

Dane Ross Thorley

J. Reuben Clark Law School, Office 416 • 341 E. Campus Dr. • Provo, UT 84602
(801) 422-3091 • thorleyd@law.byu.edu • www.danethorley.com

ACADEMIC APPOINTMENTS

BRIGHAM YOUNG UNIVERSITY LAW SCHOOL, *Associate Professor of Law*, 2019-present
Courses: Civil Procedure, Criminal Procedure, Professional Responsibility

COLUMBIA LAW SCHOOL, *Postdoctoral Fellow in Empirical Law and Economics*, 2017–2019

YALE LAW SCHOOL, *Visiting Researcher*, 2017–2018

EDUCATION

YALE LAW SCHOOL

J.D., 2017

COLUMBIA UNIVERSITY

Ph.D., Political Science, 2019

Dissertation: “Essays on Courts, Randomization, and Experiments”

Committee: Donald Green (Chair), Ian Ayres, Shigeo Hirano, Jeffrey Lax, Gregory Wawro

M.Phil., Political Science, 2017

M.A., Political Science, 2015

BRIGHAM YOUNG UNIVERSITY

B.A., Political Science and Korean, 2012

PUBLICATIONS

Campaign Donations, Judicial Recusal, and Disclosure: A Field Experiment, J. POLITICS (with Jonathon Krasno, Donald Green, Costas Panagopoulos, and Michael Schwam-Baird) (forthcoming 2021)

This article reports results from a field experiment exploring how judicial behavior is affected by complaints about conflicts of interest. The conflicts of interest studied here arise in Wisconsin civil trial cases. Using public records, we identify instances in which one party’s attorney contributed to the presiding judge’s previous election campaign. We send a random subset of these judges a letter identifying the potential conflict and requesting recusal. We find that highlighting the potential conflict and asking judges to recuse sharply increases the rate at which judges disclose this relationship in court records but does not lead them to recuse. Treated judges are no more likely to disclose or recuse in subsequent cases that present a similar conflict of interest. This experiment, which is the first to test possible remedies to judicial conflicts of interest, suggests that light touch interventions are insufficient to change judges’ behavior.

Compliance Experiments in the Field: Features, Limitations, and Examples, in CAMBRIDGE HANDBOOK OF COMPLIANCE (Daniel Sokol and Benjamin Van Rooij, eds.) (forthcoming 2021)

This chapter reviews the use, benefits, and limitations of using randomized field experiments (also known as randomized controlled trials, or RCTs) to study compliance. It begins with a brief primer on field experiments, outlining why randomized experiments are so valuable as a methodological tool and how the unique attributes of field experiments provide a distinct set of benefits from similar causality-focused approaches such as laboratory experiments and natural experiments. The chapter then highlights the important assumptions and practical difficulties required to conduct and analyze field experiments, paying particular attention to how these factors can be limitations when studying compliance. The chapter concludes by considering what sorts of compliance-related field experiments are possible by focusing on two areas in which their use is well established—tax compliance and criminal deterrence—and then highlights individual experiments testing a diversity of substantive topics less commonly explored by field experimentalists such as international law, food safety inspections, and the behavior of political elites.

Randomness Pre-considered: Making Unbiased Causal Inference Through the Random Assignment of Judges, 17 J. EMP. LEGAL STUD. 342 (2020), available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/jels.12248>.

* Recipient of the Society for Empirical Legal Studies Theodore Eisenberg Prize, 2015

This article contributes to the growing literature challenging the general assumption of random judicial assignment by identifying a set of common court procedures and practices “de-randomizing” events. These events, which include the consolidation of criminal defendants, peremptory challenges and recusal, settlement, and non-random assignment itself, should be accounted for in order to make unbiased causal claims but are commonly ignored by researchers utilizing random judicial assignment. The paper explores how these de-randomizing events violate the key empirical assumptions underlying randomized studies and then offers methodological solutions. It also presents 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.

Trial by Skype: A Causality-Oriented Replication Exploring the Use of Remote Video Adjudication in Immigration Removal Proceedings, 59 INT’L REV. L. & ECON. 82 (2019) (with Joshua Mitts), available at <https://www.sciencedirect.com/science/article/pii/S0144818818303326>

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 on the previous empirical work of Ingrid Eagly, we test these propositions in the context of U.S. immigration removal proceedings. We compare the procedural and final outcomes of hearings that were adjudicated via remote video feed against those in which the respondent appears in person, using random judicial assignment as an instrument for accurately identifying the causal effects of remote adjudication. Our findings suggest that the use of remote video adjudication disadvantages respondents at both the procedural and final stages of their removal hearings.

