Soldier Slaves: Abandoned by the White House, Courts, and Congress

By James W. Parkinson and Lee Benson

Naval Institute Press, Annapolis, MD, 2006. 249 pages, $26.06.

Reviewed by Elizabeth Kelley

At the risk of sounding trite, I must say that this book makes me proud to be a lawyer. In *Soldier Slaves: Abandoned by the White House, Courts, and Congress*, personal injury attorney James W. Parkinson and journalist Lee Benson show that, when properly and sensitively used, the law can be a powerful tool for achieving justice.

Soldier Slaves is the story of the quest of a group of lawyers to procure compensation for American soldiers who were enslaved by Japanese corporations during World War II. The book alternates between narratives. One is the story of Harold Poole, a member of the 20th Pursuit Squadron, U.S. Army Air Corps, who, with his fellow soldiers, was forced on the Bataan Death March, held prisoner at Camp O'Donnell and Camp Cabanatuan, and forced to perform labor for three and a half years in Japan. The other narrative traces the efforts of lawyers such as author Parkinson to win a settlement for these soldiers—first through the federal courts and then through Congress.

Private Harold Poole, a young man from Woods Cross, Utah, was stationed in the Philippines when the Japanese bombed Pearl Harbor. Along with 10,000 other American GIs, Poole endured the 85-mile Bataan Death March. *Soldier Slaves* describes the living hell these men endured—near starvation, disease, and torture at the hands of their Japanese captors, with at least 1,000 soldiers dying along the route. After being held prisoners, the remaining men were taken in what were called hell ships to Japan, where the soldiers were enslaved by private corporations, including Mitsubishi, Mitsui Mining, and Nippon Steel. The authors write:

> At that, the number of deaths at Hirohata were minimal compared to many of the work camps in Japan. One reason might have been the worms the men ate. These were not the big white worms that gestated in their stomachs and made them sick. These were dead silkworms that became a regular staple of the evening ration. "The Japanese would dry them and give them to us to eat," said Harold. "They still had the legs and eyes. Sometimes they'd take the bugs and dump them in with the rice and sometimes they'd grind them up and use them as gravy. We called that our bug gravy. We laughed about eating worms. But I think the protein in those silkworms was real helpful to us."
>
> "We ate everything," said Harold. "Sometimes we'd get fish heads in our soup, with the eyes still in them. We'd eat them right down. We didn't throw away anything."

Through faith and fortitude, men like Harold Poole survived. After the war, he returned to his family in Utah, where he married, raised two children, and worked as a postal carrier until he retired.

In 1999, James Parkinson was looking for another dragon to slay. He was a successful personal injury attorney living near Palm Springs, Calif., and had just come into a tidy sum following the settlement of some tobacco cases. He learned that some of the attorneys who had been involved in the tobacco cases were seeking to coordinate a nationwide network of top plaintiffs' lawyers to recover lost wages for World War II veterans who had been enslaved by Japanese corporations. Given the accumulated interest over 60 years that would be added to the sum of the lost wages, the potential recovery could be huge.

Harold Poole's son-in-law was a law school classmate of James Parkinson's, and Poole invited Parkinson to speak about the lawsuit at the annual reunion of the 20th Pursuit Squadron. This began a bond of admiration and trust that far transcended the typical attorney-client relationship.

Usually, I have difficulty following alternating story lines, but, in *Soldier Slaves*, Parkinson and his co-author, Lee Benson, do a fine job of keeping the narrative threads separate until they ultimately weave them together.

Soldier Slaves resembles *A Civil Action* by Jonathan Harr (reviewed in the June 1996 issue of *The Federal Lawyer*) in recounting a personal injury attorney's efforts to win compensation—and justice—for his clients. Parkinson is honest about the fact that he enjoys the material rewards that a successful attorney can earn. But he also emphasizes that his representation of Poole was about more than money: it was about securing an apology from Japanese corporations who had exploited American soldiers and it was about bringing a neglected part of our history to the attention of the American public. The authors write:

> It was not the money. Money, as [Congressman] Mike Honda would say, is simply a way to say thank you, you matter. Thank you for getting by on eight hundred calories a day, for sitting in languid prisons and taking repeated beatings, for burning up in the Philippines, for freezing in Japan, for riding hell ships in typhoons. Thank you for never forsaking America or what America stands for through all of it.

