

## **The Spousal Homicide Syndrome: Legal Implications†**

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### **Introduction: The Spousal Homicide Syndrome**

Drawing on the clinical literature and the case records and videotape library of the Forensic Psychiatry Clinic of the University of Virginia Institute of Law, Psychiatry, and Public Policy, we have elsewhere depicted a distinct clinical picture which appears to be characteristic of many males who kill their spouses.<sup>1</sup> In the twelve cases described in our study, the homicidal behavior was not secondary to a serious psychiatric disorder or longstanding character pathology, but could only be understood in the context of the dynamics of the victim-offender relationship. When we analyzed the offenders' personalities and developmental backgrounds, their relationships with their victims, and the circumstances of the offenses, striking similarities emerged, similarities which led us to characterize these cases as representing an identifiable "spousal homicide syndrome."

The twelve men included in the Forensic Clinic study described remarkably similar patterns of early development and family relationships. All remembered their childhood years as being marked by unhappiness, insecurity, and a sense of rejection, although few suffered outright physical abuse. Psychological rejection by the parents was usually quite explicit; in fact in several cases, the family unit disintegrated and the child was sent to live with other relatives or with strangers.

Emotional isolation continued into adulthood. Each of the twelve men experienced considerable difficulty in establishing and maintaining emotionally rewarding interpersonal relationships, especially with women. An extremely poor self-image and sense of inadequacy, coupled with a tendency to be dependent and demanding, contributed to the

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poverty of relationships. None of the men had a significant history of violent or otherwise unacceptable behavior and all could be characterized as exhibiting passive-dependent styles of adult functioning.

For most of the twelve cases, the relationship with the victim provided the first close, satisfying relationship. Most of the relationships had survived for several years before the final act of separation, but all were characterized by intense discord and repeated marital problems. The victim usually had remained strongly allied with her nuclear family, which was, in turn, perceived as a further rejection by the offender. She berated her husband for various inadequacies, usually sexual and financial, thus intensifying his own sense of inadequacy. Often the victim had separated from her husband on one or more occasions, but the offender was generally unable to tolerate the separations and the cycle continued because the wife was unable to terminate the relationship.

Finally, a threat of a permanent and irreversible separation, often the service of divorce papers, confronted the offender with an emotionally intolerable situation. In response, he lashed out at the source of the threat, tragically effecting the feared separation, and frequently turning the weapon on himself.

From the legal standpoint, a crucial aspect of the clinical inquiry concerns the offenders' mental functioning at the time of the offense. Although we will elaborate on this later, several observations will help to give clinical texture to the following discussion. In the context of the spousal homicide syndrome, the homicidal acts are carried out during periods of intense emotional arousal — arousal produced by feelings of failure and loss in the relationship with the spouse or spouse-equivalent with whom the actor has developed an extremely dependent relationship. It is especially noteworthy that the homicidal aggression does not represent, symbolically, a significant level of unconscious conflict resolution.

Although the actor is typically aware of his rage and of his conduct, ego functions are not intact. The ego function of control and modulation of serious aggressive discharge is suspended as is the capability to accurately process the implications of such aggressive discharges. This sudden loss of control is unrelated to any previous psychiatric history, does not occur as a symptom of an established clinical syndrome and is uncharacteristic of the actor's normal behavior.

These clinical observations suggest some form of disturbed mental functioning uncharacteristic of a given individual. Such observations frequently arouse great sympathy for the offender, and this naturally stimulates a search for a clinical explanation of the ego-dystonic behavior which might have exculpatory or mitigating legal consequences. Our purpose in this paper is to review the legal implications of the spousal homicide syndrome.

## Exculpation: Dissociation and Temporary Insanity

Defense attorneys representing persons who have killed their spouses sometimes seek to escape the traditional boundaries of the insanity defense by claiming that their clients were "temporarily insane," a lay notion without any established legal analogue. The closest clinical analogue is that the homicidal behavior was "ego-dystonic," but many observers of criminal behavior would agree that a large percentage of homicidal acts (perhaps even as high as 60%) could be so classified.<sup>2</sup> Obviously it would be morally obtuse to acquit all ego-dystonic murderers on grounds of insanity.

