COURSE DESCRIPTION

Behavioral science provides insight into why lawyers who believe themselves to be ethical nonetheless engage in professional misconduct. Students will gain an understanding of the psychological factors outside of the lawyer’s conscious awareness that impact decision-making and develop strategies for combatting these issues in practice. Course materials will include case studies of illegal and unethical lawyer conduct and behavioral science research. Students will analyze and discuss readings in online forums and in the classroom. In a final project, students will present research into how behavioral science explains attorney misconduct in a selected practice setting.

COURSE OUTCOMES

In the course, students will:
• Re-think their understanding about why lawyers engage in professional misconduct;
• Gain an understanding of the psychological factors outside of the lawyer’s conscious awareness that impact decisionmaking;
• Develop strategies for self and the legal profession to combat and respond to forces that influence poor decisionmaking in practice; and
• Appreciate the connection between morality and legal liability, so that the lawyer can make better decisions and provide better advice to clients.

ASSIGNED READING

In most classes, we will read an article and a case study. Sometimes you will watch a video or complete an exercise prior to class. Reading assignments are posted at TWEN and/or via the links provided in this syllabus.

COMPONENTS OF YOUR GRADE

1) Discussion Forum Posts and Replies. 75 Points.

We will use Discussion Forums on TWEN to start a conversation about the readings before class. Your posts should have the feel of a law blog post (such as https://behaviorallegalethics.wordpress.com). The replies should be thoughtful, respectful responses to the posts.
The schedule is on the syllabus. The groups are listed on TWEN.

Students in the class are divided into four groups: A, B, C, and D. Groups A & B will write posts and replies for Tuesday classes. Groups C & D will write posts and replies for Thursday classes.

- For Groups A & B: Posts are due by noon on Monday. Replies are due no later than midnight.
- For Groups C & D: Posts are due by noon on Wednesday. Replies are due no later than midnight.
- The entire class should read all posts and replies for every class, regardless of whether your group wrote posts or replies. You should feel free to post replies to posts even if you are not required to do so!

**Posts in Discussion Forums. Up to 50 of the 75 points.** Five times during the semester, you will write a 200 to 250-word post in the Discussion Forums. Give your post a name that includes the class number (Tuesday, January 17’s class is Class 2) and a title that will create interest in reading your post. Be creative in writing your post. You can talk about an aspect of the reading (the article or the case study) that was particularly interesting to you, an aspect of the reading that you disagreed with and why, how you think the reading will impact you (or not) in practice, an additional case study example of the issue, additional research that you found on the subject of the reading, etc.

**Replies to Posts in Discussion Forums. Up to 25 of the 75 points.** Five times during the semester, you are required to write a reply to one of your classmate’s posts. Each post must have at least one reply, so the person who posts a reply first will have the most posts to choose from (and the person who posts last will reply to the remaining post).

**Additional Replies in Discussion Forums.** The entire class should feel free to post replies to any and all posts. This is not required, but will make the class discussion more interesting if we have heard several points of view before class.

2) **Class Participation. 100 points.**

An essential aspect of this course is class participation. For each class, you should be actively engaged in the class discussion – participating in all in-class exercises and demonstrating that you read and thought about the assigned articles, case study materials, and Discussion Forum posts and replies. You can earn up to 5 points for your participation in each class (from January 17 to March 30). Each student has one “excused absence,” when you can be absent for any reason or not participate much (or at all) but still earn 5 points. For any additional absences (regardless of the reason), you will receive 0 points for the day.

3) **Presentation: 100 points.**

We will end the semester with your presentations on behavioral legal ethics topics. Instructions for the presentation are available on TWEN.
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<th>COURSE SCHEDULE</th>
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**Topic: Course Introduction**

**Attorney Case Study: Marc Dreier**

- Letters related to the sentencing of Marc Dreier, in the case *US v. Marc S. Dreier*, S1 09 Cr 085 (JSR) (S.D.N.Y 2009), available at TWEN.

