**Mental Health and the Law**

**Spring 2013**

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**COURSE DESCRIPTION**

This two-unit seminar will explore the intersection of mental health and the law and provide students with tools to improve advocacy when mental health is an issue in a case.

In the last three decades, the legal system has seen an evolution in the understanding between life circumstances, mental health and involvement with the law. Advances in brain science and social history investigation, as well as an increasingly nuanced view of mental disorders have prompted these strides in various aspects of the law, most notably in death penalty cases.

However, this recognition of the role of cognition in legal cases extends beyond the confines of criminal law. People with mental disorders interact with the civil legal system in employment cases, civil rights actions, family law disputes, elder law cases and the corporate arena. Lawyers in most practice areas will at some point encounter a client, a witness, a family member, or a lawyer with one or more mental disorders. They must recognize the issue, and understand its implications with respect to their legal representation of the client.

Lawyers graduating today are faced with a system that is dramatically changing where mental health meets the law. Knowledge that was once considered a specialty area for lawyers is now best practice. New attorneys should be prepared for this new world.

**FACULTY**

Dr. George Woods is a neuropsychiatrist with a private practice in San Francisco. In addition to his clinical practice in disorders of the brain, he consults and testifies as a forensic mental health expert in both civil and criminal matters throughout the United States. He is an Associate Adjunct Professor at Morehouse School of Medicine in Atlanta and has published articles in peer reviewed medical and legal publications.

Jennifer Johnson is a Deputy Public Defender in San Francisco and represents clients in Behavioral Health Court. She was a founding member of the mental health court and is actively involved in shaping public policy and public perception at the crossroads of mental health and the law. In partnership with Dr. Woods, Ms. Johnson has started a monthly continuing legal education series through West LegalEdcenter, *Where Mental Health Meets the Law*.

**OBJECTIVES**

1. To address philosophical, definitional, operational, and occupational issues that are found when psychiatry and the law interact.
2. To provide a theoretical understanding of the medicolegal relationship.
3. To explore the human rights components specific to forensic psychiatry.
4. To provide law students with a bibliographical infrastructure.

 **EXPECTATIONS**

Regular attendance is critical. Each week builds upon the last and inconsistent attendance will limit your ability to master the material.

Participation is extremely important and will count for 25% of the final grade. Much of this material may be new to your academic experience. Participating in class and group discussions, as well as asking questions, will bolster your understanding the subject matter.

The remaining 75% of the grade will be based on three six-page papers assigned throughout the semester. The course is divided into four subparts. Each student will be required to write one paper from Part II:  *Where Does Mental Illness Show Up in the Law Today?* Students can choose to write a paper on two of the remaining three subparts.

**Part I: Introduction to the History of Mental Illness**

In the first three classes of the semester, we will introduce law students to the intersection of mental health and the law by examining history, philosophy, public policy and the classifications of mental illness.

 **Week 1: What is Mental Illness?**

In the first class, we will explore our conceptualization of mental illness in the last century through the works of Michel Foucault, Baruch Spinoza and others. We will examine how the law has struggled to make sense of an evolving understanding of mental illness and to define mental health terms as legal concepts.

***Reading***

M’Naghten's case, 8 Eng. Rep. 718, Volume 8 (1843)

*Ake v. Oklahoma*, 470 U.S. 68 (1985)

Prosono. (2003). History of Forensic Psychiatry. In R. Rosner (Ed.), *Principles and Practice of Forensic Psychiatry* (Vol. 2).

Foucault, M. (1961). *History of Madness*. New York: Routledge, pp. 44-108.

**Week 2: History and Public Policy**

Over the last four decades, failed public policy, targeted budget cuts, and the economic crisis have had a disproportionate impact on those with serious mental illness. The consequence is an underclass of Americans with untreated grave mental illnesses cycling through psychiatric hospitals, civil courts, criminal courts, the streets, and the jails. In this class, we will unravel the complicated political and economic decisions that have led us to where we are today.

***Reading***

*Brown v. Plata*, 563 US\_\_\_ (2011)

The National Leadership Forum on Behavioral Health/Criminal Justice Services in *Ending an American Tragedy: Addressing the Needs of Justice-Involved People with Mental Illnesses and Co-Occurring Disorders*, September 2009

**Week 3: Psychopathology and Classification**

In week three, we review the modern classifications systems for mental health disorders and the International Classification of Diseases. We will discuss how advances in science have muddied the distinction between neurological and psychological dysfunction—a distinction the law still makes. Finally, we will define major mental illnesses that are seen most often in the legal context.