Yet, reported judicial opinions and psychiatric case histories<sup>3</sup> of persons charged with killing their spouses indicate that forensic psychiatrists sometimes characterize this acute dysfunction as a "dissociative state," a diagnosis which is then offered as a basis for an insanity defense (or which, in theory, could be offered in support of an unconsciousness or automatism defense). While dissociation may be an accurate clinical description in a small number of cases, the extension of the concept to the point of equating it with ego-dystonic behavior is clinically unsound. Our own experience at the Forensic Psychiatry Clinic indicates that this is particularly unwarranted in the typical spouse-killing case.

Dissociation can be described as a breakdown in the integrative abilities of the individual to defend the ego against information that is perceived as dangerous on a conscious or unconscious level. This breakdown is an attempt to prevent serious psychic disruption created by unconscious anxiety-producing conflict.<sup>4</sup> The primary gain is anxiety reduction, but the person may also manage to avoid a dangerous or unpleasant situation. The acts carried out during the dissociative state have a personal symbolic meaning, derived from past conflicts but activated by current emotional stress.

Dissociation should be clearly distinguished from other ego-dystonic actions resulting from emotional trauma or distress. The dissociative state is a type of hysterical neurosis generally associated with an underlying hysterical personality pattern.<sup>5</sup> A history of episodic emotional disturbances and emotional immaturity would be expected in such an individual.<sup>6</sup> Yet none of the twelve individuals in the Clinic study had a history suggestive of an underlying hysterical personality pattern.

In a dissociative state, the breakdown of conscious awareness and volitional control results in a trance-like state during which the person's behavior is automatic and lacks conscious direction. This altered state of consciousness permits an avoidance of emotional stress and tends to *inhibit* aggressive impulses, not to release them. While violence may occur during the dissociative episode, it would be highly unusual for it to occur in the manner characteristic of spousal homicide where the

killer is focusing his aggressive discharge directly at the source of the conflict — the spouse.

A very important characteristic of the true dissociative state is the inability to recall events during a discrete time period as a result of the total alteration of consciousness during the dissociated interval. Yet, while the spouse-killer may not recall certain details of brief periods of time surrounding the actual act of aggression (for example, "I can't recall firing the gun; I just remember picking it up."), he typically does *not* report a total amnesia, extending for a defined period before and after the incident. This total amnesia would be expected in a dissociative state as a result of the disruption of information assimilation.

A recent Tennessee case, *Lee v. Thompson*,<sup>7</sup> offers a good example of the imprecise and distorted use of the concept of dissociation on behalf of a spouse-killer seeking exculpation on grounds of insanity. Lee and his wife had a brief turbulent marriage. Two days after divorce papers were signed, Lee shot and killed her and seriously wounded her former husband. The incident occurred while she and her ex-husband were out rowing on a lake. At his trial, the defendant did not dispute eyewitness testimony as to his actions before and after the attack. He admitted that he purchased a gun on the afternoon of the murder, went to the lake in search of his wife, convinced friends to take him out on the lake in their boat, and fired several times at the couple. Lee then returned to shore, reloaded his pistol, and again fired at the couple as they returned to the dock. The final volley killed his wife.

Two psychiatrists testified that at the time of the shootings Lee was suffering from a "dissociative reaction." Both experts stressed that automatic or trance-like behavior, and amnesia, were the major indicators of a dissociative state. However, they also testified that Lee could recall in detail most of the events leading up to the incident, and a few of the details of the actual shootings.<sup>8</sup> The prosecution offered no expert witnesses in rebuttal, but instead relied on lay testimony as to Lee's manner and appearance on the day in question. One witness described his actions as "angry but otherwise very deliberate."<sup>9</sup> Another quoted Lee, "I come up here to kill 'em both and that's what I done."<sup>10</sup> All of the witnesses testified that Lee was rational and appeared to be normal.

