

Seth Shulman, The Telephone Gambit (W. W. Norton & Company 2008).

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There is a serious question, not only whether Alexander Graham Bell invented the telephone, but whether he stole that invention from his long-time rival, Elisha Gray. Are you shocked? If you are, you haven't been paying attention, for this book re-plows old ground much better plowed (in my opinion) in A. Edward Evenson, The Telephone Patent Conspiracy of 1876 (McFarland 2000)—as well as several even older books. However, Mr. Shulman's new book has been getting a great deal of media attention, and in many ways it is an easier read than Mr. Evenson's earlier work.

In saying that I prefer Mr. Evenson's book, I am no doubt displaying my prejudices as a working patent attorney and interference specialist. Mr. Evenson has a far firmer grasp of how the attorney-examiner relationship actually works (and presumably worked in 1876). And that is very much to the point in this context. As Mr. Evenson's book makes clear (and as Mr. Shulman's work touches on), the really egregious behavior was probably that of Mr. Bell's patent attorneys (who were leaders of the patent bar in their day) rather than that of Mr. Bell himself. In fact, the unfortunate morals of the history recounted in these two books may unfortunately be (1) that even facially upright people sometimes do dastardly things when there is a great deal of money on the table and (2) that sometimes crime does, indeed, pay.

Basically, the story is one of "getting to" an alcoholic and debt-ridden patent examiner. That patent examiner apparently allowed one of Bell's patent attorneys to see a supposedly secret patent document (called a "caveat"—the distant ancestor of the modern provisional application) filed by Gray, after which Bell (and/or his attorneys)

amended a draft application to disclose Gray's invention—and persuaded the Patent Office to treat Bell's application as having been filed prior to Gray's caveat even though (1) both documents were filed on the same day and (2) Gray's caveat was filed before Bell's application.

Wow! The modern USPTO enjoys a deservedly high reputation for probity. There have been scandals at the PTO during my working career, but they have been few and far between. That makes this tale of nineteenth century intrigue all the more intriguing to the twenty-first century reader—particularly a reader who is a member of that rather staid branch of the law, the patent profession.