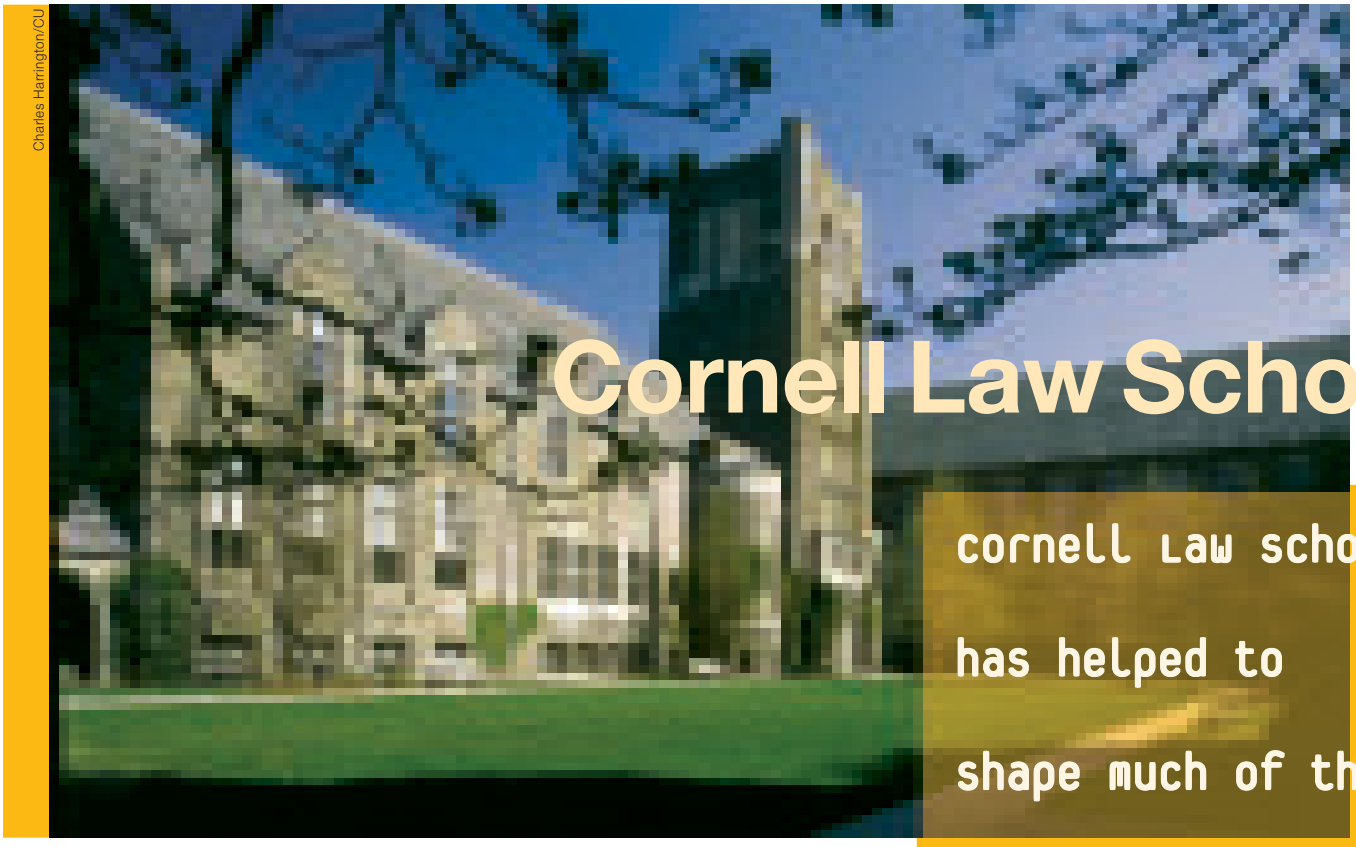

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Cornell Law School

cornell law school has helped to shape much of the knowledge in areas such as capital punishment, judge and jury decision making, and sexual harassment.

Leading Research in the Cornell Law School Reveals Surprising Results and Expands the Knowledge Base of the Legal System

"justices of the u.s. supreme court have relied in part on cornell findings in constitutional rulings that require jurors be informed what the alternative to a death sentence is."

