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Modern Scientific Evidence by James R. Richardson

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Fowler, Rouse, Measle and Bell

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Book Reviews

MODERN SCIENTIFIC EVIDENCE. By James R. Richardson. W. H. Anderson Co., Cincinnati, 1961. Table of cases, author index, subject index, pocket supplement. xvi, 538 pp. \$20.00.

Professor Richardson* has added another volume to his growing shelf of valuable practitioners' references.¹ This latest endeavor, *Modern Scientific Evidence*, however, reveals not only the trial tactician, but the theoretician and the academician as well. Despite the ambitious scope of the book indicated by the title, Professor Richardson has found room not only to cover his subject comprehensively from the practicing attorney's viewpoint, but to lucidly and briefly spell out the constitutional and jurisprudential questions underlying evidentiary issues of the scientific variety. Having exceeded thus far the mechanics of trial, he goes the scholarly extra mile, outlining his own positions and the arguments buttressing them, on the policies and philosophy of evidence law.

In the first seven chapters the author definitively covers the history, underlying policies, procedural aspects, tactical and strategic concepts, and the constitutional overtones (and dangers) of scientific evidence. Warmly welcoming the aid of science to the judicial fact-finding process, the author is nonetheless greatly perturbed by the economic inequality thus interjected into both civil and criminal litigation. One of Richardson's solutions is to remove scientific evidence from its adversary surroundings and neutralize it through court appointed experts and panels of experts. This solution does not meet all objections. If all other expert testimony is to be excluded, there arise serious questions of due process. If party-initiated expert evidence is also to be allowed, there are questions of weight and conclusiveness. Many scientific results are validly open to biased interpretation due to the inexactness of the "science" involved, e.g., psychiatric findings, questioned documents. Also public agencies, supposedly neutral, often become partisan offices as in the case of criminal prosecutors and various administrative bodies. Again, court-appointed or selected ex-

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¹ Florida Jury Instructions, West Pub. Co., 1954; Florida Law and Practice, Harrison Co., 1955; Kentucky Practice Methods (Kentucky Practice, vols. 3-5), West Pub. Co., 1957; Establishing a Law Practice, Lawyers Co-operative Pub. Co., 1958; The Trial Jury, University Press (forthcoming).

perts might tend to reflect the bias of a prosecution-minded or defendant-favoring court (the latter being, admittedly, a natural and inescapable hazard facing any party litigant, but one which ought not be carried over into the realm of expert evidence). In respect to expert testimony involving the less exact sciences, the suggested solution appears to create more problems than it solves, although there is certainly no serious argument to the procedure where the more exact or mathematical sciences are involved, such as photography, fingerprinting, blood group analysis, ballistics and others. But even here, as Professor Richardson well points out, the proper laying of foundation, qualifications of the expert, validity of procedures, identification and history of samples, etc., are always open to attack by proper cross examination and rebuttal evidence.

In the last fifteen chapters, the author covers the fundamentals of individual scientific methods of proof: psychiatry; speed detection; polygraph; narcoanalysis; blood grouping; intoxication; wire-tapping; recording; photographs, x-rays and motion pictures; ballistics; fingerprints; questioned documents; maps, plats and diagrams; models and casts; and miscellaneous tests (electroencephalograms, cardiograms, dermal nitrate, nalline, Zondek-Ascheim tests, and blood dynamics). Naturally, no one author could qualify expertly in every phase of scientific evidence, and certainly no exhaustive treatment of the field could be contained in a single-volume treatise. Nevertheless, the practitioner will find almost uniformly broad coverage of every important area, including restrictions and qualifications on admissibility, the laying of foundations, qualifications of the expert witness, standards required of and validity of tests and experiments, and the many individual factors pertinent to successful proof of facts. For those requiring or seeking analysis in depth, there are numerous citations to the primary authorities in each field. In addition there is discussion and analysis of the leading case law in each field. The only technical omission found in the work pertained to the genetic conclusiveness of blood grouping tests in excluding paternity. Recent work indicates that the blood grouping tests may not be so iron-clad in excluding paternity after all, due to a possible mutation factor and the statistical distortion of parties involved in bastardy and support proceedings. Otherwise, the author has done his homework well.

If an author's philosophy can fairly be capsulized, then Professor Richardson must be labeled an evidentiary "liberal" who favors opening the courtroom door wider to scientific evidence. He follows Dean Wigmore's view in favoring the restrictive theory of the privilege against self-incrimination. He condemns the unfounded judicial prej-

udice toward evidence such as polygraph results and argues that the usual test of scientific evidence ought to be the standard of admissibility: "Any relevant conclusions, which are supported by a qualified expert witness, in a field finding substantial scientific acceptance should be admitted in evidence, for its probative value . . . in the light of all the circumstances." He urges the courts to extend judicial notice to the basic premises of the proven and matured sciences, *e.g.*, the law of probabilities in fingerprinting is tacitly acknowledged; in forgery comparison of typewriters, it is not. Only when he approaches the admissibility issue from the direction of due process and self-incrimination limitations do Professor Richardson's footsteps falter—perhaps on the theory that fools rush in, etc. He, along with the courts and the writers, is hard put to draw the fine line of due process (not to be confused with Justice Frankfurter's plimsoll line and slippery slope) between permissibly requiring a defendant to submit to fingerprinting, photographing, line-ups, voice and handwriting identification, etc., and the dangers of compulsory body fluid tests, narcoanalysis, polygraph interrogation, stomach pumping and enemas. Perhaps in this era of accelerating technology there is no satisfactory answer. This same acceleration also has created a gap in legal literature which, however, has been competently filled by *Modern Scientific Evidence*, a primer which should render yeoman service to every trial attorney.

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