Not surprisingly, the jury was not convinced by the psychiatric testimony and convicted the defendant of murder and felonious assault. Lee challenged his conviction in a federal *habeas* action, claiming that he was denied due process because the jury based its verdict on lay testimony, rejecting the unanimous expert testimony that he was insane. In denying Lee's petition, the federal district court followed the traditional view that a jury is not bound by the conclusions of expert psychiatric witnesses.

A recent series of Canadian cases also illustrates the distorting influence of ill-conceived diagnoses of dissociation on the exculpatory doctrines of the criminal law. *Parmerkar v. The Queen*,<sup>11</sup> decided by the

Supreme Court of Canada in 1973, is the leading case.

Parnerkar was born in India and immigrated to Canada in 1963, settling in Regina. Soon thereafter, he established a close relationship with Anna and her three children. In May, 1966, Anna came to stay with him in Toronto, where he had moved the year before. During this time they had intimate relations and he made a proposal of marriage which, according to Parnerkar, was accepted. For the next three years, he and Anna exchanged letters and visits; however, it appears that the relationship had cooled considerably by the end of 1969. In May, 1970, Parnerkar decided to go to Regina to renew his marriage proposal. In preparing for his trip, he packed two knives in his flight bag, together with a letter addressed to the Royal Canadian Mounted Police in which he stated: "In case if I die, please give my body to the medical students for their studies. . . . I am very much sorry to give you the unnecessary trouble but under some circumstances you are the only one who will realize my condition. There is no need to investigate about me."

After Parnerkar arrived in Regina, the children "displayed some affection to him at this time and at one stage one little girl was sitting on his knee when he asked her if she wanted to be his daughter and stated that he wanted the two boys to have professional training." The eldest boy then told his mother that Parnerkar wanted to marry her whereupon she said "I am not going to marry you because you are a black man" and told Parnerkar to leave because her boyfriend was coming that night. Parnerkar then took three of Anna's letters out of his pocket and gave them to the older boy to read. Apparently Anna did not want him to read the letters and tore up the one he was reading. Parnerkar then stabbed Anna in the dining room, she fell into the living room, he chased the son away, and stabbed her again and then stabbed himself. He subsequently summoned an ambulance and the police.

Parnerkar's recollection of the homicidal act was sketchy. He recalled the incident concerning the letter, her falling, bending over her and pulling out the knife in the living room. Apparently his recollection was no more precise under the influence of sodium amytal. At his trial, a psychiatrist testified, on his behalf, that Parnerkar "was in a dissociated state at the time when Anna was killed and that this state commenced when she tore up the letter and lasted until he pulled the knife from Anna's stomach and realized that he had a knife in his hand."

The jury was instructed on the defense of "automatism" (induced by "psychological blow") and insanity but rejected both of them and convicted Parnerkar of manslaughter.

It is noteworthy that the reported cases of "psychological blow automatism" in England and Canada virtually always involve spousal homicides or the killing of spouse-equivalents. Like *Parnerkar*, they all appear to involve questionable diagnoses of dissociative states. In a commentary on *Parnerkar*, Professor Glanville Williams has called attention to this problem, agreeing with the position we are taking here:

The decision illustrates the difficulty that can be caused to the courts by overenthusiastic psychiatrists. If such evidence were regularly given and accepted a considerable breach would be made in the law of homicide. A medical witness who proclaims that the defendant, though awake, did not know that he was stabbing a person because of his dissociated state invites incredulity, particularly where it is shown that the defendant immediately afterwards telephoned for an ambulance and the police.<sup>12</sup>

On the basis of our own clinical experience and review of the legal and clinical literature, we believe a "diagnosis" of dissociation in spouse-killing cases is rarely justified on clinical grounds and represents an obvious attempt to escape the traditional boundaries of the insanity and "unconsciousness" defenses. No matter how sympathetic we may be toward a long-suffering spouse, he is not without blame under traditionally applied legal and moral notions, and his distress does not achieve exculpatory significance.

