

THE IMPACT OF BEHAVIORAL GENETICS ON CRIMINAL LAW

BEHAVIORAL GENETICS & CRIMINAL RESPONSIBILITY
THE SCIENCE OF VIOLENCE, AGGRESSION & RELATED TRAUMA
BEHAVIORAL GENETICS IN CONTEXT

THE IMPACT OF BEHAVIORAL GENETICS ON CRIMINAL LAW

DUKE LAW SCHOOL - APRIL 8-9, 2005

LAW AND CONTEMPORARY PROBLEMS - DUKE LAW SCHOOL

DUKE LAW SCHOOL - ROOM 3043

THE IMPACT OF BEHAVIORAL GENETICS ON CRIMINAL LAW

ADDICTION - JUVENILE JUSTICE
IMPLICATIONS FOR THE CRIMINAL JUSTICE SYSTEM
INDIVIDUALS & POPULATIONS AFFECTED

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DNA DATABANKS - RESPONSIBILITY
BEHAVIORAL GENETICS: SUBSTANTIVE AREAS IMPACTED IN THE
CRIMINAL JUSTICE SYSTEM

THE IMPACT OF BEHAVIORAL GENETICS ON CRIMINAL LAW

—CONFERENCE SCHEDULE—

FRIDAY, APRIL 8TH

12:00 noon – 1:00 p.m. **Film**
Genes on Trial: Genetics, Behavior, and the Law (1st screening)
(This film will be shown two other times during the conference.)

1:00 p.m. – 1:30 p.m. **Welcome remarks**
Katharine Bartlett, Dean and A. Kenneth Pye
Professor of Law, Duke Law School,
and co-Special Editors
Nita Farahany and James E. Coleman, Jr.

Session I: Behavioral Genetics in Context

1:30 p.m. – 2:00 p.m. **Behavioral Genetics and Crime—In Context**
Owen Jones

2:00 p.m. – 2:30 p.m. **Considering Convergence: A Policy Dialogue about Behavioral Genetics, Neuroscience & the Law**
Brent Garland

2:30 p.m. – 2:45 p.m. **Break**

2:45 p.m. – 3:15 p.m. **Panel**
Owen Jones & Brent Garland

Session II: Behavioral Genetics: The Science of Violence, Aggression, and Related Traits

3:15 p.m. – 3:45 p.m. **Behavioral Genetics: The Science of Antisocial Behavior**
Laura Baker

3:45 p.m. – 4:15 p.m. **Misinformation, Misrepresentation, and Misuse of Human Behavioral Genetics Research**
Jonathan Kaplan

—ORDERING INFORMATION—

All conference sessions will be recorded, and transcripts will be made available for those interested.

Papers written in conjunction with this conference will be published in the Autumn, 2005 issue of *Law & Contemporary Problems*. Single issues of the journal are \$15 per copy.

To order conference transcripts or issues of *Law & Contemporary Problems*, please contact the Duke Law Publishing office at the address, phone number, or e-mail provided below.

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4:15 p.m. – 4:30 p.m.	Break
4:30 p.m. – 5:00 p.m.	Panel Laura Baker & Jonathan Kaplan

Session III: Behavioral Genetics and Criminal Responsibility

5:00 p.m. – 5:45 p.m.	Addiction, Genetics & Criminal Responsibility Stephen Morse
5:45 p.m. – 6:00 p.m.	Closing Remarks
6:00 p.m.	Reception Third Floor Loggia
6:00 p.m. – 7:00 p.m.	Film <i>Genes on Trial: Genetics, Behavior, and the Law</i> (2 nd screening)

SATURDAY, APRIL 9
Implications for the Criminal Justice System

8:15 a.m. – 9:15 a.m.	Continental Breakfast Third Floor Loggia
8:30 a.m. – 9:30 a.m.	Film <i>Genes on Trial: Genetics, Behavior, and the Law</i> (3 rd screening)

