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Introduction

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Like the first edition before it, this book is written for advanced students and professionals in the mental health fields, focusing nearly exclusively on U.S. law. The first edition was also well received by students in law, and criminal justice/corrections fields, so this update has been written with them in mind as well. The text employs a modular construction, in that chapters may be read sequentially or otherwise, depending on a reader's preference or an instructor's assignment. We try to provide enough information in chapters so that the reader will be able to understand and make sense of the cases therein. We also explain the interplay between topics presented in subsequent and previous chapters. This being said, the order of chapters is chosen because many of the earlier concepts build toward the latter ones, so it is our hope that those who progress through the chapters in order will reap the benefit of that progression.

Our focus is a broadly defined region wherein mental health systems interact with legal systems. We do focus on what some call "forensic mental health" or "forensic psychology," instances when mental health professionals intentionally do work related to the legal system (e.g., insanity, personal injury, child custody). We incorporate what many call *mental health law,* or the law that dictates the general practice of mental health services (e.g., duty to warn, confidentiality). But we also cover the laws impacting topic areas that may be more of a focus of mental health researchers and consultants than of clinicians (e.g., jury selection, expert and eyewitness testimony). In taking this broad perspective, new challenges, dilemmas, struggles, and seeming inconsistencies emerge. We get

a more complete story of where we have been, and we better illuminate where it is that we still need to go.

Why Study Law and Mental Health?

The question of why mental health practitioners would want to study such an inclusive swath of law is a good one. First, and most broadly, laws indirectly affect mental health practitioners through their clients. Any given client may find him- or herself affected by any number of the areas of law covered in this book. A family member of a client may be arrested for a violent crime. Child clients and their parents may be impacted by school law. Any adult patient may experience stress from having to serve jury duty. Understanding topics such as violent offender laws, school laws, and jury selection can facilitate mental health practitioners in helping clients through these challenges in their own lives.

Second, and more directly, many of the areas of law actually dictate mental health practice. Laws relating to confidentiality, malpractice, and duty to warn are a few examples. How do we handle sensitive information about a client? Detailed knowledge of the legal nature of privileged communication provides some clues. What do we do with a client who has just expressed a desire to hurt him- or herself or someone else? Laws dictating the handling of duty to warn and protect provide the background to our professional standards of care. Why do we do so many of the things the way that we do them? The answer is often: Because the law says so.

Finally, for some mental health practitioners, the law is relevant because they purposefully engage with the legal system, for example, those working in the aforementioned insanity, personal injury, and child custody cases. Those who seek out this work may be referred to as *forensic mental health professionals*. Psychiatrists and psychologists first developed board certification procedures in the forensic practice of their respective professions only in 1978, quite late relative to other specialty areas. Mental health professionals' participation in the legal system has since increased exponentially. In the first edition of this book, we anticipated that this growth would only continue, and it has. With new areas of involvement always emerging, such as California's 2018 transition to a risk-based system for determining bail, we only anticipate that this growth will continue. Through such interdisciplinary pursuits, the law has increasingly relied on mental health professions and the behavioral sciences to fill important gaps. Professional mental health organiza-

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tions also continue to inform the development of the law. The American Psychiatric Association and the American Psychological Association, are frequently called upon by courts to express their opinions on various topics. Much can be learned by searching for one of those agencies with the term *amicus brief,* the formal name of the document that those agencies issue in order to inform the courts.

But perhaps the most fundamental answer to the question of why we study law and mental health together is that our professions seek to solve many shared, common problems. Dealing with child abuse and violent behavior, and detecting deception are examples of problems shared across mental health and law. Moreover, our professions need each other to solve some of our more complex social problems. Is there racial bias in the justice system? The data to study this would have to come from the legal system, but mental health expertise may be needed to understand what the data mean, or how to intervene to alleviate disparities. What is the best way to help people who are homeless? Professionals in both the law and mental health need to collaborate to optimize solutions.