This is not to say that the acute loss of control characteristic of these killings is, or ought to be, without legal significance. Spousal homicide frequently represents something more than a garden variety disinhibition leading to the expression of aggressive impulses. Our observations suggest that the homicidal act often derives from a significant level of ego regression catalyzed by strong ambivalence in the offender's object relations — an ambivalence generated initially with parental figures, usually the mother, and later reenacted with the spouse or spouse-equivalent.

This impairment in ego-functioning occurs principally in its synthetic component, obliterating the adaptive mechanisms and erasing, for the moment, the organism's capacity for reflection, intentionality and volitional control. Ordinarily, however, the offender does maintain conscious awareness of his behavior together with an intact conscious perception of external reality. The typically fragmented memory for the details of the violent act is attributable not to the occurrence of a dissociative state, but rather to a subsequent repression of the feelings accompanying the homicidal act which is clearly ego-dystonic and which in no way resolves the progressively mounting unconscious conflicts.

We believe that these clinical observations are, and ought to be, legally relevant; but they are relevant not to doctrines of exculpation, but rather to the traditional distinction between murder and manslaughter, a subject to which we now turn.

### **Grading: Reducing Murder to Manslaughter**

The legal concept most directly applicable to cases of spousal homicide is the distinction between murder and manslaughter.<sup>13</sup> In most Anglo-American jurisdictions, which preserve the common law of

homicide, murder includes intended killings with "malice" and (voluntary) manslaughter is defined as an intended killing without "malice." Malice is a technical legal concept, not a real approximation of a "malicious" or hostile state of mind. For present purposes, the best definition of murder is that it is an intended killing which is *not* manslaughter; the burden (of producing evidence) is on the defendant to raise a jury question regarding the absence of "malice;" and the absence of "malice" is usually defined as the presence of "heat of passion" aroused by "adequate" or "reasonable" provocation.<sup>14</sup>

Thus, common law provocation has two requirements, one objective and one subjective. The provocation must be legally sufficient or "adequate," which is measured by reference to the objective standard of the reasonable man — would the provocation have caused a reasonable person to lose his self control and would the reasonable person have regained control over himself during the time between the provocation and the homicide (the "cooling time" doctrine)? The subjective component lies in the requirement that the defendant himself must *in fact* have been provoked and have acted "in the heat of passion" in response to the provocation.

At first blush, the spousal homicide syndrome may appear to represent a core case of manslaughter — persistent psychological provocation leading to intense emotional arousal and the release of strong, unrestrained aggression. Yet this has not been the law. The main reason for this is that courts have traditionally restricted the circumstances which, in law, can constitute adequate provocation.

First and foremost, physical attack might constitute provocation, though not every technical battery is sufficient. Mutual combat is another established category of provocation, and a threat of physical attack might constitute provocation, at least in extreme cases. Most jurisdictions recognize *witnessing* adultery as provocation for intentional homicide of either the unfaithful spouse or the paramour.<sup>15</sup> Most importantly, however, the courts have excluded some situations from the jury's consideration altogether. Thus, the traditional rule, at common law, is that words alone, no matter how insulting or disturbing, cannot amount to adequate provocation. Since spousal homicides frequently are triggered by arguments, accusations of sexual inadequacy, admissions of infidelity and threats of separation, these rules have a significant and drastic impact on the liability of the offender.

*Commonwealth v. Cisneros*,<sup>16</sup> a 1955 Pennsylvania case, is illustrative. Defendant had been separated from his wife for an unspecified number of days which he spent brooding over his loss. On the day of the shooting he wrote two notes to his father and mother, stating that he was going to commit suicide because of his unrequited love for his wife. Sometime later he went to his wife's home where an argument apparently ensued; he testified that he had been drinking and that his wife had said he was half Mexican and half Puerto Rican and that she refused to have his

children out of fear that they would be black. When his wife telephoned her mother, he called into the telephone that by the time she got there her daughter would be dead. He then shot her twice and turned the weapon on himself. She died and he recovered.

