

Kris Turner:

Hello and welcome back to Wisconsin Law in Action, University of Wisconsin's Law School podcast. Today we're joined by Professor Mitra Sharafi, a legal historian whose work sits at the intersection of law, science, and empire. Her scholarship explores how legal systems function in practice, particularly in colonial South Asia and how different forms of knowledge from religious to scientific shape legal outcomes. Her recent book, *Fear of the False: Forensic Science and the Law of Crime in Colonial South Asia* offers a striking account of how concerns about false evidence helps drive the development of forensic science while also creating new risks within the legal system itself. Professor Sharafi, thank you so much for joining us today.

Mitra Sharafi:

Thanks for having me.

Kris Turner:

Of course, this has been a long time coming. I'm so excited to have this conversation with you about your new book, but also about everything else that you've been working on recently. Speaking of, congratulations on that publication of *Fear of the False*. This is actually your second book, the first being *Law and Identity in Colonial South Asia: Parsi Legal Culture from 1772-1947*. So let's start with the big picture. Your latest book centers on what you call a fear of the false. What does that phrase capture and why was it so central to the development of forensic science in colonial South Asia?

Mitra Sharafi:

Yeah, well, I think the phrase fear of the false is getting at two big ideas in the book. The first one is the idea of native mendacity, which was a racialized stereotype held by the British in colonial South Asia. And when I say colonial South Asia, I mean like British India and British Burma. And this idea was just that South Asian people were constitutionally dishonest, did not value truth telling the way Europeans did. And this is sort of the first half of my book where I look at cases of planted animal blood and planted poison that were allegedly planted by colonized people, tricksters. I call them to frame their rivals and perhaps to subvert British rule. So you've got that going on the one hand. And I think that some of those cases seem to actually have been false evidence, planted evidence, and some of them maybe not.

But I think in a colonized context, it shouldn't be a surprise where there's so much mistrust and exploitation. So that's fear of the false at one level. But the second big idea in the book is part two of the book, which is, I guess it's more of a prescriptive argument here. And here I'm suggesting that the British rulers in India should have feared falsity generated from within their own systems more than they did. And I'm talking about specifically their criminal procedure, which created this really weird rule that was only in India, not in England, that certain government lab experts did not have to come to court to be cross-examined under oath on the basis of their written reports. So fear of the false as a colonial stereotype and fear of the false as a sentiment that should have been stronger to avoid wrongful convictions via shortcuts in criminal procedure.

Kris Turner:

Kind of a double-edged sword where there's the fear of the false where they thought someone was being false, but also they put too much trust in other areas of it where they should have been more fearful of the false. And I like how you laid this down as this all is foundationally from colonial racism where it's like, "We fear you being false because we don't trust you South Asians, but we also trust you

enough experts to not even call you in and discuss this." Is that kind of a good analysis of what you're discussing?

Mitra Sharafi:

Yeah. In the beginning, the book is really looking at 1860s until 1947, which is when India became independent. In the beginning of that period, all the experts were British, but from the early 20th century on, they become more and more Indian experts who are trained in Western science and medicine, usually in England or Scotland, actually Scotland especially. So there's this really interesting Indianization of the forensic professions, both the scientific and the legal profession that happens in the 20th century and then the binary racialized system that the whole thing started with starts to change and get a little more complicated. But yes, definitely the concept of South Asian people not valuing honesty, that is a highly racialized stereotype. And as you get more Indian and Burmese forensic experts, they start removing that explanation from all the big textbooks. So they start explaining crime and falsity differently than the British did. So it's both a history of science and medicine, it's a history of law, and then there's also this history of the professions' aspect, which is really important.

Kris Turner:

You are absolutely speaking my language. I have a deep-seated love of history, so I always love discussing things with you. You said it's changed and got more complicated. There's history in a nutshell, in my opinion, and this is it there. So that's great. Your work actually often emphasizes law and action, hence why I've been so excited to have you on our Wisconsin Law in Action Podcast. So that's how law operates on the ground rather than just in theory. How did that approach shape the way you researched and wrote your book?

Mitra Sharafi:

I'm going to answer this question specifically with reference to legal history and legal historians and the debates and the ways our field has changed over the last half century. So I definitely adopt broad and interdisciplinary approach to the history of law. I'd say the more classic/old-fashioned manner of legal history was too just to trace how a legal doctrine changed over time. So it's a very doctrinally focused look at change over time to the exclusion of social, cultural, economic, political forces. And that is still the way a lot of legal historians in Europe and in England, Britain, that's kind of the dominant style I would say. I once remember talking to one of the top legal historians at Cambridge University. I was there for my postdoc before I came to UW and he told me, he said, "I don't care about social history. I'm a legal historian." And that is very different from the way I would say most legal historians in the US approach our field.