Roles Mental Health Professionals Play in the Legal System

> [An expert] is somebody who is more than 50 miles from home, has no responsibility for implementing the advice he gives, and shows slides.
>
> —Former Attorney General Ed Meese

Interacting with the topic areas discussed earlier and throughout this book, mental health professionals may assume a number of roles within the legal system. As illustrated by the opening quote for this section, the resulting relationships between legal and mental health practitioners (Mr. Meese was one of the former) can be strained and even unprofessional. Let's take more elaborate look at some of the roles to which we alluded earlier.

Expert Witnesses

Psychologists, social workers, and other mental health professionals now regularly testify in court as expert witnesses. Rules of evidence concerning the minimum qualification of expert witnesses have been modified accordingly over the years. They have evolved as the recognized exper-

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tise has broadened from the historical standard emphasizing only physicians. The role of an expert witness is to assist the jury (or sometimes the judge) with special knowledge or understanding that the jury does not have. In fact, the inability of laypeople (i.e., jurors) to understand the relevant topic is typically a prerequisite to the admission of the expert into the courtroom. If jurors understand something, they do not need the help of an expert. Given their mastery of the field in which the testimony will be offered, expert witnesses may express opinions, as well as present facts, that might not be observable by the layperson. For instance, an expert forensic clinician may determine that someone who appears completely insane to a layperson is actually faking or malingering psychological disorder (Boyd, McLearen, Meyer, & Denney, 2006). While an expert witness may be hired by either side in a legal dispute, or directly by the judge, the expert's task is to be unbiased.[1] Emerging research suggests that experts actually struggle to conduct such unbiased work, an example of the feedback loop in which research has now informed how practice may need to change.

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Forensic Consultant

The role of consultant in forensic cases is also a common one. Mental health professionals often provide legal participants with information in jury selection, preparation of direct and cross-examination questions, review of treatment records, procurement of appropriate expert witnesses, recommendations for packaging and sequencing of evidence, and courtroom jury monitoring. Other consultant functions may also be performed, such as testifying broadly about an area of specialized knowledge (e.g., posttraumatic stress disorder [PTSD]).

Treatment Provider

The role of treatment provider in situations that can be thought of as "legal" in nature is a curious one. Certainly, mental health care providers who work in jails and prisons play a critical role in the functioning of

[1] By *unbiased* we mean that the job of experts is to perform the duties expected of them, without consideration for which legal party (prosecution, defense, or even judge) hired them. For example, an assessment of a defendant's sanity should yield the same results whether the prosecution (who is arguing against insanity) or the defense (who is arguing for insanity) did the hiring. As one might well imagine, this is an aspirational goal and is not always seen in practice.

both mental health and legal systems. However, many treatment providers also find themselves involved in other roles in the legal system, mimicking the expert and consultant roles we discussed earlier. An example would be a therapist participating in a judgment about the competency of his or her patient to go to trial. This role is an ethically tenuous one. If the treatment provider provides relevant information about treatment attendance and adherence, within the bounds of confidentiality law, then that participation would likely be beneficial to the court. If the therapist also gives an opinion about competency (or any other legal consideration), then doing so may very well put him or her in an unethical and even illegal dual relationship. Yet mental health practitioners engage in such activity every day, likely in complete ignorance about the compromising situation in which they find themselves. A close study of mental health law would alleviate that ignorance.

Research and Decision Making in Law and Mental Health

Special technical dilemmas such as the potentially unethical dual roles of therapist and forensic expert are even more interesting when viewed from both mental health and legal perspectives. It is the mental health perspective that would consider being both therapist and forensic expert a problematic dual relationship. In contrast, the law may see a therapist as particularly well suited to give a forensic opinion because of his or her deeper relationship with the patient: the exact reason the mental health expert would prefer the more removed opinion of a separate expert. As will become evident throughout this text, there are difficult unresolved problems involving the very natures of the legal and mental health fields (English & Sales, 2005). Many things seem simple from the perspective of one of our fields. But few things are simple when we force a look through both law and mental health perspectives. At the heart of these difficulties lie differences in how the two respective fields acquire basic knowledge and reach decisions. Is cognitive-behavioral therapy (CBT) more effective than drug treatment in treating depression? Are anti-sodomy laws constitutional? Can one rely on the testimony of eyewitnesses? Either or both fields may be interested in these questions, but the information-gathering and decision-making processes used by each field are different. There are three broad approaches available to resolve such questions: the analytical, the empirical, and the philosophical.

