

# APPENDIX A

## THE PROVOCATION PLEA IN OPERATION – AN EMPIRICAL STUDY

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1. Provocation is a plea which continues to be beset by controversy. The reasons for this are clearly outlined in the Law Commission's Consultation Paper on *Partial Defences to Murder*<sup>2</sup> and need no further elaboration. The plea, although common law based, was modified by statute in s. 3 of the Homicide Act 1957 and there can be no doubting its importance as a vehicle for reducing murder to manslaughter. However, unlike its counterpart diminished responsibility, with which it has an important interrelationship, there are no official statistics kept on the successful use of provocation as a partial defence. Rather, such pleas are contained within the total number of cases of 'other manslaughter' recorded by the Home Office in its annual compilation of Homicide Statistics. This makes the identification of provocation cases difficult. However, discussions with the Home Office Research, Development and Statistics Directorate provided a means to identify some of the cases where provocation was raised during the proceedings, resulting in either a manslaughter or murder conviction. The period chosen for this research was the five years from 1997 to 2001 which matched the period for an analogous study of diminished responsibility cases. It is important to emphasise, however, that the following study does not claim to capture all those cases where provocation was pleaded during the five year research period. The reason for this is that resources only permitted the research team to access those cases where provocation had definitely been identified by the Home Office as a relevant plea. Accordingly, the team was unable to examine all 'multiple defence' cases some of which may or may not have used the provocation plea as part of a defence strategy.
2. So far as is known, unlike diminished responsibility,<sup>3</sup> there are no empirical studies on the operation of the plea of provocation in English law.<sup>4</sup> The reasons for this may be to do with the difficulty of identifying such cases, referred to

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<sup>2</sup> Consultation Paper No 173.

<sup>3</sup> See in particular S. Dell, *Murder into Manslaughter – the diminished responsibility plea in practice* (1984, Oxford University Press).

<sup>4</sup> Although, see Professor Andrew Ashworth's "Sentencing in Provocation Cases" [1975] Crim LR 553 and the Sentencing Advisory Panel's Consultation Paper on "Sentencing of Manslaughter by Reason of Provocation", 11 March, 2004 .

above. It may also be thought that there is little to be gained from such a study as the plea itself is essentially a matter for the jury, upon whose deliberations no research can be undertaken. However, be that as it may, a study such as the following, which gives data on some aspects of the provocation plea, is hopefully of some merit.

### The Research Findings

3. During the research period of 1997-2001 there was a total of 71 defendants where provocation was identified as a defence which was raised during the course of the trial process. These 71 defendants resulted from cases with 63 victims.<sup>5</sup> This in turn meant that there were four cases (see cases 1 & 2; 36 & 37; 38 & 39; 59 & 60) where there was one relevant co-defendant and two cases (see cases 19, 20 & 21; 32, 33 & 34) with two relevant co-defendants (relevant in the sense that each of these co-defendants also faced a charge of homicide, with provocation as a possible plea). The following findings will be presented by giving data on each of the 71 defendants and where relevant on each of the 63 victims. This means that the totals will vary between 71 for defendants and 63 for victims.
4. With regard to sex and age, unsurprisingly, males constituted the vast majority of defendants with 60 (84.5%) males compared to 11 females (15.5%). This compares in the recent Homicide Statistics to an overall rate of 65% for males, excluding the victims of Harold Shipman.<sup>6</sup>

Tables 1a and 1b give a breakdown of the sex/age distribution of the defendants. The mean age for defendants was 31.5 (age range 16-55).

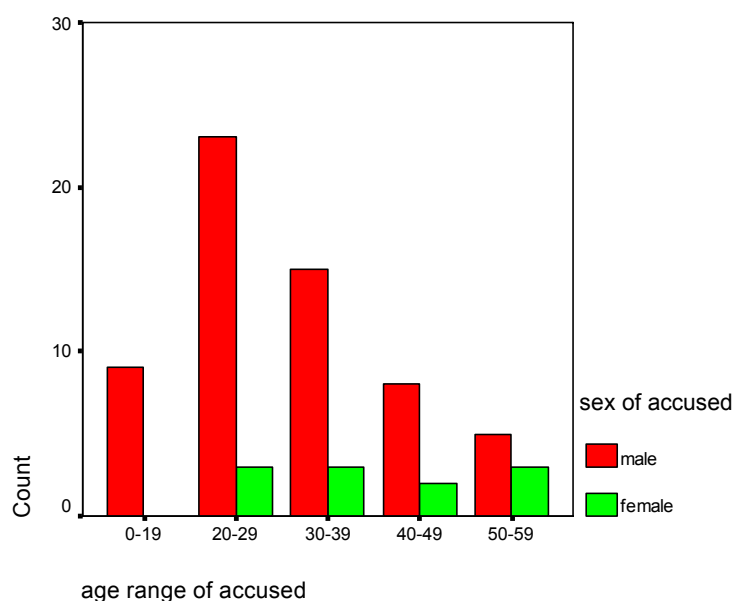
**Table 1a age range of accused \* sex of accused Crosstabulation**

		sex of accused		
		male	female	Total
age range of accused	0-19	9	0	9
	20-29	23	3	26
	30-39	15	3	18
	40-49	8	2	10
	50-59	5	3	8
Total		60	11	71

<sup>5</sup> A very brief account of each case is given in an annex. The cases are numbered 1-71 so as to include all the defendants in the sample. Any reference to a case number in the text can be followed up in the annex.

<sup>6</sup> See Crime in England and Wales 2002/2003: Supplementary Volume 1: Homicide and Gun Crime, Chapter 1, Homicide by Judith Cotton at page 3. As the Shipman case distorts previous trends his victims have been excluded.

**Table 1b age range of accused \* sex**



The ethnic breakdown of defendants is presented in Table 2 and shows that around 87% (n=62) were White and born in the United Kingdom.

**Table 2 born UK \* ethnic group Crosstabulation**

		ethnic group			Total
		white	black	asian	
born UK	yes	62	2	0	64
	no	3	1	3	7
Total		65	3	3	71

5. With regard to criminal records although 67.6% (n=48) of the sample had previous convictions, (two of whom were women) only 42% (n=30) had been convicted of offences of violence (of which only one was female) and a mere 8.5% (n=6, all male defendants) had perpetrated some form of domestic violence. Further, seven of the eleven female defendants (63.6%) had been the victims rather than the perpetrators of domestic violence.

6. Turning to victims, their sex/age distribution is presented in Table 3. The mean age for victims was 43.6 (range 16-77). Also, it may seem surprising that only 16 (22.4 %) of the victims were female, in the light of the concerns regularly expressed about men killing women and then pleading provocation successfully.

**Table 3 age range of victims \* sex of victim Crosstabulation**

		sex of victim		Total
		male	female	
age range of victims	0-19	5	0	5
	20-29	12	5	17
	30-39	12	6	18
	40-49	6	4	10
	50-59	10	0	10
	60-69	1	0	1
	70-79	1	1	2
Total		47	16	63

7. The relationship of the victim to each of the 71 accused is given in Table 4. As expected in the vast majority of cases victims (88.7%, n=63) were already known to the accused at the time of the killing, with only 11.3% (n=8) being classed as strangers. The biggest group of 32.4% (n=23) is “other known (acquaintance)”.

**Table 4 relationship of victim to accused**

	Frequency	Percent	Cumulative Percent
parent, step parent	2	2.8	2.8
spouse	6	8.5	11.3
cohabitant	10	14.1	25.4
ex cohabitant	2	2.8	28.2
lover	6	8.5	36.6
other family	1	1.4	38.0
friend	10	14.1	52.1
stranger	8	11.3	63.4
neighbour	3	4.2	67.6
other known (acquaintance)	23	32.4	100.0
Total	71	100.0	

8. It has been stated recently that “15 per cent of all recorded homicides in England and Wales could be categorised under a ‘domestic’ heading. It is also clear from national and international data, and research literature, that women are most at risk from being killed by a partner. According to the Homicide Index, between 1995 and 1999, 44% of all female homicide victims in England and Wales – and 50% of those killed by men – were killed by a current or former sexual partner. This compares to just seven per cent of all male victims”.<sup>7</sup> Further, overall the recent Homicide Statistics reveal that “40% of male victims and 66% of female victims knew the main suspect”.<sup>8</sup>
9. It can be seen below from Table 5 that 100% of the female victims in the research sample knew the accused, the eight cases in the “stranger” category all relating to male victims.
10. Table 5 attempts to show the relationships of the victims to each of the 71 defendants from which it can be seen that 24 defendants (33.8%) killed a spouse, cohabitant, ex-cohabitant or lover. It can also be seen that of the female victims who were killed by current or former sexual partners, one was also jointly killed by two “other known (acquaintances)”. They were a female and male co-defendant who had recently come to stay for a short period with the victim and her partner (see cases 19, 20 & 21). The single case classed as “friend” was the case of a male who killed his female friend with whom he was staying (see case 56). Although they knew one another well there was no suggestion on the facts of the case of any sexual relationship. Accordingly, the total number of female victims who were killed by a current or former sexual partners is 15 (93.8%), while by way of contrast only 9 (19.1%) of all male victims were killed by current or former sexual partners. This very high percentage of female victims who were killed by a sexual partner is almost certainly indicative of the fact that the cases in question were all the product of ‘provocation’. What again is interesting, however,

<sup>7</sup> Fiona Brookman and Mike Maguire, *Reducing Homicide: Summary of a review of the possibilities*, RDS Occasional Paper No 84 (January 2003) at page 1.

<sup>8</sup> Crime in England and Wales 2002/2003, op. cit.

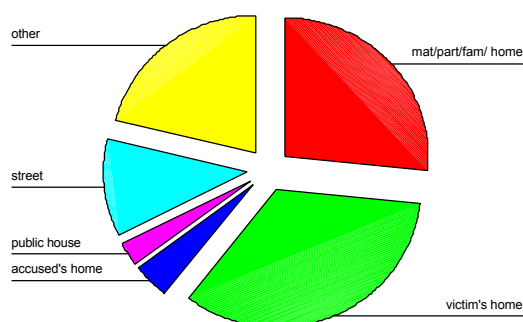
is that the research sample only accounted for a total of 16 (25.4%) female victims killed by 17 males and one female as a co-defendant (see cases 19,20 & 21).

**Table 5 relationship of victim to accused \* sex of victim Crosstabulation**

		sex of victim		Total
		Male	female	
relationship of victim to accused	parent, step parent	2	0	2
	spouse	2	4	6
	cohabitant	5	5	10
	ex cohabitant	0	2	2
	lover	2	4	6
	other family	1	0	1
	friend	9	1	10
	stranger	8	0	8
	neighbour	3	0	3
	other known (acquaintance)	21	2	23
	Total	53	18	71

11. The place or venue where the killing actually took place is given in Tables 6a and 6b. It can be seen from these that the vast majority of the offences took place in the victim's home (33.8%, n= 24) or the matrimonial/partner's/family home (26.8%, n=19). Taken together these two categories account for 60.6% (n=43) of the research sample. If one includes the accused's home (n=3) this rises to 64.8%.

**Table 6a venue of offence**



**Table 6b venue of offence**

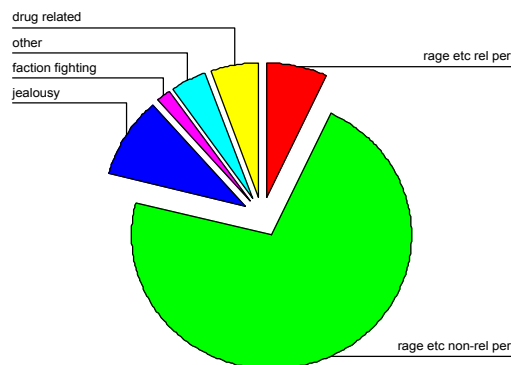
	Frequency	Percent	Cumulative Percent
matrimonial/ partner's/family home	19	26.8	26.8
victim's home	24	33.8	60.6
accused's home	3	4.2	64.8
public house	2	2.8	67.6
street	8	11.3	78.9
other	15	21.1	100.0
Total	71	100.0	

12. Tables 7a and 7b give details of the “motive for the killing”. As might be expected the two categories of “rage, quarrel or fight” predominate, accounting for 78.9% (n=56) of the total. If one includes “jealousy” (n=7) this rises to 88.7 %. Further, it is interesting to note that the motive in respect of all the female victims fell within these three categories. The most prevalent category in the recent Homicide Statistics is “quarrel, revenge or loss of temper”, particularly where the accused and victim were known to each other.<sup>9</sup>

**Table 7a motive for killing**

	Frequency	Percent	Cumulative Percent
rage, quarrel or fight with related person	5	7.0	7.0
rage, quarrel or fight with non-related person	51	71.9	78.9
jealousy	7	9.9	88.7
faction fighting	1	1.4	90.1
drug related	4	5.6	95.7
other	3	4.2	100.0
Total	71	100.0	

**Table 7b motive for killing**



13. Tables 8a and 8b show the “method of killing” and as expected the use of a “sharp instrument” predominates at 57.7% (n=41). This is much greater than revealed in the recent Homicide Statistics where although it remains the most common method of killing, the figure is 33%.<sup>10</sup> The sole case of “blunt instrument” in respect of a female defendant applied to an accomplice who was found unfit to plead (see cases 59 & 60). The two cases of “kicking or hitting” in respect of female defendants occurred in cases 19, 20 & 21 and 70. The sole case of “burning” was a case where an Asian woman set fire to her husband’s genitals after he had informed her that he had divorced her a number of years ago in Pakistan (see case 50).

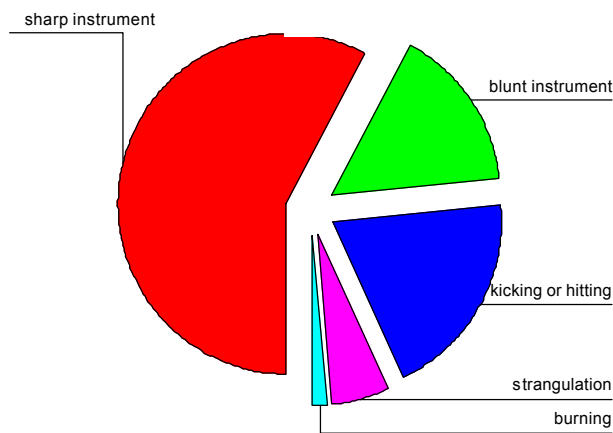
<sup>9</sup> Ibid. at Table 1.06.

<sup>10</sup> Homicide Statistics, op. cit Table 1.03.

**Table 8a method of killing**

	Frequency	Percent	Cumulative Percent
sharp instrument	41	57.7	57.7
blunt instrument	11	15.5	73.2
kicking or hitting	14	19.7	93.0
strangulation	4	5.6	98.6
burning	1	1.4	100.0
Total	71	100.0	

**Table 8b method of killing**



14. It can be seen from Table 9 that the method of killing for those victims who were killed by a current or former sexual partner was mainly a “sharp instrument” (n=16).

**Table 9 relationship of victim to accused \* method of killing Crosstabulation**

		method of killing					Total
		sharp instrument	blunt instrument	kicking or hitting	strangulation	burning	
relationship of victim to accused	parent, step parent	1	1	0	0	0	2
	spouse	3	1	0	1	1	6
	cohabitant	7	1	2	0	0	10
	ex cohabitant	2	0	0	0	0	2
	lover	4	0	0	2	0	6
	other family	0	1	0	0	0	1
	friend	4	1	4	1	0	10
	stranger	3	2	3	0	0	8
	neighbour	2	1	0	0	0	3
	other known (acquaintance)	15	3	5	0	0	23
Total		41	11	14	4	1	71

## Aspects of the Trial

15. The Crown Court files could not shed light on the intricacies of the trial in each case but the following data were extracted and may help to explain a number of different aspects of what took place. First, Table 10 shows that there was no trial in respect of 23.9% (n=17) of the defendants, four of whom were female defendants. This total includes the case where a female co-defendant was found unfit to plead (see cases 59 & 60) Also in three of the cases, male co-defendants pleaded guilty to murder despite some evidence of provocation (see cases 36 & 37, 38 & 39 and 59 & 60).<sup>11</sup> This means that there were 13 (18.3%) cases in total where the defendants' pleas of guilty to manslaughter were accepted by the prosecution.<sup>12</sup>

**Table 10 sex of accused \* jury trial Crosstabulation**

		jury trial		Total
		yes	no	
sex of accused	male	47	13	60
	female	7	4	11
Total		54	17	71

16. In 44 cases the details available on the file revealed that a defence other than provocation was possibly available to the accused. In 19 of these cases a further defence was raised. Table 11a gives an indication of the first defence while Table 11b gives similar details of any further defence raised. It can be seen from Table 11a that the most frequent alternative first defence was "lack of intent"<sup>13</sup> followed by "self defence".

**Table 11a other pleas 1**

	Frequency	Percent	Cumulative Percent
none of the following	27	38.0	38.0
lack of intent	26	36.6	74.6
self defence	10	14.1	88.7
diminished responsibility	6	8.5	97.2
intoxication	2	2.8	100.0
Total	71	100.0	

17. Of those where a further defence was considered, self defence and causation were most frequent. Both tables reveal that in only 9 cases was diminished responsibility a possible alternative plea.

<sup>11</sup> In each pair of these cases one of the two co-defendants pleaded guilty to murder.

<sup>12</sup> Three of those 13 were female defendants, which accounts for 23% of those whose guilty to manslaughter pleas were accepted. As noted earlier, females comprised a mere 15.5% of defendants in the sample.

<sup>13</sup> If the explanation for "lack of intent" was "intoxication" this is specified separately in Tables 11a and 11b.



**Table 11b other pleas 2**

	Frequency	Percent	Cumulative Percent
none of the following	52	73.2	73.2
self defence	7	9.9	83.1
causation	8	11.3	94.4
diminished responsibility	3	4.2	98.6
intoxication	1	1.4	100.0
Total	71	100.0	

18. As for the use of psychiatric reports, 49 of the accused had at least one psychiatric report on file.

19. With regard to verdicts, Tables 12a and 12b reveal that 43.7% (n=31) of the cases, all of which were male defendants except for one case of a female co-defendant (see cases 19, 20 & 21), resulted in murder convictions. As already mentioned above, three of these murder convictions resulted from pleas of guilty to that offence. This means that out of 54 contested cases where provocation was under consideration 28 (51.9%) resulted in murder convictions. Even allowing for the 13 cases where the Crown accepted a plea of guilty to manslaughter, overall the defence was unsuccessful in 41.8% of cases. While the files shed no light on the reasons for these failures to obtain manslaughter convictions, the respective failure rates are by no means trivial.

**Table 12a verdict**

	Frequency	Percent	Cumulative Percent
guilty of murder	31	43.7	43.7
guilty of manslaughter	15	21.1	64.8
provocation manslaughter	24	33.8	98.6
unfit to plead	1	1.4	100.0
Total	71	100.0	

**Table 12b verdict \* sex of accused Crosstabulation**

Verdict	sex of accused		
	male	Female	
guilty of murder	30	1	31
guilty of manslaughter	10	5	15
provocation manslaughter	20	4	24
unfit to plead	0	1	1
Total	60	11	71

20. Of those that succeeded in obtaining a manslaughter conviction it can be seen from Tables 13a and 13b that there were 15 cases where it was uncertain what precise form the manslaughter verdict took. However, in 24 (20 males and 4

females) cases it seemed reasonably clear from the file details that the manslaughter verdicts were based on provocation, six of which were uncontested. In only two cases was it clear that the accused pleaded guilty to manslaughter on the basis of a combination of provocation and diminished responsibility. In one, the plea was not accepted and the jury convicted D of murder (see case 35), while in the other (case 61) the basis of the manslaughter verdict is unclear.

**Table 13a verdict \* jury trial Crosstabulation**

Verdict	jury trial		Total
	yes	No	
guilty of murder	28	3	31
guilty of manslaughter	9	6	15
provocation manslaughter	17	7	24
unfit to plead	0	1	1
Total	54	17	71

**Table 13b verdict \* jury trial \* sex of accused Crosstabulation**

Sex of accused	Verdict	Jury trial		Total
		Yes	No	
Male	guilty of murder	27	3	30
	Guilty of manslaughter	6	4	10
	Provocation manslaughter	14	6	20
	Total	47	13	60
Female	Guilty of murder	1	0	1
	Guilty of manslaughter	3	2	5
	Provocation manslaughter	3	1	4
	Unfit to plead	0	1	1
Total	7	4	11	

21. With regard to sentences Table 14a shows that overall, 22.5% (n=16) of defendants received a sentence of between 5 and 7 years, while 16.9% (n=12) fell within the 3 and 5 year category. Table 14b reveals the breakdown of sentences in relation to verdict and gender. Of those convicted of manslaughter (n=39), 6 defendants (all males, 15.4%) were sentenced to between 7 and 10 years, 16 defendants (all males except one, 41%) received sentences of between 5 and 7 years and 12 defendants (7 males and 5 females, 30.1%) fell within the 3 and 5 category.

**Table 14a sentence**

Sentence	Frequency	Percent	Valid Percent	Cumulative Percent
mandatory life	31	43.7	43.7	43.7
between 7 and 10 years	6	8.5	8.5	52.1
between 5 and 7 years	16	22.5	22.5	74.6
between 3 and five years	12	16.9	16.9	91.5
between 1 and 3 years	2	2.8	2.8	94.4
probation/supervision	3	4.2	4.2	98.6
unfit to plead	1	1.4	1.4	100.0
Total	71	100.0	100.0	

**Table 14b sentence \* verdict \* sex of accused Crosstabulation**

sex of accused Sentence		Verdict				Total
		guilty of murder	Guilty of manslaughter	provocation manslaughter	unfit to plead	
male	mandatory life	30	0	0		30
	between 7 and 10 years	0	0	6		6
	between 5 and 7 years	0	5	10		15
	between 3 and five years	0	4	3		7
	between 1 and 3 years	0	1	0		1
	probation/supervision	0	0	1		1
	Total	30	10	20		60
female	mandatory life	1	0	0	0	1
	between 5 and 7 years	0	0	1	0	1
	between 3 and five years	0	3	2	0	5
	between 1 and 3 years	0	0	1	0	1
	probation/supervision	0	2	0	0	2
	unfit to plead	0	0	0	1	1
	Total	1	5	4	1	11

22. Below Table 15 shows the relationship between sentence and verdict. It can be seen from this that 17 provocation verdicts received 5 years or more compared to only 5 of the manslaughter verdicts.

**Table 15 sentence \* verdict Crosstabulation**

Sentence	Verdict				
	guilty of murder	Guilty of manslaughter	provocation manslaughter	unfit to plead	
mandatory life	31	0	0	0	31
between 7 and 10 years	0	0	6	0	6
between 5 and 7 years	0	5	11	0	16
between 3 and five years	0	7	5	0	12
between 1 and 3 years	0	1	1	0	2
probation/supervision	0	2	1	0	3
unfit to plead	0	0	0	1	1
Total	31	15	24	1	71

23. Table 16 shows the relationship between the sentence and the sex of the victim. It reveals that of the 16 female victims, 11 resulted in murder convictions. These eleven murders were perpetrated by 10 single male defendants and in cases 32, 33 & 34 two male co-defendants and one female co-defendant. So far as this particular study is concerned what this may indicate is that the male defendants who killed women were more likely to be convicted of murder rather than manslaughter. As for provocation, only four cases (13, 24, 48 and 57) of a male killing a female clearly resulted in a successful plea of provocation, two receiving eight years (13 & 57) and four years (24 & 48) imprisonment respectively.

**Table 16 sentence \* sex of victim Crosstabulation**

Sentence	sex of victim		Total
	male	female	
mandatory life	14	11	25
between 7 and 10 years	4	2	6
between 5 and 7 years	15	1	16
between 3 and five years	9	2	11
between 1 and 3 years	2	0	2
probation/supervision	3	0	3
Total	47	16	63

24. Table 17 below shows the relationship between the sentence, the sex of the accused and the relationship of the victim to the accused. In doing so it reveals the sentencing pattern of those women who were convicted of the manslaughter of a sexual partner. It shows that two received a community sentence, one was sentenced to between 1 and 3 years, four to terms of 3-5 years and one 5-7 years imprisonment. By way of comparison, no men convicted of manslaughter of a female sexual partner were given community sentences, while 2 were given terms of 3-5 years, one 5-7 years and two 7-10 years imprisonment.

**Table 17 sentence \* sex of accused \* relationship of victim to accused Crosstabulation**

Relationship of victim to accused	Sentence	sex of accused		Total
		male	female	
parent, step parent	Mandatory life	1		1
	between 3 and five years	1		1
	Total	2		2
spouse	Mandatory life	3	0	3
	between 3 and five years	1	1	2
	unfit to plead	0	1	1
	Total	4	2	6
cohabitant	Mandatory life	3	0	3
	between 7 and 10 years	1	0	1
	between 5 and 7 years	1	0	1
	between 3 and five years	0	2	2
	between 1 and 3 years	0	1	1
	probation/supervision	0	2	2
	Total	5	5	10
ex cohabitant	Mandatory life	1		1
	between 7 and 10 years	1		1
	Total	2		2
lover	Mandatory life	3	0	3
	between 5 and 7 years	0	1	1
	between 3 and five years	1	1	2
	Total	4	2	6
other family	between 5 and 7 years	1		1
	Total	1		1
friend	Mandatory life	6		6
	between 5 and 7 years	3		3
	between 1 and 3 years	1		1
	Total	10		10
stranger	Mandatory life	4		4
	between 7 and 10 years	2		2
	between 5 and 7 years	2		2
	Total	8		8
neighbour	between 5 and 7 years	2		2
	between 3 and five years	1		1
	Total	3		3
other known (acquaintance)	Mandatory life	9	1	10
	between 7 and 10 years	2	0	2
	between 5 and 7 years	6	0	6
	between 3 and five years	3	1	4
	probation/supervision	1	0	1
	Total	21	2	23

## Concluding Remarks

25. Clearly the study presented here has its limitations. In no way does it claim to catch all cases where provocation was pleaded during the research period of 1997-2001, the precise total of which is uncertain. Nevertheless, it does present data relating to 71 defendants where provocation was an issue of relevance within the trial process. In doing so the data from this particular piece of empirical research seem to reveal the following points:

- Out of a sample of 71 defendants there were 11 females (15.5%), see Table 1a.
- Victims were predominantly male (74.6%, n=47) with only 16 (22.4 %) females, see Table 3.
- The vast majority of the victims (88.7%, n=63) were already known to the accused, only 11.3% all males (n=8) were strangers. All of the female victims except one knew the victim. 93.75 (n=15) of the female victims were killed by a current or former sexual partner compared to nine of the male victims (19.1%), see Table 5.
- The vast majority of the offences took place in the home of the victim/partner/accused. This accounted for 64.8% (n=46) of the sample, see Table 6b.
- “Rage, quarrel or fight” accounted for 78.9% (n=56) of the “motives” for the offences, see Table 7a.
- The most common method of killing was a “sharp instrument” (59.2% n=42), see Table 8a.
- 13 defendants, three of whom were females, had their guilty to manslaughter pleas accepted by the prosecution. All 10 male defendants whose pleas were accepted had killed male victims.
- Out of 54 contested cases where provocation was under consideration 28 resulted in murder convictions. Even allowing for the 13 cases where the Crown accepted a plea of guilty to manslaughter, overall the defence was unsuccessful in 41.8% of cases.
- 17 provocation verdicts resulted in sentences of imprisonment of 5 years or more compared to 5 unspecified manslaughter verdicts, see Table 15.
- Men (together with one female co-defendant) killed all the 16 female victims. In total 12 male defendants who killed 11 female victims were convicted of murder, see Table 16. Only four cases of a male killing a female (25%) clearly resulted in a successful provocation plea.
- Of the 11 female defendants only one killed another female. She in turn was the only female convicted of murder. The remaining 10 all killed men, of whom 9 were in a sexual relationship with the victim. Nine were convicted of manslaughter and one was found unfit to plead.

## **ANNEX: PROVOCATION CASE SYNOPSES**

### **Cases 1& 2**

Two co-defendants, D1, a male of 35 and a D2 female aged 23, went to the victim's house. V was aged 67 and was alleged to have sexually abused D2. They wished to confront him and bring the abuse into the open. They argued. D2 slapped the victim. D1 got two knives from the kitchen. D2 held a knife at the victim's back. It entered the victim's body after V had lunged at D2. They claimed it was accidental. The victim, who had terminal cancer, died of stab wounds and injuries to his head. A jury convicted both defendants of manslaughter for which they each received three years imprisonment.

### **Case 3**

D, a male aged 40, returned to his flat to hear V's TV on at a very high volume. There had been problems over the years about noise. D went upstairs to V's flat. There was a fight. D picked up the television set above his head and brought it down on V's head. D then applied pressure with the TV on top of the victim suffocating him. D admitted killing V, aged 53, "after a violent and heated argument. Many years of provocation led me to explode into a murderous and uncontrollable fit of fury". A jury convicted D of manslaughter and he received a sentence of six years imprisonment.

### **Case 4**

D, a male aged 33, used to buy drugs from V, aged 30, a known hard man. He visited D in his home and demanded money for drugs. There was a fight. V threatened D with a knife. D grabbed the knife and stabbed V eighteen times. D claimed self-defence and provocation. His plea of guilty to manslaughter was accepted and he received four years imprisonment.

### **Case 5**

D, a male aged 31, worked as a security guard at a supermarket. V, a female aged 40, also worked there. D claimed they sometimes had consensual sex in return for him stealing food for her. But she threatened to report him for rape and to tell his wife. In consequence, he strangled her behind the staff entrance of the supermarket. A psychiatric report found no evidence of mental disorder and concluded that diminished responsibility was not relevant. A jury convicted of murder and received a sentence of life imprisonment.

### **Case 6**

D, a male aged 32, owed V's sister money for cannabis, which he had never given her. V, who had never met D, went to his house. He threatened to remove things from the house. D asked him to leave. A fight followed. D's partner got a knife from the kitchen. D got hold of it and stabbed V, aged 27. A psychiatric report found no mental disorder and was of the view that diminished responsibility was not relevant. A jury convicted D of manslaughter by reason of provocation and he received five years imprisonment.

### **Case 7**

D, a male-aged 30, had an argument with V, a male aged 19, outside a local pub. A single blow to the head killed V, who was known to D as they drank together. D

claimed he acted in self-defence. A plea of guilty to manslaughter was accepted and D received 21 months imprisonment.

#### **Case 8**

D, a male aged 26, had been assaulted by V, a male aged 25, on four previous occasions. V entered D's home with a knife and threatened him and his family. D managed to get possession of the knife and lashed out with it killing V. A jury returned a majority verdict of manslaughter by reason of provocation. D received nine years imprisonment which was reduced to seven years on appeal.

