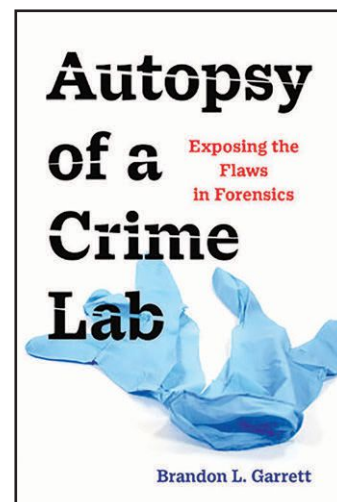


Book Review

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Autopsy of a Crime Lab: Exposing the Flaws in Forensics by Brandon L. Garrett



A *utopsy of a Crime Lab* by Brandon L. Garrett is a stark and disturbing analysis of forensic evidence used in criminal cases that have resulted in convictions of thousands of criminal defendants. The book discusses several types of forensic evidence including bite mark, hair analysis, fingerprints, fire science and firearms. Most importantly, the book takes us through what is required for a technique to be recognized in the scientific community as valid.

Garrett describes how crime labs and self-proclaimed experts have, for decades, analyzed evidence using methods often based on “science” that would not qualify as valid science in the scientific community. It was not until DNA analysis was developed that evidence in old cases could be re-examined to prove the innocence of many who spent decades in prison based on nothing more than the “analysis” of a single hair.

The book begins with the story of Brandon Mayfield, a Portland, Oregon, lawyer arrested as a material witness to terrorism after authorities found a single latent fingerprint on a plastic bag with detonators located near the bombing of four commuter trains in Madrid, Spain. Despite Mr. Mayfield's claims that he had never been to Spain, FBI fingerprint analysts claimed they were 100 percent certain the fingerprint belonged to Mayfield. When presented with contradictory analysis from Spanish authorities, the FBI analysts doubled down, placing Mr. Mayfield under constant surveillance, eventually arresting him. It was not until Spanish authorities determined the fingerprint belonged not to Mr. Mayfield, but to a known Algerian terrorist, that the FBI agreed to release Mr. Mayfield, drop the charges and later issue an apology.¹

Mr. Mayfield's story is but one of many told by Garrett—stories that not only resulted in arrests of innocent people, but in their convictions and executions. The book also described many instances

where faulty science convicted an innocent person who sometimes spent decades incarcerated, only to be eventually exonerated by DNA evidence. The book talks about decades of “science” such as bite mark evidence based on nothing more than the self-proclaimed expertise of forensic odontologists.

Garrett guides the reader through the basics of what is required for a technique to qualify as “good science.” The *New England Journal of Medicine* and other medical journals require that in order for a technique to be considered valid, it must survive rigorous testing through publication, replication and verification before it is relied upon.² Garrett asks the question that if our medical community requires rigorous testing and review, why should we expect less from

forensic science, when a person's liberty is at stake?

Garrett tells us that other than DNA evidence, no forensic techniques have undergone sufficiently rigorous testing to qualify as a science, error rates are either unknown or not fully disclosed to counsel and jurors, and defense counsel is not always afforded access to full information about

testing. Worse still were claims by fingerprint analysts that their technique was 100 percent accurate and they had zero rate of error. In fact, according to Garrett, the error rate in fingerprint analysis is much higher. Garrett makes a compelling argument that no human being is 100 percent accurate and to hold fingerprint analysts to this standard is, quite simply, a legal falsehood propagated by the FBI. Additionally, Garrett points out the ridiculous control measures used to test the accuracy of fingerprint analysts.

As gatekeepers, it is the responsibility of judges to allow reliable evidence to be presented to juries and exclude unreliable evidence. Unfortunately, many judges do not rigorously apply the standards of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

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What is the Review and Oversight Committee?

