The court declined to consider Mr. Nolan's argument that the *M'Naughten* standard for insanity should be abandoned in Mississippi, citing several previous cases in which it had similarly decided not to address the question. The court acknowledged, "M'Naughten is not perfect; nevertheless [it is] the safest means of testing criminal responsibility" (*Nolan*, p 897, citing *Hill v. State*, 339 So.2d 1382 (Miss. 1976)).

Dissent

The dissenting justices asserted that demonstrating that Mr. Nolan "acted out of emotion" and was "angry with his father" was insufficient for a heat-of-passion manslaughter conviction (*Nolan*, p 899). The dissent argued that a heat-of-passion defense requires that a reasonable person would have acted as the defendant did. The dissenters were unconvinced that Mr. Nolan's actions were objectively reasonable. They concluded that general manslaughter was a more appropriate fit.

The dissenting opinion also questioned whether general manslaughter is a lesser included offense of heat-of-passion manslaughter. The dissenters opined that heat-of-passion and general manslaughter are distinct offenses, because the former requires intent to kill, whereas the latter can include accidental or negligent killing. The dissent concluded that the court of appeals erred in converting the trial court's verdict of heat-of-passion manslaughter to general manslaughter.

Discussion

Despite extensive evidence of Mr. Nolan's developing psychosis, courts at all three levels in Mississippi concluded that he did not meet the *M'Naughten* standard for an insanity defense. This outcome exemplifies the difficulty often discussed by forensic psychiatrists that psychiatric observations about a defendant's mental state do not coincide perfectly with legal ideas about culpability, creating a square-peg-and-round-hole problem. In *M'Naughten* jurisdictions, defendants with uncontested and severe mental illness may still not meet the legal test of insanity. Perhaps the court's heat-of-passion manslaughter conviction in this case can be seen as a compromise position, an acknowledgment that Mr. Nolan was less blameworthy for his actions, but a refusal to tackle the larger need for changing the standard for insanity in the state.

Heat-of-passion manslaughter seems like an awkward fit for Mr. Nolan's crime. In *Dabney v. State*, 772 So.2d 1065 (Miss. Ct. App. 2000), the court clarified that heat-of-passion manslaughter "presupposes an individual without serious mental and emotional defects" (*Dabney*, p 1069), implying that a heat-of-passion defense should not apply to defendants with mental illness. Other case law has indicated that the test for heat of passion is an objective one, whether a reasonable person would have acted as the defendant did. In this case, it does not seem likely that a reasonable person without mental illness would have reacted to statements about his sexuality by killing his father.

One is left to wonder how Mr. Nolan's mental illness, which altered his perception of his circumstances and the reasonableness of his behavior, could best be taken into account. One solution would be to use the American Law Institute (ALI) standard for insanity. In this case, Mr. Nolan would have had to prove that he "lack[ed] substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law" (Model Penal Code and Commentaries, American Law Institute, 1980). The language of this standard is more permissive than the *M'Naughten* test, which would have allowed the court to consider the delusional motivation behind Mr. Nolan's actions and whether his mental illness had an impact on his volitional control. Although the Mississippi Supreme Court declined to consider changing the test of insanity, one can see how doing so could create a wider range of dispositions for mentally ill defendants.

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Closed Commitment Proceedings Versus Open Administration of Justice

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Involuntary Commitment Order Reversed After a Court Rule Requiring Automatic Closure of Mental Health Proceedings Is Found Unconstitutional Under the Washington State Constitution

In *In re Detention of D.F.F.*, 256 P.3d 357 (Wash. 2011), the Washington Supreme Court held that requiring automatic closure of psychiatric commitment hearings violates Article I, § 10 of the Washington State Constitution, which states that "[j]ustice in all cases shall be administered openly."

Facts of the Case

The respondent, D.F.F., was involuntarily committed for 90 days of psychiatric treatment on January 10, 2007, following commitment proceedings. In accordance with the Mental Proceedings Rule (MPR) 1.3 (1974) pursuant to Wash. Rev. Code 71.05 (1973), the proceedings were automatically closed to the public and would have been open only if D.F.F. had filed a written request to make them public. D.F.F. appealed her commitment on the grounds that MPR 1.3 violated her rights to an open hearing guaranteed by the Washington Constitution. The Washington Court of Appeals found the MPR 1.3 requirement for complete and automatic closure of commitment proceedings to be unconstitutional on its face and subsequently vacated the commitment order and remanded the case for retrial (*In re Det. of D.F.F.,* 183 P.3d 302 (Wash. Ct. App. 2008)). The case was then appealed to the Supreme Court of Washington.

Ruling and Reasoning

The supreme court ruled on two issues sequentially. In a split decision (four to three, with two additional judges concurring with the majority decision but not the reasoning), the majority first held that D.F.F. had standing to challenge the rule that automatically closed her commitment hearing to the public and refuted the state's position that, since D.F.F. was a party in the proceedings and not a member of the general public, her rights were not violated. In the ruling, the court cited *State v. Momah*, 217 P.3d 321 (Wash. 2009), noting that "the requirement of a public trial is primarily for the benefit of the accused" (*D.F.F.*, p 360) and that "[i]t is fundamental to the operation and legitimacy of the courts and protection of all other rights and liberties" (*D.F.F.*, p 361).

