

**PSYCHOLOGY AND LAWYERING (688-1001)**  
**Spring 2021**  
**Professor Jean R. Sternlight**  
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**email: [jean.sternlight@unlv.edu](mailto:jean.sternlight@unlv.edu)**  
**University of Nevada-Las Vegas Boyd School of Law**  
**Mon./Wed. 10:35 a.m. to noon, via Zoom**  
**<https://zoom.us/j/98970955066>**  
**Meeting ID: 989 7095 5066**  
**Phone: 16699006833**

**ZOOM RECORDINGS OF CLASS:**

**<https://bsl.box.com/s/mxefrfs63cujvr4a5f4092niegqtsdm>**

**OFFICE HOURS:**

Catch me before or after class if that works for you, on Zoom. I will also hold office hours Tuesday and Thursday at noon on Zoom, here: <https://zoom.us/j/99641292792> (Meeting ID: 996 4129 2792, Zoom phone +12532158782). My e-mail and phone # are listed above.

**REQUIRED COURSE MATERIALS:**

JENNIFER ROBBENNOLT & 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 reduced student price please go to the ABA webstore page for the book (link provided below)

<http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=214125>

Add the book at regular price to your cart and proceed to checkout. Then input the discount code, PFL30STU to get a 30% discount. Also, if you save a record of your transaction, particularly the order number, you can get a free e-book version of the second edition which is scheduled to come out in late February.

**OVERVIEW OF COURSE:**

Practicing law means working with people. Typical lawyers spend most of their time working with clients, other lawyers, staff, witnesses, mediators, arbitrators, experts, judges, and jurors. Because effective lawyering requires a good understanding of people and how they interact, most lawyers could benefit greatly from knowledge of psychology: the science of how people think, feel, and behave. This course is designed to provide insights from cognitive and social psychology, and to apply those insights to specific areas of law practice: interviewing, counseling, discovery, negotiation/mediation, discovery, and writing. It will also examine insights psychology provides for ethics, attorney success, and happiness. These insights will also

help you improve your lawyering online, as well as in-person, and consider more generally how technology impacts lawyering.

This course will rely substantially on student participation and students will be expected to keep up with the reading, participate in class and on TWEN, write a paper and make a presentation. Participation will inevitably be different online than it would have been in-person, but it will still be critically important. In addition to reading and discussing we will view videos and use exercises to examine how psychology can 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 because that is the focus of most attorneys) students can write papers on aspects of juries or trial practice. Similarly, students can also focus on applications of psychology to other aspects of lawyering that are not specifically covered in the course, so long as they secure my approval.

If you want to use your paper for this course to satisfy the school's Capstone Writing Requirement you may, but you will need to do substantially more work than those students who are not seeking to fulfill the Capstone Writing Requirement. Specifically, you will need to provide me with an outline and a first draft of the paper, and then respond to my comments. Your paper will also need to be a little longer than it otherwise would. Most students find it impossible to satisfy the Capstone in this course in a single semester. If you are planning to graduate in the spring of 2021 and hoping to fulfill the Capstone in this course you must contact me before January 1, 2021 and use the winter break to get a jump start on the process.

### **BOYD LEARNING OUTCOMES:**

Students who successfully complete this course will be able to demonstrate skills, knowledge, and values from the following Boyd learning outcomes:

- *Analysis and Decision-Making:* by learning how to apply relevant psychology on judgment and decisionmaking to help you and your clients make the most appropriate choices given their particular circumstances.
- *Professional Identity:* by considering how psychology impacts and distorts ethical challenges inherent to the practice of law.
- *Legal Writing:* by writing a substantial paper, considering feedback from the professor, and by learning about and applying psychology relevant to persuasion and communication.
- *Oral Communication:* by learning about psychology relevant to communication and persuasion, and by engaging in role playing exercises in class, as well as participating in class and small group discussions.
- *Information Gathering:* by considering how human psychology impacts the legal and factual information clients and attorneys need, and how they can and should process that information to help their clients consider whether and how to file/defend a claim, how to handle a transaction, and whether and how to settle a dispute.
- *Interpersonal Interactions:* by studying the psychology pertinent to interpersonal interactions, and by collaborating with peers in break-out groups and preparing for in-class role-playing exercises.

- *Client and Practice Management*: by studying psychology of judgment, decision-making, communication, persuasion, ethics, wellbeing, and other matters that are critically important to the practicalities of client representation, including attorney billing and ethical issues.

## **RESPECT, COLLEGIALITY, and BUILDING CONNECTION:**

Psychology has always shown the importance of treating each other with respect and collegiality, and of building connections, and this is truer than ever in the world of Covid-19. You will be making impressions on me and your fellow students from Day 1. And, we want to build a caring community. So, here are the rules of engagement for class: (1) Keep your video on if you possibly can; (2) If you can't keep your video on, let me know why and, if at all possible, post a current picture of yourself in lieu of video; (3) dress appropriately for class (be clothed, no pajamas, no hats, etc.); (4) don't do anything weird during class like lying in bed, cleaning a gun, smoking, picking fleas out of your pet, or eating messy food; (5) arrive on time, stay for the entire class, and do your very best to pay attention (no multitasking); (6) feel free to disagree with others' views, including mine, but do so respectfully.

Please use time before and after class, and also during office hours, to help build connections with one another and with me. In addition, I plan to set up some opportunities to go hiking, biking, play frisbee golf, or otherwise get together safely to the extent possible.

