2017

The Best of Court Review: 1998–2017

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1998–2017

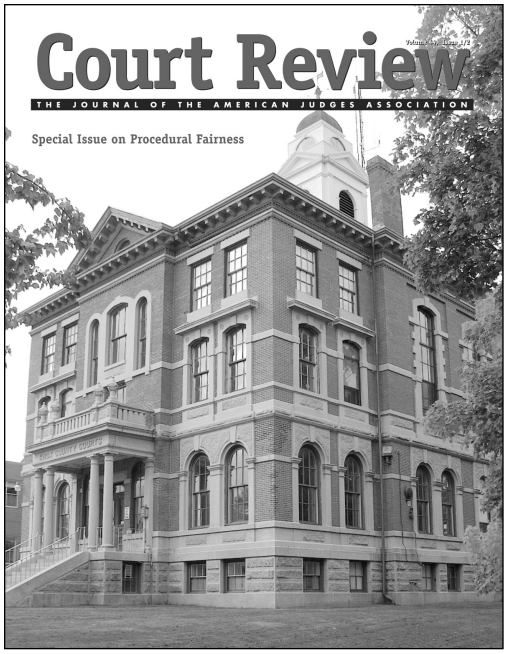
AJA WHITE PAPERS

Minding the Court: Enhancing the Decision-Making Process, by Pamela Casey, Kevin Burke, and Steve Leben, 49 Ct. Rev. 76 (2013).

Social psychologist Pamela Casey and judges Kevin Burke and Steve Leben jointly explored how the science of decision making might help judges in their daily work.

Procedural Fairness: A Key Ingredient in Public Satisfaction, by Kevin Burke and Steve Leben, 44 Ct. Rev. 4 (2008).

The first of the American Judges Association's white papers, this paper made the case for judges focusing on procedural-fairness principles as the key to getting public satisfaction with the courts in general and greater compliance with court orders in specific cases. The paper reviewed the research on procedural fairness (also called procedural justice) and presented detailed recommendations for judges, court administrators, courts, court leaders, researchers, and judicial educators.



The Debate over the Selection and Retention of Judges: How Judges Can Ride the Wave, by Mary A. Celeste, 46 Ct. Rev. 82 (2011).

Judge Mary Celeste put the debates over judicial-selection systems in context—a context of American history and recent United Supreme Court decisions about what could be said in judicial campaigns. She identified challenges judges might face regardless of selection system.

The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Courts, by Brian MacKenzie, 52 Ct. Rev. 8 (2016).

Based on his own experience as a drug-court judge and data from other studies, Judge Brian MacKenzie argued that the judge is the key to drug-court success and that the successful drug-court judge must practice the principles of procedural fairness.

ALTERNATIVE DISPUTE RESOLUTION

Breaking Impasses in Judicial Settlement Conferences: Seven (More) Techniques for Resolution, 46 Ct. Rev. 130 (2011).

United States Magistrate Judge Morton Denlow provided seven techniques (with examples) for getting parties to settle cases.

Concluding a Successful Settlement Conference: It Ain't Over Till It's Over, by Morton Denlow, 39(3) Ct. Rev. 14 (2002).

United States Magistrate Judge Morton Denlow provided practical advice—and a handy "Judge's Settlement Checklist/Term Sheet"—to help make sure that settlement agreements reached in a settlement conference couldn't fall apart afterward.

Municipal Court Mediation: Reducing the Barking Dog Docket, by Karen Arnold-Burger, 35(3) Ct. Rev. 50 (1998).

Then municipal-court judge Karen Arnold-Burger told how she started a mediation program with no money: "And the best news? I haven't heard a barking dog case in months."

BOOK REVIEWS

Actual Innocence: The Justice System Confronts Wrongful Convictions, by Steve Leben, *reviewing* Jim Dwyer, Peter Neufeld & Barry Scheck, Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongfully Convicted (2000), 36(4) Ct. Rev. 12 (2000).

The book set out in separate chapters the typical ways the justice system may go awry and the innocent found guilty. The four most frequent causes for 62 convictions found wrongful by DNA testing: eyewitness error, flawed blood-serology inclusions, police misconduct, and prosecutorial misconduct.

A Psycholegal Deskbook for Bench and Bar: Book Review of Forensic Assessments in Criminal and Civil Law, by John W. Brown and Benjamin K. Hoover, *reviewing* Forensic Assessments in Criminal and Civil Law: A Handbook for Lawyers (Ronald Roesch and Patricia A. Zapf eds. 2012), 51 Ct. Rev. 4 (2015).

Virginia trial judge John W. Brown and his court's staff attorney, Benjamin Hoover, looked at the usefulness for judges of a comprehensive deskbook about forensic psychological assessments used in civil and criminal proceedings. The book covers empirical foundations and limits for all of the leading types of assessments, and our reviewers found that the book's "value lies as a solid background and reference volume."

Do Happier Judges Make Better Judges?, by Steve Leben, *reviewing* Nancy Levit and Douglas O. Linder, The Happy Lawyer: Making a Good Life in the Law (2010), 45 Ct. Rev. 132 (2010).

Law professors Nancy Levit and Douglas Linder brought

All Court Review *articles from 1998 to the present can be found at amjudges.org/publications.*

together psychological research on what makes people happy in their lives and work, applying it to lawyers. Our reviewer considered how those lessons might be used to make courts and courthouses better places to work.

Fugitive Justice: Slavery and the Law in Pre-Civil War America, by Karen Arnold-Burger, *reviewing* STEVEN LUBET, FUGITIVE JUSTICE: RUNAWAYS, RESCUERS, AND SLAVERY ON TRIAL (2010), 46 CT. REV. 116 (2010).

The book looks at enforcement of the Fugitive Slave Acts in the years leading up to the Civil War and the role of attorneys and judges of the time in using it to shape the debate over slavery. Judge Karen Arnold-Burger reviewed the book and the times, noting that the book includes detailed accounts of three trials, with excerpts from trial transcripts and considerations of trial strategy.

Law in a Therapeutic Key: A Resource for Judges, by Thomas T. Merrigan, *reviewing* LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE (David B. Wexler & Bruce J. Winick eds., 1996), 37(1) CT. REV. 8 (2000).

Judge Thomas Merrigan reviewed this book on therapeutic jurisprudence, the view generally that since legal proceedings can affect the psychological well-being of participants, judges should use their discretion to promote therapeutic outcomes where that's possible without running contrary to any of the judge's legal duties.

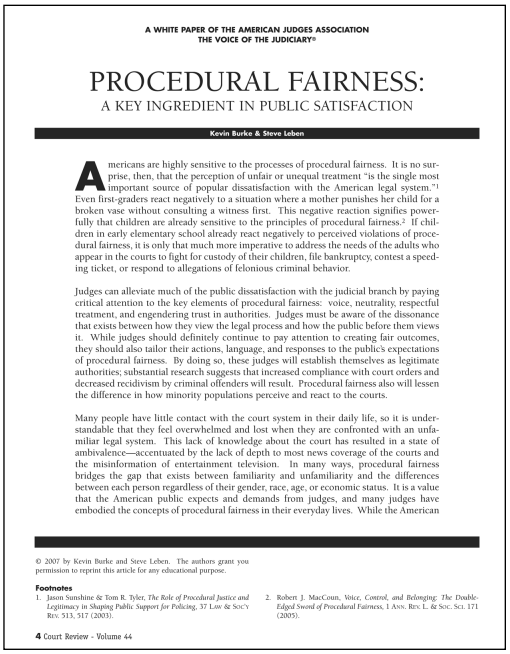
The book collected key articles exploring the role of therapeutic jurisprudence.