The court then considered *de novo* the constitutionality of the automatic closure of commitment proceedings and affirmed the appellate court decision that MPR 1.3 violates article I, § 10 of the Washington constitution. The court held that exceptions to the right to the open administration of justice are valid only "under the most unusual circumstances" (*D.F.F.*, p 360) that satisfy the five conditions outlined in *Seattle Times Co. v. Ishikawa*, 640 P.2d 716 (Wash. 1982) that require closure based on a compelling interest with a serious and imminent threat to the accused's right to a fair trial; availability of open objection to the closure at the time of the hearing; employment of the least restrictive means of curtailing open access; weighing by the court of the competing interests of the accused and the public with regard to open access; and limiting the application and duration of the closure to serve the purpose narrowly (referencing *Momah* and citing *State v. Bone-Club*, 906 P.2d 325 (Wash. 1995) and *Seattle Times Co*.).

The majority held that in creating automatic closure of commitment hearings, MPR 1.3 did not meet the necessary requirements; therefore, closure of proceedings created a structural error requiring a new commitment proceeding.

Two justices concurred with the holding that remanding D.F.F.'s case for a new commitment hearing was the appropriate remedy. They opined that the case law cited by the majority related to a criminal defendant's right to public trial was irrelevant in civil commitment proceedings; consequently, structural error analysis is not appropriate in evaluating the case at hand.

Dissent

The dissenting three justices agreed with the majority that MPR 1.3 violates Article I, § 10 of the Washington Constitution; however, they disagreed with the majority concerning the proper remedy of the case. Specifically, the dissent disagreed with the need for a new trial for D.F.F., arguing instead that releasing the trial transcripts represented a proper remedy, given that the harm fell primarily on the public, not on D.F.F.

The dissent opined that MPR 1.3 did not violate D.F.F.'s individual constitutional rights (which were satisfied by D.F.F.'s ability to request open proceedings, under the regulations), but rather, violated the constitutional rights of the public. The minority

opinion asserted that "public interest in open courts lies not in the outcome but rather in the transparency of commitment hearings" and "a member of the general public has no legally cognizable interest in the outcome of a suit to which she is not a party and therefore no grounds to seek reversal and a new trial" (*D.F.F.*, p 365). Thus, the dissent disagreed with the remedy of remand for a new commitment proceeding for D.F.F. The dissent also found the ruling problematic from a practical standpoint, noting that the "holding will allow civil litigants who suffer no harm from closure [of proceedings]—and indeed, who may have benefited from closure—to seek new trials nevertheless by asserting the rights of the public at large" (*D.F.F.*, p 367).

Discussion

The decision illustrates fundamental differences between law and mental health with respect to privacy. The justices focused solely on the benefits of openness, without a single consideration for the benefits associated with privacy. What was obvious by its absence was any recognition of the sensitive nature of regulations around protected health information or HIPAA. Ann Egeler, attorney for the state, came closest to acknowledging the risk to privacy, when she stated in oral arguments that "the point of the rule is to protect the individual in this very unique type of setting" and that "when that information is openly debated, it is impossible to simultaneously protect that information" (*D.F.F.*, oral argument, 2009. Video available at http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2009090037B. Accessed November 4, 2013). Noteworthy also is that one of the lawyers arguing on behalf of D.F.F. was from the Allied Daily Newspapers of Washington. Details that might interest the public can encumber a person on returning to the community after inpatient treatment. Sensitive mental health information that becomes public in an open hearing can be sensationalized. At the same time, mental health professionals should not be hampered by concerns about public opinion when building a case in court for urgently needed treatment for a reluctant patient.

The Washington court's decision creates a new responsibility for the treating psychiatrist who is moving for commitment: that is, the monitoring of harm from an automatically open hearing. The treater petitions for involuntary commitment of a patient, because of an assessment that the patient's judgment of risk is impaired. Therefore, it falls to the treater to ensure that patients (and their legal counsel) are cognizant of the risks associated with failing to petition for a closed hearing. The court's decision adds a new risk to consider: beyond the risk of harm to self and others and grave disability, there is now the risk of harm from an open hearing.

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The Role of Victimization as a Mitigating Factor in Penalty and Guilt Phases

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A Defendant's History of Being Victimized Is Not a Reasonable Mitigating Factor in a Case of Extreme Abuse Leading to Death

In *People v. Gonzales*, 253 P.3d 185 (Cal. 2011), the Supreme Court of California considered an appeal by Veronica Utilia Gonzales regarding her guilt in murdering her four-year-old niece, with the special circumstances of torture (Cal. Penal Code § 190.2(a)(18) (1995)) and mayhem (Cal Penal Code § 190.2(a)(17)(X) (1995)), as well as the penalty of death. This case was appealed automatically and was upheld in its entirety by the Supreme Court of California.

Facts of the Case

On July 21, 1995, four-year old-Genny Rojas was found dead after neighbors called the police. She was the maternal niece of Ms. Gonzales and was placed with the defendant and her husband, Ivan Gonzales, in early 1995, after her birth mother and father lost custody. When police arrived at the scene, they found Genny's body cold and dry; rigor had set in. The medical examiner documented numerous inju-