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The Philosophical Method

Philosophical research is similar to analytical research, with the exception that the analyses and arguments are filtered through some position or philosophy (e.g., morality, republicanism). Philosophical studies involving law and the behavioral sciences have received too little attention but are an essential part of progress in both fields. Ultimately, philosophical positions define what the law will be and the direction it will take.

The Analytical Method

An analytical method applies logic and reasoning to sometimes contradictory evidence to determine what has happened (as in the case of a trial). Those employing analytical research methods may also evaluate existing law and propose reform based on the logical application of existing social policy. It is through analytical research that reforms can be formulated and proposed. Analytical research has been the traditional form of research in law.

The Empirical Method

Empirical research, which employs various types of scientific experiment and measurement, has been a mainstay of behavioral science for decades, but it has also gathered considerable momentum in recent years within the realm of legal scholarship; much of the focus of empirical research has been on examining how legal and social services systems work, with some other efforts directed toward experimental studies designed to test basic assumptions and tenets of the legal system and any proposed reforms. See Box I.1 for a description of how each of the three methods addresses one of the questions posed earlier.

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Controversy and Complementarity among Methods

As we can see, the legal and mental health fields were founded on different views as to which research and decision-making method is best. Indeed, this may be a function of the types of tasks with which each profession deals. An empirical approach may provide a more accurate answer to a particular question as applied to the specific individuals who were studied, but the results may apply only to that or a similar group (Grisso & Vincent, 2005). The legal profession cannot afford the luxury of

BOX I.1. How the Three Research and Decision-Making Methods May Address the Question "Is CBT More Effective Than Drug Treatment in Treating Depression?"

Method	Research approach	Decision-making approach
Philosophical	May rely on preexisting philosophical opinions, or may include a review of relevant arguments before adopting a new philosophical standpoint.	Based on the belief that behavior should not be treated with mind-altering drugs, CBT is preferable to drug treatment.
Analytical	Two opposing sides call experts to offer opinions and call people who have firsthand knowledge of the treatments to testify.	An expert testified in favor of CBT and seemed more qualified than another expert who favored drug treatment. Witnesses testified about the efficacy of both treatments, but those who had received drug treatment described some negative reactions. Taking all of this into account, CBT is favorable.
Empirical	Depressed people were randomly assigned to receive either CBT or drug treatment. Depressive symptoms were measured before and after the treatment.	Those receiving CBT showed a significantly larger decrease in depressive symptoms than those who received drug treatment. CBT is better at reducing depressive symptoms in this population.

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conducting empirical research that would apply to each individual who comes through a courtroom.

It is the mental health profession's almost exclusive reliance on empirical knowledge that is the source of much turmoil between the legal and mental health fields. By its very nature, empirical research rarely (if ever) resolves an issue with absolute certainty. There are always caveats and confounds when one tries to apply the results of empirical research to real life. A skilled attorney may be able to get a mental health clinician to focus on these uncertainties, thereby undermining the clinician's credibility with the judge and/or jury. Yet in the views of the mental health profession, a clinician who acknowledges the limitations of his or

her knowledge is actually *more* credible than one who makes absolute claims in the absence of data.

