

AALS SECTION ON LAW AND MENTAL DISABILITY NEWSLETTER – FALL/WINTER 2016

Program Announcement

At the 2017 AALS Annual Meeting in San Francisco, the Section on Law and Mental Disability, with co-sponsors the Sections on Criminal Justice, Immigration Law, Disability Law, Law and the Social Sciences, and Law, Medicine and Health Care, will host

***COMPETENCE REVISITED:
THE CHANGING ROLE OF
MENTAL CAPACITY IN
CRIMINAL AND
IMMIGRATION
PROCEEDINGS***

**Friday, January 6, 2017,
from 1:30 - 3:15pm**

Discussant:

John Cline, Chair, ABA Criminal Justice Standards Committee

Panelists:

Fatma Marouf, Texas A&M University School of Law, will

address competence in removal proceedings.

Pamela Wilkins, University of Detroit Mercy School of Law, will address competence for execution.

Allison Redlich, Department of Criminology, Law and Society at George Mason University, will address competence to exercise Miranda rights.

Lea Johnston, University of Florida Levin College of Law, will address competence for self-representation.

Member News

*Publications, presentations,
other professional activity,
awards, and accomplishments*

Theresa Glennon, Professor of Law, James E. Beasley School of Law at Temple University, has published *The*

Developmental Perspective and Intersectionality, 88 Temple Law Review 928-941 (2016).

James T. R. Jones, Professor of Law, University of Louisville Brandeis School of Law was featured in an article that is part of a special section on disability in academe in the *Chronicle of Higher Education*. Here is the link: <https://shar.es/1xrgwz>.

Marshall B. Kapp, Director, Center for Innovative Collaboration in Medicine and Law, Florida State University College of Medicine and College of Law has published the following:

“Legal Intervention in Family Ties,” in *Encyclopedia of Adulthood and Aging*, edited by Susan K. Whitbourne. Malden, MA: John Wiley and Sons, Inc. (2016).

“Front Office Staff as Medical Educators, Risk Creators, and Risk Managers,” Vol. 28, No. 1, pp. 61-64, *INTERNATIONAL JOURNAL OF RISK & SAFETY IN MEDICINE* (2016).

“The Physician’s Responsibility Concerning Firearms and Older Patients,” Vol. 25, No. 2, pp. 159-186, *KANSAS JOURNAL OF LAW & PUBLIC POLICY* (Spring 2016).

“Speculating About the Impact of Healthcare Industry Consolidation on Long-Term Services and Supports,” Vol. 25, No. 2, pp. 1-33, *ANNALS OF HEALTH LAW* (Summer 2016).
http://www.annalsofhealthlaw.com/annalsofhealthlaw/vol_25_issue_2/?pg=8&pm=1&u1=friend.

“Overcoming Legal Impediments to Physician Orders for Life-Sustaining Treatment,” Vol. 18, No. 9, pp. 861-868, *AMA JOURNAL OF ETHICS* (September 2016).

And Shenifa M. Taite, & Gregory Turner, “Medical-Legal Partnerships: Six Situations in Which Elder Law Attorneys and Physicians Caring for Older Patients Need Each Other,” Vol. 37, No. 6, pp. 115-118, *BIFOCAL: A JOURNAL OF THE ABA COMMISSION ON LAW AND AGING* (August 2016).

Book Review of “International and Comparative Law on the Rights of Older Persons,” edited by Ralph Ruebner, Teresa Do, & Amy Taylor, Vol. 17, No. 1, pp. 61-62, *Care Management Journals* (2016).

Book Review of “Rights Come to Mind: Brain Injury, Ethics, and the Struggle for Consciousness,” by Joseph Fins, Vol. 17, No. 1, pp. 64-67, *Care*

Management Journals (2016).
Book Review of “Divergent Paths: The Academy and the Judiciary,” by Richard A. Posner, Vol. 90, No. 5, p. 120, *Florida Bar Journal* (June 2016).

Book Review of “Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck,” by Adam Cohen, Vol. 90, No. 7, p. 68, *Florida Bar Journal* (July/August 2016).