The Politics of Judges, by Frank B. Cross, *reviewing* TERRI JENNINGS PERETTI, IN DEFENSE OF A POLITICAL COURT (1999), 37(2) CT. REV. 18 (2000).

In her book, Terri Jennings Peretti argued that judges made decisions based on their politics, not neutral principles of law, that judges must tailor decisions to congressional politics, and that this is a good thing. Professor Frank Cross noted limitations in her review of political-science research, but also found her argument "an interesting one, well supported, and deserving of a hearing."

Writing Like the Best Judges, by Steve Leben, *reviewing* ROSS GUBERMAN, POINT TAKEN: HOW TO WRITE LIKE THE WORLD'S BEST JUDGES (2014), 51 CT. REV. 90 (2015).

Legal-writing consultant Ross Guberman uses opinion excerpts from 34 judges known for their writing abilities to show how every part of a judicial opinion can be done at the highest level. Our reviewer's conclusion: "Any judge who studies the book will become a better writer. And an already talented writer who reads the book will also become a better judge."



A WHITE PAPER OF THE AMERICAN JUDGES ASSOCIATION
THE VOICE OF THE JUDICIARY®

PROCEDURAL FAIRNESS:
A KEY INGREDIENT IN PUBLIC SATISFACTION

Kevin Burke & Steve Leben

Americans are highly sensitive to the processes of procedural fairness. It is no surprise, then, that the perception of unfair or unequal treatment "is the single most important source of popular dissatisfaction with the American legal system."[1] Even first-graders react negatively to a situation where a mother punishes her child for a broken vase without consulting a witness first. This negative reaction signifies powerfully that children are already sensitive to the principles of procedural fairness.[2] If children in early elementary school already react negatively to perceived violations of procedural fairness, it is only that much more imperative to address the needs of the adults who appear in the courts to fight for custody of their children, file bankruptcy, contest a speeding ticket, or respond to allegations of felonious criminal behavior.

Judges can alleviate much of the public dissatisfaction with the judicial branch by paying critical attention to the key elements of procedural fairness: voice, neutrality, respectful treatment, and engendering trust in authorities. Judges must be aware of the dissonance that exists between how they view the legal process and how the public before them views it. While judges should definitely continue to pay attention to creating fair outcomes, they should also tailor their actions, language, and responses to the public's expectations of procedural fairness. By doing so, these judges will establish themselves as legitimate authorities; substantial research suggests that increased compliance with court orders and decreased recidivism by criminal offenders will result. Procedural fairness also will lessen the difference in how minority populations perceive and react to the courts.

Many people have little contact with the court system in their daily life, so it is understandable that they feel overwhelmed and lost when they are confronted with an unfamiliar legal system. This lack of knowledge about the court has resulted in a state of ambivalence—accentuated by the lack of depth to most news coverage of the courts and the misinformation of entertainment television. In many ways, procedural fairness bridges the gap that exists between familiarity and unfamiliarity and the differences between each person regardless of their gender, race, age, or economic status. It is a value that the American public expects and demands from judges, and many judges have embodied the concepts of procedural fairness in their everyday lives. While the American

Footnotes
1. Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513, 517 (2003).
2. Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, 1 ANN. REV. L. & SOC. SCI. 171 (2005).

DOMESTIC VIOLENCE AND FAMILY LAW

Dealing with Complex Evidence of Domestic Violence: A Primer for the Civil Bench, by Jane H. Aiken and Jane C. Murphy, 39(2) CT. REV. 12 (2002).

Professors Jane Aiken and Jane Murphy discussed how to handle the evidentiary issues that frequently arise in domestic-violence cases.

Special Issue on Handling Domestic-Violence Cases, 53 Ct. Rev. 1 (2017).

Our most recent special-issue on handling domestic-violence cases included a bench card on steps to increase safety when handling domestic-violence cases, resources (including a list of key articles), and separate articles on expert-witness standards, batterer-intervention programs, and the vantage point of victims.

Screening for Domestic Violence: Meeting the Challenge of Identifying Domestic Relations Cases Involving Domestic Violence and Developing Strategies for Those Cases, by Julie Kunce Field, 39(2) CT. REV. 4 (2002).

A primer on how to screen for safety issues and what judges can—and cannot—do to keep people safe in those cases.

The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases, by Merrilyn McDonald, 35(1) CT. REV. 12 (1998).

Social worker Merrilyn McDonald reviewed the incidence of child sexual abuse in society and in divorce cases, as well as the research showing that false allegations were not widespread.

Visits in Cases Marked by Violence: Judicial Actions That Can Help Keep Children and Victims Safe, by Julie Kunce Field, 35(3) CT. REV. 23 (1998).

The introduction to the article put it well: "It's a judge's worst nightmare—a mother and child killed in the process of making a court-ordered visitation exchange." Then-Professor Julie Kunce Field went from that real-life case example to explain both the power dynamics and domestic violence and a series of steps judges could take in court orders to help keep victims safe.

FOR THE NEW JUDGE

Isolation in the Judicial Career, by Isaiah M. Zimmerman, 36(4) CT. REV. 4 (2000).

Psychologist Isaiah Zimmerman talked about how the cutting of ties with many others that typically occurs when a person becomes a judge may affect judges of varying personality traits. Though "[i]solation is not going to be removed from the judicial career," he suggested several steps judges can take to maintain a healthy life and judicial career:

"By understanding and actively employing the measures recommended, a judge can transmute isolation into a rewarding resource."

So You're Going to Be a Judge: Ethical Issues for New Judges, by Cynthia Gray, 52 CT. REV. 80 (2016).

Judicial-ethics expert Cynthia Gray presented a primer for every new judge on the steps the judge must take to clear the decks ethically when taking the bench.

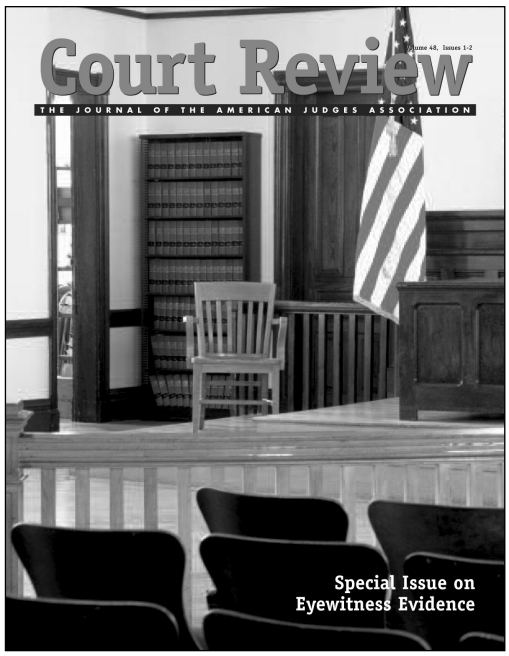
JUDICIAL ETHICS

Extrajudicial Speech: Navigating Perils and Avoiding Pitfalls, by William G. Ross, 38(2) CT. REV. 36 (2001).

Professor William Ross examined the disqualification of the federal judge who had been presiding over a Microsoft antitrust case for extrajudicial speech to reporters. Ross provides practical suggestions for dealing with the media in an ethical manner.

