

**MENTAL HEALTH EXPERTISE IN CRIMINAL LAW PROCEEDINGS**  
**preliminary syllabus – January 12, 2011**

- Instructors: Douglas Mossman, M.D.  
Director, Glenn M. Weaver Institute, U.C. College of Law  
Adjunct Professor of Clinical Psychiatry, U.C. College of Medicine  
Telephone: (513) 556-0110  
e-mail: [douglas.mossman@uc.edu](mailto:douglas.mossman@uc.edu)
- Solomon M. Fulero, Ph.D., J.D.  
Professor of Psychology, Sinclair College, Dayton, Ohio  
Clinical Professor of Psychiatry, Wright State Univ. School of Medicine  
Telephone: (937) 430-3702  
e-mail: [solomon\\_fulero@yahoo.com](mailto:solomon_fulero@yahoo.com)
- Availability: SMF: immediately after each class session  
DM: by appointment and immediately after class
- Letter grades, based on:
- |  |     |
|--|-----|
| research paper or brief, final version | 50% |
| research paper or brief, draft version | 25% |
| class oral presentations               | 10% |
| other class participation              | 15% |
- Attendance: 25% of your grade comes from class participation, and you cannot participate if you do not attend class. Also, the College requires us to take attendance.
- Requests: During class, please do not spit, eat, sleep, or wear hats (unless you do so for religious reasons). Please come to class sober. In class, please drink only non-alcoholic beverages, and use computers only for class work.
- Paper Requirements:
- Topic: A brief or law review-style research paper on any topic involving **psychological/ psychiatric evidence and the criminal law**, with prior approval of topic required.
- Length: 6500-8500 words (roughly 25 pages of text including notes/cites)
- Format: Word-processed, pages numbered, 12-point font; double-spaced, one-inch margins. Title page should state the word count.  
Footnotes/endnote/citations should be in the appropriate format for a law review article or a brief.
- Due date: Final version submitted electronically to Drs. Mossman and Fulero  
**Monday, May 2, 2010, at 4:25 p.m.**
- Readings for each session appear in the Class Schedule below. We will distribute some reading materials in class or by e-mail. The course's text is JOHN PARRY, CRIMINAL MENTAL HEALTH AND DISABILITY LAW, EVIDENCE AND TESTIMONY (2009) ("PARRY").

**Class Schedule and Readings**

<u>No.</u>	<u>Date</u>	<u>Topics</u>	<u>Readings</u>
<u>1</u>	Jan. 19	Course introduction; "Psychiatry 101"; mental health expertise; legal vs. psychological approaches to issues	Parry §§ 7.01-7.02, 8.01-8.05; pp. 252-55; <i>Daubert v. Merrell Dow</i> (1993)
<u>2</u>	Jan. 26	Competence to stand trial; competence restoration; <i>pro se</i> defendants; malingering	Parry §§ 2.03(a), 3.03, 3.05, 9.01-9.02, 10.07; <i>Godinez v. Moran</i> (1993); <i>Edwards v. Indiana</i> (2008); Mossman & Dunsieath (2001); Bienenfeld (web); Reid (2003)
<u>3</u>	Feb. 2	Juvenile delinquency; transfer to adult court <b>Paper Topics Due</b>	Parry §§ 3.06, 9.04, 9.05(f); *Mossman (2005); Ficke et al. (2006); Talbot (2000)
<u>4</u>	Feb. 9	Eyewitness reliability and eyewitness evidence collection	*Wells et al. (1998); *Fulero (2010a); <i>State of Ohio v. Echols</i> (1999), <i>U.S. v. Smithers</i> (2000); <i>U.S. v. Sullivan</i> (2003)
<u>5</u>	Feb. 16	Insanity, mental state defenses; post-NGRI disposition; drugs & guilt <b>Paper Outlines Due</b>	Parry §§ 1.01, 2.03(b), 4.01-4.07, 4.09, 5.04, 6.01(c), 10.01-10.06; <i>Clark v. Arizona</i> (2006); <i>Montana v. Egelhoff</i> (1996); McDermott et al. (2008); *Borum & Fulero (1999)
<u>6</u>	Feb. 23	Social science and the criminal trial process: jury selection & deliberation; pretrial publicity, change of venue, opening & closing arguments, etc	*Stebly et al. (1999); Goodman-Delahunty et al., (2010); <i>Apodaca v. Oregon/Johnson v. Louisiana</i> (1972); <i>Williams v. Florida</i> (1970); <i>Ballew v. Florida</i> (1978)
<u>7</u>	Mar. 2	Death penalty, mitigation, competence to be executed	Parry §§ 3.04, 4.08, 5.03; <i>Ford v. Wainwright</i> (1986); <i>Atkins v. Virginia</i> (2002); <i>Panetti v. Quarterman</i> (2007); *Fulero & Everington, 2004
<u>8</u>	Mar. 9	Sex offenders: legal and mental health issues	Parry §§ 5.05, 6.01(d), 11.01-11.02; <i>Kansas v. Hendricks</i> (1997); <i>Kansas</i>

