

Law 6831 (Psy 8960/002): Law, Race, and Social Psychology

Fall Semester 2006, 3 credits, Thursdays 10:10am-Noon, Law 471

Seminar Rationale: This interdisciplinary seminar will examine the scientific foundations for and legal implications of implicit (vs. explicit) racial and/or gender bias in four socio-legal domains: (1) criminal law, (2) affirmative action, (3) employment discrimination, and (4) legislative redistricting. Each of these domains, in different ways, highlights the disconnect between legal standards for decision making and psychological science on how people think about legal and policy issues through the filters of race and gender. Therefore, each week, we will read, discuss, and evaluate the pertinent legal standards and assumptions, in the context of the pertinent psychological science. The seminar will culminate with group presentations of *amicus* briefs/white papers/judicial opinions that take a position on the law of implicit bias in each of the seminar's four domains.

Instructors:

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Course Requirements:

We expect that seminar participants will prepare for each seminar session by completing the assigned readings and coming to the seminar ready to discuss the content and implications of the readings. Each seminar participant also will be expected to contribute to the in-class presentation of an *amicus* brief or white paper or opinion that takes a position on the law of implicit bias in the context of one of the four substantive domains covered by the seminar readings. Early in the semester, we will assign 2-3 seminar participants to a "team" connected to one of the four seminar topics. In addition to an in-class presentation of the position taken in the *amicus* brief/white paper/opinion, each team will prepare (no more than) a **30-page written version of their presentation due by 5pm December 11, 2006**. At that time, an electronic and hard copy version of the manuscript should be provided to both seminar instructors.

Schedule of Course Readings:

September 7: Overview of seminar.

September 14: Introduction to the law and science of implicit bias.

Greenwald, A.G., & Krieger, L.H. (2006). Implicit bias: Scientific foundations. *The California Law Review*, 94(4).

Jolls, C., & Sunstein, C.R. (2006). The law of implicit bias. *The California Law Review*, 94(4).

Fazio, R.H., & Olson, M.A. (2003). Implicit measures in social cognition research: Their meaning and use. *Annual Review of Psychology*, 54, 297-327.

Blair, I. V. (2002). The malleability of automatic stereotypes and prejudice. *Personality and Social Psychology Review*, 6 (3), 242-261.

Blanton, H., & Jaccard, J. (2006). Arbitrary metrics in psychology. *American Psychologist*, 61(1), 27-41.

I. Criminal Law

September 21:

Banks, R.R., Eberhardt, J.L., & Ross, L. (2006). Discrimination and implicit bias in a racially unequal society. *The California Law Review*, 94(4).

Eberhardt, J. L., Davies, P. G., Purdie-Vaughns, V. J., & Johnson, S. L. (2006). Looking deathworthy: Perceived stereotypicality of black defendants predicts capital sentencing outcomes. *Psychological Science*, 17 (5), 383-386.

Pizzi, W.T., Blair, I.V., & Judd, C.M. (2005). Discrimination in sentencing on the basis of Afrocentric features. *Michigan Journal of Race & Law*, 10(2), 327-355.

McCleskey v. Kemp, 481 U.S. 279 (1987).

September 28:

Correll, J., Park, B., Judd, C. M., & Wittenbrink, B. (2002). The police officer's dilemma: Using ethnicity to disambiguate potentially threatening individuals. *Journal of Personality and Social Psychology*, 83 (6), 1314-1329.

Graham, S., & Lowery, B. S. (2004). Priming unconscious racial stereotypes about adolescent offenders. *Law and Human Behavior*, 28 (5), 483-504.

Payne, B. K. (2001). Prejudice and perception: The role of automatic and controlled processes in misperceiving a weapon. *Journal of Personality and Social Psychology*, 81 (2), 181-192.

Plant, E. A., & Peruche, B. M. (2005). The consequences of race for police officers' responses to criminal suspects. *Psychological Science*, 16 (3), 180-183.

Terry v. Ohio, 392 U.S. 1 (1968)

October 5:

Ellsworth, P.C., & Gross, S.R. (in press). Social science and the evolving standards of death penalty law. In E. Borgida & S.T. Fiske (eds.), *Beyond common sense: Psychological science in the courtroom*. Oxford: Blackwell Publishers.

Donohue, J.J., & Wolfers, J. (2006). Uses and abuses of empirical evidence in the death penalty debate. *Stanford Law Review*, 58, 791-846.

Page, A. (2005). Batson's blind-spot: Unconscious stereotyping and the peremptory challenge. *Boston University Law Review*, 85, 155.

Batson v. Kentucky, 476 U.S. 79 (1986).

II. Affirmative Action

October 12:

Kang, J., & Banaji, M. R. (2006). Fair measures: A behavioral realist revision of "affirmative action." *The California Law Review*, 94(4).

Krieger, L.H. (1998). Civil rights Perestroika: Intergroup relations after affirmative action. *California Law Review*, 86, 1254-1333.

