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Who Speaks for the Paralegal Studies Student? - An Educator's Perspective when Teaching Forensic Science to the Legal Studies Student

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Who Speaks for the Paralegal Studies Student?

An Educator's Perspective when Teaching Forensic Science to the Legal Studies Student

When teaching the Legal Studies student about forensic science as it relates to the law, the instructor has a wealth of criminology and other similar scientific textbooks from which to draw upon for their lectures and class discussions. Much of what is contained in these resources is written from the viewpoint of someone working in the science disciplines with a focus on how law enforcement makes use of particular aspects of science to investigate crimes along with a peppering of condensed case studies. In order to assist the Legal Studies students in realizing the significance of and recognizing the connection with forensic science towards improving and refining their skills in the legal realm, in essence the legal aspects of forensic science, an instructor essentially must improvise these materials.

The gap in the Legal Studies curriculum, particularly in this blended subject area of law and science, needs to be bridged for students who choose to study law and who choose to work in the legal environment. This article will examine methods in which Forensic Science & The Legal Process course can be taught to maximize the potential for the Legal Studies student so that they may utilize this specialized knowledge and acquired skills from a forensic course with legal emphasis to assist attorneys in the workforce.

a. Writing Assignments that Demonstrate the Law and Science Connection

When deciding whether to offer and teach the specialty course of Forensic Science & The Legal Process, faculty and students are often reticent about the scientific aspect of this course. Faculty who are hesitant about teaching this topic because of the science involved are best reminded of the Latin principle *Docendo discimus* or “the best

way to learn is to teach.” In teaching this interdisciplinary course, faculty should also find comfort in the fact that those of us in the legal profession do not need to be experts in everything. Attorneys can and do rely on experts at trial to educate them, the court, and jury about fields of study outside of the attorneys legal area of expertise.

Creating a Discussion Board Post on Blackboard or Canvas regarding the topic of *Legal Expert vs. Scientific Expert*¹ is a useful starting point to help assuage the concerns of faculty. Students become engaged and often respond to this post stating that both types of experts pay attention to detail and rely on observation in order to reach a logical conclusion. Scientists may conduct many years of testing and rigorous peer review before rendering their educated opinion, whereas attorneys are more time restricted and must comply with statutory and court deadlines, and so, seek more immediate, but still accurate, answers. This tension regarding time and results between the professions is explored later on with students when discussing case law and the topic of novel scientific tests or testing procedures and the reliability of such tests in order to admit evidence in court. Discussing Sherlock Holmes’ method of inquiry is a natural follow-up to this discussion and further solidifies the link between the disciplines. Another useful Discussion Board on Blackboard or Canvas Post, “*The Founding Fathers vs. The Founding Fathers of Science*,”² challenges the Legal Studies students to choose the scientist they believe has made the greatest contribution and/or impact in terms of the admissibility of evidence in the courtroom or in assisting the legal profession in general. Legal Studies students often mention Francis Galton and his study of, and later classification of fingerprint evidence as being someone who was a forward-thinking leader in the scientific community. Others mention Leon Lattes for discovering that “blood could be grouped into different categories.”³ Legal Studies students begin thinking about the origin of these concepts/ideas how these Founding Fathers of Science like the Founding Fathers of our country saw things in a different way, questioned, studied and developed a new approach to something and in the process greatly contributed to their society and future societies as well.

An assignment that provides a variety of assessment tools for a paralegal educator begins with a reading of the *Frye v. United States*⁴ and *Daubert v. Merrell Dow*⁵ cases. After briefing the two cases, the Legal Studies students then

debate the merits of the *Frye* and *Daubert* standards and how these differing standards impact the use of scientific evidence in the courtroom and ultimately, the possible result in a case. Due to the ever evolving technological advancements, students enjoy debating whether or not the results of new tests or novel procedures not fully vetted by the scientific community, but which may lead to a guilty verdict or finding of liability, should be allowed in court as reliable evidence. The textbook *Criminalistics* by Richard Saferstein⁶ provides clear examples of current or semiole cases which correspond to forensic topics. One such case is that of Dr. Coppelino.⁷ Legal Studies students find the facts of this case interesting and better understand how the *Frye* and *Daubert* standards work and could lead to conflicting decisions based on the jurisdiction in which the case is heard as well as what a new or novel scientific test means in terms of reliability of evidence in court.



An additional assignment after briefing these cases is for the Legal Studies students to compare and contrast the case brief method with the scientific method. This allows for a discussion of what methods attorneys and scientists use to synthesize and analyze data/information to arrive at a well-reasoned and final decision. Typical student responses are that attorneys rely on case briefs to provide a clear short recitation of the salient points of a court case decision in order to determine the usefulness of particular case law to advance their arguments and theories of the client’s case. Scientists utilize the scientific step-by-step method to test theories, propose findings, and arrive at a logical and consistent conclusion. Each professional seeks to use facts, law, principles, theories, and account for variables which may alter the final conclusion, and also rely on past cases/precedent or testing/retesting, to arrive at a just and unbiased decision that he/she asserts as true.

