

## ***In Search of Lost Time: Memory in Legal Principle and Process***

*Legal Studies 190.8 – Spring 2023*

*Prof. Daniel A. Levy*

Human memory plays a key role in legal thought, institutions, and procedures. In a wide range of circumstances – evaluating the reliability of testimony, appreciating challenges to judges and jurors in learning and retaining information presented during a trial, assessing intent and culpability for plagiarism, or considering the admissibility of a plaintiff’s repressed memories – assumptions about the nature of memory play a vital role. This course will explore recent progress in the understanding of the nature and brain substrates of human memory. For each topic, the relevant basic cognitive psychology and neuroscience information will be introduced in non-specialist terms. We will then consider the implications of those insights for philosophical attitudes, legal processes, and societal institutions.

### *Learning objectives:*

- A. To become acquainted with the fundamental processes of human memory and their brain substrates, as relevant to real-life memory challenges.
- B. To be able to identify instances of social policy and legal process in which memory veracity is crucial, and to choose appropriate procedural approaches in such circumstances.
- C. To understand the memory bases of individual and collective psychological trauma, and to be aware of their implications for disability, tort circumstances, rehabilitation, and reconciliation.
- D. To appreciate the promises and perils of memory-related physiological detection of deception in principle and practice.

### *Course requirements:*

Reading, advance and follow-through commentary, and active participation in discussions (30% of the course grade); short expository mid-term exercise (20% of the course grade) and a comprehensive position paper on a relevant topic of individual choice (as the course final assessment; 50% of total course grade). Assignment guides for all required submissions will be posted on the course website.

### *Advance and follow-through commentary*

(A) In advance of class meetings, you are required to contribute to an on-line forum discussion of the assigned reading on the bCourse site. This will take the form of brief responses to specific cue questions and thought challenges that will be provided by the instructor. These commentaries are due each week in advance of the seminar meeting. You are expected to read through all of the contributions before each meeting. The assignment is designed to help you reflect on the assigned reading and kick-start our seminar conversation. (You are allowed one “absence” from the bCourse forum.)

(B) Each student will be required to file a post-meeting critical summary and commentary about one weekly topic during the course of the semester, by midnight the day after the class meeting. Students may choose their week/topic of preference (via sign-up site, to be posted).

## *Academic integrity*

Please review Berkeley's Academic Integrity Policy: <http://sa.berkeley.edu/conduct/integrity>. University rules require that you comply with this policy. If you have questions as to what it requires, please contact me.

## *Accommodation*

Students who require accommodation for a disability should refer to policies here: <https://dsp.berkeley.edu/students>. As the instructor, I must receive an official accommodation notice from DSP as soon as possible.

## *Course topics*

### **1 Introduction: The mechanisms of memory (Week 1)**

### **2 Memory of repressed trauma and false memory creation**

2.1 Infantile amnesia, the interpretation of dreams, and unconscious repression: The ghost of Freud in the courtroom (Week 2)

Reading: Bauer, 2015; Kihlstrom, 2006.

2.2 Repressed-recovered memories of sexual, physical, and emotional abuse (Weeks 3, 4)

*Case study: Israel Supreme Court decision in "The Memory Wars"*

Reading: Howe et al., 2017, ch. 2; Otgaar et al., 2019

2.3 Memory reconsolidation and the effects of misleading post-event information (Week 5)

Reading: Braun et al., 2002.

### **3 Reliability of eyewitness testimony**

3.1 Signal detection approach to suspect identification (Week 6)

Reading: Gronlund et al., 2014; Wells et al., 2020; Wixted & Wells, 2017.

3.2 Scripts and schema in the formation of biased memories (Week 7)

Reading: Ghosh & Gilboa, 2014; Holst & Pezdek, 1992; Mandler, 2014 (selections).

3.3 Efficacy of memory reconstruction enhancement methods (Week 7)

Reading: Fisher et al., 2011.

3.4 Lifespan differences in memory reliability: recent and remote memories (Week 8)

Reading: Fitzgerald & Price, 2015.

*Case study: Holocaust survivors' eyewitness testimony in Israeli courts*

### **4 Cryptomnesia: Honest lying (Week 9)**

Reading: Gingerich & Sullivan, 2013.

*Case study: Jerusalem of Gold*

### **5 The echoes of trauma**

5.1 The neurophysiology and ethics of traumatic memory erasure (Week 10)

*Case study: Snap judgments in an Israeli emergency rooms*

Reading: Haig, 2007; Treanor et al., 2017.

5.2 Post-traumatic stress disorder (PTSD) and acquired phobias: Understanding the memory systems bases of the conditions, their treatment challenges, and their disability costs (Weeks 11, 12).

*Case study: Combat veterans' and terror victims' rehabilitation in Israel*

Readings: Ross et al., 2017; Yehuda et al., 2015.

**6 Memory-based physiological lie-detection methods (Week 13)**

*Case study: Security service screening*

Readings: Farah et al., 2014; Mamelí et al., 2017; Ofen et al., 2017.

**7 Memory and restorative justice (Week 14)**

*Case study: Dynamics of dialogue in Israeli-Palestinian reconciliation and peace-seeking*

Readings: Blustein, 2014 (selections); Bolitho, 2017;

## Bibliography

*Readings will be accessible on the bCourses site for the class, or through campus library access using the links provided below.*

- Bauer, P. J. (2015). A complementary processes account of the development of childhood amnesia and a personal past. *Psychological Review*, 122(2), 204–231.  
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- Bolitho, J. (2017). Inside the restorative justice black box: The role of memory reconsolidation in transforming the emotional impact of violent crime on victims. *International Review of Victimology*, 23(3), 233-255. <https://doi.org/10.1177%2F0269758017714549>
- Blustein, J. M. (2014). *Forgiveness and Remembrance: Remembering Wrongdoing in Personal and Public Life*. New York: Oxford Academic. <https://doi.org/10.1093/acprof:oso/9780199329397.001.0001>.
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<https://doi.org/10.1038/nrn3665>
- Fisher, R. P., Milne, R., & Bull, R. (2011). Interviewing cooperative witnesses. *Current Directions in Psychological Science*, 20(1), 16-19. <https://doi.org/10.1177/0963721410396826>
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- Mameli, F., Scarpazza, C., Tomasini, E., Ferrucci, R., Ruggiero, F., Sartori, G., & Priori, A. (2017). The guilty brain: The utility of neuroimaging and neurostimulation studies in forensic field. *Reviews in the Neurosciences*, 28(2), 161–172. <https://doi.org/10.1515/revneuro-2016-0048>
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