I think that most of us see law as a cultural artifact. I mean, you could study a pottery or a piece of clothing or a statue or you could study law as a product of its culture and its time and the problems that they were dealing with and their values. And so that's really my approach. And I think a lot of us also are coming with dual training both as lawyers and as historians, so our approach is not a surprise. So that's my approach to legal history is it's not just how a particular rule changed in a little box where law is separate from society. It's these things are feeding back and forth, which is not to say that law doesn't have its own distinctive intellectual history of legal ideas and how they develop and technical it does and you need to understand that. But I think it's not accurate to put it in a little box and say that there's really no influence with the outside world.

Kris Turner:

It really feels like you're missing something. You put it in that box and say it's off doing its own thing. I love that you approach this for the multidisciplinary avenues. Go ahead.

Mitra Sharafi:

I was just going to say you also encounter sometimes an older attitude decades ago in the US and you still encounter it amongst legal historians in places like Germany, for instance, where they say that law is a science. That is not the way I think of it. I mean, there's lots of interpretation in science as well, but I think that the law and action approach to legal history specifically is really a rejection of the idea that there's one right answer. Law is technical only, has nothing to do with society.

Kris Turner:

It's messy. Things are changing, it's adapting, it's going to be viewed in different ways by different people, which is why it's so important that you've gotten this book out there and you're examining all these things from such a deep historical viewpoint. So both of your books, you've actually described them as exploring systems of knowledge production. So first religion in your first book with the Parsi legal culture and then now science. What connects those projects and what does that lens allow us to see what otherwise people might miss?

Mitra Sharafi:

Well, I think all throughout my career, I've been really fascinated by different value systems and what happens when they meet, try to work together or collide. And so my first book was very much about religion and cultural value systems meeting with the legal system. This forensics project also has actually elements of cultural and religious value systems meeting with law, but even more, of course, it's about scientific and medical ways of generating truth and how that interacts with, meets with legal notions of how we reach truth in the courtroom. So I think that's a theme that is a thread that runs through my entire career. And part of it is actually, I'm probably deeply personal because my own family background is on one side Iranian, on the other side, white American. I grew up in Canada, but we had a lot of discussions and debates at home about cultural value systems that are very different and how do you navigate the combination? And so I think that that's a driving interest of mine all throughout my research career as well as my personal life.

Kris Turner:

What a beautiful way of putting it. The legal notion of how we reach truth. You've already given me a lot of good quotes. I've been writing down while we've been discussing all these things you've been saying and I'm already filling up half of a page and we're about 10 minutes into our discussion, so that's wonderful. But I want to hear more about your research process. I'm here to eat some popcorn and listen to your historical research is what I want to hear. So your research process for fear of the false. You worked with archival materials from the National Archives of India and the British Library and you got reports from chemical examiners. What was it like to work with those sources and were there any moments of discovery that really shifted your thinking?

Mitra Sharafi:

Yeah, I love this question because legal historians, we do archival research. That's our method and it is slow, especially for a project like mine because I have to travel to the other side of the world to look at archival material. So this book took me, well, it's 12 years since my first book was published, so I've been working on this book for 12 plus years. And I think I made about six trips to the UK, mostly to London for

the British Library, but one trip to Glasgow, University of Glasgow Archives. I made about three trips to Delhi in India for the National Archives of India. And then I also drew on some research that I did for my first book, which was in Mumbai, the Bombay High Court. And I also made a trip to University of Chicago Archives. So there's a lot of research travel and archival research is, it's slow and it's hard to get access to some of these places.

And once you get access, it's hard to get the proper files to come up. And there's very exhausting bureaucratic processes. In the case of this project, the British Library had a really horrible cyber attack. You probably know about this as a librarian. They refused to pay the ransom and then the attackers destroyed their online catalog and it's a closed stack library, so you can't look at anything unless you can order it up through the catalog. So that paralyzed the BL for several years. It almost meant that I couldn't use half the images in my book, but our IT department showed me some nifty little tricks and I managed to get the permissions and get the high quality images. And then there's also, of course, the pandemic, which shut down all archival research for several years. And then in India, the government of India is now tightening its visa rules for foreign researchers.

