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Introduction

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Introduction

Chancellor & Dean David Faigman

In most academic disciplines, there is believed to be a basic division between theoretical scholarship and practical scholarship. And, very often, the former is viewed as more prestigious than the latter. To tailor one's scholarship to the pedestrian concerns of the day seems, to some academics, well, pedestrian. Scholarship should transcend the squabbles and petty vicissitudes of any one time or place. Great scholars write for the ages.

In truth, any bright line distinction between theory and practice is largely contrived. After all, even the most theoretical scholarship is intended to have some sort of impact, though perhaps not in particular cases or specific contexts. And practical scholarship should have a grounding in theory and extend beyond any individual case. Good scholarship is both useful and theoretically well-grounded.

From the very start of my career, I have sought to keep in mind this inevitable entanglement between theory and practice. In law school, I wrote a Note that was highly critical of a form of scientific evidence that was new for the time, the Battered Woman Syndrome (BWS). It turns out that then, and still today, the research basis for this theory is almost entirely absent.

At the time, the primary proponents of BWS were advocates who sought to use it to overcome self-defense doctrine that embodied traditional male notions of self-defense, which required "proportional force," and the fear of "imminent harm." In effect, the psychology was being manipulated for a normative result. Although I fully shared the normative view that self-defense doctrine was unfairly biased against women defendants who had killed their abusers, it was my view then, and it remains so today, that bad science should never be employed, even for good normative ends.

My stance on BWS led some to think that I had a conservative political agenda. But I did not. I had a good science agenda. Indeed, since those early days, I have written extensively against prosecutors' use of bad forensic science, such as pattern recognition specialties, including bitemarks, handwriting, and toolmarks. This work, of course, led some to believe that I had a liberal political agenda. But I did not. My scholarship in particular contexts of scientific evidence has always been grounded in a theory of science that reaches beyond individual cases or particular outcomes.

Good legal scholarship should be practical and useful in individual cases, but grounded in principles that transcend any one case or set of cases. The scholarship presented in this volume—the third in our *Judges' Book* series—reflects this orientation. Indeed, because it does, it is uniquely useful to an audience of judges. If an ostensibly scholarly article is little more than advocacy, it is of little use to a judge. Each party to a dispute will provide ample advocacy on its respective behalf. Legal scholarship only helps inform a judge's deliberations in a particular case when it rises above advocacy and is attached to principles that surpass the specific concerns of a particular litigation.

The first two volumes of the *Judges' Book* were extremely well received by the bench, enough so that the feedback we received inspired us to continue the series. We believe that this slim volume demonstrates just how much theoretically based, yet supremely practical, knowledge is available in the law review literature. It is our honor and pleasure to bring it to you.