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LAWYERS: 2009–2015; TOP 10:
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Covert Operations

Why scientific misconduct lawyer Barry Nelson Covert knows more about space dust than you do

INTERVIEW BY AMY KATES
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Q: I have a confession—I have no idea what “scientific misconduct” means.

A: Neither did I. A good friend of mine, a wonderful lawyer, came to me after he was consulted for a scientific misconduct case out of SUNY Buffalo. When he called I said, “What the heck is scientific misconduct?”

What it generally means—and it applies to all scientists that generate work—is any type of publication or study in which they are accused of plagiarism or fraud in relation to their studies and how they’re conducting them. Anything that would indicate that they are not being truthful throughout the process of their scientific endeavors.

I got involved in that initial case. As a result, my practice has really changed from criminal and First Amendment to now handling a significant number of defense of scientific misconduct cases. My practice is still mainly criminal and First Amendment, but added to that is scientific misconduct.

Q: From defending criminals to scientists—seems like quite the departure.

A: It is a strange departure, but it’s a very fun and challenging one. Many of the cases I’ve been involved with are allegations that the scientist engaged in fraud or cut corners, that he or she altered data to get to a result that they wanted to get to, that they lied about the number of participants in their studies, or that they plagiarized information or fabricated data.

That first case I was brought in on, the research scientist was engaged in studying various types of therapy for drug and alcohol addiction. He was accused of fabricating the number of participants in the study and thereby creating fake data for those participants. I was involved in that for many years. It’s a very long, drawn-out process when you’re accused of scientific misconduct.

It’s been very interesting work. The universities that I have been involved with include Columbia, Harvard, North Carolina State, University of California, University of Colorado, Colorado State University, and numerous cases in the SUNY system. You have to use your skills as you’ve been trained as a criminal lawyer to try to gather the overall picture of what’s going on: Who are the players involved? What are their motives? Is this a rival that’s trying to take down my client because there is a fight over grant money? Is there personal motivation? For some reason, does somebody hate somebody else? Or are the accusers trying to cover up their own fabrications and trying to throw the blame onto my client?

Q: So it’s typically a scientist-on-scientist accusation, right? Because how would a regular Joe detect junk science?

A: Correct. Often it’s scientists that are accusing other scientists of some level of misconduct. Quite often, it’s because of rivalries.

Q: Interesting. I wouldn’t imagine that type of behavior in that community.

A: The first case I was involved in, for SUNY Buffalo, I was shocked that scientists are just like the rest of us. They have the same jealousies, the same frailties, the same shortcomings. It was eye-opening.

Q: You’re strictly working on the defense side?

A: Yes. More often than not, the scientist that I represent is no longer at that university because the allegations were either raised after the scientist left, or the scientist left because of the allegations. So now the university has to decide between the credibility of the employees that are still there, scientists or research assistants, and figure out if they are more credible than the scientist who’s the subject of these proceedings.

Q: So when you say you've worked with Harvard, you're not representing Harvard; you're representing the individual.

A: Correct. I'm representing an individual who was conducting research at Harvard, or wherever, at the time that the alleged events occurred. But that individual was no longer at Harvard when the allegations arose. So that individual had to retain me out of his own pocket as opposed to the universities who use their lawyers.

Q: If I'm Harvard, why aren't I helping to defend my own people?

A: They *should* be. There should be a system in place that allows for the scientist to have counsel assigned to him because everyone else involved in that process has lawyers that are paid for by the university, or they use investigators that the university has. No one else in the system is paying for anyone out of their own pocket except for my client. It's a very unfair process, and the cases themselves are difficult to research. Not only do you have such complicated science, but it's predicated on years of research, notes and data. Putting all of that back together and trying to reassemble what occurred over five, seven or eight years of research is very difficult.

Q: What kinds of matters do you deal with?