Good Judging and Good Judgment, by Stephen C. Yeazell, 35(3) CT. REV. 8 (1998).

Professor Stephen Yeazell addressed the question, "When does independence become lawlessness?," examining the case of an intermediate appellate judge who announced he would refuse to follow a ruling of the court above him. Yeazell: "[A]ny discerning defense of judicial independence will mean disapproval of some judicial behavior."



On Judge Posner and the Perils of Commenting on Pending or Impending Proceedings, by Steven Lubet, 37(2) CT. REV. 4 (2000).

The Ethics of Judicial Commentary: A Reply to Lubet, by Richard A. Posner, 37(2) CT. REV. 6 (2000).

When Is an Investigation Merely *an Investigation? A Reply to Posner*, by Steven Lubet, 37(2) CT. REV. 7 (2000).

Free Speech for Judges: A Commentary on Lubet et al. v. Posner, by Monroe H. Freedman, 37(4) CT. REV. 4 (2001).

Free Speech and Judicial Neutrality: A Reply to Professor Freedman, by Steven Lubet, 37(4) CT. REV. 6 (2001).

In 1999, Judge Richard Posner wrote a book about the impeachment of President Bill Clinton, offering the opinion that President Clinton had committed "various felonious obstructions of justice" and clearly "perjured himself in the Paula Jones deposition." Professor Steven Lubet, an expert on judicial ethics, argued in *Court Review* that Posner had violated judicial-ethics rules "by commenting on both pending and impending proceedings." We gave Judge Posner the opportunity to respond and Professor Lubet the opportunity to close out the discussion.

That debate led to another essay by Professor Monroe Freedman, another legal-ethics expert. Freedman sided generally with Judge Posner on First Amendment grounds, though he suggested an amendment to judicial-ethics rules. Professor Lubet again responded.

So You're Going to Be a Judge: Ethical Issues for New Judges, by Cynthia Gray, 52 CT. REV. 80 (2016).

See the description under "For the New Judge."

JUDICIAL INDEPENDENCE

Remarks on Judicial Independence, by Ruth Bader Ginsburg, 43 CT. REV. 112 (2008).

In remarks to the AJA's annual educational conference, Justice Ginsburg discussed both historic and recent threats to judicial independence.

JURY TRIALS

First, Do No Harm: On Addressing the Problem of Implicit Bias in Juror Decision Making, by Jennifer K. Elek and Paula Hannaford-Agor, 49 CT. REV. 190 (2013).

Implicit Bias and the American Juror, by Jennifer K. Elek and Paula Hannaford-Agor, 51 CT. REV. 116 (2015).

In a 2013 article, researchers Jennifer Elek and Paula Hannaford-Agor reviewed various measures that have been used in an attempt to reduce the potential for implicit bias in jury verdicts. Based on social-science research, they identified the most promising practices. In a follow-up article in 2015, they reviewed the results of a mock-jury experiment using specialized jury instructions aimed at reducing juror bias. The researchers found "some preliminary evidence to suggest that a specialized instruction could alter expressions of bias in juror judgments." The 2015 article provided a sample instruction that might be used, annotated to show the research supporting each of the statements it contained.

Jury Instructions in the New Millennium, by Peter M. Tiersma, 36(2) CT. REV. 28 (1999).

Law professor and linguist Peter Tiersma shows how pattern jury instructions based on legal language can easily be misunderstood by jurors. He also provides several suggestions for writing instructions the average juror would understand. His conclusion: "Today there are modern doomsayers who continue to claim that the law is scarcely expressible in ordinary English. It is time to prove them wrong."

On Better Jury Selection: Spotting UFO Jurors Before They Enter the Jury Room, by Gregory E. Mize, 36(1) CT. REV. 10 (1999).

After cochairing the District of Columbia's jury-reform project, Judge Gregory Mize began his own experiment, conducting individual voir dire in a small room with each potential juror. He found that potential jurors who had been silent in open court often told much more in this setting—with example after example of key information that would not

have been discovered under normal procedures. His conclusion: "I am convinced that even if individual questioning took up significant amounts of time (which it has not for me), it would be well worth expending the effort in order to avoid juror UFO's and the consequent danger of mistrials caused by impaneling biased or disabled citizens."

Special Issue on Jury Reform, 41(1) Ct. Rev. 1 (2004).

In this special issue, we reviewed the use of various jury-trial innovations (like letting jurors ask questions or take notes), evaluative research on how well these innovations allowed jurors to better understand the evidence, and what happened when questions jurors submitted weren't asked.

LEGAL WRITING

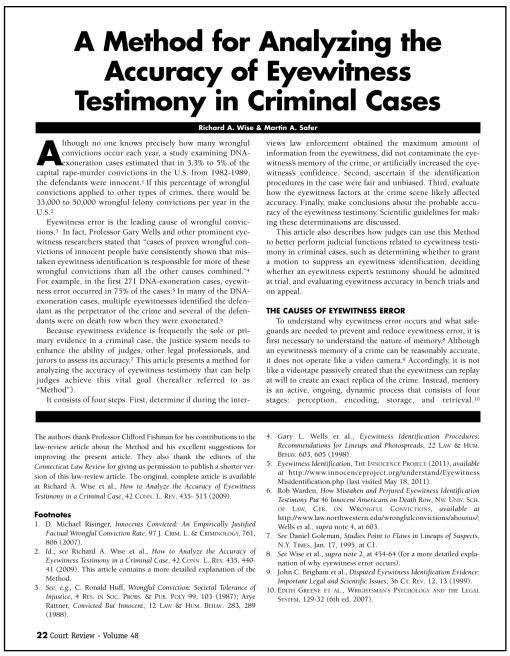
Clearing the Cobwebs from Judicial Opinions, by Bryan A. Garner, 38(2) Ct. Rev. 4 (2001).

Against Footnotes, by Richard A. Posner, 38(2) Ct. Rev. 24 (2001).

No Longer Speaking in Code, by Rodney Davis, 38(2) Ct. Rev. 26 (2001).

Afterword, by Bryan A. Garner, 38(2) Ct. Rev. 28 (2001).

Bryan Garner, editor of *Black's Law Dictionary* and author of several usage books, including *Garner's Dictionary of Legal Usage*, presented a simple proposition for judges: put all the citations in footnotes while keeping all the substance in the text. If you've never tried it, take a look at the examples Garner provided in this article. Judge Richard Posner responded—opposing footnotes altogether. Another judge, Rodney Davis, explained how he'd adapted to putting citations in footnotes.



A Method for Analyzing the Accuracy of Eyewitness Testimony in Criminal Cases

Richard A. Wise & Martin A. Safer

Although no one knows precisely how many wrongful convictions occur each year, a study examining DNA-exoneration cases estimated that in 3.3% to 5% of the capital rape-murder convictions in the U.S. from 1982-1989, the defendants were innocent.[1] If this percentage of wrongful convictions applied to other types of crimes, there would be 33,000 to 50,000 wrongful felony convictions per year in the U.S.[2]

Eyewitness error is the leading cause of wrongful convictions.[3] In fact, Professor Gary Wells and other prominent eyewitness researchers stated that "cases of proven wrongful convictions of innocent people have consistently shown that mistaken eyewitness identification is responsible for more of these wrongful convictions than all the other causes combined."[4] For example, in the first 271 DNA-exoneration cases, eyewitness error occurred in 75% of the cases.[5] In many of the DNA-exoneration cases, multiple eyewitnesses identified the defendant as the perpetrator of the crime and several of the defendants were on death row when they were exonerated.[6]

Because eyewitness evidence is frequently the sole or primary evidence in a criminal case, the justice system needs to enhance the ability of judges, other legal professionals, and jurors to assess its accuracy.[7] This article presents a method for analyzing the accuracy of eyewitness testimony that can help judges achieve this vital goal (hereafter referred to as "Method").