The trial court refused to instruct the jury on voluntary manslaughter, a ruling upheld by the Pennsylvania Supreme Court which explained its decision in the following manner:

The evidence of the defendant was that his wife made remarks about him that inflamed him, and had emphasized them by sticking her finger at his shoulder. The law of Pennsylvania is clear that no words of provocation, reproach or abuse or slight assault are sufficient to free a party from guilt of murder. The legal "battery" committed in this case was of a most trivial nature which, combined with the words used, is of no moment in reducing the crime to manslaughter.<sup>17</sup>

Thus the Court, using the traditional common law approach, focused on the sufficiency of the immediately provoking events rather than the larger context of the relationship; and since the provocation was not legally adequate, any acute emotional disturbance experienced by the defendant was legally irrelevant. One justice, in dissent, argued for a less rigid, more subjective view of the moral and psychological boundary between murder and manslaughter: "In nearly all homicides resulting from emotional disturbances and outbursts, as opposed to coldly calculated planning for material advantage, the elements of voluntary manslaughter are invariably present for consideration."<sup>18</sup>

*Parnerkar v. The Queen*, described earlier, demonstrates that even in a jurisdiction permitting insulting words to constitute adequate provocation, the defendant's emotional turmoil may be without legal significance. At Parnerkar's request, the jury was instructed on manslaughter. Although the jury rejected his exculpatory claims, it did acquit him of murder, convicting him of manslaughter instead. The Crown appealed on the ground that the provocation was insufficient, as a matter of law, and that the matter should not have been left to the jury. The Court of Appeal agreed with the Crown and ordered a new trial on the murder charge. This decision was affirmed by a divided Supreme Court. The majority concluded that neither the racial slur nor the tearing of the letter was sufficient, as a matter of law, to constitute an "act or insult . . . of such a nature as to . . . deprive an ordinary person of the power of self-control." As in *Cisneros*, the dissenting Justices argued that the adequacy of provocation should always be regarded as a matter of fact and that the jury ought to be permitted to assess the psychological impact "on the ordinary person" of the "acts or insults" to which Parnerkar had been exposed.

In recent years, appellate courts in some common law jurisdictions have tended to adopt a more liberal view, abandoning threshold notions



of what can constitute adequate provocation and leaving that question to the jury if *any* evidence of provocation and emotional distress is offered. Not surprisingly, many of the reported cases reflecting this liberalizing trend have involved spousal homicide. *People v. Ahlberg*,<sup>19</sup> a 1973 Illinois case, is illustrative. The court's summary of the facts, albeit lacking clinical detail, reveals a marked similarity to the dynamic picture of the spousal homicide syndrome.

The defendant, a high school teacher and coach, made arrangements to meet his wife Jan at the school's annual homecoming football game on a Friday evening. Jan failed to keep this appointment and after the game the defendant went home. Jan and the couple's two children never returned home, and the defendant discovered early the next morning that the clothes closets had been almost entirely emptied. He unsuccessfully looked for his wife and children all weekend. Then, on Monday morning, he called his wife at work but she refused to tell him where she and the children were staying; instead she advised him to get an attorney since she had already filed for a divorce.

At 4:00 A.M. on Wednesday, the defendant received a call from his wife. At this time they talked for approximately an hour and a half. Despite his efforts to persuade her to return home, she advised him to be in her attorney's office at 9:15 A.M.

The defendant met with his wife and her attorney at the appointed time and consented to a separation agreement. After this meeting he took his wife to work. The same evening at approximately 5:30 P.M. he called to take her home but was informed that she had already gone home because of illness. The defendant then went to his home where he found his wife and a male friend. When he tried to use the telephone an argument ensued and he was informed by his wife that her permission was needed if he was to use the phone.

The defendant testified that his wife informed him that she was tired of being the nice school teacher's wife, that he had never satisfied her sexually and that she had found an older man who could love her and the two children more than he could and that she was going to get a divorce. The defendant claimed that he has no recollection of his actions from this time until he was later found driving on a country road.

