

PSYCHOLOGY AND LAWYERING
Fall, 2013

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OFFICE HOURS:

Catch me before or after class if that works for you. You are also free to drop by without an appointment. My office is #418 (4th floor of the Rogers building, take two lefts after exiting the elevator). My e-mail and phone # are listed above.

REQUIRED COURSE MATERIALS:

JENNIFER ROBBENOLT & JEAN STERNLIGHT, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION AND DECISION MAKING* (ABA Publications, 2012). To purchase *Psychology for Lawyers* at the special student price of \$99.72 please go to the ABA webstore page for the book (link provided below)
<http://apps.americanbar.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5100021>

You will add the book at regular price (\$174.95) to your cart and proceed to checkout. Then, you will enter the following discount code: **PFLSTUDENT2** and click ‘apply discount’. The new price should be \$99.72 upon completion. Please note, the discount code is only valid 8/1/13 – 9/30/13 so don’t wait too long to order the book.

OVERVIEW OF COURSE:

Practicing law means working with people. While many people, including lawyers themselves, tend to think of lawyers as either gunslingers or analysts, in fact typical lawyers spend most of their time working with clients, other lawyers, staff, witnesses, mediators, arbitrators, experts, judges, and jurors. Because good lawyering requires a good understanding of people and how they interact, most lawyers could benefit greatly from knowing more about psychology: the science of how people think, feel, and behave. This course is designed to provide insights from a number of areas of cognitive and social psychology, and apply those insights to specific areas of practice: interviewing, counseling, discovery, negotiation/mediation, discovery, and writing. It will also examine insights psychology provides for ethics, attorney success, and happiness. Although relevant insights can also be drawn from other aspects of psychology, including, this course will focus primarily on cognitive and social psychology.

This course will rely substantially on student participation and students will be expected to keep up with the reading, prepare a journal, write a practical paper and make a presentation. In addition to reading and discussion we will view videos and use hands-on exercises to examine how psychology can be used to help lawyers in various tasks. We will discuss uses of psychology in civil litigation, criminal litigation and transactional work. Although the text does not focus on trial practice or juries (its focus is pretrial and transactional) students can write papers on aspects of juries or trial practice if they prefer. Similarly, students can also focus on other applications of psychology to lawyering that are not specifically covered in the course, so long as they secure my approval. Although the course focuses on cognitive and social psychology students may explore other branches of psychology (e.g. clinical, developmental, neuroscience, and abnormal psychology) and their implications for lawyering.

If you want to use your paper for this course to satisfy the school's writing requirement you may, but you will need to do more work than those students who are not seeking to fulfill the writing requirement. Specifically, you will need to substitute a research paper for the practical paper described below, and you will need to provide me with an outline and a first draft of the paper.

GRADING:

In general your final grade will be based 20% on class participation, 30% on your journal, 20% on your presentations, and 30% on your final paper. However, if you are taking the class to fulfill the writing requirement your final grade will instead be based 20% on class participation, 20% on your journal, 10% on your presentation, and 50% on your final paper. Each element is discussed below. There will be no final exam. Papers and journals are due on the last day of the exam period.

(A) Class participation.

In calculating the class participation portion of your grade I will consider your class attendance and punctuality, your preparation for class, your participation in class discussions, your attendance at any additional required lectures (they will be recorded in case you have a scheduling problem), and your performance in any in-class exercises. If you miss more than 80% of the scheduled classes I will dis-enroll you from the course for non-participation (absent a medical condition that can be accommodated).

With respect to class discussion, I expect regular, valuable contributions from all members of the class. To prepare for class discussions you will need to do the reading carefully. When your colleagues are making presentations you will need to participate actively in the discussions their presentations generate.

(B) Journal

I require each of you to keep a "journal," throughout this course, that you will hand in to me at the end of the semester. The purpose of the journal is to discuss your reflections on the course, and what you learned from it. (Psychologists have found that people learn most/best when they reflect on what they are learning). I am not looking for a personal diary so much as

your intellectual insights. One purpose of the journal is to make sure that you are doing the reading for class. I will pose questions for you to address in the journal each class. In addition to answering these questions you may also make additional entries regarding what you think about what you are reading/hearing in class. Be analytical. That is, don't just say "this was great," or "this was boring." Rather, talk about how you are being challenged to think in different ways, what you are learning that does or does not make sense and why, how what you learned fits in with other things you know about, etc. It is fine to be critical of things that you read or hear, but do it in some depth, i.e. "the material presented in the text regarding false memory does not make sense to me because..." or "the material in the text suggested that open-ended questions are often best in interviews, because... However, in my view" Or, "the exercise we did in class today on hindsight bias was very enlightening because..." The journal should be typed. It should be 15-20 pages long, double spaced. Each class should generally have an entry but you can skip up to 5 of the 26 classes. When you skip a class just mark it "skip." You won't be penalized for skipping classes so long as the rest of the entries are good. The journal should also have a summary, at the end, discussing the most important things you felt you learned in the class. I will grade the journals anonymously so you will need to get a number from the Registrar for that purpose.

