

Law and the Brain SYLLABUS

Professor Akilah N. Folami

Fall 2016

REQUIRED TEXTS

Casebook: OWEN D. JONES, JEFFREY D. SCHALL & FRANCIS X. SHEN, *LAW AND NEUROSCIENCE* (Aspen Publishers 2014).

Note: **There may be additional course material that I distribute over the course of the semester.**

OFFICE HOURS: By scheduled appointment. Although I am in my office on most days with the door closed, it is usually best to schedule an appointment in advance.

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COURSE OVERVIEW

General Objectives:

This course will introduce the relatively new and growing field of “neurolaw”¹ by covering key dilemmas and cases at the intersection of neuroscience (or brain science) and the law that may include the neuroscience of criminal culpability, memory enhancement, emotions, decision making, adolescent brain development, and psychopathy. In doing so, this seminar may consider issues such as what adolescents, psychopaths, and white-collar fraud artists may be thinking? Why emotional trauma for victims of abuse lasts so long? Why eye-witness memory is so poor? The effect of implicit biases and the subconscious on decision making? The seminar will explore how the legal system can and should respond to such questions given the new insights provided by neuroscience. No science background is required for this course.

This seminar has two interrelated aims: (1) to introduce students to the most important questions emerging from the intersection of law and neuroscience; and (2) to help students harness brain research to become a better practicing attorney. Upon completing the seminar, students will have been exposed to path-breaking scientific research on the brain, will have learned how that research may (or may not) be applicable to legal

¹ Neuroscience, as used herein, is analogous to brain science or study of the brain. The term neuroscience derives from the word “neuron”, which is the special type of cell that our brains rely on to function. The phrase “neurolaw” is used to refer to the application of neuroscience findings to law, as broadly defined.

questions, and will have learned more about how our own brain works (and can work better) as a legal actor.

Specific Learning Objectives:

By the end of this seminar, students will;

- ✦ Learn a set of legally relevant “brain basics” – how the brain works, how researchers study it, and different types of brain measurement and monitoring devices.
- ✦ Gain exposure to the many ways in which neuroscience research is being deployed in legal contexts such as criminal proceedings, civil litigation, state and federal legislation and court rulings, regulatory oversight, and policy evaluation.
- ✦ Think critically about whether, and under what conditions, neuroscientific evidence is relevant and should be examined in connection with a particular legal issue.
- ✦ Learn what questions to ask, and what further resources to consult, if and when confronted with neuroscience evidence and issues in the practice of law.
- ✦ Develop a better understanding of how and why legal actors (including themselves) act and think, thereby allowing for refinement in legal advocacy skills and critical analysis.
- ✦ Develop a substantive, albeit not comprehensive, understanding of a selected part of the neurolaw landscape through the development of a paper, roughly 25-30 pages in length, exploring in-depth a topic at the intersection of law and neuroscience.

ATTENDANCE, TARDINESS, CLASS PARTICIPATION, AND ASSIGNMENTS

Attendance: This is not a lecture class, but a class based on discussion and the exchange of ideas. Accordingly, students are expected to attend every class, and to be on time for every class. Each class will begin promptly.

The rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. Thus, you may not have more than two (2) absences of this class.

I will provide sign-in sheets for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you may be administratively withdrawn from the course. No prior notice may be given, and you may receive notification from the *Office of Academic Records* indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and

regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

Note: You are responsible for keeping track of your own absences and for notifying the Office of Student Affairs, as soon as possible, if you believe you must be absent from class for more than the permitted number of classes.

Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation and must otherwise be satisfactory to OSA's criteria for excusing absences.

Tardiness: I will circulate the sign-in sheet at the beginning of each class. If you are not present at that time, you will be marked absent. If you are unreasonably late, please see me at the end of class and before I leave the classroom to ask me to change your absence mark to a tardy mark. For purposes of this policy, two tardies may affect your class participation grade and/or may be counted as one absence.

Class Participation:

This is **not** a lecture class. The class will consist of discussion and active participation on your part. I will call on students randomly; in addition, several students will be assigned in advance as "students on call" for each class. I REPEAT I call on students randomly, notwithstanding those officially put on call. You should be comfortable with the reading material. Having students who are prepared will make for a much more interesting class for all of the students. Students who are unprepared more than once (without advance notice via email) will have this counted against their class participation grade.

Note: The questions in the casebook are meant to walk you through the readings. Reading closely enough should enable you to give at least a tentative answer to all of them. These questions may typically serve as a starting point for class discussion.