However, testimony from neighbors indicated that he had dragged his wife from their home, beat, kicked and stomped her causing injuries from which she later died.

The Court addressed the provocation issue in a peculiar context. The trial court had actually given a manslaughter instruction and the defendant was convicted of this offense, rather than the more serious

murder charge, apparently persuading the jury that he “was acting under a sudden and intense passion.” However, having already achieved his partial victory, defendant claimed on appeal that because the provocation was legally insufficient, he should either have been found guilty of murder or acquitted on grounds of insanity. The court found this strategy a bit peculiar and went on to hold that the provocation was, indeed, adequate:

We are inclined to believe that had the defendant been convicted of murder he would now be before us asking that his crime be reduced to voluntary manslaughter. Having escaped [a] murder conviction he now asks that we set aside a voluntary manslaughter conviction even though by his own testimony the words of his wife were such as to cause him to lose all control of himself including his memory. To follow unequivocally the rule that “mere words are not sufficient to cause the provocation necessary to support a finding of guilt of voluntary manslaughter” would be in keeping with precedent and an established rule; however, it would be a direct refutation of logic and a miscarriage of justice. [By defendant’s] own testimony . . . the cumulative effect of his wife’s absence, his fruitless searching for her whereabouts, her retention of counsel for the purpose of obtaining a divorce, and her slurring remarks as to his masculinity and the announcement that she had found another man . . . created such a state of provocation that [he] in a frenzied state of passion killed her.<sup>20</sup>

Although the *Ahlberg* decision reflects the liberalizing trend in some common law jurisdictions, the “hornbook” statements in most states would appear to preclude trial judges from giving manslaughter instructions in most spouse-killing cases. However, statements of legal doctrine which appear in “the books” are not always good predictors of the outcomes of particular cases. Based on our own experience in Virginia, where the appellate decisions are at best ambiguous, we have observed that practices vary among trial judges and prosecutors; some will permit the jury to consider a manslaughter verdict and others will not. Our suspicion is that this is true in other common law jurisdictions as well, and that many courts do not, in practice, adhere rigidly to the traditional adequate provocation doctrines. We also doubt that courts uniformly conform to evidentiary rules which appear to exclude psychiatric testimony on the “heat of passion” issue.<sup>21</sup>

In any event, we are persuaded that juries ought to be able to assess the grading significance of the spousal homicide syndrome and that the defendant ought to have the opportunity to present relevant clinical material on this issue. Whether he is convicted of murder or manslaughter should not depend on the willingness of the trial judge sitting in his case to bend the law. For this reason we strongly endorse

the manslaughter formulation of the American Law Institute's Model Penal Code and the Code-inspired statutory revisions enacted by some 15 states.

Section 201.3(1)(b) of the Model Code punishes as manslaughter a "homicide which would otherwise be murder [if it] is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse." This formulation sweeps away the rigid rules with limited reasonable provocation to certain defined circumstances and leaves the objective inquiry entirely to the fact-finder; it also qualifies the rigorous objectivity with which the common law determined adequacy of provocation by providing that the "reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be."

Under the Model Code formulation, the degree of the offender's moral culpability for his homicidal act is judged within the full psychological context of his "situation" — the marital relationship with its characteristically intense emotional dependency, the special psychological meaning of sexual taunts, threats or acts of infidelity and, especially, threats or acts of separation. As the Code's official commentators have noted:

The proper role of such factors cannot be resolved satisfactorily by abstract definition of what may constitute adequate provocation. The Model Code endorses a formulation that affords sufficient flexibility to differentiate in particular cases between those special aspects of the actor's situation that should be deemed material for purpose of grading and those that should be ignored. There thus will be room for interpretation of the word "situation," and that is precisely the flexibility desired. There will be opportunity for argument about the reasonableness of explanation or excuse, and that too is a ground on which argument is required. In the end, the question is whether the actor's loss of self-control can be understood in terms that arouse sympathy in the ordinary citizen.<sup>22</sup>

