Imagine your typical interaction with a student who is just learning about the exciting field of psychology and law. Perhaps to illustrate the applicability of psychological science to the law, you use an example of a criminal case and outline how psychology can inform process and procedure from investigation (e.g., eyewitness identification issues) through arrest (e.g., interrogations) to case disposition (e.g., jury decision making or plea bargaining), highlighting the relevance of psychological science to policy and practice. You might discuss how we attempt to use our research to influence changes in law; last year, the American Psychological Association’s (n.d.) Committee on Legal Issues (COLI) used psychology research to inform the submission of six *amicus curiae* briefs to various levels of appeal courts (including two to the Supreme Court of the United States). But, what you should also make clear, is that for psycholegal research to be most effective and influential, it must be directly informed by current statute, case, and regulatory law.

It is only with knowledge of existing law that we can develop ecologically valid research that can make a real contribution to policy discourse. And never has it been easier to access state and federal law. The digitization of information that has occurred in the last 10 to 15 years has meant that all 50 states, the commonwealths/proctorates and the federal jurisdiction have publicly accessible Internet databases housing their laws. And many academic institutions have
subscriptions to searchable services such as Westlaw and LexisNexis, allowing access to statutory law, administrative law, case law, legal reviews and commentary. In this article, we use an example from our current research on guilty pleas to highlight how knowledge of the law is easily achievable and necessary to form meaningful research questions.

In reading legal commentary and empirical research, our team identified nine topics related to the guilty plea process that were garnering a great deal of attention by scholars (Zottoli et al., 2018). One of those topics was the imposition and communication of collateral consequences of convictions. Collateral consequences refer to any non-penal restrictions imposed on individuals convicted of a crime, and can include restrictions on housing, employment, licensure, federal assistance, voting, etc., and exist at the federal, state, and local levels (Pinard, 2006). While the direct consequences of a guilty plea (such as sentence length) must be communicated to defendants before guilty plea allocution, prior to the U.S. Supreme Court’s decision in Padilla v. Kentucky (2010) requiring that “life altering” consequences, such as deportation, be communicated to defendants, many jurisdictions did not require the communication of any collateral consequences in their plea colloquies (Lang, 2012). One obvious, empirical question is whether the communication of collateral consequences plays a role in the decision-making of individuals who enter guilty pleas (i.e., the vast majority—95% or more—of those convicted of a crime; see Edkins & Dervan, in press, for research addressing whether and how defendants consider collateral consequences in their plea decisions). Another might be whether perceptions of procedural fairness differ among defendants who pleaded guilty in states with different requirements for the communication of collateral consequences. Knowledge of current practices regarding the communication of collateral consequences can help inform research questions and study design.
After the identification of topics, we systematically reviewed criminal procedure law and court rules for references to our selected topics for all 50 states, the District of Columbia, and the federal government. Specifically, we accessed statutes and court rules published on government-run websites and employed text searches to identify relevant sections. For example, a simple Google search for “Florida law” will bring up the state’s statutory code in its entirety, and searching the code for key words (e.g., “plea bargain,” “guilty plea,” “plea colloquy”) brings up the parts of the statute specific to our research. We also utilized similar search strings in Westlaw’s States & Court Rules database, selecting the options to return results for all federal and state jurisdictions. Care should be taken, of course, to ensure that search terms are exhaustive, including interchangeable/alternative terms (e.g., “plea bargain,” “plea deal”) and all potential word forms (e.g., “plead,” “pleading,” “pleaded,” or “plead!”).

The next step is the coding process and, as would be employed with any summary of qualitative information, careful attention should be paid to the development of coding schemes and inter-rater reliability. To continue with our example, we categorized jurisdictions by whether they require collateral consequence instructions and, if so, what specific consequences they require be communicated. We found that 23 states (or nearly half the country) make no mention of collateral consequence instructions in their statutes or court rules (Zottoli et al., 2018). Of the other 27 states and the federal government, most only require that defendants be informed of collateral legal consequences (e.g., sex offender registration). Only eight states require communication of any extralegal consequences (most often firearm license restrictions) and only three of these states (Illinois, Oregon, and Vermont) require information on extralegal consequences such as employment and housing restrictions.¹ The discrepancies among the states

¹ Our review covered statute and court rules only; practice in a given jurisdiction may differ from statutory requirements. For example, Idaho statute requires only sanction-specific collateral consequences, but a broad list of consequences is provided in their guilty plea advisory form.
in terms of their legal requirements for the communication of these consequences reveal an area ripe for research; for example, are there outcome disparities among the states both in guilty plea rates and in perceptions of procedural fairness among individuals convicted by plea? While existing laboratory studies suggest that defendants do not adequately consider collateral consequences in their decisions (Edkins & Dervan, in press), laboratory research will always struggle to replicate the exigencies of the real world. Field data can supplement this work, both by supporting/refuting laboratory data and by pointing the way to more precise experimental designs that seek to replicate observed data.

Whatever the area of investigation, conducting systematic reviews of procedural, administrative and case law across jurisdictions can be a fruitful way to advance research. Such reviews make data on the actual policies and procedures of given jurisdictions more accessible to investigators, making it both easier and more likely that investigators will design laboratory studies that test the effects of specific polices. Furthermore, as noted above, these kinds of reviews will facilitate investigations into whether states with different policies experience different outcomes—be that with respect to group disparities, perceptions of fairness, or efficiency and transparency—bolstering the utility of our research for policy reform.

Comparative research across jurisdictions also has the potential to reduce any tendency toward “one size fits all” thinking in empirically informed policy positions. That is, we may find that certain policies and procedures work well in some states but not in others, as a result of differences in culture, demographics or population densities.

By its nature, the field of psychology and law demands a symbiotic relationship between the two disciplines, wherein the law informs the research and the research informs the law. As researchers, let’s embrace the accessible nature of the law today and leave our ignorance behind.
References


