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ESSAY

DEEPPAKES, PHOTOGRAPHS, AND TRUST IN EVIDENCE

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In Fred Schauer’s final book, *The Proof: Uses of Evidence in Law, Politics, and Everything Else*, Fred argued that trust and truth matter now more than ever, and that the law of evidence contains important insights for navigating our ever-challenging world of fake news, misinformation, and alternative facts.¹ I hope that this contribution, focused on new technology, the law of evidence, and most importantly trust, pays a worthy tribute to *The Proof* and to the incomparable scholar behind it.

INTRODUCTION

Recent voices in the evidence literature have expressed alarm over deepfake technology—AI-driven algorithms that can manufacture fictitious images and audio that are difficult to distinguish from reality. These voices for reform claim that deepfakes represent a sea-change in technology that threatens to upend the legal proof process. The problem

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¹ Frederick Schauer, Preface to *The Proof: Uses of Evidence in Law, Politics, and Everything Else* (2022).

lies not only in deepfakes' ability to mislead and confuse, but also in the technology's pervasiveness and ease of use.

Are these fears over deepfakes justified? Does the legal system need to adopt new authentication rules and approaches to address their threat? In this Essay, I argue that the answer is no, but more significantly, I use deepfakes as a vehicle to explore the nature of authentication and, more generally, legal proof. My argument proceeds in three related steps: First, I propose a tentative model of evidentiary authentication based on base rates of trust. Such a base rate model suggests that existing evidentiary principles of authentication are more than sufficient to address the problem of deepfakes, particularly as the public becomes aware of and exposed to their existence and dangers. Second, the authentication problem of deepfakes parallels the legal system's angst over photographs a century ago. Indeed, the compromises that the legal system made to handle photographs and other images provide a ready framework for thinking about and addressing the deepfake problem. Finally, I raise some broader implications of taking a trust model of evidence seriously. On the one hand, a theory of legal proof based on trust may illuminate evidentiary problems like authentication. On the other hand, a trust theory of proof lays bare some troubling realities. If legal proof is ultimately about trust, what happens to information sources that certain factfinders are inclined to distrust, and what will this mean in an increasingly polarized society?

I. DEEPFAKES AND EVIDENTIARY REFORM

Famous deepfake examples abound: a robocall in 2024 purportedly from President Biden urging New Hampshire voters not to vote in the democratic primary;² a photograph in 2023 of Pope Francis wearing a white Balenciaga-style puffer jacket;³ a video in 2022 of Ukrainian President Volodymyr Zelenskyy telling his troops to lay down their

² Shannon Bond, A Political Consultant Faces Charges and Fines for Biden Deepfake Robocalls, NPR (May 23, 2024, at 14:58 ET), <https://www.npr.org/2024/05/23/nx-s1-4977582/fcc-ai-deepfake-robocall-biden-new-hampshire-political-operative> [https://perma.cc/SLY5-7RWN].

³ Simon Ellery, Fake Photos of Pope Francis in a Puffer Jacket Go Viral, Highlighting the Power and Peril of AI, CBS News (Mar. 28, 2023, at 11:39 ET), <https://www.cbsnews.com/news/pope-francis-puffer-jacket-fake-photos-deepfake-power-peril-of-ai/> [https://perma.cc/HH34-EBP4].

weapons and surrender to Russia.⁴ Recent evidence scholarship has raised concerns over deepfake technology and its potential to disrupt the legal system.⁵ Psychological studies suggest that ordinary citizens are insufficiently critical of the kind of evidence at the core of deepfake technology—images, videos, and audio recordings.⁶ And once gullible factfinders see or hear a deepfake, they have trouble un-seeing or un-hearing it, making such evidence especially prejudicial.⁷ At the same time, deepfake technology is readily accessible and constantly improving. Producing a deepfake no longer requires special audio processing or Photoshopping skills along with hours of meticulous editing. Deepfakes can be produced in mere seconds using publicly accessible AI engines. For now, many of these deepfakes are not quite convincing, but with the inevitable progress of technology, their production will only become cheaper and easier, and their detection more difficult.⁸

The most prominent proposal for addressing the deepfake problem is one by Maura Grossman and Paul Grimm.⁹ The Grossman-Grimm proposal is to heighten the traditional Rule 403 balancing test for suspected fake electronic evidence, so that such evidence would be admissible only if “the proponent demonstrates that [the evidence’s] probative value outweighs its prejudicial effect.”¹⁰ Other proposals seek

⁴ Bobby Allyn, *Deepfake Video of Zelenskyy Could Be ‘Tip of the Iceberg’ in Info War, Experts Warn*, NPR (Mar. 16, 2022, at 20:26 ET), <https://www.npr.org/2022/03/16/1087062648/deepfake-video-zelenskyy-experts-war-manipulation-ukraine-russia> [https://perma.cc/93N4-8MVY].