Kate Mewhinney, Clinical Professor, Wake Forest Univ. School of Law, passes on a [link to the latest newsletter](#) of the Wake Forest University **Elder Law Clinic**. (It’s our 25th anniversary!)

John E.B. Myers, Professor of Law University of the Pacific, McGeorge School of Law, has published *MENTAL HEALTH LAW IN A NUTSHELL* (West 2016), and has written the soon-to-be published *LEGAL ISSUES IN CLINICAL PRACTICE WITH VICTIMS OF VIOLENCE* (Guilford, 2017).

Michael Perlin, Professor of Law, Emeritus, New York Law School passes along the following publications, teaching, presentations, and other items:

Publications

- My book, **Sexuality, Disability and the Law: Beyond the Last Frontier?**, co-authored with Alison J. Lynch, Esq., has been

published by Palgrave Macmillan.

- The third edition of my Treatise, **Mental Disability Law: Civil and Criminal**, has been published by Lexis-Nexis. New York Law School Adjunct Prof. Heather Ellis Cucolo is the co-author of this edition.
- My article, *International Human Rights and Institutional Forensic Psychiatry: The Core Issues*, has been published in *THE USE OF COERCIVE MEASURES IN FORENSIC PSYCHIATRIC CARE: LEGAL, ETHICAL AND PRACTICAL CHALLENGES 9* (Profs. [Birgit Völm](#) & [Norbert Nedopil](#) eds.) (Springer 2016).
- My article, *"I Expected It to Happen/I Knew He'd Lost Control": The Impact of PTSD on Criminal Sentencing after the Promulgation of DSM-5*, has been published at 2015 *UTAH L. REV.* 881.
- My article (also co-authored with Lynch), *How Teaching about Therapeutic Jurisprudence Can Be a Tool of Social Justice, and Lead Law Students to Personally and Socially Rewarding Careers: Sexuality and Disability as a Case Example*, has been published in 16 *NEVADA L.J.* 209 (2015), as part of a symposium of papers presented at UNLV law school at the SALT teaching conference in October 2014.

Publications in press

- Cucolo and I have submitted the manuscript of our book, SHAMING THE CONSTITUTION: THE DETRIMENTAL RESULTS OF SEXUAL VIOLENT PREDATOR LEGISLATION, to be published later this year by Temple University Press.
- My article, *The Insanity Defense: Nine Myths That Will Not Go Away*, will be published in THE INSANITY DEFENSE: MULTIDISCIPLINARY VIEWS ON ITS HISTORY, TRENDS, AND CONTROVERSIES (Prof. Mark D. White, ed.; Praeger, 2016).
- My article, “*Merchants and Thieves, Hungry for Power*”: *Prosecutorial Misconduct and Passive Judicial Complicity in Death Penalty Trials of Defendants with Mental Disabilities*, will be published in an upcoming death penalty symposium in WASHINGTON & LEE LAW REVIEW. I presented a portion of that paper at a conference at Washington & Lee Law School on February 6.
- Along with Lynch, I presented a paper entitled “*Life’s Hurried Tangled Road*”: *A Therapeutic Jurisprudence Analysis of Why Dedicated Counsel Must Be Assigned to Represent Persons with Mental Disabilities in Community Settings*, to the Rocky Mountain Psychological Association, on April 15. That paper will be published in article form

in an upcoming symposium in mental health and the community in BEHAVIORAL SCIENCES AND THE LAW.

