

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.

Disclosures of financial or other potential conflicts of interest: None.

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

Kathryn M. Z. Smith, MA

Predoctoral Psychology Fellow in Forensic Psychiatry

Laurie Edwards, PsyD

Assistant Professor of Psychiatry

Law and Psychiatry Division

Department of Psychiatry

Yale University School of Medicine

New Haven, CT

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-

ries that showed signs of healing, which suggested that abuse had occurred before her death (e.g., petechial hemorrhaging, ligature marks around her neck, arms, and ankles). The medical examiner also documented injuries from the night of her death. A subdural hematoma, due to either violent shaking or blunt force trauma was noted. Third-degree thermal burns that removed the top layer of her skin on the lower portion of her body were recorded as the cause of death. These burns were consistent with Genny's body having been held under water that was between 140 and 148 degrees, while kneeling and with her arms outside of the tub.

The defendant and her husband were both questioned by detectives in the days following Genny's death. The couple reported that they had committed several abusive acts (e.g., hanging the child from a hook in the closet and restraining her by tying her between the knobs on a door and a drawer handle on a nightstand) as punishment, but never fully explained the fatal injuries. Ms. Gonzales initially reported that she had drawn a bath for Genny, but insisted that the water was not too hot and that Genny must have burned herself; however, after police informed her that her husband was blaming her for the murder, she began to implicate him. Ultimately, both Mr. and Ms. Gonzales were charged with murder; their cases were severed after pretrial.

Ms. Gonzales pleaded not guilty, and the main argument offered by the defense was that she was unable to come to Genny's defense, because she exhibited battered-woman syndrome. Although the testimony of several friends of Ms. Gonzales and one expert supported this defense, the prosecution argued successfully that Ms. Gonzales was not a victim or a battered woman, but a perpetrator of violence against her husband and Genny. Ms. Gonzales was convicted of felony murder with special circumstances of torture and mayhem. During the penalty phase, the jury sentenced Ms. Gonzales to death.

The case was automatically appealed, and 10 issues were brought up during the appeal to the California Supreme Court. Many were technical, but several have interesting implications for forensic psychiatry. There were several points raised on appeal related to Ms. Gonzales' claims that she had battered woman syndrome. Many of these revolved around the prosecution's questioning her status as a battered wife by questioning whether her husband was also battered. In addition, Ms. Gonzales argued

that the court violated her right not to incriminate herself when it allowed the prosecution to order her to submit to two evaluations to examine her mental status as well as the question of battered woman syndrome. Relatedly, the defense argued that the testimony by one of these experts constituted "improper profile evidence" (*Gonzales*, p 212), as he testified that a substantial portion of individuals who have been abused as children act abusively toward their own children.

Ruling and Reasoning

The California Supreme Court heard all of these issues and several more. The ruling of the lower court was affirmed in its entirety, although the majority and dissenting opinions saw some merit in several of the claims.

Regarding arguments raised about Ms. Gonzales' status as a battered woman, the court saw some merit to the claims. It agreed that the prosecutor improperly questioned Ms. Gonzales' status as a battered wife by introducing information regarding Mr. Gonzales' status as a battered husband; however, the court judged these errors to be harmless.

The court held that error occurred when the prosecution was allowed to require Ms. Gonzales to be evaluated. It noted that, because Ms. Gonzales introduced information on her mental status, the prosecution had a right to have its own experts examine her mental status. During the trial, the lower court relied on *People v. Danis*, 107 Cal. Rptr. 675 (Cal. Ct. App. 1973), which states that a trial court can require a defendant to undergo an evaluation performed by an evaluator of the prosecutor's choosing; however, the majority opinion noted that the court should have relied on *Verdin v. Superior Court*, 183 P.3d 1250 (Cal. 2008), which clarified the rule and noted that the prosecution does not have this right. Despite this error, the court decided that the matter was settled, because Ms. Gonzales introduced her mental status in court, and the lower court could have appointed an expert to evaluate Ms. Gonzales under Cal. Evid. Code § 730 (1995).

