

USC Gould

School of Law

Mental Health Law – Law 403 – Spring 2021

This syllabus is a working draft [12 14 2020] and is subject to change.

Units: 4

Term—Day—Time: Spring 2021, Tuesdays, 3:30pm-6:50pm

Location: remote / via Zoom

Instructor: Gregory L. Pleasants

Office: remote / via Zoom

Office Hours: as needed by student request

Contact Info: gpleasants@law.usc.edu / (657) 274-0224 (work cell) / via Zoom appointment

Grader: this course will have the assistance of a law student “Grader,” who will help with Zoom class invitations, office hour appointments, materials distributions, attendance, certain aspects of grading, and other like tasks.

Course Description

This survey course explores foundational legal and practice concepts through three intersecting systems: the mental health system, the criminal system, and the immigration system, with principal emphasis on the mental health system. We focus on the vindication (or not) of legal rights at points within these systems where people with mental health conditions may be deprived of freedom and choice, including involuntary commitment, incarceration, and immigration detention. We examine how people with mental health conditions move between the “pipeline” between these systems, often involuntarily. We review established and emergent accommodations and safeguards to protect those rights. We examine how race, gender, class, and other identities intersect with the vindication (or not) of these rights. We examine how systemic racism, stigma against people with mental health conditions, and the overuse of incarceration compound the inequities and harms of these systems. We explore relevant ethics issues, including informed consent, the allocation of authority between the lawyer and the client, definitions of legal competence, and the role of an advocate. We introduce basic client-centered practice skills, including how to work in a shared decision-making model based on mutual trust.

Learning Objectives

- Identify, analyze, apply, and critique major mental health legal and policy concepts in class discussion throughout the course.
- Identify and explain the “pipeline” between the mental health, criminal, and immigration systems for people with mental health conditions by the end of the course.
- Analyze, critique, and postulate answers for introductory ethical scenarios involving people with mental health conditions by the end of the course.
- Describe and demonstrate some basics of client-centered practice skills by the end of the course.

Prerequisite(s); co-requisite(s), or recommended preparation:

None.

Required Text – Important

Law and the Mental Health System: Civil and Criminal Aspects – Slobogin, Hafemeister, Mossman, Reisner (6th Ed.)

Through USC Bookstore or at https://www.amazon.com/Mental-Criminal-Aspects-American-Casebook/dp/0314267298/ref=sr_1_fkmr0_1?keywords=Law+and+the+Mental+Health+System%3A+Civil+and+Criminal+Aspects+%E2%80%93+Slobogin%2C+Hafemeister%2C+Mossman%2C+Reisner+%286th+Ed.%29&qid=1566505933&s=gateway&sr=8-1-fkmr0

Note: the text is required – it is not optional. Readings from the text will form the basis of a significant part of class discussion, and review of a “case book” text is an essential preparatory skill for those who may wish to pursue legal education. Please consider this requirement as you consider whether to take this course.

Note: apart from purchasing the required text new, students may also consider purchasing a used copy, renting a copy, consulting a library copy, or other means of text access. The Instructor encourages students to explore lower-cost options as possible, as long as the assigned readings are accessible.

Optional Materials

Additional readings to be distributed by Instructor (via Blackboard) throughout course.

Assignments

There are three assignments as set forth below. Additional instructions on the assignments will be provided during the course. All assignments are held in-class (that is, during the regular class meeting period) EXCEPT for the Final Exam and Extra Credit (if any).

Note: the Mid-Term and Final Exam are “open book” – that is, use and consultation of course materials (though not other sources such as the Internet) are encouraged. More guidelines will be given on this at the time of the exams.