A: A really interesting case that I recently wrapped up had to do with space dust. Just saying that sounds crazy. My client, who was found not guilty, was studying the Earth and what occurred in various centuries—we're talking tens of thousands of years—and what geologically significant events occurred. The way they do that is they drill into the Earth's core and pull out samples, like tubes. So imagine putting a tube into the ground and pushing it down and drilling, turning it and then pulling up a tube full of what you gather there.

And what they're looking for is space dust because they know that space dust comes down at a very set time frame, and they can determine how old various samples of that core are based upon the space dust findings. Then they can determine when there were earthquakes, when there were various events tens of thousands of years ago. When you do scientific misconduct cases, you have to study and familiarize yourself with those areas of research so that you can meaningfully assist your client.

I brought my son in one time when my client was in. I said, "If you're teaching me how the *hell* you can figure out how old the Earth is and what happened over time through space dust, he's going to learn it, too." My son was 13 at the time and just getting into all that space science stuff, and my client laid it all out on our marker board for four hours. That's how I learn. And it was so awesome. Please don't make me sound too nerdy.

Q: I'm geeking out, too. Do you have your own vial of space dust?

A: Sadly, I don't.

Q: So if a scientist does falsify data, what's the trickle down?

A: Let's say that there was some falsification of data or shortcuts taken. If it's not uncovered, and papers are being published to the scientific community, by and large, fellow scientists that are giving those incorrect results are unknowingly continuing in an incorrect direction by predicating the next study based upon the prior study.

So if I publish a paper that says that Lipitor is very effective for people between the ages of 35 and 45, but I actually faked some of that data and it turns out it's really not effective, then the next scientist says, "Oh that's interesting. I want to pick up on that data and see if that's also true of people 45 to 55, or is that true of the entire population, or is it just Caucasian males or African-American females or this and that." Then we have a big problem.

If you notice over time, it's, "coffee is good for you," then a few years later, "coffee is bad for you." Then a few years later, "No, no, really, it's good for you, makes you think better." "No, it's really bad for you: You should only have such-and-such amount." That's a very basic example, but if there are faulty studies that are causing doctors to go in different directions, then we the population could be harmed.

Q: How do you handle the learning curve?

A: You have to be a quick study. I think that my criminal [law] background really gave me an advantage there because when you handle criminal cases, one of the hardest parts is pushing yourself through, knowing how to look at the evidence, look at the testimony, look at the allegations, and figure out what really is meaningful in that case and what is just haze. Try to get to the

heart of what occurred, what the evidence really shows, what the witnesses really saw, and block out all other noise.

For most of these cases, I have a meeting with my clients where they're my teacher. They give me tutorials on their area of science. So whether it's for research on mice, research on worms and how they're testing the effects of various fertilizers on dirt, or how dirt is handling natural environments; whether it's the space dust stuff—I'm the student.

Q: Do you ever get intimidated?

A: No. I once found myself at an inquiry committee hearing at Harvard Medical School. The committee consisted of eight or nine doctors who are all incredibly credentialed, published, who run the best hospital in the world. And here's me, a kid from Fredonia University, with a Fredonia pin on my lapel, facing them down. The committee chair turns around, points out the window and he says: "By the way, they just named the medical library after me." I'm just sitting there in a room with brainpower that's up the ying yang. I know that I may not be the smartest guy in the room, but that doesn't bother me. I figure that if you can't explain something to me in a way that I can understand it, then you are either wrong or you're trying to BS me.

Q: On a national level, do you know how many lawyers are building similar practices?

A: There are only a couple that I'm familiar with that know what they're doing. That's why scientists contact us to help them all over the country because you don't want to pay for a lawyer to learn this.

Q: What else keeps you busy?

A: I do a good share of False Claims Act cases, and the more traditional criminal work. We've got a nationwide criminal practice here. I do First Amendment as well. So they're all kind of in the mix. Luckily I'm in a great firm with other lawyers that collaborate.

Q: So do you have the inside scoop on coffee? I just had 48 ounces.

A: [Laughs] I just had my second cup as well. You don't have to worry about it. It's all good. [S](#)

This interview was edited and condensed.