## **ATTENDANCE:**

Attendance is mandatory, and good attendance will also help you learn the material. At the beginning of each class sign into the chat to show you were present. But, I appreciate that these are crazy times so let me know about your special circumstances in advance and I will accommodate as well as I can, including potentially by occasionally allowing you to watch the video of class that will be made each day instead of attending class. Still, if you miss more than 20% of the classes I may dismiss you for excessive absences. I will also factor non-attendance and non-punctuality into your participation grade, as noted below. If I call on you and you are unprepared you will also be marked absent, unless you have notified me in advance that you have a problem being called on that particular day.

## **GRADING:**

Your final grade will be based 35% on class participation, 15% on your presentation of your paper, and 50% on your final paper. Each element is discussed below. There will be no final exam. Papers are due on May 13, 2021 by 5pm.

### **(A) Class participation**

In calculating the class participation portion of your grade I will consider your class attendance and punctuality, your apparent preparation for class, your participation in class discussions and exercises, your participation in TWEN discussions (see below), your assistance with teaching the class (see below), your attendance at any additional required lectures (they will

be recorded in case you have a scheduling problem), and your performance on any occasional “participation point enhancement opportunities” (pop quizzes).

With respect to live 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.

With regard to TWEN, I will set up a set of forums so that you can write about issues sparked by the readings, classroom activities, or outside materials that are relevant to class. I require each of you to initiate discussion on at least four issues, throughout the semester. I also require each of you to respond to at least six issues, initiated by others, throughout the semester. To the extent you participate more than this minimum you will earn additional participation credit. But I am looking for thoughtful comments, not just a large quantity of comments. I have multiple reasons for requiring the TWEN discussion, and I will explain them to help guide your participation. First, psychologists have found that people learn most/best when they reflect on what they are learning. Second, some of you may feel more comfortable participating in writing than verbally. Third, writing these entries will give you an opportunity to get credit for having prepared well for class. In light of all these goals I am hoping you will write about ways in which the course is allowing you to expand your thinking – reexamine your assumptions. Try to be analytical and explain your thinking. 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 have learned fits in with other things you know about, etc. Talk about how what you are reading relates to your jobs and your lives. You should also feel free to critique readings or classroom activities and discussion, so long as you do so in a respectful way. E.g., “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...” Or, “I saw an episode of *The Crown* this weekend that reminded me of the readings we did on empathy and perspective taking”.

I also invite you to boost your participation grade by helping to teach the class. You can help by: (1) offering by yourself or as part of a group to present certain material you find interesting; (2) suggesting videos/exercises to me that I can incorporate in teaching the class; (3) coming up with other good ideas re: how to teach the material.

## **(B) Final Paper**

You need to write a paper for this class, 20 pages minimum, but you can choose between two types of paper – either a traditional research paper or a practical paper. You can also combine these two types. The paper is due on the last day of exams, May 13, 2021, by 5pm. Whichever kind of paper you choose you need to apply an aspect of psychology to an aspect of *lawyering*, i.e. the way lawyers do their job. I am distinguishing here between applying psychology to a body of law, versus applying it to lawyering. I want the latter, not the former. The topics discussed in our text all involve lawyering, so that should be helpful as you look for a

topic. It is fine to expand upon a topic discussed in the text. But, make your topic as narrow as possible. Right now your temptation may be to “go broad,” so you won’t run out of things to write about, but the best papers go deep rather than broad. So, a bad topic would be “what immigration lawyers need to know about psychology.” Instead, if you are interested in immigration, you could write about how immigration attorneys might draw upon psychology to meet special challenges in interviewing their clients or how immigration attorneys might draw upon psychology to try to win asylum claims or how immigration attorneys might draw upon psychology to try to figure out if their clients are lying to them. Communicate with me as early as possible about your paper ideas so I can help you narrow your topic. Whichever kind of paper you choose to write should be substantially footnoted, and the footnotes should be consistent with the Blue Book or ALWD. I will grade the papers based on the quality of the analysis, the organization, and the writing (no typos or grammatical errors please).

If you choose to write a traditional research paper it should basically look like a law review article, with lots of good analysis and lots of footnotes to “respectable” sources (no, not Wikipedia). “Respectable” sources means a preference for more prestigious publications and authors over less prestigious. Books and articles by professors are more prestigious than student notes. Professional publications are more prestigious than People Magazine. Online sources can be “respectable” but look for reports from governmental sources rather than random blogs. I am happy to discuss sources with you on an individual basis. Our text has tons of footnotes and is often a good starting place. Depending on your topic you may well want to work with reference librarians to find sources.

On the other hand, you may prefer to write a *practical* paper rather than a traditional research paper. A *practical* paper requires you to do less original paper research than the research paper, but instead requires you to interview at least three people in the legal field (e.g. lawyers, paralegals, judges, mediators, arbitrators, clients, . . .). You don’t need to identify these people by name if they prefer to remain anonymous. The point of the practical paper is to better apply the psychology you will have learned to real life situations. You will interview the lawyers or others to find out more about an aspect of how they do their job, and then think about how greater knowledge of psychology might help them do their job more effectively. For example, you could learn more about how district attorneys decide whether or not to bring charges, and then consider how they might benefit from greater knowledge of psychology. Or, you could learn more about how estate planners interview and counsel their clients and then discuss psychology they might find useful. While the practical paper need not be as extensively researched through books and articles as the research paper you still need to use footnotes to support your assertions. Your sources should still be respectable, as discussed above. You can cite to our text. Remember, the point of this paper is not just for you to learn from the attorneys but also for you to think what you could teach to the attorneys drawing from your knowledge of psychology. Though you are a law student and they are lawyers you may know more than they do about certain subjects. Don’t just assume that they do everything well and that you have nothing to teach them.