Session III (continued): Behavioral Genetics and Criminal Responsibility

9:30 a.m. – 10:15 a.m.	Rediscovering the Role of Criminal Responsibility through Behavioral Genetics Nita Farahany & James E. Coleman, Jr.
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Session IV: Behavioral Genetics and Crime: Individuals and Populations Affected

10:15 a.m. – 10:45 a.m.	Behavioral Genetics & Criminal DNA Databases David Kaye
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10:45 a.m. – 11:00 a.m.	Break
11:00 a.m. – 11:30 a.m.	<i>Genes on Trial: Remarks on the Issues Raised by the Tracy Island Project</i> Karen Rothenberg
11:30 a.m. – 12:00 noon	Panel Karen Rothenberg and David Kaye
12:00 noon – 1:00 p.m.	Lunch R. David Thomas Executive Conference Center Fuqua School of Business

Session V: Behavioral Genetics—Substantive Areas Impacted in the Criminal Justice System

1:00 p.m. – 1:30 p.m.	The Legal Link Between Genetics & Crime: Vile or Viable (A Post-<i>Mobley</i> Update) Deborah Denno
1:30 p.m. – 2:00 p.m.	Genetic Predictions of Future Dangerousness: Is there a Blueprint for Violence? Erica Beecher-Monas
2:00 p.m. – 2:30 p.m.	Community Accountability for Juvenile Delinquency: In the Brave New World of Behavioral Genetics Jane Rutherford
2:30 p.m. – 2:45 p.m.	Break
2:45 p.m. – 3:30 p.m.	Panel Deborah Denno, Erica Beecher-Monas, and Jane Rutherford
3:30 p.m. – 3:45 p.m.	Closing remarks

—SPONSORS—**LAW AND CONTEMPORARY PROBLEMS**

Established in 1933, *Law & Contemporary Problems* is Duke Law School's oldest journal. Each issue is devoted to papers on a particular topic of contemporary interest. Usually the topics reflect an interdisciplinary perspective with contributions by lawyers, economists, social scientists, scholars in other disciplines, and public officials. Widely distributed, the journal's subscribers include general university libraries, government agencies, and foreign educational institutions, as well as the more traditional law libraries and law firms. *Law & Contemporary Problems* publishes quarterly.

THE INSTITUTE FOR GENOME SCIENCE AND POLICY'S CENTER FOR GENOME ETHICS, LAW AND POLICY

As advances in genome sciences continue, the challenge for society will be arriving at a thoughtful consensus on how to make use of the innovations to enhance the well-being of individuals and society, while protecting values such as individual rights and distributive justice. The IGSP Center for Genome Ethics, Law, & Policy (GELP) was created to foster ethically responsible and socially beneficial uses of genome science, while addressing the complex ethical, legal, social and policy impacts of the Genome Revolution.

THE AMERICAN BAR ASSOCIATION'S SECTION FOR SCIENCE AND TECHNOLOGY LAW

The ABA's Section of Science and Technology Law was created in 1974. Members with diverse backgrounds work through five substantive divisions and twenty-four committees to explore the legal implications raised by new technical and scientific discoveries and developments. The Section provides a forum for members to explore new and emerging topics such as electronic commerce and digital signatures, the scope of electronic notarial practice, online payment mechanisms such as smart cards and digital cash, scientific misconduct, law and the Internet, multimedia and interactive technology, information security and privacy, telecommunications law, biotechnology, scientific evidence and genetic engineering.