Our disciplines will undoubtedly be strengthened by a continued reliance on all three of these approaches to research and decision making. Such interreliance is fostered and enhanced by the interdisciplinary efforts that have characterized some of the research in law and the behavioral sciences in recent years. The size and importance of the questions with which these disciplines must deal require legal research and reasoning, empirical research with sound statistical analyses, solid philosophical footings and direction, and the creative interaction of *all* disciplines involved (i.e., law, psychology, sociology). However, it is the differences in these approaches that make the legal and mental health fields (indeed, the legal and many other fields) seem so at odds with each other at times. There are legal decisions that seem to make no sense from the standpoint of a social psychologist (i.e., unwavering reliance on eyewitness testimony), and courts may often be frustrated with what they perceive to be noncommittal testimony by a mental health practitioner who is merely appropriately explaining the limits of certainty of his or her testimony. We also see this phenomenon on a smaller scale when students (or practitioners) of law and mental health participate in joint training. Law students struggle with questions that seem to have no concrete answer (commonplace to the mental health practitioner or student), while students in mental health programs have relative difficulty distilling facts to arrive at a clear ultimate decision on a matter (a task at which law students excel). While frustrating at times, these different perspectives are also the source of rich discourse and ingenious compromises, the synergy of which is often much better than either field could have accomplished alone. At other times, these opposing philosophies and agendas can result in vacillations in our legal system, at times favoring one approach before ultimately reacting back in the opposite direction. Such is the case in the seemingly never-ending quest for balance between the rights of society and the rights of people accused of crimes.

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Society versus the Accused: Legal and Mental Health Roles in the Struggle to Balance Rights

In studying the case law relevant to mental health, some themes emerge in the form of perpetual struggles. Perhaps none of these is more fundamental than the struggle to balance the rights of people accused of

crimes with the rights of people who are survivors or victims of crime. Interestingly, survivors and victims of crime have no formal legal standing in criminal proceedings. Rather, the rights relevant to victims and survivors emanate from their rights as citizens *not* to have crimes perpetrated against them. These are formally recognized as rights of the citizens, a philosophy portrayed in the names of legal cases that we discuss in detail below. Thus, the rights of victims in this context are actually more accurately described as the collective rights of society. Society, as a whole, has a right to be free from crime, a nebulous and fantastic notion indeed. In contrast, the rights of citizens who are accused of committing crimes are very specifically addressed in the legal system. One could even argue that protection from undeserving persecution was foundational to the very idea of America itself. Yet the notions underlying the modern approaches are much older. "Innocent until proven guilty" is a legal tenet dating back through ancient law. And many ancient legal systems have forms of protecting this tenet, dating up to most of the modern legal systems today. An example of such a protection is the right to a trial by a jury of peers.

The legal system is in a seemingly perpetual pendulum swinging back and forth between emphasizing the rights of people accused of crimes and the rights of citizens to live lives unimpacted by crime. In the systems of decision making described earlier, the two extremes of this pendulum, societal rights and rights of the accused, may be seen as competing philosophies. Decades can be characterized by how these philosophies were balanced. The 1980s and 1990s saw rampant increases in drug use, and resulting laws aimed at criminalizing that drug use and the violence that resulted from the trafficking of those drugs. From this era come three-strikes laws that severely increase prison sentences for repeat offenders, increases in juveniles charged as adults, and other "tough-on-crime" movements. Now, a few decades later, we see overcrowded prisons, mass incarceration of people with mental illness, and complete recategorization of one of the previously implicated drugs (marijuana) as completely legal in some jurisdictions. And the new millennium has seen movements to decriminalize some people who engage in illegal behavior, those with mental illness primary among them.

Throughout this constant rebalancing of societal rights with rights of people accused of crimes, mental health expertise has played a relevant role. Thus, in this book, these themes pervade many of the chapters. An example can be seen in the sentencing of offenders who suffer from severe mental impairment, historically known as mental retardation

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and recently relabeled as intellectual disability. Tough-on-crime stances may pay little attention to offender characteristics such as intellectual aptitude. From the perspective of someone who is a victim or survivor of a crime, the intellectual capabilities of his or her attacker may be of little importance compared to his or her own suffering in the aftermath of a violent crime. Mental health concepts and experts can help to describe that suffering in the form of PTSD, depression, anxiety, or whatever mental health sequelae he or she experiences. But the legal system tells us that the ability of an offender to understand the nature and quality of his or her illegal acts is indeed an important issue, and the explanation as to why lies in our history of legislation and case law on the topic of criminal responsibility and insanity. Mental health experts can in turn also inform the legal system about the best practices in assessing and making relevant determinations about individuals for whom intellectual capacity is relevant. And both professions can iterate back and forth to polish and formalize those methods.