A section at the end of this syllabus provides ideas re: how to come up with a paper topic. No later than February 1, 2021 you must communicate 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 February 1, 2021. Your topic is not “approved” until I send you an e-mail saying it is “approved.” Yes, this date is coming up soon. That is because you are supposed to be spending a lot of time writing your paper throughout the semester. You may but need not also provide me with an outline and/or first draft as is discussed below. (These steps are only required if you are using the paper to complete the Capstone requirement).

### **(C) Fulfilling the capstone writing requirement**

If and only if you want to fulfill the capstone writing requirement in the class then you must write a paper that is at least 25 pages long. You must also provide me with an outline and a first draft and deal with my extensive comments on both. If you choose to do the capstone in connection with this class, you can take either the quick path or the slower path. The quick path gets it all done this semester, and the slower path allows you to extend the capstone into the summer or beyond. Most students find the quick path impossible. For this reason, if you are planning to graduate in the spring of 2021 and hoping to fulfill the Capstone in this course you must contact me before January 1, 2021, use the winter break to get a jump start on the process, and comply with the schedule we agree to.

If you are on the quick path you must provide me with your outline by **February 22, 2021** and a substantial first draft by **March 22, 2021**. Earlier would be better. Note that my comments tend to be substantial and therefore require fairly extensive revision. Don’t be shocked when you receive them.

If you are on the slower path you must provide me with your outline by **March 22, 2021**, and your paper for this course will constitute your first draft. It need only be twenty pages long. You can then take the summer or possibly even longer to turn that first draft into your final paper (25 pages) to fulfill the capstone requirement.

If you are dubious about the benefits of outlining see Kellogg, Ronald T. “Effectiveness of Prewriting Strategies as a Function of Task Demands.” *The American Journal of Psychology*, vol. 103, no. 3, 1990, pp. 327–342. [www.jstor.org/stable/1423213](http://www.jstor.org/stable/1423213).

### **(D) Presentations**

You will present your paper to the class and you will make this presentation during the last six classes of the semester. I will assign a specific date once I know everyone’s topic. The presentations can be in lecture/discussion format but can potentially also be more fun, and include short videos, polls, etc. The length of the presentations will depend on the size of the class. If, as things are looking, the class is very large then you won’t have long for your presentation and you may not be able to be so creative. I will also upload a grading rubric to TWEN.

### **PLAGIARISM:**

You all know not to plagiarize, but some of you may conceivably be confused as to what plagiarism means in this context. For one thing, there is such a thing as “negligent” plagiarism,

so you need to make sure you don't accidentally plagiarize. It turns out I am very good at finding plagiarism. 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. Also, see William S. Boyd School of Law Student Honor Code, IV.A.2. You can also ask reference librarian Victoria Tokar to run your paper through plagiarism software to detect any inadvertent plagiarism.

## **COURSEWORK POLICY (STUDENT POLICY HANDBOOK, 2.02):**

Pursuant to ABA standards, J.D. students are expected to spend 42.5 hours of combined in-class and out-of-class work for each academic course credit received.

### **UNLV-REQUIRED DISCLOSURES**

**Public Health Directives.** Face coverings are mandatory for all faculty and students in the classroom. Students must follow all active [UNLV public health directives](#) while enrolled in this class. Students who do not comply with these directives may be asked to leave the classroom. Refusal to follow the guidelines may result in further disciplinary action according to the [UNLV Code of Student Conduct](#), including being administratively withdrawn from the course.

**Academic Misconduct.** Acceptance to the William S. Boyd School of Law (the Law School) represents much more than admission to the study of an intellectual discipline. The privilege of admission comes with a unique set of responsibilities, not only to fellow students, but to the Law School, to the legal profession, and to the public. The legal profession demands the highest degree of trustworthiness, honesty and public integrity. As future members of that profession, students of the Law School are bound to observe principles that reflect the same high standards that govern the practice of law. This [Student Honor Code](#) (the Honor Code) sets forth conduct that is prohibited, and it establishes minimum standards for student professional responsibility. The standards of conduct in the Honor Code are in addition to the standards set forth in the [UNLV Student Conduct Code](#) and the [Law School Student Policy Handbook](#). Violations of the Honor Code will be subject to the procedures and sanctions of the Honor Code.

Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility, and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices to always

take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's function as an educational institution. An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the [Student Academic Misconduct Policy](#) (approved December 9, 2005).

**Academic Success Program/CASE.** [The Boyd Academic Success Program](#) assists students in removing barriers to academic success. This includes reviewing past exams, giving sample exams or hypotheticals, evaluating study habits, and assisting with time and stress management issues. The Academic Success Program also provides a series of pre-bar exam lectures to assist in preparing to take the bar, as well as opportunities for thoughtful feedback and individualized assistance in bar preparation through the bar prep period.

**Copyright.** The University requires all members of the University Community to familiarize themselves with and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The university will neither protect or defend you, nor assume any responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. Additional information can be found at: <http://www.unlv.edu/provost/copyright>.

**Disability Resource Center (DRC).** The [UNLV Disability Resource Center](#) (SSC-A, Room 143, <https://www.unlv.edu/drc>, telephone 702-895-0866) provides resources for students with disabilities. Students who believe that they may need academic accommodations due to injury, disability, or due to pregnancy should contact the DRC as early as possible in the academic term. A Disabilities Specialist will discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the instructor during office hours, so that you may work together to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course. Any information you provide is private and will be treated as such. To maintain the confidentiality of your request, please do not approach the instructor in front of others to discuss your accommodation needs.