The body of knowledge on capital punishment, sexual harassment, punitive damages, judge and jury decision making, bankruptcy, and products liability owes much to research in the Cornell Law School. The Law School has helped to shape this knowledge. Examples that follow are a few noteworthy results of the school's social science research and scholarly output.

Death Penalty Research

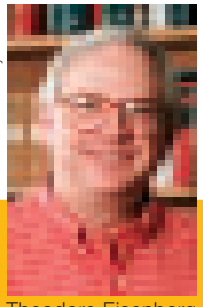
Innovative social science research has been the arena of Cornell Law School's Death Penalty Project, directed by visiting professor, John Blume, and Sheri Lynn Johnson for more than a decade. Prior to Cornell Law School's research on the death penalty, as part of the National Science Foundation–funded National Capital Jury Project (CJP), empirical analyses of capital jury decision making were based on mock jury studies. Data gathered from jurors who had actually served on a capital jury was unavailable. The CJP, established in the early 1990s and the Cornell Law School helped to fill this void. The Law School has completed more than 200 capital-case juror interviews in South Carolina. The CJP has been expanded and is continued at the Law School in South Carolina.

Cornell Law School research has helped to describe and explain how jurors function in capital cases. In the first article resulting from Cornell's portion of the National Capital Jury Project, Theodore Eisenberg and Martin T. Wells, Industrial and Labor Relations, showed a significant correlation between how long jurors expect that a convicted murder defendant who was not sentenced to death will spend in prison, and the likelihood that jurors will vote to impose the death penalty. Jurors who believe that defendants will be released earlier are significantly more likely to vote for death than jurors who believe that defendants will spend more years in prison. Importantly, all groups of jurors tend to believe that the mandatory minimum sentence for capital murder (often life in prison without the possibility of parole) is shorter than the law actually requires.

The impact of this research extends beyond academic venues. Justices of the U.S. Supreme Court have relied in part on Cornell findings in constitutional rulings that require jurors be informed what the alternative to a death sentence is. Cornell research helped limit the questionable practice of not informing jurors of the "true" alternative to capital punishment. John Blume, Stephen P. Garvey, and Sheri Lynn Johnson have used CJP research in death penalty litigation and in helping courts to appreciate jurors' confusion about the instructions that are supposed to guide them. Ronald J. Tabak, a special counsel at the law firm of Skadden, Arps, Slate, Meagher, and Flom and co-chair of the Death Penalty Committee of the American Bar Association's Section of Individual Rights and Responsibilities has noted that "the studies that Cornell has done are extremely important."

Garvey has extended the analysis of CJP data to test beliefs about how capital jurors respond emotionally to defendants. Contrary to the prevailing wisdom—which depicts capital jurors as devoid of any fellow feeling toward the defendant—he finds the dominant juror response is pity or sympathy, no matter what sentence the jury finally imposes.

Sheryl Snkow



Theodore Eisenberg, Law School

Nicola Kountoupes/CU

Martin Wells, Social Statistics; Biological Statistics and Computational Biology

Work by Theodore Eisenberg and Martin Wells has shown that punitive damages are rare and strongly correlated with compensatory damages, thus dispelling two misperceptions about punitive damages.

In related work, Garvey concludes that "jurors have a discernible moral compass." Jurors found especially brutal killings—killings with child victims, future dangerousness, and lack of remorse—to be significant aggravating factors in a case. Conversely, jurors pointed to residual doubt regarding such mitigating factors as the defendant's guilt, evidence of mental retardation, youthfulness, circumstances over which the defendant had no control and which diminished individual responsibility, and circumstances that helped to form the defendant's character. The findings provide valuable information to policymakers who are responsible for structuring the capital sentencing process and to attorneys who are involved in litigating capital cases.

