

## Accidents, Suicide, and Insurance

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**T**he law is a wond'rous thing. I was going to call this column "Accidental Death by Putting a Loaded Gun to One's Head and Pulling the Trigger," but the editor probably wouldn't have approved.

### The Case

Mr. and Mrs. Smith had been married for 4 years and had two children. The couple argued a lot, sometimes physically. He had recently beaten her badly and she had gone with the children to live with her parents. A month later, he came over and they had another argument, in which he hit and injured her. She got a restraining order, filed for divorce, and he was served with the papers in due course.

Mr. Smith had a long history of assaultive behavior and minor crimes. He had a few arrests for driving while intoxicated, and the police had charged him with domestic battery in at least one prior marriage. He had no formal psychiatric history, never having seen a counselor, taken psychotropic medication, or been to a mental hospital. There was no indication that he was severely depressed or psychotic during the events described below, nor at any other time in his life. There was no family history of serious mental illness or suicide.

Two days after he was served with the divorce papers, Mr. Smith came to the dress shop where his wife worked. He was not intoxicated and, although upset, did not appear to behave in an unusual manner. At first, he wanted to talk, and left when she and a security guard reminded him that he shouldn't be there. He returned, however, and tried to get Mrs. Smith to talk privately with him to "clear this thing up." When she refused, he came back a third time brandishing a handgun. He told her coworkers to leave, that he didn't want to harm them, and forced his wife to their car. The couple appeared to be arguing in the car, but could not be heard. When the mall security officers tried to talk to him from a distance, saying the police were on their way, he drove away with his wife at gunpoint.

A few hours later the car was found on a rural road, with both Mr. and Mrs. Smith dead, she of three shots to the head and chest and he of one shot to the head, through his open mouth. A suicide note was found on the seat, written to his mother and his children, which said he was sorry for what he was about to do, and he knew

he would "burn in Hell" for it. The coroner ruled the case a murder-suicide, and the local law enforcement agency closed the case.

Almost two years later, a lawsuit was filed alleging that Mr. Smith's death was an accident.

Why call an obvious "suicide" an "accident"? Read on.

Both spouses had life insurance through the same company. The wife's policy paid for her death but the company did not pay for his, explaining to the beneficiary children (through the grandparents and eventually their lawyers) that the policy did not cover suicide. Almost a year later, an attorney for their children filed suit on their behalf, attacking the wording in the suicide exception clause of the policy and alleging that Mr. Smith's life insurance should pay them because his death was not from suicide, but "accidental." The record contains reams of paperwork and precedent-quoting, followed by a judge's preliminary ruling that anyone suggesting that the death was a suicide would have an uphill battle to prove it, and that the police statements, autopsy finding, and coroner's report (all of which concluded "suicide") were irrelevant to the legal aspects of the case.

This is not a column on insurance law, nor am I (I'm fond of saying) a lawyer. Nevertheless, the case is instructive for those of us who think we know what suicide is. It's a great example of something said in an earlier column: The language of the law and the language of psychiatry and psychology often define terms quite differently, and the difference can be critical when we get involved in forensic work.

Three legal theories come to mind.

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## **Theory One: It's the correct way to apply the *rule of law*.**

For example, one may suggest that the policy wording was flawed. Life insurance policies commonly deny coverage of suicide and add "whether or not it is the result of mental illness" (or words to that effect). If the current policy said it would not pay for a self-induced death but left out those words, then a plaintiff might allege that the company didn't mean to exempt a suicide that was not due to a mental illness, and then go about the work of trying to show an absence of mental illness in order to collect.

## **Theory Two: It's the correct way to apply the logic of the law, and one odd-sounding verdict is a small price to pay for retaining the internal consistency of the system.**

The law in such cases appears to apply a definition of mental illness in suicide which is consistent with its definition of mental illness in criminal responsibility statutes ("not guilty by reason of insanity" laws). That is, did a mental disease or defect exist and, if so, did that disease or defect remove the person's ability to appreciate the nature and consequences of his self-destructive act, or (in some jurisdictions) did it make him powerless to resist the impulse to carry it out? Note that this is quite different from clinical reasoning, which might invoke an association with mental disorder merely by virtue of influence or clouded judgment associated with, for example, depression.

In the eyes of the law, death can come in only a few broad ways, such as "natural causes," "accident," "homicide," or "suicide." Each is defined somewhere, and the law tries to keep them from overlapping. A plaintiff might, by a process of elimination, show that Mr. Smith's death wasn't from natural causes or homicide, then look for either a legal definition or a psychiatric text to try to define suicide in such a way that mental illness is required. If the decedent had no mental illness, by some legal definition (above), then "accident" may be the only remaining choice (and the policy must pay for an "accident"). There may be statutes or appellate precedents in the jurisdiction that define suicide in a way consistent with this premise, and the legal doctrine of *stare decisis* ("let the decision stand") says that tampering with precedent is generally bad law.

## **Theory Three: It's the correct way to accomplish what some liberal scholars of the civil law believe is a political purpose of our judicial system.**

There are lawyers, law professors, and a few judges who believe that one purpose of the civil law is to move money from those who have it to those who need it. Separate from a "sympathy" argument which might involve, in this case, two young orphans, this theory views the legal system as a potential instrument of benevolent social change

which can, when necessary to achieve a lofty end, transcend matters of legal fact.

## **Discussion**

It is tempting for the forensic consultant to invoke some form of mental disorder, such as an acute adjustment disorder in a susceptible man following the trauma of his wife's filing for divorce (or the trauma of her refusing to reconsider). Juries may follow the intuitive (but clinically erroneous) logic of "no one in his right mind would kill his wife and himself."

But let's think about what might have happened if Mr. Smith had survived.

Killings by abusive husbands are not rare. Forensic psychiatrists and psychologists are often faced with scenarios in which real or threatened loss of the wife, often coupled with her humiliating the husband, triggers rage which may destroy either, or both. Men's sensitivity to loss—especially narcissistic loss—is more profound than we let on, and there is a subgroup of us who eventually reach the point at which either the threat, or the source of the threat, just has to be eliminated.\*

Nevertheless, juries are likely to find such men responsible for their behavior, since being angry is not excuse enough for breaking the law. The man is almost never found "not guilty by reason of insanity." It would seem reasonable that if the rage which took the first life (the victim's) extended to the second (the perpetrator's), juries would still refer to the anger (and not to any mental illness) as the most relevant factor, and not lean toward saying he didn't appreciate the nature and consequences of the suicide.

## **The Final Word**

The worst thing a psychiatrist or psychologist can do in court is offer an opinion that he or she believes is wrong, even if it is lent in the hope that it will influence the court toward what the psychiatrist thinks is the "right" verdict. That's not what we do (or what we should do, anyway). If you have a case in which the law's definitions seem to differ from clinical ones, remember that our job is to provide the best opinions we can on the mental health matters and to translate them into the court's vocabulary accurately and without misunderstanding. Let the court choose the theory it will apply.

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\*Commonly discussed as a victim dynamic in domestic violence, this is also a good reason not to confront or humiliate angry, intoxicated men without sufficient safeguards (tales of the Old West notwithstanding), since they have temporarily diminished their ego-protections with alcohol or some other substance.