It consists of four steps. First, determine if during the interviews law enforcement obtained the maximum amount of information from the eyewitness, did not contaminate the eyewitness's memory of the crime, or artificially increased the eyewitness's confidence. Second, ascertain if the identification procedures in the case were fair and unbiased. Third, evaluate how the eyewitness factors at the crime scene likely affected accuracy. Finally, make conclusions about the probable accuracy of the eyewitness testimony. Scientific guidelines for making these determinations are discussed.

This article also describes how judges can use this Method to better perform judicial functions related to eyewitness testimony in criminal cases, such as determining whether to grant a motion to suppress an eyewitness identification, deciding whether an eyewitness expert's testimony should be admitted at trial, and evaluating eyewitness accuracy in bench trials and on appeal.

THE CAUSES OF EYEWITNESS ERROR

To understand why eyewitness error occurs and what safeguards are needed to prevent and reduce eyewitness error, it is first necessary to understand the nature of memory.[8] Although an eyewitness's memory of a crime can be reasonably accurate, it does not operate like a video camera.[9] Accordingly, it is not like a videotape passively created that the eyewitness can replay at will to create an exact replica of the crime. Instead, memory is an active, ongoing, dynamic process that consists of four stages: perception, encoding, storage, and retrieval.[10]

The authors thank Professor Clifford Fishman for his contributions to the law-review article about the Method and his excellent suggestions for improving the present article. They also thank the editors of the *Connecticut Law Review* for giving us permission to publish a shorter version of this law-review article. The original, complete article is available at Richard A. Wise et al., *How to Analyze the Accuracy of Eyewitness Testimony in a Criminal Case*, 42 Conn. L. Rev. 435- 513 (2009).

Footnotes

1. D. Michael Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 J. Crim. L. & Criminology, 761, 809 (2007).
2. *Id.*; *see* Richard A. Wise et al., *How to Analyze the Accuracy of Eyewitness Testimony in a Criminal Case*, 42 Conn. L. Rev. 435, 440-41 (2009). This article contains a more detailed explanation of the Method.
3. *See, e.g.*, C. Ronald Huff, *Wrongful Conviction: Societal Tolerance of Injustice*, 4 Res. in Soc. Probs. & Pub. Pol'y 99, 103 (1987); Arye Rattner, *Convicted But Innocent*, 12 Law & Hum. Behav. 283, 289 (1988).
4. Gary L. Wells et al., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 Law & Hum. Behav. 603, 605 (1998).
5. Eyewitness Identification, The Innocence Project (2011), *available at* http://www.innocenceproject.org/understand/Eyewitness Misidentification.php (last visited May 18, 2011).
6. Rob Warden, *How Mistaken and Perjured Eyewitness Identification Testimony Put 46 Innocent Americans on Death Row*, Nw. Univ. Sch. of Law, Ctr. on Wrongful Convictions, *available at* http://www.law.northwestern.edu/wrongfulconvictions/aboutus/; Wells et al., *supra* note 4, at 603.
7. *See* Daniel Goleman, *Studies Point to Flaws in Lineups of Suspects*, N.Y. Times, Jan. 17, 1995, at C1.
8. *See* Wise et al., *supra* note 2, at 454-64 (for a more detailed explanation of why eyewitness error occurs).
9. John C. Brigham et al., *Disputed Eyewitness Identification Evidence: Important Legal and Scientific Issues*, 36 Ct. Rev. 12, 13 (1999).
10. Edith Greene et al., Wrightsman's Psychology and the Legal System, 129-32 (6th ed. 2007).

First Things First: The Lost Art of Summarizing, by Joseph Kimble, 38(2) Ct. Rev. 30 (2001).

Professor Joseph Kimble showed how to summarize to write great judicial-opinion openers, better legal memos, and understandable contracts, statutes, and rules.

How to Write an Impeachment Order, by Joseph Kimble, 36(2) Ct. Rev. 8 (1999).

While Professor Joseph Kimble used the order that ended the impeachment of President Bill Clinton as the take-off point for this piece, he mainly showed how to take bloated prose and prune it down to its essence. His conclusion: "How do you write an impeachment order? The same way you should write any legal sentence, paragraph, page, or document. In plain language."

Writing Like the Best Judges, by Steve Leben, *reviewing* Ross Guberman, Point Taken: How to Write Like the World's Best Judges (2014), 51 Ct. Rev. 90 (2015).

See the description under "Book Reviews."

MAKING BETTER JUDGES®

A Court and a Judiciary That Is as Good as Its Promise, by Kevin S. Burke, 40(2) Ct. Rev. 4 (2003).

In remarks on receiving the William H. Rehnquist Award for Judicial Excellence, Judge Kevin Burke argued for a judiciary "known not just for speed and efficiency . . . but also for other, less quantifiable aspects of justice—things like fairness and respect, attention to human equality, a focus on careful listening, and a demand that people leave our courts understanding our orders."

A New Model for Civil Case Management: Efficiency Through Intrinsic Engagement, by David Prince, 50 Ct. Rev. 174 (2014).

Colorado trial judge David Prince considered ways to mold the management of civil litigation around procedural-justice and organizational-management research findings. He explained how these findings should frame a judge's thinking about case management and made specific suggestions for managing civil cases.

Addressing Implicit Bias in the Courts, Pamela M. Casey, Roger K. Warren, Fred L. Cheesman, and Jennifer K. Elek, 49 Ct. Rev. 64 (2013).

Researchers Pamela Casey, Fred Cheesman, and Jennifer Elek joined with former judge and National Center for State Courts president Roger Warren to outline seven research-based strategies for reducing the influence of implicit bias in decision making. The article was research-based, highly practical, and written specifically for judges and other court personnel.

Courting Justice with the Heart: Emotional Intelligence in the Courtroom, by Nancy Perry Lubiani and Patricia H Murrell, 38(1) Ct. Rev. 10 (2001).

Two judicial educators discussed the importance of emotional intelligence for judging and how to use judicial education to enhance it.

Heuristics and Biases in Judicial Decisions, by Eyal Peer and Eyal Gamliel, 49 Ct. Rev. 114 (2013).

Israeli researchers Eyal Peer and Eyal Gamliel review common decision-making fallacies judges are susceptible to, including confirmation bias, hindsight bias, the conjunction fallacy, and an inability to ignore inadmissible evidence. They also recount a famous Israeli experiment with judges making parole decisions where the judges were more likely to grant paroles at the beginning of the day or after a break.

High-Profile Cases: Are They More Than a Wrinkle in the Daily Routine?, by Robert Alsdorf, 47 Ct. Rev. 32 (2011).

Seattle judge Robert Alsdorf handled a very high-profile case during the year he would be up for reelection. He provided guidance on how to craft the decision to be accessible and understood. Excerpts from his written decision, which over-

turned a change in the state constitution adopted in a referendum, were included.

Informing Criminal Defendants of the Immigration Consequences of Their Convictions: The Trial Judge's Duty, by Kate Ono Rahel and Justin Shilhanek, 50 Ct. Rev. 196 (2014).