#### **Case 9**

D, a male aged 37 who was born in Ireland, went to V's flat where D's sister had returned having sought refuge from V's domestic violence by staying for a period at D's home. There was a long history of confrontation between D and V, aged 48. As they argued they fought and D hit and kicked V repeatedly killing him. A psychiatric report stated that there was no diminished responsibility. However, it concluded that there was compelling evidence that D had personality characteristics, namely dependent personality disorder and paranoid jealousy, "which made him singularly vulnerable to the provocation" such that "a reasonable man with these stable characteristics of personality would have behaved as he did under such very extreme provocation." A jury returned a manslaughter verdict on the basis of provocation and D was given a probation order for three years.

#### **Case 10**

D, a male aged 47, killed V, a male aged 48, who he had met in prison. It was described as a frenzied attack made after V had insulted him at the home of an acquaintance. The trial was stopped when D pleaded guilty to manslaughter. No jury was sworn. D received five years imprisonment.

#### **Case 11**

D, a male aged 21, killed V, a 72 year-old male, by striking him on the head with a heavy object. V was gay and the offence took place after he had propositioned D for sex. D, who had known V for several years, said he "flipped" and afterwards took V's TV set to make it look like a burglary. A psychiatric report prepared for the court found no evidence of mental disorder. Immediately before the trial D admitted the killing but claimed he had been provoked. A jury returned a murder conviction.

#### **Case 12**

D, a male aged 22, killed V, a 34 year-old male, in his partner's bedroom. A fight had ensued after D had found V having sex with his girlfriend. D hit V with a metal pole and also used a knife. D had consumed both alcohol and cannabis. A psychiatric report for the defence found no abnormality of mind but concluded that anxiety and "the disinhibitory effects of alcohol and cannabis may have further contributed to his extreme distress and anger". A jury convicted D of manslaughter by reason of provocation and he received six years imprisonment.

#### **Case 13**

D, a male aged 32, killed his 39-year-old partner by inflicting a single knife wound to her chest. V had been the subject of repeated assaults by D. Prior to the offence D



and V argued. D claimed that V had goaded him about his appearance and the fact that when he went out shopping he had not bought what was asked of him. In his statement D claimed V had provoked him. A psychiatric report prepared for the court found no diminished responsibility but concluded that D "would have been prone to a considerable degree of disinhibition through the combined effects of alcohol and drugs." A jury convicted D of manslaughter by reason of provocation for which he received a sentence of 8 years and 18 months consecutive for breach of a suspended sentence, making a total of nine and a half years imprisonment.

#### **Case 14**

D, a male aged 21, was threatened by V, a male aged 29, over a period of time. His mother was also threatened. He went to a friend's home. V was already there. A fight broke out and D hit V over the head with a garden spade, killing him. A jury returned a majority verdict of guilty to manslaughter by reason of provocation and he received six years imprisonment.

#### **Case 15**

D, a male aged 26, killed his female partner, aged 29, by stabbing her with a kitchen knife. D was jealous of V's relationship with another man. A jury returned a majority verdict of murder.

#### **Case 16**

D, a male aged 31, killed V, a 52 year-old male, by repeatedly hitting him after an argument. They lived together in a DSS hostel. V had complained about the noise and was accused of being a grass. D and his friends had been drinking heavily. The jury returned the verdict of guilty to manslaughter by reason of provocation. D received a sentence of six years imprisonment.

#### **Case 17**

D, a male aged 26 and born in Australia, had an argument with his older brother who accused a mutual friend of being a grass to the police. The argument took place as they were parked at a local beauty spot. D hit V over the head with a car jack. A psychiatric report for the defence found no diminished responsibility but concluded that this was a case of "battered brother syndrome" and that the jury should consider the whole of what the deceased said and did to D. D's plea of guilty to manslaughter by reason of provocation was accepted and he received a sentence of five years imprisonment.

#### **Case 18**

D, a male aged 17, stabbed his stepfather, aged 34, after an argument at the family home. At the time D was intoxicated. A psychiatric report found no evidence of mental disorder. A plea of guilty to manslaughter by reason of provocation was accepted and D received a sentence of four years imprisonment.

#### **Cases 19, 20 & 21**

D1, aged 32, had a stormy relationship with his female partner, the 37 year-old V. The two co-defendants, a male-aged 28 and a female aged 36, came to stay. They all spent the day of the offence drinking. There was an argument because V was due to give evidence against D1 for domestic violence. V was beaten to death. Each

blamed the other. Psychiatric reports on two of the defendants found no mental disorder. The jury convicted each of the defendants of murder.

#### **Case 22**

D, a male aged 54, killed his female ex partner, aged 33, by stabbing her in the stomach. D hounded V to resume their relationship but she told him she was to marry a former partner. D went to her home and stabbed himself after the offence. A psychiatric report for the prosecution found no mental disorder but concluded that although D had experienced feelings of jealousy "these were within the normal range and not pathological." A jury convicted him of murder.

#### **Case 23**

D, a male aged 32 and born in Bangladesh, stabbed his wife, aged 25, to death after an argument over the burning of some food while she was cooking. A psychiatric report instructed by the defence concluded that D was suffering from a depressive illness and that this "abnormality of mind was sufficiently severe to substantially impair his responsibility for the alleged offence". The jury returned a majority verdict of murder.

#### **Case 24**

D, a male aged 52 and born in Vietnam, stabbed his wife at the family home after she had refused to end an affair. D said she had laughed at him. A psychiatric report for the prosecution found abnormal personality traits affected by jealous possessiveness of his wife but concluded that this was not enough to support a plea of diminished responsibility. The jury returned a majority verdict of manslaughter for which he received four years imprisonment.

#### **Case 25**

D, a 31 year-old male, had an argument with a group of boys on the bus. He later sought them out. A fight followed and D stabbed V, a 16-year-old male, who was one of the group on the bus. D pleaded provocation, self defence and lack of intent. A jury convicted him of murder.

#### **Case 26**

D, a black male aged 32, was involved in a long-standing dispute with V, a male aged 42, who went to D's home and taunted him. D went out armed with a knife. There was an argument and D stabbed V. A psychiatric report prepared for the court found no mental disorder and concluded that a defence of diminished responsibility should not be available. A plea of guilty to manslaughter was accepted and D received a sentence of three and a half years imprisonment.

#### **Case 27**

D, a male aged 20, went to V's home to collect the proceeds of a burglary they had recently committed. An argument ensued. D stabbed V, aged 22, in the chest. D claimed that V had become violent. D's plea of guilty to manslaughter was accepted and he received a sentence of six years imprisonment.

**Case 28**

D, a male aged 23, who was a drug addict, stabbed the victim, a male aged 29, who was a drug dealer. D felt that V was pushing him to go back on to heroin. D entered the house of a friend of the victim's having consumed drink and drugs, he claimed he could not remember anything about the attack. A psychiatric report for the prosecution ruled out diminished responsibility but mentioned the possibility of provocation linked to D's physical dependence on drugs as a characteristic. The jury convicted D of murder.

**Case 29**

D, a male aged 36, was involved with the victim in the supply of drugs. Having bought drugs from V, a male aged 34, D sold them on. V went to D's flat to get him to pay the money he owed. An argument followed and D stabbed V twice. A plea of guilty to manslaughter on the basis of provocation was accepted and D was sentenced to 8 years imprisonment, reduced to five years on appeal.

**Case 30**

D, a female aged 32, killed her partner, aged 42, by stabbing him. They had been drinking and had an argument at their home. D claimed V was aggressive towards her and feared he was going to attack her. In her statement D said "he was going at me, I didn't mean to do it." Unable to calm V down D had run into the kitchen to get a knife. She then claimed D staggered towards her and was impaled on the knife. A psychiatric report for the defence diagnosed alcohol dependence syndrome and battered woman syndrome as a basis for diminished responsibility. It also stated "if the defence of provocation was presented... the psychological effect of battered woman syndrome was an enduring characteristic." The jury returned a manslaughter verdict and D was sentenced to four years imprisonment.

**Case 31**

D, a male aged 34, killed V, a male aged 58. Following his release from prison D visited a house and took part in an arm wrestling competition with V who lost. An argument followed and D repeatedly struck V with a broom handle. Prior to the offence D had consumed drink and drugs. A psychiatric report for the prosecution revealed no diminished responsibility. The jury returned a verdict of guilty to manslaughter by reason of provocation. D received a sentence of eight years imprisonment.

**Cases 32, 33 & 34**

3 male co-defendants aged 18, 19 and 22 were involved in a street fight which resulted in V, a male friend aged 34, being beaten to death. All three claimed the victim had provoked them. Psychiatric reports on the defendants ruled out diminished responsibility. The jury convicted all three of murder

**Case 35**

D, a male aged 28 killed his lover, aged 28, by stabbing her with a pair of scissors and a knife. After unprotected sexual activity V had told him that she was HIV positive. A psychiatric report for the defence found evidence of post traumatic stress disorder and substance abuse problems which "could be regarded as causing a degree of diminution of responsibility". It also stated that individuals who suffer from post traumatic stress disorder are "said to be more prone to acts of violence"

because of irritability or outbursts of anger". D pleaded guilty to manslaughter on the basis of a combination of provocation and diminished responsibility. The jury returned a majority verdict of murder and D was sentenced to life imprisonment.

#### **Cases 36 & 37**

Two male co-defendants, aged 20 and 22, had an argument with V, a male aged 29, who was a stranger. V, who was blind, was alleged to have committed a rape. They argued in a car park outside a pub. V was beaten to death. Both Ds were intoxicated. One of the Ds pleaded guilty to murder and the other was convicted of murder by a jury.

#### **Cases 38 & 39**

Two male co-defendants, both aged 22, knew the victim, a male aged 59, who had made a homosexual advance to one of the defendants, D1. As a result D1 armed himself with a knife before returning to the victim's flat with his co-defendant. A struggle took place and the victim was stabbed to death by D1 with D2 present. A psychiatric report on D1 noted a long history of anti-social behaviour and drug abuse but found no mental disorder. D1 pleaded guilty to murder while a jury convicted D2 of murder after a trial.

#### **Case 40**

D, a male aged 18, was involved in an argument with the victim, a male aged 29, outside the latter's house. The argument was about drugs. D armed himself with a knife and confronted V who he stabbed to death. D admitted the stabbing but claimed self-defence and provocation. A jury convicted him of manslaughter for which he received six years detention and one year consecutive for having an article with a blade in a public place. A psychiatric report for the prosecution found no mental disorder and concluded that the diminished responsibility plea should not be available.

#### **Case 41**

D, a male aged 22, was involved in an argument in a public house with the victim, a male aged 29. The argument concerned D's girlfriend with whom the victim was also involved sexually. D had armed himself with a kitchen knife and stabbed V in the course of the argument. A psychiatric report for the defence found no evidence of mental disorder. At his trial the accused pleaded self-defence and provocation. The jury returned a manslaughter verdict on the basis of provocation for which he received a sentence of seven years imprisonment.

#### **Case 42**

D, a male aged 49, armed himself with a knife and forced his way into the victim's (a male aged 23) house. He accused the victim of informing the police about drug dealing. An argument ensued and D stabbed the victim to death. A psychiatric report for the defence found no evidence of mental disorder but a history of drug and alcohol addiction. The jury convicted D of manslaughter on the basis of provocation for which he received a sentence of three and a half years imprisonment.

**Case 43**

D, a male aged 42, stabbed his wife to death at the matrimonial home. V, aged 35, had informed D that she was seeing someone else as he had left to live with another woman. V had filed for divorce and refused take him back. D admitted the killing but claimed he was provoked. A psychiatric report for the prosecution concluded that although D had significant problems with alcohol misuse he did not come within the scope of diminished responsibility. The jury convicted D of murder.

**Case 44**

D, a male aged 42, was a friend of V, a male aged 33. Following an earlier argument between them, V went to D's house to continue the dispute. Both had been drinking. V hit D who picked up a knife he kept in the hall for defensive purposes having been burgled. D stabbed V fatally with the knife. A plea of guilty to manslaughter by reason of provocation was accepted by the prosecution and D was sentenced to five years imprisonment. D had been registered as disabled since 1992.

**Case 45**

D, a female aged 42, killed her male lover, aged 46, by inflicting a single stab wound to his chest with a kitchen knife. They were arguing about V's common-law wife with whom he still lived. They had both been drinking. V called D disgusting and a terrible mother. D said "I just flipped. I grabbed the knife and stuck it in him." The knife had been in a cutlery drawer some 8-9 feet away. A psychiatric report for the prosecution found a history of depression and anxiety together with long-standing alcoholism. However, it concluded that there was "no sufficient case to argue that she had an abnormality of mind at the material time that would substantially impair her responsibilities". A jury convicted her of manslaughter by reason of provocation for which she was sentenced to five years imprisonment.

**Case 46**

D, a black male aged 21, was involved in a dispute with V (a male aged 52) his neighbour about D's dog. This led to a fight between them outside D's home after he had been confronted by a group of neighbours unhappy about the noise his dog made. D had already picked up a kitchen knife at a friend's home before he returned to collect his dog. In the course of the argument V died from knife wounds inflicted by D. The jury returned a verdict of guilty to manslaughter by reason of provocation and D was sentenced to five years imprisonment.

**Case 47**

D, a male aged 29, met V, aged 38, in prison. They stayed friends. D believed V had informed on him and during a drive in D's car, D struck V on the head with a metal bar killing him. A psychological report for the defence found mild learning disability. D pleaded both diminished responsibility and provocation but the jury, by a majority verdict, convicted him murder.

**Case 48**

D, a male aged 16, stabbed his girlfriend, aged 30, with a kitchen knife outside a public house. V told D she had been raped. D planned to confront the man in question and armed himself with the knife before leaving home. All three had left the pub. D saw V behaving in an affectionate manner towards the man alleged to have raped her. In the course of their argument D stabbed V. A jury convicted D by a

majority verdict of manslaughter by reason of provocation. He was sentenced to four years detention.

#### **Case 49**

D, a female aged 26, met V, a male aged 18, at a nightclub. They spent the night together. V invited his friends to D's house to meet her. As they were leaving D claimed that £45 was missing from her handbag. She armed herself with a kitchen knife and in the course of an argument stabbed V with it. A psychiatric report for the defence found no evidence of mental disorder. At the trial the jury by majority verdict convicted D of manslaughter on the basis of provocation. She received a sentence of three years imprisonment.

#### **Case 50**

D, a female aged 45 born in Pakistan, was informed by her husband, V aged 54, that he had divorced her 6 years earlier in Pakistan. D claimed to have been provoked by V over many years through sexual, violent and verbal abuse. In the course of massage she poured petrol over his groin and set him alight. He died of the injuries received. D said "On that night he came to the bedroom, there was an argument. He was abusive and using swear words. A psychiatric report for the defence concluded that "under repeated provocation it could be said that an irresistible impulse had temporarily deprived her of responsibility for her actions. A failure ' to exercise will power to control physical acts' in the words of Lord Chief Justice Parker in R v Byrne (1960)". The jury returned a verdict of guilty to manslaughter by reason of provocation for which she received a sentence of four years imprisonment.

#### **Case 51**

D, a female aged 36, had been the subject of considerable domestic abuse by her male partner, V aged 36. They had an argument in her flat. V grabbed her son and was choking him. D got a knife from the kitchen and stabbed V once. She was intoxicated at the time. A psychiatric report for the defence diagnosed a depressive illness which "would give rise to an abnormality of mind (induced by disease) such as to substantially impair her responsibility for her actions." With reference to provocation the report concluded that "she might be construed as 'the reasonable woman with a history of severe domestic violence, whose mental state was modified permanently such that she believed this to be the only course of action available'". The prosecution accepted a plea of guilty to manslaughter on the basis of provocation for which she received a sentence of three and a half years imprisonment, reduced on appeal to two years.

#### **Case 52**

D, a male aged 17, killed a male acquaintance, V aged 16, by stabbing him in the neck. V had made suggestive comments to D's girlfriend at a party. The offence took place at a local park after the party. A psychiatric report for the prosecution considered that there was no evidence to suggest diminished responsibility but that D presented as a jealous individual who "may be considered to have lost his self-control at the time of the killing." A jury convicted D of murder

#### **Case 53**

D, a male aged 29, killed V, a male aged 19, by striking him on the head with a wooden pole. Both D and V were drunk. V was a friend of another man who lived opposite D. V had become aggressive. A psychiatric report for the defence

concluded that D was suffering from a depressive illness and at the time of the act "was out of control in an abnormal state of mind, and could not have formed intent to kill". D's plea of guilty to manslaughter on the basis of provocation was accepted and he was sentenced to five years imprisonment.

#### **Case 54**

D, a male aged 42, strangled V, a female aged 77, in her bedroom. D had known V for five years. They had had a sexual relationship for some time. A psychiatric report for the prosecution concluded that there was no evidence of diminished responsibility but stated that "the risk of his sexual practices with the victim being exposed in a setting of an already precarious self image, would have constituted potent triggers for his having erupted with an outburst of violence." A jury convicted D of murder.

#### **Case 55**

D, a male aged 22, met V, a male aged 53, on the underground train. V took D home. D stabbed V after an unwanted sexual advance. A psychiatric report for the prosecution found no evidence of diminished responsibility. The jury, by a majority, convicted D of manslaughter on the basis of provocation and he received a sentence of ten years imprisonment reduced to seven years on appeal.

#### **Case 56**

D, a male aged 23, was lodging on a temporary basis with V, a female friend, aged 23. They had an argument over the fact that D had a gambling problem. As a result D strangled V with a cord from her judo outfit. A psychiatric report for the defence found no evidence of diminished responsibility and considered that, although V had kicked him in the groin, this would not have been adequate to trigger his anger in the context of provocation. The jury convicted D murder.

#### **Case 57**

D, a male aged 26, killed his former partner, V, a female aged 26, by stabbing her with a knife. V had moved out and begun a relationship with another man. She complained of D's continued violence, including knife threats. There was a dispute over the children. D admitted the killing and said he had snapped. At his first trial D was convicted of murder but an appeal was allowed on the basis that the verdict was unsafe as result of the decision in R v Smith (Morgan). A psychiatric report for the defence concluded that "a combination of his over controlled personality and the subsequent building up of huge anger, with it being unleashed, and the depressive illness, would render him at the time of the killing, in a state of abnormal mind such that his responsibility for the killing would have been substantially impaired". It also concluded that the "enduring characteristic of over control" and "temporary characteristic of depression which would have reduced his self-control" together might mean that "a reasonable man could have reacted in the way that he did." At his second trial the file reveals that the jury asked the judge the following questions:

1. Do we pose questions of provocation or mental health separately (as individual tests) or in combination?
2. Many of the jury consider that neither factor was sufficient by itself but maybe the combination of the two justifies manslaughter.

The jury returned a majority verdict of manslaughter by reason of provocation and D was sentenced to 8 years imprisonment.

**Case 58**

D, a male aged 53, killed V, a male aged 27, in a public house by stabbing him. Both had been involved in a long running feud. D said he acted in self-defence and claimed he had not taken the knife to the pub but had disarmed someone there and then used it. A psychiatric report for the prosecution found no grounds for a plea of diminished responsibility. A jury convicted D of murder.

**Cases 59 & 60**

Two co-defendants, D2, a mother aged 51 and D1, her son aged 19, lived with V, the husband/father of each, aged 50. V was abusive towards D2 and threatened to kill her. In response D1 hit V over the head with a golf club while he was asleep. Despite evidence of provocation D1 pleaded guilty to murder. Psychiatric reports on behalf of D2 diagnosed dementia and she was found unfit to plead.

**Case 61**

D, a male aged 38 and born in Jamaica, killed his partner, a female, aged 34, by hitting her over the head. V had ended their relationship. D claimed self defence because V had attacked him with the knife. The jury convicted him of manslaughter and he received six years imprisonment reduced to five years on appeal. In the course of the appeal the court stated:

"The defence to the charge of murder was threefold: it was suggested that he lacked the necessary intent; it was suggested that he suffered from diminished responsibility; and, it was suggested that this was a killing under such provocation as to reduce the appropriate verdict murder to manslaughter.

In sentencing him, the judge had no positive indication from the jury as to which of those or any combination of them had led them to conclude that he should be acquitted of murder. But it was pretty clear, as the judge said, that their verdict was either because he was suffering from diminished responsibility or because of provocation. Perhaps diminished responsibility was the front runner of those two.

The defence had proffered, among other witnesses, a psychiatrist, who had concluded that the applicant had suffered from what he referred to as a "depressive episode ". The Crown's case apparently was that the depression, which he undoubtedly suffered from, was a result of the incident and not a cause of it, but that was not the psychiatrist's view. In his opinion, the depressive episode constituted an abnormality of mind for the purpose of the statute.

The judge, in his sentencing remarks said that he assumed that the verdict of manslaughter was connected with the accused's mental state."

**Case 62**

D, a male aged 19, knew V, a male aged 34. V was the boyfriend of his girlfriend's mother. V and the mother had a history of domestic problems which caused ill feeling within the family. On the day of the offence V and the mother were involved in a scuffle. D was telephoned and arrived armed with the knife. A fight followed which resulted in D stabbing the victim. A jury convicted D of murder.

**Case 63**

D, a female aged 50 of Spanish origin, killed her partner, V a male aged 55, by stabbing him with a knife. There was a history of domestic violence in the



relationship. On the day of the offence D was drunk and became aggressive towards V. He picked up a knife and threatened her with it. In the course of the struggle D stabbed V. A psychiatric report for the prosecution concluded there was no diminished responsibility but that there was evidence of self induced intoxication. With regard to provocation it stated "there are known psychological characteristics applicable to the deceased which could be taken into account when deciding whether she was in fact provoked." The jury convicted D of manslaughter for which she received four years imprisonment.

#### **Case 64**

D, a male aged 52, stabbed his best friend, V a male aged 32, who had begun an affair with D's wife. The couple had recently separated and as a result of the affair D was angry and jealous. He went to his wife's home and found her with V. He attacked V with the knife before cutting his own throat, which required emergency surgery. A psychiatric report for the defence diagnosed acute adjustment disorder and concluded that as result D "was suffering from diminished responsibility due to a mental illness. This resulted in low mood, suicidal thoughts and behaviour, as well as an inability to control his anger on extreme provocation, leading to the fight. Patients with adjustment disorder show symptoms beyond the normal and expected reaction to the stressor." The jury convicted D of murder.

#### **Case 65**

D, a male aged 27, hit V, a male aged 37, on the head with a piece of wood. They had argued outside a pub. D armed himself with the wood and returned to assault V fatally. He also assaulted a second V. D relied on provocation and lack of intent at his trial. He also argued that V had an abnormally thin skull. A jury convicted D of murder and he was sentenced to life imprisonment.

#### **Case 66**

D, a male aged 43, stabbed V, a male aged 45, in D's garden. D was drunk. They had never met but V was the stepfather of Ds daughter's boyfriend of whom D did not approve. V had gone to Ds house to 'sort him out'. D relied on provocation, lack of intent and self defence. A jury convicted D of manslaughter for which he was given 6 years imprisonment.

#### **Case 67**

D, a male aged 47, strangled his wife, aged 41. They argued about Vs affair and the fact that she might leave him. A single psychiatric report for the CPS found no DR but stated that the killing was likely to have resulted "from his intense emotional arousal at that time." A jury, by a majority verdict, convicted D of murder and he was sentenced to life imprisonment.

#### **Case 68**

D, a male aged 17, killed V, a male aged 53, by kicking and stamping on him. D claimed V, whom he knew as a passing acquaintance, had grabbed his private parts and indecently assaulted him outside Ds flat. D pleaded self defence but refused to plead provocation. The trial judge left provocation to the jury but only dealt with it briefly. A jury convicted D of murder and he was detained for life. An appeal was

lodged on the basis that manslaughter by reason of provocation was the appropriate verdict. The result is not on file.

#### **Case 69**

D, a female aged 55, stabbed her male partner, aged 39. Theirs was a violent relationship and V was drunk. They argued and D grabbed a knife. D had a psychiatric history. 2 reports, one for the defence and one for the CPS both favoured "abnormality of mind" on the basis depression but considered that the matter of "substantial impairment" was a matter for a jury. The report for the defence also favoured provocation stating that Ds depression and anxiety "may have rendered her increasingly liable to react to circumstances in an uncontrolled, sudden and impulsive fashion." Ds plea of guilty to manslaughter was accepted and she was given a 2 year probation order with a condition of mental treatment.

#### **Case 70**

D, a male aged 52, beat his female partner, aged 46, to death during a drunken rage. D had a history of violence towards V and was a heavy drinker. A psychiatric report found no mental disorder. However, there is a suggestion on the file of DR based on chronic alcoholism as well as provocation. A jury convicted D of murder and he was sentence to life imprisonment with a recommended tariff of 16 years.

#### **Case 71**

D, a female aged 21, stabbed her male partner, aged 27. Theirs was an abusive relationship and they argued over a plate of chips. One psychiatric report for the CPS found no DR but a second for the court diagnosed 'battered woman syndrome' but also was of the view that "it does not appear that the defendant had, at the material time, an abnormality of mind such that she might be able to offer a defence of diminished responsibility, although I am not going to exclude this confidently on the basis of a single examination." This report also considered that 'battered woman syndrome' might be a characteristic which the jury would be entitled to take into account in considering provocation. A third report for the defence also diagnosed 'battered woman syndrome' but considered that the question of "substantial impairment" was a question for the jury. It also viewed this condition as an enduring "mental characteristic", which would mark her out from the ordinary woman in such a situation." Ds plea of guilty to common law manslaughter was accepted and she was given a 3 year probation order. The trial judge stated that it was a "wholly exceptional case" giving rise to "a wholly exceptional sentence."

# APPENDIX B

## THE DIMINISHED RESPONSIBILITY PLEA IN OPERATION – AN EMPIRICAL STUDY

By R D Mackay<sup>1</sup>

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1. Diminished responsibility is a plea which reduces murder to manslaughter. The essentials of the plea are contained in section 2(1) of the Homicide Act 1957, which 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 in doing or being a party to the killing.

2. Section 2(2) makes it clear that, as with insanity, the burden of proving this defence on a balance of probabilities rests upon the accused<sup>2</sup> and if the plea is successful, subsection 3 ensures a conviction for manslaughter, thus enabling the judge to exercise discretion as to sentence.
3. Although initially some judges adopted a narrow interpretation of what could amount to an 'abnormality of mind' within the section, it was not long before the Court of Appeal, in the landmark case of *R v Byrne*,<sup>3</sup> decided that a wider approach was called for. The crucial question was whether a sexual psychopath who had killed the victim while suffering from an impulse control disorder was entitled to have his diminished responsibility plea left to the jury. In answering this question in the affirmative, Lord Parker CJ made the following remark, which was to have a fundamental influence on the scope of section 2:

'Abnormality of mind', which has to be contrasted with the time honoured expression in the M'Naghten Rules, 'defect of reason', means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters and the ability to form a rational judgment whether an act is right or wrong, but also the ability to exercise will-power to control physical acts in accordance with that rational judgement.<sup>4</sup>

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<sup>2</sup> See *R v Dunbar* [1958] 1 QB 36.

<sup>3</sup> [1960] 2 QB 396.

<sup>4</sup> *Ibid.* 403.

4. The effect of this judgment was not only to permit the notion of irresistible impulse to be introduced into English law but also to allow a wide variety of less serious forms of mental condition to be brought within the scope of 'abnormality of mind'.
5. The wording of section 2(1) has been the subject of much criticism as is clearly outlined in the Law Commission's Consultation Paper on *Partial Defences to Murder*<sup>5</sup> and will not be further discussed. Unlike its counterpart, provocation, with which it has an important interrelationship, there are official statistics kept on the successful use of diminished responsibility as a partial defence. In this connection it is interesting to note that the number of successful pleas has fallen dramatically. Indeed, the most recent statistics reveal that in 2001/02, for the first time the total number of successful pleas fell below 20 (the figure for 2000/01) to 15.<sup>6</sup> This number of pleas can be contrasted with 1998/99 where the total was 40 and 1992 where the total was 78. In short there has been a consistent fall in the successful use of diminished responsibility in recent years.
6. So far as is known there have been no empirical research studies of diminished responsibility since Susanne Dell's study was published in 1984.<sup>7</sup> Accordingly, it was decided to examine a sample of diminished responsibility cases for the five years from 1997 to 2001. In doing so it must be pointed out that it has not been possible, for a number of reasons, to gain access to all the relevant cases. The Homicide Statistics reveal that in the five year period between 1997 and 2001 there were around 171 successful diminished responsibility pleas.<sup>8</sup> In this study, the total number of cases accessed is 157, including 21 unsuccessful pleas.<sup>9</sup> Despite the fact that this study does not claim to have examined all the successful cases it is hoped that it will be of value, especially as no other study, so far as is known, has looked at any unsuccessful pleas.

### The Research Findings

7. During the research period of 1997-2001 there was a total of 157 defendants<sup>10</sup> where diminished responsibility was identified as a defence which was raised during the course of the trial process.
8. With regard to sex and age, unsurprisingly males constituted the vast majority of defendants with 128 (81.5%) males compared to 29 females (18.5%). The recent Homicide Statistics give an overall rate of 91.4% for males indicted for homicide in 2001/02.<sup>11</sup>
9. Tables 1a and 1b give a breakdown of the sex/age distribution of the defendants. The mean age for defendants was 37 (age range 12-83).

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<sup>5</sup> Law Commission Consultation Paper No 173.

<sup>6</sup> See, *Crime in England and Wales 2002/2003: Supplementary Volume 1: Homicide and Gun Crime (01/04, January 2004)* at Table 1.10.

<sup>7</sup> S. Dell. *Murder into Manslaughter- The Diminished Responsibility Defence in Practice*, Oxford University Press, 1984.

<sup>8</sup> See note 6, *ibid*. However these statistics are no longer based on a calendar year so one cannot be sure of the precise number of pleas.

<sup>9</sup> In one case (number 33) D refused to allow DR to be used at his trial and was convicted of murder, see page 12.

<sup>10</sup> A very brief account of each case is given in an appendix. The cases are numbered 1-157 so as to include all the relevant defendants in the sample. Any reference to a case number in the text can be followed up in the appendix.

