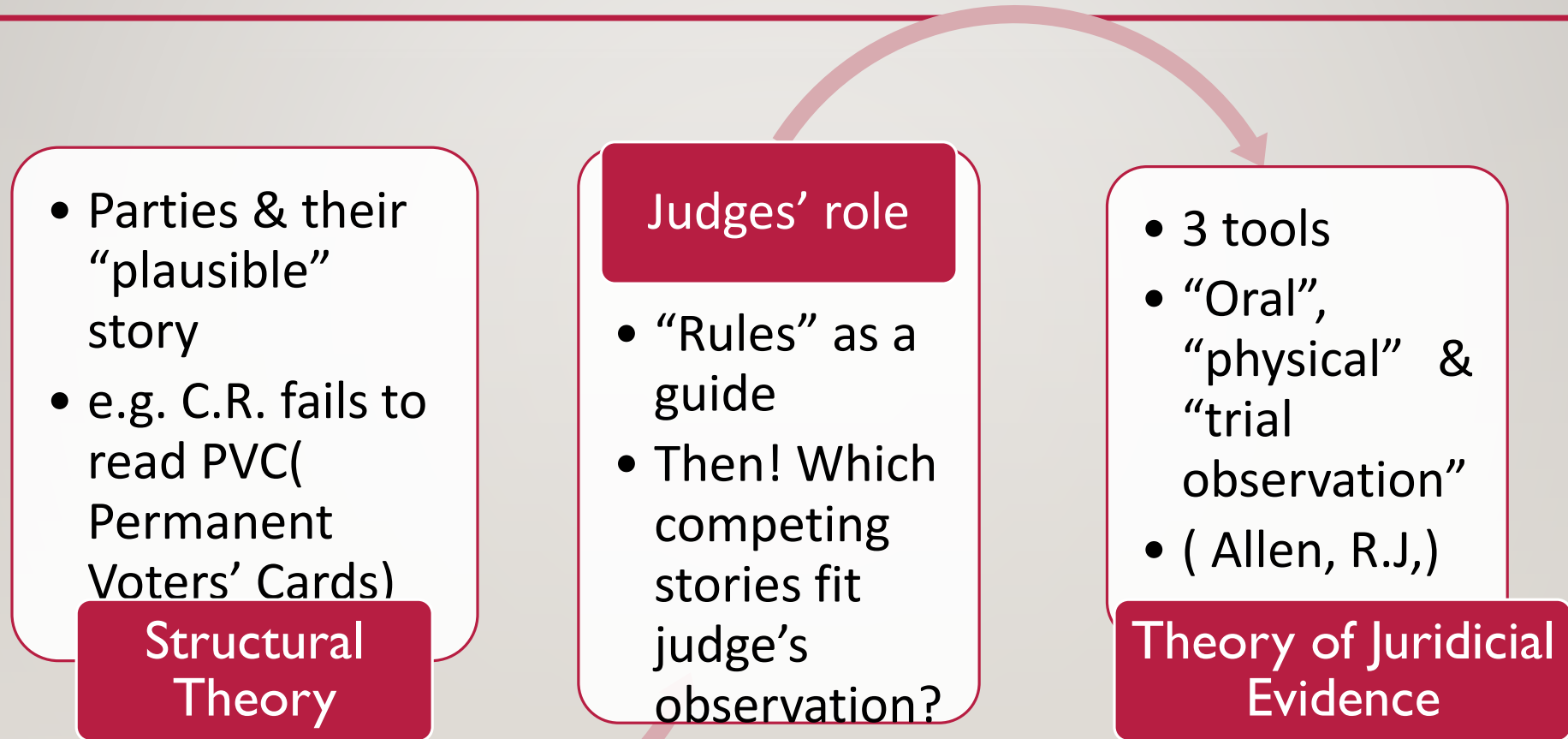
**Accreditation
Process/Event**

E-accreditation implementation issues

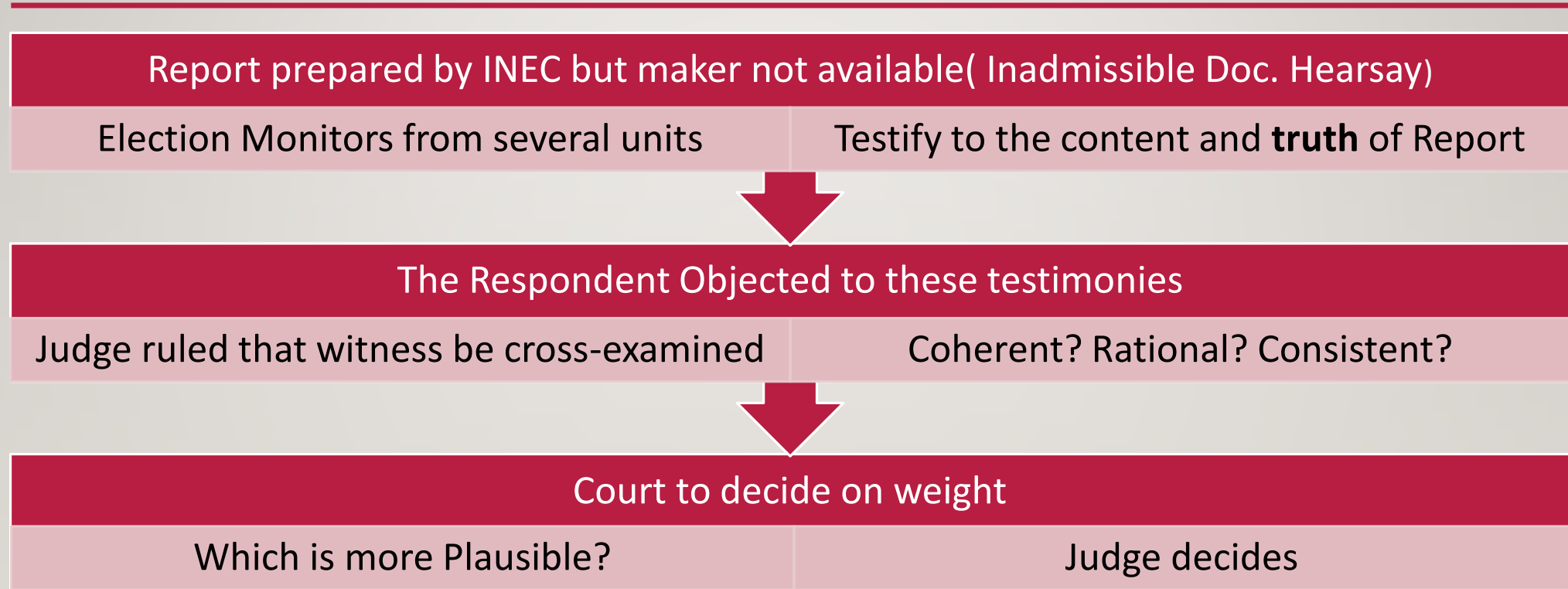
		Responsible Officer/ Device's Functions	Possible Challenges	Legal & Evidential Implications	Best Evidence	Alternative Evidence (RPT-based Plausible Hearsay Witness)
1	Uploading Pre-Election Registered Voters' Figures to INEC central server	INEC's Data Officer	All electronically registered voters not captured	Affects the data for voting accreditation/ Post-Election Evidence of CEEM	INEC's Data Officer	-Expert witness (Hardware, Software, Testing) -Registered Voters (Manual Proof of Registration)
2	Card Reader (CR) reads embedded chips on Permanent Voters' Card (PVC)	Done by Assistant Presiding Officer 1(APO 1)	CR fails to read the PVC	-No CEEM generated for potential voter(s)	INEC officers	-Party polling Agents -Election Monitors
3	CR authenticate identity of voter	CR cross-match fingerprint with that on PVC	CR fails to authenticate voters' identity	Tendering of: -Incidence Report - A report similar to the "Redundant vote data"	-Presiding Officer -INEC Database officer	Computer forensic experts

4	CR tabulates details of PVCs read	CR also tabulates data on verified & unverified voters	CR fails to tabulate/ wrongly tabulates	-Incidence Report - A report similar to the "Logic and Accuracy Test" report	-Presiding Officer -INEC Database officer	Computer forensic experts
5	Malfunction/ Unlawful access to CR	None	CR reports misleading CEEM	-Incidence Report -A report similar to the "System Access Log" report	-Presiding Officer - INEC Database officer	-Party polling Agents -Election Monitors - Computer forensic experts
6	Transmission& Audit of accreditation figures	Transmission done with aid of GSM services	Auditing becomes slower if GSM service is affected	Incidence Report	-Presiding Officer -INEC Database officer	Computer forensic experts