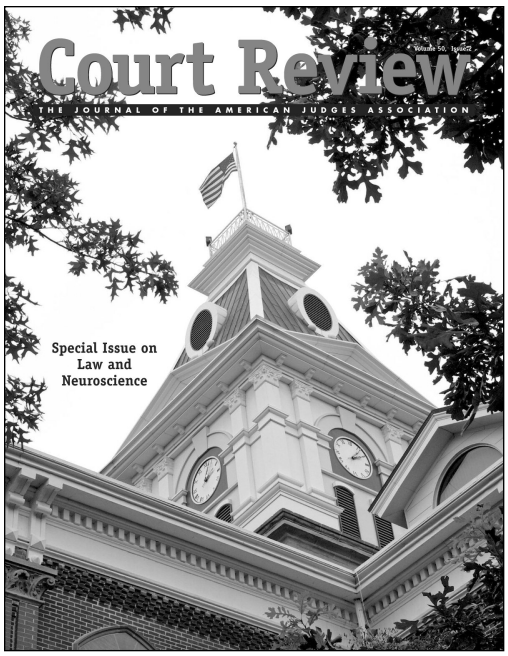
After the United States Supreme Court's 2010 decision in *Padilla v. Kentucky*, which held that defense attorneys must advise their clients in some circumstances of the immigration consequences of a guilty plea, we recruited two law students to look at the obligation of judges during these same plea proceedings. Kate Ono Rahel and Justin Shilhanek provided a thorough review of the caselaw and detailed recommendations for trial judges handling plea proceedings.

Isolation in the Judicial Career, by Isaiah M. Zimmerman, 36(4) Ct. Rev. 4 (2000).

See description under "For the New Judge."

Judges and Wrongful Convictions, by Brandon L. Garrett, 48 Ct. Rev. 132 (2012).

Law professor Brandon Garrett wrote a book, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (2011), discussing the mistakes found in the first 250 DNA-exoneration cases. In this article for *Court Review*, he focused on the lessons for judges.



Judicial Wisdom: An Introductory Empirical Account, by Jeremy A. Blumenthal and Daria A. Bakina, 52 Ct. Rev. 72 (2016).

The late professor Jeremy Blumenthal and professor Daria Bakina conducted a study on what makes a judge wise based on surveys of both judges and law students. Professor Bakina summarized the findings, some of the first empirical studies of what might constitute judicial wisdom. Any judge would benefit just from reading through the lists of traits that might make for a wise and excellent judge.

Minding the Court: Enhancing the Decision-Making Process, by Pamela Casey, Kevin Burke, and Steve Leben, 49 Ct. Rev. 76 (2013).

See the description under "AJA White Papers."

Practical Advice from the Trenches: Best Techniques for Handling Self-Represented Litigants, by Dorothy J. Wilson and Miriam B. Hutchins, 51 Ct. Rev. 54 (2015).

Baltimore judges Dorothy Wilson and Miriam Hutchins, who have more than 30 years of combined experience dealing with self-represented litigants, gave their advice on what techniques work best. They discussed the concept of neutral engagement, in which judges remain neutral but help make sure cases are fully presented and gave step-by-step advice about handling cases with one or more self-represented parties.

Special Issue on Elder Mistreatment, 53 Ct. Rev. 53 (2017).

With the help of special-issue editor, Professor Nina Kohn, this special issue covered aspects of elder mistreatment that judges can impact. Separate articles presented perspectives of the physician, judge, prosecutor, law professor, and guardian.

Special Issue on Indian Law and Tribal Courts, 45 Ct. Rev. 1 (2009).

This special issue focused on the ways Indian Law arises in state-court proceedings, interactions between tribal courts and state courts, and how to research Indian Law.

Special Issue on Law and Neuroscience, 50 Ct. Rev. 44 (2014).

Court Review teamed up with the MacArthur Foundation Research Network on Law and Neuroscience (www.lawneuro.org) for this special issue. Articles covered an overview of the ways in which brain science has been integrated into law; what the legal system can infer about individuals from group-based neuroscience data; how science on adolescent development should (and shouldn't) be applied; how pain neuroimaging may be used in legal disputes; and where neuroscience contributions may be the most useful in law.

Special Issue on Therapeutic Jurisprudence, 37(1) Ct. Rev. 1 (2000).

This special issue explored therapeutic jurisprudence—"TJ" to its friends and supporters—which focuses on the therapeutic or antitherapeutic consequences legal proceedings may cause. TJ proponents suggest that judges should, wherever possible, work to obtain therapeutic outcomes without violating other important values, like due process. Articles in the issue explored TJ in multiple contexts, including domestic-violence courts, mental-health courts, and on appeal.

Starting a Help Center in Twelve Easy Steps: One Court's Experience with Trial, Error, and Lots of Help, by Keven M.P. O'Grady, 51 Ct. Rev. 74 (2015).

Many courts have set up self-help centers for the self-represented. Given the existence of established centers in many places, a Kansas court was able to draw on the wisdom of others when starting its own. Judge Keven O'Grady uses the lessons he learned—from other courts and starting his own center—to provide a step-by-step guide for any court looking to provide better help for the self-represented.

Ten Tips for Judges Dealing with the Media, by Steve Leben, 47 Ct. Rev. 38 (2011).

This article presented ten tips for dealing with the media

based on the recommendations of journalists and experience handling two high-profile murder trials.

The Emotional Dimension of Judging: Issues, Evidence, and Insights, by Sharyn Roach Anleu, David Rottman, and Kathy Mack, 52 Ct. Rev. 60 (2016).

Researchers Sharyn Roach Anleu, David Rottman, and Kathy Mack provided a look at the background research on judging and emotions, presented specific examples of judicial misbehavior that seemed emotionally based, and described a four-year international study they are conducting on judges and emotion.

The Emotionally Intelligent Judge: A New (and Realistic) Ideal, by Terry A. Maroney, 49 Ct. Rev. 100 (2013).

Law professor Terry Maroney discusses how judges can deal with the emotions that naturally arise from their work, drawing on insights from psychology, neuroscience, and the experiences of judges.

The Emotionally Intelligent Judge:

A New (and Realistic) Ideal

Terry A. Maroney

As a Supreme Court Justice once wrote, "dispassionate judges" are "mythical beings," like "Santa Claus or Uncle Sam or Easter bunnies."[1] Judges have emotions, and emotions influence decision making. These observations may seem obvious, even banal. But their implications are broad-reaching. Judicial emotion is more common than most people—certainly laypeople, and perhaps judges as well—would like to believe. Further, emotion almost certainly has a substantial impact on judicial decision making and behavior—and that is not necessarily a bad thing.

The ideal of the emotionless, "dispassionate" judge has a very long pedigree. More than three centuries ago, Thomas Hobbes wrote in *Leviathan* that the ideal judge is "divested of all fear, anger, hatred, love, and compassion."[2] To a modern ear such a blunt statement sounds, perhaps, antiquated. To the extent this is so, it is because the Legal Realists of the early twentieth century largely convinced us of the importance of the person wearing the robe. Law is not certain, and judges have discretion, within which space ostensibly "alogical" or "non-rational" forces have room to operate.[3] As the great Benjamin Cardozo once mused, "Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge."[4]

In our post-Realist world, such frank acknowledgment of judges' humanity is relatively commonplace. As other contributions to this special issue make clear,[5] judges are affected by factors as diverse as fatigue and life experiences, and they deploy common (but sometimes misleading) decision-making shortcuts known as heuristics. Judges are likely no better than ordinary humans at multitasking or truth-telling. An entire academic cottage industry is devoted to ascertaining the decisional influence of personal characteristics such as gender and political party.

