



# Psychiatry & Behavioral Science Section - 2015

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## 127 Extreme Emotional Disturbance Defense: From the Heat of Passion to a Reasonable Explanation

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After attending this presentation, attendees will: (1) understand the history of the Extreme Emotional Disturbance (EED) defense in the mitigation of prosecutions for murder; (2) compare different states' statutes; (3) examine jury instructions for this defense; and, (4) engage in a discussion of the New York State case, *People v. Sepe*, as a case example of the EED defense. Mr. Sepe was charged with murdering his wife and used the defense that the stress regarding the preparation of a family Easter dinner led him to commit the murder.

This presentation will impact the forensic science community by increasing the understanding of the EED defense and improving competence in psychiatric assessment of defendants.

In 1967, the New York Penal Law dealing with mitigation of prosecutions of murder was revised. The criterion that the offense occurred in the "heat of passion" was replaced with "extreme emotional disturbance for which there is reasonable explanation or excuse."<sup>1</sup> As an affirmative defense, the defendant must prove he or she was provoked by the victim's actions and that a reasonable person would also be provoked.<sup>1</sup> This presentation will discuss both the history of this defense and the current New York State law. This law will be compared with the laws in other states.

A discussion of the jury instructions provided for this defense will be explored. These include: (1) the defendant must have had an extreme emotional disturbance; (2) in committing the homicide, the defendant must have acted under the influence of that extreme emotional disturbance; and, (3) there must have been an explanation or excuse for such extreme emotional disturbance that was reasonable.

There have been many studies describing the use of the "Not Criminally Responsible" or "Insanity Defense"; however, there are very few studies describing other psychiatric defenses. One such study looked at the New York County criminal justice system. The results of the study showed that similar to the insanity defense, EED defense is rarely used by defendants in the criminal justice system. The plea rate for this particular defense by criminal defendants was 0.84%.<sup>3</sup> Furthermore, the defense won the case in only one instance when in a jury trial.<sup>2</sup> In this sample, the EED defense success rate was 39% of the times that it was entered; however, it was noted this was usually when the prosecutor accepted the particular argument offered by the defense.<sup>3</sup>

The discussion will conclude with a review of the New York State case *People v. Sepe*, a prominent case utilizing the EED defense from 2009.<sup>3</sup> The judicial reasoning behind the verdict, which exemplifies the challenges of using this defense, will be highlighted.

### References:

1. Goldstein, Robert Lloyd. New York's "Extreme Emotional Disturbance" Defense. A Hybrid Creature of the Law at the Psycho-Legal Interface. In Rosner, R, Harmon RB (Eds.) *Critical Issues in American Psychiatry and the Law*, Vol. 5. Plenum Press, New York, 1989, 119-134.
  2. Kirschner, SM, Galperin GJ. The defense of extreme emotional disturbance in New York County: pleas and outcomes. *Behav Sci Law*. 2002;20(1-2):47-50.
  3. [http://www.nycourts.gov/reporter/3dseries/2013/2013\\_06030.htm](http://www.nycourts.gov/reporter/3dseries/2013/2013_06030.htm)
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### Extreme Emotional Disturbance, Murder, Defense