Grading Breakdown

Assignment	% of Grade
Mid-Term Exam	40
“Hearing Voices” Activity	5
Pop Quiz on Reading	5
Final Exam	50
Total	100

Grading Scale

Course final grades will be determined using the following scale:

A	95-100
A-	90-94
B+	87-89
B	83-86
B-	80-82
C+	77-79
C	73-76

C-	70-72
D+	67-69
D	63-66
D-	60-62
F	59 and below

Extra Credit

Any student may, by giving notice to the Instructor, elect to write a 5-7 page paper, APA-style and with citations, on a topic pre-approved by the Instructor, or perform a comparable extra credit assignment in the discretion and with the permission of the Instructor. The extra credit is worth up to 5 points (or up to 5% of the final grade), but mere performance of the assignment is not a guarantee of the full 5 points. All extra credit assignments must be completed **on or before 4/27/2021**.

Course Policies

Zoom Practices

- When attending the course, students are generally expected to keep video cameras “on,” with common-sense, case-by-case exceptions wherever needed. This is so the Instructor can properly gauge attendance and foster class interaction and participation. Exceptions to this general expectation for specific reason will be granted on a case-by-case basis.
- Microphones should generally be set to “mute” unless participating.
- As a general matter, and to support student learning, Zoom classes are recorded, and students should have the same professional bearing during class as would be appropriate in any public space.
- The Instructor makes regular use of online video, informational websites, Zoom breakout rooms, and other like techniques to keep class as engaging as possible. When attending class, students, to the extent possible, should be in a quiet place where they can adequately see, hear, and participate online.
- Students should log into Zoom with their University credentials. University Zoom security protocols generally require this.

Attendance

Attendance is required because it is essential for learning. Attendance is taken each class period. Each student is permitted one, no-questions-asked, unexcused absence. Each absence thereafter must be excused. Whether an absence is excused is determined by the Instructor’s discretion and applicable University policy. Excessive unexcused tardiness may also, in the discretion of the Instructor, constitute an unexcused absence. Each unexcused absence will result in a cumulative penalty to the final course grade, up to and including course failure / no credit. A student whose attendance is not regular and punctual may be withdrawn from enrollment at the discretion of the Dean of Students and the Instructor.

Participation

Participation is expected but does not form part of the course grade except as part of the “Hearing Voices” assignment, where attendance and participation are required for the activity to work. Even so, all students will

be called on in class and expected to give responses that reflect having completed the in-class and reading assignments.

Preparation

Being prepared is an essential trait of effective legal practice. Students will be called on in class and expected to give responses that reflecting having completed the reading assignments.

Professionalism and Respect

Students are required to treat this class and one another with professionalism and respect. That does not require agreement on the merits for the topics we will discuss, but it does require listening, consideration of others' views, and thoughtful, respectful, and empathetic engagement. The Instructor will follow this standard and expects students to as well.

Use of Computers, Cellphones, and Like Devices

Use of such devices to take notes and to engage in coursework is encouraged. Use of such devices for other reasons during course hours is generally not permitted. If a student anticipates attending to an important communication during class, prior notice to the Instructor is appropriate.

Update of This Syllabus

This syllabus may be updated during the semester by the Instructor. The Instructor will distribute each updated syllabus on the course Blackboard. The latest version of this syllabus will always be noted at the very end of this document (also accessible by clicking the "last updated" link in the document navigation pane).

Course Schedule: A Weekly Breakdown

The course calendar follows. A few things to note:

- "Text" refers to the Required Text, above.
- Instructor may add supplementary readings in lieu of Text readings or as optional readings
- The items in red are the overarching sections of the course.
- The items in bold each week denote the general topics.
- Most of the items in italics will be covered, but because of time limits, some will be covered very briefly or not covered.
- **Students should check Blackboard on a weekly basis for updates to reading assignments.**
- **Note: based on feedback from 2020, the below reading assignments will be moderately reduced before the beginning of the 2021 course.**