The court found no merit in Ms. Gonzales' claim that the prosecution expert's testimony constituted improper profile evidence. It noted that Ms. Gonzales introduced her own history of childhood abuse as evidence in support of battered spouse syndrome, which meant that the prosecution had a right to in-

roduce information regarding other potential outcomes of childhood abuse, such as difficulty controlling anger and an increased likelihood of committing violent acts.

Discussion

Defining the role of a defendant's own history of victimization in determining culpability and sentencing is a difficult task. In the present case, numerous individuals testified that Ms. Gonzales had been abused as a child and as an adult. This history of trauma and victimization has many implications for an individual's interpersonal functioning and development (Fergusson DM, Boden JM, Horwood LJ: Exposure to childhood sexual and physical abuse. . . . *Child Abuse Neglect* 32:607–619, 2008; Tyler KA: Social and emotional outcomes of childhood sexual abuse. . . . *Aggress Violent Behav* 7:567–589, 2002) and is associated with later problems with substance use (Fergusson DM, Horwood LJ, Lynskey MT: Childhood sexual abuse and psychiatric disorder in young adulthood. . . . *J Am Acad Child Adolesc Psychiatry* 35:1365–1374, 1996; Widom CS, Ireland T, Glynn PJ: Alcohol abuse in abused and neglected children. . . . *J Stud Alcohol* 56:207–217, 1995), as well as difficulties with emotion regulation (Tyler 2002); therefore, a history of trauma may very well be an important mitigating factor, although it was not found to be for Ms. Gonzales. It is interesting to reflect on when a defendant's history of victimization should be considered in legal cases and when the nature of the crime precludes the consideration of these factors.

Relatedly, even when a defendant's history of trauma is not considered as a mitigating factor, it may still have bearing on the legal proceedings. For example, in the present case, Ms. Gonzales was required to participate in several psychiatric evaluations. One of these evaluations was with a male psychiatrist who worked with her husband, and she chose not to participate. When someone has a history of victimization, it may be important to be more sensitive when assigning an evaluator. The failure to recognize that someone with a history of trauma may have difficulties communicating honestly and openly with individuals that remind them of a perpetrator may produce a situation in which it appears that the defendant is being uncooperative, when it may truly be a function of the pathology.

The matter of improper profile evidence in this case deserves discussion. This concern has come up in other cases where psychiatric profile evidence was used as an aggravating factor in penalty phases. For example, Cal. Penal Code § 190.3 (1995) does not list mental illness as a permitted aggravating factor; however, in *People v. Smith*, 107 P.3d 229 (Cal. 2005), the court ruled that it can be introduced as an aggravating factor as long as it is more probative than prejudicial in understanding the circumstances of the crime. Ultimately, the court ruled that testimony regarding psychiatric diagnosis or profile description is improper profile evidence only when the information presented has a large bearing on guilt or innocence. Ms. Gonzales' history of childhood abuse was noted during testimony as a factor that can increase the odds that an individual will behave violently. Although this information was not presented as proof of her guilt, it may have influenced how the jury viewed her potential for future violence as well as her involvement in Genny's fatal injuries. Given that a substantial number of defendants of violent crimes have trauma histories and are victims of childhood abuse, it is important to consider fully how these factors should be responsibly represented in the courts.

Disclosures of financial or other potential conflicts of interest: None.

Altered Mental State Tolls Statute of Limitations in Medical Malpractice Case

Elena L. Grigorenko, PhD
Clinical Psychology Intern

Madelon Baranoski, PhD
Associate Professor of Psychiatry

*Law and Psychiatry Division
Department of Psychiatry
Yale School of Medicine
New Haven, CT*

Two-Year Statute of Limitations for Filing Wrongful-Death Claim Tolloed Due to Patient's "Mental Disorder" Before Death

In *Maycock v. Hoody*, 799 N.W.2d 322 (Neb. 2011), the Supreme Court of Nebraska dismissed a medical malpractice and wrongful-death suit on the basis that the appellant failed to rebut the *prima facie*