**Mental Health and the Law**

**Spring 2014**

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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 few 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.

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 in the corporate arena. Lawyers in most practice areas will encounter a client, witness, family member, or even another lawyer with a mental health issue. We should be able to recognize the issue, and understand its implications.

Law students 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 lawyers 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*.

**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 short papers assigned during the semester.

**SYLLABUS**

**Week 1: The Apprehension of Unreason**

In the first class, we will explore our conceptualization of mental illness in the last century through the work of French philosopher Michel Foucault. We will examine how the law has struggled to make sense of an evolving, and often circular, understanding of mental illness and to define mental health terms as legal concepts. We will also look at how lawyers are currently educated about mental health. How can we better prepare lawyers who will encounter mental health issues in criminal and civil cases?

**Reading**

* Review power point presentation before class
* Foucault, M. (1961). *History of Madness*, New York: Routledge, pp. 108-131.

**Week 2: History and Public Policy**

Over the last several 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**

* Review power point presentation before class
* Gionfriddo, Paul, *How I Helped Create a Flawed Mental Health System That’s Failed Millions—and My Son.* Health Affairs 31:9 (September 2012)
* *Brown v. Plata*, 563 US\_\_\_ (2011), pp. 1-29
* Read 2 New York Times articles

**Week 3: Listening to Clients with Mental Illness**

Lawyers are not trained as mental health practitioners. Communicating with people with cognitive and mental disorders comes through training to the mental health specialist but it is often counterintuitive for an attorney—especially an attorney who is not expecting to encounter a client with a major mental illness. In this hour, we focus on recognizing the signs and symptoms of a mental disorder, negotiating the conversation, and maintaining a trust relationship with the client.

**Reading**

* Review power point presentation before class
* Amador, Xavier, “I AM NOT SICK, and I Don’t Need Help!” Chapter 6

**Week 4: 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. But 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 four, we learn about how an individual’s response to trauma may impact his or her involvement with the legal system.

**Reading**

* Review power point before class
* *Wiggins v. Smith*, 539 U.S. 510 (2003), dissent.
* Read juvenile mental health assessment and police report

**Week 5: What is Science and What is Not?**

**“**Science" is an honorific title that is often treated, in contemporary society and in law, as a privileged form of knowledge with greater access to truth than other forms of knowledge. For this reason, the bestowing of this title is often hotly contested in litigation.

The U.S. Supreme Court's vague list of considerations, while perhaps helpful, does not and cannot offer a simple heuristic for distinguishing science from non-science. In this class we will examine various ways that philosophers and courts have sought to define science and seek to develop a more pragmatic approach to the question "What is Science and What is Not?"

**Reading**

* Review power point before class
* Jasanoff, Sheila, *Law’s Knowledge: Science for Justice in Legal Settings,* Am J Public Health, 2005: 95: S49-S58
* *How Science Goes Wrong,* (2013) The Economist

**Week 6: Competence and Capacity**

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. In the first hour, we will focus on what it means to be “competent” and how that applies in different legal settings.

In the second hour, we will discuss 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 potential? How has capacity been applied in understanding a person’s culpability? How is mental health capacity measured?

**Reading**

* Review powerpoint before class
* Competency Assessment Test Workbook, Atascadero State Hospital
* *Montana v. Engelhoff*, 518 U.S. 37 (1996), O’Connor dissent
* Read competency evaluation

**Week 7: 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**

* People v. Cortes, 192 Cal.App.4th 873, 121 Cal.Rptr.3d 605 (2011)
* *Free to Choose? Modern Neuroscience Is Eroding the Idea of Free Will*, (2006) The Economist

**Week 8: 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**

* Review power point before class
* Patrick Radden Keefe, *A Mass Shooter*, The New Yorker, February 11 & 18, 2013
* Read psychiatric evaluation

**Week 9: 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 lawyers to uncover mitigating evidence through life history investigation.

**Reading**

* Review power point presentation before class
* Dudley, R. and and Leonard, P., “Getting It Right: Life History Investigation as the Foundation for a Reliable Mental Health Assessment,” *Hofstra Law Review*, Volume 36, No. 3 (2008)
* Read sample social history

**Week 10: Race, Culture and Mental Illness**

Race, ethnicity, and culture 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**

* Review power point presentation before class
* Malukele, M.J., “Culture, Tradition, Custom, Law and Gender Equality” (2012)
* Freedman, D. Woods, G.W., *Neighborhood Effects, Mental Illness and Criminal Behavior: A Review*, Journal of Politics and Law, Vol. 6 No. 3 (2013)

**Week 11: Gender and Mental Illness**

Mental illness expresses itself differently in men and women. Studies show that rates of certain mental illnesses are different, while the overall percentage of mental impairment is about the same among men and women.

How have these differences played out for women when they encounter the legal system? Has a misunderstanding of women’s mental health led to unequal treatment of women in the courts? In this hour, we explore the expression of mental health symptoms by gender and the effect of those differences in both the civil and criminal systems over time.

**Reading**

* Review power point presentation
* Valian, Virginia, *Roundtable: Cognitive Bases of Gender Bias,* 65 Brooklyn Law Review 1037, 1052 (1999)
* Schneider, Elizabeth M., *Gender Bias, Cognition and Power in the Legal Academy*, 65 Brooklyn Law Review 1125, 1129 (1999)

**Week 12: Juvenile and Geriatric Mental Health**

In week twelve, we focus on two overlooked populations — juveniles and the elderly. First, what are children 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 previously under recognized 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**

* Review power point presentation before class
* Denno, Deborah W. *The Scientific Shortcomings of Ropers v. Simmons,* Ohio State Journal of Criminal Law, Vol 3, 379 (2006)
* Appelbaum, P. S., Bonnie, R. J., & Karlawish, J. H. (2005), *The Capacity to Vote of Persons with Alzheimer's Disease,* The American Journal of Psychiatry, 162(11), 2094-2100

**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**

* Review power point presentation before class
* Americans with Disabilities Act Manual, Chapter 1 pp. 1-26
* *Atkins v. Virginia*, 536 U.S. 304 (2002), dissent

**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**

* Review powerpoint presentation before class
* Review of Foucault, M. (1961). *History of Madness*. New York: Routledge, pp. 108-131