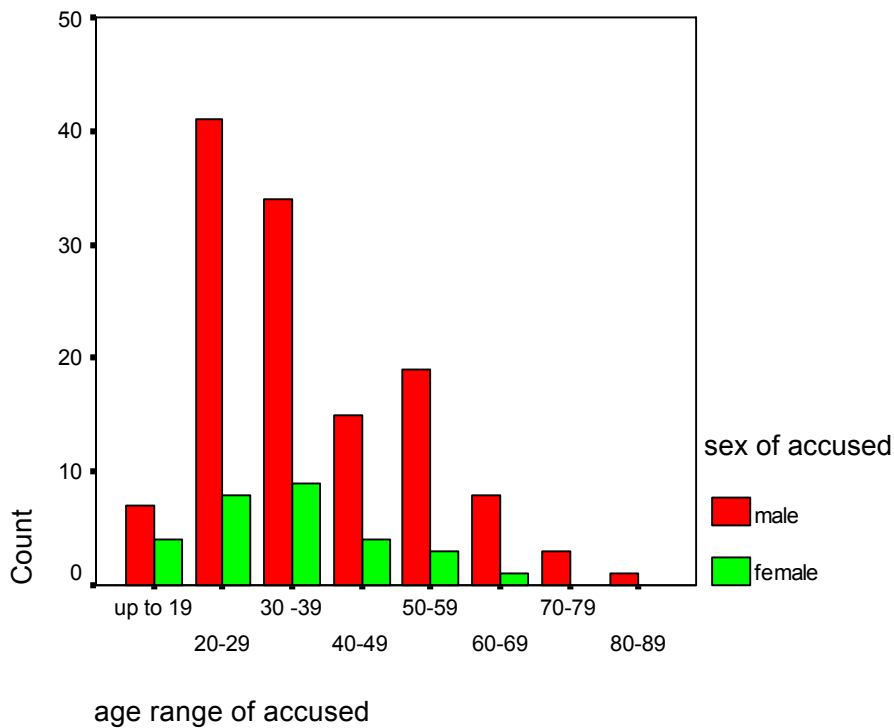
<sup>11</sup> See *Crime in England and Wales 2002/2003: Supplementary Volume 1: Homicide and Gun Crime*, Chapter 1, Homicide by Judith Cotton at Table 1.09.

**Table 1a and b - age range of accused \* sex of accused Crosstabulation**

**Table 1a**

Age range of accused	sex of accused		
	male	female	
up to 19	7	4	11
20-29	41	8	49
30 -39	34	9	43
40-49	15	4	19
50-59	19	3	22
60-69	8	1	9
70-79	3	0	3
80-89	1	0	1
Total	128	29	157

**Table 1b**



10. The ethnic breakdown of defendants is presented in Table 2 and shows that around 74.5% (n=117) were white and born in the United Kingdom.

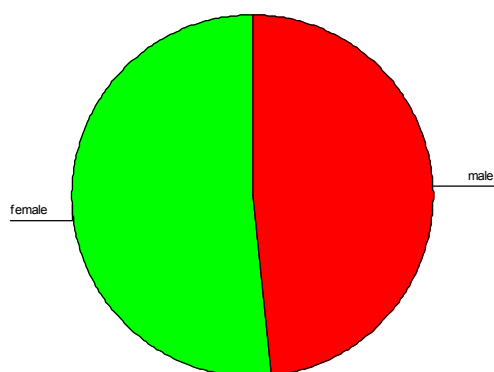
**Table 2 - born uk \* ethnic group Crosstabulation**

		ethnic group				Total
		white	black	asian	other	
born uk	yes	117	7	6	1	131
	no	4	12	8	2	26
Total		121	19	14	3	157

11. With regard to criminal records although 51.6% (n=81) of the sample had previous convictions, (11.1%, n=9 of whom were women) only 31.8% (n=50) had been convicted of offences of violence (of which only 8%, n=4 were female). As for psychiatric history, 70.7% (n=111) had had contact with psychiatric services (of which 19.8%, n=22 were female).

12. Turning to victims, their sex/age distribution is presented in Tables 3a and 3b. The mean age for victims was 40.5 (range 1month-91). It can be seen that the majority, 51.6 % (n=81), were female

**Table 3a - sex of victim**

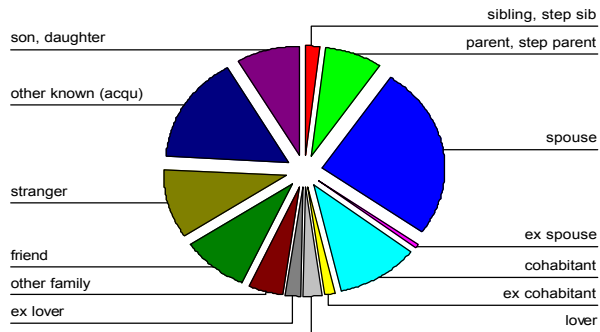


**Table 3b - age range of victims \* sex of victim Crosstabulation**

Age range of victims	sex of victim		Total
	male	female	
up to 19	12	6	18
20-29	21	11	32
30 -39	12	18	30
40-49	11	14	25
50-59	11	12	23
60-69	7	8	15
70-79	2	6	8
80-89	0	5	5
90-99	0	1	1
Total	76	81	157

13. The relationship of the victim to the accused is given in Tables 4a and 4b. As expected the vast majority of the victims (88.8%, n=141) were already known to the accused at the time of the killing, with only 10.2% (n=16) being classed as strangers. The biggest group of 25.5% (n=40) is “spouse”.

**Table 4a – relationship of victim to accused**



**Table 4b - relationship of victim to accused**

	Frequency	Percent	Cumulative Percent
spouse	40	25.5	25.5
ex spouse	1	.6	26.1
cohabitant	17	10.8	36.9
ex cohabitant	2	1.3	38.2
lover	4	2.6	40.8
ex lover	3	1.9	42.7
parent, step parent	12	7.6	50.3
son, daughter	13	8.3	58.6
sibling, step sibling	3	1.9	60.5
other family	7	4.5	70.0
friend	14	8.9	73.9
stranger	16	10.2	84.1
other known (acquaintance)	25	15.9	100.0
Total	157	100.0	

14. It has been stated recently that “15% of all recorded homicides in England and Wales could be categorised under a ‘domestic’ heading. It is also clear from national and international data, and research literature, that women are most at risk from being killed by a partner. According to the Homicide Index, between 1995 and 1999, 44% of all female homicide victims in England and Wales – and 50% of those killed by men – were killed by a current or former sexual partner. This compares to just seven per cent of all male victims.”<sup>12</sup> Further, overall the recent Homicide Statistics reveal that “40% of male victims and 66% of female victims knew the main suspect”.<sup>13</sup> It can be seen below from Table 5a that most of the male (n=64, 84.2%) and female (n=77, 95%) victims in the research sample knew the accused.

<sup>12</sup> Fiona Brookman and Mike Maguire, *Reducing Homicide: Summary of a review of the possibilities*, RDS Occasional Paper No 84 (January 2003) at page 1.

<sup>13</sup> Crime in England and Wales 2002/2003, op. cit.

15. Table 5a shows that overall 88.9% (n=72) of the female victims were killed by male defendants while 69% (n=20) of the female defendants killed males. In table 5b below it can be seen that of all the female victims 63.4% (n=52) were killed by a current or former lover/partner. Of those 52, 67.3% (n=35) were killed by their spouse. The equivalent percentages and numbers for male victims are 19.7% (n=15) and 33.3% (n=5). Table 5b also shows that of the 128 male defendants 39.8% (n=51) killed a current or former female sexual partner while of the 29 female defendants, 41.4% (n=12) killed a current or former male sexual partner. Each of the 29 female defendants knew the victim, 11 (38%) of which were their children.

**Table 5a sex of accused \* sex of victim Crosstabulation**

Sex of accused	sex of victim		Total
	male	female	
male	56	72	128
female	20	9	29
Total	76	81	157

**Table 5b - relationship of victim to accused \* sex of victim \* sex of accused Crosstabulation**

			sex of victim		Total
			male	female	
Male	Relationship of victim to accused	spouse	0	35	35
		ex spouse	0	1	1
		cohabitant	1	9	10
		ex cohabitant	0	2	2
		lover	0	3	3
		ex lover	2	1	3
		parent, step parent	4	6	10
		son, daughter	2	0	2
		sibling, step sibling	2	1	3
		other family	1	5	6
		friend	12	1	13
		stranger	12	4	16
		other known (acquaintance)	20	4	24
	Total		56	72	128
Female	Relationship of victim to accused	spouse	5	0	5
		cohabitant	6	1	7
		lover	1	0	1
		parent, step parent	1	1	2
		son, daughter	7	4	11
		other family	0	1	1
		friend	0	1	1
		other known (acquaintance)	0	1	1
	Total		20	9	29

16. The place or venue where the killing actually took place is given in Tables 6a and 6b. It can be seen from these that the vast majority of the offences took place in the

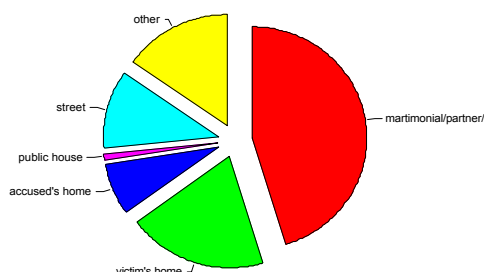


matrimonial/partner's/family home (45.2%, n=71) or the victim's home (19.7%, n= 31). Taken together these two categories account for 65% (n=102) of the research sample. If one includes the accused's home (n=12) this rises to 72.6%.

**Table 6a venue of offence**

Venue of offence	Frequency	Percent	Cumulative Percent
matrimonial/partner's/family home	71	45.2	45.2
victim's home	31	19.8	65.0
accused's home	12	7.6	72.6
public house	1	.6	73.2
street	18	11.5	84.7
other	24	15.3	100.0
Total	157	100.0	

**Table 6b – venue of offence**



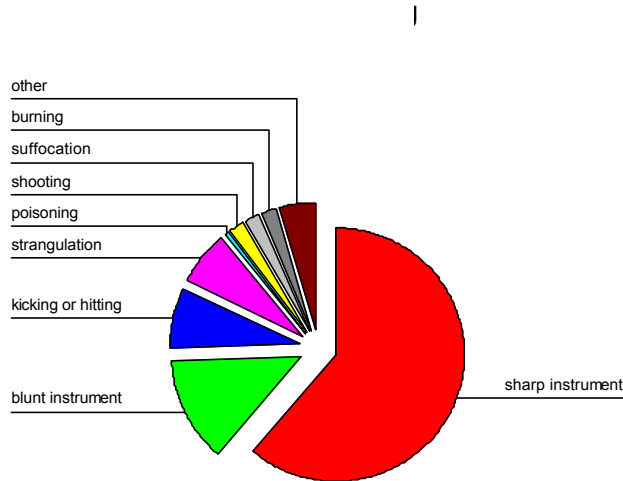
17. Table 7 gives details of the “apparent circumstances for the killing”. Although the two categories of “rage, quarrel or fight” account for 46.5% (n=73) of the total, the largest single category is “suspect mentally disturbed” at 42% (n=66). Having regard to the nature of the diminished responsibility plea, this latter category is perhaps smaller than one might have expected. However, it must be pointed out that in no way does this mean that defendants were not mentally disturbed at the time of the offence in some of the other cases. As a category it is inevitably somewhat inexact and has been used in those cases where it seemed clear that mental disturbance was either present at the time of or instrumental in the commission of the offence.

**Table 7 - apparent circumstances for killing**

Apparent circumstances	Frequency	Percent	Cumulative Percent
rage, quarrel or fight with related person	27	17.2	17.2
rage, quarrel or fight with non-related person	46	29.3	46.5
jealousy	8	5.1	51.6
mercy killing	4	2.5	54.1
suspect mentally disturbed	66	42.1	96.2
other	6	3.8	100.0
Total	157	100.0	

18. Tables 8a, 8b and 8c show the “method of killing” and as expected the use of a “sharp instrument” predominates at 61.1% (n=96). This is much greater than revealed in the recent Homicide Statistics where, although it remains the most common method of killing, the figure is 33%.<sup>14</sup>

**Table 8a – method of killing**



**Table 8b - method of killing**

Method	Frequency	Percent	Cumulative Percent
sharp instrument	96	61.1	61.1
blunt instrument	21	13.4	74.5
kicking or hitting	12	7.6	82.2
strangulation	11	7.0	89.2
poisoning	1	.6	89.8
shooting	3	1.9	91.7
suffocation	3	1.9	93.6
burning	3	1.9	95.5
other	7	4.5	100.0
Total	157	100.0	

<sup>14</sup> Homicide Statistics, op. cit at page 1.

**Table 8c - method of killing \* sex of victim Crosstabulation**

Method of killing	sex of victim		Total
	male	female	
sharp instrument	50	46	96
blunt instrument	6	15	21
kicking or hitting	7	5	12
strangulation	2	9	11
poisoning	1	0	1
shooting	2	1	3
suffocation	1	2	3
burning	2	1	3
other	5	2	7
Total	76	81	157

19. It can be seen from Table 9 that the method of killing for the victims who were killed by a current or former sexual partner was mainly a “sharp instrument” followed by “blunt instrument” and “strangulation”.

**Table 9 - relationship of victim to accused \* method of killing Crosstabulation**

relationship of victim to accused	method of killing									Total
	sharp instrument	blunt instrument	kicking or hitting	strangulation	poisoning	shooting	suffocation	burning	other	
spouse	25	8	1	5	0	1	0	0	0	40
ex spouse	1	0	0	0	0	0	0	0	0	1
cohabitant	11	3	2	1	0	0	0	0	0	17
ex cohabitant	1	1	0	0	0	0	0	0	0	2
lover	3	1	0	0	0	0	0	0	0	4
ex lover	3	0	0	0	0	0	0	0	0	3
parent, step parent	4	4	2	1	0	0	0	1	0	12
son, daughter	2	1	0	3	1	0	1	1	4	13
sibling, step sibling	3	0	0	0	0	0	0	0	0	3
other family	5	1	0	0	0	0	0	0	1	7
friend	9	1	2	0	0	1	0	1	0	14
stranger	10	1	2	0	0	0	1	0	2	16
other known (acquaintance)	19	0	3	1	0	1	1	0	0	25
Total	96	21	12	11	1	3	3	3	7	157

## Aspects of the Trial

20. The Crown Court files could not shed light on all of the intricacies of the trial process in each case but the following data were extracted and may help to explain a number of different aspects of what took place. First, Tables 10a and 10b show that there was no jury trial in 77.1% (n=121) of the cases, 25 of whom were females. This represents 86.2% of female defendants compared to 75% (n=96) of male defendants.

**Table 10a - jury trial**

Jury trial	Frequency	Percent	Cumulative Percent
yes	36	22.9	22.9
no	121	77.1	100.0
Total	157	100.0	

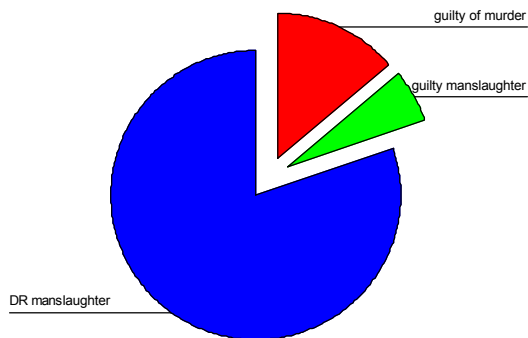
**Table 10b - jury trial \* sex of accused Crosstabulation**

Jury trial	sex of accused		Total
	male	female	
yes	32	4	36
no	96	25	121
Total	128	29	157

21. With regard to verdicts, Tables 11a and 11b reveal that in 80.3% of the cases (n=126) the finding was one of diminished responsibility, of which 6.3% (n=8) were contested. Further, 22 of the contested cases resulted in murder convictions, 21 of which were failed diminished responsibility pleas (the exception is case 33 where D refused to allow DR to be used at his trial). This means that out of a total of 36 contested cases, diminished responsibility pleas were successful in 22.2% (n=8) of these cases. If one adds the six unspecified manslaughter cases we have a total of 14 out of 36 (38.9%) contested cases where defendants avoided murder convictions. Of the 36 cases where there was a jury trial, 36.1% (n=13) involved the killing by a male defendant of a current or former female partner. This represents 24.5% of the total number (n=51) of killings by males of their current or former female partner. Of those 13 cases, 61.5% (n=8) resulted in a conviction for murder. By contrast, only one such case (case 37) involved the killing by a female of her current or former male partner. This represents 8.3% of the total number (n=12) of killings by females of their current or former male partner. The defendant was convicted of manslaughter.<sup>15</sup> Further, of the 51 male defendants referred to above who killed their current or former female partner, a plea was accepted in 38 cases (74.5%). The corresponding figure for females is 11 out of 12 cases, representing 91.6%.

<sup>15</sup> All three cases of males killing their current or former male sexual partner resulted in pleas of guilty to manslaughter being accepted while the one case (93) of a female killing her female sexual partner resulted in a contested trial.

**Table 11a - verdict**



**Table 11b - verdict \* jury trial Crosstabulation**

Verdict	jury trial		
	yes	no	
guilty of murder	22	0	22
guilty of manslaughter	6	3	9
diminished (DR) manslaughter	8	118	126
Total	36	121	157

22. Tables 12a and 12b below give the sentences for each case. It is interesting to note from Table 12b that of the 126 diminished responsibility verdicts, 49.2% (n=62) resulted in a restriction order and six in a hospital order, while 46% (n=58) were punished in the normal way. Of this latter group, 10 were given discretionary life penalties, while 16 received probation orders and two were given suspended prison sentences.

**Table 12a – sentence**

Sentence	Frequency	Percent	Cumulative Percent
mandatory life	22	14.0	14.0
discretionary life	12	7.7	21.7
between 7 and 10 years	12	7.6	29.3
between 5 and 7 years	10	6.4	35.7
between 3 and five years	9	5.7	41.4
between 1 and 3 years	5	3.2	44.6
probation/supervision	17	10.8	55.4
fully suspended sentence	2	1.3	56.7
restriction order	62	39.5	96.2
hospital order	6	3.8	100.0
Total	157	100.0	

**Table 12b - sentence \* verdict Crosstabulation**

Sentence	Verdict			
	guilty of murder	guilty of manslaughter other than DR	diminished manslaughter	
mandatory life	22	0	0	22
discretionary life	0	2	10	12
between 7 and 10 years	0	4	8	12
between 5 and 7 years	0	0	10	10
between 3 and five years	0	2	7	9
between 1 and 3 years	0	0	5	5
probation/supervision	0	1	16	17
fully suspended sentence	0	0	2	2
restriction order	0	0	62	62
hospital order	0	0	6	6
Total	22	9	126	157

23. Table 12c shows that 38% of the female defendants (n=11) were given probation orders. This in turn accounts for 64.7% of all the probation orders.

**Table 12c - sentence \* sex of accused Crosstabulation**

Sentence	sex of accused		Total
	male	female	
mandatory life	20	2	22
discretionary life	9	3	12
between 7 and 10 years	12	0	12
between 5 and 7 years	10	0	10
between 3 and five years	6	3	9
between 1 and 3 years	4	1	5
probation/supervision	6	11	17
fully suspended sentence	2	0	2
restriction order	55	7	62
hospital order	4	2	6
Total	128	29	157

**The Psychiatric Reports**

24. The psychiatric reports on the Crown Court files which addressed the issue of diminished responsibility were all analysed. The maximum number of DR reports in any one file was five. However, it can be seen from Table 13 below that in nine cases the files contained no DR reports. What this means is that the Crown Court files clearly do not contain all relevant reports and the following analysis must be read with this caveat in mind. However, despite this deficiency in the data, the DR reports reveal much of interest.

First, Table 13 reveals that five files contained the maximum of five reports, compared to 65 files which each had two reports. The grand total of DR reports was 366.

**Table 13 - psychiatric reports on file**

Reports on file	Frequency	Percent	Cumulative Percent
one	18	11.5	11.5
two	65	41.4	52.9
three	47	29.9	82.8
four	13	8.3	91.1
five	5	3.2	94.3
none	9	5.7	100.0
Total	157	100.0	

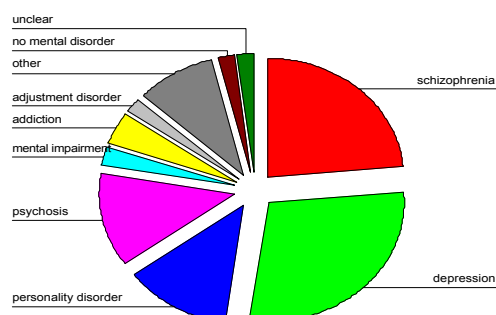
25. Table 14 below shows that the defence requested 43.7% (n=160) of the overall DR reports followed by the prosecution at 35.2% (n=129).

**Table 14 - report sources**

Source of report	Frequency	Percent	Cumulative Percent
court	58	15.9	15.9
prosecution	129	35.2	51.1
defence	160	43.7	94.8
unclear	19	5.2	100.0
Total	366	100.0	

26. With regard to diagnostic groups, Tables 15a and 15b reveal that the most frequent primary diagnosis<sup>16</sup> used in connection with the diminished responsibility plea was depression (28.7%, n=45) followed by schizophrenia (23.6%, n=37), personality disorder (12.7%, n=20) and psychosis (12.7%, n=20). It should be pointed out that although there were nine files containing no DR reports in six of these cases it was possible to identify the primary diagnosis from other sources. In only three cases could this not be achieved. Further, the three cases of “no mental disorder” all resulted in convictions for murder where the DR reports on file found no abnormality of mind at the time of the offence.

**Table 15a – primary diagnosis**



<sup>16</sup> The primary diagnosis was the one which an overall analysis of the DR reports in each case seemed to support the plea. Clearly, in some cases there was disagreement over diagnosis. In short the primary diagnosis is based on a cumulative view of the reports in each case.

**Table 15b - primary diagnosis**

Primary diagnosis	Frequency	Percent	Cumulative Percent
schizophrenia	37	23.6	23.6
depression	45	28.7	52.3
personality disorder	20	12.7	65.0
psychosis	20	12.7	77.7
mental impairment	4	2.5	80.2
addiction	7	4.5	84.7
adjustment disorder	3	1.9	86.6
other	15	9.6	96.2
no mental disorder	3	1.9	98.1
unclear	3	1.9	100.0
Total	157	100.0	

27. Table 16a below shows the relationship between diagnosis and sentence. This reveals, not unsurprisingly, that schizophrenia and psychosis were the two most prominent diagnoses leading to restriction orders. By way of contrast of the 20 diagnoses of personality disorder, five resulted in murder convictions and eight discretionary life sentences. On the other hand a diagnosis of depression resulted in a much more mixed range of sentences, from a mandatory penalty of life imprisonment in 6 cases, to probation in 11 cases. In order to explore this further Table 16b below displays the relationship between diagnosis and jury trial where it can be seen that depression, personality disorder and "other" diagnoses were the major diagnostic categories which led to the cases being tried by a jury as opposed to schizophrenia and psychosis where the plea was only placed before a jury in a total of three cases. It is also interesting to note that in 82.2% (n=37) of cases where depression was the primary diagnosis the Crown was prepared to accept a plea of guilty to manslaughter on the basis of DR compared to 60% (n=12) of cases where the primary diagnosis was one of personality disorder.

**Table 16a - sentence \* primary diagnosis Crosstabulation**

Sentence	primary diagnosis?										Total
	A	B	C	D	E	F	G	H	I	J	
mandatory life	0	6	5	1	0	1	2	4	3	0	22
discretionary life	1	0	8	1	0	2	0	0	0	0	12
between 7 and 10 years	0	3	1	1	1	1	0	4	0	1	12
between 5 and 7 years	0	4	1	1	0	1	0	3	0	0	10
between 3 and five years	0	5	1	2	0	0	1	0	0	0	9
between 1 and 3 years	0	4	1	0	0	0	0	0	0	0	5
probation/supervision	0	11	1	0	1	2	0	2	0	0	17
fully suspended sentence	0	2	0	0	0	0	0	0	0	0	2
restriction order	33	8	2	14	1	0	0	2	0	2	62
hospital order	3	2	0	0	1	0	0	0	0	0	6
Total	37	45	20	20	4	7	3	15	3	3	157

?Key: A= schizophrenia: B= depression: C= personality disorder: D= psychosis: E =mental impairment: F = addiction: G=adjustment disorder: H=other: I= No mental disorder: J = unclear



**Table 16b - primary diagnosis \* jury trial Crosstabulation**

Primary diagnosis	jury trial		Total
	yes	no	
schizophrenia	1	36	37
depression	8	37	45
personality disorder	8	12	20
psychosis	2	18	20
mental impairment	1	3	4
addiction	3	4	7
adjustment disorder	2	1	3
other	7	8	15
no mental disorder	3	0	3
unclear	1	2	3
Total	36	121	157

28. The DR reports are of course vital as to how a diminished responsibility plea progresses. Table 17 below shows the broad opinions given in all the DR reports in respect of whether or not the report writer favoured the plea.

**Table 17 - report opinions on DR**

	Frequency	Percent	Cumulative Percent
no mention of DR	19	5.2	5.2
favours DR	286	78.1	83.3
no DR	41	11.2	94.5
for jury to decide	20	5.5	100.0
Total	366	100.0	

29. It can be seen from this that the vast majority of report writers whose reports were in the court files favoured DR with only 41 reaching the view that the accused's condition did not fall within the scope of section 2 of the Homicide Act 1957, and 20 making it clear that DR was an issue for the jury to decide. In those reports which favoured the plea some typical examples of the ways in which psychiatrists would couch their conclusions as to the ultimate issue are given with reference to case numbers:

**Case 1**

"I believe therefore that a defence within the terms of section 2 of the Homicide Act 1957, is available to the defendant." (Report for the CPS.)

**Case 8**

"It would appear that the defendant was not in full control of his actions and I would support a plea on grounds of diminished responsibility and mental abnormality." (Report for the Court).

### Case 26

“At the material time he was suffering from a psychotic condition. I believe this condition significantly affected his reasoning and perception such that a plea of diminished responsibility under the Homicide Act is appropriate.” (Report for the CPS)

### Case 27

“In my opinion either [condition] alone would be sufficient to have diminished his responsibility for his actions...” (Report for the defence)

### Case 62

I believe therefore, that he was at the material time suffering from an abnormality of mind in terms of section 2 of the Homicide Act. His mental illness (the depressive episode with psychotic features) could be considered as a disease arising from inherent causes ...I would therefore support, if it were raised, a defence of diminished responsibility.” (Report for the CPS)

### Case 104

“I believe that at the time of the index offence he was mentally ill and remains so at this moment in time. Therefore, Section 2 of the Homicide Act 1957 will be applicable in his case.” (Report for the defence)

### Case 105

“At the time there was diminished responsibility for his actions.” (Report for the defence)

30. With regard to the wording of s. 2(1), Table 18 below shows that report writers frequently failed to consider the bracketed causes.<sup>17</sup> As a result the majority of reports did not discuss these aetiological causes. If one ignores the 19 reports where DR was not mentioned (which reduces the total number of relevant reports to 347), what this means is that in 55.6% (n=193) of the reports DR was discussed without commenting on the causes. Having regard to the fact that the courts have made it clear on a number of occasions<sup>18</sup> that the accused’s “abnormality of mind” must arise from one or more of these causes this may seem strange. However, it can more than likely be explained by the fact that these causes are not psychiatrically recognised concepts.

Table 18 - bracketed causes

	Frequency	Percent	Cumulative Percent
not mentioned	212	57.9	57.9
arrested development of mind	3	0.8	58.7
inherent causes	28	7.7	66.4
induced by disease	96	26.2	92.4
Induced by injury	3	0.8	94.2
combination of causes	24	6.6	100.0
Total	366	100.0	

31. Further, although “induced by disease” was the most frequent cause (n=96) this category was selected by the research in all cases where report writers classified the defendant’s

<sup>17</sup> They are: “whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury”.

<sup>18</sup> See in particular *R v Byrne* [1960] 2 QB 396 and *R v Dix* (1981) 74 Cr App R 306.

condition as a “disease”, despite the fact that in some of these instances the words “induced by” were not used.

32. When it came to the issue of “substantial impairment of mental responsibility”, Table 19 shows that report writers failed to make any mention of this concept in 16.7% (n=61) of the reports. Again if as above this is adjusted to exclude the 19 cases where DR was not mentioned, the number is 42 (12.1%), while 9.8% (n=34) positively refused to give a view mainly on the ground that it was for the court and not for them to reach a conclusion on this issue. What is interesting, however, is the frequency with which report writers were willing to give a clear view on this matter. Overall, 69.7% (n=242 out of the total of 347 reports which mentioned DR) of the reports reached such a conclusion, with only 8.5% (n=29) giving a negative as opposed to a positive view.

**Table 19 - substantial impairment of mental responsibility**

	Frequency	Percent	Cumulative Percent
not mentioned	61	16.7	16.7
positive view given	242	66.1	82.8
negative view given	29	7.9	90.7
view refused	34	9.3	100.0
Total	366	100.0	

33. In those reports which favoured the plea some typical examples of the ways in which psychiatrists would couch their conclusions as to the issue of substantial impairment are again given with reference to case numbers:

**Case 3**

“In my opinion at the time of the alleged offence, he was suffering with an abnormality of mind, namely a serious depressive illness, which in my opinion substantially diminished his responsibility for the killing,” (Report for the CPS)

**Case 13**

“In my opinion he was suffering from an abnormality of mind, and further, in my opinion, this was such as to substantially impair his mental responsibility for his actions, within the meaning of section 2 of the Homicide Act 1957.” (Report for the defence)

**Case 14**

“At the time of the alleged offence I believe that, because of his schizophrenia, he was suffering from such an abnormality of mind that it substantially impaired his mental responsibility for his acts. Accordingly a defence of diminished responsibility would be supportable on the evidence.” (Report for the Defence)

**Case 30**

“In my opinion his mental state was such that as a result of the abnormality of mind, a jury could quite reasonably conclude that his responsibility for the offence was substantially diminished.” (Report for the defence)

### **Case 33**

“..at the material time, he was suffering from such an abnormality of mind, induced by disease, as to substantially impair his mental responsibility for his acts in doing the killing.” (Report for the CPS)

### **Case 51**

“I understand that it is a matter for the jury to decide whether this abnormality of mind substantially impaired her mental responsibility for her acts and omissions. I would, however, support that opinion.” (Report for the defence)

### **Case 58**

“..it is probable that the defendant’s abnormality of mind substantially impaired his mental responsibility at the time of the killing.” (Report for the CPS)

### **Case 71**

“The defendant’s abnormality of mind is severe and it is clear to me that his abnormality of mind substantially impaired his mental responsibility for the killing.” (Report for the CPS)

### **Case 107**

“In my view, at the time of the offence he was suffering from such abnormality of mind due to mental depression caused by his marital problems, as to substantially impair his mental responsibility for the act of killing.” (Report for the CPS)

### **Case 124**

“I am further of the opinion that his abnormality of mind at the material time of the alleged offence would have been sufficient substantially to diminish his responsibility for his acts/omissions.” (Report for the CPS)

### **Case 138**

“The issue of whether his mental responsibility was substantially diminished...is ultimately an issue for the jury. In my opinion I believe there is strong evidence to support the argument that his mental responsibility was substantially diminished at the material time.” (Report for the defence)

34. A further point concerns the issue of how often the insanity defence was referred to by report writers as a possible alternative to the diminished responsibility plea. The answer is that this only clearly occurred in a mere 14 of the reports. In all the rest of the reports insanity was either expressly ruled out or not mentioned. The fact that this number is so small is of interest as it means that in very few cases was insanity proposed by report writers as a realistic alternative. Indeed, in only one case (case 38) was the insanity defence actually used as such an alternative, where it was rejected by a jury in favour of DR.

35. It is also of note that 31 of the reports mentioned provocation as a possible plea. In addition, although there were 9 common law manslaughter verdicts which may have been based on provocation, in no case was it suggested that the verdict was based on a combination of diminished responsibility and provocation.