Parkinson is also honest about the fact that his clients felt compromised by being represented by advocates whom they viewed as rich, greedy trial lawyers, and, notwithstanding that Parkinson and other attorneys had fronted thousands of hours as well as expenses, the soldier-slaves felt huge resentment over reimbursing them.

I must add a final note: I wrote this review on election day. The weather was miserable, and I really didn't care much about the candidates or issues. Then I remembered men such as Harold Poole, who are now in their 80s and 90s. I got out my umbrella and I

went out and voted. **TFL**

Elizabeth Kelley is a criminal defense attorney in Ohio. She has a special commitment to representing individuals suffering from mental illness and mental retardation. She frequently provides legal commentary for Court TV and can be contacted at ZealousAdvocacy@aol.com.

David's Hammer: The Case for an Activist Judiciary

By Clint Bolick

Cato Institute, Washington, DC, 2007. 188 pages, $19.95 (cloth), $11.95 (paper).

REVIEWED BY JOHN C. HOLMES

Clint Bolick begins *David's Hammer: The Case for an Activist Judiciary* by acknowledging that one type of judicial activism deserves contempt—the type "in which judges literally invent new constitutional or statutory rights out of thin air, exercise sweeping powers that belong to other branches of government, and act as if completely unbound to any type of constitutional moorings." Increasingly, however, Bolick writes, "many today on both the right and the left define judicial activism in simpler terms, as the act of courts striking down laws enacted by the democratic branches. Thus defined, and still cast in a pejorative manner, the term suggests that courts ought routinely to defer to the elected branches of government."

But Bolick asks: Why should they? The primary goal of the Constitution, he writes, "is to protect freedom. And within that system, for better or worse, the courts are assigned the role of keeping the other branches of government within the assigned limits of their constitutional powers. Given the explosive growth of government at every level and the resulting erosion of freedom, the problem with judicial activism as thus defined is not too much of it but too little. … [C]ourts are a forum in which the proverbial David can, and often does, defeat Goliath (hence the title of the book)."

David did not defeat Goliath, however, in what was probably the most egregious abuse of governmental power that Bolick cites—the 2005 decision in *Kelo v. City of New London*. In this case, the U.S. Supreme Court, by a five-to-four majority, upheld the exercise of the power of eminent domain, which the Fifth Amendment permits for "public use" in order to take property from one private owner and transfer it to another. The property that was transferred was to be used for an economic development plan that was designed to revitalize downtown New London, Conn., and thereby provide a public benefit, which the Court found to qualify as a "public use." Although the *Kelo* decision shocked much of the public as well as constitutional observers, the precedent for it had been set as early as 1954 in *Berman v. Parker*, in which the Court upheld the taking of a department store as part of a slum clearance project in the District of Columbia. The owners of the department store, Bolick writes, argued that "[t]heir property was not blighted, its taking was unnecessary for slum clearance, and the property would be given to a different business owner." In a unanimous opinion for the Court, Justice Douglas concluded that "the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established."

Bolick also cites the *Slaughter-House Cases* (1873) and *Plessy v. Ferguson* (1896) as cases in which the Court failed to take its legitimate activist role to protect the public from constitutional violations by other branches of government. The earlier ruling, as Bolick writes, "upheld a state-imposed slaughterhouse monopoly that destroyed the livelihood of scores of butchers in Louisiana" and, in the process, jettisoned the Fourteenth Amendment's Privileges and Immunities Clause. That left Plessy, in *Plessy v. Ferguson*, with only the Equal Protection Clause to invoke against the denial of his rights. Plessy was a railway patron who had been arrested for attempting to board a car designated for "whites only" in violation of Louisiana law; the Court, with only Justice Harlan dissenting, found the law reasonable and therefore constitutional. In contrast to these failures of the Supreme Court to take its legitimate activist role, Bolick cites myriad examples of federal courts' engaging in unjustified activism, such as taking over "the governance of school systems even to the level of minutiae, and … the operation of other public entities, such as prisons."

