

Dane Thorley

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EDUCATION

YALE LAW SCHOOL, New Haven, CT
J.D., 2017

COLUMBIA UNIVERSITY, New York, NY
Ph.D., Political Science, expected 2018
Major: American Politics
Minor: Law
Dissertation: “Courts, Experiments, and Randomization”
(Chair: Jeffrey Lax; Sponsor: Donald Green)
M.Phil., Political Science, 2017
M.A., Political Science, 2015

COLUMBIA LAW SCHOOL, New York, NY
J.D. Candidate, 2012-2015 (transferred candidacy to Yale Law School in Fall 2015)

BRIGHAM YOUNG UNIVERSITY, Provo, UT
B.A., Political Science and Korean, 2012

TEACHING & RESEARCH INTERESTS

Primary Interests: Civil Procedure, Criminal Law, Criminal Procedure, Professional Responsibility, Election Law

Additional Interests: Federal Courts, Constitutional Law, Criminal Justice, Local Government, Contracts, Empirical Legal Studies, Law and Social Science

PUBLICATIONS & WORKS IN PROGRESS

Why Judges Don't Recuse and Attorneys Don't Ask Them To: A Randomized Field Experiment Testing the Efficacy of Recusal and Disclosure (working paper; job talk).

This Article reviews the two most prominent procedural approaches to addressing judicial conflicts of interest—recusal and in-court disclosure—and contends that they fail to account for the legal and institutional dynamics that surround the relationship between judges and attorneys. It argues that judges do not recuse, that attorneys will not ask them to, and that if we understand the incentives at play in these decisions, this should not surprise us. The shortcomings of recusal and disclosure are particularly salient in the context of judicial campaign finance, where judges often face the acute and unique dilemma of being assigned to preside over cases in which one of the attorneys has contributed

to their election campaign. To support these claims, this Article presents the results of a randomized field experiment which identifies active civil cases that feature donor-attorneys and randomly assigns a portion of the judges presiding over these cases to receive a letter from an NGO identifying the potential conflict and requesting recusal. The results support the growing skepticism surrounding judicial recusal and raise doubts that judicial disclosure is efficacious as a remedy for the limitations of recusal. The Article then explores broad institutional reform and concludes that first-order solutions such as the elimination of judicial elections or bans on judicial campaign fundraising are infeasible in the current political environment, although anonymized donations may be both practical and effective. The article concludes by suggesting that the problem of money in the courtroom is best ameliorated by the combination of no-cause peremptory challenges paired with automatic disclosure by the court system as opposed to the judges themselves.

Field Experimentation and the Study of Law and Policy, 10 ANN. REV. L. SOCIAL SCI. 53 (2014) (with Donald P. Green) (available at: <https://www.annualreviews.org/doi/10.1146/annurev-lawsocsci-110413-030936>).

Field experiments are randomized experiments that take place under naturalistic conditions. This research method is experiencing rapid growth throughout the social sciences and especially in legal studies, where it is used to rigorously evaluate policies and programs. We begin by charting the growth of field experimentation in law and legal studies, describing the statistical properties of experiments and discussing the practical threats that may undermine experiments conducted in field settings. Next, we review the experimental research literature in a variety of domains: legal institutions, including the judiciary, legislature, and legal profession; incentives, especially as they apply to tax compliance and business law; and laws and obligations, including legal code, policy, and legal theory. We conclude by highlighting some of the challenges that the experimental literature must confront if it is to speak convincingly to issues of law and policy.

Trial by Skype: Identifying the Causal Impact of Remote Adjudication, J. EMPIRICAL LEGAL STUD. (forthcoming 2018) (with Joshua Mitts)

American courts are increasingly using remote video conferencing to conduct hearings in a variety of contexts, including preliminary criminal proceedings, parole reviews, and witness testimony. This is all done with the promise that video conferencing reduces the costs necessary to conduct these proceedings without sacrificing due process. Building off the previous empirical work of Ingrid Eagly, we test these propositions in the context of U.S. immigration removal proceedings. We compare cases that were adjudicated via remote video feed against those in which the respondent appears in person.

Randomness Pre-considered: Making Unbiased Causal Inference Through the Random Assignment of Judges (under review) (available at: <https://ssrn.com/abstract=2628782>).

- Recipient of the Society for Empirical Legal Studies Theodore Eisenberg Prize (2015)

This paper contributes to the growing literature challenging the general assumption of random judicial assignment by identifying a set of common court procedures that I call “de-randomizing” events. These events, which include non-random assignment itself, should be accounted for in order to make unbiased causal claims but are commonly either ignored or not even recognized by researchers utilizing random judicial assignment. This paper also attempts to fill in what others have noted to be a dearth of information on the assignment protocols of courts other than the U.S. Courts of Appeals by presenting original data from a survey of the 30 largest U.S. state-level criminal courts, outlining their assignment protocols, and identifying the extent to which they feature the “de-randomizing” events described in the paper.