Field Experimentation and the Study of Law and Policy, 10 ANN. REV. L. SOCIAL SCI. 53 (2014) (with Donald 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 has recently begun to be used to rigorously evaluate policies and programs. This article describes the statistical properties of field experiments and discusses the practical threats that may undermine experiments conducted in field settings. It then reviews the field experimental research literature in a variety of legal 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. The article concludes by highlighting some of the challenges that the experimental literature must confront in order to speak convincingly to issues of law and policy.

WORKING PAPERS

Informed Reform: An Empirical Analysis of Pretrial Disparity and the Consequences of Money Bail (with Miguel de Figueiredo; funded by The Laura and John Arnold Foundation)

This Article provides new evidence on America's pretrial system by analyzing tens of thousands of misdemeanor bail decisions in rural and suburban Pima County, Arizona, where Tucson is located. Compared to the results of similar studies in large metropolitan cities, our findings are striking. Our analyses show that despite having virtually identical caseloads (1) the most "lenient" judges assign money bail in only 20 percent of their cases with average bail amounts of only \$175, whereas the "strictest" judges assign money bail in nearly 60 percent of cases at an average of \$1,200 per bail assignment (three and ten times higher, respectively); and (2) judges may be as much as 13 percentage points more likely to assign money bail to black defendants in comparison to their white counterparts. Furthermore, (3) defendants assigned money bail are significantly more likely (5.1 percentage points) to appear in court for trial. And contrary to the results of previous studies, we find (4) a minimal impact of money bail on the likelihood of guilty pleas and judgments, and (5) a substantial reduction in recidivism (11.4 percentage points) for those who are assigned bail only in the six months immediately following a defendant's initial appearance.

Taken together, our findings suggest that bail reformers should both account for and develop interventions in response to high levels of judicial disparity and be wary of "one-size-fits-all" policy prescriptions, since some jurisdictions may have varied outcomes in response to similar bail processes. To reduce judicial disparities, the Article suggests that systematically informing judges of their pretrial behavior relative to their colleagues will likely reduce pretrial disparity generally and along socioeconomic lines. The Article also provides a multi-pronged approach for evaluating the impact of local pretrial reforms that will improve outcomes for defendants and society.

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 judicial candidate runs for election and utilizes one of various campaign fundraising tactics. The results suggest that the public does not discern any significant difference between direct and indirect judicial solicitation but does see other campaign strategies and features (promises of recusal and the amount of the donations) as significant 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.

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

This article evaluates the two main 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 the legal and extra-legal incentives at play in these decisions are understood, this behavior should not be surprising. In support of these claims, this Article presents the results of a randomized field experiment involving active civil cases that feature attorneys who had donated to the judge's previous election campaign. A portion of the judges presiding over these cases were randomly assigned to receive a letter from an NGO identifying the potential conflict and requesting recusal. Judges rarely recused themselves from these cases and were no more likely to recuse when they were asked to do so by a third party. Unexpectedly, judges never disclosed the potential conflicts on their own, and even when the judges were induced to disclose by the letters, the attorneys in these cases were no more likely to request recusal, raising doubts that judicial disclosure is an efficacious remedy for low recusal rates. The article concludes by suggesting that these conflicts of interest are best addressed by no-cause peremptory challenges paired with automatic disclosure by the court system.

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 using experimental methods 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 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 method can and should be used to study laws, procedure, and behavior.

ONGOING EMPIRICAL PROJECTS

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 some states, New York does not extend the right to legal counsel to parole hearings. This empirical project arises from an ongoing collaboration 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. In order to evaluate the efficacy of these services, we randomly assign the project's volunteers, 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 legal assistance 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.

An Empirical Investigation of Warrant Review and Approval (working project) (with Miguel de Figueiredo).

Very little empirical work has looked into the submission, review, and approval of criminal warrants. Using a novel dataset of criminal warrants in Utah, we look at how, when, and why judges approve criminal warrants.

