



# Introduction to the Legal System, Civil Commitment, and Regulation of the Profession(s)

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# Disclosures

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# My work

- MGH Law & Psychiatry Service/Forensic Fellowship Program → Saint Elizabeths in DC
- Forensic psychiatry:
  - Civil/Criminal
  - Violence risk assessment
- Threat assessment and management
  - Campus
  - Workplace



# Goals for Today's Program

- Explore medicolegal issues that affect our practices in greater depth and breadth than previous program iterations
- Hear from different expert faculty
- Solicit your participation and feedback



*"I am a member of the legal profession, but I'm not a lawyer in the pejorative sense."*

# An Overview of the Legal System

- Law:
  - A system of regulations utilized to govern the conduct of people of a community, society or nation, in response to the need for regularity, consistency and justice based upon collective human experience ([www.law.com](http://www.law.com) Dictionary)
  - Exists as a protector of the status quo
    - E.g. existing rights and principle
  - Exists as a living thing and agent of social change
    - Interpretation of principles with regards to social changes
    - Limitation, or expansion, of existing principles

# Legal Precedents

- Everyone “knows” what to expect
- Laid out in
  - Constitutions (but not D.C.!)
  - Statutes and regulations
  - The Common Law
    - Case law, aka “judge made law”
    - The concept of legal precedents
      - Only appellate court decisions
      - Only within the same jurisdiction



# Types of Law

- Criminal law
  - The body of law, embodied in statutes, that relates to offenses against the state and members of the public
  - Penalties can be monetary (fines) or deprivation of or limits on freedom (incarceration, probation)



# Types of Law

- Civil law
  - For our purposes, all law that is not criminal, e.g. personal injury or tort law
  - Penalties are monetary (damages) or injunctive (stop doing what you were doing, or start doing something you weren't)
  - Examples of purposes:
    - Tort law (e.g., malpractice): Compensate victims of negligence/discourage negligence
    - Probate law: Give effect to wishes of the deceased; Serve best interests of a child in a custody case
    - Administrative Law: Promulgate rules to regulate areas of practice, such as Department of Mental Health Regulations on seclusion or restraint, or Medical Board on licensing

# Burdens of Proof

- Civil
  - Plaintiff has the burden of proof
  - Exception: Res ipsa loquitur (The thing speaks for itself)
    - Defendant alone controlled the means and has knowledge of the event leading to injury
    - Burden shifts to Defendant to show that they were not responsible
- Criminal: Prosecution

# Standards of Proof

- Preponderance of the evidence
  - "More likely than not"
  - >50% or 51% vs. 49%
  - Used in malpractice and other civil matters; lack of competency to stand trial
- Clear and convincing evidence
  - Stronger standard
  - Estimate ~75% certainty
  - Used in fraud, refuting presumption of paternity (by statute in some jurisdictions); typical minimal standard in civil commitment matters
- Beyond a reasonable doubt
  - There must be "an abiding conviction, to a moral certainty, of the truth of the charge." Commonwealth v. Webster, 59 Mass. 295, 320 (1850)
  - ~95%
  - Criminal conviction; civil commitment in Massachusetts

# Civil vs. Criminal

## Criminal

- Parties:
  - Prosecutor: burden of proof
  - Defendant
- Determinations:
  - Guilt
  - Sentencing

## Civil

- Parties:
  - Plaintiff: burden of proof
  - Defendant
- Determinations:
  - Liability
  - Contributory negligence
  - Damages/Injunctive relief/Change in status