DUKE UNIVERSITY GRADUATE AND PROFESSIONAL STUDENT COUNCIL

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Journal of Law, Medicine & Ethics, as a member of the NIH Recombinant DNA Advisory Committee, the National Action Plan for Breast Cancer, the American Bar Association's Coordinating Group on Bioethics and the Law and on the Advisory Council to the National Institute of Child Health and Human Development. She is currently serving on the Board of Directors for the American Law Deans Association, Editorial Board of the *Journal of Law, Medicine and Ethics*, Association of American Law Schools Committee on Academic Freedom and Tenure, and as a Fellow of the American Bar Foundation and Maryland Bar Foundation. She is a distinguished scholar, with numerous articles on women's health, genetic technology and the use of genetic information. She has done empirical work on attitudes about genetics. She has also done research on ethnic populations and on legislative approaches to genetic privacy and discrimination issues in the insurance and employment contexts. Dean Rothenberg was a participant in the Fred Friendly Seminar, *Genes on Trial: Genetics, Behavior & the Law*.

Professor Jane Rutherford

Professor of Law

Co-Director, Family Law Center

DePaul University College of Law

A.B., University of Chicago, J.D., University of Michigan

Professor Jane Rutherford is a widely cited scholar in both family law and constitutional law. She has a strong interest in juvenile justice, and has taught courses on juvenile justice, organized an interdisciplinary symposium on the impact of recent discoveries in neuroscience on the law affecting adolescence, and has devoted considerable scholarship to the intersection of juvenile justice, neuroscience, and biological heritability. Professor Rutherford's divorce reform articles have generated a national debate about income sharing that provides the basis for her efforts on both the state and national levels to make divorce law more equitable. Similar concerns about equality have motivated her work in constitutional law, which recently has focused on issues of religious liberty, children's rights, and voting. Professor Rutherford is currently working on a book on divorce. She also directs the College of Law's Schiller DuCanto & Fleck Family Law Center, and is the former chair of the Family Law Section of the Association of American Law Schools.

—DEDICATION—

PROFESSOR EMERITUS MELVIN G. SHIMM

A.B. 1947, Columbia University; LL.B. 1950, Yale University.

Professor Shimm is a native of New York City and served three years in the Army in World War II from which he emerged as a Lieutenant in the Field Artillery. He practiced law privately in New York City from 1950 to 1951 and as an attorney for the Wage Stabilization Board in Washington, D. C., from 1951 to 1952 before entering law teaching as a Bigelow Fellow at the University of Chicago from 1952 to 1953. He has been at Duke since 1953, serving as Associate Dean from 1978 to 1983 and assuming emeritus status in 1996. He has also taught at New York University and the Universities of Southern California, North Carolina, Michigan, and Texas.

He has been heavily invested in the Law School's publication program, editing *Law & Contemporary Problems*, the *Association of American Law School*, *Journal of Legal Education*, the American sections of the *Business Law Review* and the *Journal of Business Law*; and organizing and serving first as faculty editor and then as faculty adviser of the *Duke Law Journal*. He has also served as an editor of the *Yale Law Journal*, as senior consultant with The Brookings Institution, as director of the Association of American Law Schools' Orientation Program in American Law, as director of the Duke University Institute in Transnational Law, and as a member of the North Carolina General Statutes Commission. He continues to serve on the Faculty Editorial Committee of *Law & Contemporary Problems*, and from time to time to teach the Interdisciplinary Seminar in Medical-Legal-Ethical Issues.

Professor Shimm is a member of Phi Beta Kappa and the Order of the Coif, and is a recipient of the Duke University Award for Merit.

The staff of *Law & Contemporary Problems* is proud to dedicate this conference to Professor Shimm, for his more than fifty years of commitment to this journal's excellence.

—SPECIAL EDITORS—

Professor James E. Coleman, Jr.

Senior Associate Dean for Academic Affairs & Professor of the Practice
Duke University School of Law
A.B., Harvard University; J.D., Columbia University.