⁵ E.g., Maura R. Grossman & Paul W. Grimm, *Judicial Approaches to Acknowledged and Unacknowledged AI-Generated Evidence*, 26 *Colum. Sci. & Tech. L. Rev.*, no. 2, 2025, at 110, 124 (discussing the authentication problem presented by deepfakes).

⁶ E.g., Nils C. Köbis, Barbora Doležalová & Ivan Soraperra, *Foiled Twice: People Cannot Detect Deepfakes But Think They Can*, *iScience*, Nov. 19, 2021, at 1, 1 (reporting that “people cannot reliably detect deepfakes and . . . they overestimate their own detection abilities”).

⁷ Rebecca A. Delfino, *Deepfakes on Trial: A Call to Expand the Trial Judge’s Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*, 74 *Hastings L.J.* 293, 311 (2023); Grossman & Grimm, *supra* note 5, at 124.

⁸ Riana Pfefferkorn, “Deepfakes” in the Courtroom, 29 *B.U. Pub. Int. L.J.* 245, 249–50 (2020).

⁹ Grossman & Grimm, *supra* note 5, at 147–48. Grossman and Grimm offer proposals for both acknowledged and unacknowledged AI-generated evidence. *Id.* This Essay only focuses on the unacknowledged scenario, in which the proponent claims that its electronic evidence is authentic, and the opponent claims that the evidence is fabricated (e.g., a deepfake).

¹⁰ *Id.* at 148.

greater reliability through alternative mechanisms. Rebecca Delfino, for example, has argued for a *Daubert*-like gatekeeping stage in which the court must first decide authentication under a 104(a) preponderance standard.¹¹ John LaMonaca has proposed a corroboration requirement.¹² By contrast, a number of courts and Riana Pfefferkorn have expressed confidence that “[t]he protective processes that courts have developed over the years [for excluding manipulated evidence] will . . . prove robust against deepfakes, as they have for previous generations of technology.”¹³

For its part, the Advisory Committee on the Federal Rules of Evidence has thus far stayed its hand on the issue of deepfakes. In 2014, the Committee rejected a proposed general rule on the authentication of digital evidence, concluding that the existing rules were sufficiently flexible to handle the new challenges.¹⁴ Deepfakes, however, seem to have re-captured the Advisory Committee’s attention and imagination. It considered the issue as recently as May 2025,¹⁵ when a consensus supported “work[ing] up a proposal on deepfakes to hold for future publication, if necessary.”¹⁶

II. A BASE-RATE MODEL OF AUTHENTICATION

One way of thinking about the process of assessing authenticity is through base rates of trust. Factfinders begin with an implicit base rate about the authenticity or reliability of evidence. This base rate depends on the prevalence of forgery, which is in turn partly a function of the difficulty of forgery. The difficulty depends on attributes inherent to the medium itself, as well as other technological and social factors.

¹¹ Delfino, *supra* note 7, at 341.

¹² John P. LaMonaca, A Break from Reality: Modernizing Authentication Standards for Digital Video Evidence in the Era of Deepfakes, 69 *Am. U. L. Rev.* 1945, 1985 (2020).

¹³ Pfefferkorn, *supra* note 8, at 266; see also *id.* at 265–66 (discussing previous case law).

¹⁴ Daniel J. Capra, Deepfakes Reach the Advisory Committee on Evidence Rules, 92 *Fordham L. Rev.* 2491, 2496–98 (2024).

¹⁵ Advisory Comm. on Evidence Rules, Agenda for Committee Meeting, May 2, 2025, at 1 (2025) [hereinafter May 2025 Committee Meeting Agenda], www.uscourts.gov/sites/default/files/document/2025-05_evidence_rules_committee_agenda_book_final.pdf [https://perma.cc/G96D-W48E]; Al Windham, AI-Generated Deepfakes in Court: An Emerging Threat to Evidence Authenticity?, *Nat’l L. Rev.* (June 11, 2025), natlawreview.com/article/ai-generated-deepfakes-court-emerging-threat-evidence-authenticity [https://perma.cc/9CDE-HM M7].