Bolick's unabashed hero is Justice Clarence Thomas, whom he admires as a private person as well as a justice, and to whom the author devotes an entire chapter, titled "Model Justice." Bolick lauds Thomas' principled, consistent decisions favoring individual liberty, and his insistence in each case at looking first to the Constitution and not to prior Court decisions in forming his opinion. Justice Anthony Kennedy is Bolick's second favorite justice also because of the high percentage of his opinions that favor individual liberty against more powerful governmental and private interests. This ranking reveals the difference between Bolick's libertarian approach and the approach of the many conservatives who find Kennedy a disappointment, because he too often sides with the liberal justices in exercising his swing vote on the Court. But Bolick sides with conservatives in concluding that the Rehnquist Court's counterrevolution against the excesses of the Burger Court and especially the Warren Court has fizzled out. Bolick is guardedly optimistic that the Roberts Court will again resist "flexible" constitutional interpretation.

In his insistence on coming down on the side of individual liberty, Bolick may sometimes overlook community interests, and, in his adherence to "the doctrine of original meaning," he may sometimes overlook the way conditions have changed since the Constitution was ratified. Nevertheless, Bolick makes a compelling case for the use of judicial activism as a way to return to principles of individual liberty. **TFL**

John C. Holmes recently retired as chief administrative law judge at the U.S. Department of the Interior, after having served as an administrative law judge at the U.S. Department of Labor for almost 25 years. He currently works as a mediator and arbitrator and may be reached at TRVLNTERRY @ a o l . c o m .

REVIEWS *continued on page 68*

Arkfeld on Electronic Discovery and Evidence (2nd ed.)

By Michael R. Arkfeld

Lexis-Nexis Group, Dayton, OH, 2007. 1,000 pages, loose-leaf, plus CD-ROM, $205.00.

REVIEWED BY MARK S. SIDOTI

When former assistant U.S. attorney, trial lawyer, and electronic discovery expert Michael Arkfeld published the first edition of this incredibly useful and informative text in 2003, it quickly became the e-discovery bible for practitioners, jurists, and everyone interested in this exploding area of the law. Reviews of the first edition were uniformly glowing, and the book became an invaluable resource for becoming acclimated to the case law and rules, because the practice pointers allowed the reader to navigate through e-discovery challenges that seemed to be multiplying exponentially.

And multiply they have. In the few years since the first edition was published, there has been an explosion of legal developments in electronic discovery that touches many aspects of both litigation and regulatory practice. In December 2006, the Federal Rules of Civil Procedure were amended significantly to address e-discovery practice. In August 2007, the *Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production*—the principles underlying the amendments—were released in a second edition that includes discussion of new rules and e-discovery-related case law. And, in the past two years, federal (and some state) courts throughout the country have issued hundreds of opinions that address e-discovery principles, laws, and rules.

This, then, is an appropriate time for publication of the second edition of *Arkfeld on Electronic Discovery and Evidence*, which retains the user-friendly structure of the first edition. (It is a looseleaf, allowing for easy updating.) The new edition's eight chapters cover a wide variety of subjects, including management of electronically stored information, computer forensics, the discovery and production process, the admissibility of electronic information, and much more. Each of the eight chapters is divided into multiple subsections and presented in a brief, easy-to-digest narrative. For example, the thorough treatment of discovery steps in chapter 6 includes sections titled, "Nature of Case and Type of Information Sought," "Type of Storage Media, Devices and Locations," "Scope and Specificity of Request," "Computer and Forensic Expert Assistance," "Preservation Request," "Waiver of Privileges," "Search Efforts," "Sampling," and "Form of Discovery." In this chapter, as throughout the book, each section is cross-referenced to other related sections in the book and to other sources.