**Preparation for Class: We will not post in the Discussion Forums prior to this class. Your only assignment is to read the materials listed above and think about (and be prepared to discuss) the following:**

- What are the top 3-5 reasons that explain why Dreier acted as he did?
- How would you describe Dreier’s character? How do you think Dreier would describe his own character?
- Is there a way for bar admission authorities to predict conduct like this? What red flags might have appeared in his bar application at the time he was a recent law school graduate?
- Are you capable of acting as Dreier did? Why or why not?
- If you had been an attorney at Dreier's firm, would you have been suspicious that he was engaged in wrongdoing? What steps would you have taken if you had been concerned that he was engaged in misconduct?
Week 2

2) January 17 (Tuesday)

**Topic: Obedience**

**Assigned Reading:**

**Attorney Case Study: Adam Bier**

**Discussion Forum:** Group A posts by noon Monday before class; Group B replies by midnight Tuesday before class.

3) January 19 (Thursday)

**Topic: Obedience**

**Assigned Reading:**

**Attorney Case Study 1: Ronald Seastrunk**

**Attorney Case Study 2: Justin Martus Smith**

**Discussion Forum:** Group C posts by noon Wednesday before class; Group D replies by midnight Thursday before class.
Week 3

4) January 24 (Tuesday)

Topic: Fundamental Attribution Error

Assigned Reading:

Attorney Case Study: Stephen Glass

Discussion Forum: Group B posts by noon Monday before class; Group A replies by midnight Tuesday before class.

5) January 26 (Thursday)

Topic: Naïve Realism / Overconfidence Bias

Assigned Reading:

Attorney Case Study: Jessica Lyons

Discussion Forum: Group D posts by noon Wednesday before class; Group C replies by midnight Thursday before class.
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<td><strong>Assigned Reading:</strong></td>
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<td><strong>Attorney Case Study: Arthur Wisehart</strong></td>
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<td><strong>Discussion Forum:</strong> Group A posts by noon Monday before class; Group B replies by midnight Tuesday before class.</td>
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<td><strong>7) February 2 (Thursday)</strong></td>
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<td><strong>Topic:</strong> Rationalization</td>
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<td><strong>Assigned Reading:</strong></td>
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<td><strong>Attorney Case Study: Carlos Spinelli-Nosedo</strong></td>
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<td>• Affidavit of Carlos Spinelli-Nosedo, available at TWEN</td>
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<td><strong>Supplemental reading related to case study of attorney engaged in billing fraud:</strong></td>
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<td><strong>Discussion Forum:</strong> Group C posts by noon Wednesday before class; Group D replies by midnight Thursday before class.</td>
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### Week 5

#### 8) February 7 (Tuesday)

**Topic:** Ethical Fading

**Assigned Reading:**

**Attorney Case Study: John Yoo**
- John Yoo’s *Torture Memos, Lessons for Us All*, [http://legalethicsforum.typepad.com/blog/2008/05/op-ed-on-john-y.html](http://legalethicsforum.typepad.com/blog/2008/05/op-ed-on-john-y.html)
- Frontline Interview with John Yoo, [http://www.pbs.org/wgbh/pages/frontline/torture/interviews/yoo.html#3](http://www.pbs.org/wgbh/pages/frontline/torture/interviews/yoo.html#3)

**Discussion Forum:** Group B posts by noon Monday before class; Group A replies by midnight Tuesday before class.

#### 9) February 9 (Thursday)

**Topic:** Ethical Fading

**Assigned Reading:**

**Attorney Case Study: Douglas Anderson**

**Discussion Forum:** Group D posts by noon Wednesday before class; Group C replies by midnight Thursday before class.
# Week 6

## 10) February 14 (Tuesday)

**Topic:** Blind Spots

**Assigned Reading:**

**Attorney Case Study:** Mike Nifong

**Discussion Forum:** Group A posts by noon Monday before class; Group B replies by midnight Tuesday before class.

## 11) February 16 (Thursday)

**Topic:** Failing to Recognize Our Own Mistakes

**Assigned Reading:**

**Attorney Case Study:** Paul Robson
- *Law Society of Upper Canada v. Robson*, available at TWEN.

**Discussion Forum:** Group C posts by noon Wednesday before class; Group D replies by midnight Thursday before class.
Week 7

12) February 21 (Tuesday)

Topic: Implicit Bias

Assigned Reading:

Complete an Implicit Association Test prior to class. You do not have to share your results with the class. Choose one or more tests from those available at this link: https://implicit.harvard.edu/implicit/selectatest.html

Discussion Forum: Group B posts by noon Monday before class; Group A replies by midnight Tuesday before class.