The use of a quote to introduce the topic of a lecture is often helpful in allowing Legal Studies students to think about the application of the subject matter of a lecture to real life. In other words, application of knowledge learned in order to make a point readily understood. A similar such use of quotes is heard at the beginning and end of each episode in the television series *Criminal Minds* and may also be found in legal textbooks such as *Technology in the Law Office*⁸ and its accompanying *Instructors Manual*.⁹ The assignments based on *Frye* and *Daubert* and the use of a quote like the one below makes the discussion of science in a legal course less intimidating, while further demonstrating the natural bond that exists between law and science.

“Wherever he steps, wherever he touches, whatever he leaves, even without consciousness, will serve as a silent witness against him. Not only his fingerprints or his footprints, but his hair, the fibers from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. All of these and more, bear mute witness against him. This is evidence that does not forget. It is not confused by the excitement of the moment. It is not absent because human witnesses are. It is factual evidence. Physical evidence cannot be wrong, it cannot perjure itself, it cannot be wholly absent. Only human failure to find it, study and understand it, can diminish its value.”¹⁰

b. Internships, STEM, and Grant Funding that Link Law with Science

Options worth exploring for the paralegal educator when teaching Forensic Science & The Legal Process course are to think about teaching the course in a Collaborative Online Learning Community (COIL) either at the domestic or international level.¹¹ There are several COIL organizations which host events/seminars and seek partnerships with colleges and individual faculty. A class of Legal Studies students can participate through blogs or Blackboard Discussion Board posts with other classes of Legal Studies students or law school students to learn first-hand how different jurisdictions apply the law and also how to work with other members of a legal team. Forensic Science & The Legal Process course may also be designed as an upper level seminar or honors course with weekly seminar lectures and

paper based assignments. The challenges and limitations mentioned in the journal article entitled “*Doubting Daubert*,”¹² could more readily be explored in such a seminar and honors setting. Another way of introducing the scientific aspects of the course is to actually Ask an Expert. Skype, pre-recorded lectures which can be shown in class, or professors in the science department within your own college may provide a ready source of guest-experts on certain science topics. Technology expands the way in which the forensic and legal process course may be taught and law educators have opportunities to partner with colleagues and legal practitioners to collaborate on topics of shared interest.

Legal Studies programs often require at least one internship course. Offering Legal Studies students a Forensic Science & The Legal Process course may assist them in obtaining a specialized internship. I explored this option after attending a New York State Bar Association Criminal Law Seminar. A student who had taken my Forensic Science & The Legal Process course that fall was successfully placed as an intern at the Innocence Project in New York¹³ the following spring semester. Forensic Science may also be linked to Science Technology Engineering and Math (STEM)¹⁴ courses and allow for law faculty to receive possible grant funding which could be used to add a laboratory component to the course or even opportunities for law faculty and faculty from the science disciplines to co-teach a class.

c. Media and Television Shows that Blend Law and Science

A practical assignment often used in the Introductory Legal Studies courses such as Civil Law and Procedure is for students to visit a court and write an analysis paper of both the court case or substantive law and legal proceedings or procedural law they observed. A similar such assignment can be designed for Forensic Science & The Legal Process course. Legal Studies students select a favorite legal television show such as *Law & Order*, *Forensic Files*, *CSI*, *NCIS*, *Criminal Minds*, *Bones*, or *Homicide Hunter: Lt. Joe Kendra*¹⁵ and view an episode that has a forensic science aspect. The students then draft a memo discussing which show they chose, explain what the legal issue is or provide a description of the case, and then discuss how forensic science contributed to solving the case or resolving an evidentiary issue. If there was an evidentiary issue regarding the use of the forensic evidence, the Legal Studies students are asked to explain how this matter was resolved by the court or attorneys. Any case law mentioned in the show, such as *Frye* or *Daubert* or scientific terms like “touch DNA” should be discussed in

the memo and students should conduct additional research to explain the relevant case law, holding, and rationale as well as the meaning of the scientific terms. Finally, Legal Studies students also explain anything in the episode which is not realistic, in other words, could or would not be done by real life professionals or could not take place as quickly as depicted in the show.