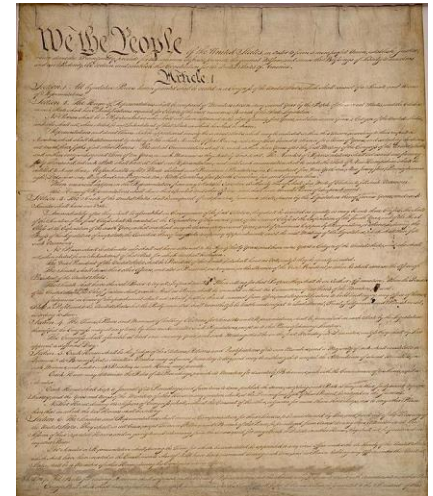
# Sources of Law

- Common law: Judge-made law
  - English common law originated with Angles, Britons, Saxons, and Normans after 1066
  - Based on custom rather than written codes
  - Application of custom to the facts of a given matter by a court
- Statutes: Written rules enacted by legislative
- Regulations:
  - Promulgated and enforced by administrative agencies
  - Enforcement decisions reviewable by courts
- Constitutions: A written body of fundamental principles or established precedents for governance



# The American Legal System

- The U.S. Constitution as the supreme law of the land
- Parallel systems at the federal and state levels
  - 50 state constitutions + organized territories (but not DC!)
  - 50 state legislatures and sets of administrative agencies (plus organized territories and DC)
  - 50 state court systems (plus organized territories and DC)



# The American Legal System

- Basic court structure (state and federal), but terminologies differ
  - Trial courts: Decide the case or controversy
  - Intermediate appellate courts:
    - First level of appeal for dissatisfied litigants
    - Defer to the trial court's fact finding unless there has been an abuse of discretion
      - No new witnesses or other evidence
      - May remand "for further proceedings consistent with this decision"
  - Highest appellate court

# Essential Elements of the Adversarial Process

- Trier of fact (judge or jury)
- Trier of law (judge)
- Decision making through argument
- Attorney professional ethics:
  - Presenting client's case in the most favorable light
  - Zealous representation within the bounds of the law
- Rules of evidence, e.g. attorney-client privilege
- Settlement/plea bargaining



# Involuntary Commitment

- Old standard: Need for treatment (*Parens patriae* model)
- “New” standard: Dangerousness (Police Powers model)
  - To self
  - To others
  - Inability to care for self
- Constitutes “a massive curtailment of liberty.” (Humphrey v. Cady, 1972)
  - Requires procedural Due Process
    - Clear criteria required
    - Right to counsel, legal representation, present and confront witnesses

# Involuntary Commitment

- Different jurisdictions have different processes and terminology
- Typical system
  - Temporary involuntary hospitalization
    - On petition of one or more individuals (clinicians of multiple types, law enforcement)
    - Usually 72 hours, but it varies
      - Missouri: 96 hours
      - Connecticut: up to 10 days
      - “Conditional voluntary” admission
  - Civil commitment:
    - By a judge,
    - Sometimes a jury, and
    - Sometimes a Mental Health Commission → Judge &/or jury
    - For an extended period, e.g. 6 months/12 months

# Civil Commitment: Liability Issues

- False imprisonment
- Libel/slander/defamation
- Violation of civil rights
- Defenses
  - Good faith
  - Statutory immunity
  - No reason to know of violation of civil rights
- Documentation is key

# Civil Commitment: Liability Issues

- Constitutional torts: 42 USC §1983
  - Zinerman v. Burch (US 1990)
    - State official may be held liable for civil rights violation where lack of procedural safeguards allowed an incompetent patient to voluntarily commit himself to a state mental hospital
    - Deprivation of liberty without due process
    - Must assess competency of individual offered voluntary admission

# Regulation of the Professions

- State boards of registration
  - Initial licensure and renewals
  - Review of complaints
    - Malpractice
    - Repeat adverse outcomes
    - Practicing while impaired
    - Criminal behavior
    - Boundary violations
    - Behavior that damages the public's faith in the profession
    - Disruptive behavior
  - Board hearings
  - Disciplinary outcomes
    - Admonishment
    - Reprimand
    - Voluntary agreement not to practice
    - Resignation of license
    - Probation
    - Suspension
    - Revocation

# Thank You!