- My article, also co-authored with Lynch, “*In the Wasteland of Your Mind*”: *Criminology, Scientific Discoveries and the Criminal Process*, will be published in a forthcoming issue of the VIRGINIA JOURNAL OF CRIMINAL LAW.
- My article, also co-authored with Lynch, “*Toiling in the Danger and in the Morals of Despair*”: *Risk, Security, Danger, the Constitution, and the Clinician’s Dilemma*, will be published in an upcoming issue of the INDIANA JOURNAL OF LAW AND SOCIAL EQUALITY.
- My article, “*God Said to Abraham/Kill Me a Son*”: *Why the Insanity Defense and the Incompetency Status Are Compatible with and Required by the Convention on the Rights of Persons with Disabilities and Basic Principles of Therapeutic Jurisprudence*, will be published in a forthcoming issue of the AMERICAN CRIMINAL LAW REVIEW.
- My article, “*Your Corrupt Ways Had Finally Made You Blind*”: *Prosecutorial Misconduct and the Use of “Ethnic Adjustments” in Death Penalty Cases of Defendants with Intellectual Disabilities*, has been commissioned by the AMERICAN UNIVERSITY LAW REVIEW to respond to an article on the same topic that that review recently

published (Robert Sanger, *IQ, Intelligence Tests, “Ethnic Adjustments” and Atkins*, 65 AM. U. L. REV. 87 (2015)).

On-line teaching

- Cucolo and I have taped a series of seven web courses for the Global Institute of Forensic Research (GIFR) (*Survey of Mental Disability Law; Therapeutic Jurisprudence; Mental Health Issues in Jails and Prisons; Mental Disability and Criminal Law; Advocacy Skills in Cases Involving Persons with Mental Disabilities: The Role of Lawyers and Expert Witnesses; Trauma and Mental Disability Law*, and *International Human Rights and Mental Disability Law*). On May 10, we presented a full-day, live, interactive webinar for GIFR on *Best Practices in Expert Witness Testimony & Forensic Ethics*; on June 17, we will be presenting a similar interactive webinar for GIFR, on *Best Practices in the Representation of Marginalized Populations*, and, on June 22, we will be presenting a similar one (at Barry University in Florida) on *Sex Offender Law*.
- Cucolo and I, under the auspices of CONCEPT (a continuing education program primarily for forensic psychologists) offered a ten-week webinar course this winter/spring on *Mental Illness, Dangerousness, the Police Power and Risk Assessment*.

Presentations

- On June 2, I presented the keynote paper, “*Said I, ‘But You Have No Choice’*”: *Why a Lawyer Must Ethically Honor a Client’s Decision about Mental Health Treatment Even if It Is Not What S/he Would Have Chosen*, to a conference co-sponsored by the Journal of Ethics in Mental Health and Thompson Rivers University Law School, in Kamloops, BC, Canada.
 - On May 13, at the United Nations Mission, I presented a lecture on *Therapeutic Jurisprudence and International Human Rights Law* to a group of Pakistani judges and legal scholars under the auspices of the U.S. Department of State’s Exchange Program.
 - On April 28, I presented a seminar on *The Roots of Modern Mental Disability Law* to the Forensic Fellows of St. Elizabeth’s Hospital and Walter Reed Medical Center in Washington, DC.
 - On March 29, Lynch and I presented excerpts from our *SEXUALITY, DISABILITY AND THE LAW* book to the University of Pennsylvania Forensic Psychiatry Seminar series.
 - On March 23 & 24, I presented two papers at Stetson Law School: a faculty development workshop (presenting portions of my “*God Said to Abraham*” article), and a lecture to the student body (presenting portions of my article, “*Power and Greed and the Corruptible Seed*”: *Mental Disability, Prosecutorial Misconduct, and the Death Penalty*, published last year at 43 J. AM. ACAD. PSYCHIATRY & L. 266 (2015).
 - On March 8, along with Yvonne Segars, Esq. (former State Public Defender of New Jersey, and currently a professor in the school of criminal justice at Kean University), I presented a webinar on *Effective Representation of Defendants with Mental Disabilities in Criminal Courts and Drug Courts*, under the auspices of the US Department of Justice Bureau of Justice Assistance Drug Court Technical Assistance Project at American University.
 - On March 2, I presented two versions of my paper, “*Had to be Held down by Big Police*”: *A Therapeutic Jurisprudence Perspective on Interactions between Police and Persons with Mental Disabilities*, -- FORDHAM URBAN L.J. – (2016) (forthcoming), co-authored with Lynch,: first (solo) to the Tri-State Forensic Psychiatry Fellowship Program run by the Albert Einstein School of Medicine (to be held at Bellevue Hospital), and second (with Lynch) at a Brown Bag workshop to forensic psychology graduate students at John Jay College of Criminal Justice.
 - On February 29, I did a webinar for the National Association of Public Defenders, on *How Sanism*
- Poisons the Attorney-Client Relationship in Criminal Cases*, an expansion of a paper I presented in November 2015 to the American Society of Criminology.
- On February 17, I spoke to the mid-winter meeting of the National Association of Criminal Defense Lawyers in Austin, TX (topic: “*Infinity Goes up on Trial*”: *Sanism, Pretextuality, and the Representation of Defendants with Mental Disabilities*).

