Law and Behavioral Science

PSYC 985 and LAW 762, 762G

(Spring, 2007) (Room 121 - 4:30 to 7:00)

Instructor: Dr. Richard L. Wiener, 238 Burnett Hall, UNL
472-1137, rwiener2@unl.edu

Office Hours: Tuesday 3:00 (Law College) or by appointment (Burnett or Law College)

Reading List

Texts: (Required reading)


Outside Reading Packet: The bolded articles are required reading and are available as PDF files on line on Blackboard for this class


*Free v. Peters, 12 F.3d 700 (7th Cir.1993).*


Course Description: This course is a seminar that will examine the relationship between social science and the law. The course will adopt an interdisciplinary approach in both content and style. We will study social science and law from 3 converging points of view: 1) using social science research and theory in dispute resolution, 2) using social scientific analysis of legal doctrine to formulate public policy, and 3) studying the research results of social science as it attempts to understand the legal system. While the primary focus of the original sources will be psychological research, the student will encounter occasional readings from other social sciences. We will begin by studying the origins of the relationship between social science and the law and the functions of the law from a social scientific perspective. Next, we will briefly discuss some of the methodological problems of answering legal questions with scientific analysis.

After discussing the foundations of the relationship, we will examine specific legal problems from a social scientific point of view. Adopting Monahan and Walker's typology, we will examine the use of social science to determine factual issues specific to a particular case, establish legal rules that set precedent for future disputes, provide context or background for determining facts important only to a specific case, shape the court system and set public policy, and assist attorneys in preparing for litigation. While examining these topics we will focus on a number of specific legal issues including trademark law, obscenity, school desegregation, jury size, death qualification, the death penalty, rules of evidence, tort liability of special defendants, setting bail, parole, searches and seizures, criminal defenses (including eyewitness identification), note-taking by jurors, rules of evidence, changing venue, juror selection, and jury instructions.

In the process of studying the relationship between law and social science, we will look at the results of research that speak directly and indirectly to the issues raised in the law. Although our efforts will focus on psychological research, we will examine occasional contributions of sociologists, anthropologists, and economists. While selections from the supplemental readings will provide the basic reference for our discussion of research findings, individual students will be encouraged, and at times, required to extend their search for social scientific findings to professional journals, which report recent and pertinent findings about legal issues.

Course Objectives: This is a survey course with the overall objective of introducing the interdisciplinary approach of sociolegal and psychological jurisprudence to students of social science and students of law. The students are expected to (1) become comfortable in translating
legal problems into social scientific questions and social scientific findings into legal arguments, (2) learn about the resources available for the study of sociolegal and psychological jurisprudence, (3) gain a fundamental understanding of the general content area, and (4) master a specific problem area.

**Class Meetings:** The class meets Tuesday afternoons from 4:30 to 7:00 p.m. Your attendance at these meetings is mandatory. The class will be conducted in seminar form, although the instructor will at times present some material in lecture format. For the first half of class the instructor will lead discussions and/or lectures. For the second half of class, the students will lead discussions. For each student led discussion, a separate team consisting of two students will be responsible for organizing the discussion of the material that the instructor assigned for that session. The discussion leaders will present material, ask questions, and lead discussions about the topic of the day. The instructor will pass a sign up sheet around class at the beginning of the course. Sign up for two of the open dates to take your turns as discussion leader.

**Everyone is responsible for reading all the material and participating in each discussion every class meeting.** The discussion leaders will not teach the material to the class, instead, they will lead the class through our analysis. In a seminar course, everyone shares the responsibility for teaching everyone else. The most effective learning occurs when each individual contributes to the experience of the class. If the intrinsic motivation is not enough incentive, please note in the grading system established below that a substantial percentage of your grade is determined by leading and participating in class discussions. The instructor expects student at each class session unless you have contacted the Professor Wiener before class and explained why you will be absent. Unexcused absences will detract from class discussions and lower your overall class grade.

**Research Papers:** Each student will select a topic about which she or he will write a research paper. The paper will either be written in the format of the *Uniform System of Citation* (Blue Book) or according to the *Publication Manual of the American Psychological Association*. The final product should approach the quality of a review article in a professional journal or in a high quality law review.

The research paper will examine a problem from the perspective of both the law and social science. One formula that will be successful is to divide the paper into 3 sections. The first section will review the legal issue including relevant statutes and case law. You will find law review articles especially helpful in structuring and researching this section. The second section will review the theory and research currently available in the social sciences that speak to the legal issues under review. Some journals that will be especially relevant include:

1. *Law and Human Behavior*
2. *Behavioral Sciences and the Law*
3. *Journal of Legal Education*
4. *Journal of Applied Social Psychology*
5. *Journal of Applied Cognitive Psychology*
6. *Law and Society Review*
7. *Journal of Research in Crime and Delinquency*
8. *Journal of Personality and Social Psychology*
9. *Personality and Social Psychology Bulletin*

(Note: this list is not meant to be exhaustive. There are many other sources of social science and law.)

The third section will include a brief proposal for additional research that would be helpful in analyzing the issue.

Other formats for the paper are possible. After selecting a topic and a format, each student should meet with the instructor before or after class to check and make sure, his or her approach will be acceptable. One strategy for selecting paper topics that has worked well in the past is to select a topic from the materials that you will use to lead the class discussion. You are encouraged to work together with your discussion co-leader in finding materials and organizing the approach for your paper. However, each student must write her or his manuscript independent of the discussion co-leader. An outline for this paper will be due on February 6, and final papers will be turned in no later than April 20.

**NOTE: THERE IS NOT A GREAT DEAL OF TIME TO RESEARCH AND WRITE THIS MANUSCRIPT. BEGIN TODAY!**

**Grading:** The course grade will be based on class participation during the discussion sessions, the discussion that each student leads, and the grades for the research paper. Grades will be assigned according to the following schedule.

- Class participation (general): 15%
- Leading a discussion: 15%
- Research paper: 70%
### Course Outline

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<th>Day</th>
<th>Weekly Topic</th>
<th>Readings</th>
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<tr>
<td>January 9</td>
<td>Introduction to the course and the court system, Origins of sociolegal and psycholegal jurisprudence</td>
<td>M&amp;W pgs. 1-27</td>
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<td>January 23</td>
<td>Methods, trademark law</td>
<td>M&amp;W pgs. 45-130, Koehler &amp; Thomson (2006)</td>
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<td>March 13</td>
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<td>April 20</td>
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Some Possible Research Paper Topics

1. Regulation of Hate Speech and/or Hate Crimes
2. Sentencing Guidelines
3. Repressed Memories
4. Death Penalty Decisions
5. Prosecutor Discretion
6. Child Witnesses
7. Eyewitness Identification
8. Jury Nullification
9. Jury Instructions
10. Procedural Justice
11. Determinations of Negligence
12. Sexual Harassment
13. Affirmative Action
14. Speech Regulation of the Internet
15. Trademark Infringement
16. Lineups
17. Rape
18. Battered Women Syndrome
19. Insanity Defense
20. Comprehension of Contracts (esp. Exculpatory Clauses)
21. Alternative Dispute Resolution
22. Predicting Dangerousness
23. Release Decisions for defendants found not guilty because of mental disorder
24. Psychopathy and the law
25. Sexual Offenders and Civil Commitment
26. Anything else that you come up with and wish to check out with the instructor
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