



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

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Disclosures

Neither I nor any member of my immediate family has a significant financial interest or affiliation with any manufacturer of commercial product(s) or provider(s) of commercial services discussed in my educational presentations for MGH Psychiatry Programs in 2021.

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 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

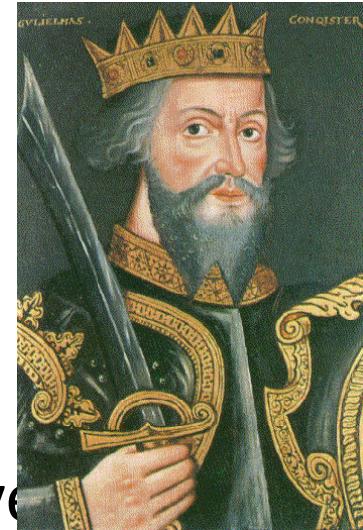
- Parties:
 - Prosecutor: burden of proof
 - Defendant
- Determinations:
 - Guilt
 - Sentencing

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 bodies
- 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
 - Zinermon 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!