But we still seldom talk about the *emotional* aspect of judges' humanity. And when we do, we run into a fairly solid wall of opposition. Judicial emotion generally is seen as an unfortunate consequence of having to populate the legal system with fallible, biased, real people. Indeed, emotion traditionally has been counted among the primary sources of fallibility and bias. A Maryland judge expressed this well: "Judges, being flesh and blood, are subject to the same emotions and human frailties as affect other members of the species."[6] The task of the legal system, under this contemporary view, is to systematically reduce the opportunities for judicial emotion to insert itself; the task of the good judge is to prevent emotion from exerting any influence wherever such opportunities remain.

We saw this view vividly articulated during the 2009 nomination of now-Justice Sonia Sotomayor, who some feared would have an overly "empathic" judging style. One senator implied that judges' emotions posed a threat to liberty;[7] a prominent professor declared that a "compassionate, empathetic judge was very likely to be a bad judge";[8] a journalist noted that the mere suggestion that emotion might affect judging was "radioactive."[9] Even among Sotomayor's supporters, defense of empathy (or any emotional influence) was tepid at best. She was finally able to put the issue to rest by offering a standard post-Realist narrative: that while judges are not "robots" and do have feelings, a good judge recognizes those feelings and puts them aside.[10]

Certainly, judges are not robots, so the first half of that story is correct. But what if the latter part is wrong? What if emotion—at least sometimes—offers something of value to judicial decision making? Judge Richard A. Posner has suggested as much, writing that judges ought not try to become "emotionless, like computers," because feelings might sometimes be necessary to good judging.[11] Justice William J. Brennan similarly asserted that good judgment flows from a "dialogue of

Footnotes

Many of the ideas expressed in this article are explored in much greater depth in my prior works, all of which are available at my Vanderbilt Law School faculty website and on SSRN. *See* Terry A. Maroney, *Angry Judges*, 65 Vand. L. Rev. 1207 (2012); *Emotional Regulation and Judicial Behavior*, 99 Cal. L. Rev. 1485 (2011); and *The Persistent Cultural Script of Judicial Dispassion*, 99 Cal. L. Rev. 629 (2011). This article is by design lightly footnoted; I refer the interested reader to the extensive citations in those longer publications.

1. United States v. Ballard, 322 U.S. 78, 93-94 (1944) (Jackson, J., dissenting).
2. Thomas Hobbes, Leviathan 203 (A.R. Waller ed., 1904) (1651).
3. Roscoe Pound, *The Call for a Realist Jurisprudence*, 44 Harv. L. Rev. 697, 706 (1931).
4. Benjamin N. Cardozo, The Nature of the Judicial Process 167-68 (1921).
5. *See* Pamela Casey, Kevin Burke & Steve Leben, *Minding the Court: Enhancing the Decision-Making Process*, 49 Ct. Rev. 76 (2013); Eyal Peer & Eyal Gamliel, *Heuristics and Biases in Judicial Decisions*, 49 Ct. Rev. 114 (2013).
6. State v. Hutchinson, 271 A.2d 641, 644 (Md. 1970).
7. Confirmation Hearing on the Nomination of Hon. Sonia Sotomayor, To Be an Assoc. Justice of the Supreme Court of the United States: Hearing Before the S. Comm. On the Judiciary, 111th Cong. 13 (2009) (statement of Sen. Orrin Hatch). *See also* id. at 17 (statement of Sen. Lindsay Graham) (a judge's most critical qualification is "the capacity to set aside one's own feelings so he or she can blindly and dispassionately administer equal justice for all").
8. John Yoo, *Closing Arguments: Obama Needs a Neutral Justice*, Phila. Inquirer, May 10, 2009, at C3.
9. Peter Baker, *In Court Nominees, Is Obama Looking for Empathy by Another Name?*, N.Y. Times, Apr. 26, 2010, at A12.
10. Sotomayor Confirmation Hearings, at 71, 120 (statement of J. Sonia Sotomayor).
11. Richard A. Posner, Frontiers of Legal Theory 226 (2001).

The Implication of Therapeutic Jurisprudence for Judicial Satisfaction, by Deborah J. Chase and Peggy Fulton Hora, 37(1) Ct. Rev. 12 (2000).

Based on a survey of drug-court and family-court judges, Deborah Chase and Judge Peggy Fulton Hora found that "[p]erception of litigant gratitude was the most important overall predictor of feeling positively about the judicial assignment." Family-court judges scored low in perceptions of litigant gratitude; drug-court judges scored high. The authors speculated that "the therapeutic effects of these new types of courts," such as drug courts, "which employ the social sciences and are oriented to problem solving" had "beneficial effects on the litigants and court personnel."

Two Letters to Judge Eaton, by Paul D. Carrington, 37(2) Ct. Rev. 14 (2000).

Law professor Paul Carrington presented two letters he wrote to a federal judge about the sentencing of a man he knew. In the first letter, Carrington explained that the young man had recently taken Carrington's advice to get a job—actually two—and was also in school. Carrington suggested the man be given a chance to show he had truly changed. Twenty-eight years later, Carrington told the judge, who had given a suspended sentence, how the man had since become a professor of cell biology at a major university. Carrington's conclusion: "I am informed that if [the man] had come up for sentencing [at a later time] the judge would have had no authority to suspend the sentence, and that he would have spent as much as twenty years in the federal penitentiary. What a tragic waste!"

Understanding and Diagnosing Court Culture, by Brian J. Ostrom and Roger A. Hanson, 45 Ct. Rev. 104 (2010).

Brian Ostrom and Roger Hanson explained that court performance is often affected greatly by court culture. They described and categorized court cultures, while noting the impact court culture may have on attempts at court reform.

Who Are You Going to Believe?, by Richard Schauffler and Kevin S. Burke, 49 Ct. Rev. 124 (2013).

Researcher Richard Schauffler and Judge Kevin Burke reviewed the research on whether credibility judgments can be accurately made either by judges or juries: "The notion that whether a person is lying or telling the truth can be detected by a trained expert remains a popular one, but it is simply not supported by behavioral science." Given that limitation, they made three practical suggestions for judges.

PROCEDURAL FAIRNESS/PROCEDURAL JUSTICE

An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court, by Alan J. Tomkins, Brian Bornstein, Michael N. Heriam, David I. Rosenbaum, and Elizabeth M. Neeley, 48 Ct. Rev. 96 (2012).

Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program, 48 Ct. Rev. 86 (2012).

These two articles presented the results of two pilot projects that achieved some success in reducing no-show rates for criminal defendants—saving time and money while also having fewer warrants and pretrial incarcerations. The articles report for each test what worked, what didn't, and what merits further consideration. Researchers indicated both that reducing failures-to-appear should result in improved perceptions of court fairness by defendants and that incorporating procedural-fairness principles into reminder notices seemed to help reduce no-shows.

A New Model for Civil Case Management: Efficiency Through Intrisic Engagement, by David Prince, 50 Ct. Rev. 174 (2014).

See the description under "Making Better Judges®."