Pettigrew, T.F. (2004). Justice deferred a half century after *Brown v. Board of Education*. *American Psychologist*, 59(6), 521-529.

Grutter v. Bollinger, 539 U.S. 306 (2003).

October 19:

Crosby, F.J., Iyer, A., Clayton, S., & Downing, R.A. (2003). Affirmative action: Psychological data and the policy debates. *American Psychologist*, 58(2), 93-115.

Crosby, F.J., Iyer, A., & Sincharoen, S. (2006). Understanding affirmative action. *Annual Review of Psychology*, 57, 585-611.

Blasi, G., & Jost, J.T. (2006). System justification theory and research: Implications for law, legal advocacy, and social justice. *The California Law Review*, 94(4).

October 26:

Crosby, F.J., & Dovidio, J.F. (in press). Discrimination in America and legal strategies for reducing it. . In E. Borgida & S.T. Fiske (eds.), *Beyond common sense: Psychological science in the courtroom*. Oxford: Blackwell Publishers.

Norton, M.I., Sommers, S.R., Vandello, J.A., & Darley, J.M. (2006). Mixed motives and racial bias: The impact of legitimate and illegitimate criteria on decision making. *Psychology, Public Policy, and Law*, 12(1), 36-55.

Federico, C.M., & Sidanius, J. (2002). Racism, ideology, and affirmative action revisited: The antecedents and consequences of “principled objections” to affirmative action. *Journal of Personality and Social Psychology*, 82(4), 488-502.

III. Employment Discrimination

November 2:

Krieger, L.H. (1995). The content of our categories: A cognitive bias approach to discrimination and equal employment opportunity. *Stanford Law Review*, 47, 1161.

Krieger, L.H., & Fiske, S.T. (2006). Behavioral realism in employment discrimination law: Implicit bias and disparate treatment. *California Law Review*.

Washington v. Davis, 426 U.S. 229 (1976).

November 9:

Hart, M. (2005). Subjective decision making and unconscious discrimination. *Alabama Law Review*, 56, 741.

Williams, J.C., & Segal, N. (2003). Beyond the maternal wall: Relief for family caregivers who are discriminated against on the job. *Harvard Women's Law Journal*, 26, 77-162.

Williams, J.C. (2003). The social psychology of stereotyping: Using social science to litigate gender discrimination cases and defang the 'cluelessness' defense. *Employee Rights and Employment Policy Journal*, 7(2), 401.
St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

November 16:

Hunt, J.S., Borgida, E., Kelly, K.A., & Burgess, D. (2002). Gender stereotyping: Scientific status. In D. Faigman, D.H. Kaye, M.J. Saks, & J. Sanders (Eds.), Modern scientific evidence: The law and science of expert testimony. (pp.374-426). St. Paul, MN: West Publishing Co.

Krieger, L.H. (2004). The intuitive psychologist behind the bench: Models of gender bias in social psychology and employment discrimination law. *Journal of Social Issues*, 60(4), 835-848.

Rudman, L.A., Ashmore, R.D., & Gary, M.L. (2001). "Unlearning" automatic biases: The malleability of implicit prejudice and stereotypes. *Journal of Personality and Social Psychology*, 81(5), 856-868.

IV. Race and Legislative Re-districting

November 30:

Hutchings, V.L., & Valentino, N.A. (2004). The centrality of race in American politics. *Annual Review of Political Science*, 7, 383-408.

Pildes, R.H., & Niemi, R.G. (1993). Expressive harms, "bizarre districts," and voting rights: Evaluating election-district appearances after *Shaw v. Reno*. *Michigan Law Review*, 92(3), 483-587.

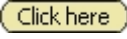
Cole, A.P., & Thomas, E.A.C. (2006). Group differences in fairness perceptions and decision making in voting rights cases. *Law and Human Behavior*, 30, 543-560.

Shaw v. Reno, 509 U.S. 630 (1993).

V. December 5: In-class "team" presentations.

December 11: 30-page written document (in *amicus* brief, white paper, or opinion form) is due by 5pm.

How to get articles online if there is no link, or if the link doesn't work:

1. Go to <http://mncat.lib.umn.edu>.
2. Enter the name of the journal (not the name of the article!) into the "Browse for" box.
3. From the list of results, click on the one with "Online" in parentheses after its title.
4. Click where it says  for University of Minnesota Twin Cities access
5. Enter the volume and page numbers of the article (you do not need to enter the year or the issue number).
6. Click on "Go."
7. Depending on the journal, you may need to scroll down and select the article you need.

Week of Sept. 14:

Annual Review of Psychology, Fazio:

Online, but not linkable.

Personality and Social Psychology Review, Blair:

http://www.leaonline.com/doi/pdf/10.1207/S15327957PSPR0603_8

American Psychologist, Blanton:

<http://content.apa.org/journals/amp/61/1/27.pdf>

Week of Sept. 21:

Psychological Science, Eberhardt:

Online, but not linkable.