**Law Library Resources.** The Wiener-Rogers Law Library provides resources to support students' access to information. Reference librarians are available for consultation in person or by phone or email. For library services and resources, see <https://law.unlv.edu/law-library> and <https://law.unlv.edu/academics/law-library/student>.

**Final Examinations.** The University requires that final exams given at the end of a course occur at the time and on the day specified in the [final exam schedule](#).

**Missed Classwork.** Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within the first 14 calendar days of the course for fall and spring courses (excepting intersession courses), or within the**

**first 7 calendar days of the course for summer and modular courses**, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess.

**Identity Verification in Online Courses.** All UNLV students must use their Campus-issued ACE ID and password to log in to WebCampus-Canvas.

UNLV students enrolled in online or hybrid courses are expected to read and adhere to the [Student Academic Misconduct Policy](https://www.unlv.edu/studentconduct/misconduct/policy), <https://www.unlv.edu/studentconduct/misconduct/policy>, which states that “acting or attempting to act as a substitute for another, or using or attempting to use a substitute, in a academic evaluation or assignment” is a form of academic misconduct. Intentionally sharing ACE login credentials with another person may be considered an attempt to use a substitute, and could result in investigation and sanctions, as outlined in the Student Academic Misconduct Policy.

UNLV students enrolled in online courses are also expected to read and adhere to the [Acceptable Use of Computing and Information Technology Resources Policy](https://www.it.unlv.edu/policies/acceptable-use-computing-and-information-technology-resources-policy), <https://www.it.unlv.edu/policies/acceptable-use-computing-and-information-technology-resources-policy>, which prohibits sharing university accounts with other persons without authorization.

To the greatest extent possible, all graded assignments and assessments in UNLV online courses should be hosted in WebCampus-Canvas or another UNLV-managed platform that requires ACE login credentials for access.

**Rebelmail.** By policy, faculty and staff should email students’ Rebelmail accounts only. Rebelmail is UNLV’s official email system for students. As such, it is a primary way students receive official university communications such as information about deadlines, major campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the university. Students’ email prefixes are listed on class rosters. The suffix is always [@unlv.nevada.edu](mailto:@unlv.nevada.edu). The law school has two general email lists for students: INFO and ADMIN-MSGS. Some faculty will use TWEN or personal Gmail groups to send specific class messages.

**Diversity Statement.** As an institution of higher learning, UNLV represents a rich diversity of human beings among its faculty, staff, and students, and is committed to aspiring to maintain a Campus environment that values that diversity. Accordingly, the University supports understanding and appreciation of all members of its community, regardless of race, sex, age, color, national origin, ethnicity, creed, religion, disability, sexual orientation, gender, gender identity, marital status, pregnancy, genetic information, veteran status, or political affiliation. *See [University Statements and Compliance](#).*

A successful learning experience requires mutual respect and trust between the students and the instructor. Accordingly, the instructor asks that students be willing to listen to one another’s points of view, acknowledging that there may be disagreements, keep discussion and comments on topic, and use first person, positive language when expressing their perspectives.

**Policy on Recording Classes** ([Student Policy Handbook, 6.02](#)) —Students are not permitted to audio-record or video-record any virtual class meeting or office hours, or arrange for it to be recorded by someone else, nor can any portion of the class be publically displayed or distributed. The course instructor will record live class meetings and make them available with closed captioning in order to provide students with necessary accommodations under the Americans with Disabilities Act. Unauthorized sharing of recordings is a violation of the Boyd Honor Code.

**Attendance** ([Student Policy Handbook, 4.02a](#)) —Per Student Policy Handbook, 4.02a, regular and punctual attendance at all synchronous class meetings is required. Because law school is a collaborative learning experience, attendance in class benefits all student. Further, course material is cumulative, meaning that each successive class builds upon material previously covered. Students who fail to attend class meetings will be at a disadvantage. Students are responsible for obtaining any and all information given, materials distributed, and assignments made, during missed classes.

**\*\*\* Continue to the Next Page for Class Assignments \*\*\***

## CLASSES:

**January 20: Introduction.** Read the introduction to the text and also read the syllabus, focusing particularly on pp. 1-8. Sign up for TWEN. Introduce yourself to your fellow students and to me on TWEN. Write at least three sentences to describe yourself. Think about what your goals are in writing these sentences and whether what you are writing is/is not likely to achieve your goals. You can also attach a picture if you like.

### Optional:

*Building a Better Bar: The Twelve Building Blocks of Minimum Competence*, [link to study](#);  
Randall Kiser, *The Emotionally Attentive Lawyer: Balancing the Rule of Law with the Realities of Human Behavior*, <https://scholars.law.unlv.edu/nlj/vol15/iss2/3/>  
Nadler & Mueller, *Social Psychology and the Law*,  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2876868](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2876868);  
RANDALL KISER, *SOFT SKILLS FOR THE EFFECTIVE LAWYER* (2017);  
RHONDA MUIR, *BEYOND SMART: LAWYERING WITH EMOTIONAL INTELLIGENCE* (2017)

1. What questions do you have about the course and course requirements?
2. Why you are taking this class and what you hope to get out of the class?
3. What if any psychology background do you have?
4. Do you have any idea what kind of lawyer you want to be?
5. What skills do you think are most important for lawyers to be effective? How does this relate to the various types of jobs lawyers may hold?
6. What is the difference between IQ & EQ? Which better predicts success in general? How are each important to lawyering?
7. Which lawyering skills has your law school training emphasized to date?
8. Why do you suppose that people who do the best in law school are not always the best attorneys?
9. Why do you think that people who don't particularly enjoy law school often love being an attorney?
10. What can you do to gain more of the skills that you will need to be a good attorney?
11. Who needs more/better people skills: doctors or lawyers? Would it surprise you to learn that med schools are generally doing more than law schools to teach students about people skills?
12. We all draw a lot on "common sense." When/how can supposed common sense be verified?
13. As our legal world becomes more technological does psychology become less relevant?
14. What is your plan for how to come up with a paper topic in the next few weeks? (If you don't have a plan, this might be a good thing to raise in class discussion).