	Topics/Daily Activities	Readings
Week 1 January 19 2021 (Reminder: MLK Birthday 1/18)	Course Introduction <ul style="list-style-type: none"> • <i>Personal introductions</i> • <i>Review syllabus</i> • <i>Review slides, including “The Stakes”</i> • <i>Personal learning goals – breakout discussion and report back</i> • <i>Hypo review</i> 	Ragins, M. <i>Road to Recovery</i> , pp. 1-8 (read) (uploaded to Blackboard, Week 1 Law 403 – Readings) (read closely) <i>Additional text reading TBA.</i>
Week 2 January 26 2021	I. The Mental Health System Brief Introduction to the Mental Health System <ul style="list-style-type: none"> • <i>Context: history, scale, shape, actors, selected data, and issues</i> • <i>Payment and parity</i> • <i>De-institutionalization</i> • <i>Trans-institutionalization: jails and prisons as new “hospitals”</i> • <i>Homelessness, substance abuse, and mental health</i> • <i>CA: Mental Health Services Act</i> • <i>Mental Health System > Criminal System Pipeline</i> Introduction to Mental Health Conditions <ul style="list-style-type: none"> • <i>Definition of mental health condition</i> • <i>Impairment, functioning, competence</i> • <i>Models: biomedical; social determinants of health / person in the environment</i> • <i>Labels, stigma, and race</i> • <i>Professions</i> • <i>DSM-V / review of selected mental health conditions</i> • <i>Recovery, Rogerian Triad, people-first language, trust</i> 	Text, pp.1-30 (read closely) Text. pp. 1497-1507 (read closely)

<p>Week 3 February 2 2021</p>	<p>Competence in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Introduction to “competence:” conceptual predicates; incompetent to do what?</i> • <i>Race, gender, and labeling as “incompetent”</i> • <i>Competence for other tasks (briefly)</i> 	<p>Text, pp.1037-1053 (read closely)</p>
<p>Week 4 February 9 2021</p>	<p>Competence in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Informed consent</i> • <i>Right to Refuse and Consent to Psychiatric Treatment</i> 	<p><i>Informed Consent</i> Text, pp. 307-315 (stopping at Section II); 343-353 (stopping at section III) (read closely)</p> <p><i>Right / competence to refuse treatment:</i> Text, pp. 1081 (starting with “The Right to Refuse...” – 1112 (includes <i>Washington v. Harper</i>, 494 U.S. 210) (1990)) (read closely)</p>
<p>Week 5 February 16 2021</p> <p>(Reminder: President’s Day 2/15)</p>	<p>Conditions of Confinement in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Involuntary commitment - police power basis</i> • <i>Dangerousness</i> • <i>CA: Lanterman-Petris-Short Act and patients’ rights (short introduction)</i> • <i>Harm of “no treatment”</i> 	<p>Text, pp. 803-849 (read closely)</p> <p>Text, 922-932 (<i>Addington v. Texas</i>, 441 U.S. 418 (1979), and commentary)</p>
<p>Week 6 February 23 2021</p>	<p>Conditions of Confinement in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Involuntary Commitment – parens patriae basis</i> • <i>Harm of “no treatment”</i> 	<p>Text, pp. 854-888 (read closely)</p> <p>Text, 1151 (starting at 3.) – 1159 <i>Jackson v. Indiana</i>, 406 U.S. 715 (1972) (read closely)</p>
<p>Week 7 March 2 2021</p>	<p>Right to Treatment in Commitment Setting</p> <ul style="list-style-type: none"> • <i>O’Conner v. Donaldson, Youngberg v. Romeo</i> 	<p>Text, pp. 1233-1268 (very top, stopping at III.) -Skim 1234, <i>Nocera</i> – 1246, <i>Fisher et. al.</i> -Read 1246-1268, <i>Donaldson</i> and <i>Youngberg</i>, closely</p>