***Reading***

*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)

**Part II: Where Does Mental Illness Show Up in the Law Today?**

In the next segment of the course, we examine how mental health interfaces with civil and criminal law. We will explore the concepts of competency, insanity, capacity, specific intent, mitigation, and disease versus defect. We will look at which disorders have meaning in the legal context and which do not. Finally, we will compare and contrast our approach to the intersection of mental health and law with that of other nations

**Week 4: Competence**

Whether involved in the legal system as a criminal defendant, a civil plaintiff, a client in a contract negotiation, or an elderly person planning an estate, the law requires a decision maker to be competent. This class will focus on what it means to be “competent” and how that applies in different legal settings.

***Reading***

 *Dusky v. United States, 362 U.S. 402* (1960)

Schwartz, H. Informed Consent and Competency. *Legal Regulation of Psychiatric Practice*.

Jared Loughner’s plea agreement

 **Week 5: Capacity**

Capacity is an ambiguous term in the law. What is meant by capacity? Is capacity actualized or is it an abstraction of the relationship between the law and ability? How has capacity been applied in understanding a person’s culpability? How is mental health capacity measured?

***Reading***

*Montana v. Engelhoff*, 518 U.S. 37 (1996)

Appelbaum, P. S., Bonnie, R. J., & Karlawish, J. H. (2005). “The Capacity to Vote of Persons with Alzheimer's Disease.” [Comparative Study Multicenter Study Research Support, Non-U.S. Gov't]. *The American Journal of Psychiatry, 162*(11), 2094-2100. doi: 10.1176/appi.ajp.162.11.2094

**Week 6: Specific Intent**

Along with competency and capacity, the law defines other states of mind that must be present as an element in a legal action. Intentional behavior requires weighing and deliberation, distinguishing it from purposeful action that only requires goal-directed behavior. The state of mind of the actor, or *mens rea*, is the central question in most criminal legal theory. In this class we examine how intent is defined and the relationship between intent and mental disorder.

***Reading***

“Modern Neuroscience Is Eroding the Idea of Free Will.” (2006). *The Economist*.

**Week 7: Insanity**

The legal concept of insanity is often confused with the psychiatric concept of psychosis. Insanity is a purely legal construct with little or no relationship to any form of mental illness or any particular symptoms. In this class we explore the history of the definition of insanity. What does it mean legally and how does that translate into specific mental symptoms?

***Reading***

*United States v. Hinckley*, 672 F. 2d 115 (1982)

Miller, R. (2003). Criminal Responsibility. In R. Rosner (Ed.), *Principles and Practice of Forensic Psychiatry* (Vol. 2).

**Part III: Context and the Science of the Brain**

For a complete picture of the client, lawyers need to examine context and the life history of the person who comes into contact with the legal system. Both the lawyer and the doctor examining a person are at a distinct disadvantage without a comprehensive social history and an inquiry into question of race, culture and gender.

**Week 8: Unraveling a Social History in Concentric Circles**

In week eight, we turn the conversation to individual clients within the criminal and civil systems. An essential starting place when mental health is an issue in a case is a comprehensive, multigenerational social history of the client. The inquiry into a client’s background, school history, and family history is not a luxury for the lawyer but a necessity. In this class we explore the United States Supreme Court’s decisions that define the concept of mitigation and impose a duty on capital defense lawyers to uncover mitigating evidence through life history investigation.

***Reading***

*Wiggins v. Smith*, 539 U.S. 510 (2003)

Holdman, Scharlette and Seeds, Christopher, “Cultural Competency in Capital Mitigation,” *Hofstra Law Review*, Volume 36, No. 3, p. 883 (2008)

**Week 9: Race, Culture, Gender and Mental Illness**

Race, culture, and gender all play a significant role in the expression of mental health symptoms. How a person understands his or her identity affects how medical and mental illnesses are described, understood, and experienced by an individual and his or her community. In this class, we explore the importance of being aware of cultural norms in order to accurately interpret data gathered through observation, records, and interviews.