So if I tried to do this project today, it would look very different than when I was doing the research a decade ago. So I feel like I'm lucky and I just kind of squeezed through both with the BL and with the National Archives of India. So that's a bit about the archives. I think the real archival heart of the project is what you mentioned, the chemical examiners reports. So the chemical examiners, they were these military physicians in the Indian medical service who ran these regional labs that did toxicological and other kinds of testing for the state and their reports are just remarkable actually. They start in the 1870s. I mean, the preserved reports start in the 1870s. There were about eight of these labs ultimately across India and Burma and they end in ... I followed them all the way up to 1947 and they were mostly on microfilm, which is absolutely so painful as you will know as a librarian.

So I put in a whole bunch of research at the BL, especially trying to work with the microfilm. There was one moment that I really remember as a moment when a lot of things shifted for me and that was I was reading one of these reports and there was a debate going on between ... There was this figure that they would produce every year in their reports called the Poison Detection Rate, where the chemical examiners would say, "We received X suspicious poisoning cases to test and we actually found poison in Y percentage of those." And so these would be reports and a lot of people read these reports, including high court judges, but this was directly going to their military supervisors and their military superiors.

And sometimes the superiors would sort of say, "Well, the superiors would've assumed that the higher that percentage, the more efficient and effective the lab." I mean, here we are living in this moment of little shortcut metrics that everybody loves to lean on, like scholarly citation metrics. This was their version of that, where the boss may say, "Oh, this is a good poison detection rate, 70%, you're doing well." Or they would say, "This is too low." So it was in the first decade of the 20th century and the Bengal chemical examiner's rate for that year was something like 45, 46%. And his superior was criticizing him and saying, "This is not high enough. You need to raise this rate. Your lab is not good enough."

And the chemical examiner pushed back and he said, "No, I think you're kind of misunderstanding what this is all about because as much service to justice is done by finding that there's no poison in a particular case as by finding that there is poison." What he was saying was, our job is not just to help the state secure convictions, it's also to clear the name of a person of an innocent person who has been wrongfully accused. And for me, that was like this light bulb went off in my mind because as you know, at this law school, we have this wonderful innocence project and we have so much important work that goes on in our clinics led by our clinical colleagues and wonderful opportunities for our students to work on real wrongful conviction cases and occasionally they do manage to get an exoneration.

But those concerns existed before the DNA age as well, which is early 1990s, Innocence Project gets created in 1992 and that's when what's called PCRR DNA testing, the modern fast version that we use now was developed. And I think we forget that. I think because most of the Innocence Project cases are like DNA evidence versus these other kinds of evidence that were less reliable that were the basis for the conviction. But even before all of that, there were also debates and discussions and concerns about wrongful convictions. I found this corner of it happening amongst the chemical examiners internally with their military superiors. So for me, that was a big contribution I think of the book too is that I'm telling a pre DNA, pre-innocence project story about concern for wrongful convictions and in a non-US context.

Kris Turner:

I think we could talk about this question for about the next hour and a half if we wanted to. Just everything you just told me, I have so many follow-up questions. I'll try to constrain them to just a couple. But to go back to the beginning of the using archival materials, you had used the phrase slow work, and that is something that we have probably both seen with undergraduates and law students where if it's not available digitally, it's just not there. And so have you had to communicate with students or research assistants about how to find these materials or what has to be done in order to locate what you need for your book or for your other articles?

Mitra Sharafi:

Yeah, that's a great question. That's funny because I'm on Bluesky. I mean, since the demise of Twitter now X, a lot of academics have moved over to Bluesky, which is getting really good, I have to say. Scholars on Bluesky make a lot of jokes about how non-historians seem to think that everything in the archives is digitized and maybe 1% is digitized and that figure's probably much higher in the US than in India. So there's this vast universe of materials and there's one copy of it and it's physical and you have to go to the National Archives of India and get in and get them to find it to actually look at it. So there's that. Most of the really, what I consider the hardest, the most painstaking archival work, I would never give that to anyone else. I have to do that myself because what you're looking at and what you're looking for is shaped by your ongoing research.

I guess some scholars maybe sometimes do farm that out and hire a research assistant to do it, but I don't think I would ever do that. But that said, I did work with a really nice team over the years of students from law, from undergrad legal studies, from history, from geography, from comparative literature, even who did some Bengali detective fiction translation for me, that was really fun. And what I think works really well for me is if there's quite a discreet little side offshoot that I can give to someone because they have the expertise, does not involve travel. And so I did have a whole number of nice little chunks like that. So there was Bengali language, which I don't read, mystery, detective fiction translation. I hired a cartography student from the UW Cartography Lab, which I am a huge fan of.