<p>Week 8 March 9 2021</p>	<p>Right to Treatment in the Community</p> <ul style="list-style-type: none"> • <i>Olmstead v. L.C. ex rel. Zimring</i> • <i>Right to treatment in the community</i> • <i>Right to discharge planning</i> <p>Least Restrictive Alternative Doctrine</p> <p>Discrimination: Americans with Disabilities Act, Rehabilitation Act of 1973 (Introduction)</p> <ul style="list-style-type: none"> • <i>Discrimination – cognizable</i> • <i>Reasonable accommodations and safeguards</i> • <i>Undue burden / hardship</i> 	<p>Text, pp. 1306-1331 -1306-1317- note 4 (skim) -1317, note 4-1331 (read closely)</p> <p>Text, pp. 888-903 (skim)</p> <p>Text, pp. 1401-1416 (read closely)</p>
<p>Week 9 March 16 2021</p>	<p>Mid-Term Exam</p> <p>Mid-Term will be held / administered during this class period.</p>	<p>Study for Mid-Term.</p>
<p>Week 10 March 23 2021</p>	<p>University Wellness Day (Undergraduate) – NO CLASS</p>	<p>NO HOMEWORK – PLEASE REST</p>

<p>Week 11 March 30 2021</p>	<p>II. The Criminal System</p> <p>Brief Introduction to the Criminal System</p> <ul style="list-style-type: none"> • <i>Context: history, scale, shape, actors, selected data, and issues</i> • <i>Primacy of race</i> • <i>Pre-trial detention and bond; pleas (overwhelming prevalence); sentencing and incarceration</i> • <i>Where “competence” comes up</i> • <i>Police encounters with people with mental health conditions</i> • <i>Prevalence of mental health conditions in jails and prisons; right to treatment?</i> • <i>Mental Health System > Criminal System Pipeline</i> <p>Ethics: Allocation of Authority</p> <ul style="list-style-type: none"> • <i>Allocation of authority in the lawyer-client relationship</i> • <i>Relevant Model Rules; Restatement (3rd) rules</i> • <i>Protective action and scope</i> • <i>Substitution of judgment, expressed interest, hybrid</i> 	<p>John D. King, <i>Candor, Zeal, and the Substitution of Judgment: Ethics and the Mentally Ill Criminal Defendant</i>, 58 Am. U. L. Rev. 207 (2008) (read closely).</p> <p>Additional reading TBD.</p>
<p>Week 12 April 6 2021</p>	<p>Competence in the Criminal System</p> <ul style="list-style-type: none"> • <i>Review - competence to do what?</i> • <i>Competence to proceed (Dusky)</i> • <i>Decisional competence (Godinez, Edwards)</i> 	<p>Text, 1126 (starting at V) – 1141 Text, 1180-1197 (until note 4)</p> <p><i>Dusky v. United States</i>, 362 U.S. 402 (1960)</p> <p><i>Godinez v. Moran</i>, 509 U.S. 389 (1993)</p> <p><i>Indiana v. Edwards</i>, 554 U.S. 164 (2008)</p>

<p>Week 13 April 13 2021</p>	<p>Conditions of Confinement in the Criminal System</p> <ul style="list-style-type: none"> • <i>Solitary confinement / segregation</i> • <i>Pre-trial detention and bond</i> • <i>Kalief Browder</i> <p>Hearing Voices Assignment (in class)</p>	<p><i>Davis v. Ayala</i>, 576 U.S. ____ (2015) (Kennedy concurrence only)</p> <p>American Psychological Association, <i>Alone, in 'the hole'</i>, May 2012</p> <p>Psychology Today, <i>The Effects of Solitary Confinement on the Brain</i>, February 2019</p> <p>Vera Institute of Justice, <i>Solitary Confinement: Common Misperceptions and Emerging Safe Alternatives</i>, May 2015 (p.3; pp. 17-18 (Misconception #5))</p> <p>The New Yorker, <i>Before the Law</i>, September 2014</p> <p>The New York Times, <i>Kalief Browder, Held at Rikers Island for 3 Years Without Trial, Commits Suicide</i>, June 2015</p>
<p>Week 14 April 20 2021</p>	<p>III. The Immigration Court and Detention System</p> <p>Brief Introduction to the Immigration Court and Detention System</p> <ul style="list-style-type: none"> • <i>Context: history, scale, shape, actors, selected data, and issues</i> • <i>Immigration detention; immigration court; bond</i> • <i>Immigration Judge: racial and mental health bias; lack of judicial independence</i> • <i>Right to counsel? Representation rates and the effect of no representation on due process and outcomes</i> • <i>Criminal System > Immigration Enforcement System Pipeline</i> 	<p>Review instructor-provided slides on a) immigration court and detention basics and b) criminalization of drug use.</p> <p>Alina Das, <i>Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation</i> (2018)</p> <p>(Note: read the Prof. Das article closely – this is a synthesis piece that draws together many of the critical themes of the course. The article is complex and will require re-reading. Students should be prepared to discuss this article and its thesis in detail.).</p>

