

## LEGAL STUDIES 181 - PSYCHOLOGY & THE LAW

Professor Robert MacCoun

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Course web page: [http://ist-socrates.berkeley.edu/~maccoun/ls181\\_f06.html](http://ist-socrates.berkeley.edu/~maccoun/ls181_f06.html)

Professor's web page: <http://ist-socrates.berkeley.edu/~maccoun/>

Meeting Time: Tuesday and Thursday, 2:00-3:30, 110 Barrows Hall

Course Control Number: 51629

Office hours: Tuesdays 9:30-11am, 2<sup>nd</sup> floor of the JSP Bldg. (2240 Piedmont)

GSI: Alexa Koenig, [kalexakm@berkeley.edu](mailto:kalexakm@berkeley.edu)

You must also enroll in one of Alexa's discussion sections in 203 Wurster Hall:

Thursdays 4-5 pm or Fridays 1-2 pm

This course will examine the implications of psychological theory and research for normative legal theory and for contemporary legal policies, procedures, and practices. The course will draw on contemporary cognitive, social, and clinical psychology to address the concepts of intent, responsibility, deterrence, retribution, morality, and procedural and distributive justice. We will examine evidence law (e.g. eyewitness testimony, polygraphy, expert testimony, psychiatric diagnosis and prediction), procedure (e.g., trial conduct, jury selection, settlement negotiations, alternative dispute resolution), and various topics in criminal law, tort law, family law, and other areas. We will compare "rational actor" and psychological perspectives on decision making by juries, judges, attorneys, and litigants. **4 Units**

***A note about this syllabus:*** If you are reading a hard copy of this syllabus, please note that the most current version is on line at [http://ist-socrates.berkeley.edu/~maccoun/ls181\\_f06.html](http://ist-socrates.berkeley.edu/~maccoun/ls181_f06.html). The readings and dates may be revised during the term; any revisions will be announced in class and immediately posted to the web page. Also, we will try to keep the links working, but if a link to a reading does not work, then (a) email us to tell us, and (b) search for another copy of the reading on the web. We obtained the readings from the web, so with some digging, you should be able to find them as well, for free. (Hints: Use

Google Scholar, and use a campus internet address so you can take advantage of the university site licenses.)

## REQUIREMENTS

- **Midterm and Final Exams** (each worth 40% of grade): Each exam will have two components: (1) A closed-book component with a mix of true-false, multiple-choice, and short answer items; (2) an open-book component with essay questions.
- **Participation** (20% of grade): This includes attendance and participation in the lecture sessions and the discussion sections.
- **To appeal a grade, see:** [http://ist-socrates.berkeley.edu/~maccoun/MacCoun\\_CoursePolicies.html](http://ist-socrates.berkeley.edu/~maccoun/MacCoun_CoursePolicies.html)
- **Textbook:** Greene, E., Heilbrun, K., Fortune, W.H., & Nietzel. M.T. (2007). *Wrightsmen's Psychology and the Legal System* (6th Edition), Wadsworth Publishing. (ISBN # 0534521061)
- **Additional readings:** posted at: [http://ist-socrates.berkeley.edu/~maccoun/ls181\\_f06.html](http://ist-socrates.berkeley.edu/~maccoun/ls181_f06.html)

## I. THE PSYCHOLOGY OF THE COURTROOM

### Course introduction

Read Textbook Ch. 1

Skim Ch. 2 and 7 (will not be on the exams)

### Eyewitness testimony

Textbook Ch. 5

Wells, G. L., et al. (2000). From the lab to the police station: A successful application of eyewitness research. *American Psychologist*, 55, 581-598.

[http://ist-socrates.berkeley.edu/~maccoun/LP\\_Wells2000.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Wells2000.pdf)

Tenney, E. R., MacCoun, R. J., Spellman, B. A., & Hastie, R. (in press). [Calibration trumps confidence as a basis for witness credibility](http://ist-socrates.berkeley.edu/~maccoun/CalibrationTrumpsConfidence_Tenney%20MacCoun%20Spellman%20Hastie.pdf). *Psychological Science*. [http://ist-socrates.berkeley.edu/~maccoun/CalibrationTrumpsConfidence\\_Tenney%20MacCoun%20Spellman%20Hastie.pdf](http://ist-socrates.berkeley.edu/~maccoun/CalibrationTrumpsConfidence_Tenney%20MacCoun%20Spellman%20Hastie.pdf)

## **Forensic evidence and expert testimony**

Textbook Ch. 6, 9

Dawes, R.M., Faust, D., & Meehl, P. E. (1989). Clinical versus actuarial judgment. *Science*, 243, 1668-1674. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_DawesFaustMeehl1989.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_DawesFaustMeehl1989.pdf)