He made a couple maps for the book, which are published in the book. And then we have since the pandemic, especially we've had more digitizing of published case law for colonial India. There's this wonderful platform LLMC Digital, the Law Librarian's Microfilm Consortium Digital. I'm such a fan. If you look at their website, you'll see there's a quotation from me that rotates through about how much I love them because they digitized a whole bunch of law reports from colonial India that were not digitized before. And so I have hired some of our law students, for instance, to do things like go through all of the rape cases you can find. I have a chapter on rape and planted animal blood and sperm cell detection. And so I had a student go through and collect and download all of the cases involving rape in the colonial case law.

So I think most often I would say that's what I'm doing when I hire a student is they're doing some kind of case law survey for me. There are the modern day legal databases, one called Manupatra that we subscribe to and occasionally it'll have something colonial. I think it has something colonial if a modern day case is citing that case so that modern day lawyers need to see the earlier case, but they're not comprehensive about the early stuff. So we can't just use those. So I am always looking out for nice little discreet pieces that the students have the skillset and that they can ideally do remotely, but going to the archives trip, I never give that to anyone. I feel I have to do that myself.

Kris Turner:

Completely understandable. I think the things that you have come up with to work with the students on is just as important though where they get connected with these historical resources and become a part of it. That cartography student that made the maps, that's so cool that they had the opportunity to do that. It's just nice to bring in the students. You can see in my experience when you're showing them even something like, "Here is a microfiche or a micro form," and they're like, "What is going on here?"

Mitra Sharafi:

That is too mean. I could never subject my students to micro form or that stuff's just too hard, I have to say physically. I will say, this is a side note, but I developed an undergraduate legal studies/history course for this project, which is called History of Forensic Science. It's super fun. I'm teaching it right now. We've got 40 students taking it and they do a really fun research project using historical newspapers. UW Library, as you know, has these incredible digitized historical newspaper databases and we have so many of them that I only let one student pick each one. Everyone has their own database and then they just go through and they find stories on a theme of their choosing relating to forensics and they come up with the coolest stuff. I think they also really enjoy that, dipping their toe into old historical newspapers because you stumble on weird fascinating things.

Kris Turner:

Absolutely. So note to self, take this class next spring is what's what I'm going to learn there. But besides the point, I'll continue on with our discussion here of your book and your research here. Going back to the falsity question we had talked about a little bit earlier. Again, one of the most compelling ideas from your work is how the efforts to detect falsity from the outside from defendants or witnesses sometimes ended up enabling falsity from within the system itself. Can you walk us through how that dynamic unfolded through your research and through your writing?

Mitra Sharafi:

Yeah, so this is part one of the book and part two. So part one is about how fear, and this is kind of an uncomfortable thing for a lot of people, how fear of the false, of colonial stereotype, how a paranoia about colonized subjects lying, manipulating the system, producing perjury, forgery constantly. That actually, I argue, acts as a driver for the development of forensic science. So I think this is kind of an uncomfortable point for a lot of people that something scientifically productive at least came out of this deeply racialized stereotype. But I'll give you three specific examples that are big parts of the book. The first one is species of origin bloodstain testing, this is where the cover of the book is very, very red and blood-like and that's inspired by the fact that this test, which was called the Precipitant Test, is a really big part of the book.

It's almost two chapters of the book are about this test and it was basically to deal with planted animal blood to frame another person for murder or rape. This test is not invented in India. It's invented in

Germany and England, but India, they institutionalize it in a whole new way way earlier than anywhere else in the empire. They create this figure called the imperial serologist and most of his job is to test what is the species of this bloodstain. This is a rape case, but why is the blood on the woman's sari sheep's blood? This is a murder case, but why is the blood on the man's loin cloth bird blood? So there's that. Another example is I have a whole chapter on planted poison and there was a special test for cow poisoning cases, which are these really complicated upper castes accusing lower caste leather workers of poisoning cows so they could take the skins and turn them into leather.

Cow is sacred for upper caste hindu communities, so you're not allowed to kill a cow, although the leather workers could work with the skin of a cow if they found it dead. So there's these really complicated inter caste accusations and cases and chemical examiners developed specific tests involving rectal rags stuck up the rear end of cows using snake venom to poison a cow to make it look like they died of illness when they're actually poisoned. And if you really want something bizarre in my book, you can look up the snake and banana method. I won't explain it here, but people are always quite shocked by that one. It's very innovative, let's just say, and shocking. So anyway, they develop a special test to detect arsenic in these cattle rags that's coming out of India. There's also special form of sperm cell staining that gets developed. In India, that's a story about Burma and then Agra, chemical examiners working together.

