Psychology and Law
192-147-01 (3)
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Office Hours: Tu Th 9:15-10:15 a.m.; 1:00-2:00 p.m.

Topics and Terrain

It is, unfortunately, an all too common sight today for patients to enter the courtroom seeking relief (and release) from their healers, as well as from their disorders; and therapists, formerly the defenders of mental health, now have to defend themselves and their practices. This course begins with the question, “How has this come to pass?” It then proceeds to the psychological practices receiving increased legal scrutiny: contractual therapy, involuntary therapy, psychiatric diagnoses, predictions of dangerousness, commitment, expert testimony, and insanity defending. And lastly, this course explores the psychology of “paternalism,” “benevolence” and “doing good.” Prerequisite: 001.

Format

This course will be organized around a variety of moot court cases. Some of the moot court cases will involve a full-blown trial, with a cast of characters (e.g., a defendant, plaintiff, psychological experts, lawyers, judge, and jury). Other moot court cases will be of the Appeals Court type, with only lawyers and three judges constituting the dramatis personae. All the cases are hypothetical, though some clearly derive from actual cases. I will assign students to play various parts. All of you will be directly involved in at least one moot court case.

Before entering our courtroom, you need to be aware of the issues, history, and precedents: in short, you need to know a lot more than you know now. This will be accomplished primarily in two ways: I will lecture on topics, and you will present, in seminars, on assigned topics. The seminar topics, along with suggested starting sources, are listed elsewhere in the syllabus.

In addition to lectures that I give, seminars that you give, and moot courts in which we all participate, there will be guest lectures in the areas of mental health law and forensics.

Lastly, there is an opportunity for some of you to participate in an ongoing piece of experimental work on insanity. This is entirely optional, and no course credit will follow; however, if this work is published, as I expect it will be, your own resume may be enhanced by such participation.

Evaluation Components

1. Seminar Presentation – You will be responsible for leading one seminar, and will be graded on your part of the seminar presentation. Such factors as enthusiasm and discussion
generated, the work and effort in researching, planning, and organizing the material, and the effectiveness and creativity of presentation will comprise the overall grade. In addition, you must turn in a bibliography of sources used for your seminar at that time.

2. A Major Paper – to be turned in no later than December 5, which organizes and extends in depth your seminar presentation in a scholarly fashion is required. It will include an Appendix section of one page Abstracts summarizing all the sources you’ve used. References must be complete.

3. Moot Court Presentations – You will play a part in at least one of the cases. This work will be evaluated as to effort, depth, and thoroughness.

4. Classroom Involvement – You are expected to contribute in an active way throughout the course and will be evaluated on that participation.

Required Reading

There is no basic text in this course. But as you will quickly see, from scanning the seminar topics’ suggested starting sources, much reading is required. There are some sources that are cited frequently, but because of their expense, I have designated them as “supplemental texts”; 20 copies are available in the bookstore, but they can be found in libraries.

Supplemental Texts


Additional Sources and Information

I have, in my own office library, a number of books and articles that I am willing to make available to you on two-day loan. My “willingness” will quickly turn to “unwillingness” if copies are not returned.

There are many libraries beyond Lauinger where sources can be found (e.g., the Law Library, Library of Congress). An excellent resource is the Kennedy Institute Center for Bioethics; not only do they have an excellent collection, but they have helped my students in past years by doing a computer search in topic areas, which has been of great help for seminars and papers. They do not, however, let you borrow books, so you must read them there, although you can Xerox.

Seminar Topics
1. **Involuntary commitment – Substantive Grounds**

   History of commitment

   Police powers and parens patriae grounds

   What reasons have been offered to justify commitment?

   The place of “mental illness,” “dangerousness,” and “need for treatment”

   What is someone committed for?

   **Starting Sources**

   Finkel; Szasz Ideology & insanity; The age of madness: The history of involuntary mental hospitalization; other of his writings; Ennis &: Emory; Kittrie, N.N. The right to be different: Deviance and enforced therapy.; Mill, J.S. On liberty; Robinson, D.N. Harm, offense, and nuisance. American Psychologist, 1974, 29, 4, 233-238


2. **Involuntary Commitment – Procedural Grounds**

   How has it been done in the past, and how has it changed?