Such are the types of issues with which both the mental health and legal systems struggle. The expertise on each side illustrates the importance of collaboration between professionals in both areas, and drives home the importance of the study of law for mental health practitioners. But the arena in which this change takes place is not straightforward. It is not as if professionals from all relevant fields sit down to discuss and debate things, eventually arriving at a solution that then applies neatly to every relevant situation that follows. Rather, these things slowly morph and change over years and decades of legal reform, happening at all levels of the complicated world that is the U.S. legal system.

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An Overview of the Legal System

> *Courtroom:* A place where Jesus Christ
> and Judas Iscariot would be equals,
> with the betting odds in favor of Judas.
> —H. L. Mencken, American essayist

Central to the U.S. legal system is the division of powers among the legislative, judicial, and executive branches of government that is wisely embedded in the Constitution. Most states also follow this general schema, and the most common label of a law relates its branch of origin. *Statutory laws* are written by state legislatures or by the Congress. *Case law* is made as courts interpret statutory laws. These court decisions clar-

ify the statutes and so effectively become part of the law. For example, a particular state-licensing statute may fail to mention whether licenses from other states will be honored (known as *reciprocity*). If a court in that state interprets the statute as disallowing reciprocity, then that decision has the same effect as if the legislature had explicitly disallowed it in the original statute. Nonreciprocity becomes a part of the state's case law, at least for a while. The legislature could choose to modify the law to allow reciprocity, or the original court's decision could be appealed to a higher court. Courts strongly value the concept of "precedent" of relevant past court decisions. Changing a legal standard by overturning a precedent can have adverse effects. To minimize this, courts try to rely on the reasoning of earlier decisions when possible and to leave well-settled ideas undisturbed, a doctrine known by the Latin term *stare decisis* (to stand by a decision).

Jurisdiction and the Appellate Process

Jurisdiction is an essential component of both federal and state law. The term *jurisdiction* describes a court's power to hear and decide a case, and is defined by statute or constitutional provision, or *case law.* There are several types of jurisdiction, the most important of which include original, appellate, and subject-matter jurisdiction. *Original jurisdiction* implies that a court has authority to hear and decide a case, usually when first filed. *Appellate jurisdiction* means that a court has authority to review, and possibly overturn, a case already decided in a lower court. Appellate courts generally review cases at their discretion; while people have the right to appeal lower court decisions, the appellate court may refuse to review the case. *Subject-matter jurisdiction* means that the court is qualified by statute or the Constitution to hear a particular type of case. State courts have jurisdiction for cases concerning state laws. Federal courts have jurisdiction concerning federal laws.

Trial courts are a state's general court of original jurisdiction. Most serious matters are heard here. Many states find it useful to have specialized trial courts to hear only civil or only criminal matters. Some states further establish subject-matter jurisdiction for courts that will serve other highly specialized roles (e.g., family courts to handle divorce and custody proceedings).

State criminal courts deal with the prosecution of persons accused of violations of the criminal law. *Criminal laws* pertain to those behaviors that are specifically prohibited by statute. Criminal law includes both

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misdemeanors (generally less serious offenses) and felonies, and can be conceptualized as representing an affront or threat to society. In contrast, *civil law* deals with private rights and what happens when a person's civil rights are violated. Some significant areas of civil law include *torts (civil liability), contract law,* and *family law.*

Laws often make sense individually but start to look problematic when viewed within larger systems. Many issues in the areas of law and mental health come under state law. The laws within a state have increased likelihood of uniformity because of increased likelihood of similar philosophies driving multiple laws. Unfortunately, another characteristic of state laws is their lack of uniformity between *different* states. These then get interpreted and molded through various means over the years. The results can be quite confusing. Some areas of law are a crazy quilt of incompatible legislation, while others, influenced by broader, nationwide trends, may be quite consistent. Even national systems can show similar apparent disparity.