New material in the second edition includes more thorough discussions of

- "litigation hold" triggers as well as sanctions for failure to properly implement holds,
- procedural rules and techniques for protecting electronic information (including the thorny "not reasonably accessible" issue),
- the new "meet and confer" obligations on parties under amended Rule 26, and
- ethical concerns for practitioners who fail to properly address e-discovery issues.

New sections include "Audit Trails, Logs and Registries," "Computer Viruses," "Selection of E-Discovery Vendors," "Chain of Custody and Hash Value," and "Ways to Limit Your Cost Exposure." Another welcome addition to the second edition is its appendix of practice forms, including e-discovery checklists, preservation letters, stipulated orders, and discovery demands, among others things.

The second edition is accompanied by *Best Practices Guide for Electronic Discovery and Evidence*, which is a pamphlet consisting of more than 100 pages designed to provide portable thumbnail guidance on all the topics addressed at length in the treatise. It is a useful portable guide for client meetings and court appearances and includes an appendix with the amended federal rules—complete with the committee notes. Also portable is the companion CD-ROM, which contains the full text of the treatise and the *Best Practices Guide*. Once the reader becomes familiar with the Folio® 4 format, which is relatively user-friendly, it is easy to navigate through the treatise and the *Best Practices Guide*, as well as to hyperlink to all references throughout each, including related sections of the book and the cited case law. The CD-ROM, in fact, includes links to the full texts of hundreds of court opinions of the past century, which are fully searchable. In addition, the CD-ROM provides annotated versions of relevant U.S. Code and Code of Federal Regulation provisions, as well as complete versions of the Federal Rules of Civil Procedure and the Federal Rules of Evidence. If e-discovery is becoming an inescapable part of your law practice, then I unreservedly recommend that the *Electronic Discovery and Evidence* treatise, guide, and CD-ROM be on your bookshelf, in your briefcase, and loaded onto to your computer. **TFL**

Mark S. Sidoti is a director at Gibbons P.C., a leading, full service law firm with offices in Newark, N.J., New York, Philadelphia, Trenton, N.J., and Wilmington, Del. Sidoti chairs Gibbons' Electronic Discovery Task Force and frequently publishes and lectures on e-discovery and information management best practices. He is counsel for the plaintiffs in the well-known Treppel v. Biovail *case, which resulted in a reported decision that has been recognized as one of the most important e-discovery opinions to date. Sidoti is membership chair of the Defense Research Institute's Electronic Discovery Committee and a member of the Sedona Conference Working Group on Electronic Document Retention and Production. He is recognized among the state's leading lawyers in the area of business litigation by New York Super Lawyers, and is AV Peer Review Rated by Martindale-Hubbell.*

Ukraine: An Illustrated History

By Paul Robert Magocsi

University of Washington Press, Seattle, WA,

2007. 336 pages, $75.00.

REVIEWED BY HENRY S. COHN

University of Toronto Professor Paul R. Magocsi's new book on Ukraine is essential reading for anyone interested in European history and commerce. Ukraine holds a significant place on the European continent. It is now Europe's second largest sovereign state, with a population of almost 50 million. It is one of the few former Soviet republics that has a growing economy. Long known as an agricultural breadbasket, Ukraine is also one of the world's main centers of sugar production. The country is rich in natural resources, including coal, oil, gas, and water power.

Ukraine is also associated with some of the most significant events in Western history. The turning point of World War II occurred in 1943, when the Soviets defeated the Germans in a ferocious tank battle at Kursk. Chernobyl, where a nuclear reactor exploded in 1986, is in Ukraine, and the earthwide spewing of radioactive particles that followed the explosion caused the world to question the competence of the Soviet system. The Orange Revolution of 2004 involved thousands of Ukrainians protesting a corrupt presidential election. The election result was voided, thrilling those throughout the world who favor democracy.