Please Recuse Yourself: A Field Experiment Exploring the Relationship Between Campaign Donations and Judicial Recusal (2018) (under review) (with Jonathon S. Krasno, Donald P. Green, Costas Panagopoulos, and Michael Schwam-Baird).

In this paper we present the results of a field experiment that explores the interaction of campaign finance, judicial recusal, and third-party watchdog groups. We identify active civil trial cases in which one of the attorneys involved made financial contributions to the judge's previous election campaign and randomly assign a portion of the judges presiding over these cases to receive letters identifying the potential conflict and requesting recusal. We find that highlighting the potential conflict and asking a judge to recuse has no significant impact on a judge's propensity to recuse herself but has a substantial and statistically significant impact on formal disclosure rates. This study provides novel insight into the impartiality of the judicial system and the sensitivity of elected judges to the appearance of conflicts of interest.

Testing Williams-Yulee: An Experiment on Judicial Elections, Institutional Trust, and Tenuous Empirical Claims in the Supreme Court (working paper) (available at: <https://ssrn.com/abstract=2994267>).

In *Williams-Yulee v. The Florida Bar* (2015), the Supreme Court ruled that a Florida law banning direct campaign solicitation by judicial candidates was not a violation of the First Amendment. In doing so, the majority relied on several untested empirical claims, including the proposition that direct solicitation has a distinctly stronger impact on the public's confidence in the judiciary than indirect solicitation. This paper tests these empirical claims using a nationally representative survey experiment that presents subjects with a hypothetical vignette in which a state trial-level judge runs for election and utilizes one of various campaign fundraising tactics. The survey then presents subjects with questions relating to the trust and legitimacy that they associate with both the judge featured in the vignette and the broader judicial system. I find that the public does not discern any significant difference between direct and indirect judicial solicitation but does see other campaign features (promises of recusal and the amount of the donations) as salient in regard to trust and legitimacy. These findings are at odds with the empirical assumptions that the majority relied upon in the *Williams-Yulee* decision.

The Legal and Ethical Challenges of Running Randomized Field Experiments in the Courtroom (working paper) (with Jacob Kopas) (available at: <https://ssrn.com/abstract=2994298>).

Although legal scholars have been utilizing experimental methodologies for over 60 years, they have only recently begun to design and implement field experiments, an empirical method in which subjects are randomly assigned treatments in natural settings. Because field experiments require the researcher to actively intervene in the subjects' lives, researchers and organizations running experiments must address a number of ethical concerns before and during their study. When field experiments take place in the court context, these ethical concerns become even more salient because researchers must also take into account the legal implications of randomizing interventions in actual court cases. In this article, we explore the legal and ethical issues surrounding the use of court-based field experiments and conclude that when properly designed, this methodological approach can and should be used to study laws, procedure, and behavior.

The Hidden Costs of High Bail and Pre-trial Detainment: Utilizing Random Judicial Assignment to Identify Causal Effects (working project; funded by The Laura and John Arnold Foundation) (with Miguel de Figueiredo).

Traditional evaluations of the bail and pretrial systems generally balance the likelihood of absconion and pre-trial criminality against the monetary cost of bail to the defendant. Recent empirical research, however, has indicated that pretrial detainment likely results in additional costs to defendants—individuals who are unable to afford bail and must subsequently await trial in jail are more likely to enter plea bargains, more likely to be found guilty, more likely to recidivate once released, and less

likely to find formal employment. In an ongoing study funded by the Laura and John Arnold Foundation, we are exploring these “hidden” costs of pretrial detainment by utilizing quasi-random assignment of initial appearance judges in Tucson County, Arizona and discontinuities in bail assessment in Connecticut. By utilizing the natural variation in the probability of pretrial detainment that these systems create, we can credibly estimate the causal impact that detainment subsequently has on a defendant’s case, future criminality, and social well-being.

The Effect of Expungement on Recidivism and Employment (working project; funded by The Laura and John Arnold Foundation) (with Miguel de Figueiredo).

The process of criminal record sealing and expungement is meant to afford individuals with criminal convictions the ability to erase their past mistakes and more easily obtain housing and employment. There is limited empirical evidence, however, that these benefits are realized, particularly in the digital age where criminal records can be removed by the state but persist in digital form on the internet. In an ongoing study funded by the Laura and John Arnold Foundation, we are collecting and analyzing expungement data from the Clark County, Nevada District Court, where judges are randomly assigned to expungement hearings. This system creates a naturally-occurring experiment that will allow us to compare the employment and social outcomes for those who are granted expungement against those who are not.

Testing the Right to Counsel in Parole Hearings: A Randomized Field Experiment (working project; in partnership with the Parole Preparation Project) (with Jacob Kopas).

Unlike in some states—most prominently California—the New York constitution does not extend the right to legal counsel to parole hearings. For over two years, we have been working with the Parole Preparation Project, a New York-based non-profit that connects volunteer attorneys and law students with individuals who are serving life sentences but are up for parole. We have worked with the Parole Preparation Project to randomly assign the volunteers, thereby allowing us to compare the parole hearing outcomes for those who have received assistance against those who have not. The results of this study will deliver the first well-identified data on the role that counsel might play in the parole process and will be important in the active, ongoing debate surrounding parole reform in New York and the right to counsel in the U.S. writ large.