So on the one hand, fear of the false is an accelerator for specific tests that are getting developed in India. At the same time, there is the story about the criminal procedure rule, which was for most of my period, it was section 510 of the criminal procedure code. And it said that chemical examiners could merely submit a written report of their findings. They did not have to come to court and be cross-examined under oath on the basis of their report. And that was very strange because in England, the rule was you did have to come to court. The most prestigious toxicologist in all of London had to come to court every time to explain his report. So this is kind of a weird one because the reason for this rule, it was very much about contingency. When the rule was first developed in the, I believe around the 1860s, the chemical examiners were complaining that it was really hard for them to travel from their labs, which were in these urban centers, travel to the countryside into these rural courts.

It was disruptive of their other testing. And so they got this special exception that said they don't have to come to court. It said that the judge could call them, but the judge didn't have to call them. So it gives the judge the option and the practice that developed was that they would not be called to court. So it's not like that rule Section 510 was somehow connected to the racialized stereotype of fear of the false. Rather, the racialized stereotype and Section 510 are both coming out of colonial conditions. And then the story about the rule of criminal procedure is that once it gets set up, it sticks. And even when travel conditions become better, faster, the railroads get developed, people can travel more easily. And even when other people in the lab are authorized to go and testify.

So there are these other ways in which going to court would be less disruptive. Even when all that happens, the rule still sticks. And then worse than that, other experts start lobbying to get the same privilege and some of them do get it during the colonial period, some of them don't. And then after independence, more of them get the privilege. The rule is not just sticking but growing, it's expanding the number of different types, categories of forensic experts who don't have to come to court is growing. And then just two years ago we had a new version of the criminal procedure code come out for India and there are private experts who have now been added to the list as well. So this is kind of a story of colonial inertia or momentum. Once the thing gets fixed, it's really, really hard to get it out and it just grows.

I will also say this is still the law, not only in India, but also Pakistan and Bangladesh, which used to be part of British India and not just that, and this happened with a lot of legislation in British India. It would

often get pioneered in India and then they would ship it out to other parts of the British Empire in Asia and Africa. So I'm going to be doing soon, I'm just finishing up an article that is a little more aimed at current lawyers and judges in India about this rule. And I've actually followed the case law all the way to the present in the article to show them that this is a real problem, that if there's ambiguity in the report, something's unclear, you can't clarify it, you might misunderstand it. And especially when these are really murder cases, you could have a death penalty riding on it. So you need to be really clear about the evidence.

Kris Turner:

What's always been assigned to me with the history I have read is the banality of how something would happen or example, an expert couldn't travel because the roads weren't that good or it would interfere with my lab work. And now we can see, like you said, through inertia, it has continued through too today to some extent to have the reverberations of that policy put into place. You also write about, you had mentioned this earlier as well, the belief in native mendacity among colonial officials. How did that assumption shape legal doctrine and scientific practice in colonial India?

Mitra Sharafi:

So on the scientific practice side, it definitely accelerated the development of new tests or the perfecting of existing tests, the fine-tuning of preexisting tests. On the legal doctrine side, I guess I'll say a couple things. There was a long line of experiments with oath taking in colonial India as the British tried to find a religious symbol or object that would be sufficiently serious and weighty to incentivize people to tell the truth in the colonial courtrooms. So whether it was taking the oath on the Quran or on Ganges water, or even there was talk at times about bringing a cow in and having a person swear on a cow if they were Hindu. So there's all these kind of experiments with oath taking.

A lot of British judges, at least by the period I'm looking at, took this view that perjury and forgery were the rule rather than the exception. So one solution was to lean more heavily on scientific testing and experts, which only makes the unaccountable no cross-examination rule more powerful and important and dangerous. But there's another kind of phenomena that I think is super interesting that I talk about the book, especially in the chapter on rape and that is what I call bolstered cases. So these are cases where the court finds that there is some false evidence like animal blood in a rape case. It's interesting what the judges do with it then. It's a real kind of patchwork. Some judges took the English approach, which is kind of grounded in the *falsus in uno, falsus in omnibus* principle, which is falsity in one thing, falsity in all things, which means that if you find ... it would apply to if a witness said something false, then you would dismiss all of their testimony.

