

BOOK REVIEW

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Review of: *Forensic Evidence: Science and the Criminal Law, 2nd edition*

REFERENCE: Kiely T. Forensic evidence: science and the criminal law, 2nd ed. Boca Raton, FL: CRC Press, 2006, 515 pp.

Forensic Evidence states its purpose to be to “focus on those cases questioning the legal acceptability under a *Frye* or *Daubert* standard of the methodological basis of the forensic science at issue.” It is “[d]evoted to a study of the judicial response to uses of forensic science” The book reminds this reviewer of one of Clint Eastwood’s spaghetti westerns: *The Good, the Bad, and the Ugly*.

The Good

Among the chapters focused on particular areas of forensic science, some go into useful detail about cases, illuminating problems that some courts are beginning to recognize about some kinds of forensic science. For example, the microscopic hair comparison chapter makes clear that there are no databases that allow estimations of the probability that indistinguishably similar hairs came from someone other than the suspect, that criminalists know that hair is not able to individualize, and yet some or many examiners give testimony that exaggerates the linking power of such evidence. Some judges are surprised to learn all of this, and try to police the testimony; others look for ways to admit the testimony anyway. The book also makes evident that the problem of what basis exists to support linkage conclusions, how small the circle of suspect persons or objects can be drawn, and what kinds of statements are felicitous reflections of what can be known and are not exaggerations—are problems that run through much of forensic identification. And that these problems will continue to be “of major concern” until databases are brought into being that can support objective probability estimates. Such cases, and the lessons to be drawn from them, are the book’s strength.

The Bad

The presentation of the law sometimes is so superficial or misfocused as to be meaningless or misleading. One example is the discussion of *General Electric v. Joiner*, the second in the Supreme Court’s trilogy of expert evidence cases. The book entirely fails to state the Court’s holdings in the case or even to say what the issues were. The third of the trilogy, *Kumho Tire v. Carmichael*, is a very important case for forensic science, but readers never learn of those implications.

Another example is *State v. Fortin*, offered as an example of a case involving bitemark expert testimony. After a meager summary of what each side’s experts opined in the case, the discussion quickly goes off on a tangent, spending three times as much ink on another expertise entirely.

The worst examples are probably the book’s coverage of major *Daubert* challenges to fingerprint expert testimony. The cases are briefly summarized, but their most important lessons are completely overlooked. A reader would come away from this book never knowing: (a) That although the judge in *U.S. v. Havvard* admitted fingerprint expert testimony, he was unable to find any scientific support for doing so and substituted litigation system testing for scientific testing—a move that has made *Havvard* one of the most ridiculed of *Daubert* opinions. (b) That in *U.S. v. Llera Plaza*, the trial gatekeeper excluded the expert’s opinion on identity (pointing out, along the way, some of the *Havvard* court’s misunderstanding of *Daubert*). And, although the *Llera Plaza* court later reversed itself, the judge continued to find that, after being in business for a century, the fingerprint field still had no research to support its claims. (c) That the lucidity of the dissenting opinion in *U.S. v. Crisp* puts to shame the majority’s fuzzy admission. (d) Or that, in all, the cases admitting fingerprint expert testimony did so by fashioning a path around the roadblock that a straightforward application of *Daubert* places in the expert’s path.

The Ugly

Forensic Evidence is a poorly crafted work of writing and appears to be untouched by any human editor. The first two (introductory) chapters are the worst. They are conglomerations of references to and quotations from works in philosophy and history and literature and (nonforensic) science. As often as not, these literate flourishes do more to get in the way of illuminating a point or advancing some argument or analysis. Too often, the point remains elusive, or becomes lost in overdevelopment of the flourish, or contradicts other statements (without reconciliation or resolution). The author is not a guide through the forest but a gardener with a penchant for adding specimen plantings that do little more than distract.

Chapter 1 has the further technical flaw that various quotations are not set off as quotations, but look as though they are the author’s text. It makes one worry about other parts of the book, where the language of quoted material might be less obviously

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that of other authors, and where the signals that something is a quotation are all the more necessary.

Too often, the discussion is trivial in the sense that it is something that the least informed of readers already knows. Sometimes, the triviality is redundant: how many times do readers need to be told that: "Any trial, in any area of law, from the simplest to the most complex, is in essence an exercise in establishing a version of history" (p. 48)? And sometimes, the redundancy is sheer repetition: eight pages later we are told: "Any trial, in any area of

law, from the simplest to the most complex, is in essence an exercise in establishing a version of history" (p. 56).

This kind of thing happens so often that the reader is greatly distracted from the content. And it creates an impression that various parts of the book were the product of copying and pasting, not of writing and editing. Perhaps some day our software will write and edit for us. Until then, authors need to work hard at writing so the reader's job is made easy. And publishers still need to hire editors to help authors do that well.