(C) Final Paper

I am not requiring a research paper for this class. Instead, I want you to write a *practical* paper that applies the psychology you have learned from the reading and our classroom activities to a particular aspect of lawyering. That is, the purpose of your paper is not just to discuss psychology, but to help lawyers use psychology to be better lawyers. I must approve your paper topic. (This is a protection for you!). In the alternative, if you want to discuss an aspect of psychology that was not covered in class or in the readings you can do so, but again the paper must be practical.

To make sure that your paper is practical and relevant to law practice I want you to discuss the subject with at least three attorneys or paralegals. You should speak to these attorneys/paralegals about an aspect of lawyering such as interviewing, counseling, writing, trial practice, discovery, negotiation, mediation, marketing, succeeding in a firm, etc. Then, consider how knowledge of an aspect of psychology might help them be even more effective at their job. Your paper will be either a memorandum or a bar journal type article designed to inform attorneys/paralegals of the value of a particular aspect of psychology to lawyering. It should refer to what you learned from the people you interviewed in at least general terms. It should also identify the people whom you interviewed. The paper should be 12-15 pages long, double-spaced.

No later than September 11, 2013 you must meet with me to discuss your proposed paper topic. You should have a topic chosen by this point. Do any brainstorming with me earlier, so you are ready to talk some specifics about your topic and research plan by.

I will grade the papers based on the quality of the analysis, the organization, and the writing (no typos or grammatical errors please). All papers must be footnoted, and you should follow either the Blue Book or ALWD. However, you don't need the kind of extensive footnotes that

would be required for a research paper. I don't want to just read regurgitation of the book. Rather, your goal should be to expand on the book in some way, and to be practical in the advice you are providing to attorneys. Usually narrow topics make for better papers than broader topics, because they allow you to go into more detail.

(D) Fulfilling the writing requirement

If and only if you want to fulfill the writing requirement in the class then your paper requirements are different. Instead of writing the practical paper described above you will need to write a research paper that is at least 25 pages long, including footnotes, having first provided me with a detailed outline and a good first draft. You will need to revise the first draft in response to my comments. Note that my comments tend to be substantial and therefore require fairly extensive revision. Your outline is due September 24th and your first draft is due October 22, 2013. If you are fulfilling the writing requirement through this course you must also attend the related class(es) sponsored by the LP faculty

(E) Presentations

You will make two presentations to the class. One presentation will be made during the first eight weeks of class, regarding material we will all read. The second presentation will discuss the subject of your paper and will be made during the last five weeks of class. The presentations can be in lecture/discussion format but can also be much more fun, and include videos, role plays, etc. The length of the presentations will depend on the size of the class.

(F) Client Counseling Competition

As a requirement for this class you must participate in the Boyd in-house client counseling competition. I will let you know the date of the competition as soon as it is scheduled. You must then write about the psychology of your experience in your journal.

(G) Cancelled Classes

There will be no class November 25th or 27th. This is your "reward" for participating in the client counseling competition.

PLAGIARISM:

You all know not to plagiarize, but some of you may conceivably be confused as to what plagiarism means in this context. Of course you all know that you cannot quote another author without attribution. This includes web sites! Merely altering a few words does not permit you to omit quotation marks. In addition, it is also improper to paraphrase or borrow ideas from another, without attribution. If you got an idea from another author, cite that work. It is often appropriate to explain either in text or footnotes how your own argument differs from that previously made by others. You will find other articles' sources/footnotes to be a rich source of information. However, to the extent that you rely on another article's footnotes you must read all such sources yourself, to make sure they really say what the other author said they said. It is

never proper to cite a source you have not yourself read, unless you note that you are “citing Source A citing Source B.” This should only be done rarely, when that second source is important but cannot be located. To the extent you use other authors’ footnotes as starting points you will often find you need to update such footnotes, e.g. by citing to a more current work. If you have any questions regarding when cites are and aren’t needed, please ask me, or err on the side of citation. Before you hand in your paper you may want to run it through the plagiarism detection software offered by LEXIS. To do so, I am told you:

just need to sign onto Lexis and click on "Access Webcourses". Once in Webcourses, the student just clicks on the "Courses" tab in the upper-left hand corner of the page and then select our school from the list. Finally, the student clicks on "Enroll" to add the class.”

DISABILITY STATEMENT:

The Disability Resource Center (DRC) coordinates all academic accommodations for students with documented disabilities. The DRC is the official office to review and house disability documentation for students, and to provide them with an official Academic Accommodation Plan to present to the faculty if an accommodation is warranted. Faculty should not provide students accommodations without being in receipt of this plan.

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the DRC for the coordination of services. The DRC is located in the Student Services Complex (SSC-A), Room 143, and the contact numbers are: Voice (702) 895-0866, TTY (702) 895-0652, fax (702) 895-0651. For additional information, please visit: <http://studentlife.unlv.edu/disability/>.

