

## MENTAL HEALTH EXPERTISE IN CRIMINAL LAW PROCEEDINGS

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by appointment and immediately after class

Availability:

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; you can't participate if you don't attend class. Also, the College wants me 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. During class, 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 <b>psychological/ psychiatric evidence and the criminal law</b> , 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 by <b>Monday, May 2, 2011, at 4:25 p.m.</b>

Readings for each session appear in the Class Schedule below. I'll 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. psych. approaches	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; <i>pro se</i> defendants; competence restoration	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 & Dunsieith (2001)
<u>3</u>	Feb. 2	Confessions <b>Paper Topics Due</b>	Parry §§ 3.01-3.02, 9.03; Kassin et al. (2009); <i>Colorado v. Connolly</i> (1986)
<u>4</u>	Feb. 9	Insanity and mental state defenses	Parry §§ 1.01, 2.03(b), 4.01-4.07, 4.09; <i>Clark v. Arizona</i> (2006)
<u>5</u>	Feb. 16	Post-NGRI disposition; diminished capacity; drugs & guilt <b>Paper Outlines Due</b>	Parry §§ 1.01, 2.03(b), 4.01-4.07, 4.09; <i>Montana v. Egelhoff</i> (1996); McDermott et al. (2008)
<u>6</u>	Feb. 23	Juvenile delinquency, transfer to adult court	Parry §§ 3.06, 9.04, 9.05(f); *Mossman (2005); Ficke et al. (2006); Talbot (2000)
<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);
<u>8</u>	Mar. 9	<b>Student Progress Reports</b> Tips on writing your paper Malingering	Bienenfeld (web); Reid (2003)
<u>9</u>	Mar. 16	<b>Weaver Institute Symposium</b> <b>Room 118</b> <b>3:10 – 6:30 pm</b>	
<u>10</u>	Mar. 30	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 v. Crane</i> (2002); Dunsieith et al. (2004)

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| <u>11</u> | Apr. 6  | Assessment instruments;<br>sentencing; risk assessment<br><b>Paper drafts due</b> | Parry §§ 1.02(d), 2.03(c), 5.01-5.04,<br>5.06, 11.03-11.04; *Mossman<br>(2010); Monahan (2006)   |
| <u>12</u> | Apr. 13 | Refusing and forcing medication   | Parry §§ 2.03(d), 3.05(d), 6.01(e);<br><i>State v. Perry</i> (1990); <i>Singleton v.</i><br><i>Norris</i> (2003); <i>Washington v.</i><br><i>Harper</i> (1990); <i>Riggins v. Nevada</i><br>(1992); <i>Sell v. U.S.</i> (2003) |
| <u>13</u> | Apr. 20 | Student Presentations   |  |
| <u>14</u> | Apr. 27 | Student Presentations   |  |

### Course Readings

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

Atkins v. Virginia, 536 U.S. 304 (2002)  
 Bienenfeld D: Malingering. <http://emedicine.medscape.com/article/293206-overview>  
 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>.  
 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)

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

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

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

Eugene Volokh, *Writing a Student Article*, 48 Journal of 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:
  - Summary of “the story”
  - Major holding (the big points – what you’d explain to a physician)
  - Because of this case, what kinds of expertise or input would courts seek from mental health professionals?
  - What questions does the majority opinion leave unanswered for judges and attorneys?
  - What empirical claims (facts about the world) does the decision use or assume, and how good is the justification for such use?