36. It will be recalled that there were 36 cases which went to jury trial. They are case numbers:

2, 4, 6, 10, 12, 13, 15, 17, 24, 28, 33, 37, 38, 47, 58, 60, 68, 69, 73, 81, 93, 111, 112, 113, 114, 118, 123, 126, 127, 131, 135, 136, 142, 144, 147 and 156.

37. It will be recalled from Tables 11a and 11b that of the 36 contested cases, a jury rejected the diminished responsibility plea and convicted the defendant of murder in 58.3% (n=21) of such cases with the plea only being successful in 22.2% (n=8). In a further 16.6% (n=6) of contested cases a jury returned verdicts of common law manslaughter. It may tentatively be concluded, therefore, that juries are more likely to reject the diminished responsibility plea once it is put to them. However, having regard to the fact that these are more likely to be the cases where report writers have major disagreements and which the CPS consider need to be contested this seems hardly surprising.<sup>19</sup>

38. Further, Table 20 below shows that of the 14 cases where the trial judge had discretion over the sentence in the contested cases, 11 received prison sentences and three were given restriction orders. In short, only in uncontested cases were probation orders or suspended sentences used.

**Table 20 - sentence \* jury trial Crosstabulation**

Sentence	jury trial		Total
	yes	no	
mandatory life	22	0	22
discretionary life	3	9	12
between 7 and 10 years	6	6	12
between 5 and 7 years	0	10	10
between 3 and five years	2	7	9
between 1 and 3 years	0	5	5
probation/supervision	0	17	17
fully suspended sentence	0	2	2
restriction order	3	59	62
hospital order	0	6	6
Total	36	121	157

### Concluding Remarks

39. As has already been emphasised this study does not claim to include all the cases where diminished responsibility was pleaded during the research period of 1997-2001. Nevertheless, it does present data relating to 157 defendants where the plea was clearly an issue of relevance within the trial process. In doing so the data from this particular empirical research study reveals the following points:

- Out of a sample of 157 defendants there were 29 females (18.5%) see Table 1a.
- Victims were fairly equally split with 51.6% (n=81) female, see Table 3b.

<sup>19</sup> Disagreements amongst report writers is not something about which any firm conclusions can be drawn owing to the fact that in a number of cases no reports were on the file or alternatively it was clear that some reports were missing.

- The vast majority of the victims (89.8%, n=141) were already known to the accused, only 10.2% (n=16) were strangers. 95% (n=77) of the female victims knew the accused, see table 5a.
- The vast majority of the offences took place in the home of the victim/partner/accused. This accounted for 72.6% (n=114) of the sample, see table 6a.
- “Rage, quarrel or fight” accounted for 46.5% (n=73) of the “apparent circumstances” for the offences. The largest single category of apparent circumstance was “suspect mentally disturbed” at 42% (n=66), see table 7.
- The most common method of killing was a “sharp instrument” (61.1%, n=96), see table 8b.
- There was no jury trial in 77.1% (n=121) of the cases, 20.8% (n=25) of whom were females, see table 10b. This represents 86.2% of the female defendants compared to 75% (n=96) of male defendants.
- Of the four female defendants who were the subject of a jury trial only 1 was charged with the murder of her male sexual partner and she was convicted of DR manslaughter. By contrast of the 32 male defendants, who were the subject of a jury trial, 13 were charged with the murder of a female partner or ex-partner and 9 were convicted of murder.
- In 80.3% of the cases (n=126) the finding was one of diminished responsibility, of which 6.3% (n=8) were contested, see table 11b.
- In 13.4% (n=21) of the cases a diminished responsibility plea failed resulting in 21 murder convictions.<sup>20</sup> This means that out of a total of 36 contested cases, diminished responsibility pleas were successful in 22.2% (n=8) cases. If one adds the six unspecified manslaughter cases we have a total of 14 out of 36 contested cases where defendants avoided murder convictions, see tables 11a and 12a.
- Of the 126 diminished responsibility verdicts, 49.2% (n=62) resulted in a restriction order and six in a hospital order, while 46% (n=58) were punished in the normal way. Of this latter group, 17.2% (n=10) were given discretionary life penalties, while 27.6% (n=16) received probation orders and two were given suspended prison sentences, see table 12b.
- 38% of the female defendants (n=11) were given probation orders. This in turn accounts for 64.7% of all the probation orders (n=17), see table 12c.
- The grand total of psychiatric reports which considered diminished responsibility was 366, see table 14.
- The defence requested 43.7% (n=160) of the overall DR reports followed by the prosecution at 35.2% (n=129), see table 14.
- The most frequent primary diagnosis used in connection with the diminished responsibility plea was depression (28.7%, n=45) followed by schizophrenia

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<sup>20</sup> Although the total number of murder convictions is 22, this includes case 33 where D refused to allow DR to be used at his trial.

(23.6%, n=37), personality disorder (12.7%, n=20) and psychosis (12.7%, n=20), see table 15b.

- Schizophrenia (n=33) and psychosis (n=14) were the two most prominent diagnoses leading to restriction orders. By way of contrast of the 20 diagnoses of personality disorder, five resulted in murder convictions and eight in discretionary life penalties, see table 16a.
- A diagnosis of depression resulted in a much more mixed range of sentences, from a mandatory penalty of life imprisonment in 6 cases, to probation in 11 cases, see table 16a.
- Depression, personality disorder and “other” diagnoses were the major diagnostic categories which led to the cases being tried by a jury as opposed to schizophrenia and psychosis where the plea was only placed before a jury in a total of three cases, see table 16b.
- The vast majority of report writers whose reports were in the court files favoured DR with only 41 reaching the view that the accused’s condition did not fall within the scope of section 2 of the Homicide Act 1957, and 20 making it clear that DR was an issue for the jury to decide, see table 17.
- Report writers frequently failed to consider the bracketed causes.<sup>21</sup> As a result the majority of reports (55.6%, n=193) did not discuss these aetiological causes, see table 18.
- The majority of report writers were willing to give a clear view on the issue of “substantial impairment of mental responsibility”. Overall, 69.7% (n=242) of the reports reached such a conclusion, with only 8.5% (n=29) giving a negative as opposed to a positive view, see table 19.
- The insanity defence was rarely referred to by report writers as a possible alternative to the diminished responsibility plea.

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<sup>21</sup> They are: “whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury”.

## **APPENDIX: DIMINISHED RESPONSIBILITY CASE SYNOPSES**

### **Case 1**

D, a male aged 34, stabbed V, a black stranger aged 56, in the back at a railway station. D was following command hallucinations to kill a black man. In 1996 D received a hospital order for robbery and wounding after he had heard voices telling him to stab a black man. After the alleged offence he was detained in Broadmoor under s 48 MHA. 3 of the 4 psychiatric reports on file favoured DR on the basis of schizophrenia. D's plea of DR was accepted and he received a restriction order.

### **Case 2 Trial**

D, a male aged 50, stabbed his ex-lover, aged 36, in her back garden. He had become possessive and said he was going to commit suicide. There were 2 psychiatric reports on file both instructed by the CPS. One clearly favoured DR on the basis of depression. The other was guarded concluding that although D had an abnormality of mind "I have not been able to establish any causal link or association between D's symptoms, and his state of mind and his alleged offence. It is of course a matter for the jury to decide on the ultimate issue of impairment of responsibility after hearing all the evidence". D was convicted of murder after a trial.

### **Case 3**

D, a male aged 38, killed his ex-partner, aged 30, by hitting her on the head with a hammer. She had been his nurse when he was a psychiatric patient and their relationship had developed. They had a child together but were not living together at the time of the offence. Ds DR plea was accepted by the prosecution. He received a sentence of three years imprisonment. Two psychiatric reports, one for the CPS and one for the defence both favoured DR on the basis of depression.

### **Case 4 Trial**

D, a male aged 26, struck his lover, aged 34, on the head with a hammer when she refused to leave her husband. 2 psychiatric reports, one for the CPS and one for the defence found no mental disorder at the time of the offence and considered there were no grounds for DR. The jury by a majority verdict convicted D of common law manslaughter for which he was given a sentence of 7 years imprisonment.

### **Case 5**

D, a male aged 70, hit his wife, aged 75, on the head with a hammer. She had been ill for some time and was confined to a wheelchair. D said he did it to put her out of her misery. 3 psychiatric reports favoured DR and one for the CPS did not. Ds DR plea was accepted and he received 18 months imprisonment.

### **Case 6 Trial**

D, a male aged 64, stabbed his wife, aged 58, after she had served him with divorce papers. A first psychiatric report for the defence favoured DR on the basis of adjustment disorder. However, a second report for the defence found abnormality of mind but made it clear that the issue of substantial impairment was a matter for the jury. A third report for the Court concluded that Ds condition was not an abnormality of mind, which would have substantially impaired his mental responsibility. Finally, 2 reports for the CPS found no DR. D was convicted of murder by a jury.



**Case 7**

D, aged 50, hit his wife, aged 38, over the head with a hammer. There was marital disharmony and the offence took place after she chided him. A single psychiatric report prepared for the Court favoured DR on the basis of depression. Ds DR plea was accepted and he received 6 years imprisonment.

**Case 8**

D, aged 83, shot his wife, aged 87, twice in the head. She suffered from dementia and had had a stroke. It was described as a mercy killing. 2 psychiatric reports, one for the Court and one for the CPS both favoured DR on the basis of depression. Ds DR plea was accepted and he received a Probation Order.

**Case 9**

D, a male aged 26, stabbed V, aged 24, a fellow male psychiatric patient who had sneaked in to his room, argued with him and accused him of being a Nazi. A report for the defence and the CPS both favoured DR on the basis of schizophrenia. Ds DR plea was accepted on the basis of personality disorder and he received a discretionary life sentence.

**Case 10 Trial**

D, a male aged 34, strangled V, aged 57, a transsexual who had changed sex from male to female in 1999. They were friends but V had propositioned D sexually. At his trial D pleaded DR and provocation. A psychiatric report for the CPS favoured DR on the basis of Post Traumatic Stress Disorder. A jury returned a DR verdict and D was sentenced to 7 years imprisonment.

**Case 11**

D, a male aged 20, killed a fellow male resident, aged 22, in a care home for psychiatric patients by stabbing him. They had an argument about a games console. A psychiatric report for the defence and the CPS both favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order under the MHA.

**Case 12 Trial**

D, a male aged 52, stabbed his wife, aged 42. They had recently separated and D wanted her back but she refused. The killing took place in the marital home. One psychiatric report for the CPS found no DR. The jury returned a majority verdict of murder.

**Case 13 Trial**

D, a male aged 36, stabbed V, a female aged 44, who worked for a credit company and had come to his flat to collect money owed. D could not explain why he had killed V. 2 psychiatric reports for the CPS and the Court found no DR. 3 reports for the defence supported DR on the basis of personality disorder. At his trial a jury returned a murder verdict.

**Case 14**

D, a male aged 26, killed his father, aged 55, by hitting on the head with a pickaxe. D had a history of mental illness and could not explain the offence. 2 Psychiatric reports for the defence both favoured DR on the basis of schizophrenia. Ds DR plea was accepted by the prosecution and he received a hospital order.

**Case 15 Trial**

D, a male aged 57, killed his granddaughter, aged 3, who he was looking after, by dropping her from a 7<sup>th</sup> floor balcony of a block of flats. D was drunk and was in a bad temper after being told to leave the club where he was drinking. D said it was an accident. A psychiatric report for the Court found no DR and a jury convicted D of murder.

**Case 16**

D, a Moroccan woman, aged 44, stabbed her husband, aged 59, outside their home. She was deluded and believed V was trying to poison her. A psychiatric report for the defence and the Court both favoured DR and her plea was accepted. D received a restriction order.

**Case 17 Trial**

D, a male aged 25, stabbed V, a male aged 19, fatally and two other males who he wounded. They were strangers. D was drunk and had a psychiatric history. The offences were motiveless. A report for the CPS did not favour DR. Another report for the CPS and one for the defence both found DR. A jury returned a DR verdict and he received a restriction order.

**Case 18**

V, a female, aged 18, stabbed her lover, a male aged 39, in the bedroom of her flat. She was experiencing flashbacks of sexual abuse as a child at the time. A report for the defence and the CPS both favoured DR on the basis of personality disorder and her plea was accepted. She received a discretionary life penalty.

**Case 19**

D, a male aged 57, slit his partner's (aged 50) throat. He was deluded into believing she was trying to poison him. The offence took place in their campervan as she slept. Two reports one for the defence and the CPS both favoured DR on the basis of psychosis and his plea was accepted. He received a discretionary life penalty but this was quashed on appeal and replaced with a restriction order.

**Case 20**

D, a male aged 34 born in Thailand, stabbed V a male friend, aged 29, outside a pub. D was angry at alleged remarks V had made about his mother. D had a history of mental illness. 2 reports for the court both favoured DR on the basis of schizophrenia and Ds DR plea was accepted by the prosecution. He received a restriction order.

**Case 21**

D, a female aged 20 born in Uganda, suffocated her 3 year old daughter at home due to depression and suicidal thoughts. 2 psychiatric reports for the defence both favoured DR on the basis of depression. Ds DR plea was accepted and she received a hospital order.

**Case 22**

D, a male aged 26 together with his brother and another co-defendant had an argument in a pub with V, aged 42. They beat him to death and later attacked another V which led to an attempted murder charge. Ds brother was convicted of murder. One report for the defence

found DR on the basis of schizophrenia. Ds DR plea was accepted and he received a restriction order. His attempted murder charge was ordered to remain on file.

### **Case 23**

D, a male aged 65 born in Spain strangled his wife, aged 60. They had separated and they argued because he had paranoid beliefs that she was entering his flat and going through his papers. 2 reports for the CPS, one for the defence and one for the CPS all favoured DR on the basis of schizophrenia and paranoid psychosis. Ds DR plea was accepted and he received a restriction order.

### **Case 24 Trial**

D, a male aged 16, with a co-defendant attacked 2 vagrants and killed one, aged 57, by beating him to death. All 5 reports diagnosed personality disorder, which was untreatable, and only one for the defence found an "abnormality of mind" but considered it was for the jury to decide the issue of substantial impairment of mental responsibility. 4 other reports, 2 for the Court, one for the CPS and one for the defence all found no DR. D was convicted of murder, robbery and GBH. He was sentenced to be detained for life.

### **Case 25**

D, a female aged 29, killed her 5year old son by hitting him with a pickaxe handle, stabbing and strangling him. She attempted to murder her other son. She believed paedophiles were after her children. 3 reports all diagnosed schizophrenia and her DR plea was accepted. She was also convicted of false imprisonment and attempted murder. She received a restriction order.

### **Case 26**

D, a male aged 27, stabbed a male friend, aged 65, in the street after an unwanted sexual advance. He believed he had been sexually abused by V a month before while sleeping. 4 reports favoured DR on the basis of schizophrenia and D received a restriction order.

### **Case 27**

D, a male aged 33, stabbed V a male friend, aged 37, who had sexually molested his girlfriend as all 3 lay on a mattress after a heavy drinking session. 5 reports all favoured DR on the basis of personality disorder and Post Traumatic Stress Disorder. Ds DR plea was accepted and he was sentenced to 8 years imprisonment.

### **Case 28 Trial**

D, a male aged 41, stabbed his wife, aged 38. They were living apart. D was babysitting. V came back after a night out. D wondered if V would bring a man back. He decided to wait to see if she would. He sat in the dark in the kitchen. She arrived and switched on the light. He said "she went barmy", swearing at him for checking up on her. He held out a knife, to cut himself. She screamed and ran at him. He repeatedly stabbed her with several knives. A report for the defence favoured DR while 2 for the CPS did not. A jury convicted D of murder.

### **Case 29**

D, a Sikh male aged 35 born in the UK, felt ostracised by the Sikh community. He planned to confront and attack the priest at the Sikh temple. In doing so he fatally stabbed a male

helper, aged 55, and wounded the priest. Two reports favoured DR on the basis of depression. D's DR plea was accepted and he was given a restriction order. He pleaded guilty to unlawful wounding.

### **Case 30**

D, a male aged 29, stabbed his father, aged 62, believing that V practised black magic. D had suffered from schizophrenia since 1987 and had twice before stabbed V for which he had received 4 years for wounding in 1992. Two reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

### **Case 31**

D, a male aged 39 stabbed a male neighbour, aged 30, in a block of flats. D believed they had bugged his door and that there was a light sensor in the door to alert the neighbours as to his movements. 3 reports all favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

### **Case 32**

D, a 12 year old boy stabbed his stepbrother, aged 6 months, and cut off his hand. D was suffering from Asperger syndrome. A psychiatric assessment report opined that while D fulfilled the criteria for mental impairment under the MHA 1983, cutting off V's hand which required accuracy and deliberation ran "counter to the argument for substantial impairment of mental responsibility". D's DR plea was accepted and he was given a restriction order.

### **Case 33 Trial**

D, a black male aged 29, stabbed his friend's brother, aged 31, outside V's house. D thought V was talking about him and going to harm him and they argued about this. 3 reports favoured DR on the basis of paranoid psychosis but D refused to allow the plea to be led at his trial. As a result he was convicted of murder. On appeal a manslaughter conviction was substituted and he was given a restriction order.

### **Case 34**

D, a black male aged 21 born in Ethiopia, stabbed his sister, aged 23, in the flat they shared. She was sleeping on the settee. D thought she was putting something in his drink. 2 reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

### **Case 35**

D, a female aged 26, stabbed her female friend, aged 25. They had an argument in Ds flat. D had taken drink and drugs. 2 reports favoured DR on the basis of severe personality disorder. Ds DR plea was accepted and she was given a discretionary life penalty with a 4-year tariff. Her appeal against sentence was allowed in 2001 and a 3-year tariff substituted.

### **Case 36**

D, a male aged 48, drove his car at 3 strangers on purpose killing 2 of them. D had a long history of mental illness. 3 reports all favoured DR on the basis of manic depressive psychosis. Ds DR plea was accepted and he was given a restriction order.

### **Case 37 Trial**

D, a female aged 36, stabbed her male partner, aged 40, at home after an argument. Theirs was an abusive relationship. V drank a great deal. 2 reports one for the defence and one for the CPS both favoured DR on the basis of personality disorder. The report for the defence also considered provocation to be relevant as D had a number of “enduring characteristics relating to her personality difficulties and her response to the relationship with” V. “These might be seen to have affected her susceptibility to respond as she did under the provocation of the deceased’s failure to defend her honour in public and his refusal to challenge the behaviour of the other woman in insulting the defendant over a prolonged period of time leading up to the index offence”. A jury convicted D of DR manslaughter and she was sentenced to 42 months imprisonment.

### **Case 38 Trial**

D, a male aged 26, stabbed V, his psychiatric social worker, a female aged 51. He said he was acting on instructions from God. 2 reports diagnosed schizophrenia and favoured DR. At the trial the defence pleaded insanity and both defences were left to the jury which returned a DR verdict. D was given a restriction order.

### **Case 39**

D a retired psychiatrist, aged 58, born in Syria, set fire to the flat he shared with V, a male aged 60, who died in the blaze. D was depressed and wanted to end his life. 2 reports diagnosed depression. Ds DR plea was accepted and he received a sentence of 6 years imprisonment.

### **Case 40**

D, a male aged 31, strangled his wife, aged 33, after an argument. Theirs was an abusive relationship and D had been drinking. 2 reports favoured DR on the basis of depression and alcohol dependency syndrome. D’s DR plea was accepted and he was sentenced to 5 years imprisonment.

### **Case 41**

D, a male aged 68, stabbed his daughter-in-law, aged 38, in her home where he was staying. There was no apparent motive but D attempted suicide after the offence. 3 reports diagnosed depression and favoured DR. Ds DR plea was accepted and he received a hospital order.

### **Case 42**

D, a male aged 29, stabbed his grandmother, aged 69. D had a long psychiatric history including a hospital order for wounding. One report for the court diagnosed psychopathic disorder and favoured DR. Ds DR plea was accepted and he was given a discretionary life penalty with a tariff of 5 years and 3 months.

### **Case 43**

D, a female born in the Philippines, aged 27, stabbed her husband, aged 47, in the marital home after he had forcible sex with her. Theirs was an abusive relationship. 3 reports diagnosed depression and favoured DR. Ds DR plea was accepted and she was given a 3 year probation order with mental treatment.

**Case 44**

D, a male aged 28, beat his grandmother, aged 84, to death at her home. He had taken drink and drugs and had a psychiatric history. 3 reports diagnosed schizophrenia and favoured DR. Ds DR plea was accepted and he was given a restriction order.

**Case 45**

D, a male aged 21, stabbed a male neighbour aged 41. D had a long psychiatric history. There was no motive for the attack. 2 reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 46**

D, a male aged 70, killed his wife, aged 86, with a hammer. Vs health had deteriorated and D was concerned about this. 2 reports favoured DR on the basis of depression. Ds DR plea was accepted and he was sentenced to 2 years imprisonment full suspended with 2 years supervision.

**Case 47 Trial**

D, an Asian male aged 32, beat his female partner, aged 18, to death. D had a long psychiatric history and suffered from epilepsy. An epileptic automatism defence was supported by 3 reports for the defence but not by 2 prosecution reports. 2 of the defence reports favoured DR on the basis of personality disorder but this was rebutted by one of the reports for the prosecution. After a trial a jury convicted D of murder and he was sentenced to life imprisonment.

**Case 48**

D, a black male aged 19, killed V, a female friend, aged 57, by beating her. There was no apparent motive. D was deaf and had a psychiatric history, which included violent episodes. 2 reports for the court both diagnosed manic depression. One of these reports favoured DR. Ds DR plea was accepted and he was given a restriction order.

**Case 49**

D, a male aged 16, stabbed his grandmother, aged 70, in the belief that her side of the family was evil. D had a psychiatric history. 2 reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 50**

D, a male aged 29, stabbed V, aged 26, who had a homosexual relationship with D. D wanted V back and was jealous of Vs new relationship. D had a psychiatric history. 3 reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 51**

D, a female aged 31, stabbed her male partner, aged 43, after an argument over her cat. D had a serious alcohol problem and a history of hydrocephalus. 3 reports diagnosed personality disorder and alcohol dependence and favoured DR. Ds DR plea was accepted and she was given a discretionary life penalty with a tariff of 3 years and 10 months.

**Case 52**

D, a male aged 47, strangled his female partner, aged 44 for no apparent motive. D had a psychiatric history. 3 reports diagnosed personality disorder but all made it clear that the issue of "substantial impairment" was a matter for the court to decide. Ds DR plea was accepted and he was given a discretionary life penalty with a tariff of 10 years.

**Case 53**

D, a male aged 31 born in Angola, stabbed a stranger, aged 42, who was living in the bedroom D had slept in formerly in a mental health hostel. D had absconded from a psychiatric unit prior to the offence. Two reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 54**

D, a female aged 31, hit her stepfather, aged 68, with a hammer in their home. She had a psychiatric history and was hearing voices at the time. A single report diagnosed schizophrenia as "an inherent cause for her abnormality of mind". Ds DR plea was accepted and she was given a restriction order.

**Case 55**

D, a male aged 33 born in South Africa, stabbed a male nurse, aged 34. They both worked together and D thought V was talking about him behind his back and calling him a homosexual. 3 reports favoured DR on the basis of paranoid psychosis. Ds DR plea was accepted and he was given a restriction order.

**Case 56**

D, a female aged 20, stabbed her aunt, aged 60, with whom she lived. There was no motive for the offence. D had a psychiatric history. Three reports favoured DR on the basis of paranoid psychosis. Ds DR plea was accepted and she was given a restriction order.

**Case 57**

D, a female aged 37, born in Nigeria strangled her 5 year old son in order to exorcise demons from him. 2 reports favoured DR on the basis of paranoid psychosis. D's DR plea was accepted and she was given a restriction order.

**Case 58 Trial**

D, a male aged 41 born in the West Indies, stabbed his wife, aged 39. He believed she was having an affair and they argued. A report for the defence and for the CPS found no DR. A second report for the CPS favoured DR on the basis of morbid jealousy. A fourth report, the source of which is unclear, favoured DR on the basis of depression and also mentioned provocation. After a trial D was convicted on the basis of DR and was given a sentence of 7 years imprisonment.

**Case 59**

D, a female aged 51, poisoned her two sons, aged 20 and 23, both of whom suffered from cerebral palsy. Looking after them became too much for her. 2 reports favoured DR on the basis of depression. Ds DR plea was accepted and she was given a 3 year probation order which was later discharged on the grounds of good progress.

**Case 60 Trial**

D, a male aged 28 killed his lover, aged 28, by stabbing her with a pair of scissors and a knife. After unprotected sexual activity V had told him that she was HIV positive. A psychiatric report for the defence found evidence of post traumatic stress disorder and substance abuse problems which "could be regarded as causing a degree of diminution of responsibility". It also stated that individuals who suffer from post traumatic stress disorder are "said to be more prone to acts of violent" because of "irritability or outbursts of anger". D pleaded guilty to manslaughter on the basis of a combination of provocation and diminished responsibility. The jury returned a majority verdict of murder and D was sentenced to life imprisonment.

**Case 61**

D, an Asian female, aged 30, drowned her 4 month old daughter. She heard voices telling her to do it. A psychiatric report for the defence favoured DR on the basis of puerperal psychosis. Ds DR plea was accepted and she received a restriction order.

**Case 62**

D, a male aged 49, beat his father, aged 73, to death. His wife had recently said she wished to divorce him, out of the blue. D was having a breakdown at the time. Two reports favoured DR on the basis of depressive psychosis. Ds DR plea was accepted and he was sentenced to 42 months imprisonment.

**Case 63**

D, a male aged 57, stabbed his wife, aged 52. They were living apart. V told D there was someone else and wanted a divorce. Two reports favoured DR on the basis of depression. Ds DR plea was accepted and he was given a three year probation order which required D to receive such treatment as and when directed by the probation service.

**Case 64**

D, a male aged 30, stabbed a female PC, aged 25, who had gone to his address to arrest him. D had a psychiatric history and had assaulted the police in the past. Four reports all favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 65**

D, a male aged 51, hit his wife, aged 56, on the head with a hammer. They had marital problems and argued. Three Reports all favoured DR on the basis of depression. Ds DR plea was accepted and he was sentenced to 5 years imprisonment.

**Case 66**

D, a male aged 26, beat V, a male aged 39, to death in the street. They had a long running dispute which began over a game of pool in a pub. A report for the CPS favoured DR on the basis of psychopathic disorder. Ds DR plea was accepted and he was given a discretionary life penalty.

**Case 67**

D, a male aged 30, hit his wife, aged 28, with a hammer while she was asleep. D suspected an affair. Three reports all diagnosed schizophrenia and epilepsy. The CPS eventually



accepted D's DR plea after initial reluctance. D received a restriction order. Early reports expressed concerns over Ds fitness to plead.

#### **Case 68 Trial**

D, a male aged 24 born in Algeria, stabbed a fellow Algerian, aged 25, after a disagreement. D was drunk. Three reports found no DR while one for the defence found DR on the basis of a disease of the mind arising from abnormal grief reaction, alcohol dependency and acute stress disorder. A jury convicted D of murder and he was given a penalty of life imprisonment.

#### **Case 69 Trial**

D, a male aged 36, stabbed his wife, aged 44, in their bedroom at home. There was a history of domestic violence. He suspected infidelity. D pleaded DR on the basis of a defence report which diagnosed a delusional disorder of the persecutory type. 2 other reports were neutral on the issue of DR. A jury convicted D of murder and he received sentence of life imprisonment.

#### **Case 70**

D, a male aged 54, stabbed his wife, aged 46 in their home. V had left him and returned to tell him the marriage was over. They argued. A report (not on file) for the CPS found no DR, another found abnormality of mind but gave no view on substantial impairment. Two reports for the defence favoured DR on the basis of depression. The prosecution refused to accept Ds DR plea and a trial began but was halted after discussions in court with the psychiatrists. Ds DR plea was then accepted and he received a restriction order.

#### **Case 71**

D, a male aged 52, stabbed his wife, aged 40, in their bedroom. He suspected her of an affair. D had suffered a serious head injury some years earlier. Two reports favoured DR on the basis of PTSD, delusional jealousy, depression and organic brain damage. Ds DR plea was accepted and he was given a restriction order.

#### **Case 72**

D, a male aged 46, stabbed V, a male aged 43, in his car as they argued about Ds wife's affair and her leaving to live with V and taking their children. Two reports favoured DR on the basis of depression. Ds DR plea was accepted and he was sentenced to 4 years imprisonment.

#### **Case 73 Trial**

D, a male aged 25, an asylum seeker from Albania, stabbed V, aged 27, in the street. V and D lived in the same house. D believed V was responsible for his abdominal complaint which prevented him from eating. D was initially found unfit to plead but was later remitted for trial. A report favoured DR on the basis of psychosis. A jury convicted D of manslaughter and he was given a discretionary life penalty with a tariff of two years.

#### **Case 74**

D, a female aged 51, stabbed her husband, aged 51, at home. They had marital problems and V had been violent towards D. D said V began pushing her and she took a knife from the kitchen to protect herself from his aggression. There were no reports on the file but 2 are referred to, both of which favoured DR on the basis of depression. Ds DR plea was accepted and she was sentenced to 2 years imprisonment.

**Case 75**

D, a female aged 18, stabbed her male partner, aged 23, in their flat. There was a violent relationship. They argued about splitting up. V claimed the stabbing was an accident. The prosecution would not accept Vs manslaughter plea based on lack of intent but did accept her DR plea. There were no reports on file but 2 are referred to both of which favoured DR on the basis of depression. V was sentenced to 4 years detention substituted on appeal to a 2 year probation order.

**Case 76**

D, a female aged 42 born in Malaya, drowned her 2 year old son. There was a background of domestic violence and psychiatric problems. A custody battle was underway with her husband who was violent towards D. D said she could think of no other way to keep V safe, she felt overwhelmed with blackness. A report for the defence favoured DR on the basis of depression. A report for the CPS also favoured DR but diagnosed borderline personality disorder. Ds DR plea was accepted and she was given a 3 year probation order.

**Case 77**

D, a female aged 36, stabbed her partner, a male aged 43, at their home. D was an alcoholic and both had been drinking heavily. There was a history of domestic violence. D said they argued and that she acted in self defence and was provoked. Three reports all favoured DR on the basis of alcohol dependency syndrome. Ds DR plea was accepted and she was given a 3 year probation order with a residence condition relating to an alcohol project.

**Case 78**

D, a female aged 61, strangled her mother, aged 91. V had become difficult to deal with and their relationship was strained. D could not explain the offence. Two reports diagnosed psychotic depression and favoured DR. Ds DR plea was accepted and she received a 3 year probation order.

**Case 79**

D, a female aged 26, stabbed her husband, aged 24, at home. They had an abusive relationship. They argued about Vs glue sniffing. V went to hit D. She picked up a knife and stabbed him once. Two reports favoured DR on the basis of mental handicap. Ds DR plea was accepted and she was given a 3 year probation order with a condition of mental treatment.