CLASSES:

August 26: Introduction. Read introduction to text and syllabus. For your journal (this will be further explained in class) discuss why you are taking this class and what you hope to get out of the class. Also discuss the extent to which you think your law school training to date is/is not adequately preparing you to be an attorney.

August 28: Perception. Read Chapter 1. For your journal, discuss how the concepts of “schemas” and “naïve realism” are relevant to the work of attorneys.

Sept. 4: Memory. Read Chapter 2. For your journal, choose three psychological insights regarding memory and discuss how they are relevant to the work of attorneys.

Sept. 9: Emotion. Read Chapter 3. For your journal, discuss two situations in which you have seen attorneys confront emotion, or two situations in which you can imagine attorneys confronting emotion. Then, discuss how attorneys might use the psychology of emotion to deal with such situations.

Sept. 11: Judgment shortcuts. Read Chapter 4. For your journal, discuss whether/why you think attorneys and judgments are likely to be affected differently by judgment heuristics and biases than are clients. To the extent you believe attorneys may be less or differently affected by these heuristics than are their clients, how should this affect the way attorneys counsel their clients?

Sept. 16: Decision making. Read Chapter 5. For your journal, discuss an important decision you have made and how you see the psychology of decision making affected that decision.

Sept. 18: Persuasion and social influence. Read Chapter 6. For your journal, discuss one type of deliberative persuasion and one type of peripheral persuasion that you think are particularly important for attorneys to understand, and why.

Sept. 23: Interpersonal communication. Read Chapter 7. For your journal, discuss the psychological implications of at least two of the following for attorneys: (1) nonverbal communication; (2) alternative communication mediums; (3) lying; (4) rapport & trust.

Sept. 25: Justice. Read Chapter 8. For your journal, discuss whether/how knowledge of the psychology of justice is relevant to the work of attorneys. If time/space permit you may also want to consider the extent to which discussions of justice have been part of your legal education to date.

Sept. 30: Interviewing. Read Chapter 9. For your journal, apply the psychology you have learned to analyze at least one of the interviews you observed in class (recorded or live).

Oct. 2: Counseling. Read Chapter 10. For your journal, discuss how an attorney can best apply psychology to deal with the problem of how to deliver bad news to a client.

Oct. 7: More interviewing and counseling. No reading. For your journal, use your knowledge of psychology to analyze an interview conducted in class.

Oct. 9: Negotiating. Read pp. 253-294. For your journal, describe a legal negotiation of which you are aware. If you are not aware of any, you can use one from a movie or television show or something like that. Then, discuss how one of the attorneys involved in that negotiation might effectively use psychology to be more effective.

Oct. 14: Mediation. Read pp. 295-304. Also read James H. Stark & Douglas N. Frenkel, *Changing Minds: The Work of Mediators and Empirical Studies of Persuasion*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1769167 (download the paper, rather than just reading the abstract). For your journal, discuss one of the following: (1) three important things attorneys need to know about psychology to be effective advocates in mediation; or (2) three important things mediators need to know about psychology to do their job effectively.

Oct. 16: Discovery and due diligence. Read Chapter 12. For your journal, imagine that you have been assigned to take the deposition of Sheldon Adelson. (You can watch some of his depositions online). What would you draw from psychology to try to do your job more effectively?

Oct. 21: Writing. Read Chapter 13. For your journal, what if anything did you learn from this chapter that you believe will help improve your writing?

Oct. 23: Ethics. Read Chapter 14. If you like you may also want to read Jennifer K. Robbennolt & Jean R. Sternlight, *Behavioral Legal Ethics*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2248137 (as before, you will want to download the full paper rather than just rely on this abstract). For your journal, discuss what steps you might take, given the psychology you have learned, to help yourself be an ethical attorney.

Oct. 28: Productivity and success. Read pp. 417-444. For your journal, discuss how you can apply what you learned about at least two of the following to be more productive and successful: (1) procrastination; (2) learning from mistakes; (3) working in groups; or (4) rainmaking.

Oct. 30: Happiness. Read pp. 444-459. For your journal, discuss how what you have learned about the psychology of happiness is relevant to (1) choices you will be making about future employment or (2) your personal life.

Nov. 1: Participate in client counseling competition: evening only

Nov. 2: Participate in client counseling competition: amount of time will depend on how well you do! For your journal, discuss what you learned, psychologically, from participating in the client counseling competition.

Nov. 4: Student presentations. For your journal, discuss two of the presentations you heard today.

Nov. 6: Student presentations. For your journal, discuss two of the presentations you heard today.

Nov. 13: Student presentations. For your journal, discuss two of the presentations you heard today.

Nov. 18: Student presentations. For your journal, discuss two of the presentations you heard today.

Nov. 20: Student presentations. For your journal, discuss two of the presentations you heard today.

Final journal entry: Summarize the most important things you got out of this course.