Sexual Harassment and Civil Rights

Stewart J. Schwab and Cornell Law School graduate, Ann Juliano, have published the leading empirical study of sexual harassment litigation in the U.S. Using methodology that was self-consciously different from the traditional legal method of analyzing leading cases, they describe the distinctive features, benefits, and problems of this method. Their research findings indicate that a disproportionate number of plaintiffs are blue-collar or clerical workers, although most cases arise from mixed rather than sex-segregated workplaces. Most defendants are private employers, however, a disproportionately large fraction are government employers. Most cases involve harassment by supervisors rather than co-workers. Successful cases are likely to involve sexualized conduct directed at individual victims. Sexual harassment claims involving differential but nonsexual conduct and conduct demeaning to women in general are far less successful. Two critical factors for a successful case are that the victim complained within the organization and that the employer had no formal process for dealing with sexual harassment issues.

Judges and Juries

Kevin M. Clermont, Theodore Eisenberg, Jeffrey J. Rachlinski, and Martin T. Wells helped reshape the perception of civil litigation of differences between judges and juries, of differences between appellate and trial judges, and of punitive damages. Early work

Bruce Wang/CU

Kevin Clermont, Law School, has helped reshape the perception of civil litigation of differences between judges and juries, of differences between appellate and trial judges, and of punitive damages.

Stephen Garvey, Law School, tests beliefs about how capital jurors respond emotionally to defendants.

Robert Hillman, Law School, challenges the collective wisdom about the role of promissory estoppel in contract law.

Sheri Lynn Johnson, Law School, co-directs Cornell Law School's Death Penalty Project, along with visiting professor, John Blume.

Jeffrey Rachlinski, Law School, designed a study to determine whether five cognitive illusions affect judges.

Stewart Schwab, Law School, and Ann Juliano, Law School graduate, have published the leading empirical study of sexual harassment litigation in the U.S.

Photos: Sheryl Sinkow

"Nonunion employees rarely succeed against their employer in court on the basis of employee reliance on employer promises and representations."

showed that plaintiffs in the most visible areas of tort law—products liability and medical malpractice—have higher win rates in judge trials than in jury trials. Recent work finds that appellate courts systematically reverse plaintiff trial victories at a higher rate than defendant trial victories. The effect is strongest in employment discrimination cases. Work by Eisenberg and Wells has shown that punitive damages are rare and are strongly correlated with compensatory damages, thus dispelling two misperceptions about punitive damages.

Rachlinski applied his psychological training to the question of cognitive illusions. He designed an empirical study to determine whether five common cognitive illusions—anchoring, framing, hindsight bias, the representativeness heuristic, and egocentric biases—affect judges. They found that each of the five illusions had a significant impact on judicial decision making. Like anyone, their judgment is affected by cognitive illusions that can produce systematic errors in judgment.

Endangered Species, Contracts, and Products Liability

Jeffrey J. Rachlinski used social science methodology to test whether restrictions of the Endangered Species Act (ESA) on private landowners harmed endangered species. These restrictions make harboring protected species costly to private landowners. Other than anecdotal reports, there was no evidence to support the conclusion that the restrictions actually harm protected species. His data supports the conclusion that the ESA does what it says—it prevents the further destruction of the habitat of endangered and threatened species. He finds that the consequences of eliminating the regulations of the U.S. Fish and Wildlife Service restricting private landowners would drive more species into extinction.

Nonunion employees rarely succeed against their employer in court on the basis of employee reliance on employer promises and representations. This research finding of Robert A. Hillman challenges the collective wisdom about the role of promissory estoppel in contract law. The theory of promissory estoppel, which enforces promises that induce reasonable detrimental reliance, has been called "the most radical and expansive development of the century in the law of promissory liability." Hillman found a startling lack of success of promissory estoppel in employment litigation.

James A. Henderson, working with Theodore Eisenberg, used empirical methods to put what has been called "a bullet in the head of products liability reform." They found declining plaintiff success rates in the 1980s and 1990s, contrary to widespread belief. This was a period when tort reform advocates claimed that the products liability system was out of control. Despite the belief in ever-increasing awards in products cases, they found evidence of declining real-dollar awards and declining case-filing trends. Products liability's impact at the end of the 1980s had returned to about where it was at the beginning of the decade.

Theodore Eisenberg
H. A. Mark Professor of Law

Sheryl Sinkow

Despite the belief in ever-increasing awards in products cases, James Henderson and Theodore Eisenberg (not pictured), Law School, found evidence of declining real-dollar awards and declining case-filing trends.

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