   How is it being done today in different states and in the District of Columbia?

   What are the steps?

   Who are the key players (e.g., “patient”, family, police, mental health professionals, lawyers, judge, jury) and what are their roles?

   **Starting Sources**

   Finkel; Ennis &: Emory; Szasz; Price, R.H., & Denner, B. (Eds.) The making of a mental patient: see articles by Smith et al.; Bittner; Miller & Schwartz; Wenger & Fletcher; Scheff; Yarrow et al.; Kittrie, N.N. The right to be different; Harvard Law Review (1974); University of Chicago Law Review (1967)

   O’Connor v. Donaldson, 422 U.S. 563 (1975)

Addington v. Texas, 99 S. Ct. 1804 (1979)


In re Ballay, 482 F. 2d 648 (D.C. Cir. 1973)

3. **Parens Patriae and Hospitalization**

What is parens patriae; how has it evolved; what are the justifications for it; and what are the problems with it?

What are the facts and figures regarding the effectiveness of hospitalization? What treatment modalities are used, and what side effects, if any, are reported.

What is the least restrictive alternative doctrine?

Starting Sources

Finkel; Ennis & Emory; Szasz; Gaylin et al.; Beauchamp, T. L. Paternalism and biobehavioral control. The Monist, 1977, 60, 62-80.; Stone’s “thank you” doctrine – see Wyatt case below, note 1, 325 F. Supp. 781; Price & Denner (see articles in parts 3, 4, 5, 6); Kiesler, C.A. Public and professional myths about mental hospitalization. American Psychologist. 1982, 37, 12, 1323-1339.; Ennis, B. Prisoners of psychiatry – Donaldson case


4. **Psychology as a Science, Its Ability to predict Dangerousness – And Some Reasonable Doubts About Both**

Is Psychology a Science and should we be given “expert” status in the courts?

Can we provide a high degree of certainty, or provide proof beyond reasonable doubts?

Definitions of dangerousness and their problems.

Predictions of dangerousness and their validity

Starting Sources

Finkel; Ennis & Emory; Robinson, D.N. Psychology and law: Can justice survive the

Baxstrom v. Herald, 383 U.S. Supreme Court Reports 107 (1966)

Addington v. Texas, 99 S. Ct. 1804 (1979)

The Barefoot case – and controversy – Newsweek, July 18, 1983

5. The Right to Treatment

Where does this “right” come from? legally? philosophically?

How did it develop? Where does it stand today?

Wyatt Case

Donaldson Case

Starting Sources

Finkel; Ennis & Emory; Kittrie, N.N. The right to be different; Birnbaum, M. The right to treatment, American Bar Assn. Journal, 46 (1960): 499; D.S. Burris (Ed.), The right to treatment: A symposium. Stone, A.A. Mental health and the law: A system in transition; Amicus Curiae brief in the Wyatt case (in my office); Ennis, B. Prisoners of Psychiatry

Rouse v. Cameron, 387 F. 2d 241 (D.C. Cir. 1967)


6. **Consent and the Right to Refuse Treatment**

“Potent” therapies – drugs, shock, sterilization, aversive conditioning, psychosurgery

Do we have such a right?

When are limits placed on that right?

How is the concept of “Consent” both central and threatened?

Starting Sources


Knecht v. Gillman, 488 F .2d 1136 (8th Cir. 1973).


7. **“Healer Heal Thyself”**

Malpractice

Confidentiality – questions and limits

Are we manufacturing madness; treating, or imprisoning?
Therapists: Persecutors or Victims?