In the U.S. federal system, the general courts of original jurisdiction are *district courts.* Each state may have one or more districts, and large districts may even have more than one division. Each district is administered by a federal magistrate and a federal district court judge. Appeals from federal courts are handled by 14 *circuit courts of appeal,* plus one for the District of Columbia. These courts may review decisions by district courts within their jurisdiction, review orders of many administrative agencies, and issue some original writs in appropriate cases. The U.S. Supreme Court has limited original jurisdiction and may exercise appellate jurisdiction over district and circuit courts, and the highest courts in each state; that is, the course of appeal from a state supreme court would be directly to the U.S. Supreme Court. Figure I.1 portrays the hierarchical direction of legal appeals typical in the United States.

The appeals process may seem straightforward; if one is dissatisfied with a lower court ruling, he or she can appeal to a higher court. In practice, the legal maneuvering is much more complicated. Often appeals merely lead to orders that a court of original jurisdiction hold a new trial, reconsider some matter under new guidelines, or refrain from some action. Also, when appeals under one rationale no longer seem likely to succeed, it is at times possible to start back with new appeals at a lower level, with a new rationale. For example, a criminal defendant could assert that new evidence has come to light that was not available in an earlier trial. Thus, many cases traverse a torturous process of appeals before they are resolved or settled. Very important, precedent-setting cases often have a rich history all their own.

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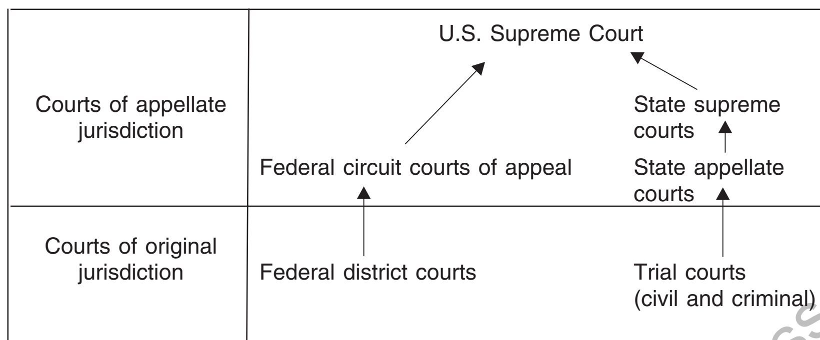

FIGURE I.1. The hierarchy of legal appeals.

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Standard of Proof

A *standard of proof,* as required by the due process clause of the Fourteenth Amendment, is the degree of confidence society thinks the fact finder should have in the correctness of factual conclusions for a particular type of adjudication. The three most common standards of proof, in increasing degree of the necessary definitiveness of the evidence, are (1) *preponderance of evidence,* which applies to most civil cases; (2) *clear and convincing evidence,* which demands more cogent evidence to be produced; and (3) *beyond a reasonable doubt,* which is the required standard of proof in criminal cases. While specific numbers do not formally apply to these standards, they are sometimes described respectively as (1) 51% certainty, (2) ~75% certainty, and (3) ~95% certainty. While such a description is an oversimplification, it does illustrate the notion of standards of proof well.

Cases and Case Law

In the context of this book, the word *case* carries with it a dual meaning. A *case study* in mental health terms means a particular example of a person presented for the purpose of explaining or representing a broader phenomenon. In legal terms, a *case* is a particular legal proceeding. The rulings contained in legal cases constitute *case law,* which is used to define legislative and constitutional law, as well as to refine (or redefine) previous case law. Thus, in such a manner, the law as a whole takes its shape and is put into practice. Therefore, for the purposes of our text,

case refers both to the specific examples presented (i.e., case studies) and to the legal proceedings (i.e., legal cases) that provide precedent within their respective topic areas. Our case studies are studies of legal cases. Before we delve into these cases in detail, we must first start with the basics.