**Case 80**

D, a female aged 30, abandoned her newly born son who died of neglect aged one month. D concealed the pregnancy from her parents as she was afraid. D had attended a school for children with learning problems and had a history of behavioural and personality difficulties. A charge of Infanticide was not appropriate, as there was no evidence that Ds omission was wilful. Two reports favoured DR on the basis of personality disorder and she was given a 3 year probation order.

**Case 81 Trial**

D, a female aged 14, with a co-accused of the same age, jointly suffocated the elderly V, aged 71, whom they knew. Both Ds had taken drink and drugs. There are no reports on file but reference is made to 2 reports both of which diagnosed PTSD. The report for the defence favoured DR, there are no details on the report for the CPS. After a trial lasting 27 days both Ds were convicted of murder and sentenced to detention for life.

**Case 82**

D, a male aged 46, stabbed his wife, aged 40. V was in bed. D believed she was having an affair. D had suffered a serious head injury in 1981. Three reports favoured DR on the basis of brain damage and pathological jealousy. Ds DR plea was accepted and he received a sentence of 6 years imprisonment.

**Case 83**

D, a female aged 52, suffocated her 13 year old son after drugging him. She was found with a plastic bag over her head, intending to kill herself. She had a history of depression. Two reports favoured DR on the basis of depression. Ds DR plea was accepted and she was sentenced to 4 years and 6 months imprisonment.

**Case 84**

D, a male aged 23, beat his girlfriend, aged 31, to death. He was also charged with the attempted murder of the man she was with. They were all intoxicated and D woke up to find V and the other man in a compromising position. He said he "freaked out" and attacked them both. A report for the CPS found no DR. A report for the defence favoured DR on the basis of personality disorder worsened by the associated increased sensitivity to the effects of intoxicants. Ds DR plea and plea of guilty to s. 18 were accepted. He received a sentence of 6 years imprisonment.

**Case 85**

D, a male aged 32, beat his mother, aged 70, to death in the belief that she was the devil. He had a psychiatric history. Three reports all favoured DR on the basis of schizophrenia and psychosis. Ds DR plea was accepted and he received a restriction order.

**Case 86**

D, a male aged 39, stabbed his ex-partner, aged 39. Their relationship was turbulent with some violence. V told D it was finished between them. D went to Vs home to discuss this and thought she was lying to him. He picked up a kitchen knife and she grabbed at it with the result that D stabbed her. A report for the CPS found no DR. A second CPS report and one for the defence both favoured DR on the basis of depression. Ds DR plea was accepted and he received a sentence of 7 years imprisonment.

**Case 87**

D, a female aged 17, stabbed the man, aged 30, she was living with while he slept. There was a history of domestic violence. D feared V would kill her when he woke up. Vs dismembered body was found later on farmland. Three reports favoured DR on the basis of depression. Ds DR plea was accepted and she was given a 3 year probation order with a condition of mental treatment.

**Case 88**

D, a male aged 23, shook his 2 month old son. D snapped, as V would not stop crying. A report for the defence favoured DR on the basis of depression. D denied any intent to do GBH. The Crown would not accept this but did accept DR. D was sentenced to a term 2 years and 6 months imprisonment.

**Case 89**

D, a male aged 29, stabbed his mother, aged 50, at his parents' home. V was asleep and D thought she was the devil. D had a drug problem and had been taking diazepam. Two reports favoured DR on the basis of psychosis influenced by drugs. Ds DR plea was accepted and he was given a restriction order.

**Case 90**

D, a male aged 67, bludgeoned his wife, aged 64, to death because he thought they were financially ruined and he had to prevent her facing a bleak future. D had earlier attacked V while suffering from depression. Three reports favoured DR on the basis of depression. Ds DR plea was accepted and he was given a restriction order.

**Case 91**

D, a male aged 25, stabbed two friends killing one of them. D had a psychiatric history and said he did it because the Vs both suffered from depression and anxiety and had no quality of life. He wanted to put them out of their misery. Three reports favoured DR on the basis of schizophrenia. Ds DR plea and plea of guilty to attempted murder of the other V were accepted. He was given a restriction order.

**Case 92**

D, a male aged 24, stabbed V, aged 37, with whom he had been having a homosexual relationship for some time. D confronted V about being coerced into having sex with V, who mocked him. D picked up a knife and stabbed V once in the neck. Three reports favoured DR on the basis of schizophrenia. D had a psychiatric history. Ds DR plea was accepted and he was given a hospital order.

**Case 93 Trial**

D, a female aged 32, stabbed V, a female aged 31. They had been having a lesbian relationship for some time. Both had been drinking. V had been flirting with a man. They argued at home. V had a knife and D felt threatened. D got a knife and jabbed out with it stabbing V. Two defence reports favoured DR on the basis of depression. Two CPS reports found no DR. Other defences in issue were lack of intent, self-defence and provocation. A jury convicted D of manslaughter (unspecified) and D was sentenced to 4 years imprisonment.

**Case 94**

D, a male aged 24, suffocated V, a male aged 51. D went back to Vs flat after V had approached him. V was a homosexual. D tied V up and put a plastic bag over his head. D left with Vs chequebook, bankcard and some of his belongings. D had a psychiatric history. There were no reports on file but 2 are referred to without any details. Ds DR plea was accepted and he was given a restriction order.

**Case 95**

D, a male aged 41, pushed a male stranger, aged 20, off the platform at railway station under a train. D had a psychiatric history. He thought he was the reincarnation of John the Baptist. Three reports favoured DR on the basis of psychosis. Ds DR plea was accepted and he was given a restriction order.

**Case 96**

D, a male aged 34, set fire to the flat in which he lived with his mother, aged 62. She died in the blaze. Two reports favoured DR on the basis of depression and personality disorder. Ds DR plea was accepted and he was given a restriction order.

**Case 97**

D, a female aged 25, stabbed her 18 month old daughter and set fire to her flat. D stabbed herself four times intending to kill herself. Two reports favoured DR on the basis of depression. Ds DR plea was accepted and she received a restriction order.

**Case 98**

D, a male aged 47, stabbed his son-in-law, aged 30. D broke into his daughter and son-in-law's house at night and stabbed V in bed. D had a history of schizophrenia and blamed V for taking his daughter from him. D had stopped taking his medication prior to the offence. There were no reports on file but Ds DR plea was accepted and he was given a restriction order.

**Case 99**

D, a male aged 48, stabbed his female partner, aged 31, at their home. Their relationship was volatile. D had a psychiatric history. V had refused D entry to the house and he had kicked in the door. A report for the Court found no DR. Two reports, one for the defence and one for the CPS favoured DR on the basis of psychosis. Ds DR plea was accepted and he received a term of 9 years imprisonment.

**Case 100**

D, a male, aged 24, had a fight with V, aged 32, after a party and stamped on his head. D and V knew one another but were not friends. D had been in the army in Bosnia. A report for the Court found no DR. Two other reports favoured DR on the basis of Post Traumatic Stress Disorder. Ds DR plea was accepted and he received a sentence of 6 years imprisonment.

**Case 101**

D, a male aged 28, hit his female partner, aged 24, repeatedly. D had a history of schizophrenia and believed V was a prostitute and a member of the IRA. Two reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 102**

D, a male aged 54, stabbed his landlady, aged 70, after he had tried to kill himself. D said he just 'flipped' as V kept on at him. A report for the defence favoured DR on the basis of alcohol related brain damage. Two reports by the same psychiatrist for the CPS are not on file. In the first the expert was undecided. In the second, after a brain scan carried out on V, it confirmed brain damage. Although the report did not express a concluded view on the degree of impairment, it did not contradict the defence report and implicitly favoured DR. On the day of the start of the trial Ds DR plea was accepted. D received a discretionary life penalty with a tariff of 5 years.

**Case 103**

D, a male aged 75, stabbed his wife, aged 86, at home after they had both been drinking in the pub. V had become unwell and D said he could no longer cope. D was mentally impaired

and had dementia. Three reports all favoured DR on this basis. Ds DR plea was accepted and he was given a hospital order.

#### **Case 104**

D, an Asian male aged 42 born in Kashmir, stabbed his wife, aged 44, daughter, aged 16 and son, aged 18 at home. He believed he had been put under a spell and thought his wife and daughter were having affairs. His son got in the way. Two reports diagnosed schizophrenia and favoured DR. Ds DR plea was accepted and he was given a restriction order.

#### **Case 105**

D, a male aged 37, stabbed his wife, aged 36. V had met someone else thought a chat room on the Internet. She had returned to their house to collect her belongings. A report for the CPS diagnosed acute stress reaction but failed to mention DR. A report for the defence favoured DR on this basis. The file makes clear that the judge was reluctant to permit the DR plea to be accepted, as the reports were unclear as to DR. He asked for more reports. Ds DR plea was eventually accepted and he was given a sentence of 6 years imprisonment.

#### **Case 106**

D, a male aged 38, kicked his wife, aged 38, in the head. Both had been drinking heavily and argued. D had a long history of alcoholism. Two reports favoured DR on the basis of alcohol dependency syndrome. Ds DR plea was accepted and he was sentenced to 6 years imprisonment with a 4 year extended license period.

#### **Case 107**

D, a male aged 55, stabbed his wife, aged 52, during an argument over her infidelity. D had a psychiatric history. Three reports favoured DR on the basis of depression. Ds DR plea was accepted and he received a sentence of 4 years imprisonment.

#### **Case 108**

D, a male aged 66, strangled his wife, aged 54. V had a psychiatric history and D was trying to have her hospitalised. They argued and V hit D twice, saying "why don't you attack me then I can do you for GBH." D snapped and strangled her. One report for the defence found no DR. Three other reports favoured DR on the basis of depression. Provocation was also an issue. Ds DR plea was accepted and he was given a suspended sentence for 2 years and a 2 year suspended sentence supervision order.

#### **Case 109**

D, a male aged 32, struck V, aged 29, on the head twice with a heavy gas cylinder. They had both been drinking for 3 days. Vs body was found outside Ds flat. D said he was trying to get rid of V who was a nuisance and that V had butted the wall himself. D could not remember hitting V. 2 reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

#### **Case 110**

D, a male aged 33, stabbed his wife, aged 28. They were living apart but he expected to be reunited with V. She taunted him about her infidelity and the paternity of the children. They argued and D stabbed V. Two reports for the CPS found no DR but commented on provocation. A third report for the CPS and one for the defence both favoured DR on the

basis of depression and provocation. Ds plea of guilty to manslaughter was accepted and he was sentenced to 7 years imprisonment.

#### **Case 111 Trial**

D, a male aged 22, kicked V, a male aged 22, to death after V bit off part of Ds ear. D had been living at Vs flat. They both used class A drugs. There were no reports on file but it is clear that DR and provocation were under consideration. D had severe learning difficulties and was partially deaf. After a trial D was convicted of manslaughter and was sentenced to 8 years imprisonment.

#### **Case 112 Trial**

D, a male aged 38, hit his partner, aged 35, on the head with an iron bar and strangled her. The couple was separating and V had begun a relationship with another man. D had been drinking heavily. A report for the CPS found no DR. A report for the defence favoured DR on the basis of depression. A jury convicted D of murder and he was sentenced to life imprisonment.

#### **Case 113 Trial**

D, a male aged 27, stabbed V, aged 26, in her car after she had refused to drive off with him. V was a stranger. He then falsely imprisoned and threatened to kill a second female V, also a stranger to him. There were no reports on file on DR. But it is clear that 2 defence reports favoured insanity and DR. A third report for the CPS favoured DR while a fourth also for the CPS was unclear. A jury convicted D of murder and he was sentenced to life imprisonment with a recommendation that he should never be released.

#### **Case 114 Trial**

D, a male aged 53, stabbed his neighbour, aged 23, from a downstairs flat. V played very loud music over a period of months. D removed a fuse to stop this. V who was drunk confronted D about this. They argued and D stabbed V. D was convicted of murder in 1966 when he hit a neighbour with a hammer. He was released on life license in 1984. All 3 reports diagnosed personality disorder but 2 considered there was no substantial impairment. Provocation and self defence were also raised. A jury convicted D of DR manslaughter and he was sentenced to a discretionary life penalty with a tariff of 15 years.

#### **Case 115**

D, a male aged 29, killed a fellow inmate, aged 35, in the prison cell they were sharing. D in response to voices cut V open while he slept and removed his organs and eyes. D had a long psychiatric history and had been discharged from a secure hospital as untreatable in 1998. An agreed position statement by all 3 psychiatrists was asked for by the trial judge. This diagnosed severe personality disorder arising from all the causes specified in section 2. It favoured DR and recommended a prison sentence. Ds DR plea was accepted and he was given a restriction order.

#### **Case 116**

D, a male from Somalia aged 21, stabbed an associate, aged 23, from whom he bought Khat, a plant chewed for its intoxicating effect. They argued over a transaction and D stabbed V. Three reports diagnosed Khat psychosis. The report for the Court stated that the question of substantial impairment was for the jury. The other 2 reports favoured DR. Ds DR plea was accepted and he was sentenced to 5 years imprisonment.

**Case 117**

D, a male aged 32, stabbed his mother, aged 65, at their home. D had a psychiatric history. At the time of the offence D said he had to get rid of the 'Y' in her surname. Two reports favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 118 Trial**

D, a female aged 44 from the Punjab, assisted her son to strangle her eldest daughter, aged 29, who was pregnant as a result of a relationship of which the family disapproved. D was also charged with child destruction. A report for the CPS found no DR. A jury convicted D of murder along with her son and she was sentenced to life imprisonment.

**Case 119**

D, a male aged 50, stabbed his wife, aged 51, whom he believed was involved in pornography. He stabbed V in the kitchen of their home, in a frenzy. D had been receiving medication for depression. Three reports favoured DR on the basis of depression. Ds DR plea was accepted and he was given a probation order for 3 years with a condition of mental treatment.

**Case 120**

D, a male aged 30, stabbed a fellow drinker, aged 26, at Ds flat. They were heavily intoxicated and were both alcoholics. D could not remember the offence. A report for the CPS found no DR but agreed with the report for the defence on diagnosis, a combination of mental impairment, depression and alcohol dependence syndrome. These reports were requested at short notice owing to problems with earlier reports. Ds DR plea was accepted and he was sentenced to 8 years imprisonment.

**Case 121**

D, a male aged 29, stabbed his elder brother, aged 35, after V had intervened in an argument between D and one of his other brothers about money owed. D had a history of schizophrenia and not taking his medication. Two reports diagnosed schizophrenia. One did not address DR but the one for the defence favoured DR. A third report, not on file, also favoured DR. Ds DR plea was accepted and he was given a restriction order (exceptional circumstances found to avoid an automatic life sentence).

**Case 122**

D, a male aged 58, shot V, aged 62, twice. They were next door neighbours and D thought V was breaking up his family. D suffered from Huntington's chorea. Three Reports favoured DR on this basis. Ds DR plea was accepted and he was given a restriction order. The prosecution was put under pressure by Vs family not to accept the DR plea and D had to be persuaded against pleading not guilty.

**Case 123 Trial**

D, a male aged 16, stabbed his male friend, aged 16. D suffered from Asperger syndrome. V demanded money, threatened to take Ds playstation which was like the end of the world for D. The only report on file does not address DR. However, a first jury was unable to agree and was discharged on 29/1/2001. At a second trial it is clear that both DR and provocation were pleaded. Four experts for the defence all diagnosed Asperger but two experts for the CPS disagreed. D was convicted of murder and sentenced to detention for life. An appeal on the basis of provocation and DR was lodged.



**Case 124**

D, a male aged 27, hit his wife, aged 24, with a hammer. They had a violent relationship, argued about drugs and V accused D of having an affair. V came at D with a hammer and D was unable to control his reaction. Two reports favoured DR on the basis of personality disorder. Ds DR plea was only accepted after long negotiations when the judge indicated he would not stand in the way of this. D received a discretionary life penalty with a tariff of 7 years.

**Case 125**

D, a male aged 36, strangled his wife, aged 45. Two months before the offence D was admitted to hospital as an emergency patient. He believed V was having an affair with his brother. D was discharged 9 days later. He continued to believe V was having an affair and strangled her in bed. Two reports favoured DR on the basis of paranoid psychosis. Ds DR plea was accepted and he was given a restriction order. Ds case resulted in an independent enquiry.

**Case 126 Trial**

D, a male aged 20, was involved in a street fight which resulted in V, a male aged 17, being stabbed. There were no reports on file. D was convicted by a jury of DR manslaughter and was given a restriction order.

**Case 127 Trial**

D, a male aged 23, stabbed V, aged 27, in the back. D had given V money to buy drugs but he did not do so. D wanted the money back. They argued. D stabbed V with a knife he had bought for the purpose of confronting V. A report for the CPS was unable to draw conclusions as to DR as D would not discuss the offence. A report for the defence diagnosed depression and favoured DR. At his trial D did not give evidence. The judge told the jury they must decide whether the account he gave to the psychiatrists was a reality. D was convicted of murder and sentence to life imprisonment.

**Case 128**

D, a male aged 56, stabbed his wife, aged 47, at home. V had left the marital home, which D thought a mortal sin. He wanted to end her human life in order to release her spirit and save her soul. A report for the CPS found no DR. A report for the defence favoured DR on the basis of paranoid psychosis. The CPS sent a copy of the defence report to their psychiatrist who revised his opinion and concluded in favour of DR. Ds DR plea was accepted and he was given a restriction order.

**Case 129**

D, a male aged 59, stabbed his mother, aged 86, in both eyes with a screwdriver. D had a psychiatric history. At the time of the offence D said he was convinced that he and his mother were to be killed and that, by killing V, it would be less painful for her. Two reports both favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 130**

D, a male aged 66, hit his wife, aged 49, with a hammer and strangled her using 4 ligatures. The year before the offence he had developed an irrational worry about money problems. D

said he could not remember the offence, "he just cracked". Two reports both favoured DR on the basis of depression. Ds DR plea was accepted and he was given a 3 year probation order.

#### **Case 131 Trial**

D, a male aged 26, beat V, aged 59, to death at the hostel where V lived. There are very few details on file. A report for the CPS diagnosed drug and alcohol addiction and personality difficulties but did not address DR. Ds DR plea was not accepted. He was convicted of manslaughter by a jury and was given a discretionary life penalty.

#### **Case 132**

D, a male aged 28, shot V, aged 25, twice in a pub car park. V was having an affair with Ds Wife. There were no reports on file and few details. Ds DR plea was accepted and he was sentenced to 9 years imprisonment.

#### **Case 133**

D, a female aged 43, stabbed her husband, aged 60. They were both alcoholics and argued after D drove the car while drunk. D said she was going to kill herself and got a knife from the kitchen. They struggled and V was stabbed. Two reports both diagnosed alcohol dependence syndrome and stated that the first drink had been consumed by D involuntarily. Ds DR plea was accepted and she was given a 2 year probation order with a condition of attendance at an alcohol treatment centre.

#### **Case 134**

D, a female, aged 30, born in India, set fire to her house in order to kill herself. V, her son, aged 6, died and her 2 other children were rescued. A report for the defence did not address DR. Two other reports, one for the defence and one for the CPS, both favoured DR on the basis of schizophrenia. Ds DR plea was accepted and she was given a hospital order.

#### **Case 135 Trial**

D, a male aged 38, stabbed his ex-wife, aged 32. D had a history of depression and he and his wife had separated some time ago. V had started a relationship with another man about which D was jealous. D returned to V's home unexpectedly and found V with the other man. D left but returned and when V opened the door he stabbed her. A report for the defence diagnosed a depressive disorder and concluded that although the question of substantial impairment was "essentially one for the jury..it is possible that his mental responsibility was impaired..". A report for the CPS found no DR. After a trial D was convicted of manslaughter and was sentenced to 9 years imprisonment.

#### **Case 136 Trial**

D, a male aged 38, stabbed his wife, aged 35, at home. She wanted a divorce and told him 4 days before. He became depressed and upset. They argued and V said she was leaving. D had a vegetable knife, which he carried, from the kitchen. He stabbed V with it and put his hands round her neck. Two reports diagnosed adjustment disorder. The report for the defence considered there was a basis for a jury to conclude that there was a substantial impairment of mental responsibility. The report for the CPS considered it to be a borderline case, to be answered by a jury. It is unclear from the file what pleas were used by the defence. D was convicted of murder by a jury and sentenced to life imprisonment.

**Case 137**

D, a male aged 49, born in India, hit his wife, aged 44, with a hammer. V was having an affair which became public knowledge. D said he heard voices telling him to kill V. A report for the court found no DR. An addendum to this report for the CPS diagnosed depression as an abnormality of mind but considered that it was not of sufficient severity to substantially impair Ds responsibility. Two reports for the defence favoured DR on the basis of depression. Ds DR plea was accepted and he was given a sentence of 3 years imprisonment.

**Case 138**

D, a black male aged 31, stabbed a fellow resident, aged 40, in a homeless men's hostel. D carried a knife for protection and was afraid of V who had pushed him. A scuffle followed and D stabbed V. Three reports all favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

**Case 139**

D, a male aged 48, confronted V, a male aged 52, in the street about an affair he suspected V was having with his wife. D stabbed V. Three reports, 2 for the CPS and one for the defence, all favoured DR on the basis of depression. Ds DR plea was accepted and he was given a restriction order.

**Case 140**

D, a male aged 35, born in Turkey, stabbed a prostitute, aged 34, he met and took home. She was asleep at the time. D heard voices instructing him to kill V. D had a history of schizophrenia. Two reports confirmed this diagnosis. Only the report for the defence dealt expressly with DR, favouring it. Ds DR plea was accepted and he was given a restriction order.

**Case 141**

D, a male aged 34, beat his mother, aged 66 to death. D had a psychiatric history. They argued about family issues. Two reports both favoured DR on the basis of psychosis. Ds DR plea was accepted and he was given a restriction order.

**Case 142 Trial**

D, a male aged 37, stabbed his girlfriend, aged 26, in the street during an argument. Both were alcoholics and heavily intoxicated. A report for the defence diagnosed alcohol dependence syndrome and favoured DR on the basis that D was unable to abstain from drinking and would have had to consume the first drink of the day. A report for the CPS disagreed with this view on the basis that D was able to exercise choice over his drinking. It considered DR a matter for the jury. A third report for the court opined that D's alcoholism was an abnormality of mind due to inherent causes or disease but that the issue of substantial impairment was one for the court to decide. A jury found DR and D was sentenced to 7 years imprisonment.

**Case 143**

D, a male aged 24, stabbed his male ex-lover, aged 47. D was jealous of Vs new relationship with a female and had tried to break them up with threats. D went to meet V armed with a knife and they argued. A report for the defence favoured DR on the basis of adjustment disorder. It also states that "On the defence of provocation, a very strong case exists". Ds

plea of guilty to manslaughter was accepted and he was sentenced to three and a half years imprisonment.

#### **Case 144 Trial**

D, a male aged 27, stabbed V, a male aged 27, in the Ds cousin's house. D believed V had been spreading rumours about D being a 'nonce'. V had a hammer and D thought he was being threatened. D used a knife he had removed from Vs pocket while he was asleep. A report for the defence favoured DR on the basis of personality disorder and paranoia. A report for the Court disagreed, concluding that there was no personality disorder and that D was voluntarily intoxicated at the time of the offence. A jury convicted D of murder and he was sentenced to life imprisonment.

#### **Case 145**

D, a male aged 66, stabbed his common law wife, aged 73, at home. D had a psychiatric history and had become depressed about financial matters. Two reports both favoured DR on the basis of depression and stress. Ds DR plea was accepted and he was given a 3 year probation order with a condition of mental treatment.

#### **Case 146**

D, a male, aged 44, from India, stabbed V, a female aged 16, while she sunbathed in public. D thought that if he did not kill someone by this date he would be killed. Four reports all favoured DR on the basis of psychosis. Ds DR plea was accepted and he was given a restriction order.

#### **Case 147 Trial**

D, a male aged 19, stabbed a male stranger, aged 23, while crossing a common after a night's drinking. They had become involved in an argument. D said he thought V was behaving in a threatening manner. A report for the defence favoured DR on the basis of depression it also mentioned provocation. Two reports for the CPS disagreed concluding that there was no evidence of abnormality of mind. The jury convicted D of murder and he was sentenced to detention for life.

#### **Case 148**

D, a black male aged 31, fatally beat V, aged 72. It was the day of the eclipse and D thought the world would end and that he had to kill or be killed. D had a long psychiatric history. Prior to the fatal assault D stabbed another adult male and one of his sons, aged 12. Two reports both favoured DR on the basis of schizo-affective disorder. Ds DR plea was accepted and he was given a restriction order.

#### **Case 149**

D, a female aged 21, stabbed her male partner, aged 27. Theirs was an abusive relationship and they argued over a plate of chips. One psychiatric report for the CPS found no DR but a second for the court diagnosed 'battered woman syndrome' but also was of the view that "it does not appear that the defendant had, at the material time, an abnormality of mind such that she might be able to offer a defence of diminished responsibility, although I am not going to exclude this confidently on the basis of a single examination." This report also considered that 'battered woman syndrome' might be a characteristic which the jury would be entitled to take into account in considering provocation. A third report for the defence also diagnosed 'battered woman syndrome' but considered that the question of "substantial impairment" was

a question for the jury. It also viewed this condition as an enduring “mental characteristic’, which would mark her out from the ordinary woman in such a situation.” Ds plea of guilty to common law manslaughter was accepted and she was given a 3 year probation order. The trial judge stated that it was a “wholly exceptional case” giving rise to “a wholly exceptional sentence.”

#### **Case 150**

D, a male aged 59, strangled his wife, aged 57. V was an in-patient in hospital suffering from severe back pain. Both D and V had long psychiatric histories. D took V to an empty ward and said he strangled her in response to her demands. Two psychiatric reports, one for the defence and one for the court both diagnosed depression and favoured DR. Ds DR plea was accepted and he was given a restriction order.

#### **Case 151**

D, a male aged 45, beat his female partner, aged 41, to death after an argument. Both had a history of alcohol abuse and D had a psychiatric history. D was intoxicated at the time of the offence. Three psychiatric reports diagnosed psychosis and alcohol dependency syndrome. The report for the CPS stated that Ds abnormality of mind “might be said to diminish his responsibility” while the reports for the defence and the Court made it clear that this was a matter for the court or jury to decide. Ds DR plea was accepted and he was sentenced to 54 months imprisonment.

#### **Case 152**

D, a male aged 28, fatally stabbed V, aged 62, and attempted to kill V’s wife. D said the Freemasons were ordering him to kill someone so he stole a knife and entered Vs house at random. D had a long psychiatric history. Two psychiatric reports, one for the defence and one for the court both diagnosed schizophrenia. Ds DR plea was accepted, as was his plea of guilty to attempted murder. He was given a restriction order.

#### **Case 153**

D, a male aged 54, stabbed his wife, aged 46, with a knife he had bought. They had been married for 26 years but V left D six weeks before the offence as a result of marital problems. D had recently been diagnosed with a kidney disorder. They met to discuss their mortgage problems and argued. D stabbed V in the throat. A report for the CPS diagnosed reactive depression but made it clear that it was for the jury to decide if this was a “major factor which led him to kill his wife”. Two reports for the defence favoured DR on the basis of depression. Ds DR plea was accepted by the prosecution after the trial had begun and the jury was directed to bring in a formal verdict of DR. He was given a restriction order.

#### **Case 154**

D, a male aged 18, stabbed his mother’s boyfriend, aged 49. V had been verbally and physically abused by D. A physical altercation took place between them. D picked up a knife he kept in his room for cutting stories out of newspapers and stabbed V with it. Two reports, one for the CPS and one for the defence both favoured DR on the basis of schizophrenia. Ds DR plea was accepted and he was given a restriction order.

#### **Case 155**

D, a male aged 61, stabbed his wife, aged 60. D was cutting meat in the kitchen and V laughed at him. Theirs was a stormy relationship involving domestic violence. D had suffered organic brain damage from a stroke. Two reports, one for the CPS and one for the defence

both favoured DR on the basis of acquired brain injury. Ds DR plea was accepted and he was given a 2 year probation order.

#### **Case 156 Trial**

D, a male aged 28, fatally stabbed his four year old son. D had a psychiatric history and after the breakdown of his marriage he decided to kill his two children so that they could be together in heaven. D also stabbed his baby daughter, aged eleven months. A single report on file for the defence diagnosed depression but made it clear the issue of “substantial impairment” was a question for the jury. After a trial a jury convicted D of murder and he was sentenced to life imprisonment.

#### **Case 157**

D, a male aged 32, hit his stepfather, aged 58, with a lump hammer. D went to see V after many years absence and was reminded of the serious sexual abuse he had been subjected to by V as a child. A report for the CPS diagnosed borderline personality disorder as an abnormality of mind but made it clear that the issue of “substantial impairment” was a matter for the jury. A report for the defence diagnosed personality disorder but also found post-traumatic stress disorder and favoured DR. Ds DR plea was accepted and he was sentenced to 2 years imprisonment.

# APPENDIX C

## BRIEF EMPIRICAL SURVEY OF PUBLIC OPINION RELATING TO PARTIAL DEFENCES TO MURDER

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### Introduction

1. As part of its project on *Partial Defences to Murder*<sup>1</sup> (hereafter the “PDM project”) the Law Commission was keen to elicit evidence of public opinion on homicides in which defendants would be likely to raise a defence based on provocation, diminished responsibility or the use of excessive force in self-defence. Whilst there has been a good deal of research in England on popular views across a broad range of crimes, there has been comparatively little work specifically concerned with homicide. Indeed, the only national survey was conducted in October 1995<sup>2</sup> (hereafter the “1995 survey”), although that was supplemented by a considerably smaller survey which did not claim to represent the country as a whole.<sup>3</sup> Between them they provide useful data of public perceptions of various homicides, some of which are clearly very relevant to the PDM project, but there are inevitably many issues relating to provoked, diminished and self-defence homicides which they were unable to address.

### The Survey

2. Time and financial constraints prohibited a further national survey, but it was clearly possible to conduct a more modest study which would provide a flavour of public sentiment on many of the issues falling within the Law Commission’s terms of reference. It was therefore agreed that a short series of interviews would be undertaken with a group of individuals drawn from various parts of the country who might be expected to reflect a wide cross-section of backgrounds and personal circumstances (hereafter “the main sample”).<sup>4</sup> The Law Commission was also keen to elicit the views of the next-of-kin of those who had been killed, and a small sub-group of these secondary victims were included in the survey (hereafter “the SAMM respondents”).<sup>5</sup>
3. A total of 62 interviews – 47 in the main sample and 15 with SAMM respondents - were conducted between late August and October 2003, at a time and in a

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<sup>1</sup> Law Commission, *Partial Defences to Murder: A Consultation Paper*, No. 173 (2003) London: TSO.

<sup>2</sup> Barry Mitchell, “Public Perceptions of Homicide and Criminal Justice” (1998) 38(3) *British Journal of Criminology* 453-472.