The OBC Review and Oversight Committee (ROC) is a Court-appointed committee of three lawyers charged with overseeing the Office of Bar Counsel. The committee's duties include preparing the OBC's annual budget and, in consultation with the Wyoming State Bar's Board of Officers and Commissioners, making decisions regarding the hiring, compensation and termination of Bar Counsel. In cases where the OBC deems it appropriate to engage outside counsel to handle a matter, the ROC must approve the hiring of Special Bar Counsel.

The ROC provides important oversight over the investigation and proper disposition of lawyer discipline matters. Before the OBC may investigate an attorney when no written complaint or report of misconduct has been submitted, the ROC must give approval to initiate an investigation. Such approval will be given only when the OBC has presented sufficiently credible or verifiable information to warrant an investigation. Before the OBC may file a Formal Charge against a lawyer, the ROC must determine that probable cause exists to justify the charge. In cases where the OBC has decided to dismiss a complaint following an investigation, the

complaining party may ask the ROC to review the dismissal decision. In appropriate cases, the ROC may issue a private reprimand to a lawyer who has engaged in professional misconduct not sufficient to warrant public discipline.

What is the Board of Professional Responsibility?

The Board of Professional Responsibility (BPR) is a Court-appointed board comprised of six lawyers and three nonlawyers that serves as the hearing tribunal for lawyer discipline cases. It is the function of the BPR to recommend public discipline of lawyers upon a showing of clear and convincing evidence that ethical rules have been violated.

So, that is a brief walk through the disciplinary system from origination through completion. The OBC is always happy to provide additional information to attorneys and members of the public. Questions? Please call Mark Gifford, Bar Counsel, at (307) 432-2106 or Melinda McCorkle, Deputy Bar Counsel, at (307) 432-2112. **WL**

Daubert requires that scientific evidence must be valid and reliable. It must be based on more than a subjective belief or unsupported speculation. The evidence should include conclusions that can be tested. The method should be subjected to peer review. The method should have a known error rate. There should be standards maintained in the discipline. There should be general acceptance in the scientific community. According to Garrett, the standards required by *Daubert* have been applied by judges in a very limited way.³

After the Mayfield case, the forensic science community came under harsh scrutiny. Garrett describes crime labs run by law enforcement in small communities rather than scientists. He describes issues with funding, with testing of analysts and sometimes outright falsification of testing results. Horror stories of analysts stealing and using drugs rather than testing them and then submitting false reports have resulted in the dismissal of hundreds of drug cases.

Finally, Garrett talks about success stories, such as the transformation of the Houston crime lab from one of the worst crime labs in the country to a place with the highest standards of scientific analysis and an example of how a crime lab should operate. Most importantly, Garrett believes crime labs should be operated by scientists, independent of law enforcement and the influence of prosecutors' offices. He talks about progress being made in forensics to improve reliability so the forensic evidence presented to jurors can be relied upon as valid science. Garrett tells us there is work to be done and laments that there is no way to know how many people have been arrested, convicted, incarcerated and executed based on faulty or sometimes outright fabricated evidence.

Garrett details recommendations made by the National Academy of Sciences that a single federal agency be created to oversee the various crime labs in operation in the United States. The agency would be tasked with establishing and enforcing standards for crime labs and forensic analysts to ensure the reliability of forensic evidence. Congress declined to adopt this recommendation, instead focusing its attention on the National Institute of Standards and Technology (NIST) to take on this task. NIST is an organization that specializes in the science of measurement to develop and assess standards for science and technology.⁴

Garrett ends the book on a positive note, describing an increased focus on building a forensic science community determined to improve the quality and reliability of the forensic science used in our courtrooms every day in criminal cases.

Anatomy of a Crime Lab is a very readable book that begins as a horror story and ends with hope. It should be required reading for anyone practicing criminal law, regardless of the lawyer's role as prosecutor, defense attorney or judge. **WL**

(Endnotes)

- 1 Garrett, Brandon L., *Anatomy of a Crime Lab, Exposing the Flaws in Forensics*, p. 3.
- 2 *Id.* at 37.
- 3 *Id.* at 122-136.
- 4 *Id.* at 204.