- 9 Mar. 16 **Weaver Institute Symposium**  
**Room 118**  
**3:10 – 6:30 pm**
- 10 Mar. 30 False Confessions Parry §§ 3.01-3.02, 9.03; Kassin et al. (2009); *Colorado v. Connolly* (1986)
- 11 Apr. 6 Assessment instruments; risk assessment; sentencing  
**Paper drafts due** Parry §§ 1.02(d), 2.03(c), 5.01-5.04, 5.06, 11.03-11.04; \*Mossman (2010); Monahan (2006)
- 12 Apr. 13 Refusing and forcing medication Parry §§ 2.03(d), 3.05(d), 6.01(e); *State v. Perry* (1990); *Singleton v. Norris* (2003); *Washington v. Harper* (1990); *Riggins v. Nevada* (1992); *Sell v. U.S.* (2003)
- 13 Apr. 20 Student Presentations
- 14 Apr. 27 Student Presentations

### Course Readings

\* denotes readings that faculty will distribute in class or by e-mail

Apodaca v. Oregon, 406 U. S. 404 (1972)  
Atkins v. Virginia, 536 U.S. 304 (2002)  
Ballew v. Georgia, 435 U.S. 223 (1978)  
Bienenfeld D: Malingering. <http://emedicine.medscape.com/article/293206-overview>  
\*Borum R. & Fulero S. Empirical research on the insanity defense and attempted reforms: Evidence toward informed policy. *Law and Human Behavior* 1999; 23:375-394.  
Clark v. Arizona, 548 U.S. 735 (2006)  
Colorado v. Connolly, 479 U.S. 157 (1986)  
Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993)  
Dunsieith NW, Nelson EB, Brusman-Lovins LA, et al: Psychiatric and legal features of 113 men convicted of sexual offenses. *J Clinical Psychiatry* 2004; 65:293-300 (access on a UC computer via <http://www.ncbi.nlm.nih.gov/pubmed/15096066>)  
Ficke SL, Hart KJ, Deardorff PA: The performance of incarcerated juveniles on the

- MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA). *J Am Acad Psychiatry Law* 2006;34:360-373. Available at <http://www.jaapl.org/cgi/content/full/34/3/360>.
- \*Fulero, S.M & Everington, C. (2004). Assessing the capacity of persons with mental retardation to waive *Miranda* rights: a jurisprudent therapy perspective. *Law & Psychology Review*, 28, 52-69
- \*Fulero, S. (2010a). System and estimator variables in eyewitness testimony: A review. In J. Lieberman and D. Krauss (Eds.), *Psychology in the courtroom*. Hampshire, UK: Ashgate Publishing.
- \*Fulero, S. (2010b). Expert psychological testimony on the psychology of interrogations and confessions: Five years later. In K.D. Lassiter & C. Meissner (Eds.) *Interrogations and Confessions: Current Research, Practices and Policy*. Washington, DC: American Psychological Association.
- Godinez v. Moran, 509 U.S. 389 (1993)
- Goodman-Delahunty J, Granhag PA, Hartwig M, Loftus EF. (2010). Insightful or wishful: lawyers' ability to predict case outcomes. *Psychology, Public Policy, and Law*, 16, 133-157. <http://www.apa.org/pubs/journals/releases/law-16-2-133.pdf>
- Indiana v. Edwards, 554 U.S. 208 (2008)
- Johnson v. Louisiana, 400 U.S. 356 (1972)
- Kansas v. Crane, 534 U.S. 407 (2002)
- Kansas v. Hendricks, 521 U.S. 346 (1997)
- Kassin, S.M. et al. (2009). Police-induced confessions: risk factors and recommendations. *Law and Human Behavior* DOI 10.1007/s10979-009-9188-6 (e-published ahead of print). Available at: <http://www.springerlink.com/content/85vh322j085784t0/> ... or at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1483878](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1483878)
- McDermott BE et al.: The conditional release of insanity acquittees: three decades of decision-making. *J Am Acad Psychiatry Law* 2008;36:329-36. Available at <http://www.jaapl.org/cgi/content/full/36/3/329>
- Monahan J: *Tarasoff* at thirty: how developments in science and policy shape the common law. *Cincinnati L Rev* 2006;75:497-521
- Montana v. Egelhoff, 518 U.S. 37 (1996)
- \*Mossman D, Dunseith NW Jr: "A fool for a client": print portrayals of 49 pro se criminal defendants. *J Am Acad Psychiatry Law* 2001;29:408-419.
- \*Mossman D: Child psychiatry and the law. In *Clinical Child Psychiatry, Second Edition* (Klykylo WM, Kay J, eds.), pp. 530-551. Chichester, West Sussex, England: John Wiley & Sons, 2005 (students will receive this article by e-mail)
- \*Mossman D: Understanding risk assessment instruments. In *The American Psychiatric Publishing Textbook of Forensic Psychiatry, Second Edition* (Simon RI, Gold LH, eds.), pp. 563-586. Washington: American Psychiatric Publishing, Inc., 2010 (students will receive this article by e-mail)
- Panetti v. Quarterman, 549 U. S. 930 (2007)
- \*Penrod, S., Fulero, S., & Cutler, B. (1995). Eyewitness expert testimony before and after *Daubert*: The state of the law and the science. *Behavioral Sciences and the Law*, 13, 229-259

Reid WH: Expert evaluation, controversial cases, and the media. *J Psychiatric Practice* 2003; 9:388-390 (available at <http://reidpsychiatry.com>, near bottom)

Sell v. U.S., 539 U.S. 166 (2003)

Singleton v. Norris, 319 F.3d 1018 (8th Cir. 2003)

State of Ohio v. Echols, 128 Ohio App. 3d 677, 716 N.E.2d 728 (1998)

State v. Perry, 610 So. 2d 746 (La. 1992)

\*Stebly, N., Besirevic, J., Fulero, S., & Jimenez-Lorente, B. (1999). The effects of pretrial publicity on jury verdicts: A meta-analytic review. *Law and Human Behavior*, 23, 219-235.

Talbot M: The maximum security adolescent. *New York Times Magazine*, Sept. 10, 2000 (available at <http://www.nytimes.com/library/magazine/home/20000910mag-juvenile.html>)

U.S. v. Smithers, 212 F.3d 306; 2000 U.S. APP. LEXIS 9045 (2000)

U.S. v. Sullivan, 246 F. Supp.2d 696; 2003 U.S. Dist. LEXIS 3015 (2003)

\*Wells, G., Small, M., Penrod, S., Malpass, R., Fulero, S., & Brimacombe, C.A.E., (1998). Good practice recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

Williams v. Florida, 399 U.S. 78 (1970)

### **Suggested Readings for Writing a Paper**

Eugene Volokh, *Writing a Student Article*, 48 J. Legal Education 247 (1998).

Eugene Volokh, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW*, SECOND EDITION (University Casebook Series, 2005)

### **In-Class Case Presentations**

1. 5-10 minutes in length
2. Done from notes (not your computer)
3. These elements:
  - a. Summary of "the story"
  - b. Major holding (the big points – what you'd explain to a physician)
  - c. Because of this case, what kinds of expertise or input would courts seek from mental health professionals?
  - d. What questions does the majority opinion leave unanswered for judges and attorneys?
  - e. What empirical claims (facts about the world) does the decision use or assume, and how good is the justification for such use?