**January 25: Perception.** Read Chapter 1. Check some of your biases at <http://implicit.harvard.edu/implicit/demo/>.

### Optional:

yanny/laurel debate, [link to NY Times article](#) ;

What color is the dress? <https://www.youtube.com/watch?v=I0OPNOpU6SY>  
Aarin Reeves, *Written in Black and White* [link to article](#);  
Dov Cohen et al, *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy*,  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3041393](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3041393);  
ABA Video, Hidden Injustice: <https://vimeo.com/175897153/891b9eacde>;  
Hidden Brain podcast Episode 48 re: womens' double bind, [link to podcast](#);  
Lauren A. Newell, *Redefining Attention (And Revamping the Legal Profession?) for the Digital Generation* <https://scholars.law.unlv.edu/nlj/vol15/iss2/16/> .

1. How are the limits of attention relevant to the work of attorneys?
2. Do you believe that persons accustomed to using digital technology have different attentional capacities than persons who grew up in the pre-digital era?
3. How good do you think you are at multi-tasking and how do you think this will be relevant to your work as an attorney?
4. What are “schemas” and how might they be relevant to the work of attorneys?
5. Is it possible for people to eliminate all of their stereotypes? If not, how should attorneys deal with their stereotypes? Think about your own stereotypes and how they might impact your work as an attorney.
6. Would it surprise you to learn that bankruptcy lawyers steer different races of client to different bankruptcy processes, and yet are not aware they are doing that? *See* Dov et al, above.
7. What is *confirmation bias*? How might knowledge of confirmation bias be important to a criminal prosecutor? To a defense attorney? To a family law practitioner?
8. How might knowledge of the psychology of causation be relevant to a personal injury attorney?
9. What is *naïve realism* and how might it be relevant to the work of attorneys. Try to think of an example.
10. How might *perspective taking* be important to the work of a transactional attorney? An immigration attorney?
11. What other aspects of the psychology of perception do you think are most important to attorneys?

**January 27:** Memory. Read Chapter 2.

Optional:

Serial, <https://serialpodcast.org/season-one>;

This American Life Podcast #507, [link to podcast](#)

Snap Judgment #206, <http://www.snapjudgment.org/proof>

1. How has the information in the chapter changed your prior ideas about memory?
2. Are there aspects of the chapter that don't ring true for you?
3. Have you ever had an experience where you were sure you remembered something correctly but it turned out you did not?
4. What are three insights from the chapter that you think would be important to attorneys? Why?

5. Consider how memory may be important to attorneys in various areas of practice, i.e. not just criminal prosecution and defense, and not just litigation.
6. How might the psychology of memory be relevant to some disputes currently in the news?
7. How might the psychology of false confessions be important to teachers? School administrators? Prosecutors?

**February 1:** Deadline to discuss paper topic with professor: Contact me before this date to brainstorm a topic and plan out how to approach your subject.

**February 1:** Emotion. Read Chapter 3.

Optional:

RHONDA MUIR, BEYOND SMART: LAWYERING WITH EMOTIONAL INTELLIGENCE (2017);  
 Randall Kiser, *The Emotionally Attentive Lawyer: Balancing the Rule of Law with the Realities of Human Behavior* <https://scholars.law.unlv.edu/nlj/vol15/iss2/3/> ;  
 Nancy Holtz, *How the Inside Out of Emotion Affects the Inside of a Mediation*, [link to article](#);  
 Debra S. Austin, *Windmills of Your Mind: Understanding the Neurobiology of Emotion* (2019), [link to article](#)

1. What kinds of clients/areas of practice tend to be the most/least emotional?
2. Should a good attorney try to help a client make emotion-free decisions?
3. How should a good attorney endeavor to relate to emotions? Should a lawyer try to rid him or herself of emotion?
4. Prepare to discuss a real or fictional situation in which you have seen attorneys confront emotion, or in which you can imagine attorneys confronting emotion.
5. And, prepare to discuss how attorneys might use the psychology of emotion to deal with such situations.
6. How might knowledge of emotional regulation be important to an attorney?
7. Is elimination of emotion always the best approach for an attorney? How might an attorney effectively use emotion to his/her advantage or that of her client?
8. Can emotion be controlled? Regulated? How might one learn how to deal with emotion?
9. What else would you like to know about the psychology of emotion?
10. Do you think emotion plays out differently when interviews/depositions/mediations are conducted online rather than in person? How?