<p>Week 15 April 27 2021</p> <p>(Reminder: UG classes end 4/30)</p> <p>(Reminder: UG study days from April 30-May 4).</p> <p>(Reminder: final exam period from May 5 – May 12).</p>	<p>Americans with Disabilities Act, Rehabilitation Act of 1973, and Discrimination – Revisited</p> <ul style="list-style-type: none"> • <i>Franco-Gonzalez v. Holder (and background)</i> <p>Competence in the Immigration Enforcement System</p> <ul style="list-style-type: none"> • <i>Competence to represent self in immigration proceedings – Matter of M-A-M; Franco Pro Se Competence Standard</i> <p>Conditions of Confinement in the Immigration Enforcement System</p> <ul style="list-style-type: none"> • <i>What is the applicability – if any – to the law and concepts we have reviewed to immigration detention? Is there any?</i> • <i>Least restrictive alternative?</i> • <i>Right to safety, freedom from restraints and segregation, and treatment in immigration detention?</i> • <i>Right to treatment in the community?</i> • <i>Deliberate indifference to unsafe conditions?</i> • <i>Solitary confinement / segregation / self-harm?</i> <p>Course Evaluations</p> <p>Discussion / Review for final exam. We will spend at least 1/3 of class discussing the final exam, which will be the same format as the Mid-Term exam.</p>	<p><i>Franco Gonzalez v. Holder</i> (third amended complaint) (read closely)</p> <p>Matter of M-A-M (read closely)</p> <p>OIG Adelanto Report (2018) (skim)</p> <p>July 24 2009 Holder Letter (skim)</p> <p>Ochoa, Pleasants, et al, <i>Disparities in Justice and Care</i> (2010) (skim)</p>
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Statement on Academic Conduct and Support Systems

The current **Statement on Academic Conduct and Support Systems** is a required component of all USC syllabi.

Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, policy.usc.edu/scientific-misconduct.

Support Systems:

Counseling and Mental Health - (213) 740-9355 – 24/7 on call
studenthealth.usc.edu/counseling

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call
suicidepreventionlifeline.org

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

Relationship and Sexual Violence Prevention and Services (RSVP) - (213) 740-9355(WELL), press “0” after hours – 24/7 on call
studenthealth.usc.edu/sexual-assault

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

Office of Equity and Diversity (OED)- (213) 740-5086 | *Title IX* – (213) 821-8298
equity.usc.edu, titleix.usc.edu

Information about how to get help or help someone affected by harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following *protected characteristics*: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations. The university also prohibits sexual assault, non-consensual sexual contact, sexual misconduct, intimate partner violence, stalking, malicious dissuasion, retaliation, and violation of interim measures.

Reporting Incidents of Bias or Harassment - (213) 740-5086 or (213) 821-8298
usc-advocate.symphlicity.com/care_report

Avenue to report incidents of bias, hate crimes, and microaggressions to the Office of Equity and Diversity |Title IX for appropriate investigation, supportive measures, and response.

The Office of Disability Services and Programs - (213) 740-0776
dsp.usc.edu

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

Campus Support & Intervention - (213) 821-4710

campussupport.usc.edu

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

Diversity at USC - (213) 740-2101

diversity.usc.edu

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call

dps.usc.edu, emergency.usc.edu

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call

dps.usc.edu

Non-emergency assistance or information.

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Syllabus Law 403 Spring 2021 last updated 12 14 2020 GLP