ACADEMIC PRESENTATIONS

POLITICAL ECONOMY AND PUBLIC LAW CONFERENCE (June 16, 2018)

YALE LAW SCHOOL, Cultural Cognition Project (May 7, 2018)

PROGRAM ON EMPIRICAL LEGAL STUDIES REPLICATION CONFERENCE (April 27, 2018)

NOTRE DAME LAW SCHOOL, Workshop on Preparing for the Legal Academy (March 26, 2018)

YALE LAW SCHOOL, Ethics Bureau (March 22, 2018)

ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION (September 1, 2017)

ANNUAL MEETING OF THE AMERICAN LAW AND ECONOMICS ASSOCIATION (Accepted) (May 12, 2017)

MIDWESTERN POLITICAL SCIENCE ASSOCIATION ANNUAL CONFERENCE (April 8, 2017)

HARVARD EXPERIMENTAL POLITICAL SCIENCE GRADUATE STUDENT CONFERENCE (March 25, 2017)

WESTERN EMPIRICAL LEGAL STUDIES CONFERENCE (March 12, 2016)

YALE ISPS EXPERIMENTS WORKSHOP (November 14, 2015)

CONFERENCE ON EMPIRICAL LEGAL STUDIES (October 30, 2015)

ANNUAL MEETING OF THE AMERICAN LAW AND ECONOMICS ASSOCIATION (May 15, 2015)

ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION (August 26, 2014)

GRANTS, HONORS & FELLOWSHIPS

LAURA & JOHN ARNOLD FOUNDATION GRANT, Research on the Effects of Pretrial Detainment and Bail, \$80,107 (2016-2018)

LAURA & JOHN ARNOLD FOUNDATION GRANT, Research on the Effects of Criminal Expungement, \$74,096 (2016-2018)

DISSERTATION DEVELOPMENT GRANT, Columbia University, \$3,000 (2018)

THEODORE EISENBERG PRIZE, Society for Empirical Legal Studies (2015)

WARNER W. GARDNER RESEARCH FELLOWSHIP, Columbia Law School (2013)

HARLAN FISK STONE SCHOLAR, Columbia Law School (2012-2013)

LAWRENCE A. WIEN FELLOWSHIP IN CORPORATE SOCIAL RESPONSIBILITY, Columbia Law School (2012)

JUDICIAL CLERKSHIP

JUDGE ANDREW PATRICK GORDON, U.S. District Court, District of Nevada (Aug. 2018 – Aug. 2019)

TEACHING & LEGAL EXPERIENCE

COLUMBIA LAW SCHOOL, New York, NY

Postdoctoral Fellow in Law and Economics (Nov. 2017 – present)

Research Assistant for Robert Scott (April 2014 – July 2015)

Research Assistant for Benjamin Liebman (April 2013 – July 2015)

Teaching Assistant (Torts) for Benjamin Liebman (Aug. 2013 – Jan. 2015)

Research Assistant for Katarina Pistor (April 2013 – April 2014)

YALE LAW SCHOOL, New Haven, CT

Visiting Researcher (Aug. 2017 – June 2018)

Guest Lecturer for Empirical Legal Seminar (Oct. 2016; Oct. 2017)

Temporary Retraining Order Project Volunteer (Jan. 2016 – March 2017)

Research Assistant for Richard Brooks (April 2016 – June 2016)

Law and Field Experiments Working Group Organizer (Jan. 2016 – April 2016)

YALE LAW & POLICY REVIEW, New Haven, CT

Submissions Editor, Vol. 35 (May 2016 – April 2017)

Lead Editor, Vol. 34 (Jan. 2016 – April 2016)

LATHAM & WATKINS, LLP, New York, NY

Summer Associate (May 2016 – July 2016)

COLUMBIA UNIVERSITY, New York, NY

Teaching Fellow (Introduction to American Politics) (August 2014 – May 2015)

Organizer for Law and Policy Workshop (Jan. 2014 – April 2014)

MEMBERSHIPS

MIDWESTERN POLITICAL SCIENCE ASSOCIATION (since 2016)

AMERICAN LAW AND ECONOMICS ASSOCIATION (since 2014)

SOCIETY OF EMPIRICAL LEGAL STUDIES (since 2013)

AMERICAN POLITICAL SCIENCE ASSOCIATION (since 2013)

REFERENCES

PROFESSOR IAN AYRES

Yale Law School

(203) 415-5587

PROFESSOR ROBERT SCOTT

Columbia Law School

(212) 854-0072

PROFESSOR TOM TYLER

Yale Law School

(203) 432-7432

PROFESSOR BEN LIEBMAN

Columbia Law School

(212) 854-0678

HON. ANDREW GORDON

U.S. District Court, District of Nevada

(702) 868-4940

PROFESSOR DONALD GREEN

Columbia University, Political Science

(212) 854-0397