Writing Assignment:

There are two formal deadlines for the research papers (that meet the Writing I requirement), one for the draft of the paper and the other for the final paper. Your paper topic and preliminary discussion summary is set forth in the Chart attached to this syllabus. This Topic and Summary submission counts towards your overall class participation grade. For more detailed information regarding your paper, including formatting and other points, please read the memo "Guidelines for Writing Assignments and Class Participation" and the attached Chart that I have prepared for this class.

GRADING POLICY

Final Grade: Your grade will be based upon the score that you earn on your draft and final research paper, and upon your classroom participation (which includes your Topic and Summary submission). Subject to my discretion, grades may be adjusted up to account for consistent and exceptional class participation, or down to account for repeated absences or failure to be properly prepared

NOTE: To the extent an unexcused draft or final paper is submitted late and is accepted, which shall be at my sole discretion, it will be subject to ½ a grade deduction for each 12hr of lateness and, therefore, deducted a full grade for a 24 hr lateness, and a full grade and a ½ for a 36 hr lateness, etc.

READING ASSIGNMENTS

Depending on the topic, we will read and discuss 30 to 45 pages each class session. I reserve the right to change and adjust this outline and the assignments based on the pace and progress of the class, the topics of particular interest to the class, and otherwise, as I deem necessary. Any changes will be announced in class, posted on TWEN, and/or emailed to you via the email address you have provided on TWEN.

Please note, the American Bar Association requires that you spend at least four hours per week, on average, outside of class studying for this two-credit course. This is in addition to the two hours a week we spend in class.

Part One

- (1) August 23. What is law and neuroscience? (pages 1-40)
- (2) August 30. Individual and Adolescent Brains and Responsibility (Murder) Under the Law. (pages 41-84)
- (3) September 6. Adolescent Brain and Responsibility cont'd (pages 87-100): Philosophical Views from Law and Neuroscience. (pages 121-149)
- (4) September 13. Brain Structure and Brain Function (pages 193-220)
- (5) September 20. The Injured Brain in the Law (pages 267-302)
- (6) September 27. Pain and Distress in the Law (pages 335-374)

NOTE: October 2nd Topic and Summary submission due on TWEN.

- (7) **October 18.** The Thinking Brain (Memory) in the Law (pages 375-420)
- (8) **October 25.** The Emotional Brain and Decision Making in the Law (pages 421-448, 515-540)

NOTE: October 30th Draft Paper due on TWEN.

- (9) **November 1.** The Adolescent Brain and Other Types of Accountability in the Law. (pages 541-590)
- (10) **November 8.** The Future-Cognitive Enhancement. (pages 631-666)
- (11) **November 15.** The Future-Brain-Machine Connection and Artificial Intelligence and Artificial Intelligence (pages 667-674, 685-718)
- (12) **November 22 and November 29.** In class presentations.

NOTE: Final Paper is Due on November 27th on TWEN.

TOPIC

- Your *research* paper should be a legal analysis addressing any one of the topics we will discuss during the semester. If you would like to choose a topic that is not within the confines of the topics discussed in class but is covered in the casebook or one you have discovered on your own, you will need my approval in advance.
 - NOTE: You may want to peruse, early on, the syllabus and assigned reading materials or other material that I distribute during the course of the semester to find a topic of interest to you.

DUE DATES

- *Research Papers*:
 - **Topic and Summary submission due by 8 a.m. on October 2nd.**
 - **Draft due by 8 a.m. on October 30th.** It accounts for 25% of your writing assignment grade.
 - **Final due by 8 a.m. on November 27th.** It accounts for 75% of your writing assignment grade

NOTE: Please submit drafts and final papers on TWEN in the Assignment Drop Box.

FORMAT

- Please use footnotes and not endnotes. Bluebook format is required for research papers.
 - Margins may not be more than one-inch all around.
 - Use a twelve (12) point Times New Roman font.
 - Number all pages, excluding first page of the paper.

For further detail, please refer to the memorandum posted

on TWEN in the Telecom Law site under Course Materials, titled, “*Guidelines for Writing Assignments and Class Participation.*”

LENGTH

- Your *research* paper should be twenty-five (25) to thirty (30) pages in length.

Basis of Grade for the Draft and Final Papers

For the draft and final papers, the grade of the final paper will be based on its cogency, its coverage of the issues, grounding in law and policy, and of course organization, structure, and its conformity to general rules of grammar. In addition, incorporating relevant analysis will be rewarded higher grades than merely regurgitating previous law review articles.

Again, for further detail, please refer to the memorandum posted on TWEN in the Telecom Law site under Course Materials, titled, "*Guidelines for Writing Assignments and Class Participation.*"