Week of Sept. 28:

Journal of Personality and Social Psychology, Correll:

<http://content.apa.org/journals/psp/83/6/1314.pdf>

Journal of Personality and Social Psychology, Payne:

<http://content.apa.org/journals/psp/81/2/181.pdf>

Law and Human Behavior, Graham:

This issue isn't available online.

Psychological Science, Plant:

Online, but not linkable.

Week of Oct. 5: [no psych journals]

Week of Oct. 12: [no psych journals]

Week of Oct. 19:

American Psychologist, Crosby 2003:

<http://content.apa.org/journals/amp/58/2/93.pdf>

Annual Review of Psychology, Crosby 2006:

<http://arjournals.annualreviews.org/doi/pdf/10.1146/annurev.psych.57.102904.190029?cookieSet=1>

Week of Oct. 26:

Journal of Personality and Social Psychology, Federico:

<http://content.apa.org/journals/psp/82/4/488.pdf>

Psychology, Public Policy, and Law:

On Westlaw and LexisNexis.

Week of Nov. 2: [no psych journals]

Week of Nov. 9: [no psych journals; Employee Rights & Employment Policy Journal is on Westlaw]

Week of Nov. 16:

Journal of Social Issues, Krieger:

[Should be online, but link is not currently working correctly; users are told they must pay for access. Reported to main library on 9/12/06.]

Journal of Personality and Social Psychology, Rudman:

<http://content.apa.org/journals/psp/81/5/856.pdf>

Week of Nov. 30:

Annual Review of Political Science (Hutchings) is not available online after 1997.

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Guidelines for Presentations and Final Project Document

Overview of Assignment:

Part I: Each seminar participant is expected to contribute to a *half-hour* in-class presentation on *December 5th* of an *amicus* brief *or* white paper *or* opinion that takes a position on the law of implicit bias in the context of one of the four substantive domains covered by the seminar readings. Each seminar participant has now been assigned to one of the four themes (Criminal law, Affirmative action, Employment discrimination, and Racial redistricting). Two themes have five seminar participants per work group and two themes have four seminar participants per work group.

Next Steps: Each thematic group should meet as soon as possible to discuss the work group's approach or approaches to the assigned theme. Email addresses of all seminar participants are provided below on the "Project Preferences" summary, and a work group "coordinator" who is responsible for setting up at least the first meeting(s) of the work group. At the first gathering of the work groups, we expect you to decide (a) if the entire group will work together on a project or if sub-groups (i.e., at least two individuals working together) will take up different but thematically related projects; (b) the general substantive focus of the project or projects; and (c) the *form* of the presentations and final written products (i.e., *amicus* brief, white paper, or legal opinion). Once this has been determined, the work group coordinator should inform Professors Borgida and Charles of the decisions made by the work group.

With regard to (a) above, no work group is obligated to work together on the same theme. It may be that two or three individuals within a work group have one particular theme-related idea and the others in the work group prefer to focus on a different theme-related idea. One purpose of the work group's organizational meeting is to make this decision.

With regard to (b) above, it may not be possible to decide upon a substantive theme at the work group's first organizational meeting; it may take additional gatherings and/or emails to set the focus. But the sooner this is decided, the better. If the work group as a whole or sub-groups need some feedback on the different ideas for the final presentation and written project, then by all means contact either or both Professor Borgida and Professor Charles.

With regard to (c) above, each work group working together as a "committee of the whole" or sub-groups within the work group needs to decide the *form* of the presentation and final written project. You have three choices: an *amicus* brief, a white paper that critically reviews the issues and scholarly literature pertinent to your theme-related project, *or* a legal opinion. Your half-hour presentation on December 5th will be an overview and summary of the arguments in the context of whatever form your work group or sub-group decides to adopt.

Part II:

In addition to an in-class presentation of the position taken in the *amicus* brief/white paper/opinion, each work group or sub-group will prepare (no more than) a **30-page written version of their presentation due by 5pm December 11, 2006**. At that time, an electronic and hard copy version of the manuscript should be provided to both seminar instructors.

We expect that each member of the work group or sub-group will contribute to the writing of the final submitted project. Exactly who does what will be decided in meetings of your work group or sub-group, but efforts should be made to apportion the work equally. If there are issues or concerns that crop up in the context of this division of labor, then please consult Professors Borgida and Charles.

Next Steps: We will discuss in class the templates to follow for an *amicus* brief, white paper review, and legal opinion once your work group or sub-group makes its final decision as to form and this decision is forwarded to the instructors. But the American Psychological Association *amicus* brief in *Grutter* is a good template for the *amicus* brief option, and the Supreme Court decisions we have been reading provide a good working template for how the opinion form can be structured. The review paper by Blair that we read on stereotype malleability or Page's BU Law Review article that we read on peremptory challenges are both good templates to keep in mind for a "white paper" review.

Law 6831/Psy 8960 FINAL.2 Project Preferences

1. Criminal Law

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4. Racial redistricting/gerrymandering

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Grace Deason – deaso002@umn.edu

*Responsible for initiating and setting up first group meeting(s).