Vidmar, N., Diamond, S. S. (2001). Juries and expert evidence. 66 *Brooklyn Law Review* 1121. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_VidmarDiamond.htm](http://ist-socrates.berkeley.edu/~maccoun/LP_VidmarDiamond.htm)

OPTIONAL: MacCoun, R. J. (1998). Biases in the interpretation and use of research results. *Annu. Rev. Psychol*, 49: 259-287. [http://ist-socrates.berkeley.edu/~maccoun/MacCoun\\_AnnualReview98.pdf](http://ist-socrates.berkeley.edu/~maccoun/MacCoun_AnnualReview98.pdf)

Here's a link to an OPTIONAL paper that discusses errors in statistical reasoning.

[http://ist-socrates.berkeley.edu/~maccoun/LP\\_Thompson.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Thompson.pdf)

## **Jury selection**

Textbook Ch. 11

Hastie, R. (1991). Is attorney-conducted voir dire an effective procedure for the selection of impartial juries? 40 *Am. Univ. L. Rev.* 703. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Hastie.htm](http://ist-socrates.berkeley.edu/~maccoun/LP_Hastie.htm)

## **Juror reasoning and jury deliberation**

Textbook Ch. 12

MacCoun, R. J. (1989). Experimental research on jury decision making. *Science*, 244, 1046-1050. [http://ist-socrates.berkeley.edu/~maccoun/MacCoun\\_Science\\_1989.pdf](http://ist-socrates.berkeley.edu/~maccoun/MacCoun_Science_1989.pdf)

Pennington, N., & Hastie, R. (1992). Explaining the evidence: Tests of the story model for juror decision making. *Journal of Personality and Social Psychology*, 62, 189-206. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_PenningtonHastie1992.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_PenningtonHastie1992.pdf)

Lieberman, J. D., & Arndt, J. (2000). Understanding the limits of limiting instructions: Social psychological explanations for the failures of instructions to disregard pretrial publicity and other inadmissible evidence. *Psychology, Public Policy, and Law*, 6, 677-711. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_LiebermanArndt.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_LiebermanArndt.pdf)

Kerr, N. L., Niedermeier, K. E., & Kaplan, M. F. (1999). Bias in jurors vs bias in juries: New evidence from the SDS perspective. *Organizational Behavior Human Decision Processes*, 80, 70-86. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_KerrNiedermeierKaplan1999.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_KerrNiedermeierKaplan1999.pdf)

Greene, E., & Loftus, E. (1998). Psycholegal research on jury damage awards. *Current Directions in Psychological Science*, 7, 50-54. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_GreeneLoftus1998.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_GreeneLoftus1998.pdf)

## **Death qualification and capital punishment**

Textbook Ch. 15

Bersoff, D. N., & Ogden, D. W. (1987). In the Supreme Court of the United States *Lockhart v. McCree*: Amicus curiae brief for the APA American Psychological Association. *American Psychologist*, 42, 59-68. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_AmicusBrief\\_LockhartvMcCree.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_AmicusBrief_LockhartvMcCree.pdf)

## **Judges vs. juries**

Textbook Ch. 10

Robbennolt, J. K. (2002). Punitive damage decision making: the decisions of citizens and trial court judges. *Law and Human Behavior*, 26, 315-41. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Robbennolt2002.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Robbennolt2002.pdf)

Guthrie, C., Rachlinski, J.J., & Wistrich, A.J. (2001). Inside the judicial mind (summary version from Dispute Resolution Alert; full article appeared in the May 2001 *Cornell Law Review*). [http://ist-socrates.berkeley.edu/~maccoun/LP\\_GuthrieRachlinskiWistrich2001.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_GuthrieRachlinskiWistrich2001.pdf)

## **Midterm exam**

## **II. MORALITY AND RESPONSIBILITY**

### **Moral reasoning**

Wikipedia (2006): Kohlberg's stages of moral development. From Wikipedia, the free encyclopedia.

