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SCIENTIFIC AND
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**SCIENTIFIC AND EXPERT
EVIDENCE**

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Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

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<http://lawschool.aspenpublishers.com>

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New York, NY 10011-5201

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Aspen Publishers
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-5799-4

Library of Congress Cataloging-in-Publication Data

Conley, John M.

Scientific and expert evidence/John M. Conley, Jane Campbell Moriarty.
p. cm.

Includes index.

ISBN 978-0-7355-5799-4

1. Evidence, Expert—United States. I. Moriarty, Jane Campbell. II. Title.
KF8961.C665 2007

347.73'67—dc22

2007019825

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**TO MY MOTHER:
HAPPY 85TH BIRTHDAY**

J.M.C.

**TO MY MOTHER, JUSTINE B. DESMOND, AND MY
GRANDPARENTS, THE LATE MAY AND LEO BROPHY:
*CUM AMORE ET GRATIIS PRO EDUCATIONE***

J.C.M.

We bring to this book a mixture of academic and practical experience with scientific evidence, a blend that we hope is reflected in the book itself. For each of us, the book represents a logical next step in a lengthy relationship with the topic. Both of us spent substantial apprenticeships as big-firm litigators, during which we dealt extensively with expert witnesses, both friendly and hostile. We both have also dealt with the judiciary on these issues, Conley as director of a “judging science” program and a teacher of law and social science at the University of Virginia’s Graduate Program for Judges, and Moriarty as clerk to a state supreme court justice with a special interest in questions of law and science. And both of us have written on law and science, Moriarty primarily on psychological and “forensic science” issues, and Conley on anthropology and statistics.

At about the time that *Daubert* brought new urgency to the topic, each of us began teaching a course on scientific evidence. Although we were not in consultation at the time, each of us concluded that, to be an intelligent and critical consumer of scientific evidence, a lawyer needs a grounding both in the relevant legal doctrines and in the basic scientific principles that underlie various types of evidence—not that a lawyer needs to function as a scientist (neither of us fits that description), but it is not sufficient to treat the “scientific” part of scientific evidence as a black box to be managed by the experts. We have both believed from the outset that mastery of a relatively few overarching scientific concepts and processes can greatly enhance a lawyer’s effectiveness. Accordingly, as we assembled,

tested, and revised our own *ad hoc* teaching materials, we particularly sought cases and other sources that deal with scientific issues in some depth, in a way that is both accurate and straightforward.

The completion of the *Daubert* trilogy; the burgeoning academic literature about the theoretical, practical, and policy implications of the trilogy; the revision of Federal Rule of Evidence 702; and, most importantly, the proliferation of significant cases that seem to turn on the admissibility and sufficiency of scientific evidence acted in concert to persuade us that the time had come to turn our *ad hoc* teaching materials into a casebook. In simplest terms, scientific evidence had become part of the basic literacy of every courtroom lawyer, whether civil or criminal, and that reality seemed to call for a course with a “real” book.

We hope that law students and their teachers will find this to be a challenging yet non-intimidating introduction to the scientific techniques that regularly enter the courtroom and the evidentiary principles that govern their use. If we, who majored in Latin literature (Conley) and philosophy (Moriarty), have been able to achieve elemental literacy, then so can you. We hope that this book will make your journeys a good deal less painful than ours have been.

John M. Conley
Jane Campbell Moriarty

May 2007

ACKNOWLEDGMENTS

I owe special thanks to my research assistant, Rhiannon D'Agostin, a member of the class of 2008 at the University of North Carolina School of Law. An adept law student as well as a graduate biologist, she went far beyond the usual RA duties in helping me to define topics, find and edit cases and materials, and insure the accuracy of the biological material.

My longtime friend David Peterson also deserves a particular expression of gratitude. A forensic statistician whose work has been relied on by the Supreme Court in multiple cases, David has been my mentor (and frequent collaborator) on all things statistical since I began teaching in 1983. He generously read and commented on the statistical components of this book, and, even more generously, wrote an essay on regression analysis that appears in Chapter 3, Statistical Inference.

Jake Barnes, Scott Baker, and Richard Myers were kind enough to read and comment on portions of the manuscript within their respective areas of expertise, as were the anonymous reviewers solicited by Aspen. My students (including many judges) over the years have also been astute reviewers of the materials as they have developed.

And above all, thanks to my wife, Paula, for everything.

J.M.C.

Many thanks to my colleagues, and the librarians and staff at the University of Akron School of Law who have been helpful and encouraging,

for which I am most grateful. Most particularly, Dean Richard L. Aynes, Associate Dean Elizabeth Reilly, and Faculty Research Director Tracy Thomas have provided encouragement, support, and assistance during the last few years while I worked on this project. Thank you all so much.

Michael Saks, John Conley, Will Huhn, Simon Cole, Bill Thompson, Michael Perlin, Adina Schwarz, Mindy Mechanic, Maureen O'Connor, Michael Risinger, Mark Brodin, and David Faigman have helped shape my thoughts on various aspects of expert evidence over the last several years. I'm grateful to each of you. Thanks to the anonymous reviewers solicited by Aspen who provided many helpful suggestions and new ways to think about issues.

Many thanks to Alex Pachos, a member of the 2008 class of the University of Akron School of Law, who has put in long (and tedious) hours to help complete this project. A number of students over the years at Akron have used portions of this book in its draft form and have been instrumental in helping me refine my thoughts on the contents. I thank you all.

As always, love and gratitude to my husband, Gary Zimmerman. You're as constant as the northern star.

J.C.M.

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