**February 3:** Judgment shortcuts. Read Chapter 4. Also read Kittrick & Lewis, *Looking Inside Your Own Mind* (TWEN).

Optional:

Douglas N. Frenkel & James H. Stark, *Improving Lawyers' Judgment: Is Mediation Training Debiasing?* [https://scholarship.law.upenn.edu/faculty\\_scholarship/1680/](https://scholarship.law.upenn.edu/faculty_scholarship/1680/);  
 MICHAEL LEWIS, THE UNDOING PROJECT: A FRIENDSHIP THAT CHANGED OUR MINDS (2016)  
 This American Life Podcast #581, [link to podcast](#)  
 This American Life Podcast #555, [link to podcast](#)  
 This American Life Podcast #547, [link to podcast](#)

1. How might familiarity with the phenomenon of positive illusions be important for law students? attorneys?
2. How might knowledge of the *planning fallacy* be useful for law students? Lawyers?
3. Why might it matter to attorneys that people are often affected by an *egocentric bias*?
4. How might knowledge of the *anchoring* phenomenon be important to attorneys?
5. How might the *availability* or *representativeness* biases impact an attorney?
6. Should an attorney always strive to avoid judgment biases, or may an attorney sometimes want to take advantage of such biases?
7. Prepare to discuss whether/why you think attorneys and judgments are likely to be affected differently by judgment heuristics and biases than are clients. Which ones?
8. 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?
9. To the extent an attorney wants to debias him/herself or someone else, what do you suggest?
10. To what extent do you think judge/arbitrators/mediators are affected by judgment shortcuts?
11. What is the relationship between lawyering and good baseball management?

**February 8:** Decision making. Read Chapter 5.

Optional:

RANDALL KISER, BEYOND RIGHT AND WRONG: THE POWER OF EFFECTIVE DECISION MAKING FOR ATTORNEYS AND CLIENTS (2010);

Hidden Brain Podcast # 42, Decide Already,

<https://www.npr.org/player/embed/490989663/490990032>;

Freakonomics Podcast # 266, How to Make a Bad Decision,

<http://freakonomics.com/podcast/make-bad-decision/>

This American Life #590, Choosing Wrong, [podcast link](#)

Hidden Brain Podcast, Tunnel Vision, [podcast link](#)

Think about how you decided whether to go to law school, and which law school you decided to attend, and consider whether/how you believe the psychology of decision making affected that decision.

1. In hindsight do you think you should have made the law school decision differently? How? Is your reflection itself affected by some kind of psychology?
2. What approach should lawyers take in helping their clients make decisions? Should they endeavor to gather all the relevant information? Is this possible?
3. What difference does *framing* make to one's decisions? Does it matter that losses tend to loom larger than gains?
4. Is it possible for an attorney to *frame* a particular decision as either a gain or a loss? Try to think of an example.
5. What are sunk costs? Should lawyers encourage their clients not to overweight sunk costs?
6. So what that people tend to be affected by "contrast" and "compromise" effects?
7. How do people tend to factor time into their decisions, and what relevance does this have for attorneys?
8. Prepare to discuss one of the other aspects of the psychology of decision making, and why/how it is important to attorneys.

**February 10:** Persuasion and social influence. Read Chapter 6.

Optional:

Robert Cialdini, Science of Persuasion, <https://www.youtube.com/watch?v=cFdCzN7RYbw>

Kenneth D. Chestek, *Of Reptiles and Velcro: The Brain's Negativity Bias and Persuasion*, [link to article](#)

Freakonomics Podcast #265, Trust Me, <http://freakonomics.com/podcast/trust-me/>

Robert Cialdini, Power of Persuasion, [link to video](#)

1. In what contexts do/should attorneys try to be persuasive? Think of as many examples as you can outside the courtroom.
2. Prepare to discuss one type of deliberative persuasion that you think is particularly important for attorneys to understand in a particular context, and why. How might you use such a method?
3. Should attorneys only use deliberative persuasion or is it also sometimes appropriate for them to use less direct methods of persuasion?
4. Prepare to discuss one type of peripheral persuasion that you think is particularly important for attorneys to understand in a particular context, and why.
5. How might you use such a method?
6. Can you think of any examples from real life or elsewhere of attorneys using or failing to use such methods of persuasion? With what result?
7. Which of the persuasion methods described in the chapter do you think work well on you? Any stories?
8. Do you think any of the mentioned persuasion methods do not work well on you? Any stories?
9. As an attorney do you think you might need to resist others' efforts at persuasion? What contexts? How might you try to do so?
10. Does attorney persuasion make you uncomfortable? When? How?
11. Do you think negative emotions are more persuasive than positive emotions?
12. Do you think persuasion does/should play out differently in person as opposed to by phone or online?

**February 15: No School. President's Day.**

**February 17:** Interpersonal communication. Read Chapter 7.

Optional:

Jean R. Sternlight, *Pouring a Little Psychological Cold Water on Online Dispute Resolution* <https://scholars.law.unlv.edu/facpub/1295/>;

Lauren A. Newell, *Redefining Attention (And Revamping the Legal Profession?) for the Digital Generation* <https://scholars.law.unlv.edu/nlj/vol15/iss2/16/>

Hidden Brain podcast, Alan Alda wants us to have better conversations, [link to podcast](#)

1. With whom do attorneys need to use interpersonal communication skills?
2. What is the relevance of the psychology of nonverbal communication for attorneys?
3. What do attorneys need to know about the psychology of rapport and trust? Any examples?

4. What do attorneys need to know about the psychology of alternative communication mediums such as texting, social media, or e-mails?
5. Under what circumstances do attorneys need to try to detect lying? How can they do so?
6. How good do you think you are at detecting lying?
7. How good do you think you are at lying without being detected?
8. How good do you think most people are at detecting lying? Are they as good as they think?
9. What are the key psychological differences in interpersonally communicating in person, by phone, or online?

**February 22:** Paper outline due if fulfilling capstone requirement on “fast path”

**February 22:** Justice. Read Chapter 8. Also skim Donna Shestowsky, *The Psychology of Procedural Preference: How Litigants Evaluate Legal Procedures Ex Ante*, [link to article](#); Look at VW apology (TWEN).