Decision Makers and Decision Recipients: Understanding Disparities in the Meaning of Fairness, by Diane Sivasubramaniam and Larry Heuer, 44 Ct. Rev. 672 (2008).

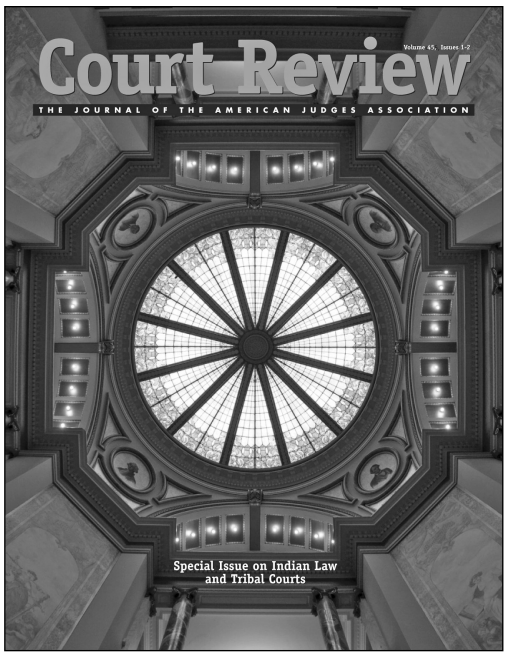
Researchers Diane Sivasubramaniam and Larry Heuer discuss important differences in the importance that decision recipients and decision makers place on fair procedures: decision makers are more concerned with outcome, while decision recipients are more concerned with process. This has important implications for judges, who are the decision makers.

Fair Procedures, Yes. But We Dare Not Lose Sight of Fair Outcomes, by Brian H. Bornstein and Hannah Dietrich, 44 CT. REV. 72 (2008).

Law-and-psychology researchers Brian Bornstein and Hannah Dietrich reminded us that even if improving procedural fairness is important, outcomes matter too. They noted that the perception of unfairness is also based in part on perceptions of unfairness in distributive justice (the probability of different outcomes for certain groups).

Opinions as the Voice of the Court: How State Supreme Courts Can Communicate Effectively and Promote Procedural Fairness, by William C. Vickrey, Douglas G. Denton, and Wallace B. Jefferson, 48 CT. REV. 74 (2012).

Former Texas Chief Justice Wallace Jefferson, former California court administrative director William Vickrey, and California court staffer Douglas Denton addressed the changing audience for state supreme court opinions—an audience now far beyond lawyers. They urged further attention to procedural-fairness principles by state high courts and noted practices (plain-language summaries, instant web access, and cooperation with the media) that have helped clearly communicate court opinions.



Procedural Fairness: A Key Ingredient in Public Satisfaction, by Kevin Burke and Steve Leben, 44 CT. REV. 4 (2008).

See description under "AJA White Papers."

Procedural Justice and the Courts, by Tom R. Tyler, 44 CT. REV. 26 (2008).

Professor Tom Tyler is the leading researcher in procedural justice for both law enforcement and the courts. He provided an overview of the concepts and research showing the effectiveness of procedural-justice concepts when used in court proceedings.

Procedural Justice as a Court Reform Agenda, by David B. Rottman, 44 CT. REV. 32 (2008).

Researcher David Rottman described how procedural justice could act as an organizing principle for court reform.

The Courtroom-Observation Program of the Utah Judicial Performance Evaluation Commission, by Nicholas H. Woolf and Jennifer MJ Yim, 47 CT. REV. 84 (2012).

Utah has a governmentally established commission that evaluates judicial performance and provides public reports before each judge's retention election. The commission adopted procedural-justice principles to govern its review process and sends citizens to observe judges' adherence to those principles in the courtroom. Researcher Nicholas Woolf and then commission vice chair Jennifer Yim described the process, including a list of 20 evaluative criteria that could be used by courtroom observers anywhere.

The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Courts, by Brian MacKenzie, 52 CT. REV. 8 (2016).

See description under "AJA White Papers."

PSYCHOLOGY AND THE LAW

A Judge's Guide to Using Social Science, by John Monahan and Laurens Walker, 43 CT. REV. 156 (2007).

Professors John Monahan and Laurens Walker wrote the book, literally, on *Social Science in Law*, a law-school text that went through seven editions. In this article, they broke down for judges how and when social-science information can be used to determine a relevant question in a contested court case.

Children as Witnesses: What We Hear Them Say May Not Be What They Mean, by David B. Battin and Stephen J. Ceci, 40(1) CT. REV. 4 (2003).

Researchers David Battin and Stephen Ceci reviewed ways in which young children aren't as prepared to answer questions in court as adults perceive them to be, including problems understanding prepositions like above or behind, and problems with temporal terms.

Disputed Eyewitness Identification Evidence: Important Legal and Scientific Issues, by John C. Brigham, Adina W. Waserman, and Christian A. Meissner, 36(2) CT. REV. 12 (1999).

Three academic researchers reviewed both the leading research on what leads to eyewitness-identification errors and the United States Supreme Court cases on the subject, noting a disconnect between them. They also reviewed the "common knowledge" of jurors in the area and safeguards that could be taken to protect against reliance on unreliable testimony.

Fact or Fiction? The Myth and Reality of the CSI Effect, by Steven M. Smith, Veronica Stinson, and Marc W. Patry, 47 CT. REV. 4 (2011).

Should Judges Worry About the "CSI Effect"?, by Simon A. Cole and Rachel Dioso-Villa, 47 CT. REV. 20 (2011).

Studying Juror Expectations for Scientific Evidence: A New Model for Looking at the CSI Myth, by Donald E. Shelton, Gregg Barak, and Young S. Kim, 47 CT. REV. 8 (2011).

In these three articles, we explored the claim that jurors (and attorneys and judges) have changed their behavior based on an expectation that forensic evidence should be available if a defendant has committed a crime. Professors Steven Smith, Veronica Stinson, and Marc Patry found that evidence that the CSI effect is real but wondered whether the effect was more due to changed attorney behavior than to the views of

jurors. Judge Donald Shelton and researchers Gregg Barak and Young Kim also concluded the effect was real but due not to television but to advances generally in technology. And researchers Simon Cole and Rachel Dioso-Villa expressed skepticism about the existence of a CSI effect while offering suggested steps judges could take to guard against it.

Mental Competency Evaluations: Guidelines for Judges and Attorneys, by Patricia A. Zapf and Ronald Roesch, 37(2) Ct. Rev. 28 (2000).

Two leading psychology professors provided an overview of methods for conducting competency exams and key information that should be in reports to the court.

Mental Illness and the Courts: Some Reflections on Judges as Innovators, by John P. Petrila and Allison D. Redlich, 43 Ct. Rev. 164 (2008).

Researchers John Petrila and Allison Redlich discussed the roles judges might play in helping those with mental illness on their journey through the court system, including as a program designer, as a community leader, as an advocate, and as a member of the treatment team.

Risk Assessment for Future Offending: The Value and Limits of Expert Evidence at Sentencing, by Kirk Heilbrun, Jaymes Fairfax-Columbo, Suraji Wagage, and Leah Brogan, 53 Ct. Rev. 116 (2017).

A team of researchers led by Professor Kirk Heilburn reviewed each of the major risk-assessment tools in use in court proceedings, discussing the strengths and limitations of each as well as the extent to which expert opinion guided by some structured judgment process might compare in usefulness to the scored instruments. They also provided recommended best practices for the use of risk assessments in court.