So some judges said, if there's any animal blood in this case, I'm going to acquit because the whole thing is rotten, basically the whole thing is false. But other judges took a different view and said, "Well, you remove the false evidence and then you decide the case based on everything else." And I call that a bolstered case because the idea was false evidence doesn't necessarily mean a false case. It could be embroidery as some of the case law called it. So it's a real kind of patchwork. So some of the judges at the upper levels in India, they were barristers from England and they had whole careers in England before they came to India. So they would come a little later in their 30s or 40s and they were the ones who really stuck closer to English law.

But other judges went up through the Indian Civil Service. So they had much less legal training and they were in India from the time they were teenagers. If there's any chance of them speaking Indian languages, they would be the ones who'd be better at it than the people who arrived in their 40s. And they were the ones who were a little more flexible and who took this view that you remove the false

evidence and you decide the case based on everything else. So I'd say those are the big places where native mendacity, you can really see it playing out, whether it's in specific scientific tests or in specific areas of law.

Kris Turner:

Along those lines, everything you've been talking about so far in our discussion has shown me that forensic science in colonial India was kind of a lab for some of the forensic science practices and theories that happened there. How should we rethink the global history of forensic science in light of what was worked within colonial India initially and then exported elsewhere?

Mitra Sharafi:

I think the older idea or assumption was that forensic science gets developed in the West and then shipped out to the rest. And there's now a growing body of really exciting work showing that that's not the case. I mean, you could find specific examples where that was the case, particular forms of testing, but you can also find examples of techniques that travel in the other direction. So there's a great book by a historian of science called Chandak Sengoopta. It's called *Imprint of the Raj*, and it's the story of how forensic fingerprinting, we actually get that from Asia. That's actually a centuries old practice in China, India, possibly other parts of Asia as well.

And then when the British were in India, this colonial administrator in Bengal noticed this and started to think our fingerprint's unique. He realized that fingerprints stayed the same across a lifetime. And then they started using it for pension fraud to prevent people from double dipping into pensions. And then it starts to be used in prisons. So if a person is coming through with an alias, you can determine that this was the same person who came through five years ago. And then it gets used as latent prints at the crime scene where you're just getting a fragment or one print and then it travels to England and America and everywhere else. That's a really well-documented example. My friend, he's a law professor, legal historian at UC College of Law in San Francisco, Binyamin Blum.

He's working on what's going to be an amazing book about a whole bunch of different kinds of forensic sciences that are played around with in the empire first, including dog-based evidence, canine evidence. He's got two articles out on that that are really great. Ballistics, I think he also writes about footprint evidence, possibly typewriter evidence, possibly textiles. Anyway, he's done research on all of these. I'm not sure what will be in the book in the end. My book has got the specific examples of the species of origin bloodstain testing, the cattle rag, arsenic detection, and the sperm cell staining methods. Those are all ideas and techniques that come out of India and then travel to the rest of the world, including the US.

Kris Turner:

So what I'm hearing is there's a tension that's in your book about the difference between trust and expertise and the risks of insulating the experts from the scrutiny the judiciary might expose them to. How does that tension resonate with today's contemporary debates about expert authority, whether in law, science, or public policy?

Mitra Sharafi:

Yeah, that's a great question and something I've been thinking a lot about in my teaching and in my conferences. Just the other day in my history of forensic science course, we were talking about this because we talk a lot about expert misconduct and the disturbing fact that there's more documented cases of this I think than people realize. And the question I was asking the students is like, "Okay, so you

have these instances of forensic lab experts who are falsifying the evidence. What do we do with that? Does that mean we stop trusting science or does that mean that we clean up our expert accountability systems?" And their answer was very strongly the latter. However, as we know in the larger public, there's definitely rising mistrust of scientific experts. I was just at a conference at Notre Dame a couple of weeks ago on the history and philosophy of science, and that was a workshop on experts.

And it got me thinking a lot about education and mistrust in science because I think I like to think, and probably a lot of academics do too, that education is always the answer. And if people just had more education, then they would be less mistrustful. But there was a presentation at that workshop about evangelical. It was a sample study, but this person was looking at a group of evangelical Christians who actually had fairly high levels of university education and yet also high levels of mistrust of scientific experts. So I do think that it's not as simple as ... mistrust in science is not just inversely proportional to education levels. This is a little more complicated than that. There's a book that I came across in my work for my book that I really liked and I've thought a lot about since.

