

ASPEN COLLEGE SERIES

■ Joelyn D. Marlowe

EVIDENCE FOR PARALEGALS

FIFTH EDITION



Wolters Kluwer

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Evidence for Paralegals

Fifth Edition

Joelyn D. Marlowe

Career Prosecutor



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About the Author

Joelyn D. Marlowe was a career prosecutor for thirty years. She began prosecuting misdemeanor crimes at the Tucson City Prosecutor's Office as an intern while she was still in law school. Thereafter, at the Pima County Attorney's Office, she prosecuted all types of felony offenses, but she specialized in prosecuting child and adult sexual abuse cases.

She recently retired after dedicating twenty-five years to the United States Attorney's Office in the District of Arizona where she handled many types of federal criminal cases. She spent much of her time in the courtroom. Additionally, she prepared appellate briefs and argued numerous cases at the United States Court of Appeals for the Ninth Circuit.

In 2011, she lived and worked for one year in Afghanistan as a Senior Legal Advisor for the Department of Justice Rule of Law Anti-Terrorism Mission.

Her first career was teaching research and essay writing to college-bound students in a Nebraska high school. Once she became an attorney, it was no surprise that she wanted to combine her legal knowledge and experience with her teaching skills. Accordingly, for many years, Joelyn simultaneously maintained a part-time position as an adjunct professor at Pima Community College, where she taught the Federal Rules of Evidence to paralegal students. She employed her unique sense of humor, her love of the substantive law embodied in the rules of evidence, and her experience in the courtroom to enhance her students' appreciation and understanding of evidentiary law.

When she was not working, Joelyn spent her free time traveling the world and, in particular, loving life in a small countryside village in Tuscany, Italy. Now, as a retiree and until recently, she enjoyed having free time to walk and travel with her brilliant dog Bella, the love of her life, who recently went to doggie heaven. Joelyn also, reads, writes, gardens, travels, and does anything else that inspires her!

*In memory of loved ones who have been called home, and in
celebration of those who remain*

—and especially for you, Roo—you were such a good friend.

*—and now for you, my sweet Bella—you will always be the love
of my life.*

jdm

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Foreword

In the present volume, Joelyn Marlowe has drawn on her rich and diverse legal experience to provide an eminently readable and useful exposition of trial evidence for paralegals and legal assistants. Replete with practical, easily graspable examples, case extracts, end-of-chapter summaries, and chapter review questions, the book can be read cover to cover or kept on the desk as a reference. I would recommend doing both.

This book explores the rules of evidence to just the right degree. It also contains helpful hints on such matters as gathering evidence, interviewing witnesses, and researching and fashioning evidentiary arguments, all tasks likely to be performed by paralegals and legal assistants.

Stressing the crucial role of legal argumentation, the author accurately imparts a feel for the imperfect and chancy process by which judges arrive at evidentiary decisions. The degree of elasticity of the rules emerges clearly. Ethical limits are conveyed well.

Not only those engaged in litigation work will benefit from this knowledge of evidence, but also those working on any legal matter that potentially could wind up in court. Paralegals and legal assistants are involved in planning, organizing, and drafting many documents, arrangements, and transactions. They work on tax planning; wills and estates; formation of corporations, partnerships, and other business entities; corporate mergers; pre-nuptial agreements; real estate deals; commercial contracts; securities issues; financial reorganizations; business loans; and so on.

Whatever your role may be, some knowledge of evidence is desirable. You should always have an eye on the practicalities of proof—on whether and how clients could marshal admissible evidence needed to vindicate their rights if the matter had to go to court. Your rights are hollow if you cannot prove your case. The prospect of what would happen if transactions went to court is the practical measure of a client's rights.

Good planning takes account of what admissible proof the client could produce; may provide for the accumulation and keeping of such proof; and may even prescribe what shall be sufficient proof in certain

circumstances. Proper planning in these respects is probably the best way to keep the matter out of court. Those who would like to take advantage of your firm's client will be considerably discouraged from trying to do so if they know the client's case could be proved.

A knowledge of evidence can also guide you through a myriad of office functions and communications, particularly those involving potential adversaries of the firm's clients. For example, it is useful to know that a contemporaneous note on a calendar may be admissible evidence of the meeting or conversation it records; that a failure to respond to a letter can in certain circumstances be admissible evidence of acquiescence in the facts stated in the letter; and that legal assistants and paralegals might be treated as agents not only of their law firms but of the law firm's clients, for some evidentiary purposes. Their statements may be usable against the client in a number of situations. In some circumstances (but not others), communications to or from a paralegal or legal assistant may be privileged.

Knowing these things, you may be able to avoid mistakes; actively fortify your firm's clients' evidentiary positions; and appreciate better the strengths and weaknesses of a potential adversary's evidentiary position. Forewarned is forearmed!

Marlowe is to be congratulated for providing a clear and concise roadmap in an area of the legal landscape where it is easy to go astray.

The book is also quite enjoyable.

Paul F. Rothstein
Professor of Law
Georgetown University
Washington, D.C.

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And a special thanks to Suzanne Cummins, for her contributions in the first two editions.

Joelyn D. Marlowe
August 2015

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