But, for all of Ukraine's progress, it continues to face enormous challenges. Although a few of its citizens are financially successful, most live in poverty, as they have for centuries. A typical example of the problems facing Ukraine today was reflected in a November 2007 coal mining disaster that claimed more than 60 lives. All mines are threatened by methane explosions as a by-product of the mining process, but deep mines are especially threatened, and Ukrainian mines are unusually deep. Evidence shows that many of these mines, including the one involved in the November explosion, have out-of-date safety equipment and warning systems. Yet, according to an article published in the *New York Times* on Nov. 18, 2007, the U.S. government is pressing mining companies to increase production by one-third in the coming year.

Ukraine: An Illustrated History examines Ukraine's economy, as well as its history and social organization, and is illustrated with over 300 photographs, line drawings, and reproductions of book covers and works of art. In addition, the author has personally drawn 46 maps of areas beginning in the seventh century and ending in 2005. The book's account of Ukraine is organized around the maps, and the many Americans of Ukrainian descent will find the maps useful if they wish to research their family origins.

Magocsi discusses the forces that have ruled Ukraine through the centuries, as well as the shifting boundaries of the geographical area that has constituted Ukraine. For example, the partition of Poland in 1772 gave Galicia, or Western Ukraine, to Austria. After World War I, the Austrian empire collapsed and Western Ukraine became part of the new Poland. During World War II, Poland, including Western Ukraine, was incorporated by Germany into its "General Government." After World War II, Poland's borders were redrawn, with Western Ukraine becoming a republic of the Soviet Union and being united with Eastern Ukraine, which, under the name of Dnieper Ukraine, had been controlled by Russia.

Magocsi tells the parallel stories of the Austrian and Russian Ukraines, which eventually became one nation—an independent nation in 1991, after the collapse of the Soviet Union. In the Hapsburg territory, longtime Emperor Franz Joseph encouraged the development of Ukrainian culture in the central city, L'viv. At the same time, under the czars, Russian Ukraine played an important role in the production and export of wheat. The government invested heavily in upgrading its railroads to transport the wheat from farms to Odessa on the Black Sea, and Russian Ukraine increasingly became urbanized. Art and literature flourished and the urban citizenry became involved in the developing revolution and the overthrow of the czarist government.

Sadly, of course, the revolution culminated with the rise of Stalin, whose handling of Ukraine's economy was both negligent and intentionally cruel, leading to the shocking famine of 1932–1933—the *Holodomor*, the 75th anniversary of which Ukraine is currently marking. The Ukrainian president, Victor Yushchenko, has proposed that the famine be deemed an act of genocide. Russia has objected; its representative has declared that Russia will not apologize and has no one to apologize to.

Magocsi explains that Ukraine consists of many ethnic groups beside Ukrainians; these groups include Russians, Poles, Jews, Germans, and Crimeans, each of which has its own political, religious, and cultural achievements. The ethnic Russian population dominates the cities, drawing its numbers from civil servants sent into Ukraine by Moscow, as well as workers employed in manufacturing. One of the Russian literary figures who came from Ukraine and wrote about his experiences there was Nikolai Gogol. Another was Sholem Aleichem, whose stories about the Ukrainian village where he was born became the basis for the musical "Fiddler on the Roof."

Magocsi also records the living conditions of the Jews in Ukraine throughout the centuries. In the early medieval period, a ruler of Ukraine actually chose Judaism as the national religion for a couple of decades. Several centuries later, the Jews were the second largest non-Ukrainian ethnic group in Ukraine. Magocsi provides extensive information on the pogroms and persecution mounted by the Russian and Soviet governments against this group.

This book will be useful for college students, international legal and business professionals, genealogists, and travelers. **TFL**

Henry S. Cohn is a judge of the Connecticut Superior Court.