Case Law: What's in a Name?

Much can be learned about a legal case merely by examining its name. To begin with, in most instances, the court case represents an adversarial undertaking in which one side is pitted against another side. Each side can have one or more parties involved. A *party* in this sense may be an individual, a group of individuals (as in a class-action suit), a company or other organization, a state, or even a country. Thus, we are provided with the general format for the labeling of most court cases: *Party 1 versus Party 2,* or as typically abbreviated, *Party 1 v. Party 2,* an extension of which could easily be *Parties 1–7 v. Parties 8–14*. In the latter instance, the case would probably be referred to merely as *Party 1 v. Party 8* for the sake of simplicity.

An examination of the parties in a case name offers more information. First of all, the party names indicate whether a case has been undertaken in criminal court (when a crime has been committed) or in civil court (when a wrong has been committed by one party toward the other party). In criminal cases, typically, one of the parties is the government that originally made the act illegal. Thus, a murder committed in violation of state law by a Mr. Meyer could take on the name *West Virginia v. Meyer,* or Common*wealth*[2] *v. Meyer,* or even *People v. Meyer.* These labels mean essentially the same thing: that the state and Mr. Meyer are opposing parties in the case. The logic here is that the offense was committed against the people of the state, and their representatives: the state government. Notice that the government (the party that was allegedly wronged) is named first. Depending on the jurisdiction and the nature of any appeal, subsequent court proceedings stemming from this initial case may have the parties transposed (i.e., *Meyer v. State*). Should

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[2] Some of the 50 states (i.e., Kentucky and Pennsylvania) continue to refer to themselves as Commonwealths rather than States. While there are undoubtedly some subtle legal distinctions between the two, they are considered synonymous for the purposes of this text. As in another of the examples, some states include *The People of the State,* commonly abbreviated as *People,* as a party in a criminal act to reflect that the alleged crime was committed against the people of the jurisdiction themselves.

a criminal case be appealed all the way to the U.S. Supreme Court, the actual name of the state would take the place of the generic term *State.* Since such cases typically involve the allegation that the state infringed on the constitutional rights of the other party, the case name typically takes a form such as *Meyer v. Kentucky,* implying that the wrong was committed against Mr. Meyer by the Commonwealth of Kentucky. If a federal criminal charge were brought against Mr. Meyer, the case might be initially labeled *United States v. Meyer,* with the party that was allegedly wronged being the United States of America as representative of all of her citizens.

Civil court cases employ a similar naming structure, except that there may not be any government involved as a party to the case. For instance, in a case where Mr. Meyer alleges that Mr. Weaver committed some wrong against him, the name of the case would be *Meyer v. Weaver.* If Mr. Weaver then wanted to countersue for damages resulting from a frivolous lawsuit, the new case would be known as *Weaver v. Meyer.* An interesting phenomenon may take place when an individual wants to sue a government body for perceived wrongdoings, because that government may actually be immune from such a lawsuit. In these instances (or perhaps when an attorney merely feels he or she will be more successful in this manner), a case may be brought against a government official (i.e., Governor or Attorney General) instead of the actual state. Such was the case in the long string of Texas legal proceedings known collectively as *Penry v. Lynaugh* (1988), in which Lynaugh was the State Attorney General, and Penry was a man appealing his death sentence. Thus, there may be several unrelated cases from Texas in which Lynaugh was a party, not because the Lynaughs are particularly litigious people, but merely because of the governmental status of one particular Lynaugh. The most recent case in this particular example, *Penry v. Johnson* (2001), reflects a change in the Texas Attorney General's office. A similar example is seen in the Pennsylvania cases of *Halderman v. Pennhurst* (1977) and *Romeo v. Youngberg* (1980), in which Youngberg was the superintendent of the Pennhurst institution, and Halderman and Romeo were individuals alleging that the institution had infringed on their rights. As such, both Pennhurst and Youngberg represented essentially the same party. Because several iterations of any case may take place, individual proceedings are sometimes only distinguishable by the year in which they were decided (e.g., *Meyer v. Weaver,* 1990, 1993); thus, we attempt throughout this text to delimit specifically this aspect of each case.