***Reading***

*Mak v. Blodgett*, 970 F.2d 614 (9th Cir. 1992)

Dudley, Richard and Leonard, Pamela Blume, “Getting It Right: Life History Investigation as the Foundation for a Reliable Mental Health Assessment,” *Hofstra Law Review*, Volume 36, No. 3, p. 963 (2008)

**Week 10: Understanding the State of Brain Science and the Law**

What causes mental health symptoms? As our understanding of the brain evolves, that question becomes both easier and more difficult to answer. This class will focus on the brain. What makes us human? How do we learn? What makes us feel? How can we measure brain function? Just as mental health experts must understand the law, lawyers need to understand science to adequately represent clients at the intersection of mental health and law.

***Reading***

*Graham v. Florida*, 982 So.2d 43 (2010) (USSC CITE 560 U.S. \_\_\_ (2010))

Neurobehavioral Assessments

**Part IV: Special Populations**

Along with understanding the context in which clients come to the attention of the legal system, there are a number of special populations that present novel issues to the lawyer and to the mental health professional. These last classes will look at clients along the age continuum and explore how mental health affects different generations in a different way. Also we look at the effects of trauma, the Americans with Disabilities Act, and the concept of therapeutic jurisprudence. Once peripheral to the main topic, these subjects are now integral to the discussion at the intersection of law and mental health.

**Week 11: Juvenile and Geriatric Mental Health**

In week eleven, we focus on two overlooked populations — juveniles and the elderly. First, what are kids diagnosed with and when? Are there “rush to judgment” diagnoses that lead to problems as kids get older? Can substance abuse cause mental illness in children? Are the symptoms of mental illness really just reactions to an undeveloped brain, trauma, poverty, and living in an urban war zone?

On the other end of the spectrum, understanding elder mental health is increasingly important as America ages. How has the graying of our society affected our legal system? We see record numbers of elderly people in our legal systemdue to increased drug and alcohol use, issues of competency, elder abuse, and increased rates of property crime. In this class, we examine both ends of the age continuum as it relates to mental health and the legal system.

***Reading***

*Graham v. Florida*, 982 So.2d 43 (2010) (USSC CITE 560 U.S. \_\_\_ (2010))

Phillips, J. P. S. a. D. A. (2000). *From Neurons to Neighborhoods: The Science of Early Childhood Development*.

**Week 12: The Effects of Trauma**

The effects of trauma on clients involved with the law in both criminal and civil matters are pervasive and also may not be easily recognizable. We often associate symptoms of trauma with the after effects of war or natural disaster. Indeed, veterans returning from the most recent wars have provided us with a wealth of new scientific data about brain impairment and the implications of living with cognitive deficits.

However, trauma is also caused by less obvious micro-assaults: repeated exposure to urban events, incarceration in prisons and jails, problems at work, family dysfunction, chronic poverty, medical problems, and child maltreatment. In week ten, we learn about how an individual’s response to trauma may impact his or her involvement with the legal system.

***Reading***

*Wiggins v. Smith*, 539 U.S. 510 (2003)

Wayland, Kathleen, “The Importance of Recognizing Trauma Throughout Capital Mitigation Investigation and Presentations.” *Hofstra Law Review*, Volume 36, No. 3, p. 923 (2008)

**Week 13: Disability Rights**

The Americans with Disabilities Act (1991) is an extension of civil rights to those with physical and mental challenges. The Act establishes the right of access for those with physical and mental disabilities to all aspects of the American Dream. This expansion of rights has changed transportation, construction, sports, education and medicine. How was this act developed? How have subsequent laws followed the ADA? How are those laws applied?

***Reading***

Americans with Disabilities Act

*Atkins v. Virginia*, 536 U.S. 304 (2002)

Greenspan, S., Switzky, H. N., & Woods, G. W. (2011). “Intelligence Involves Risk-Awareness and Intellectual Disability Involves Risk-Unawareness: Implications of a Theory of Common Sense.” *Journal of Intellectual and Developmental Disability, 36*(4), 242-253. doi: 10.3109/13668250.2011.626759

**Week 14: Collaborative Courts and the Evolving Criminal Justice System**

In California and elsewhere, criminal justice policy has been driven by politics—specifically the politics of fear. The failure of that policy has resulted in a trend toward therapeutic jurisprudence, an approach that aims to treat the root causes of behavior in a collaborative treatment court rather than through the adversarial system. This movement started with Drug Courts in the 1990s and has grown to include Mental Health Courts, Veterans Treatment Courts, Homeless Courts and Elder Courts.