Starting Sources

Finkel; Ennis & Emory; Szasz Ideology and insanity; Law, liberty, and psychiatry; The manufacture of madness; Psychiatric slavery; Ennis, B. Prisoners of psychiatry; Cohen, R.J. Malpractice: A guide for mental health professionals; Halleck, S.L. The politics of therapy; Gaylin; Bloch, S., & Reddaway, P. Russia’s political hospitals: The abuse of psychiatry in the Soviet Union; Monahan, J. (Ed.) Who is the client? The ethics of psychological intervention in the criminal justice system; Widiger, T.A., & Rorer, L.G. The responsible psychotherapist. American Psychologist, 1984, 39, 5, 503-515.


8. Incompetence, Retardation, Rights and Protections

What is the legal meaning of incompetence?

What groups are vulnerable, what are the potential consequences, and what protections exist?

The psychiatric will

Starting Sources

Friedman, P.R. The rights of the mentally retarded (ACLU Handbook); Ennis & Emory; W. T. Reich (Ed.) Encyclopedia of bioethics (see Nuremberg Code, 1946, and Declarations of Helsinki, 1964, 1975); American Psychological Association’s Ethical Standards of Psychologists; Tidyman, E. Dummy; Szasz, T .S. The psychiatric will; American Psychologist; Ennis, B.; Monahan & Steadman (Eds.) Mentally disordered offenders (Chapters 1 & 2).

Jackson v. Indiana, 406 U.S. 715 (1972)

Schmidt v. Goddin, 297 S.E. 2d 701 (1982)


9. **Insanity Defenses**

An historical review: Wild Beast, Hadfield, M’Naghten, Irresistible Impulse Durham, American Law Institute’s Model Penal Code, Disability of Mind Doctrine, GBMI – Guilty but Mental Ill, Diminished Responsibility

Current bills before Congress

**Starting Sources**

## Tentative Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Tuesday</th>
<th>Thursday</th>
</tr>
</thead>
<tbody>
<tr>
<td>August</td>
<td></td>
<td>29 Orientation to the course</td>
</tr>
<tr>
<td>September</td>
<td>Lecture – Anglo-American History of Insanity</td>
<td>5 Lecture – The Courtship of Law and Psychology</td>
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<tr>
<td></td>
<td>Lecture – Punishment, Responsibility and Insanity</td>
<td>12 Lecture – Mental Illness and Insanity</td>
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<tr>
<td></td>
<td>Seminar 1</td>
<td>19 Seminar 2</td>
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<tr>
<td></td>
<td>Seminar 3</td>
<td>26 Seminar 4</td>
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<tr>
<td>October</td>
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<tr>
<td></td>
<td>1 Guest Lecture</td>
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<tr>
<td></td>
<td>8 Seminar 5</td>
<td>10 Seminar 6</td>
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<td></td>
<td>15 Moot Court – Case I</td>
<td>17 Moot Court – Case I</td>
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<tr>
<td></td>
<td>22 Moot Court – Case I</td>
<td>24 Seminar 7</td>
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<tr>
<td></td>
<td>29 Moot Court – Case II A</td>
<td>31 Moot Court – Case II A</td>
</tr>
<tr>
<td>November</td>
<td>5 Moot Court – Case II B</td>
<td>7 Moot Course – Case II B</td>
</tr>
<tr>
<td></td>
<td>12 Seminar 8</td>
<td>14 Appeals Court – Case III A</td>
</tr>
<tr>
<td></td>
<td>19 Appeals Court – Case III B</td>
<td>21 Seminar 9</td>
</tr>
<tr>
<td></td>
<td>26 Appeals Court – Case IV A</td>
<td></td>
</tr>
<tr>
<td>December</td>
<td>3 Appeals Court – Case IV B</td>
<td>5 Closing Summary</td>
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### Topics of Our Court Cases

- Moot Court I – Right to Refuse Treatment Case, with Complications
- Moot Court II A – A Confidentiality Case
- Moot Court II B – Malpractice and Criminal Negligence Case
- Appeals Court III A – Competency to Stand Trial
- Appeals Court III B – Competency to Plead Guilty
- Appeals Court IV A – Automatic Commitment following NGRI
- Appeals Court IV B – A different standard of proof for involuntary commitment following NGRI