¹⁶ Advisory Comm. on Evidence Rules, Draft Minutes of the Meeting of November 8, 2024, *in* May 2025 Committee Meeting Agenda, *supra* note 15, at 12, 28.

For example, in everyday life, we tend to assume the authenticity of paper currency, absent suspicious circumstances. This belief is due to the rarity of counterfeit money,¹⁷ which is in turn due to the various security features in paper currency, the criminal penalties associated with counterfeiting, as well as the government's considerable efforts in detecting and prosecuting counterfeiters.¹⁸ By contrast, we approach oral statements and testimony with far greater skepticism, especially in an adversarial setting, because witnesses can (and do) easily lie. A responsible factfinder faced with oral testimony will accordingly employ various tactics to scrutinize its reliability, including accounting for a witness's incentives, considering other circumstantial evidence, demanding corroboration, or triangulating among different witness accounts. Similarly, the opposing party will use cross-examination and the presentation of contrary evidence.

The same conceptual analysis applies to documents. Today, handwritten documents are relatively more difficult to forge than typed ones. Assuming that the handwriting appears genuine, we may be more inclined to believe that a handwritten note came from a particular person than a computer printout. This base rate, however, depends critically on the available technology. In an earlier era, the trust ranking between handwritten and typewritten notes was likely reversed. Printed matter like a booklet or letterhead was much more difficult to forge because of the cost of printing equipment. The modern development of electronic publishing and low-cost, high-resolution color printing flipped that assessment.

This base rate perspective strongly suggests that deepfakes are an evolutionary, not revolutionary, problem. Deepfakes are just one in a long line of technological developments that have prompted an adjustment in base rates. Mechanically or electronically produced evidence like images, video, and audio currently enjoy a strong presumption of trust because forgeries are (or at least previously were) difficult to fabricate. The danger of fabrication has of course always

¹⁷ Ruth Judson, Estimating the Volume of Counterfeit U.S. Currency in Circulation 16 (Bd. of Governors of the Fed. Rsv. Sys. Int'l Fin. Discussion Paper, Paper No. 1404, 2025), <https://www.federalreserve.gov/econres/ifdp/files/ifdp1404.pdf> [<https://perma.cc/8HL4-8FMM>].

¹⁸ See Donald J. Mihalek, How the Crime of Counterfeiting Is Making a Comeback, ABC News (Mar. 12, 2024, at 08:46 ET), abcnews.go.com/US/counterfeiting-modern-age/story?id=108005573 [<https://perma.cc/C6XM-2TUE>] (discussing counterfeiting trends and government efforts to suppress counterfeiting).

existed. Images can be photoshopped, sound files can be digitally processed, and we are all familiar with the computer-generated imagery (“CGI”) in movies.¹⁹ But high-quality fakes required specialized software, substantial expertise, and considerable time and effort. Low-quality fakes were easy to detect. Forgeries were thus relatively rare.

Deepfake technology concededly has the potential to radically alter this landscape. This technology may enable anyone, with little effort and no expertise, to produce a passable forgery. But if that happens, then base rate estimates will simply adjust. Audiovisual evidence, which previously enjoyed a strong presumption of reliability, will suddenly become suspect—a phenomenon dubbed the “liar’s dividend” by Bobby Chesney and Danielle Citron.²⁰ In such a world, trust in audiovisual evidence can derive only from the evidence’s attributed source—for example, the witness who presents it—not from the nature of the medium itself.

Note that while deepfakes may provoke a reassessment of the evidentiary weight to give audiovisual evidence, they do not require a change in the evidentiary rules. To be sure, in the short term, jurors unaware or unfamiliar with deepfake technology may improperly assess the reliability of video or audio evidence. But that problem is scarcely different from other instances in which juries make mistakes. For example, psychologists have shown that eyewitness identifications are less reliable than laypersons think.²¹ They have also shown that people are unable to detect lies on the basis of demeanor, despite popular beliefs to the contrary.²² Yet, in general, no special evidentiary rules exist to address these problems. Cross-examination, the presentation of expert evidence, and, in rare cases, the use of cautionary jury instructions are usually sufficient responses.²³

¹⁹ Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 *Calif. L. Rev.* 1753, 1759 (2019).

²⁰ *Id.* at 1785–86.

²¹ Michael J. Saks & Barbara A. Spellman, *The Psychological Foundations of Evidence Law* 121 (2016) (reporting studies showing that expert knowledge on eyewitness reliability diverges from the knowledge of legal actors).