This class will explore the growth of this movement, the success of therapeutic models and some of the ethical dilemmas that lawyers practicing in these courts face.

***Reading***

*Brown v. Plata,* 563 US\_\_\_ (2011)

**ADDENDUM**

**Week 2: History and Policy**

Appelbaum, P. S. (2006). “Violence and Mental Disorders: Data and Public Policy.” [Comment Editorial]. *The American Journal of Psychiatry, 163*(8), 1319-1321. doi: 10.1176/appi.ajp.163.8.1319

 **Week 4: Competence**

*Rohan ex rel. Gates v. Woodford*, 334 F.3d 803 (9th Cir. 2003)

Poortinga, E., Lemmen, C., & Jibson, M. D. (2006). “A Case Control Study: White‐Collar Defendants Compared With Defendants Charged With Other Nonviolent Theft.” *Journal of the American Academy of Psychiatry and the Law Online, 34*(1), 82-89.

**Week 7: Insanity**

*Durham v. U.S.*, 94 U.S. App. D.C. 228, 214 F.2d 862, (1954)

**Week 8: Social History**

*Williams v. Taylor*, 529 U.S. 362 (2000)

Wayland, Kathleen, “The Importance of Recognizing Trauma Throughout Capital Mitigation Investigation and Presentations,” *Hofstra Law Review*, Volume 36, No. 3, p. 923 (2008)

**Week 9: Race, Culture, Gender and Mental Illness**

Friedman, S. H., Shelton, M. D., Elhaj, O., Youngstrom, E. A., Rapport, D. J., Packer, K. A., Bilali, S. R., Jackson, K. S., Sakai, H. E., Resnick, P. J., Finding, R. L., Calabrese, J. R. (2005). “Gender Differences in Criminality: Bipolar Disorder with Co-Occurring Substance Abuse.” *Journal of the American Academy of Psychiatry and the Law Online, 33*(2), 188-195.

Arnold, L. M. (2003). “Gender Differences in Bipolar Disorder.” [Comparative StudyReview]. *The Psychiatric Clinics of North America, 26*(3), 595-620.

**Week 10: Brain Science**

Hayes, B. K., & Chen, T. H. (2008). “Clinical Expertise and Reasoning with Uncertain Categories.” [Research Support, Non-U.S. Government]. *Psychonomic Bulletin and Review 15*(5), 1002-1007. doi: 10.3758/PBR.15.5.1002

**Week 11: Juvenile and Geriatric Mental Health**

Faust, D. S., Walker, D., & Sands, M. (2006). “Diagnosis and Management of Childhood Bipolar Disorder in the Primary Care Setting.” [Case Reports Review]. *Clinical Pediatrics, 45*(9), 801-808. doi: 10.1177/0009922806295279

Patel NC, Delbello MP, & SM., S. (2004). “Ethnic Differences in Symptom Presentation of Youths with Bipolar Disorder.

**Week 12: The Effects of Trauma**

de Jong, J. T., Komproe, I. H., Spinazzola, J., van der Kolk, B. A., & Van Ommeren, M. H. (2005). “DESNOS in Three Postconflict Settings: Assessing Cross-cultural Construct Equivalence.” [Validation Studies]. *Journal of Traumatic Stress, 18*(1), 13-21. doi: 10.1002/jts.20005

van der Kolk, B. A., Roth, S., Pelcovitz, D., Sunday, S., & Spinazzola, J. (2005). “Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma.” [Research Support, N.I.H., Extramural]. *Journal of Traumatic Stress, 18*(5), 389-399. doi: 10.1002/jts.20047

Lavik, N. J., Hauff, E., Skrondal, A., & Solberg, O. (1996). “Mental Disorder among Refugees and the Impact of Persecution and Exile: Some Findings from an Out-patient Population. *The British Journal of Psychiatry, 169*(6), 726-732.

**Week 13: Disability Rights**

Disabilities, A. A. o. I. a. D. (2010a). Intellectual Disabiliity: Definition, Classification, and Systems of Supports.

Disabilities, A. A. o. I. a. D. (2010b). *Manual of the American Association of Intellectual and Developmental Disabiities*: AAIDD.