

# Collusion or Collision: Working at the Intersection of Mental Health and Legal Interpreting

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@ 2015

# Disclaimer

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- ▶ I am not an attorney.
- ▶ My opinions are not legal advice but are based on experience in a variety of situations
- ▶ Specific state statutes can (and do) vary widely, if you are unsure, consult with a legal professional



# Thanks to:

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- ▶ Wendy Harmon, for helping take a vague concept and put it into a rough set of ideas.
- ▶ Carla Mathers, for helping develop a rough set of ideas into a teachable framework.



# Where is this intersection?

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- ▶ Mentally ill individuals in court
- ▶ Mental Health Court
- ▶ Competency to Stand Trial (CST) evaluation
- ▶ Mental Status Exams, in response to a Plea of Not Guilty by Reason of Insanity (NGRI)
- ▶ Sexually Violent Predator determinations
- ▶ Civil Commitment Procedures
- ▶ Child/Elder/Vulnerable Adult Abuse reporting and investigation
- ▶ Guardianship Proceedings



# Specific Terms

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- ▶ Competency to stand trial
- ▶ Not Guilty Reason of Insanity/NGRI
- ▶ M'Naghten Rule
- ▶ Durham Rule
- ▶ Model Penal Code
- ▶ Federal standard
- ▶ Diminished capacity
- ▶ Guilty But Mentally III (GBMI)/Guilty and Mentally III (GAMI)
- ▶ Commitment hearings



# Mental Health Interpreting Norms

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- ▶ The form is often more important than the content
- ▶ Interpreters are part of the behavioral healthcare team with a specific area of expertise
  - ▶ May chart and maintain record independent of other team members
- ▶ Providing commentary on language, culture and the interpreting process is appropriate.
- ▶ Issues that could lead to misunderstanding or misdiagnosis must be shared with the evaluators, this may include sharing information about Deaf culture and communication norms.



# Mental Health Interpreting Expectations

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- ▶ Interpreters should have a working knowledge of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV,TR; DSM-5)
- ▶ Interpreters should have access to qualified ongoing supervision/mentoring
- ▶ Interpreters will be compliant with OSHA and HIPAA
- ▶ Interpreters should know the standard for insanity, competence and commitment in their jurisdiction
- ▶ Interpreters should know abuse reporting requirements



# Competency to Stand Trial

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- ▶ **Has a factual understanding of the proceedings**
  - ▶ Appreciate the charges against him/her
- ▶ **Ability to cooperate with counsel**
  - ▶ Talk about their case
  - ▶ Understand advocate role of defense attorney
  - ▶ Be able to state own opinions
- ▶ **Able to participate in their defense**
  - ▶ Share their memories of the case with their attorney
  - ▶ Able to make their own decisions
  - ▶ Able to understand testimony given by others





# Competency Outcomes

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- ▶ **Incompetent**

- ▶ Likely to regain competence
- ▶ Not likely to regain competence (Nolle Prosequi – Nol Pros)

- ▶ **Competent**

- ▶ Trial proceeds



# Mental Health Court

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- ▶ Vary from state to state
- ▶ Take cases upon referral from prosecutor
- ▶ Defendants must have severe mental illness
- ▶ Include staff from public mental health system
- ▶ Typically handle misdemeanors and “minor” felonies
- ▶ Have authority to require treatment, including medication, as condition of avoiding return to regular court
- ▶ Non-compliance results in a return to standard court system, with attendant greater penalties



# Insanity

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- ▶ A term with a specific legal meaning, not used in the mental health arena
- ▶ Severe mental illness
- ▶ Cannot accurately assess reality
- ▶ Cannot appropriately conduct affairs and make decisions about behavior
- ▶ Subject to uncontrollable impulsive behavior



# M'Naghten Rule

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- ▶ Presumption of sanity
- ▶ Defense burden
- ▶ Defect of reason from disease of the mind
- ▶ Requires that the individual:
  - ▶ Unaware of nature and quality of act, or
  - ▶ Did not know the act was wrong, or
- ▶ Often used with the “irresistible impulse” test
  - ▶ Is a person unable to comport behavior



# M'Naghten Rule

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- Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Indiana, Iowa, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, Washington



# Durham rule

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- ▶ Not criminally responsible if unlawful act was
  - ▶ Product of mental disease or defect
- ▶ Rejected by federal courts
- ▶ Too broad (only used in New Hampshire today)



# American Legal Institute

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- ▶ A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law
- ▶ Arkansas, Connecticut, District Of Columbia, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Rhode Island, Tennessee, Vermont. West Virginia, Wisconsin, Wyoming



# Model Penal Code (ALI)

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- ▶ Not responsible for criminal conduct, if,
- ▶ Recognized mental disease or defect, and
- ▶ No substantial capacity (less strict than M’Naghten) to:
  - ▶ Appreciate the criminality of conduct, or
  - ▶ To conform conduct to requirements of the law





# Federal standards

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- ▶ Defense burden – clear and convincing
- ▶ At time of act
- ▶ Severe mental disease or defect
- ▶ Unable to appreciate nature and quality of wrongfulness of act
- ▶ Similar to M’Naghten but no “irresistible impulse” or “policeman at the elbow” test
- ▶ Trivia question, this was passed in 1984, what happened in 1982 that prompted this change?



# GBMI/GAMI

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- ▶ GBMI equivalent to a “guilty” verdict
- ▶ The defendant is sentenced the same as other people
- ▶ After sentencing, evaluated to see if they require psychiatric treatment and/or hospitalization, within the correctional system
- ▶ Alaska, Georgia, Illinois, Indiana, Kentucky, Michigan, Montana, New Mexico, Pennsylvania



# Judicial Commitment/Emergency Commitment

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- ▶ Laws vary from state to state but essentially require:
  - ▶ A severe mental illness
  - ▶ Clear and present danger to self or others
    - ▶ And/or
  - ▶ Lacking in insight and/or judgment to make reasonable decisions about treatment



# Sexual Offenders / Civil Commitment

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- ▶ A “sexually violent predator” is defined as “any person who: (a) Has been convicted of a sexually violent offense; and (b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.
- ▶ Exact definition varies from state to state.



# Sexually Violent Predator laws

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- ▶ Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, the Federal Government and the District of Columbia



# Child / Elder / Vulnerable Adult Abuse

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- ▶ Interpreters (except for some privileged communication) may be mandated reporters
- ▶ All states have mandatory reporting for child abuse
- ▶ Elder and vulnerable adult mandated in many states, optional in the rest
- ▶ Depending on specific state statute, licensing and funding source, the obligation to report may be upon the interpreter, even if other parties are not mandated or choose not to



# Abuse Investigations

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- ▶ Normally videotaped
- ▶ In most states the standard is preponderance of evidence
  - ▶ In a few it is “some credible evidence”
  - ▶ No significant difference in outcome
  - ▶ Founded or not-founded
- ▶ Notable concern about leading questions
  - ▶ A challenge for listing format in ASL questions
  - ▶ Requires thorough knowledge of interview protocol and consultation with interviewer
- ▶ May lead to criminal investigation and prosecution



# Guardianship Proceedings

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- ▶ Conservator – of the estate or property
- ▶ Guardian – of the person
- ▶ Either a minor or incapacitated adult
- ▶ An assessment by a physician
- ▶ In many states, some other assessment also required, such as a “visitor” or a “court representative”
- ▶ A court determination, typically with a guardian ad litem