²² *Id.* at 123; see also *id.* at 122–25 (discussing psychological research on lie detection).

²³ E.g., *Commonwealth v. Serge*, 896 A.2d 1170, 1186–87 (Pa. 2006) (using a jury instruction on computer-generated animations); *State v. Henderson*, 27 A.3d 872, 919–20 (N.J. 2011) (mandating jury instructions on eyewitness reliability). To be sure, the *Henderson* Court not only mandated jury instructions, but also instituted a judicial gatekeeping hearing, in line with some of the deepfake proposals explored earlier. 27 A.3d at

III. A HISTORICAL LINK

Ironically, the deepfake problem makes what was old, new again. As Jennifer Mnookin recounts in her seminal piece on the history of photographic evidence, the legal system has long been highly skeptical and distrustful of photographs.²⁴ Indeed, the traditional legal treatment of photographs, which continues to this day, is as demonstrative evidence or “pictorial testimony,” equating photographs to a diagram or drawing.²⁵ A witness must vouch that an image is a fair and accurate representation of the witness’s testimony, and then the photograph is admitted as an illustrative aid—not substantive evidence.²⁶

The reasons that led to this odd framework for thinking about photographs are diverse. One early reason was a concern that photographs could become too powerful a form of proof, one that could usurp the jury. As Mnookin argues, “[t]he more unquestionably accurate and truthful the process of photography, the more threatening photography might seem to factfinders and the judicial process.”²⁷ Another related reason was a judicial reluctance to treat photographs as a kind of “self-proving” evidence that did not require testimonial support.²⁸ If photographs were considered “real evidence” like a knife,²⁹ then they could quickly de-emphasize the role of witness testimony. Still another reason was the power of analogy. Courts already had a framework for handling visual representation evidence like diagrams.

919. This raises broader questions of when judicial gatekeeping is necessary and appropriate, as opposed to when the conventional deference to the jury should prevail.

²⁴ Jennifer L. Mnookin, *The Image of Truth: Photographic Evidence and the Power of Analogy*, 10 *Yale J.L. & Humans* 1, 43–50 (1998).

²⁵ 5 Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 9:23, at 490 (4th ed. 2013).

²⁶ Fed. R. Evid. 901; Mnookin, *supra* note 24, at 44 (“Before a witness could use such a visual aid, he was required to authenticate the image and verify that it in fact offered a correct representation of whatever was at issue. Only thus would the picture be admissible as the witness’s testimony.”); see, e.g., Fed. R. Evid. 107 (“An illustrative aid is not evidence and must not be provided to the jury during deliberations . . .”).

²⁷ Mnookin, *supra* note 24, at 20, 57.

²⁸ *Id.* at 53.

²⁹ Although the Federal Rules of Evidence abandoned use of the term, “real evidence” (coined by Jeremy Bentham) was traditionally used to describe “evidence furnished by a view of a ‘res,’ or thing itself.” John Henry Wigmore, *Select Cases on the Law of Evidence* 13 (2d ed. 1913). Wigmore chose to describe real evidence as “autoptic preference,” in that a “tribunal uses its own senses to observe the thing” (autoptic), and “the parties produce the thing for that purpose to the tribunal” (preference). *Id.*

Using that framework on photographs handled the new disruptive technology while defanging it at the same time.³⁰

Regardless of its origins, the “pictorial testimony” theory of photographic images created an epistemic disconnect between law and society. Law treated audiovisual evidence as a mere *representation* of testimony, something without evidentiary worth beyond the testimony supporting it.³¹ But in broader society, it was all too clear that the value of audiovisual evidence extended far beyond its sponsoring witness. Audiovisual evidence was not perfect: it could be inaccurate, it could distort based on its perspective,³² and it could be forged. But ultimately, audiovisual evidence was generally far more reliable and more objective than any witness testimony,³³ and prior to deepfakes, such evidence was costly and difficult to fabricate. The base rate for reliability was therefore very high, making video and audio recordings especially compelling evidence.

³⁰ Mnookin, *supra* note 24, at 54.

³¹ 1 John Henry Wigmore, *Evidence in Trials at Common Law* § 790, at 893 (1904).