Optional: Donna Shestowsky, *How Litigants Evaluate the Characteristics of Legal Procedures* [link to article](#)

1. How often have you discussed “justice” in law school?
2. What are the different versions of justice discussed in the chapter?
3. How if at all is knowledge of the psychology of justice relevant to the work of attorneys? Try to think of specific examples.
4. How if at all should Shestowsky’s research matter to attorneys?
5. Should an attorney try to convince a client that one type of justice is more important than another?
6. What do you think of the VW apology?
7. Do justice concerns play out differently in person than online?

**Feb. 24:** Interviewing and counseling. Read Chapters 9 & 10. VW apology (TWEN).

Optional:

Al Marquis, *The Importance of Professional Empathy* (TWEN);

*False Confessions*, New Yorker (TWEN);

“Making a Murderer” (Netflix), particularly Episode 3 re: interrogation of Brendan Dassey

1. What is the difference between interviewing and counseling?
2. At what stages of representation does an attorney interview the client? Counsel the client?
3. What should an attorney’s primary goals be in conducting an initial interview and counseling session?
4. What psychological tools do you think are particularly important to interviewing and to counseling?
5. Make a checklist that will help you evaluate whether attorneys are/are not using psychology effectively when they interview and counsel a client.
6. Consider how the psychology you have learned would apply to interrogating a crime suspect.
7. Psychologically, why might a person admit to having done something improper or even criminal, when they did not really commit that act?

8. How about that VW apology?
9. How might law students/lawyers try to gain psychological skills that will help them be more effective interviewers/counselors?
10. How, psychologically, is interviewing and counseling different if handled online than in person?

**March 1:** More interviewing and counseling. No reading.

1. Prepare to discuss how an attorney can best apply psychology to deal with the problem of how to deliver bad news to a client.
2. Review and, if necessary, revise the checklist you prepared in connection with the prior class.

**March 3:** Psychology of oral arguments and presentations. Read Michael Higdon, *Oral Argument and Impression Management: Harnessing the Power of Nonverbal Persuasion for a Judicial Audience* [link to article](#)

Watch the Ames Moot Court Competition, 2017, [link to Ames](#)

*Getting it Across* (TWEN);

<https://www.konsus.com/blog/persuasive-presentations/>

Optional:

James D. Ridgway, *The Behavioral Psychology of Appellate Persuasion* [link to article](#)

1. Prepare to discuss what you thought the competitors did particularly well or poorly from a psychological standpoint. Focus not just on voice or mannerisms or dress but on the competitors' presentation and choice of arguments too.
2. More generally, how can psychology be used to make a good oral argument?
3. Also, prepare to discuss how knowledge of psychology might help one make a better oral presentation, e.g. in this class.
4. How can one draw on psychology to make a good visual presentation, (e.g. a good powerpoint or prezi slide show)?
5. How psychologically do you anticipate oral arguments and presentations are different if done online rather than in person?

**March 8:** Negotiating. Read pp. 253-294.

1. What psychology will be particularly useful to an attorney meeting with a client to plan for a negotiation? Why?
2. If a lawyer thinks that a client's negotiation goals are not "rational," what should the attorney do? Where does psychology fit in?
3. What psychology do you think might be useful in helping a client construct an initial proposal?
4. How does psychology relate to the question of whether one should make a first offer or instead wait for the other side to make a first offer?
5. What is the relevance of psychology if lawyers conduct their negotiations in writing, by e-mail, or over the phone, rather than in person?

6. How should/shouldn't attorneys use emotion in a negotiation? How? How should attorneys deal with emotion in themselves, their client, or an adversary?
7. What is the relevance of psychology in evaluating a counterpart's offer?
8. How might psychology help an attorney interact with a client in a negotiation?
9. Prepare to discuss a real or fictional legal negotiation, and how one of the attorneys involved in that negotiation used or might have used psychology to be more effective.
10. What insights does psychology provide re: any typical or perceived gender or cultural differences among negotiators?
11. How should lawyer negotiators deal with any real or perceived differences in the ways that various genders/cultures negotiate?
12. What psychological differences between negotiations handled in person, in writing, by phone, or online?

**March 10:** More negotiating. No additional reading but review pp. 253-294.

**March 15, March 17:** No Class - Spring Break

**March 22:** Substantial first draft due if fulfilling capstone on fast path

Outline due if fulfilling capstone on slower path

**March 22:** Mediation. Read pp. 295-304. Also skim James H. Stark & Douglas N. Frenkel, *Changing Minds: The Work of Mediators and Empirical Studies of Persuasion* [link to article](#).

Optional: Jean R. Sternlight, *Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Non-Adversarial Setting*, [link to article](#)

1. What is at least one thing attorneys should know about psychology to be effective as advocates in mediation?
2. What is at least one thing mediators should know about psychology to be effective in mediation?
3. What do you think of the Stark/Frenkel article?
4. What do you anticipate would be key psychological differences between mediations conducted in person, and those conducted online or by phone?

**March 24:** Discovery and due diligence. Read Chapter 12.

1. How can knowledge of psychology help an attorney be more effective in taking a deposition? If you have never seen a depo you may want to watch one of the crazy ones available online – check youtube.
2. How can knowledge of psychology help an attorney be more effective in defending a deposition, including preparing a client for deposition?
3. How can knowledge of psychology help an attorney be more effective with some other aspect of discovery or due diligence work?
4. What do you anticipate would be key psychological differences between mediations conducted in person, and those conducted online?