Empirical Evaluation of Judicial Recusal in Federal Courts (working project) (with Ben Johnson and Newby Parton)

This project is using the financial disclosure forms of U.S. federal judges to evaluate the frequency of conflicts of interest and recusal.

Testing Restorative Justice as an Alternative to Juvenile Prosecution: A Randomized Field Experiment (working project; in partnership with the Office of the Attorney General for the District of Columbia) (with Miguel de Figueiredo).

We are working with the Office of the Attorney General for the District of Columbia to evaluate their restorative justice program, focusing specifically on whether participation in the program reduces recidivism among juvenile defendants.

ACADEMIC CONFERENCES & PRESENTATIONS

Why Judges Don't Recuse Themselves and Attorneys Don't Ask Them To: A Randomized Field Experiment Testing the Efficacy of Recusal and Disclosure

Rocky Mountain Junior Scholars Forum, November 2020

Conference on Empirical Legal Studies, October 2018

Political Economy and Public Law Conference, June 2018

Notre Dame Law School Workshop for Aspiring Legal Academics, March 2018

Yale Law School, Ethics Bureau, March 2018

Informed Reform: An Empirical Analysis of Pretrial Disparity and the Consequences of Money Bail

2020 QuantLaw Conference, February 2020

Testing Williams-Yulee: An Experiment on Judicial Elections, Institutional Trust, and Tenuous Empirical Claims in the Supreme Court

Conference on Empirical Legal Studies, November 2019

Rocky Mountain Junior Scholars Forum, October 2019

Trial by Skype: Identifying the Causal Impact of Remote Adjudication

Program on Empirical Legal Studies Replication Conference, April 2018

Randomness Pre-considered: Making Unbiased Causal Inference Through the Random Assignment of Judges

Midwestern Political Science Association Annual Conference, April 2017

Western Empirical Legal Studies Conference, March 2016

Conference on Empirical Legal Studies, October 2015

Please Recuse Yourself: A Field Experiment Exploring the Relationship Between Campaign Donations and Judicial Recusal

Annual Meeting of the American Political Science Association, September 2017

Western Empirical Legal Studies Conference, March 2016

Yale ISPS Experiments Workshop, November 2015

Conference on Empirical Legal Studies, October 2015

Annual Meeting of the American Law and Economics Association, May 2015

Annual Meeting of the American Political Science Association, August 2014

The Legal and Ethical Challenges of Running Randomized Field Experiments in the Courtroom

Yale ISPS Experiments Workshop, November 2015

OTHER TEACHING EXPERIENCE

YALE LAW SCHOOL

Guest Lecturer for Empirical Legal Seminar, Oct. 2016 & Oct. 2017

Law and Field Experiments Working Group Organizer and Lecturer, Jan. 2016 – April 2016

COLUMBIA UNIVERSITY

Teaching Fellow (Introduction to American Politics), Aug. 2014 – May 2015

COLUMBIA LAW SCHOOL

Teaching Assistant (Torts), Aug. 2013 – Jan. 2015

PROFESSIONAL EXPERIENCE

HON. ANDREW GORDON, U.S. District Court for the District of Nevada, *Judicial Clerk*, 2018–2019

LATHAM & WATKINS, LLP, *Summer Associate*, 2016

COMMUNITY INVOLVEMENT

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT, July 2020 – present

UTAH SUPREME COURT BAR ADMISSIONS WORKING GROUP, June 2020 – present

GRANTS AND FELLOWSHIPS

TRAC FELLOW, Research on the Effects of Video Conferencing on Immigration Removal Proceedings, 2018-2019

LAURA & JOHN ARNOLD FOUNDATION GRANT (\$80,000), Research on the Effects of Pretrial Detainment and Bail, 2016-2019

LAURA & JOHN ARNOLD FOUNDATION GRANT (\$74,000), Research on the Effects of Criminal Expungement, 2016-2019

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

MEMBERSHIPS

SOCIETY OF EMPIRICAL LEGAL STUDIES, since 2013

AMERICAN POLITICAL SCIENCE ASSOCIATION, since 2013

AMERICAN LAW AND ECONOMICS ASSOCIATION, since 2014

MIDWESTERN POLITICAL SCIENCE ASSOCIATION, since 2016

ASSOCIATION OF AMERICAN LAW SCHOOLS, since 2019