Although the key reform of the Model Code manslaughter formulation is its modification of the objective dimension of the inquiry, the Code's formulation of the subjective issue is especially important for purposes of the present discussion. Not all homicidal violence, however, "reasonably" explained, constitutes manslaughter. The moral gradient is still defined by the occurrence of acute psychological distress — here "extreme mental or emotional disturbance." This line seems to approximate fairly closely the clinical distinction between ego-dystonic and ego-syntonic behavior. Moreover, the Code's drafters appear to have deliberately abandoned the colorful but incomplete common law language ("heat of passion," "hot blood") in favor of the broader and

more scientific concept of "extreme mental or emotional disturbance."

The clinical literature on spousal homicide suggests that many, if not most, of these killings represent the prototypical examples of ego-dystonic violence. Yet forensic specialists have given precious little attention to the nature of the acute psychological dysfunction which accompanies — or, indeed, releases — the homicidal aggression. The drafters of the Model Code (and the legislatures which have enacted it) have issued the invitation so frequently solicited by forensic psychiatrists — an opportunity to inform the legal system about psychological dysfunction without being shackled to the medical model. Yet "extreme mental or emotional disturbance" has not yet been linked in any systematic way to shared clinical concepts. Instead, as we noted earlier, occasional witnesses and commentators bypass the question altogether in favor of misguided efforts to ascribe exculpatory significance to these same clinical insights.

Our primary objectives in presenting this paper have been to link our own clinical reports of spousal homicide to this larger legal context and to encourage further efforts to give clinical content to the concept of "extreme mental or emotional disturbance." This need will become increasingly apparent to clinicians, as well as judges and lawyers, as more and more states adopt the manslaughter formulation of the Model Penal Code. Moreover, it is well worth noting that most of the contemporary death penalty statutes have also been adapted from the Model Code and include, as one of the specific mitigating circumstances to be considered in capital sentencing proceedings, ". . . that the capital murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. . . ." <sup>23</sup>

This acute psychological disturbance, albeit "extreme," is given grading significance (in choosing between life and death) in cases which involve neither (a) reasonable explanation or excuse, nor (b) a mental aberration of sufficient severity to either exculpate or diminish the capacity of the offender to premeditate a murder. Although discussion of this question would range far beyond the compass of this paper, the key point is this: under the evolving law of homicide the concept of "extreme mental or emotional disturbance" has extraordinary mitigating significance in two important — and very different — contexts (manslaughter and capital sentencing), and forensic clinicians should not overlook this new challenge as they continue to grapple with old ones.

## References and Footnotes

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3. See, e.g., Tanay E: Reactive parricide. *J. Forensic Science* 21:76 (1976)
4. Cameron N: *Personality Development and Psychopathology*. Houghton Mifflin, 1963
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6. Janet P: *The Major Symptoms of Hysteria*. Macmillan, 1907
7. 452 F. Supp. 165 (1977)
8. *Ibid.*, p. 167
9. *Ibid.*
10. *Ibid.*, p. 168
11. [1977] 1 WWR 161, 16 CRNS 347, aff'd [1974] SCR 449
12. Williams G: *Textbook of Criminal Law*. Stevens and Sons, 1978, p. 613
13. For present purposes, we are putting aside the distinction between first degree and second degree murder. Most U.S. jurisdictions recognize that psychological impairment may "diminish" the offender's "capacity" to engage in the mental functions denoted by the concepts of "premeditation" and "deliberation" — the mental element which distinguishes first degree murder from other intent-to-kill homicides. They thus admit into evidence expert testimony offered to "negate" any inferences of premeditation and deliberation which may have been raised by the prosecution's evidence. The only real theoretical question, which is not widely discussed in the literature, is whether relatively "pure" psychodynamic interpretations — not tied to the medical model of serious mental abnormality — reach sufficiently beyond speculation to be admissible as expert opinion. See generally Bonnie R, and Slobogin C: *The role of mental health professionals in the criminal process: The case for informed speculation*. *Virginia Law Rev* 66: 427, 473-485 (1980). Be that as it may, most jurisdictions which recognize the concept of "diminished capacity" would probably admit testimony concerning the acute mental dysfunction characteristic of the spousal homicide syndrome. As a matter of practice, of course, juries are unlikely to convict spouse-killers of first degree murder anyway, regardless of what the evidence shows.
14. For present purposes, we are focusing only on the traditional manslaughter formulation. In passing, however, we should note that psychiatric testimony concerning the emotional disturbance characteristic of the spousal homicide syndrome would clearly be admissible in the few jurisdictions which recognize "diminished responsibility" as an independent doctrinal ground of reducing murder to manslaughter. Thus, in England, §2(1) of the Homicide Act of 1957, 5 & 6 Eliz. II, C. II, provides:

