

## BOOK REVIEW

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### Review of: *Black Robes, White Coats: The Puzzle of Judicial Policymaking and Scientific Evidence*

**REFERENCE: Harris RC. Black robes, white coats: the puzzle of judicial policymaking and scientific evidence. New Brunswick, NJ: Rutgers University Press, 2008, 163 pp.**

This book is too much and too little: too much repetition and too little research.

The book is painfully repetitive. The Introduction and the first two chapters state, and restate, the thesis of the book: political factors explain judicial outcome variations in the admission of scientific evidence. The final two chapters summarize the author's conclusions and detail the additional factors she could and should have considered before reaching her conclusion that political factors affect the admission of scientific evidence. Between the redundant introduction and the lengthy postscript, further repetition is prefaced "In other words" or "By way of review."

While the book's subject would be of particular interest to lawyers and forensic scientists, the author does not appear to have consulted either profession during her research. Unwarranted assumptions and several misstatements evidence a lack of insight into the criminal justice system.

In the discussion of DNA evidence admissibility, the author's unfamiliarity with criminal defense and forensic science was the most glaring. One of the fundamental assumptions by the author was that "the actual science did not vary from case to case." However, the science and technology of DNA profiling did advance from 1989 to 2003, and deciphering admissibility results from those years must take the advancements into account.

The advancements in DNA profiling technology and research are illustrated in the case of Glen Dale Woodall—a case the author virtually ignored and which highlights another mistaken assumption by the author. The author repeatedly referred to DNA evidence as being "overwhelmingly used" by prosecutors. But it was Glen Dale Woodall of West Virginia—not the prosecution—who sought DNA testing in his case. The author virtually ignored the *Woodall* case (erroneously listed in the book as "Woodhall") to tout the *Spencer* case from Virginia as the first case in which a state's highest court ruled on admissibility. The first such ruling actually came from the Supreme Court of Appeals of West Virginia in *Woodall*—2 months before the Virginia Supreme Court decision in *Spencer*.

If the author had researched the case of Glen Dale Woodall, she would have discovered that Woodall was later able to establish his

innocence because of advances in DNA testing. The problem is that the author inexplicably ignored the use of DNA evidence by the defense. The exonerations of the 1990's were based almost entirely on DNA evidence used by defendants—such as Glen Dale Woodall—to prove their innocence. Any investigation of the factors that affected the admission of DNA evidence from 1989 to 2003 must consider the vested interest of the defense bar in the acceptance and admission of this evidence.

Also missing from the author's analysis of the admissibility determinations are two factors anyone with experience in the criminal justice system would have identified immediately: resource limitations on indigent defense counsel and individual state discovery rules. The defendant in *Spencer* (Virginia, 1989) was unable to mount an effective challenge to the admission of DNA evidence because he was denied two important resources: expert assistance and access to the testing records. An indigent defendant's constitutional right to forensic expert assistance was not recognized by Virginia until 1996, and state discovery rules prohibited access to any bench notes or information concerning the testing. These factors had a much greater effect on the admission of the DNA evidence than the vaguely discernible political party affiliations of the state Supreme Court justices.

The two chapters discussing polygraph and syndrome evidence suffer similarly unwarranted assumptions. The author assumed that DNA evidence is no more difficult to understand than polygraph or syndrome evidence. The author overlooks the fact that polygraph and syndrome evidence—unlike DNA—is based on relatively uncomplicated science and observation, making that evidence more accessible and easier for lawyers and judges to debate, which in turn leads to greater variation in admission outcomes. Concerning syndrome evidence, the author failed to recognize that admission is frequently limited not by the general legal standard for the admission of scientific evidence, but by specific legal bars to the admission of mental health evidence in the absence of an insanity defense.

The author, an assistant professor of politics, failed to approach her subject as a scientist or a lawyer and appeared determined to prove "the power of politics." While political factors may have an effect on judicial outcomes, the author's errors, unwarranted assumptions, and lack of experience in the criminal justice system ensure that this book is inadequate to prove the author's thesis.

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