<sup>3</sup> Barry Mitchell, “Further Evidence of the Relationship Between Legal and Public Opinion on the Law of Homicide” [2000] *Crim LR* 814-827.

<sup>4</sup> The interviewees were recruited through an agency who were instructed to produce a list of willing men and women in different parts of England, living in cities, towns and rural areas, and who represented a range of ages, marital and domestic circumstances, ethnic groups, religious beliefs and occupations.

<sup>5</sup> These were recruited with the assistance of the support group SAMM (Support After Murder and Manslaughter), whose help was much appreciated.

place suitable to the respondents.<sup>6</sup> A brief statistical analysis of the respondents is set out in Appendix I at the end of this report. In short, it indicates that they come from a broad spectrum of backgrounds and should reflect a variety of ethnic, religious and cultural views.

4. Having been briefly reminded of the nature and purpose of the survey, respondents firstly provided some demographic details. The main sample then made some general observations about the criminal justice system and its response to crime; whereas the SAMM respondents were invited to summarise the case with which they had been involved.<sup>7</sup> The interviews took about one hour and fifteen minutes on average,<sup>8</sup> and the majority of time was devoted to inviting respondents to comment on a short series of scenarios.<sup>9</sup> The objectives were to determine whether the scenario was regarded as one of the more or less serious homicides, and to identify the factors which influenced this assessment. In the light of the 1995 survey, it was expected that respondents would recognise variations in the moral culpability of different homicide scenarios – and the expectation was indeed well-founded – but respondents in the 2003 study were not asked to define or describe what they regarded as the most serious cases. An indication was also sought as to what sentence was felt to be appropriate, (full details of which are set out in Appendix III).<sup>10</sup> The original facts were then varied, one fact at a time, and respondents were asked to say whether that variation affected their assessment of the seriousness of the scenario. In the last stage of the interviews, respondents were invited to rank the original scenarios in order of gravity (brief statistical details of which are contained in Appendix II<sup>11</sup>), and then to put them into groups such that each group represented a separate offence.
5. The interviews were recorded on audio-tape and contemporaneous notes were taken on a prepared form.

### Homicide scenarios

6. It is perhaps appropriate to preface discussion of the respondents' comments on the scenarios by underlining two points. First, there is an obvious need for caution when interpreting the statistical analysis of this survey because of the small size of the figures. Second, it would be incorrect to assume that

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<sup>6</sup> 53 of the 62 interviews were conducted in the respondent's homes, one was at a friend's home, seven were in the respondent's workplace, and one was in a university building hired for the purpose.

<sup>7</sup> All interviews primarily sought to elicit respondents' views on a series of scenarios, and an attempt was made to avoid causing distress to any of the SAMM respondents which might arise where there was marked similarity between their particular case and any of the scenarios.

<sup>8</sup> The shortest took about 45 minutes, and the longest nearly two hours.

<sup>9</sup> Each of the scenarios was printed on a separate card which was handed to the respondent.

<sup>10</sup> Very occasionally, respondents felt unable to suggest a specific sentence (such as X years in prison), preferring to recommend a range within which the case should fall. This was because the facts of the scenarios were obviously ambiguous and incomplete. In these instances, the average sentence – i.e. the mid point within the range - has been recorded for the purposes of compiling these statistics.

<sup>11</sup> This was purely a comparative exercise – respondents did not rate the scenarios – and on that basis it cannot be assumed that the scenario ranked first was necessarily an example of what was viewed as one of the worst possible homicides. However, it is possible to gauge from the sentence which respondents recommended just how serious they treated the scenarios. Indeed, as is indicated later in the section on **General Comments** many respondents volunteered the observation that scenario E (the "Contract Killing") was an example of what they thought was one of the worst homicides.



respondents' thoughts and suggestions are necessarily entirely logically consistent. They were giving responses to a series of questions and did not have the opportunity to go back through their earlier replies to check for possible inconsistencies. Moreover, the possibility that their opinions changed in the course of the interviews, as they thought more about the issues, should not be discounted.<sup>12</sup>

#### Scenario A ("The Battered Wife")

*A woman had been physically and verbally abused by her husband for many years. He came home one night, insulted her and punched her again. She decided she could take no more, so she waited till he was asleep, got a knife from the kitchen and went to the bedroom where she stabbed him to death.*

7. In the battered wife scenario provocation ought probably to be unavailable to the defendant because it appears that even if she lost her self-control when abused by her husband, she had had ample time in which to cool down. Indeed, killing him was apparently premeditated and conviction for murder would be likely. Diminished responsibility might be a possible alternative defence if, say, she was suffering from clinical depression and that abnormality substantially impaired her mental responsibility for the killing.
8. Public opinion on this scenario was distinctly equivocal in the sense that just under a third of respondents ranked it in the worst three scenarios, a third placed it in the least serious three scenarios, and just over a third ranked it in the intermediate group (see Appendix II). At one extreme, this homicide was regarded as very serious meriting a sentence of natural life imprisonment; at the other it was suggested there should be no prosecution at all. Even those who favoured prosecution did not always advocate a custodial sentence, preferring either a community rehabilitation order or counselling. The largest group of respondents thought that, given that all homicides are serious but some are worse than others, this ranked somewhere in the middle and recommended a fixed period of imprisonment, measured in single figures.
9. Two characteristics which were most frequently identified as influencing respondents' views were the years of abuse and the premeditation. The former obviously elicited sympathy for the woman's predicament and many respondents replied that we all have limits on our tolerance and that eventually people will just "snap". Others simply said she had been "driven to it". Conversely, premeditation clearly aggravates the homicide, but this response was sometimes moderated by suggestions that the woman experienced a cumulative anger and that although she appeared outwardly calm she may well have still been emotionally upset when she stabbed her husband. Moreover, some commented that it may be unrealistic to expect her to retaliate immediately after his abuse, because she would simply have suffered more abuse. The difficulty respondents had in assessing the gravity of this homicide was also illustrated by the fact that the criticism that she should have left him was sometimes counter-balanced by recognition of the fact that it might not be easy to do so. A small number of respondents thought that it was more appropriate to treat this as a kind of self-defence rather than provocation.

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<sup>12</sup> There was clear evidence of this adjustment or "evolution" of opinions in a pilot study with two groups of people which preceded the 1995 survey.

10. There was no apparently significant variation in the opinions of male and female respondents. This is evidenced in the recommended sentences which are shown in Appendix III. The only other relevant data here stems from the ranking exercise (see Appendix II) in which respondents were invited to put the 10 scenarios in order of gravity, with the most serious scenario first. On average, male respondents regarded this as the seventh most serious scenario, whereas female respondents placed it a little higher with an average ranking of 4.89.<sup>13</sup>
11. In the 1995 survey, respondents were invited to consider a very similarly drafted scenario:-
- A woman had been physically and sexually abused by her husband for three years. He came home one evening and started hitting her again. She felt she couldn't stand any more abuse, so she waited until her husband was sleeping, then hit him over the head with a saucepan, killing him.*
12. On average, respondents ranked this as the fifth most serious of a total of eight scenarios,<sup>14</sup> giving it a mean score of 8.1 on a scale of 1 to 20 (where 20 represents the worst possible homicide). The account of the 1995 survey comments that the scenario “provoked a broad range of reactions. Almost a third rated it as one of the three worst cases, four out of ten thought it one of the three least serious, and 27 per cent perceived it as of middling severity. Interestingly, there were very few significant differences in the responses of subgroups. The severity rating varied considerably within each subgroup – age, gender, social class etc. The only statistically significant variation was by marital status; married or cohabiting respondents were slightly less likely than single or “never-married” respondents to rate this scenario as one of the two most serious homicides (14 per cent compared to 25 per cent).”<sup>15</sup>
13. The idea that people who have not personally experienced a (possibly de facto) marital relationship are likely to find it difficult to fully appreciate the predicament of a battered wife, is logical and understandable, although it would clearly be wrong to assume that those who are single have not at some stage had such a relationship.
14. Since the figures in the 2003 survey are so small it is very difficult, and unwise, to draw any clear or confident inferences. Nonetheless, it is worth noting that three of the four life sentences were recommended by single respondents, and all but one of the 16 single respondents felt some sort of immediately custodial sentence would be appropriate whereas more of the married, cohabiting, divorced or separated respondents recommended a psychiatric or non-custodial sentence.
15. In both surveys, respondents who treated this as one of the more serious scenarios identified the element of premeditation and the fact that she had alternative courses of action available as aggravating features. In contrast, those who took a more sympathetic view suggested the premeditation was perhaps misleading since the wife’s mind would be in a state of turmoil – “she wouldn’t be

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<sup>13</sup> Of course, the ranking exercise merely requires respondents to compare the scenarios with one another. The fact that female respondents ranked scenario A higher than their male counterparts does not imply that in absolute terms they thought it was a much more serious homicide than male respondents.

<sup>14</sup> The scenarios in the 1995 survey were similar to those in the 2003 survey in that they tended to reveal a mixture of aggravating and mitigating features.

<sup>15</sup> n.2 at 459, 460.

thinking straight” – and that this would be a function of the lengthy abuse she had endured.

16. When the facts were varied so that the woman was verbally but not physically abused by her husband there were some interesting variations in responses. Some stressed the more obvious point that the woman then faced no physical threat to her well-being, so that the homicide was more serious, whereas others thought that verbal abuse can nonetheless be very bad so that the difference was less than might initially be supposed. Thus, although the majority of respondents thought that this variation was more serious than the original, some thought the difference was not significant. On the other hand, most respondents felt more confident in expressing their thoughts by reference to increasing the sentence they would impose rather than by convicting the woman of a more serious offence.
17. The second variation to the original facts envisaged the woman having being raped by her husband rather than physically and verbally abused. Here respondents were very evenly divided in that almost equal numbers thought that it either made the homicide less serious or made no difference. Again, those who thought it rendered the killing less serious would reflect that view by reducing the sentence, rather than not prosecuting the woman for homicide at all.
18. If, on the other hand, there was clear evidence that the woman was clinically depressed when she killed her husband, the vast majority of respondents thought the matter should be viewed very differently – just four said it made no significant difference. About a third of them thought she should not be prosecuted for any form of criminal homicide, and those who still favoured prosecution very largely said that imprisonment would be inappropriate and that some form of treatment and/or counselling was to be recommended.
19. Only five respondents thought that reversal of the sexual roles – i.e. if a man killed his abusing wife - would make any difference to their evaluation of the gravity of the case, and even then they were usually a little hesitant in doing so. A man, they felt, would be able to respond immediately to any abuse, he would not be expected to wait until his wife was asleep and so his killing her ought not to be premeditated.
20. Amending the facts so as to include the son in the homicide marked a more substantial variation to the original scenario:-

*Suppose instead that, after the husband had gone to bed, their son (who had witnessed the abuse over the years) came in. Acting together, the son held his father down while the woman, having got a knife from the kitchen, fatally stabbed him. They then disposed of the body.*

21. All but four respondents thought that this made the offence more serious, but again there were considerable differences in the extent to which respondents thought the killing was worse. The vast majority favoured increasing the sentence but did not regard this as one of the most serious homicides. It seemed more deliberate, and also more essentially unjust because there were two of them against a single victim. By disposing of the body they revealed an element of planning and premeditation, and an awareness that they had done wrong. Some respondents criticised the mother in particular for involving her son in the enterprise; she should have set a better example to him. Others, though, stressed the need to consider the son's age; the older he was the more criticism

he would deserve, although one or two respondents thought that children would naturally try to support their mother in these circumstances. Some commented that the son would also have suffered by seeing his mother being abused and, especially if he was a young teenager, it would be important that he be rehabilitated rather than punished.

#### *Scenario B ("Camplin")*

*A 15-year old boy agreed to have sex with a man. Afterwards the boy felt ashamed and the man ridiculed him. So the boy picked up the first thing that came to hand, a frying pan, and hit the man repeatedly over the head with it, killing him.*

22. The second scenario was based very heavily on the facts of *DPP –v- Camplin*<sup>16</sup> where the defence was one of provocation. The immediacy of the defendant's response was important, but the particular issue was the potential relevance of his age.
23. All but one respondent did not regard this scenario as one of the worst kinds of homicide. Again, however, there was considerable variation in the way in which respondents expressed their assessment of it. Only eight respondents ranked this in the three most serious scenarios, and the remainder were fairly evenly split between placing it in the three least serious and the intermediate group. Five thought there should be no prosecution for homicide. The suggested sentences varied from counselling/treatment or community rehabilitation at one end to life imprisonment at the other.
24. Most respondents thought that the lack of any premeditation – the impulsivity of the killing reflecting the emotional nature of the defendant's reaction – and the provocation through ridicule were significant mitigating factors. Most respondents thought that sympathy should be shown to the defendant because he was only 15 years old – he would thus be mentally and emotionally immature, possibly unsure of his sexuality and incapable of knowing how to respond to being ridiculed. At least twelve respondents, however, thought differently, that teenagers grow up relatively quickly and he knew what he had agreed to and what he was doing, and should be treated the same as an adult.

#### *Scenario C ("The Attempted Rape/Burglary")*

*An Asian woman returned home to find two white men attempting to rape her 15-year old daughter. She got a knife from the kitchen. The men shouted racist abuse at her and started to run away. She chased after them and stabbed one of them several times in the back, killing him.*

25. This scenario might invoke thoughts of pleading provocation and/or self-defence/prevention of crime as possible defences. The likely difficulty is that the killing appears too deliberate; the woman chases after the men and stabs one of them in the back. Was her reaction sufficiently immediate? Did she over-react to the situation? The facts that she was chasing them and stabbed one of them in the back seem inconsistent with self-defence.
26. Nearly two-thirds of respondents placed this in the middle four scenarios; only four thought it was one of the three most serious, and eighteen ranked it as one

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<sup>16</sup> [1978] AC 705.

of three least serious scenarios. The extent of respondents' variation in evaluation is shown by the fact that eight thought there should be no prosecution of the woman for homicide, whereas one advocated a sentence of natural life imprisonment. The majority had some sympathy for her, especially because she found one of the men trying to rape her daughter; this would produce a highly emotional and possibly irrational reaction and, driven by this, we might understand why she got the knife and chased after the men. That said, a few respondents expressed concerns that she had taken the law into her own hands and had pursued them, and the fact that she stabbed the deceased several times might reflect an overreaction, that she was really trying to kill. Nevertheless, the men should not have been in the woman's home, and many felt this could not properly be regarded as a premeditated killing. What might appear to be an act of revenge – which would clearly aggravate the seriousness of the offence – was at least partly understandable given the woman's emotional disturbance and anger. Thirteen respondents specifically suggested that the racist comments would be irrelevant and 38 made no reference to the racist comments when considering the gravity of the case.

27. In the first variation to the facts the woman returns home to find the men burgling the house instead of trying to rape her daughter. The issue here is whether the burglary constitutes a different/lesser form of provocation or threat. All but five of the respondents thought the homicide would be more serious; burglary would only involve a threat to possessions, not a threat to anyone's personal safety, and material goods are replaceable.<sup>17</sup> Again, the tendency was to reflect this by advocating an increase in the sentence rather than re-categorising the appropriate offence.

28. The second variation of the facts was more substantial:-

*Suppose instead that when the men were attempting to rape the daughter, rather than chase them the woman waited for her husband to return home and told him what had happened. He realised who the men were.*

(i) *He took a knife, went to the home of one of the men and stabbed him to death.*

(ii) *A week later he saw the other man in the street and deliberately ran him down in his car, killing him.*

29. These are prima facie very deliberate acts: whatever the provocation, the husband has had time to calm down, especially in the later incident, and the homicides appear to be deliberate acts of revenge.

30. One respondent felt that no prosecution should be brought: the daughter had almost been raped, and the respondent would have done the same in those circumstances. A second respondent said this was less serious than the original scenario. But the remainder regarded the husband's homicides as clearly more serious, and although they recommended sentences varying from two years' imprisonment to capital punishment, there was a marked increase in the terms of imprisonment they proposed in comparison to the original scenario. The husband's crimes involved deliberate acts (especially the second killing), premeditated acts in revenge, in which he had taken the law into his own hands

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<sup>17</sup> One possible qualification was made here; if the woman had been burgled several times previously, she might have reached the stage at which she could not take any more and her reaction might then be more understandable because she would be more angry and thus find it harder to exercise self-control.

having hunted the men down (in the first case) and killed his victim cold-bloodedly. A small number of respondents identified elements of mitigation – notwithstanding the time lapse, the husband would still be experiencing mental torment or torture, and was trying to protect his family. Two respondents<sup>18</sup> also raised by way of possible mitigation, the cultural issues which might arise here, in particular the stigma which his daughter and other members of the family would have to bear following the attempted rape.

#### *Scenario D1 (“The Baby Killing”)*

*A 19-year old man was the father of a young baby who constantly cried. One night the man, who had an important job interview the next day, was kept awake by the baby crying. He went into her bedroom and violently shook her and hit her. The baby died.*

31. The cries of a baby can constitute provocation in law,<sup>19</sup> but killing a baby is likely to be viewed as particularly serious<sup>20</sup> and a court might well conclude the defendant’s actions to have been disproportionately violent. Almost half of the respondents ranked this scenario amongst the three most serious, but the remainder placed it roughly equally in either the least serious or intermediate groups.
32. All but two respondents favoured prosecuting the defendant for unlawfully killing his baby, and fourteen thought it was one of the worst possible homicides, but there was a considerable variation in the degree of condemnation of him. Some felt a non-custodial sentence was deserved (with the emphasis on helping or rehabilitating the defendant), whereas at the other extreme, one respondent suggested the death penalty. Several respondents would have sentenced the defendant to either life imprisonment or a substantial fixed term (measured in double figures). Babies are vulnerable – defenceless, helpless, innocent, have had no life; they are at the mercy of their parents, they rely on their parents. Babies do cry and it is usually because something is wrong. The father here was selfish and over-reacted, and the fact that he hit his baby as well as shook her was especially alarming. At the same time, respondents frequently empathised with the father – babies drive you “mad” or “nearly bonkers”; “you can only take so much”; “you’re pushed to the limit, so that you don’t know what you’re doing”. Most respondents advocated imprisonment for a fixed period, often measured in single figures, and several respondents suggested the father needed help with learning to control his temper.

#### *Scenario D2 (“The Noisy Neighbour”)*

*Suppose instead that the young man was kept awake by his neighbour constantly playing loud music throughout the night. He had repeatedly asked the neighbour to keep the noise down. The night before the interview the music started at midnight. He got up, got a knife from the kitchen, went to the neighbour’s flat and asked him to lower the music. But the neighbour laughed and the man fatally stabbed him.*

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<sup>18</sup> These were one white male and one white female respondent.

<sup>19</sup> *Doughty* (1986) 83 Cr App R 319.

<sup>20</sup> n.2 at 463.

33. The noisy neighbour clearly provokes the defendant in this case, but there is a strong suspicion that the homicide is to some extent premeditated and that the killer over-reacted.
34. With one exception, respondents favoured prosecuting the defendant here for killing his victim, but there was again a wide variation in the levels to which they condemned his behaviour. Most advocated fixed-term custodial sentences, with a few preferring life imprisonment, but the proposed sentences were slightly less severe than in the original scenario. (Of those able to express an opinion, only 18 thought this was more serious than the baby killing scenario, 13 thought it was of similar gravity, and 23 regarded it as less serious.) The most commonly cited aggravating features were that it was a deliberate act; he had had time to think about it and armed himself with a knife – a wholly unnecessary act. He had other options and had wrongly taken the law into his own hands. Even if he had sought help previously (e.g. by contacting the police and/or local authority/noise abatement), he ought not to have killed his neighbour. Conversely, it was recognised by some respondents that noise can be a form of abuse, and that persistent noise can “drive you to the end of your tether”, so that we can understand the defendant’s frustration and irritation. But he should have reacted differently.

#### *Scenario E (“The Contract Killing”)*

*A man agreed to kill his victim for £5,000, and carried out his part of that agreement two days later. (Payment of the £5,000 was the only reason for the killing.)*

35. The contract killer is an obvious candidate for being regarded as one of the most heinous killers: he means to kill, plans and calmly executes the offence, and exhibits no apparent mitigation.
36. It was unsurprising to find 56 respondents ranked this scenario amongst the three most serious, with 47 treating it as the worst of all scenarios. (One respondent placed it in the least serious scenarios, but that may have been in error.) 57 of the 62 respondents thought this was one of the worst types of homicide; seven advocated some form of capital punishment, 28 favoured natural life imprisonment, and a further 16 preferred life imprisonment with the possibility of release on licence. Two respondents, on the other hand, thought it was less serious than killing a child. The aggravating features were the motive – financial gain is a poor motive, it reflects greed and implies that the killer puts more value on the money he will receive than on the life of another. Even if the killer has financial difficulties, the homicide warrants the same condemnation. He is a very dangerous individual who is likely to kill again. His offence is premeditated and cynical, and shows his indifference towards the victim’s life.

#### *Scenario F (“The Argument”)*

*There was an argument between two men and when one man began punching and kicking him, the other pulled out a knife and fatally stabbed his attacker with it.*

37. Although there is an element of self-defence in this scenario, there is a strong argument that the defendant has used disproportionate force, and the fact that he was carrying a knife may imply some form of premeditation. Such homicides are not uncommon (within the context of homicides) and they are sometimes

characterised by the voluntary consumption of alcohol or other drugs which may partially reduce moral and legal culpability – murder, a specific intent crime, may be reduced to manslaughter.<sup>21</sup>

38. On the whole, this scenario was treated as of intermediate gravity in comparison to the others. Twelve respondents ranked it amongst the three most serious scenarios, whereas 14 placed in the least serious group. More than half of all respondents thought it comes in between these extremes. It appears to have been regarded as slightly more serious than scenario C (“The Attempted Rape”).
39. All but one respondent advocated prosecution for some form of homicide, but there was a wide variation in the recommended sentences, with two respondents favouring non-custodial penalties in contrast to several suggestions of life imprisonment. Twelve respondents thought the scenario represented one of the worst forms of unlawful homicide. A commonly cited aggravating factor was that the killer was carrying a knife with him, and respondents frequently inferred from this that he must at least have considered the possibility that he might have to use violence. Respondents tended to be critical of this, although some did stress that this did not necessarily preclude a possible claim of self-defence and acknowledged that the killer might (reasonably) have anticipated serious violence being threatened against himself. Conversely, several respondents suggested that a self-defence plea would be stronger if the killer had not been carrying a knife and had simply picked up one which had been at hand at the critical time.
40. A broadly similar response was received to a self-defence scenario in the 1995 survey which was drafted as follows:-
41. *Two men were having a heated argument at work which developed into a fight. One of them picked up a screwdriver and lunged at the other. Fearing that he would otherwise be stabbed, the unarmed man grabbed a spanner, and in self-defence he hit the other man over the head with it, killing him.*
42. There are, of course, obvious distinctions between this and scenario F (“The Argument”) in the 2003 survey. In the latter, the killer appears to have been armed with a knife, and was only being attacked with fists and feet. In other words, the killer in the 2003 survey seems to have at least anticipated the possibility of using violence (if only in self-defence), and there is a stronger suspicion that he reacted with excessive force.
43. The 1995 scenario was generally viewed as of intermediate severity, scoring a mean rating of 9.1 on a 1-to-20 scale (where 20 represents the most serious cases). The 2003 survey<sup>22</sup> echoed the earlier study in that female respondents were slightly more critical than their male counterparts – female respondents were more likely to favour life sentences or fixed terms of 10 to 20 years, whereas male respondents more commonly suggested sentences in the 5-to-10 year range. On the other hand, the 2003 survey did not reproduce the tendency found in the 1995 survey for older respondents to be more critical in this scenario, although the 1995 survey refers to those aged 75 and over, whereas the eldest respondents in the 2003 survey were only in their early 70s. In the 2003 survey there was a fairly even spread of sentence recommendations across

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<sup>21</sup> Under the principle in *DPP –v- Majewski* [1977] AC 443.

<sup>22</sup> Analysis of the ranking of this scenario showed that both male and female respondents placed it about sixth in order of seriousness; the mean average for males was 5.9 and for females 5.8.



the age-groups, although it appeared that the youngest group (aged 18 to 24) were probably the most punitive.<sup>23</sup>

44. The parties in the original scenario were both male and all respondents felt that it would make no difference if they had been female. On the other hand, 15 respondents suggested that the presence or absence of a prior relationship (albeit perhaps merely as acquaintances) would make a difference. Interestingly, though, nine thought it would be worse if there was such a relationship – usually because that might indicate some sort of “feeling” or premeditation - whereas six felt that either a prior relationship might reflect some form of provocation (i.e. mitigation) or that the killer would have more mens rea if he did not know his victim.
45. Homicides resembling the facts in this scenario are often characterised by the parties having consumed alcohol or other drugs. More than half the respondents thought this would not affect their assessment of the seriousness of the killing, but the remainder were evenly divided – 14 said it aggravated the offence because it reflected a recklessness on the killer’s part, whereas 12 treated it as mitigation on the basis that the killer would probably not have been thinking as clearly.
46. The presence of an intent to kill is usually regarded as increasing the seriousness of a homicide, and 43 respondents suggested that if the killer had stabbed his victim 20 or 30 times rather than just once the offence would be worse largely because it implied that he must have meant to kill. (One or two simply felt that the killing must have been more “frenzied”.) Only one respondent thought that being out of control – which would be consistent with the infliction of 20 or 30 stab wounds – would reduce the gravity of the homicide. Higher levels of mens rea also explained why 38 respondents thought that using a gun to kill his victim would make the homicide more serious – we all appreciate that guns are lethal weapons. In addition, it would reflect a more disproportionate reaction to being punched and kicked.

#### *Scenario G (“The Bailiff Homicide”)*

*A man with a wife and three children of school age had been served with an eviction notice. The house had been his home for 20 years. He had lost his job and fell into substantial rent arrears. The loss of his job together with the eviction notice made him depressed. The bailiff arrived to enforce the notice but when he tried to enter the house the man shot him with a gun he was lawfully entitled to keep.*

47. The use of a gun to kill may well imply an intent to do so. The fact that the defendant had been under a good deal of stress appears to be no defence, and he killed a man who was simply carrying out his job and enforcing the law. Only if the defendant was clinically depressed might he be able to avoid a murder conviction and reduce his liability to manslaughter on the basis of diminished responsibility.
48. Overall, this was ranked very similarly to scenario F (see Appendix II). Eleven respondents thought this was one of the three most serious scenarios, and twelve placed it in the three least serious, leaving two-thirds of respondents regarding it as falling somewhere in between. One respondent thought there

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<sup>23</sup> There were only 5 respondents in this group, though 3 recommended a life sentence.

should be no prosecution, yet seven regarded it as one of the worst examples of homicide. In general, it was felt that although the defendant was under considerable stress and in a sense was trying to protect his home, his act was a deliberate one and he must have known what the outcome would be. He bore considerable responsibility for his predicament and had killed an innocent victim who was merely trying to do his job. Any sympathy for him should therefore be limited.

49. If the defendant was clinically depressed when he killed, 52 respondents thought the crime less serious and the sentence should be adjusted so as to give him treatment rather than punishment, although at the same time there would be a need to protect the public from him. Eight respondents suggested there should be no prosecution.

#### *Scenario H ("The Brooding Jealous Husband")*

*A man was told by his wife that as soon as their children had left home she would leave him and live with another man whom she'd known for many years. He brooded on this for four weeks and then killed her by poisoning her tea. He said he couldn't bear the thought of her being with another man, and psychiatrists reported that he suffered from an extreme form of jealousy.*

50. The fact that the husband brooded and used poison to kill his wife would almost certainly be construed as implying premeditation – a deliberate, intentional killing. Her statement that she was going to leave him would surely be inadequate as sufficient provocation – his reaction to it seems very disproportionate – and he would probably be convicted of murder. If his extreme form of jealousy represented a mental disorder recognised by the psychiatric profession, he may have a partial defence of diminished responsibility.
51. Almost half (28) the respondents placed this amongst the three most serious scenarios and only six located it in the three least serious, one of whom recommended no prosecution. Twelve or thirteen – one was unsure – respondents treated this as one of the most serious homicides. Imprisonment was by far the most commonly suggested sentence, but there were significant variations in this (see Appendix III). There was one recommendation for the death penalty and 24 suggested life sentences. Other suggestions reflected broad differences in the length of the term, and a minority of respondents thought the defendant needed help rather than punishment.
52. Many respondents were suspicious of the idea that the killer's extreme jealousy might represent some form of mental/psychiatric disorder and many were reluctant to conclude that he might thereby deserve some sympathy/mitigation. However, more than half (36) said it would reduce the seriousness of the offence – and a small minority would even decline to prosecute in these circumstances.

#### *Scenario I ("The Mercy Killing")*

*A man had nursed his terminally-ill wife for several years but eventually gave in to her regular requests that he should "put her out of it", and he smothered her with a pillow.*

53. Mercy killing, of course, usually contains all the ingredients necessary for a murder conviction, and yet in practice defendants frequently escape a mandatory

life sentence on the basis of diminished responsibility. The victim's consent is no defence (partial or complete) in law.

54. Predictably, this scenario was generally regarded as the least serious. No less than 58 of the 62 respondents placed it in the three least serious scenarios (47 treated it as the least serious of the ten). According to 35 respondents, certainly where the victim (whilst *compos mentis*) asked to be "put out of her misery", the husband should not be prosecuted. No-one thought it was in the "top three". Only 14 respondents favoured imprisonment, and 11 of these thought the term should be measured in single figures.
55. The victim's request to die was identified by 41 respondents (66.1%) as an important factor, and 26 of these thought there should be no prosecution. On the other hand, nine of the 35 respondents who advocated no prosecution did not treat the request as significant, and their views would not have altered even if the deceased had not made the request. The other apparently significant factors were the husband's good motive (24 respondents mentioned this), and the woman's poor quality of life (there were 13 references to this). Four respondents said that the defendant ought not to have been put in the position of having to decide whether to comply with his wife's request; the decision ought to be taken or carried out by someone else. Three respondents expressed concern that the law would be open to abuse if it adopted a particularly lenient approach to mercy killing – i.e. if there was no prosecution at all.
56. In keeping with their views on other scenarios, respondents said they would be even more sympathetic if the husband became mentally ill (e.g. clinically depressed), which would point either to no prosecution at all or a lesser (frequently non-custodial) sentence.
57. These responses are very much in keeping with those received in the 1995 survey which included the following remarkably similar scenario:-

*A woman was terminally ill and in great pain. She had been begging her husband to "put her out of her misery" for months. Eventually, he gave in to her request and suffocated her whilst she was asleep."*

58. In both surveys the majority of respondents felt there should be no prosecution for any kind of homicide (51% in the 1995 survey and 59.7% in 2003). The 1995 respondents gave the scenario an average rating of 3.5. Similarly, more than half the respondents in each survey placed it last in order of seriousness in the scenarios they considered.<sup>24</sup> Three respondents in the 2003 survey recommended sentences of at least 10 but less than 15 years' imprisonment, whereas no-one in the 1995 study thought the husband should receive a sentence of more than 9 years in prison. The 1995 survey also found the same factors being most frequently cited as influential in respondents' assessments of the seriousness of the situation.