[http://en.wikipedia.org/wiki/Kohlberg's\\_stages\\_of\\_moral\\_development](http://en.wikipedia.org/wiki/Kohlberg's_stages_of_moral_development)

Tetlock, P. E. (2002). Social functionalist frameworks for judgment and choice: Intuitive politicians, theologians, and prosecutors. *Psychological Review*, 109, 451-471. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Tetlock2002.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Tetlock2002.pdf)

Haidt, Jonathan. (2001). The emotional dog and its rational tail: A social intuitionist approach to moral judgment. *Psychological Review*. 108(4), Oct 2001, 814-834. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Haidt.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Haidt.pdf)

### **Lay vs. legal theories of responsibility and agency**

Textbook Ch 8

Raine, Moffitt, Caspi, Loeber, Stouthamer-Loeber, & Lyman (2005). Neurocognitive impairment in boys on the life-course persistent path. *Journal of Abnormal Psychology*, 114, 38-49. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Raine2005.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Raine2005.pdf)

Wegner, D. M. (2003). The mind's best trick: How we experience conscious will. *Trends in Cognitive Science*, 7, 65-69. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Wegner2003.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Wegner2003.pdf)

Krieger, L. (1995). The content of our categories: A cognitive bias approach to discrimination and equal employment opportunity. 47 Stanford Law Review 1161. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Krieger1995.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Krieger1995.pdf)

OPTIONAL: McGraw, K.M. (1991). Managing blame: An experimental test of the effects of political accounts. Am. Political Science Review, 85, 1133-1157. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_McGraw1991.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_McGraw1991.pdf)

## **Psychiatric diagnosis, prediction of dangerousness, insanity defense**

Textbook Ch 8

Monahan, J., Steadman, H. J., Robbins, P.C., Appelbaum, P., Banks, S., Grisso, T., Heilbrun, K., Mulvey, E. P., Roth, L., & Silver, E. (2005). An actuarial model of violence risk assessment for persons with mental disorders. Psychiatr Serv, 56: 810 - 815. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Monahan2005.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Monahan2005.pdf)

OPTIONAL: Swets, John A.; Dawes, Robyn M.; & Monahan, John. (2000). Better decisions through science. Scientific American, 283(4), p82-88. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_SwetsDawesMonahan2000.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_SwetsDawesMonahan2000.pdf)

Borum, R., & Fulero, S. M. (1999). Empirical research on the insanity defense and attempted reforms: Evidence toward informed policy. LawHuman Behavior, 23, 117-135. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_BorumFulero1999.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_BorumFulero1999.pdf)

## **Children and adolescents**

Textbook Ch 14

## **III. LAW AS A BEHAVIORAL INSTRUMENT**

### **Deterrence**

Textbook Ch 3,4, 15

MacCoun, R. J. (1993). Drugs and the law: A psychological analysis of drug prohibition. Psychological Bulletin, 113, 497-512. <http://ist-socrates.berkeley.edu/~maccoun/PsyBull1993.pdf>

Braithwaite, J., & Mugford, S. (1994). Conditions of successful reintegration ceremonies: Dealing with juvenile offenders. *British Journal of Criminology*, 34, 139-171. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_BraithwaiteMugford.html](http://ist-socrates.berkeley.edu/~maccoun/LP_BraithwaiteMugford.html)

### **Risk regulation and harm reduction**

Paul Slovic (1987). Perception of Risk. *Science*, 236, 280-285. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Slovic1987.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Slovic1987.pdf)

KA Kamin, JJ Rachlinski (1995). Ex Post [not equal to] Ex Ante: Determining Liability in Hindsight. *Law and Human Behavior*. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_KaminRachlinski.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_KaminRachlinski.pdf)

Marwan Sinaceur, Chip Heath, & Steve Cole. (2005) Emotional and Deliberative Reactions to a Public Crisis. Mad Cow Disease in France. *Psychological Science* 16:3, 247-254. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Mad cow disease.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Mad_cow_disease.pdf)

OPTIONAL: MacCoun, R. (1998). Toward a psychology of harm reduction. *American Psychologist*, 53, 1199-1208. <http://ist-socrates.berkeley.edu/~maccoun/AmPsych1998.pdf>

### **Norms and informal social controls**

Latane, B., & Dabbs, J.M. (1975). Sex, group size, and helping in three cities. *Sociometry*, 38, 180-194. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_LataneDabbs.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_LataneDabbs.pdf)

Cialdini, R.B. (2003). Crafting normative messages to protect the environment. *Current Directions in Psychological Science*, 12, 105. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Cialdini\\_2003.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Cialdini_2003.pdf)

Malcolm Gladwell, Three Rules for Epidemics (Ch. 1 of *The Tipping Point*) [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Gladwell.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Gladwell.pdf)

OPTIONAL: Feldman, Y., & MacCoun, R. J. (2005). Some well-aged wines for the “new norms” bottles: Implications of social psychology for law and economics. In Francesco Parisi and Vernon Smith (eds.), *The law and economics of irrational behavior* (pp.358-394). University of Chicago Press. <http://repositories.cdlib.org/csls/fwp/6/>