Other

- I am one of a group of federal courts and sentencing scholars who has signed on to an amicus brief on behalf of petitioner in *Welsch v. United States*, seeking retroactive application of *Johnson v. United States*, 135 S. Ct. 2551 (2015), that had held that imposing an increased sentence under the Armed Career Criminal Act’s residual clause violates due process.
- I have been appointed to the ad hoc advisory committee of a project on “Unfitness to Plead and Indefinite Detention of Persons with Cognitive Impairments: Addressing the Legal Barriers and Creating Appropriate Alternative Supports in the Community,” conducted by the University of Melbourne and the University of New South Wales in Australia.

Brian Shannon, Horn Professor, Texas Tech University School of Law, has prepared the fifth edition of a guidebook on TEXAS CRIMINAL PROCEDURE & THE OFFENDER WITH MENTAL ILLNESS. The book was developed through a grant from the Texas Bar Foundation to NAMI Texas to permit free copies to be distributed to Texas judges, prosecutors, and criminal defense attorneys.

See <http://namitexas.org/texas-tech-law-professor-donates-time-effort-book-2/> and [Shannon 5th Edition pdf version](#). Professor Shannon has also worked with the Texas Tech Law Review and Texas Tech Administrative Law Journal to plan the 2016 Texas Tech Mental Health Law Symposium on November 18, 2016, with a particular focus on criminal justice issues. See <http://texastechlawreview.org/mental-health-law-symposium/> and <http://texastechlawreview.org/wp-content/uploads/2016-Texas-Tech-Mental-Health-Law-Symposium-Program.pdf>.

Christopher Slobogin, Milton R. Underwood Chair in Law, Vanderbilt Law School, passes along the following

development: On August 6, 2016, the American Bar Association's House of Delegates approved the Criminal Justice Mental Health Standards, consisting of over 90 black letter standards governing the criminal justice system and people with mental disability. Produced by a twelve-member interdisciplinary task force chaired by Christopher Slobogin (Vanderbilt) and including Richard Bonnie (Virginia) and Larry Fitch (Maryland), the new Standards incorporate legal, empirical and policy developments since the first edition of the standards were promulgated in the 1980s, concerning: competence to proceed; competence to waive rights; insanity and mens rea defenses; sentencing (including capital sentencing); preventive detention; constitutional, evidentiary, and ethical rules governing expert evaluation and testimony about these issues; discovery and other procedural requirements in criminal cases involving mental disability; police decision-making about people with mental disability; training and education of lawyers, mental health professionals and police about mental health issues and their respective roles in the

criminal/mental health system; treatment of people found incompetent or insane and of other people with mental disability who are in jail or in prison; and specialized courts and other alternatives to traditional criminal justice approaches. The standards are available at http://www.americanbar.org/groups/criminal_justice/standards.html (look for Mental Health standards on the right). Commentary to the standards will be published next year.

Michelle A. Travis, Professor of Law and Associate Dean for Faculty Scholarship at University of San Francisco School of Law, has the following forthcoming publication: *Gendering Disability to Enable Disability Rights*, 105 CAL. L. REV. (forthcoming 2017).

This newsletter was prepared by **Susan Raeker-Jordan,** Widener University Commonwealth Law School, AALS Law and Mental Disability Section Secretary.