

GETTING SCHOLARSHIP INTO COURT PROJECT

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Courts' Increasing Consideration of Behavioral Genetics Evidence in Criminal Cases: Results of a Longitudinal Study

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This article analyzes a unique study of all criminal cases that addressed behavioral genetics evidence during a 17-year period (1994-2011), with a particular emphasis on the last four years of that time frame. The article shows that such evidence is now more widely used in court than ever before, it is introduced nearly exclusively by defense attorneys, and it is being accepted by judges for a wider variety of mental and behavioral disorders. Strikingly, this study found no case during 2007-2011 in which behavioral genetics factors were introduced by the state, much less employed as aggravating evidence or as indications that a defendant would be a future danger to others. These results indicate that such information can be advantageous for practitioners and courts in various ways. While such evidence appears to have been applied almost entirely for mitigation purposes in death penalty cases, the same objectives and outcomes fueling such usage can extend to other kinds of cases and circumstances. For example, behavioral genetics evidence can provide proof and diagnosis of a defendant's mental disease or defect in the context of an insanity defense or of other conditions and behaviors associated with many different kinds of defenses. In sum, this study shows that behavioral genetics fac-

tors can become an effective litigation tool along with a range of other kinds of variables and that courts are increasingly accepting of such evidence.

Glenn Harlan Reynolds & John A. Steakley

A Due Process Right to Record the Police
89 WASH. U.L. REV. (forthcoming 2012)
SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2043907

With the advent of camera-enabled cell phones in the first decade of the 21st century, Americans are more empowered than ever to record the events that occur in their lives. When these recordings happen to be the activities of law enforcement officers in public places, courts have routinely sided with the citizen. But what about a recording of law enforcement officers in a private place, such as an interrogation room, made by the target of the interrogation? Does the Due Process Clause of the Constitution afford protection for individuals to record and preserve their own private interactions with law enforcement officers? This article raises that issue and concludes that a due process right of citizens to record their encounters with law enforcement serves to level the playing field and to protect liberty interests that may not always be fully protected by the First Amendment.

Deborah Tuerkheimer

The Next Innocence Project: Shaken Baby Syndrome and the Criminal Courts
87 WASH. U. L. REV. (2009), SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1354659

Every year in the United States,



hundreds of people are convicted of having shaken a baby, most often to death. In a prosecution paradigm without precedent, expert medical testimony is used to establish that a crime occurred, that the defendant caused the infant's death by shaking, and that the shaking was sufficiently forceful to constitute depraved indifference to human life. Shaken Baby Syndrome (SBS) is, in essence, a medical diagnosis of murder, one based solely on the presence of a diagnostic triad: retinal bleeding, bleeding in the protective layer of the brain, and brain swelling. New scientific research has cast doubt on the forensic significance of this triad, thereby undermining the foundations of thousands of SBS convictions. Outside the United States, this scientific evolution has prompted systemic re-evaluations of the prosecutorial paradigm. In contrast, the U.S. criminal justice system has failed to absorb the latest scientific knowledge. This is beginning to change, yet the response has been halting and inconsistent. To this day, triad-based convictions are affirmed, and new prosecutions commenced, as a matter of course. ■

Editor's Note: This is the inaugural edition of the "Getting Scholarship Into Court Project." NACDL is excited to use this platform to bring helpful law review articles and other writings to the attention of criminal defense attorneys. The project's purpose is to identify scholarship that will be especially useful to courts and practitioners. Summarized on this page are the articles the project's advisory board recommends that practicing lawyers take the time to read. I am confident that this project will play a role in advancing the goal of providing lawyers with the tools they need to help clients obtain justice.