Professor Coleman's experience includes a judicial clerkship for the U.S. District Court for the Eastern District of Michigan, a year in private practice in New York, and fifteen years in private practice in Washington, D.C., the last twelve as a partner in a large law firm. In private practice, he specialized in federal court and administrative litigation; he also represented criminal defendants in capital collateral proceedings. He has had a range of government experience. In 1976, he joined the start-up Legal Services Corporation, where he served for two years as an assistant general counsel. In 1978, he conducted an investigation of two members of Congress as chief counsel for the U.S. House of Representatives' Committee on Standards of Official Conduct. In 1980, he served as a deputy general counsel for the start-up U.S. Department of Education. On sabbatical from his law firm, he was a visitor at Duke Law School for the fall semester of 1989, where he taught a seminar on capital punishment. He joined the faculty full-time in 1991 and taught criminal law, research and writing, and a seminar on capital punishment. He returned to private practice in 1993, but continued to teach a seminar on capital punishment as a senior visiting lecturer. He rejoined the faculty full-time in 1996. He teaches criminal law, legal ethics, negotiation and mediation, and capital punishment. He is active in the American Bar Association's effort to institute a moratorium on executions while jurisdictions with capital punishment examine the fairness of their systems. He was chair of the ABA Section of Individual Rights and Responsibilities (1999-2000) and is chair of the ABA Death Penalty Moratorium Implementation Project.

Nita Farahany

Judicial Law Clerk

Honorable Judith W. Rogers, U.S. Court of Appeals for the D.C. Circuit
A.B., Dartmouth College, M.A., Duke University, J.D., Duke University,
A.L.M., Harvard University, Ph.D. (ABD), Duke University

Nita Farahany has an interdisciplinary background in genetics, philosophy, and the law. Her experience includes strategy consulting for Fortune 100 pharmaceutical and biotechnology companies, health policy development in Kenya and Tanzania, legal work in health law, intellectual property, and general litigation, and advanced graduate work in biology, philosophy of law

Dr. Stephen J. Morse

Ferdinand Wakeman Hubbell Professor of Law
Professor of Psychology and Law in Psychiatry
University of Pennsylvania Law School & School of Medicine
A.B., Tufts University, Ed.M., J.D., Ph.D., Harvard University

Dr. Stephen Morse is a renowned expert in criminal and mental health law, whose work emphasizes individual responsibility in criminal and civil law. Dr. Morse has published *Foundations of Criminal Law* (Foundation Press, with Leo Katz and Michael S. Moore), and he is currently working on a book, *Desert and Disease: Responsibility and Social Control*. He is a Diplomate in Forensic Psychology of the American Board of Professional Psychology; a past president of Division 41 of the American Psychological Association (the American Psychology-Law Society); a recipient of the American Academy of Forensic Psychology's Distinguished Contribution Award; a member of the MacArthur Foundation Research Network on Mental Health and Law (1988-1996); and a trustee of the Bazelon Center for Mental Health Law in Washington, D.C. (1995-present). Prior to joining the Penn faculty in 1988, Morse was the Orrin B. Evans Professor of Law, Psychiatry and the Behavioral Sciences at the University of Southern California. He has served as a Visiting Professor at a number of institutions, including the California Institute of Technology (Law and Social Science), Cardozo School of Law, Georgetown Law Center, and University of Virginia School of Law.

Dean Karen H. Rothenberg

Dean, Marjorie Cook Professor of Law
University of Maryland School of Law
B.A., Princeton University, M.P.A., Woodrow Wilson School for Public and International Affairs, Princeton University, J.D., University of Virginia School of Law

Dean Karen H. Rothenberg is the Dean, the Marjorie Cook Professor of Law, and the founding Director of the Law & Health Care Program at the University of Maryland School of Law. Her experience includes Special Assistant to the Director, Office of Research on Women's Health, National Institutes of Health, associate at a major Washington D.C. law firm, and work with a variety of health and medical organizations. She served as president of the American Society of Law, Medicine and Ethics, as a member of the Institute of Medicine's Committee on Legal and Ethical Issues Relating to the Inclusion of Women in Clinical Studies, and on a number of NIH panels, including panels on the ethical, legal and social implications of genetics. She has also served as co-editor-in-chief of the

Behavioral Biology,” with Timothy Goldsmith (Yale, Biology), appeared in the March 2005 issue of the *Columbia Law Review*.