³² Voices have long maintained that photographs and videos are colored by the photographer’s point of view. E.g., Susan Sontag, *Regarding the Pain of Others* 26 (2003) (describing objectivity as “inbuilt” but necessarily also involving a point of view); see also Schauer, *supra* note 1, at 140 (discussing Sontag and the choices made in taking a photograph). More recently, scholars have applied this critique to police-worn body cameras. E.g., Rémi Boivin, Annie Gendron, Camille Faubert & Bruno Poulin, *The Body-Worn Camera Perspective Bias*, 13 *J. Experimental Criminology* 125 (2017) (exploring the effect of perspective on assessments of police interventions); see also Timothy Williams, James Thomas, Samuel Jacoby & Damien Cave, *Police Body Cameras: What Do You See?*, *N.Y. Times* (Apr. 1, 2016), www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html (examining sample police-worn body camera footage from multiple perspectives). While this observation is surely true, the mechanically or electronically produced image is still more objective and more reliable than a human witness. One could argue that dramatic examples showing the importance of perspective are notable precisely because they depart from the modal case in which most points of view yield similar perspectives. For example, photographs of the pyramids of Giza in one direction famously show them against their timeless desert landscape, while photographs in the opposite direction show their anomalousness against the backdrop of modern Cairo. See Maya Salam, *The Pyramids of Giza Are Near a Pizza Hut, and Other Sites that May Disappoint You*, *N.Y. Times* (May 30, 2018), www.nytimes.com/2018/05/30/travel/world-famous-destinations-depictions.html. By contrast, pictures of the exterior façade of the White House look pretty much the same regardless of what point of view you select.

³³ See Schauer, *supra* note 1, at 141 (“[A] photograph is usually pretty good evidence of some aspect of what the photograph is a photograph of.”); *id.* at 144 (“Skepticism [of photographs] is justified, but complete skepticism is not.”).

Pictorial testimony was thus a legal construct that never captured the essence of what photographs were as evidence.³⁴ Indeed, one might say that pictorial testimony theory was an intellectual embarrassment, as it got things exactly backwards. It was not that an image was worth believing because a sponsoring witness vouched for the image; rather it was that a witness's testimony was worth believing because an image vouched for the witness.³⁵

The advent of modern surveillance cameras ultimately made the construct untenable, at least in some contexts. In the case of a lot of surveillance footage, there could be no sponsoring witness, as no human witnessed the live event. Courts thus developed an alternative “silent witness” theory of photographic authentication to handle these cases.³⁶ Under “silent witness theory,” photographs could be admitted based on a showing that the creation process was sufficiently reliable.³⁷ This theory accorded far more with common sense. It recognized that audiovisual evidence had substantive value independent of any sponsoring testimony, and any concerns about fabrication or inaccuracy could be best addressed by scrutinizing the creation process itself.

The great irony is that deepfakes have the potential to turn this narrative full circle. In the dystopia painted by deepfake doomsayers, pictorial testimony theory had it right all along. In a world awash in deepfakes, an image is indeed “simply nothing, except so far as it has a human being's credit to support it.”³⁸ If deepfake technology truly makes fabricated images costless to produce and nearly impossible to detect, then images will not only lose their special evidentiary value—they will potentially lack any independent evidentiary value at all.

To be sure, one can imagine less extreme outcomes. For example, if detection technology keeps pace with the ability to fabricate, or if manufacturers embed cryptographic markers in the images captured on

³⁴ See Mnookin, *supra* note 24, at 46–47 (“For even though the photograph may be misleading or inaccurate, it may also make a special kind of truth-claim that these other forms of representational evidence cannot. The analogy that judges built ignored the photograph's veridical power.”).

³⁵ See Edward K. Cheng & G. Alexander Nunn, *Beyond the Witness: Bringing a Process Perspective to Modern Evidence Law*, 97 *Tex. L. Rev.* 1077, 1101 (2019) (arguing that the photograph is better evidence than the witness testimony it nominally supports).

³⁶ 5 Mueller & Kirkpatrick, *supra* note 25, at 490.

³⁷ E.g., *State v. Reeves*, 967 N.W.2d 144, 150 (S.D. 2021) (establishing requirements for the admission of video evidence under a silent witness theory).

³⁸ 1 Wigmore, *supra* note 31, § 790, at 893.

their smartphones,³⁹ then images will retain some base rate of reliability. Perhaps the base rate of reliability will not be the same as digital images circa 2000, but it will not be zero either.