ESSAY

Keeping Up with Neurolaw:

What to Know and Where to Look

Francis X. Shen

It is hard to know exactly what the future holds for law and neuroscience. But it is a fair bet that the future will look different, perhaps markedly so, than the neurolaw of today. How can one keep up with this change? In this brief essay, I provide a series of resources for those interested in expanding their knowledge of fundamental law and neuroscience issues, as well as keeping up to date on cutting-edge innovations.

A useful starting point for orienting to neurolaw is Bill Gates's observation on technological change, "People often overestimate what will happen in the next two years and underestimate what will happen in ten."[1] Gates suggests the importance of both a short-term and long-term view. In the short-term, it seems unlikely that legislators, advocates, or judges will produce a paradigm shift in law, or that any single neuroscience discovery will be game changing. In the long-term, however, the possibilities (as discussed by the many commentaries in this issue) are numerous and potent. The informed consumer and producer of neurolaw should be sensitive to both of these time horizons.

The practical reality of legal and judicial practice is that knowledge is typically and rightly driven by case-specific needs. The resources that follow provide general orientation, allowing navigation toward more specific information of greatest relevance for a specific case or query.

PUBLISHED RESOURCES FOR THE REFERENCE SHELF. With a Law and Neuroscience Bibliography that now includes more than 1,000 entries, there is no lack of reading material in neurolaw. The bibliography is online, sortable, and searchable at www.lawneuro.org/bibliography.php. There are many specific topics covered in the bibliography, and general references include:

- Owen D. Jones, Jeffrey D. Schall & Francis X. Shen, Law and Neuroscience (2014). This is the first coursebook in law and neuroscience, and it provides over 800 pages of hard copy in 21 chapters, with additional online materials and over 1,000 links. It is the single largest compendium of neurolaw materials. An overview, and sample chapter, are available online at http://www.vanderbilt.edu/lawbrain.
- Henry Greely & Anthony Wagner, Reference Guide on Neuroscience, *in* Federal Judicial College Reference Manual on Scientific Evidence (3d ed. 2012).[2] This chapter by Greely and Wagner is an excellent, concise introduction to the field.
- A Primer on Criminal Law and Neuroscience (Stephen J. Morse & Adina L. Roskies eds., 2013). This edited volume presents an all-star roster of scientists and legal thinkers on core issues in criminal law and cognitive neuroscience.
- Owen D. Jones, Joshua W. Buckholtz, Jeffrey D. Schall & René Marois, *Brain Imaging for Legal Thinkers: A Guide for the Perplexed*, 2009 Stan. Tech. L. Rev. 5 (2009). This is a great introduction for the legal community to neuroimaging generally, and fMRI specifically.
- Oxford Handbook of Neuroethics (Judy Illes & Barbara J. Sahakian eds., 2011). Neuroethics considers the ethical implications of neuroscience, including a number of issues germane to law and policy. This Handbook is a wonderful and comprehensive collection of contemporary neuroethics thought. You might also check out the journal *Neuroethics*, which often publishes work relevant to law.

ONLINE RESOURCES. The easiest way to keep up to date on neurolaw is to visit regularly or subscribe to updates from websites dedicated to law and neuroscience. These sites include the following:

- www.lawneuro.org, hosted by *The MacArthur Foundation Research Network on Law and Neuroscience*, provides excellent introductory materials on neurolaw, links to conferences, a bibliography, and a blog with notable news from around the neurolaw universe. On the site you can subscribe to *Neurolaw News* at lawneuro.org/listserv.php. *Neurolaw News* is a free service devoted to regularly circulating news of developments in scholarship, courts, and conferences in the field of neurolaw.
- kolber.typepad.com is the *Neuroethics & Law Blog*, maintained by law professor Adam Kolber. It features weekly dispatches from the Johns Hopkins Program in Ethics and Brain Sciences and guest bloggers on relevant neurolaw topics.
- neuroethics.upenn.edu, hosted by the University of Pennsylvania's Center for Neuroethics & Society, announces neurolaw events, highlights news of interest, and promotes awareness of neuroscience in society.
- clbb.mgh.harvard.edu, the home of the Massachusetts General Hospital Center for Law, Brain & Behavior, features news, events, and commentary on neuroscience and law.
- www.ssrn.com/link/Law-Neuroscience.html links to the *Law and Neuroscience eJournal*, featuring recent neurolaw works uploaded to the Social Science Research Network (SSRN).
- dana.org features the work of the Dana Foundation, which supports and disseminates research on the brain and the implications of brain research for society and law.

Footnotes

1. Bill Gates, The Road Ahead 316 (1996).
2. Available online at http://www.nap.edu/openbook.php?record_id=13163&page=747.

Special Issue on Eyewitness Evidence, 48 Ct. Rev. 1 (2012).

This special issue focused on social-science research on eyewitness evidence and how that information might be used by judges, including in jury instructions.

Why Judges Must Insist on Electronically Preserved Recordings of Child Interviews, by Stephen J. Ceci and Maggie Bruck, 37(2) Ct. Rev. 10 (2000).

Shortly after publication of their award-winning book, *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*, professors Stephen Ceci and Maggie Bruck explained how interviews with children differ from ones with adults in ways that can lead to error when the children's statements are merely recounted by others. They concluded: "If courts are interested in historical accuracy, there is simply no substitute for a tape that can be played to verify . . . the details of the discussion that took place . . . ."

PUBLIC OPINION OF THE COURTS

On Public Trust and Confidence: Does Experience with the Courts Promote or Diminish It?, by David Rottman, 35(4) Ct. Rev. 14 (1998).

Looking at opinion research over an extended period, National Center for State Courts researcher David Rottman concluded that contact with the courts seemed "to have either a neutral or moderately positive impact on how people rate the state courts," a change from 20 years before. He also concluded that "the public responds positively to efforts courts make to be more accessible [and] more sensitive to the perception of fairness in court decisions."

Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges, by David B. Rottman and Alan J. Tomkins, 36(3) Ct. Rev. 24 (1999).

Researchers David Rottman and Alan Tomkins reviewed public-opinion surveys about state courts from 1978 through 1998. They explored differences in perception among racial and ethnic groups and concluded, "Judges can make a difference in how they and their courts are perceived."

Speak to Values: How to Promote the Courts and Blunt Attacks on the Judiciary, by John Russonello, 41(2) Ct. Rev. 10 (2004).

Public-opinion researcher John Russonello reported on what the public most wanted from its courts and how that information should form judicial responses to attacks.

Special Issue on Public Trust and Confidence in the Courts, 36(3) Ct. Rev. 1 (1999).

For two days in May 1999, 500 attendees representing the federal and state judiciary, the bar, the media, and the public met for two days and participated in a National Conference on Public Trust and Confidence in Washington, D.C. *Court Review* provided the only comprehensive coverage of the conference, publishing transcripts of key portions, including speeches from Chief Justice William H. Rehnquist, Justice Sandra Day O'Connor, and New York Governor Mario Cuomo. Panel-discussion transcripts focused on public opinion of the courts, critical issues affecting trust in the courts, and strategies for improving the level of public trust.

Note: For volumes 35 through 42, each of the four issues in each volume of Court Review *was separately paginated (starting at 1 for each issue). From volume 43 forward, each volume has been consecutively paginated throughout the volume. For clarity in the citations to volumes 35 through 42, the issue is also noted. So the citation 39(3) Ct. Rev. 14 is to the third issue in volume 39.*