Dr. Jonathan Kaplan

Assistant Professor of Philosophy
Oregon State University
B.A., University of California at Irvine,
Ph.D. in Philosophy, Stanford University

Dr. Jonathan Kaplan specializes in the Philosophy of Biology, Philosophy of Science and Political Philosophy. Prior to his current position as Assistant Professor of Philosophy at Oregon State University, he served as an Assistant Professor of Philosophy at the University of Tennessee in Knoxville, a Lecturer in Philosophy at Stanford University, and was a post-doctoral fellow with the Stanford University Biomedical Ethics Center's Program in Genomics, Ethics and Society. He currently directs the OSU undergraduate program in Applied Ethics.

Professor David H. Kaye

Regents' Professor, Arizona State University College of Law
Fellow, Center for the Study of Law, Science & Technology
B.S., Massachusetts Institute of Technology, M.A., Harvard University,
J.D., Yale Law School

Professor David H. Kaye is a widely published and oft-cited legal scholar with an expertise in fields impacted by genetics, scientific evidence and the law, including Evidence, Criminal Law, Constitutional Law, and Tort Law. He has held teaching positions at a number of institutions, including the University of Virginia, Duke University School of Law, and Cornell Law School. He was a Fellow of Oxford University's University College, a Mason Ladd Distinguished Visiting Professor at the University of Iowa, a Visiting Research Fellow at University of Chicago Law School, a Fulbright Professor at Wuhan University, and the Director at the Center for the Study of Law, Science and Technology at Arizona State University. He also served on the National Academy of Sciences' Committee on DNA Forensic Science: An Update and as the Reporter for the Legal Issues Working Group of the Attorney General's National Commission on the Future of DNA Evidence.

and science, and the law. Ms. Farahany is presently a judicial clerk for the Honorable Judith W. Rogers on the United States Court of Appeals for the District of Columbia Circuit. She is also completing a Ph.D. in Philosophy of Science and the Law, focusing on the intersection of behavioral genetics and criminal law, with a detailed inquiry into the scientific underpinnings of violence, aggression, and related traits, the philosophical assumptions of the criminal justice system, and the practical implications of introducing behavioral genetics into the U.S. criminal justice system.

—SPEAKER PROFILES—

Dr. Laura A. Baker

Associate Professor, Department of Psychology
University of Southern California
Director, Southern California Twin Project
B.A., University of Kansas, M.A., University of Colorado,
Ph.D., University of Colorado.

Dr. Baker primarily studies the genetic and environmental bases of human behavior, including how genes and environment produce individual differences in both cognitive and personality variables, as well as antisocial behavior during both childhood and adulthood. Her current research focuses on the genetic and environmental factors in childhood aggression and antisocial behavior. She is presently conducting a large-scale twin study in this area (funded by NIMH), investigating biological risk factors for antisocial behavior (primarily psychophysiological measures, including ERPs and autonomic arousal), as well as social risk factors (including family and peer characteristics). The study is designed to improve understanding of how genes and environment mediate the pathways between risk factors and antisocial outcomes.

Professor Erica Beecher-Monas

Professor of Law
University of Arkansas at Little Rock
William H. Bowen School of Law
B.A., Florida International University, M.S., J.D., University of Miami,
LL.M., Columbia University, J.S.D., Columbia University

Professor Beecher-Monas's published work has focused largely on the impact of neuroscience, behavioral biology and related scientific research on the civil and criminal justice system, and she is a leading scholar on the implications of scientific research for predictions of future dangerousness, and the reliability and admissibility of scientific evidence in civil and

criminal trials. She joined the faculty of the William H. Bowen School of Law at the University of Arkansas at Little Rock in 1996. Her previous experience includes a judicial clerkship for the Honorable William M. Hoeveler, United States District Judge for the Southern District of Florida, and a Visiting Professorship at the University of Miami School of Law. Prior to joining the academy, Professor Beecher-Monas was a trial and appellate attorney at a major New York law firm, where she concentrated on insider trading defense work and securities litigation. She has published numerous articles and presented at and participated in conferences, meetings and symposia on the use of scientific evidence in civil and criminal trials. She recently Chaired the Law & Society Association's panel on "The Law & The Brain: Toward an Empirical Basis for Criminal Law," and participated in the AAAS Conference on Neuroscience and the Law.