Thomas Jefferson and Executive Power

By Jeremy D. Bailey

Cambridge University Press, New York, NY, 2007. 280 pages, $80.00.

REVIEWED BY GEORGE W. GOWEN

Are we ready for yet another book

REVIEWS *continued on page 70*

on Thomas Jefferson? In recent years we've had books relating to everything about Jefferson from his Parisian dalliances (*The Paris Years of Thomas Jefferson*), to his knowledge of oenology (*Thomas Jefferson on Wine*), to his misogyny (*Mr. Jefferson's Women*). Now we have *Thomas Jefferson and Executive Power*, by Jeremy D. Bailey. The book is a timely and highly readable examination of Jefferson's exercise of executive prerogative and includes references to Presidents George Washington, Andrew Jackson, Abraham Lincoln, Franklin Roosevelt, and Harry Truman but does not mention the current occupant of the White House.

In his *Notes on the State of Virginia*, Jefferson wrote:

> All powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that those powers will be exercised by a plurality of hands, and not a single one. 173 despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason that convention, which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time.

In this quotation, Jefferson advocates that the powers of government be "divided and balanced"; and balance is crucial. Balance is not a stationary concept, and it is the shifting notions of executive power that this book addresses and that concern us today. Bailey writes:

> Under Jefferson's presentation, the practical implication of strict construction, paradoxically, is that the three branches construe the Constitution differently. Members of each department would construe the Constitution informed by their respective constitutional place—just as congressmen would read the Constitution with a view towards deliberation and judges would take time to investigate what the Constitution's framers meant, the president would interpret it with a view towards action and energy.

It is commonly believed that Alexander Hamilton stood for an energetic president, whereas Jefferson did not, so the reader may be surprised to learn of Jefferson's strong belief in an energetic president. According to Bailey,

> Because Jefferson was convinced that democratic government required a strong chief executive, he focused his efforts not only on preventing what he believed to be Hamilton's monarchial designs but also on strengthening the presidential office. Consequently his "Revolution of 1800" was a victory for democratic principle *and* for a particular doctrine of presidential strength.

Jefferson concluded (in regard to the Louisiana Purchase) that it was sometimes appropriate for the President to exceed his constitutional authority. "A strict observance of written laws," Jefferson wrote, "is doubtless *one* of the high duties of a good citizen, but it is not *the highest*. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation."

This book is full of nuggets that are a joy to mine. One example is the following passage, which consists of several quotations from Madison that Bailey pulled together:

> Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether *a war ought* to be *commenced*, *continued*, or *concluded*. War is in fact the true nurse of executive aggrandizement, for the powers of the sword, public treasures, and patronage gather around the president by virtue of his role as commander in chief. Furthermore, war tempts passions of the president, because it is in war, finally, that laurels are to be gathered. The strongest passions and the most dangerous weaknesses of the human breast: ambition, avarice, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace.

Another valuable nugget is the quotation from the *Annals of Congress* reporting on the Senate's approval of the Louisiana Purchase: "The Senate assembled, and, after the consideration of Executive business, adjourned." That is all that the *Annals* say on the subject. Jefferson chose not to risk losing the deal either by seeking a constitutional amendment authorizing the purchase of such vast acreage or by quibbling about the cost. The Louisiana Purchase is the clearest example of Jefferson's exercise of executive prerogative and his ability to explain and garner support after the fact.

Jefferson was elected President in 1800 and 1804, and the election campaign of 1800 (which Bailey does not cover, though its inclusion would have strengthened the book) was one of the most tawdry and acrimonious campaigns in U.S. history. Because each state could pick it own Election Day, voting lasted from April to October. Under the Constitution at the time, electors cast two votes, the winner became

President and the runner-up became Vice President (who therefore could be from a different party from the President's). The 1800 election resulted in a tie, and the decision was placed in the hands of the U.S. House of Representatives, which needed 36 ballots to elect Jefferson and Burr. With this background, the need for the Twelfth Amendment reforming the Electoral College becomes apparent.