#### *Scenario J1 ("The Cuckolded Husband")*

*A man whose wife had had a series of affairs with other men, decided to kill her if she had another affair. Soon afterwards, he discovered she was having a further*

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<sup>24</sup> Although the two surveys tested opinions on a largely different range of scenarios, almost all of them contained some mitigating factors.

*affair and he strangled her to death. Psychiatrists reported that he was not mentally ill.*

59. This scenario reflects a prima facie case of murder. There is ample indication of a premeditated killing. The fact that his wife had another affair would surely not be treated as adequate provocation, and there was no evidence of mental illness.
60. The respondents' ranking of this scenario was similar to that of scenario H ("the jealous husband") – almost half thought it was one of the three most serious scenarios and only seven placed it in the bottom three. At least 27 respondents felt it was one of the worst possible homicides; two advocated the death penalty and a further 20 recommended life imprisonment. (In contrast, one respondent suggested a sentence of just six months' imprisonment.) The features of the scenario which were most frequently cited as significant were the premeditation and the fact that the husband had other options – he ought simply to have left his wife. Her behaviour was usually regarded as a wholly inadequate reason for killing her. Those who were a little more sympathetic towards the husband described the case as "sad" as well as bad.

#### *Scenario J2 ("The Taunted Husband")*

*Suppose instead that when he discovered she was having an affair he confronted her and she taunted him about his sexual inadequacy – whereupon he lost his temper and killed her.*

61. In this variation of the original scenario, the wife's taunt may constitute some provocation, and it appears the husband may well have lost his self-control within the law's interpretation of this. The main query is probably whether killing her reflects an over-reaction.
62. Just over half (33 of the 62) of all respondents thought J2 was less serious than the original scenario, whereas only three took the opposite view. There was no significant difference between the replies of male or female respondents. The primary reason given by the majority for regarding J2 as less serious was that the husband reacted spontaneously to his wife's taunt, although they varied as to the degree to which it did so – several of them commented that there was probably still an intent to kill.
63. None of the respondents felt that reversing the sexual roles of the parties would affect their judgment of the seriousness of the scenario.

#### **Offence Groups**

64. In common with the 1995 national survey, respondents experienced considerable difficulty in allocating the ten original scenarios into offence groups. Indeed, four respondents could not make any positive suggestions.
65. No apparent patterns or trends in respondents' views on this have been discerned; in other words, there was no evidence that respondents with particular characteristics tended to have distinctive opinions on the homicide offences which they would like the law to recognise. The number of suggested offences varied from one to nine: the mean average was four<sup>25</sup> and the mode was three.<sup>26</sup>

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<sup>25</sup> The corresponding figure in the 1995 survey was 4.4. It should however be noted that the scenarios in the 1995 survey reflected a wider range of legal issues – such as duress by threats

Nor was there any clear pattern in the criteria used to group scenarios. Since the scenarios were drafted so succinctly it is impossible to get a clear picture of exactly what happened, but it might be argued that a distinction should be made according to the presence (or absence) of premeditation.<sup>27</sup> On this basis, scenarios A, E, H and J would be grouped together, although it may be that other scenarios (such as G) might – the wording is silent but is not inconsistent with premeditation – also be included. None of the respondents placed scenarios A, E, H and J in an offence by themselves, but 30 respondents put at least three of them together in a group. Sometimes respondents combined premeditation with the presence or absence of any mitigating factors. Thus, premeditation but no mitigation ranked more highly than premeditation plus mitigation, and that in turn ranked more highly than spur-of-the-moment killing regardless of mitigation.

66. Others focussed instead on the context of the offence and the identity of the parties – for example, distinguishing domestic from non-domestic homicides, killing children or killing to protect children.<sup>28</sup> In this latter respect, offences were apparently distinguished more on the basis of the contextual variations rather than variations in gravity or blameworthiness.
67. Many of the scenarios contained an element of provocation – some much more clearly so than others. But only two, scenarios C and F, reflected some possible degree of self-defence/prevention of crime. Interestingly, seven respondents suggested a group consisting of precisely these two scenarios and a further 16 included scenarios C and F in a larger offence group.

### **The Mandatory Life Sentence**

68. Of the 62 respondents, 39 (62.9%) said they did not favour a mandatory penalty for what are regarded as the most serious criminal homicides. Of course, the views as to what should constitute the most serious homicides vary – the comments received in this survey broadly confirmed the results of the 1995 national survey which highlighted factors such as premeditation, torturing victims before death, and killing child victims - but the majority of respondents felt that even within this category of the most serious homicides there will inevitably be sufficient variations in gravity and heinousness that the judge ought to be able to reflect the more precise degree of seriousness in the sentence imposed.
69. Three respondents who supported a mandatory sentence for the most serious homicides suggested that the appropriate sentence would be one of “natural life” imprisonment. Two other respondents expressed concerns that the sentence should be determined by a small panel rather than a single judge.

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and of circumstances, killing by omission, and killing in the course of a burglary – than the 2003 survey.

<sup>26</sup> In some instances, respondents identified a group of scenarios where there should be no prosecution.

<sup>27</sup> A small number of respondents actually said that they had treated premeditation as a distinguishing characteristic in carrying out this exercise. Unsurprisingly, lay people seem to be more unsure about the concept of manslaughter, often describing it as “accidental” killing, although whether they use the word “accidental” in its literal sense is unclear.

<sup>28</sup> It may be worth remembering that killing a child was the most frequently cited example of one of the worst possible homicides in the 1995 survey; n.2 at 463.

## General Comments

70. The respondents in this survey mirrored those in the 1995 national survey (1) in recognising marked variations in seriousness between different homicide scenarios, and (2) in having considerable difficulty in allocating scenarios to offence groups. In this latter respect, they struggled to identify what they thought should be the criteria for distinguishing between homicide offences and the precise boundaries between them.
71. There were no apparent variations in the responses of the two groups of respondents. Although they had talked briefly about the case in which they had been personally involved, the SAMM respondents appeared to adopt a similarly analytical approach to the scenarios to that adopted by the main sample of respondents, and their views did not reveal any vindictiveness or higher level of sentencing.
72. Not surprisingly, some respondents *prima facie* contradicted themselves in that their ranking of the ten original scenarios towards the latter stages of the interviews did not always fully accord with the responses they had given earlier.<sup>29</sup> However, as indicated earlier in this report, the pilot study which preceded the 1995 survey suggested that people sometimes change their views as they spend more time thinking about the different situations and circumstances in which homicides are committed. Nevertheless, the ranking of scenarios by ten respondents was entirely consistent with their earlier comments on them individually and a further 14 respondents revealed a high level of consistency.
73. Whilst the ranking of scenarios as set out in Appendix II reveals a broad range of opinions, one or two general patterns of responses can be discerned. There was undeniably widespread condemnation of the killer in scenario E (the contract killer), and a good deal of sympathy and support for the mercy killer in scenario I, albeit that many respondents would be less understanding if, for example, there was no desire to die expressed by the victim. As reflected in the mean ranking scores as well as in the earlier discussions, the remaining eight scenarios were frequently viewed as of intermediate seriousness. Some of these eight were more serious than others, but they were all distinctly less serious than scenario E and markedly more serious than scenario I. Perhaps not surprisingly, some respondents volunteered the observation that hardly any of the scenarios illustrated what they regarded as the really serious criminal homicides, with the obvious exception of scenario E, implying that most of the scenarios contained a mixture of mitigating and aggravating features which, to varying degrees, counterbalanced each other.
74. There appears to be widespread recognition that provocation mitigates the seriousness of a homicide; respondents commonly expressed sympathy and empathy for those who react emotionally to a stimulus, either through anger or fear or (cumulative) stress. A loss of self-control (in the *Duffy*<sup>30</sup> sense) does not seem to be particularly important, and even an element of premeditation will not automatically have an especially damning effect on the perceived level of seriousness.
75. Similarly, it is evident from comments on scenarios C and F that many respondents refrained from unreservedly condemning those who killed in self-

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<sup>29</sup> Some even commented to this effect at the end of the interview.

<sup>30</sup> See the definition of provocation by Devlin J in *Duffy* [1949] 1 All ER 932n.

defence even though it was very arguable that disproportionate force had been used by the killer. Homicides in this category often involve killers who are emotionally aroused, they are focussed on the need to protect (themselves and/or others) and they are quite likely to be incensed by the attack. If they are subsequently thought to have over-reacted, that should not be tolerated but neither should it warrant the full condemnation of the law: a balance has to be struck between the aggravating and mitigating factors in the case. The argument for a tough response from the law in an attempt to deter others did not generally feature in respondents' minds.

76. What remains unclear is whether and under what conditions the presence of mitigation in the form of provocation or self-defence (albeit using excessive force) should be reflected in the recognition of separate (lesser) offences
77. The presence of a mental abnormality in the killer at the critical time usually led to a more sympathetic opinion. Several respondents expressed some cynicism or scepticism about the reliability of psychiatric evidence of this nature, but even so respondents tended to accept that if the evidence was clear and unequivocal then a different approach is called for from the criminal justice system. Treatment, help and rehabilitation should be the priorities rather than punishment. Not only did this merit a reduction in liability, but in many cases it was suggested it would be inappropriate to prosecute or at least think very carefully before doing so.
78. It is clear from the earlier discussion of responses to each scenario and from the figures shown in Appendix II that respondents revealed considerable differences of opinion as to the appropriate sentences to be imposed. These variations of opinion were apparent not only with respect to individual scenarios but also in the sentencing philosophy and policy they advocated. Some favoured a retributive or just deserts approach, whereas others looked for a rehabilitative response from the penal system. Whichever policy was advocated, however, protection of the public was a common concern. Many felt this should be achieved through imprisonment, while others expressed reservations about the value of this particular option.

## **ANNEX 1**

### **Respondents' sex**

Male: 25 (3 SMM)  
Female: 37 (12 SMM)

### **Respondents' age**

Aged 18 to 24: 5 (0 SMM)  
25 to 34: 12 (2 SMM)  
35 to 44: 14 (2 SMM)  
45 to 54: 11 (4 SMM)  
55 to 64: 12 (4 SMM)  
65 and over: 8 (3 SMM)

### **Respondents' marital circumstances**

Single: 16 (3 SMM)  
Married: 27 (6 SMM)  
Cohabiting: 4 (1 SMM)  
Divorced: 7 (0 SMM)  
Separated: 1 (0 SMM)  
Widowed: 7 (5 SMM)

### **Respondents' domestic circumstances**

Living Alone: 18 (5 SMM)  
Living with Others: 44 (10 SMM)

### **Respondents' family details**

Have Children: 43 (13 SMM)  
Have No Children: 19 (2 SMM)

Have Grandchildren: 17 (7 SMM)  
Have No Grandchildren: 45 (8 SMM)

### **Respondents' ethnic grouping**

White UK: 37 (10 SMM)  
White Irish: 2 (1 SMM)  
Black Caribbean: 6 (1 SMM)  
Black African: 4 (0 SMM)  
Indian: 4 (0 SMM)  
Chinese: 2 (0 SMM)  
Bangladeshi: 1 (0 SMM)  
Pakistani: 1 (0 SMM)  
Other: 5 (3 SMM)

### **Respondents' religious affiliations**

Christian: 43 (11 SMM)  
Muslim: 3 (0 SMM)  
Hindu: 2 (0 SMM)  
Sikh: 1 (0 SMM)  
Jewish: 1 (0 SMM)  
Buddhist: 1 (0 SMM)  
Atheist: 5 (2 SMM)  
Agnostic: 2 (1 SMM)  
Other: 1 (1 SMM)  
None: 3 (0 SMM)



**Respondents' occupation**

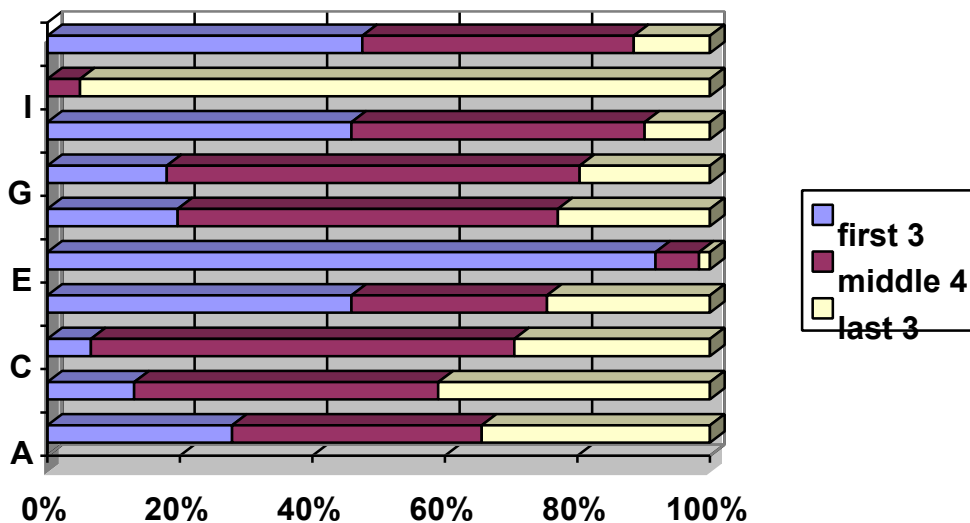
Professional:	14
Administration:	9
Clerical:	4
Manual:	7
Unemployed	3
Housewife/mother:	4
Student:	5
Retired	16

## ANNEX 2

Ranking of scenarios (with the most serious in the “first three” and the least serious in the “last three”)

<p>A: <i>“The Battered Wife”</i>            17 in first three            23 in middle four            21 in last three            mean ranking score: <b>5.74</b></p>	<p>F: <i>“The Argument”</i>            12 in first three            35 in middle four            14 in last three            mean ranking score: <b>5.57</b></p>
<p>B: <i>“Camplin”</i>            8 in first three            28 in middle four            25 in last three            mean ranking score: <b>6.66</b></p>	<p>G: <i>“The Bailiff”</i>            11 in first three            38 in middle four            12 in last three            mean ranking score: <b>5.57</b></p>
<p>C1: <i>“The Attempted Rape of Daughter”</i>            4 in first three            39 in middle four            18 in last three            mean ranking score: <b>6.52</b></p>	<p>H: <i>“The Brooding Jealous Husband”</i>            28 in first three            27 in middle four            6 in last three            mean ranking score: <b>4.38</b></p>
<p>D1: <i>“The Baby Killing”</i>            28 in first three            18 in middle four            15 in last three            mean ranking score: <b>4.38</b></p>	<p>I: <i>“The Mercy Killing”</i>            0 in first three            3 in middle four            58 in last three            mean ranking score: <b>9.51</b></p>
<p>E: <i>“The Contract Killing”</i>            56 in first three            4 in middle four            1 in last three            mean ranking score: <b>1.52</b></p>	<p>J1: <i>“The Cuckolded Husband”</i>            29 in first three            25 in middle four            7 in last three            mean ranking score: <b>4.31</b></p>

Bar Chart showing Ranking of Scenarios



### ANNEX 3 RECOMMENDED SENTENCES BY RESPONDENTS' SEX

Scenario A: "The Battered Wife"

Sentence	Male respondents	Female respondents	All respondents
No prosecution	0	2 (5.4%)	2 (3.2%)
Psychiatric disposal	2 (8%)	3 (8.1%)	5 (8.1%)
Non-custodial sentence	6 (24%)	5 (13.5%)	11 (17.7%)
Less than 2 years' imprisonment	1 (4%)	4 (10.8%)	5 (8.1%)
At least 2 but less than 5 years' imprisonment	2 (8%)	5 (13.5%)	7 (11.3%)
At least 5 but less than 10 years' imprisonment	7 (28%)	12 (32.4%)	19 (30.6%)
At least 10 but less than 20 years' imprisonment	3 (12%)	5 (13.5%)	8 (12.9%)
20 years' imprisonment or more	1 (4%)	0	1 (1.6%)
Life imprisonment with release on licence	2 (8%)	0	2 (3.2%)
"Natural life" imprisonment	1 (4%)	1 (2.7%)	2 (3.2%)

Comments on these figures, and all those in the remaining tables, must inevitably be cautious because of the smallness of the numbers. Although a larger proportion of male respondents preferred a life sentence, fewer males favoured a custodial sentence.

Scenario B: "Camplin"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>0</b>	<b>1 (2.7%)</b>	<b>1 (1.6%)</b>
<b>Psychiatric disposal</b>	<b>3 (12%)</b>	<b>8 (21.6%)</b>	<b>11 (17.7%)</b>
<b>Non-custodial sentence</b>	<b>3 (12%)</b>	<b>2 (5.4%)</b>	<b>5 (8.1%)</b>
<b>Less than 2 years' imprisonment</b>	<b>4 (16%)</b>	<b>4 (10.8%)</b>	<b>8 (12.9%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>5 (20%)</b>	<b>6 (16.7%)</b>	<b>11 (17.7%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>4 (16%)</b>	<b>10 (27%)</b>	<b>14 (22.6%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>5* (20%)</b>	<b>5 (13.5%)</b>	<b>10 (16.1%)</b>
<b>20 years' imprisonment or more</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Life imprisonment with release on licence</b>	<b>1 (4%)</b>	<b>1 (2.7%)</b>	<b>2 (3.2%)</b>

\*All 5 male respondents recommended sentences of at least 10 but less than 15 years' imprisonment.

The numbers of male respondents who favoured a determinate prison sentence were fairly evenly divided as to the length of the term, whereas more of their female counterparts recommended an average term (5 to 10 years).

Scenario C1: "The Attempted Rape of Daughter"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>4 (16%)</b>	<b>6 (16.7%)</b>	<b>10 (16.1%)</b>
<b>Psychiatric disposal</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Non-custodial sentence</b>	<b>7 (28%)</b>	<b>8 (21.6%)</b>	<b>15 (24.2%)</b>
<b>Less than 2 years' imprisonment</b>	<b>2 (8%)</b>	<b>5 (13.5%)</b>	<b>7 (11.3%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>3 (12%)</b>	<b>9 (24.3%)</b>	<b>12 (19.4%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>6 (24%)</b>	<b>5 (13.5%)</b>	<b>11 (17.7%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>2 *(8%)</b>	<b>3 *(8.1%)</b>	<b>5 (8.1%)</b>
<b>20 years' imprisonment or more</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>"Natural life" imprisonment</b>	<b>1 (4%)</b>	<b>1 (2.7%)</b>	<b>2 (3.2%)</b>

\*In the case of both male and female respondents, all recommendations were for not more than 15 years' imprisonment.

Whilst a slightly higher proportion of female respondents favoured a custodial sentence (62.2% compared to 56%), those male respondents who recommended imprisonment favoured terms of marginally greater length.

Scenario C2: “The Husband and the Attempted Rape of Daughter”

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>0</b>	<b>1 (2.8%)</b>	<b>1 (1.8%)</b>
<b>Psychiatric disposal</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Non-custodial sentence</b>	<b>1 (4.8%)</b>	<b>4 (11.1%)</b>	<b>5 (8.8%)</b>
<b>Less than 2 years’ imprisonment</b>	<b>0</b>	<b>1 (2.8%)</b>	<b>1 (1.8%)</b>
<b>At least 2 but less than 5 years’ imprisonment</b>	<b>2 (9.5%)</b>	<b>1 (2.8%)</b>	<b>3 (5.3%)</b>
<b>At least 5 but less than 10 years’ imprisonment</b>	<b>5 (23.8%)</b>	<b>1 (2.8%)</b>	<b>6 (10.5%)</b>
<b>At least 10 but less than 20 years’ imprisonment</b>	<b>7 (33.3%)</b>	<b>11 (30.6%)</b>	<b>18 (31.6%)</b>
<b>20 years’ imprisonment or more</b>	<b>0</b>	<b>4 (11.1%)</b>	<b>4 (7%)</b>
<b>Life imprisonment with release on licence</b>	<b>3 (14.3%)</b>	<b>6 (16.7%)</b>	<b>9 (15.8%)</b>
<b>“Natural life” imprisonment</b>	<b>3 (14.3%)</b>	<b>7 (19.4%)</b>	<b>10 (17.5%)</b>

NB. 5 respondents did not make a specific recommendation as to sentence in this variation of the scenario.

Although a slightly greater proportion of male respondents proposed a prison sentence, overall female respondents were just as robust, if not more so, in their sentencing recommendations.

Scenario D1: “The Baby Killing”

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>0</b>	<b>2 (5.4%)</b>	<b>2 (3.2%)</b>
<b>Psychiatric disposal</b>	<b>1 (4%)</b>	<b>4 (10.8%)</b>	<b>5 (8.1%)</b>
<b>Non-custodial sentence</b>	<b>1 (4%)</b>	<b>0</b>	<b>1 (1.6%)</b>
<b>Less than 2 years' imprisonment</b>	<b>1 (4%)</b>	<b>0</b>	<b>1 (1.6%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>2 (8%)</b>	<b>3 (8.1%)</b>	<b>5 (8.1%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>6 (24%)</b>	<b>5 (13.5%)</b>	<b>11 (17.7%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>3 (12%)</b>	<b>6 (16.2%)</b>	<b>9 (14.5%)</b>
<b>20 years' imprisonment or more</b>	<b>4 (16%)</b>	<b>4 (10.8%)</b>	<b>8 (12.9%)</b>
<b>Life imprisonment with release on licence</b>	<b>4 (16%)</b>	<b>7 (18.9%)</b>	<b>11 (17.7%)</b>
<b>“Natural life” imprisonment</b>	<b>1 (4%)</b>	<b>6 (16.2%)</b>	<b>7 (11.3%)</b>
<b>Death penalty</b>	<b>2 (8%)</b>	<b>0</b>	<b>2 (3.2%)</b>

A greater proportion of female respondents overall favoured more lenient (i.e. not even imprisonment) than their male counterparts – though the figures are obviously very small.

Scenario D2: "The Noisy Neighbour"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>0</b>	<b>1 (2.8%)</b>	<b>1 (1.7%)</b>
<b>Psychiatric disposal</b>	<b>1 (4.2%)</b>	<b>1 (2.8%)</b>	<b>2 (3.3%)</b>
<b>Non-custodial sentence</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Less than 2 years' imprisonment</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>At least 2 years but less than 5 years' imprisonment</b>	<b>3 (12.5%)</b>	<b>5 (13.9%)</b>	<b>8 (13.3%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>5 (20.8%)</b>	<b>10 (27.8%)</b>	<b>15 (25%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>7 (29.1%)</b>	<b>11 (30.6%)</b>	<b>18 (30%)</b>
<b>20 years' imprisonment or more</b>	<b>3 (12.5%)</b>	<b>2 (5.6%)</b>	<b>5 (8.3%)</b>
<b>Life imprisonment with release on licence</b>	<b>4 (16.7%)</b>	<b>3 (8.3%)</b>	<b>7 (11.7%)</b>
<b>"Natural life" imprisonment</b>	<b>1 (4.2%)</b>	<b>3 (8.3%)</b>	<b>4 (6.7%)</b>

NB one male respondent did not make a specific recommendation to this variation of the scenario.

There are no obvious contrasts in the recommended sentences between male and female respondents here.



Scenario E: "The Contract Killer"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>At least 10 but less than 15 years' imprisonment</b>	<b>1 (4%)</b>	<b>5 (13.5%)</b>	<b>6 (9.7%)</b>
<b>At least 15 but less than 20 years' imprisonment</b>	<b>1 (4%)</b>	<b>3 (8.1%)</b>	<b>4 (6.5%)</b>
<b>20 years' imprisonment or more</b>	<b>0</b>	<b>3 (8.1%)</b>	<b>3 (4.8%)</b>
<b>Life imprisonment with release on licence</b>	<b>7 (28%)</b>	<b>7 (18.9%)</b>	<b>14 (22.6%)</b>
<b>"Natural life" imprisonment</b>	<b>10 (40 %)</b>	<b>18 (48.6%)</b>	<b>28 (45.2%)</b>
<b>Death penalty</b>	<b>6 (24%)</b>	<b>1 (2.7%)</b>	<b>7 (11.3%)</b>

This was generally regarded as the most serious of the scenarios and these figures indicate that respondents felt this was clearly a particularly nasty homicide. The principal contrast here is that a greater proportion of male respondents recommended tougher sentences than their female counterparts, although this is largely due to the 6 men who favoured the death penalty.

Scenario F: "The Argument"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>Psychiatric disposal</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Non-custodial sentence</b>	<b>1 (4.3%)</b>	<b>2 (5.6%)</b>	<b>3 (5.1%)</b>
<b>Less than 2 years' imprisonment</b>	<b>0</b>	<b>1 (2.8%)</b>	<b>1 (1.7%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>2 (8.7%)</b>	<b>2 (5.6%)</b>	<b>4 (6.8%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>10 (43.5%)</b>	<b>6 (16.7%)</b>	<b>16 (27.1%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>6 (26.1%)</b>	<b>13 (36.1%)</b>	<b>19 (32.2%)</b>
<b>20 years' imprisonment or more</b>	<b>1 (4.3%)</b>	<b>1 (2.8%)</b>	<b>2 (3.4%)</b>
<b>Life imprisonment with release on licence</b>	<b>3 (13%)</b>	<b>6 (16.7%)</b>	<b>9 (15.3%)</b>
<b>"Natural life" imprisonment</b>	<b>0</b>	<b>5 (13.9%)</b>	<b>5 (8.5%)</b>

NB 3 respondents did not make specific recommendations in this scenario.

Slightly smaller proportions of the male respondents favoured tougher prison sentences than female respondents, especially from terms of 10 years and upwards.

Scenario G: "The Bailiff"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>1 (4%)</b>	<b>0</b>	<b>1 (1.6%)</b>
<b>Psychiatric disposal</b>	<b>0</b>	<b>3 (8.1%)</b>	<b>3 (4.8%)</b>
<b>Non-custodial sentence</b>	<b>0</b>	<b>2 (5.4%)</b>	<b>2 (3.2%)</b>
<b>Less than 2 years' imprisonment</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>2 (8%)</b>	<b>3 (8.1%)</b>	<b>5 (8.1%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>6 (24%)</b>	<b>9 (24.3%)</b>	<b>15 (24.2%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>9 (36%)</b>	<b>14 (37.8%)</b>	<b>23 (37.1%)</b>
<b>20 years' imprisonment or more</b>	<b>2 (8%)</b>	<b>1 (2.7%)</b>	<b>3 (4.8%)</b>
<b>Life imprisonment with release on licence</b>	<b>4 (16%)</b>	<b>4 (10.8%)</b>	<b>8 (12.9%)</b>
<b>"Natural life" imprisonment</b>	<b>1 (4%)</b>	<b>1 (2.7%)</b>	<b>2 (3.2%)</b>

A larger proportion of female respondents (13.5%, compared to 4%) did not favour imprisonment: otherwise these statistics are generally comparable.

Scenario H: "The Brooding Jealous Husband"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>0</b>	<b>1 (2.7%)</b>	<b>1 (1.6%)</b>
<b>Psychiatric disposal</b>	<b>1 (4%)</b>	<b>2 (5.4%)</b>	<b>3 (4.8%)</b>
<b>Non-custodial sentence</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Less than 2 years' imprisonment</b>	<b>0</b>	<b>1 (2.7%)</b>	<b>1 (1.6%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>0</b>	<b>1 (2.7%)</b>	<b>1 (1.6%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>5 (20%)</b>	<b>4 (10.8%)</b>	<b>9 (14.5%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>6 (24%)</b>	<b>9 (24.3%)</b>	<b>15 (24.2%)</b>
<b>20 years' imprisonment or more</b>	<b>3 (12%)</b>	<b>2 (5.4%)</b>	<b>5 (8.1%)</b>
<b>Life imprisonment with release on licence</b>	<b>5 (20%)</b>	<b>8 (21.6%)</b>	<b>13 (21%)</b>
<b>"Natural life" imprisonment</b>	<b>4 (16%)</b>	<b>9 (24.3%)</b>	<b>13 (21%)</b>
<b>Death penalty</b>	<b>1 (4%)</b>	<b>0</b>	<b>1 (1.6%)</b>

The one obvious observation here is that, with one exception, male respondents favoured at least an average term (5 years minimum) of imprisonment, whereas female respondents were slightly more evenly spread of the range of possible sentences.

Scenario I: "The Mercy Killing"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>No prosecution</b>	<b>9 (36%)</b>	<b>28 (75.7%)</b>	<b>37 (59.7%)</b>
<b>Psychiatric disposal</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Non-custodial sentence</b>	<b>9 (36%)</b>	<b>2 (5.4%)</b>	<b>11 (17.7%)</b>
<b>Less than 2 years' imprisonment</b>	<b>1 (4%)</b>	<b>1 (2.7%)</b>	<b>2 (3.2%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>3 (12%)</b>	<b>1 (2.7%)</b>	<b>4 (6.5%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>2 (8%)</b>	<b>3 (8.1%)</b>	<b>5 (8.1%)</b>
<b>At least 10 but less than 15 years' imprisonment</b>	<b>1 (4%)</b>	<b>2 (5.4%)</b>	<b>3 (4.8%)</b>

Whilst respondents generally regarded this as the least serious scenario, more female respondents felt there should be no prosecution at all, whereas more male respondents favoured prosecution followed by a non-custodial sentence.

Scenario J1: "The Cuckolded Husband"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>Psychiatric disposal</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Non-custodial sentence</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Less than 2 years' imprisonment</b>	<b>0</b>	<b>1 (2.9%)</b>	<b>1(1.7%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>0</b>	<b>1 (2.9%)</b>	<b>1 (1.7%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>5 (20%)</b>	<b>6 (17.1%)</b>	<b>11 (18.3%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>7 (28%)</b>	<b>13 (37.1%)</b>	<b>20 (33.3%)</b>
<b>20 years' imprisonment or more</b>	<b>1 (4%)</b>	<b>3 (8.6%)</b>	<b>4 (6.7%)</b>
<b>Life imprisonment with release on licence</b>	<b>7 (28%)</b>	<b>5 (14.3%)</b>	<b>12 (20%)</b>
<b>"Natural life" imprisonment</b>	<b>3 (12%)</b>	<b>6 (17.1%)</b>	<b>9 (15%)</b>
<b>Death penalty</b>	<b>2 (8%)</b>	<b>0</b>	<b>2 (3.3%)</b>

NB Two respondents did not give a specific recommendation to this variation of the scenario.

The one obvious comment is that male respondents were generally a little tougher with their proposed sentences than females, though the difference is not great and the figures are small.

