

**Competence in the law: from legal theory to clinical application** By Michael L. Perlin

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#### D. AN INTRODUCTION TO SANISM AND PRETEXTUALITY

*Sanism* is an irrational prejudice of the same quality and character as other irrational prejudices that cause and are reflected in prevailing social attitudes of racism, sexism, homophobia and ethnic bigotry. It permeates all aspects of mental disability law and affects all participants in the mental disability law system: litigants, fact finders, counsel, and expert and lay witnesses. Its corrosive effects have warped mental disability law jurisprudence in involuntary civil commitment law, institutional law, tort law, and all aspects of the criminal process (pretrial, trial, and sentencing). It reflects what civil rights lawyer Florynce Kennedy has characterized as the "pathology of oppression."<sup>77</sup>

*Pretextuality* means that courts accept (either implicitly or explicitly) testimonial dishonesty and engage similarly in dishonest (frequently meretricious) decision-making, specifically when witnesses, especially expert witnesses, show a "high propensity to purposely distort their testimony in order to achieve desired ends."<sup>78</sup> This pretextuality is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants, and reinforces shoddy lawyering, biased judging, and, at times, derisive and/or cor-