Jefferson's ascendancy immediately raised the question of the President's power to remove and replace public officials—a matter that goes to the heart of executive prerogative and was the subject of *Marbury v. Madison* in 1803. In addition to the Louisiana Purchase, Jefferson's presidency was highlighted by military action in Tripoli, the Lewis and Clark expedition, the Burr conspiracy (for which Burr was acquitted of treason), the embargo of U.S. trade with European nations from 1807 to 1809, and the Twelfth Amendment.

Thomas Jefferson's justification for a strong executive branch was, according to Bailey, that the President embodies the will of the nation and that he has been elected to carry out the public good (even if doing so sometimes requires him to act outside the law). Bailey devotes attention to the way that Jefferson achieved public support for his actions by his annual message to Congress (written, not spoken), proclamations, and special messages. Bailey comments that, "Unlike Washington, Jefferson went out of his way to keep Congress informed with Messages to Report on Executive Action. … In addition to illustrating the extraordinary effort on Jefferson's part to defer to Congress, these messages depict a president who spent a large amount of time defending executive actions that had already taken place."

This book is yet another reminder that ours is not the only age filled with challenges. Bailey's depiction of how our leaders have dealt with the challenges the country has faced is perhaps of most interest to students of history. There will be more books on Jefferson, but this is the best among the recent offerings. **TFL**

George W. Gowen is a partner with the New York law firm of Dunnington, Bartholow & Miller. He represents private clients and has served as counsel to leading sports organizations as well as the chair of humane and environmental organizations.

Every Contact Leaves a Trace: Crime Scene Experts Talk About Their Work from Discovery Through Verdict

By Connie Fletcher

St. Martin's Press, New York, NY, 2006. 386 pages, $24.95.

Reviewed by Elizabeth Kelley

Television shows like "CSI" have changed the way that prosecutors and criminal defense lawyers try cases, largely because these shows have taught potential jurors so much about forensic evidence. At the same time, jurors' expectations of what forensic evidence can prove have risen—often to unrealistic levels. Connie Fletcher, a journalism professor at Northwestern University, writes about this phenomenon in *Every Contact Leaves a Trace: Crime Scene Experts Talk About Their Work from Discovery Through Verdict*—an intensely enjoyable, readable, and thought-provoking book.

Fletcher calls her book an oral history; each of its nine chapters is composed of segments of interviews with a wide variety of experts, including homicide detectives, forensic anthropologists, and latent print examiners, to name a few—more than 80 experts in all. Most of the interview segments are only a paragraph or two in length; the longest consist of a few pages. Interviews are arranged under topic headings such as "Fibers," "Tire Tracks," and "Crime Lab Directors on the Old Days of Forensic Science." Thus, you can pick up *Every Contact Leaves a Trace* and begin reading at any point in the book. Think of it as a small coffee-table book on forensics.

Fletcher asserts that television shows such as "CSI" are completely unrealistic:

> Just as an occasional viewer, I found *CSI* and its minions sort of unsettling, rather than convincing. The tone of the shows, especially *CSI*, seemed too smug with the science and too in-your-face with body parts. ... But it seemed odd that four people would concentrate on one case at a time, handling all the work from scene processing through analysis at the lab (and why was the lab always so dark?), on through smirking interrogation of suspects. It didn't ring right. First of all, who would wear designer suits, leather, and suede to places festooned with body parts? Second, what was with all the gloom? The detectives I know are incredibly skilled socially, fun to be with, and humorous, not at all like the grim, condescending troupe of *CSI*.