Dr. Deborah Denno

Professor of Law

Fordham University School of Law

B.A., University of Virginia, M.A., University of Toronto, Ph.D., J.D.
University of Pennsylvania

Dr. Deborah Denno is a distinguished legal scholar who has studied factors related to criminal behavior, and published extensively on criminal law, criminal responsibility, the death penalty, and the intersection of behavioral biology and psychology, criminal behavior and punishment. Her experience includes work as a research associate at the Georgetown Law Center's Institute of Criminal Law and Procedure, lecturer and Project Director at the Wharton School's Sellin Center for Studies in Criminology and Criminal Law, associate at a major New York law firm, judicial law clerk to the Honorable Anthony J. Scirica, Chief Judge of the U.S. Court of Appeals for the Third Circuit, Visiting Professor of Public and International Affairs at the Woodrow Wilson School of Princeton University, at Vanderbilt University School of Law and Columbia University School of Law, and a Visiting Senior Fellow at the University of London's School of Advanced Study, in the Institute of Advanced Legal Studies. Dr. Denno was the first to write about the use of behavioral genetics in the case of Stephen Mobley, and the implications at the time for criminal law and criminal responsibility. She has presented at and attended numerous conferences and symposia focusing on the intersection of science and criminal law.

Brent Garland

Senior Program Associate, Scientific Freedom, Responsibility and Law
Program, AAAS

B.A., University of Virginia, M.S., Virginia Commonwealth University, J.D.,
College of William and Mary's Marshall-Wythe School of Law

Brent Garland is a Senior Program Associate with the Scientific Freedom, Responsibility and Law Program of AAAS. His interests include biomedicine, bioethics, biotechnology, and the interaction between science and law. He recently edited the volume, *Neuroscience and the Law: Brain, Mind and the Scales of Justice*, which evaluates the legal, social, and ethical issues that are evolving as a result of new neuroscience discoveries and advances in brain imaging technologies. The book is based on a discussion of twenty-seven neuroscientists and law professionals who met in 2003 for a two-day conference to discuss these emerging issues. The conference was sponsored by the American Association for the Advancement of Science (AAAS) and the Dana Foundation, co-publishers of the book. Mr. Garland began his legal career as an assistant district attorney in North Carolina, and is a former member of the faculty of the University of Virginia. He is an active member of the Virginia State Bar.

Professor Owen D. Jones

Professor of Law & Professor of Biological Sciences
Vanderbilt University

B.A., Amherst College, J.D., Yale Law School

Professor Owen D. Jones is a Professor of Law and a Professor of Biological Sciences at Vanderbilt University. Professor Jones came to Vanderbilt from Arizona State University, where he was Willard H. Pedrick Distinguished Research Scholar, Professor of Law, and Professor of Biology. He has also served as a visiting professor at the University of Texas School of Law and as the Dunwoody Distinguished Lecturer at the University of Florida College of Law. Professor Jones is a leading scholar on issues at the intersection of law and human behavioral biology. He is the founding President of the *Society for Evolutionary Analysis in Law* (SEAL; www.sealsite.org)—an international interdisciplinary scholarly organization, whose several hundred members focus on issues at the intersection of law and evolutionary sciences. Prior to joining the academy, Professor Jones clerked for Judge Thomas Penfield Jackson, of the United States District Court for the District of Columbia, and practiced law with the D.C. law firm Covington & Burling. In 2004, The Gruter Institute for Law and Behavioral Research awarded Professor Jones the Bene Merenti Award for distinguished achievements in law and biology. His article, "Law and