It's by Sophia Rosenfeld. It's called *Democracy and Truth: A Short History* 2019. And she talks about how in a modern democracy there is a productive tension between the rule of expert truth, which includes science and the rule of majority instincts, which is governed by the common sense of the voting public. I used this in my book because in British India, it's not a democracy, it's colonial authoritarianism. And so I think that makes the unchecked power of these experts not surprising. But I like your idea that you're actually going for a ... There's a sweet spot, you're actually going for a balance and that these two forces should hold each other in productive tension, which is a form of accountability. You don't want either one to be totally unaccountable. That is dangerous.

Kris Turner:

Right. That's where things go really astray, where the trust just collapses in all the systems that we've listed and you've been discussing.

Mitra Sharafi:

Yeah. And I will just to say one more thing to go back to the Notre Dame workshop I was at, we had this really nice plenary session where we all just talked about this. And I do think better communication of research to the public is it's really important and it's not just a small fun thing that we should do on the side. It's really, really important. It may be that the people doing the scholarly research do not have the bandwidth in all cases to translate that to the public, but if that's the case, then what we want to do is collaborate with people who can.

And I'll just say in my own project, I've worked with a wonderful murder mystery writer called Sujata Massey. She writes the Perveen Mistry Detective books, which are set in 1920s Bombay with a Parsi lady lawyer whose kind of the main sleuth. And she does a lot of research reading the work of legal historians, including me. And we have been in touch about a lot of her books and I really value that. I think that's a really great model of how scholarly work and beach reading can ... The beach reading and the bedtime reading, the fun reading can be built on a solid scholarly foundation, but maybe one person should not be expected to do all of it.

Kris Turner:

Right. It's tough to find the time to advocate or communicate all the work that you just said. It's already very slow work to go and visit these archives and get the writing done and work with the students that are doing all these projects. And then after all that, you have to go out and make sure that people are communicating and advocating for your work. And that one thing I did want to mention here is that

maybe they should all do podcasts. So I think we're already on the right track here for sure. We'll make sure everyone's listening.

Mitra Sharafi:

Yeah, I agree. Podcast is fantastic. So thank you, Kris. You're part of the solution.

Kris Turner:

All right, good. Well, that's a nice change of pace for me instead of being part of the problem. One other thing I wanted to mention about the trust level that you and I have had ample discussions about is the question of AI in courts and in science about how that is throwing another wrench into the issue of questionable evidence or forensic science. Is this legitimate? Was it made up? And so I think again, advocacy and communication and education is just incumbent on us to make sure that people understand the role it plays for good or for ill.

Mitra Sharafi:

Yeah, no, I totally agree with you that AI is like, it's just making us mistrust everything we encounter. Is this video I'm watching on Instagram, is it real or is it AI? Is this audio reel or AI? Is this written? I mean, as a professor, when I read written work by my students, how can I be sure that it's not AI generated? I mean, the answer for me has been unfortunately, I've wiped out research papers from my undergrad teaching and instead we do a presentation because I think the oral skills are still something that only human beings can do. And then we do a Q&A meeting one-on-one with me, no technology afterwards so I can ensure that the students actually did the reading. So it's seeping into everything, as you say, and it is elevating the mistrust. I'll say in the world of scholarly publishing that I'm now seeing these clauses in contracts between authors and publishers that say, "I have not used AI in the writing of this book."

Kris Turner:

And I do not allow my work to be used to train AI on the flip side of that.

Mitra Sharafi:

And there's huge battles over that because the publishers are trying to get the authors to sign, give permission for that. And my book is open access, so it's all out there. I mean, it would probably be out there even if it weren't open access. But yeah, I think AI is just affecting every corner of research, writing, teaching, publishing. It's tough to know what the right way forward is.

Kris Turner:

Right. It contributes to all the tension and all of the above as you were just discussing for the trust levels in all these different places, but I will get us back on track and continue to discuss legal history and get off of AI for a little while. So I want to just step a little bit further back. For listeners who may not be familiar with legal history, what does studying a colonial legal system help us understand about modern legal institutions more broadly?

Mitra Sharafi:

I think our legal systems, especially common law legal systems, legal systems all across the English-speaking world, they are inherently historical because we rely so heavily on case law and case law expands through accretive growth. It's the pile of cases that have happened. And so I think we do retain

a lot of features from the distant past without realizing it just through our case law-based system and our precedent-based system. So that's a general comment. And then a specific comment for India, there's this one provision of criminal procedure and I've been in touch with judges in South Asia who sort of say, "Oh, I confess, that provision never really caught my attention. I didn't really know anything about it. I didn't think there was a problem. I didn't really know about the history." So I'm hoping to raise awareness.