As Fletcher's research progressed, so did her frustration with the influence of the series. As one of her interviewees notes,

> The "*CSI* effect": I think the old cliché of "the good, the bad, and the ugly" really refers to it quite well. The general population, the people who sit on juries, are much better informed because of it. The jury's level of understanding has increased. They're familiar with terms like gas chromatographs, mass spectrometers, DNA—because of *CSI*. That's the good part.
>
> The bad part is the expectation, many times, of the jury that, if you don't have forensic evidence, then you don't have a case. But it's not uncommon to *not* have forensic evidence. Even though you collect everything at a crime scene, sometimes there's just nothing there.
>
> And the ugly part is that, if you don't have forensic evidence, there have been occasions where the juries have refused to find the individual guilty, even though you had the classical case against him. There was no forensic evi-

REVIEWS *continued on page 72*

> dence to associate the defendant with the crime. But there was a lot of good investigative information that was developed by the investigators that said that this was the guy who did it. And the jury refused to convict. As one juror said, "Well, they didn't have any forensic evidence, so he couldn't be guilty." They turn a blind eye to good evidence if it's not forensic evidence.

Every Contact Leaves a Trace is useful for trial attorneys for two reasons. First, it teaches us about forensic science in simple, nontechnical language. Second, it teaches us how little regard some forensic scientists have for attorneys. As Fletcher reports, "Attorneys will do things to disrupt your eye contact with the jury. They'll do things like walk as far away from the jury as they can to ask the questions, in hopes that you'll start having a conversation with the attorney, instead of focusing on the jury."

And, according to a forensic psychologist Fletcher interviewed,

> All the rhetoric. The "Isn't it possible?" questions. There's a constant: If something *is* possible, you have to say yes and hope that the other attorney will pick up on it because, for the sake of your argument, you can't commit perjury. ... Or when you're being asked questions like "Well, you didn't even *care* about this record, did you?" or "You didn't *like* my client!" or "Isn't it true that ... ," when something is just blatantly untrue.

Every Contact Leaves a Trace is also valuable for the material it includes that you don't find in manuals on trial tactics, such as its descriptions of seminars on courtroom demeanor that are designed for forensic scientists and its descriptions of tactics used by police during interrogations. But what makes the book so enjoyable is that the author humanizes forensic scientists, sometimes with interviews that are downright funny, albeit a bit disgusting. For example:

> I've got a baseball cap I like to wear with the saying MAGGOTS ARE OUR FRIENDS. A coroner gave it to me. When I'm doing PR for TV shows and stuff, sometimes I'll put that cap on.
>
> I want to get a T-shirt made up with that. The T-shirt's gonna have a copper, he's taking notes, the body's at his feet, and there's a little maggot on his shoulder, whispering in his ear, telling him the story. I mean it: Maggots are our friends.

Other interviews show the delightful quirks of these scientists:

> You do get a little obsessed. There's a web site for latent fingerprint examiners. It has a section called "You Might Be a Latent Print Person If . . ." It quizzes you on things like "When you go through the line at a buffet, do you examine the Jell-O cubes for fingerprints?" I *do* that! ...
>
> What we do *does* have an effect on how we look at things in our own lives. When my first son was born, ... the hospital takes the newborn's footprint. And they took my son's footprint and handed the card to me. ... I examined it *carefully*. And I'm standing there, in the middle of the delivery room, and I'm pointing out to everybody that the footprint had no ridge detail. "Look at this! You can't distinguish anything!" And they said, "Hey! You should be happy he only has five toes. Do you have any idea how *squirmy* newborns are?" But I wanted them to retake the prints. I said, "These are of no value."

Still other interviews show that, advanced degrees and complicated procedures aside, forensic scientists are very, very human:

> Most crime scene people who have children will admit that, throughout their careers, the scenes that are probably the most difficult to go on are the ones that have children as victims, and the children happen to be, at that moment in time, the same age as their own children. Does that make sense?
>
> Many times, I've been on scenes where there was a child. And the child happened to be the age of one of my sons. It, uh ... You go home and give them an extra hug. **TFL**

Elizabeth Kelley is a criminal defense attorney in Ohio who has a special commitment to representing individuals suffering from mental illness and mental retardation. She frequently provides legal commentary for Court TV and can be contacted at ZealousAdvocacy@aol.com.