An interesting variation on the naming of a case takes place within the realm of juvenile law. In cases of particularly heinous acts commit-

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ted by someone under the age of 18, the individual may be transferred to adult court. Once there, the standard rules of adult court (including the naming) apply. However, when a case remains in juvenile court, a fundamental assumption changes in that the proceedings are no longer considered adversarial in nature. Thus, a juvenile case may involve no *versus,* because it is assumed instead that all parties involved are seeking a common goal: a result in the best interests of the juvenile. An example of this labeling system is seen in the landmark Supreme Court case *In re Gault* (1967), with *In re* being Latin for "in the matter of" or "concerning." Thus, *In re Gault* was a legal proceeding "concerning" a young person by the name of Gault. Another form of label that may signify that a case involves a juvenile is the use of initials, meant to maintain the anonymity of the juvenile to the extent possible. An example of this type of label is seen in the juvenile law case *Parham v. J.R. and J.L.* (1979). Other attempts at maintaining juveniles' anonymity have included briefly summarizing the case rather than using any form of the juvenile's name. Such an attempt resulted in our last and most amusing example, the 1966 case of *Two Brothers and a Case of Liquor* (as cited in *In re Gault,* 1967).

About This Book

Despite the cultural divide between the legal and mental health fields, there is merit for those in mental health to study the legal cases that dictate our day-to-day professional activities. In most accounts of these cases, however, the fascinating and sometimes tragic details, and the impact each case had on the people involved, is lost.

This book brings those details back to light, and brings them to bear on the legal and mental health issues as they exist today. As we progress through this text, we hope the reader will be able to comprehend more fully the process by which mental health and law currently interact.

In seeking our arguably wide-sweeping approach of "law and mental health," we are necessarily limited in the amount of discussion that can be afforded to the basics of each topic area (e.g., research on jury decision making). Thus, this text assumes some familiarity on the reader's part with each of the topic areas, be it through professional knowledge or concurrent instruction. We have not attempted to provide a foundation of knowledge in forensic mental health topics. Rather, we have designed this book to complement such a foundation.

Chapters in *Law and Mental Health* are grouped into seven parts: Psychological Issues and Involvement in Basic Courtroom Proceedings,

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Legal Precedent in Everyday Clinical Practice, Clinical Forensic Evaluation, Civil Rights and Civil Law, Specific Mental Diagnoses in the Law, Violent Criminals and Violent Crime, and Juveniles in the Legal System. The text introduces readers to basic information needed to comprehend the development of the case law in each subject area and expands on individual cases within each area. Readers are provided with an overview of case law on each topic, as well as the details of each expanded case (typically two per chapter). The text presents both the histories of the individuals involved in each expanded case and the impact that each continues to have on the respective areas as we know them today.

Readers of *Law and Mental Health* are presented with a wide variety of legal cases. Cases range from the classic, such as the 1966 *Miranda v. Arizona,* which established the *Miranda* rights read to all suspects upon arrest (i.e., "You have the right to remain silent"), to the contemporary, such as the 2018 case of *Tharpe v. Sellers,* in which the courts are actively struggling with how to handle potential race bias among jurors. This discourse takes place every day in courts of law throughout the country. If we are to hear and understand this conversation, then we must learn the language of the legal system: case law. Case law is the tie that binds this book together.

Upon completion of *Law and Mental Health,* readers should possess a solid fundamental knowledge of the temporal progression of case law in each area. (For readers who want to gauge their comprehension of the topics we cover, there is a simple *Student Study Guide* available on the Guilford website (see the box at the end of the table of contents.) We hope the text not only presents a comprehensive and important review of legal and mental health material but that it also does so in a manner that is both thought provoking and enjoyable to read. And most important, we hope that this book helps to enhance the legal knowledge of mental health practitioners, so that they can best help the people they serve and actively engage in the ongoing improvement of both systems.

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