And the good news in this one case is that the rule baked into the legislation says that a judge may call an expert in this special category to court, but they don't need to. So it's not like I'm asking for legislative change, which is of course really hard. I'm asking for change in judicial practice rather than in statutory law. And so that's nice because it means the judge can just tomorrow start calling this growing list of experts who get to not testify. I'll also say in the colonial period, the problem with these chemical examiners reports, the worst ones were that they were cryptic. They were too short. They would say something like, "We found arsenic," but they wouldn't say how much. And there was a fatal dose of arsenic, which was two grains to use their units, but there are all these household products and hair removal products and rat killer and fly paper that used arsenic.

So there were all these other ... And even in traditional Ayurvedic and Unani medical practices, which are the non-European medical traditions in India, two of them, in some medicines coming out of those traditions, there would be arsenic in them or other poisons. I mean, the line between poison and medicine is very blurry even at the best of times for allopathic or Western medicine as well. But there are all these reasons why you might have arsenic in your body, but the question is how much? So you've got a murder case, a poisoning death penalty case coming in front of you and the key piece of evidence doesn't tell you how much arsenic there was in the body. Are you going to sentence this person to death when you're unclear about the poisoning aspect? So that was the problem in the period of my book, but since independence, it's kind of the opposite problem. It's like these massive data dumps that they get.

They get this huge, long, highly technical, toxicological report. Most judges and lawyers do not have scientific training. Actually, it's a problem, I'd say all across the English-speaking world that our pool of illegal professionals are usually avoiding science, not going to med school, going to law school because they don't like math and science. Often that's the case. And then you get a case with very technical scientific evidence and you don't know how to understand it and there's nobody you can ask because your witness is not in front of you. So the nature of the problem has shifted, but the problem in both the colonial and the post-colonial period is it's not clear to a scientific layperson in all cases. And that's why you need cross-examination under oath.

Kris Turner:

It sounds like you've positioned your book perfectly to expose the origins and the roots of the how and the why this was a problem in the period your book discussed and then nature of the problem might have changed, but it's still a problem and they can maybe start to change their minds and change that inertia of their workflows to actually consider when and why they should call witnesses to court. That's excellent. It's law and action is what it is.

Mitra Sharafi:

And I want to give them an article. I mean, I would love it if they read my book, but my book is really aimed at historians and legal historians and lawyers who really love history. But for the lawyers who don't really love history and the judges who don't really love history, I want to give them just an article that's going to give them exactly what they need. So I'm working on that. I've got a couple spinoff articles from the book project and that's one of them.

Kris Turner:

Excellent. So as readers come to your book and come to these articles that you're spinning off of the book and as listeners to this podcast think about these issues, what's the one idea or takeaway you hope stays with them?

Mitra Sharafi:

Well, I think my book is a story of how the colonial context created better specific tests in some instances, but worse testing in general. So in other words, yes, we get the precipitant test, the catalase test, the sperm cell staining method coming out of colonial India, but also we get criminal procedure that actually creates a disincentive to test well in the lab. And this feature lives on not only in India, but other parts of South Asia and even the world today. So I think the big message is like the legacy of colonial systems lives on in criminal trials and forensic labs today. I'm just trying to point out to people, show them some of the places where what we do today has these historical roots that have been lost in the midst of time until now.

Kris Turner:

Until your book has cleared away all those myths and people can read about it and learn. Again, I just love that the history that explains to me when I have a question says, why is it this way? Books like yours help illuminate the way for me. So I'm so excited to read it myself. I look forward to it. Professor Sharafi, thank you once again for joining the podcast to discuss not just your newest book and all the important topics it covers, but also everything from AI to research to everything I asked you about in detail. And like I said, I have about three pages worth of notes they will discuss off camera, so to speak, after this is all done. We'll be sure to link out to Professor Sharafi's scholarship on our podcast page, along with everything else we discussed today and with a link to her blog where she works out so many wonderful things there as well. Both are just wonderful ways to engage deeply in her work. Again, Professor Sharafi, thank you for joining the podcast today.

Mitra Sharafi:

Thanks for having me.

Kris Turner:

Thank you and thank you all for listening. This was Wisconsin Law in Action from the University of Wisconsin Law School. To hear more conversations with our faculty about their research and its real world impact, visit wilawinaction.law.wisc.edu. You can stay up to date on Wisconsin Law School's scholarship by subscribing to this podcast by the Apple iTunes store or follow the Wisconsin Law School on social media for updates and faculty news and publications. I'm Kris Turner. See you next time and happy researching.