History and logic thus suggest that creating bespoke evidentiary schemes to deal with the deepfake threat is unnecessary, if not a fool's errand. Just as the authentication rules have weathered other disruptive technologies, they are perfectly capable of handling deepfakes. If deepfakes do become pervasive, then the base rates with which jurors assess digital images will adjust. We may see a shift back to pictorial testimony theory in earnest. Alternatively, we may see the emergence of technological fixes to guarantee reliability. Either way, though, the existing conceptual framework remains perfectly serviceable.

CONCLUSION: A TRUST THEORY OF PROOF

So far, my focus has been on authenticating audiovisual evidence and the threat of deepfake technology. The underlying analysis, however, has broader implications across evidence law. Our discussion of deepfakes relies on a theory of legal proof rooted in trust. As Fred Schauer noted in *The Proof*, “[l]ittle of what we know is based on our own perceptions.”⁴⁰ The way we know things about the world is through some form of trust, whether that is trust in witnesses,⁴¹ trust in institutions, or trust in the authenticity of objects or images. When we cannot trust one form of evidence, we switch to another. For example, a mistrust of police testimony led to widespread reliance on body-worn cameras.⁴² Conversely, in a world awash with deepfakes, mistrust of images will likely force us to fall back on vouching witnesses. But *whether* we trust something and to what extent are ultimately about base rates. What is the prior probability that this image is genuine? What is the prior probability that this witness is telling the truth?

³⁹ E.g., Sydney A. Beckman, Presentation at the 2025 Evidence Summer Workshop, *The New Gatekeepers: Blockchain, Zero-Knowledge Proofs, and the Future of Evidence Authentication in an AI World* (May 6, 2025).

⁴⁰ Schauer, *supra* note 1, at 82.

⁴¹ *Id.* at 11 (“Much that we know, we learn from what others tell us.”); *id.* at 82 (“[M]uch of what we believe, not just about the past but about everything, is based on testimony that it is scarcely credible that we could get along without it.” (quoting R.F. Atkinson, *Knowledge and Explanation in History: An Introduction to the Philosophy of History* 42 (1978))).

⁴² Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 *U.C. Davis L. Rev.* 897, 912–21 (2017).

While a trust-based theory of proof may be empirically descriptive, it carries troubling normative implications in our increasingly polarized world. If proof depends on trust, what happens to groups that are mistrusted? Marginalized or disfavored groups surely face different implicit reliability base rates, and therefore may find it difficult to be believed in court. The problem can also cut the other way, against elites rather than the marginalized. Distrust of the mainstream medical or scientific establishment, for example, will impede accurate decisionmaking in cases requiring expertise. In other work, I have argued that legal actors (non-experts) should defer to expert communities when determining facts requiring expertise, because non-experts lack epistemic competence.⁴³ But if factfinders do not trust those communities, where will that leave the legal system?

The existential threat to the legal system is not the dystopia wrought by a world of deepfakes. Deepfakes the traditional authentication rules can handle. The real dystopia is a world in which deep *polarization* causes factfinders to have wildly disparate base rates and an inability to achieve compromise or consensus on a shared set of trusted sources of information. In such a world, factfinding, let alone accurate factfinding, becomes next to impossible.

Worse yet, if legal proof is about trust, and we fundamentally cannot agree on whom or what to trust, then there is very little that the rules of evidence can do. Evidence law can moderate society's worst tendencies. It can even ameliorate known and acknowledged cognitive biases. But while evidence law may help us think analytically and rigorously about the problems of proof, evidence law is no panacea for the broader epistemic troubles of society. The solution to polarization lies in broader social and political discourse, not evidence law; there is no magic solution waiting to be discovered in the Federal Rules of Evidence.

So just as the solution of deepfakes must eventually come from the learned skepticism of factfinders, so too must the solution to fake news and alternative truths come from a more critical populace and a public willing to rethink how we interact with social media platforms. On this point, I think that Fred would have agreed. After all, as he wrote in his conclusion to *The Proof*,

⁴³ Edward K. Cheng, *The Consensus Rule: A New Approach to Scientific Evidence*, 75 *Vand. L. Rev.* 407, 410 (2022).

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This book has been written for those for whom evidence matters, and for when it matters to them. For those for whom evidence does not matter, no amount of evidence, and no amount of the analysis of evidence, is going to make a difference.⁴⁴

This is the evidentiary challenge of our age. How do we get back to some kind of consensus on what constitutes good or acceptable evidence? Unfortunately for us, there would have been no one better with whom to tackle this problem than Fred Schauer.

⁴⁴ Schauer, *supra* note 1, at 238.