Another writing assignment is to have students brief the *Brady* case,¹⁶ examine a Brady motion, and then draft their own Brady motion based on the instructor's hypothetical fact pattern. *The People v. Pizarro*, 110 Cal. App.4th 530 (2003)¹⁷ case is another interesting science meets law case for students to brief and study. This case provides a plethora of questions that Legal Studies students can discuss/explain such as the Prosecutor's Fallacy; how to effectively challenge DNA evidence; and the use of mitochondrial DNA ("mtDNA") and why mtDNA it is not as good as a DNA match.

d. Law Faculty, the Legal Experts and Invited Guest Speakers, the Science Experts

The impact of science in our lives and its connection to the field of law provides the paralegal educator with unique opportunities to demonstrate to Legal Studies students how their work, time, and dedication as students will one day have an effect on the life/lives of a real person/people. After perusing the website of an author who had written a book about the untimely death of her daughter and the possible worsening of her condition due to a misdiagnosis and treatment,¹⁸ I came across a letter written by a medical student to that author informing her how valuable it was for her, as a soon to be doctor, to read this book.¹⁹ Utilizing books written about science and forensics and incorporating this information into the Forensic Science & The Legal Process course can provide our Legal Studies students with this same kind of realization and understanding about how their professional decisions can and do impact and affect the lives of their clients and their families.

One such book I have come across is entitled, *Inside the Cell: The Dark Side of Forensics*, by Erin Murphy,²⁰ a professor at New York University. Professor Murphy shares her science expertise and allows the reader to understand that while DNA evidence is useful, the legal professionals who rely on it must not only consult with the scientific experts, but also explore variable alternate conclusions through a close examination of the case, especially the facts. A widely covered

case in the news involving the death of a Yale student a few days before she was to be married²¹ illustrated that "DNA evidence incriminated an impossible suspect."²² DNA that people voluntarily agree to have tested when using the various genetic testing kits on the market with downloadable raw data features, may through familial searches or what Professor Murphy refers to as *Genetic Informants*,²³ assist law enforcement in solving a cold case.²⁴ Some recent cold cases which have been solved in this manner include the 1970s/1980s California "Golden State Killer" case;²⁵ the 1986 Tacoma, Washington case of 12 year old Michella Welch;²⁶ the 1988 Indiana case of 8-year-old April Tinsley;²⁷ and the 1992 Pennsylvania case of elementary school teacher Christy Mirack.²⁸

During any semester, the legal educator can find current legal cases involving the use of DNA evidence,²⁹ and draw from these actual cases to craft drafting assignments. Suggested topics for research papers include "Familial Searches: The Legal and Ethical Issues Surrounding Its Use" and "Collection of Arrestee DNA and Fourth Amendment Implications."³⁰ Criminalist textbooks as well as articles on the topic of DNA, the Fourth Amendment³¹ and how specific states³² are managing and responding to the challenges and issues arising out of technological advancements as well as the ethical implications of familial searches³³ provide background information for the legal educator when guiding the Legal Studies students with these assignments.

CONCLUDING THOUGHTS

A course dedicated to forensic science and the legal process is both timely and necessary in the Legal Studies curriculum. What such a course offers both the legal educator and student is flexibility in teaching this subject matter; practical skills for use in the legal profession; a ready source of material in a ripped-from-the-headlines fashion; and the opportunity to work with peer-experts (domestic and abroad) within and outside your field of knowledge/study. ■

BIOGRAPHY

Marissa J. Moran is an attorney and professor in the Department of Law & Paralegal Studies, New York City College of Technology, CUNY, where she currently teaches Legal Technology, Forensic Science & the Legal Process, and Legal Document Preparation. She has also taught business law courses as an adjunct professor at New York University, Stern School of Business. Her teaching concentration focuses on the blended areas of technology & law and forensic science & law.

ENDNOTES

- ¹ Professor Marissa Moran, LAW 4805 - Forensic Science & The Legal Process course, Discussion Board Post, *Legal Expert vs. Scientific Expert*.
- ² Professor Marissa Moran, LAW 4805 - Forensic Science & The Legal Process course, Discussion Board Post, *Founding Fathers vs. Fathers of Scientific Evidence*.
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- ⁵ *Daubert v. Merrell Dow*, 509 U.S. 579 (1993).
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- ¹² Lisa Heinzlering, *Doubling Daubert*, 14 J. L. & Pol'y (2006).
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- ¹⁸ Isabel Allende. *Paula*. 1994.
- ¹⁹ Letter to Paula, *By Erin Coleman, M.D.*, written while in medical school. https://isabelallende.com/en/words/letter_to_paula
- ²⁰ Murphy, Erin. *Inside the Cell: The Dark Side of Forensic DNA*. Perseus Books, 2016.
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- ²² Murphy, Erin E. "How DNA Evidence Incriminated an Impossible Suspect." *New Republic*, 26 Oct. 2015.
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- ²⁴ *Ibid.*, 200-202
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