13 A Theoretical Argument: The RPT



14 A Theoretical Analysis: “Card Readers” fails to read PVC



15 Implications of a relaxed hearsay rule for CEEM/ Recommendations

More Witness

- Not only “expert” & “polling agents”
- Election Monitors into the picture

Balance out power-mix

- “Presumptions” effect weakened
- All Parties treated more fairly

Accord with nature of CEEM

- CEEM produced in phases
- Permissible Hearsay recognises this “unbundling” process
- **NEED FOR REFORMS ALONG THIS LINE!**

16 THANK YOU ALL!

17 References

- [Morguefile](https://morguefile.com/photos/morguefile/2/Judge/pop), <https://morguefile.com/photos/morguefile/2/Judge/pop>, last accessed 2018/09/25
- [How Stuff works](https://people.howstuffworks.com/lawsuit6.htm), <https://people.howstuffworks.com/lawsuit6.htm>, last accessed 2018/09/23
- Bing, <https://www.bing.com/?scope=images&FORM=Z9LHI>, last accessed 2018/09/23
- [The Will Newspapers](https://thewillnigeria.com/news/inec-explains-a-z-about-electronic-card-readers/), <https://thewillnigeria.com/news/inec-explains-a-z-about-electronic-card-readers/>, last accessed 2018/09/20
- Policy and Legal Advocacy Center: Factsheet on the Electoral Act Amendment Bill, <https://placng.org/wp/category/publications/>, last accessed 2018/09/19
- Independent National Electoral Commission: Approved Guidelines for 2015 Elections, http://www.inecnigeria.org/?page_id=3463, last accessed: 2018/09/13
- NDI, https://www.ndi.org/sites/default/files/2267_elections_manuals_monitoringtech-ch3.pdf, last accessed: 2018/09/20
- Maurer, A.D.: E-Voting: What Do Judges Say? In: Maurer, A.D., Barrat, J. (Eds.) E-Voting Case Law: A Comparative Analysis. Routledge (2016).
- Sebastine Tar Hon, Law of Evidence in Nigeria(2013).