**March 29:** Writing. Read Chapter 13.

1. What do you believe are your greatest strengths and weaknesses as a writer?
2. Prepare to discuss what if anything you learned from this chapter that you believe will help improve your writing.
3. What did you learn in the chapter which was either consistent or inconsistent with what you learned in LP?
4. What legal writing have you seen/prepared in practice, and what insights does the psychology provide with respect to that writing?

**March 31:** Ethics. Read Chapter 14.

Optional:

Jennifer K. Robbennolt & Jean R. Sternlight, *Behavioral Legal Ethics*, [link](#)

Hidden Brain Podcast #36, Science of Deception, [link to podcast](#)

Catherine Gage O'Grady, *Behavioral Legal Ethics, Decision Making, and the New Attorney's Unique Professional Perspective* [link to article](#)

Tigran W. Eldred, *Insights from Psychology: Teaching Behavioral Legal Ethics as a Core Element of Professional Responsibility* [link article](#)

1. Prepare to discuss what steps you might take, given the psychology you have learned, to help yourself be an ethical attorney.
2. What psychological advantages and disadvantages might a recent law graduate have re: behaving ethically as compared to a more senior attorney?
3. What insights does the psychology provide into a prominent legal ethical scandal (e.g. Michigan State/Dr. Nasser, Wells Fargo (extra accounts), VW (polluting cars), Enron (investment fraud), GM (defective ignition), Takata (air bags) Penn State (pervert coach), Catholic church (priests), or a more local attorney scandal such as Robert Graham (stole from clients) or prosecutorial misconduct (Bundy case)
4. Given the psychology of ethics, how do you suggest law schools teach their students to be ethical attorneys?
5. Given the psychology of ethics, how do you think Covid-19 might have impacted law students' temptation to cheat on exams?

**April 5:** Productivity and success. Read pp. 417-444.

Optional:

No Stupid Questions Podcast, How Do You Know When It's Time to Quit? [link to podcast](#)

Hidden Brain Podcast #26, Grit, <https://www.npr.org/player/embed/472993948/472994544>

Freakonomics Podcast #245, How to Get More Grit in Your Life, [link to podcast](#)

Freakonomics Podcast #243, How to Be More Productive, [link to podcast](#)

Freakonomics Podcast #200, When Willpower Isn't Enough, [link to podcast](#)

Freakonomics Podcast #117, When is a Negative a Positive? [link to podcast](#)

1. Think about how you might apply what you learned to procrastinate less in this class, in law school generally, and in practice. Be specific.
2. Think about how you might apply what you learned in order to learn from any mistakes you might make as an attorney.
3. Think about how you might apply what you learned to work more effectively in groups in law school and in practice.
4. Think about how you might apply what you learned to be a good networker and rainmaker.

**April 7:** Happiness. Read pp. 444-459.

Optional:

Lawrence Krieger & Kennon Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success* [link to article](#) ;

Debra S. Austin, *Drink Like a Lawyer: the Neuroscience of Substance Abuse and its Impact on Cognitive Wellness* [link to article](#) ;

Kathryne M. Young, *How to be Sort of Happy in Law School* (2018)

1. How is the psychology of happiness relevant to choices you are making in law school?
2. How is the psychology of happiness relevant to choices you will be making about future employment?
3. How is the psychology of happiness relevant to choices you will make about how to spend your time once you are an attorney?
4. How is the psychology of happiness relevant to the balance we all must create between personal/family and work?
5. Should you be meditating?
6. Should you be working out?
7. What insights does psychology provide re: lawyers' risk of falling prey to substance abuse?

**April 12:** Student presentations.

**April 14:** Student presentations.

**April 19:** Student presentations.

**April 21:** Student presentations.

**April 26:** Student presentations.

**April 27:** Student presentations. (Tuesday as Monday)

**May 13:** Final paper due by 5 p.m.

### **Inspiration for paper topics**

Pick a topic that relates to an area of practice you might want to go into, or an area of practice you have learned about through a job or externship. But then, think about a piece of that practice area and an aspect of psychology. Contact me and I will help you narrow/refine your topic.

Feel free to draw on movies, books, tv shows, podcasts.

Pick a real or fictional attorney and discuss how that person did/did not use an aspect of psychology to perform their job effectively.

Pick a real or fictional attorney, or legal event, and discuss the psychology of ethics as it pertains to that person/event.

Pick an area of law (criminal defense, criminal prosecution, immigration, family law, contract drafting etc.) and consider psychological insights that might be useful to a practitioner in that area – perhaps particular aspects of practice such as interviewing, counseling, lobbying, jury selection, negotiation, drafting.

Check out these great books re: psychology in the criminal justice context: Adam Benforado, “Unfair: The New Science of Criminal Injustice”; Dan Simon, “In Doubt: The Psychology of the Criminal Justice Process”.

Think about an aspect of technology that is relevant to lawyering, and then consider whether/how psychology is relevant to appropriate design/use of that technology.

Pick an aspect of psychology (hindsight bias, loss aversion, schemas, limited memory, emotional regulation. . .) and consider how knowledge of that aspect of psychology might be useful to certain types of attorneys or in certain contexts (trial, negotiation, depositions).

Consider how legislators might benefit from knowledge of a certain aspect of psychology (e.g. how best to lobby, how best to encourage people to follow the law).

Examine an area you think is ripe for legal psychology research, and make a recommendation for how to study that issue.

Focus on an aspect of attorney happiness – and discuss relevant insights from psychology.

Focus on an aspect of attorney success (e.g. networking, rainmaking,) – and discuss relevant insights from psychology.

Anything else that is sufficient narrow and related to class. The above are just possible starting points.