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

The Supreme Court of California has achieved a similar doctrinal result through a reinterpretation of the traditional concept of malice. In *People v. Conley*, 64 Cal. 2d 310, 411 P.2d 911, 49 Cal. Rptr. 815 (1966), the Court held that "if because of mental disease, defect or intoxication . . . the defendant is unable to comprehend his duty to govern his actions in accord with the duty imposed by law, he does not act with malice aforethought." Then, in *People v. Poddar*, 10 Cal. 3d 750, 518 P.2d 342, 111 Cal. Rptr. 910 (1974), the Court went a step further: "If it is established that an accused, because he suffered a diminished capacity, was . . . unable to act in accordance with the law, malice could not properly be found and the maximum offense for which he could be convicted would be voluntary manslaughter." For a full discussion of the California cases and the concept of diminished responsibility, see Morse S: *Diminished capacity: A moral and legal conundrum*. *Int J of Law & Psychiatry* 2:271 (1979)

15. Note. *Manslaughter and adequacy of provocation: The reasonableness of the reasonable man*. *U Pa L Rev* 106: 1021, 1036 (1958). ("The reasonable man tells us that he does not become sufficiently provoked when his California or Georgia or Iowa wife tells him that she has been unfaithful but the provocation becomes unbearable when the scene is shifted to Kentucky, Mississippi or South Carolina.")
16. 381 Pa. 447, 113 A.2d 293 (1955)
17. *Ibid.*, 113 A.2d at 266
18. *Ibid.*, p. 300
19. 13 Ill. App. 3d 1038, 301 N.E.2d 608 (1973)
20. *Ibid.*, 301 N.E.2d 608 at 610-611
21. The usual hornbook statement is that most states admit psychiatric evidence concerning "diminished capacity" only if it negates premeditation. See generally, Bonnie R, and Slobogin C: *The role of mental health professionals in the criminal process: The case for informed speculation*. *Virginia Law Rev* 66:427, 473-485 (1980). In very few common law jurisdictions have appellate courts explicitly endorsed the admissibility of psychiatric testimony on the subjective aspects of the "heat of passion" inquiry. For an example, see *Comm. v. McCusker*, 448 Pa. 382, 292 A.2d 286 (1972).

It is possible, however, that courts are permitting clinicians to testify directly on this issue in

ignorance or defiance of this orthodox rubric. It is also possible that the testimony is permitted in support of a plea of insanity (whether or not an insanity instruction is ultimately given) and is thereby available for the jury's consideration in connection with the grading issue as well. In any event, we are aware of no study which systematically reports judicial practice regarding the admission of psychiatric testimony in spousal homicide cases (or other cases where a manslaughter verdict is sought). Such a study should be undertaken.

22. American Law Institute Model Penal Code and Commentaries, Part II (West 1980), pp. 61-63
23. Va. Code Ann. 19.2-264.4.B (Supp. Vol. 1979) See Model Penal Code 210.6(4)(b)
24. For a brief discussion of the clinical implication of these mitigating mental abnormality formulations under the new capital sentencing procedures, see Bonnie R: Psychiatry and the death penalty: Emerging problems in Virginia. Virginia Law Rev 66:167 (1980)