13) February 23 (Thursday)

Topic: Thinking (Too) Fast

Assigned Reading:
- To be announced.

Attorney Case Study: New Advocates

Discussion Forum: Group D posts by noon Wednesday before class; Group C replies by midnight Thursday before class.
Week 8

14) February 28 (Tuesday)

Topic: Zealous Advocacy Bias and Advisors

Assigned Reading:

Attorney Case Study: Joseph Collins
- Chad Bray, *Refco Lawyer Gets 7-Year Sentence*, http://www.wsj.com/articles/SB10001424052748704363504575003200481973346
- Excerpts from transcript of Joseph Collins’ testimony in his first trial, available at TWEN.

Discussion Forum: Group A posts by noon Monday before class; Group B replies by midnight Tuesday before class.

15) March 2 (Thursday)

Topic: Zealous Advocacy Bias and Advisors

Assigned Reading:

Attorney Case Study: Vinson & Elkins, as counsel to Enron
- Enron’s Lawyers Faulted Deals but Failed to Blow the Whistle, WSJ, available at TWEN.

Discussion Forum: Group C posts by noon Wednesday before class; Group D replies by midnight Thursday before class.
16) March 7 (Tuesday)

Topic: Zealous Advocacy Bias and Litigators

Assigned Reading:

Attorney Case Study: Matthew Murray
- *In the Matter of Matthew B. Murray*, Agreed Disposition (July 2013), available at TWEN.

Discussion Forum: Group B posts by noon Monday before class; Group A replies by midnight Tuesday before class.

17) March 9 (Thursday)

Topic: Moral Courage

Assigned Reading:

Attorney Case Study: To Be Announced

Discussion Forum: Group D posts by noon Wednesday before class; Group C replies by midnight Thursday before class.
Week 10

18) March 21 (Tuesday)

Topic: Putting the Pieces Together: Why Did this Misconduct Happen?

Attorney Case Study 1: Chris Gossage
- Firm profile: http://www.russells.co.uk/people/chris-gossage.html

Attorney Case Study 2: Lawyer Decisionmakers at Charlotte School of Law
- *Barcheisi v. Charlotte School of Law*, Complaint, available at TWEN
- Students file $5 million Class Action Lawsuit Against Charlotte School of Law, http://abovethelaw.com/2016/12/students-file-5-million-class-action-lawsuit-against-charlotte-law/

Discussion Forum: Group A posts by noon Monday before class; Group B replies by midnight Tuesday before class.

19) March 23 (Thursday)

Topic: Putting the Pieces Together: Why Did this Misconduct Happen?

Attorney Case Study 1: Bill Lockett

Attorney Case Study 2: Joseph Harold Smith

Discussion Forum: Group C posts by noon Wednesday before class; Group D replies by midnight Thursday before class.
Week 11

20) March 28 (Tuesday)

Topic: How Lawyers and Law Firms Should Respond to the Lessons of Behavioral Legal Ethics

Assigned Reading:

Discussion Forum: Group B posts by noon Monday before class; Group A replies by midnight Tuesday before class.

21) March 30 (Thursday)

Topic: How Courts Can Harness the Power of Behavioral Legal Ethics

Assigned Reading:

Case Study: James Himmel
- *In re Himmel*, 533 N.E.2d 790 (Ill. 1988).

Discussion Forum: Group D posts by noon Wednesday before class; Group A replies by midnight Thursday before class.
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