## **Distributive, procedural, and retributive justice**

Textbook Ch 13

Mitchell, Gregory; Tetlock, Philip E.; Newman, Daniel G.; & Lerner, Jennifer S. (2003). Behind the veil: Structural influences on judgments of social justice. *Political Psychology*, 24, 519-538. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_MitchellTetlockNewmanLerner2003.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_MitchellTetlockNewmanLerner2003.pdf)

MacCoun, R. J. (2005). Voice, control, and belonging: The double-edged sword of procedural fairness. *Annual Review of Law and Social Science*, Vol. 1, 171-201. [http://ist-socrates.berkeley.edu/~maccoun/MacCoun\\_ARLSS2005.pdf](http://ist-socrates.berkeley.edu/~maccoun/MacCoun_ARLSS2005.pdf)

Darley, J. M., & Pittman, T. S. (2003). The psychology of compensatory and retributive justice. *Personality and Social Psychology Review*, 7, 324-336. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_DarleyPittman2003.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_DarleyPittman2003.pdf)

Carlsmith, K. (2006). The roles of retribution and utility in determining punishments. *Journal of Experimental Social Psychology*, 42, 437-451. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Carlsmith.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Carlsmith.pdf)

OPTIONAL: Robbennolt, J. K., Darley, J. M., & MacCoun, R. J. (2003). Symbolism and incommensurability in civil sanctioning: Decision-makers as goal managers. Symposium on "Responsibility and blame: Psychological and legal perspectives," *Brooklyn Law Review*, 68, 1121-1158. <http://ist-socrates.berkeley.edu/~maccoun/RobbennoltDarleyMacCoun.pdf>

### **What influence should psychology have on law?**

Faigman, D. L., & Monahan, J. (2005). Psychological evidence at the dawn of the law's scientific age. *Annual Review of Psychology*, 56, 631-659. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_FaigmanMonahan2005.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_FaigmanMonahan2005.pdf)

Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O'Donoghue, & Matthew Rabin (2003). Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism", *University of Pennsylvania Law Review*, Vol 151, No. 3, January 2003, 1211-1254. [http://ist-socrates.berkeley.edu/~maccoun/LP\\_Camerer.pdf](http://ist-socrates.berkeley.edu/~maccoun/LP_Camerer.pdf)



## Final exam

**Final Exam Group: 2:** Thursday, May 14, 2009, 12:30-3:30 pm

### *SCHEDULE OVERVIEW – FALL 2006*

<b>Week</b>	<b>Day</b>	<b>Date</b>	<b>Topic</b>	<b>Notes</b>
1	Tues.	Jan. 20	Course Overview	NO SECTION THIS WEEK
	Thurs.	Jan. 22	Psychological Methods	
2	Tues.	Jan. 27	Eyewitness Accuracy	
	Thurs.	Jan. 29	Eyewitness Testimony	
3	Tues.	Feb. 3	Forensic Evidence	
	Thurs.	Feb. 5	Expert Testimony	
4	Tues.	Feb. 10	Jury Selection	
	Thurs.	Feb. 12	Juror Decisionmaking	
5	Tues.	Feb. 17	Jury Deliberation	
	Thurs.	Feb. 19	Jury Awards	
6	Tues.	Feb. 24	Death Penalty Verdicts	
	Thurs.	Feb. 26	Jury Nullification	
7	Tues.	March 3	Judges versus Juries	
	Thurs.	March 5	Catch up and Review	

8	Tues.	March 10	In-Class Midterm Exam	MIDTERM
	Thurs.	March 12	Moral Reasoning	
9	Tues.	March 17	Theories of Responsibility	
	Thurs.	March 19	Psychology of Agency	
10	Tues.	March 24	NO CLASS	BREAK
	Thurs.	March 26	NO CLASS	BREAK
11	Tues.	March 31	Psychiatric Diagnoses	
	Thurs.	April 2	Criminal Profiling	
12	Tues.	April 7	Interrogations (Alexa)	
	Thurs.	April 9	The Insanity Defense	
13	Tues.	April 14	Children and Adolescents	
	Thurs.	April 16	Deterrence	
14	Tues.	April 21	Risk Regulation	
	Thurs.	April 23	Norms	
15	Tues.	April 28	Distributive Justice	
	Thurs.	April 30	Procedural Justice	
16	Tues.	May 5	Retributive Justice	
	Thurs.	May 7	Influence of Psychology on Law	LAST CLASS

Final Exam	Thurs.	May 14	Group 2: 12:30 to 3:30 pm
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**Last revised 1/6/09**