J2: "The Taunted Husband"

<b>Sentence</b>	<b>Male respondents</b>	<b>Female respondents</b>	<b>All respondents</b>
<b>Psychiatric disposal</b>	<b>0</b>	<b>1 (2.8%)</b>	<b>1 (1.6%)</b>
<b>Non-custodial sentence</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Less than 2 years' imprisonment</b>	<b>0</b>	<b>2 (5.6%)</b>	<b>2 (3.3%)</b>
<b>At least 2 but less than 5 years' imprisonment</b>	<b>0</b>	<b>1 (2.8%)</b>	<b>1 (1.6%)</b>
<b>At least 5 but less than 10 years' imprisonment</b>	<b>13 (52%)</b>	<b>14 (38.9%)</b>	<b>27 (44.3%)</b>
<b>At least 10 but less than 20 years' imprisonment</b>	<b>8 (32%)</b>	<b>11 (30.6%)</b>	<b>19 (31.1%)</b>
<b>20 years' imprisonment or more</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Life imprisonment with release on licence</b>	<b>4 (16)</b>	<b>3 (8.3%)</b>	<b>7 (11.5%)</b>
<b>"Natural life" imprisonment</b>	<b>0</b>	<b>4 (11.1%)</b>	<b>4 (6.6%)</b>

NB One respondent did not offer a specific recommendation to this variation of the scenario.

Overall, there are no obvious contrasts between male and female respondents' recommendations.

# APPENDIX D

## PARTIAL DEFENCES AND DEFENDANTS CONVICTED OF MURDER

### PART I: AIMS AND METHODS

#### A. Aims of the research

1. The research has sought to answer a number of questions through the analysis of a sample of cases of defendants convicted of murder. Information about these defendants was extracted from Judges Reports. These are Reports compiled by the trial judge, following the imposition of the mandatory life sentence upon conviction for murder, for use by the Home Secretary in determining the length of the minimum term to be set. The reports vary in length but are usually between two and four pages long. The information recorded and analysed is set out below.
2. The project on Partial Defences to Murder is intended, amongst other things, to indicate whether the defences of diminished responsibility and provocation as they are currently interpreted and applied are operating satisfactorily. One aspect of the project is to ascertain whether female defendants charged with murder in circumstances which suggest a defence ought to be available are excluded from running certain defences, or run them unsuccessfully, either because the scope of the defences is insufficiently wide or because no appropriate defence exists. Conversely, there is concern that *Smith (Morgan)*<sup>1</sup> may have led to the provocation defence becoming unduly broad in its application.
3. Information was sought about incidences of various types of murder, the number of co-defendants, the relationship between the defendant and the victim, the circumstances in which murders were committed, the prevalence of murders committed against current or former partners and some personal details, such as age and sex, of both defendants and victims. The minimum terms recommended by the trial judge and subsequently by the Lord Chief Justice were also recorded where that information was available.
4. The research was also intended to shed light on whether female defendants convicted of murder were more likely than male defendants to have run certain defences, whether partial or complete. One of the reasons is to address the perception that provocation is a defence which is used successfully by male defendants whereas female defendants are less likely to have committed murder in a way, or in circumstances, which allows them to raise the defence of provocation. The difficulty is that without a comparable sample of cases resulting in a conviction for manslaughter (see p 3, below) any conclusion can only be tentative. If it were the case that women or men do succeed more often, this would not of itself necessarily mean that there is a gender bias; there may be perfectly good reasons for any differences in the way in which the defences are used.
5. The research also looked at whether there were significant differences in the defences run in cases where the defendant murders a partner as compared to cases where the victim is not a partner.

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<sup>1</sup> [2001] 1 AC 146.



6. There has been public concern that, in some cases,<sup>2</sup> a person should not be convicted of murder where he or she has acted to protect his or her property, self or family but has used greater force than was necessary to do so. One way to address this perceived injustice might be to create a partial defence of excessive force in self- defence. The research was intended to give an idea of whether this is a significant issue.
7. In addition, the research was intended to indicate the extent to which multiple defences are raised and the extent to which defences, in particular provocation and self-defence, were left by the trial judge to the jury where they had not been raised by the defence. Under the current law if there is evidence of provocation, the trial judge must leave the issue to the jury, even if he or she is of the view that no reasonable jury could conclude that the provocation was enough to make a reasonable person do as the accused did and even if the defence would prefer that it was not left to the jury.
8. The research also sought to discover the extent to which in cases where there was infidelity provocation was pleaded by both male and female defendants in the context of infidelity.
9. Information relating to the minimum terms recommended by the trial judge and the Lord Chief Justice was analysed in order to reveal any apparent differences in the tariff imposed in murders against partners as compared with those against victims who were not partners and whether gender appears to have affected the level of tariff imposed.

## **B. Methods Used**

### **1. The samples**

10. The study involved two samples. The first sample comprises 510 male defendants. Information was extracted from a batch of 432<sup>3</sup> murder cases tried between 1999 and 2003 which were made available to the Law Commission at the Prison Service's Lifer Review and Recall Section.<sup>4</sup> They were cases in which Judges Reports had been written but no tariff set by the Home Secretary, pending, and immediately following, the House of Lords ruling in *Anderson and Taylor*.<sup>5</sup>
11. The original batch of cases examined at the Lifer Review and Recall Section also included 31 female defendants. However, due to suggestions that there is a gender bias in the way in which the partial defences operate<sup>6</sup> the Law

<sup>2</sup> Most notably that of Tony Martin, the Norfolk farmer who shot and killed an intruder in the back as he was running away from the premises.

<sup>3</sup> The number of defendants is greater than the number of 'cases' because some cases involved more than one defendant.

<sup>4</sup> The original batch comprised 460 cases. 23 cases involved one female defendant and 5 cases involved at least one female defendant (the total number of female defendants was 31). The original intention was to carry out a comparison between these male and female defendants but 31 defendants was considered too small a sample with which to compare to the male defendants (510), despite the obvious advantage of comparability in terms of the time scale. The decision was therefore taken to take a larger sample of female defendants over a longer period of time. In 5 cases the gender of the defendant(s) was unclear and these cases were also excluded from the original batch.

<sup>5</sup> [2002] 3 WLR 1800.

<sup>6</sup> Partial Defences to Murder, Consultation Paper No 173, para 4.166.

Commission wanted to examine as large as possible a sample of women's cases and the sample from the original batch was considered too small. Therefore a second sample was compiled comprising 184 female defendants tried for and convicted of murder between the years 1974 and 2003. The difference in time span was not thought to render the two samples incomparable, although it must of course be recognised when evaluating the findings.

12. Neither sample represents the total number of defendants who were convicted of murder during the respective periods.

## **2. Issues and limitations**

### *a) Interpretation*

13. A process of interpretation was involved in determining whether or not defendants fell into particular categories or whether certain factors were present. Furthermore, since several researchers were involved in the data collection, this interpretation is subject to a variety of subjective judgements.<sup>7</sup>
14. The researchers had to assess what should be regarded as other 'provocative' conduct by the victim in any particular case. The difficulty in determining what should fall into this category is evident in the way that the law on provocation has changed. Where there was conduct which the researcher regarded as constituting a degree of provocation, albeit not in law, this was recorded. One example was incessant talking at night by the victim which prevented the defendant from sleeping.
15. 'Other domestic circumstances' is another category open to interpretation. In addition to those domestic murders which involve a person killing a partner, spouse or former partner or spouse, it includes killing relatives such as parents, grandparents, siblings and children.
16. Deciding what relationship existed between the defendant and his or her victim was not always straightforward. Since friends and acquaintances could often be regarded as both, they comprise one category. In some cases it was difficult to determine whether a victim was a stranger or an acquaintance. One case, for example, involved a man murdering the driver of the taxi he was travelling in. It was, however, generally easier to distinguish these two categories and it did not cause any significant difficulty.

### *b) Missing data*

17. The amount of missing data was relatively low. However, there are some omissions. The age of the defendant was calculated in relation to the date of conviction, which was not always apparent. The age of the victim was sometimes missing. In general, missing data was not a significant problem and, where data was missing, this is indicated within the results.

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<sup>7</sup> The majority of the data relating to the female defendants was however collected by a single researcher.

*c) Lack of manslaughter cases and acquittals*

18. Although the data is valuable for showing which defences have been run unsuccessfully, the judges' reports provide no data about defences run successfully. The results in this study are still of value for showing whether certain defences tend to be run unsuccessfully by certain types of defendant, but it is not possible to tell which defences are run overall and how often they are successful.

*d) Significance*

19. The differences between the groups have been analysed to see if they are statistically significant. Where differences occur between groups, it is not necessarily the case that these differences have not occurred by chance. A seemingly large difference between two groups may not be significant if the numbers involved are very small because it is not possible to say with certainty that the results observed have not occurred by chance. Where the results of the significance test show that  $p > 0.05$ , this means that there is a 5% chance that the observed difference could have happened by chance. Where  $p > 0.01$ , this is reduced to a 1% chance, thus indicating a highly significant difference between the groups.<sup>8</sup>

**3. Confidentiality**

20. The data was collected both manually and electronically by Law Commission researchers from judges' reports made available to them at the Lifer Unit of the Prison Service. The reports remained at the Unit and the data collected was taken back to the Law Commission and kept securely. Each case has been given a number for the purposes of this research so that the database is anonymous. Each case has been given a number for the purposes of this research.

**4. Acknowledgements**

21. We wish to express our gratitude to the Home Office for agreeing to make the Judges Reports available to us. In addition, we would like to convey our thanks to the staff at the Lifer Review and Recall Section for their patience and co-operation and without whose assistance this study could never have been completed.

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<sup>8</sup> The 't' value indicates how significant the difference is between the groups compared; the higher the value, the greater the significance.

## PART II: DETAILS OF DEFENDANTS AND VICTIMS

### A. Age of defendant

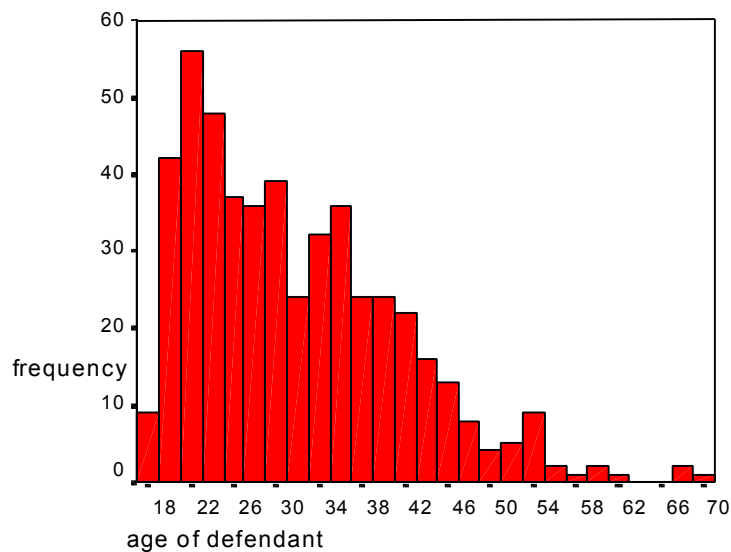
#### 1. Male defendants

The age of the defendant was known in 96.7% (493/510) of cases.

? Median age: 30.

? Mean age: 32.

**Graph 1: Age of male defendants**



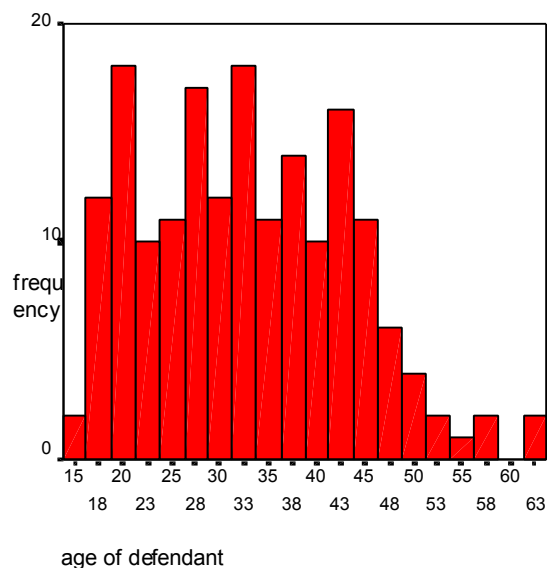
#### 2. Female defendants

The age of the defendant was known in 97.3% (179/184) of cases.

? Median age: 32.

? Mean age: 33.

**Graph 2: Age of female defendants**

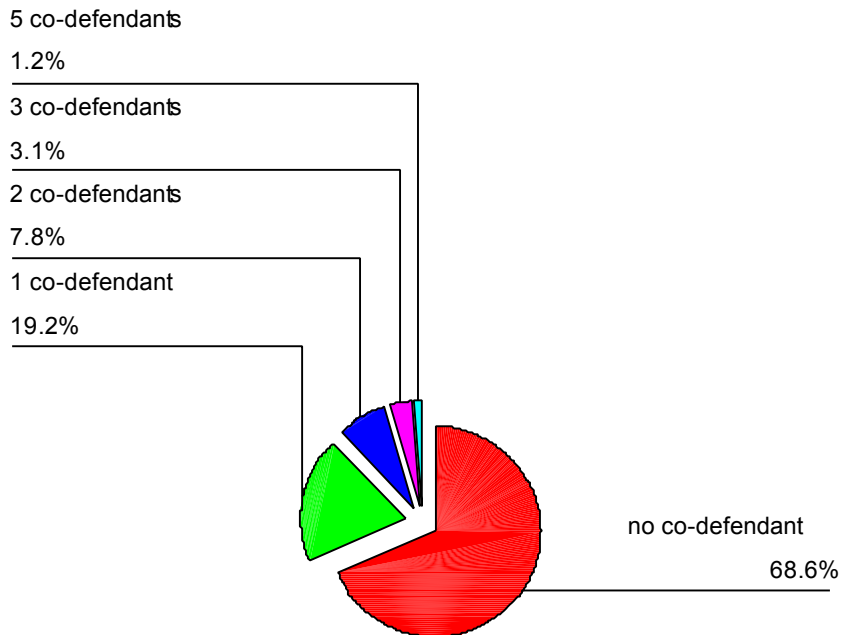


## B. Number of co-defendants

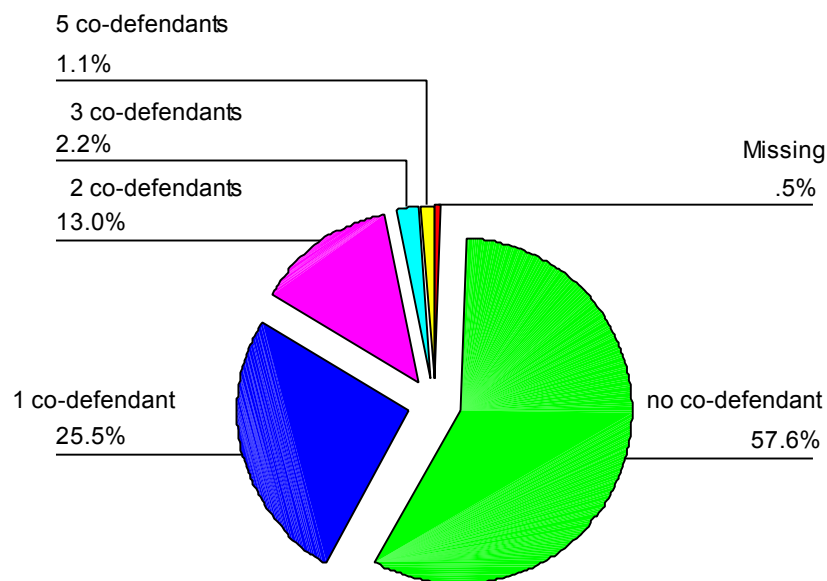
160 of the 510 male defendants and 78 of the 184 female defendants were charged with one or more co-defendant.

The following pie charts indicate the number of co-defendants each defendant had.

**Pie 1: Male defendants: no of co-defendants**



**Pie 2: Female defendants: no of co-defendants**



**C. Sex of victim**

22. The first and third rows of Table 1 indicate the sex of the victim(s) of each defendant. Therefore where a defendant kills two people of the same sex it counts as one case for the purposes of the first and third rows.
23. The second and fourth rows indicate the sex of the victims. It is possible to tell from these two rows how many victims were involved overall. In contrast to the first and third rows, the information relates to the victim rather than the defendant.

**Table 1: Sex of victim(s)**

	Male victim(s)	Female victim(s)	Victims of both sexes	Sex of victim(s) unknown	Total
<b>Male defendants</b>	64.9% (331/510)	29.8% (152/510)	2.4% (12/510)	2.4% (12/510)	100% (510/510)
<b>Total no of victims (male Ds)</b>	61.8% (283/458)	36.2% (166/458)	N/A	2% (9/458)	100% (458/458)
<b>Female defendants</b>	65.8% (121/184)	32.6% (60/184)	1.6% (3/184)	0% (0/184)	100% (184/184)
<b>Total no of victims (female Ds)</b>	64.4% (119/177)	32.8% (58/177)	N/A	0% (0/177)	100% (177/177)

**D. Age of victim**

**1. Victims of male defendants**

The age of 42.1% (232/551) of victims was known.

- ? Median age: 32.
- ? Mean age: 35.

- ? 3% (7/232) were children under a year old.
- ? 6.5% (15/232) were children aged between one year and 17 years inclusive.
- ? 9.1% (21/232) were over 60, the eldest being 91.

It must be borne in mind that the proportion of cases in which the age of the victim was apparent is under half and, given the uneven distribution across the ages, the true results are not known.

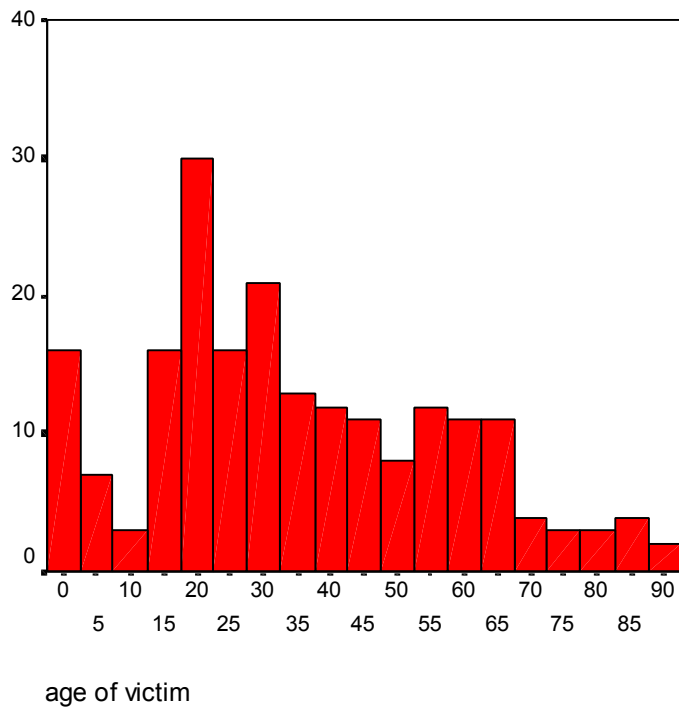
**2. Victims of female defendants**

The age of 69.5% (123/177) of victims was known.

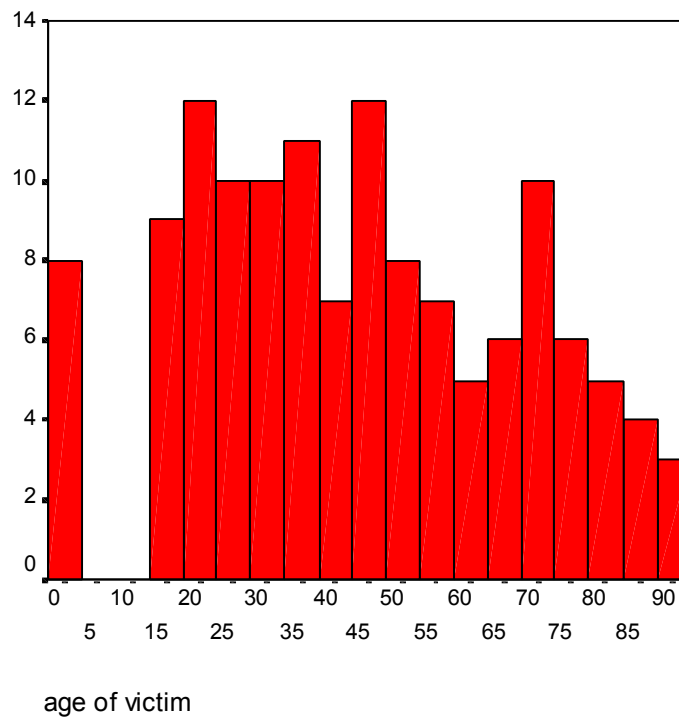
- ? Median age: 41.
- ? Mean age: 43.

- ? 3.25%(4/123) were children under a year old.
- ? 9.76%(12/123) were children aged between one year and 17 years inclusive.
- ? 28.5% (35/123) were aged 60 or over, the eldest being 90.

**Graph 3: Male defendants: age of victim(s)**

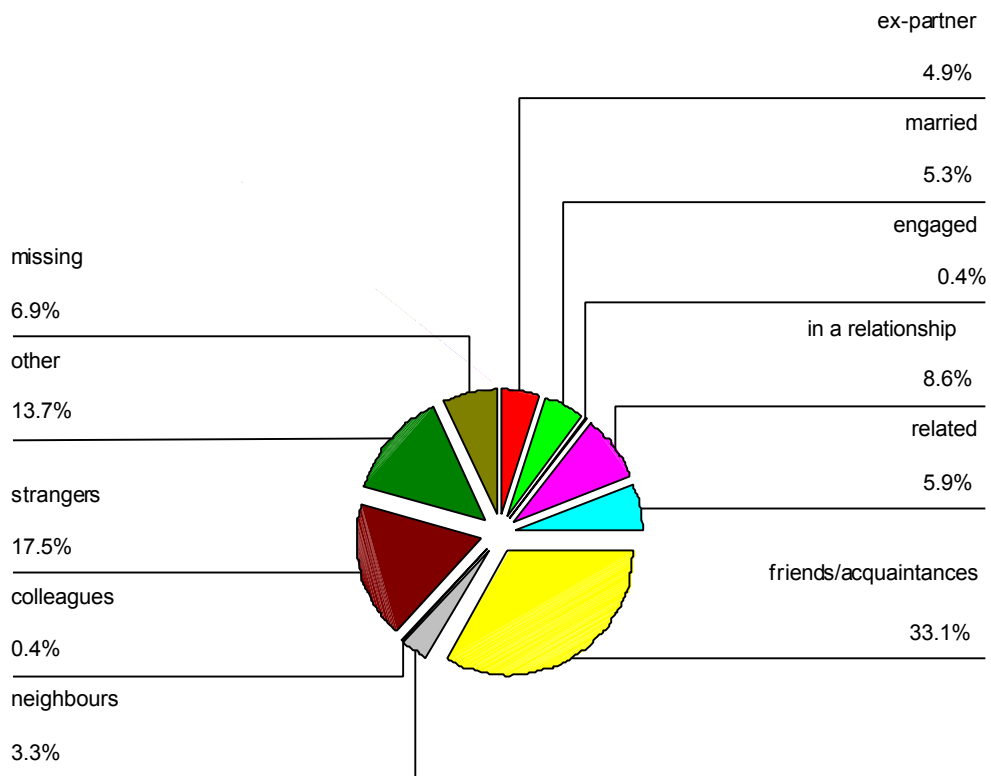


**Graph 4: Female defendants: age of victim(s)**

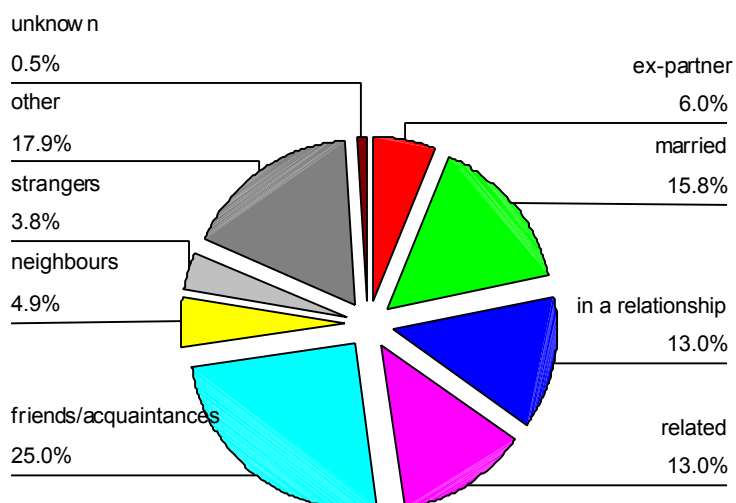


## Relationship between defendant and victim

**Pie 3: Male defendants: relationship with victim**



**Pie 4: Female defendants: relationship with victim**





## PART III: USE OF PARTIAL DEFENCES AND SELF-DEFENCE

This section focuses principally on the extent to which the defences of diminished responsibility, provocation and self-defence were used by the defendants in the samples. Table 2 provides some information relating to the use of other defences, and further details can be found in Tables 1A and 2A in the Appendix.

### A. Comparing the two samples

This section compares the two samples as a whole.

#### 1. Defences run

Table 2 indicates which defences were run by each defendant and which were left by the judge to the jury without having been run by the defendant. The percentages given do not amount to 100% because defendants may have run more than one defence.<sup>9</sup> Two of the male defendants had a mixture of guilty and not guilty pleas and in each case no defence was apparent. They are included within the guilty pleas.

**Table 2: Defences run**

	Male defendants: defences run	M: Left by judge to jury	Female defendants: defences run	F: Left by judge to jury
<b>Diminished Responsibility</b>	8.2% (42/510)	N/A	13.6% (25/184)	N/A
<b>Provocation</b>	18.4% (94/510)	3.9% (20/510)	17.9% (33/184)	8.2% (15/184)
<b>Self-defence</b>	14.3% (73/510)	0.4% (2/510)	10.3% (19/184)	1.6% (3/184)
<b>Insanity</b>	0.4% (2/510)	N/A	0% (0/184)	N/A
<b>Lack of intent</b>	25% (128/510)	0.8% (4/510)	28.8% (53/184)	1.1% (2/184)
<b>Other</b>	50% (255/510)	0% (0/139)	59.8% (110/184)	0% (0/139)
<b>No defence apparent</b>	4.3% (22/510)	N/A	3.8% (7/184)	N/A
<b>Pleaded guilty</b>	13.1% (67/510)	N/A	8.2% (15/184)	N/A

<sup>9</sup> More detailed breakdowns of which defences were run in conjunction with one another in certain categories can be found in the Appendix at pp 3–4.

In terms of defences run, diminished responsibility is the only area where there is a significant difference between male and female defendants. 13.6% (25/184) of female defendants and 8.2% (42/510) of male defendants ran the defence, and the difference between the groups is highly significant.<sup>10</sup> These cases include those where diminished responsibility was either run alone or with other defences.

The differences between the groups in relation to provocation and self-defence are not significant. 17.9% (33/184) of female defendants and 18.4% (94/510) of male defendants pleaded provocation<sup>11</sup> and 10.3% (19/184) of female defendants and 14.3% (73/510) of male defendants ran self-defence.<sup>12</sup>

The difference in the proportion of male and female defendants who pleaded guilty is not significant.<sup>13</sup>

## **2. Self-defence: degree of force in issue?**

The degree of force used was in issue<sup>14</sup> in respect of 38.4% (28/73) of male defendants and 21.1% (4/19) of female defendants who ran self-defence.

The difference between the male and female defendants is not statistically significant<sup>15</sup> but the proportion of cases in which the degree of force used was in issue is in itself substantial.

## **B. Defendants who murdered partners**

This section relates to defendants who murdered a spouse, partner or former partner, all of whom will be referred to as 'partners'. More detail about defences run by defendants in various types of relationship (including defences other than diminished responsibility, provocation and self-defence) can be found in Tables A1 and A2 in the Appendix.

? 19.2% (98/510) of male defendants murdered partners.

? 34.8% (64/184) of all female defendants murdered partners.

? 5.1% (5/98) of the male defendants who killed partners killed male partners.

? 4.7% (3/64) of the female defendants who killed partners killed female partners.

Female defendants were more likely to have murdered a partner than male defendants.<sup>16</sup> This does not mean that men are more at risk from partners than women because the actual numbers involved are smaller in respect of women. Furthermore, the sample of female defendants stretches over a wider time span.<sup>17</sup>

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<sup>10</sup>  $t = 3.8, p > 0.01.$

<sup>11</sup>  $t = 1.4, n.s.$

<sup>12</sup>  $t = 0.2, n.s.$

<sup>13</sup>  $t = 1.8, n.s.$

<sup>14</sup> "In issue" in the sense that it appeared to the researcher that the facts showed that the defendant may have been acting in self-defence but it was questionable whether the degree of force used was reasonably necessary in those circumstances.

<sup>15</sup>  $t = 0.7, n.s.$

<sup>16</sup>  $t = 4.3, p > 0.01.$

<sup>17</sup> Of the female defendants who correspond to the male defendants in terms of their date of conviction (ie 1999–2003), 34.4% (22/64) murdered partners, so the actual numbers involved are much smaller. However, neither sample represents the total number of defendants who were convicted of murder during that period so a comparison of numbers, rather than proportions, only gives an approximate idea of the difference between the groups.

Defences run may have been run in conjunction with other defences. More detail about which defences were run alone and which were combined with other defences can be found in the Appendix at pp 3–4.

### **1. Male defendants**

- ? 17.3% (17/98) ran diminished responsibility.
- ? 31.6% (31/98) ran provocation.
- ? 6.1% (6/98) ran self-defence.
  
- ? 44.9% (44/98) ran a single defence.
- ? 22.4% (22/98) ran two defences.
- ? 5.1% (5/98) ran three defences.
- ? 2% (2/98) ran four defences.
  
- ? 20.4% (20/98) pleaded guilty.
- ? In 4.1% (4/98) of cases the defence was not clear.

### **2. Female defendants**

- ? 7.8% (5/64) ran diminished responsibility.
- ? 25% (16/64) ran provocation.
- ? 12.5% (8/64) ran self-defence.
  
- ? 62.5% (40/64) ran a single defence.
- ? 17.2% (11/64) ran two defences.
- ? 9.4% (6/64) ran three defences.
- ? 1.6% (1/64) ran four defences.
  
- ? 4.7% (3/64) pleaded guilty.
- ? In 3.1% (2/64) of cases the defence was not clear.

### **3. Comparing male and female defendants who murdered partners**

#### *a) Defences run*

Findings in respect of defendants who murdered partners differed from those that emerged from an analysis of the samples as a whole. Self-defence and, in particular self-defence run alongside provocation, was run by significantly more female than male defendants. 17.2% (11/64) of female defendants and 6.1% (6/98) of male defendants who murdered partners pleaded self-defence.<sup>18</sup> 12.5% (8/64) of female defendants and 6.1% (6/98) of male defendants who murdered partners ran self-defence along with provocation.<sup>19</sup> In each of these cases, other defences may have been run in addition.

There were no significant differences between male and female defendants in respect of diminished responsibility<sup>20</sup> and provocation.<sup>21</sup> Similarly no significant differences emerged in respect of defendants who combined diminished

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<sup>18</sup>  $t = 2.2, p > 0.05.$

<sup>19</sup>  $t = 2., p > 0.05.$

<sup>20</sup>  $t = 1.4, n.s.$

<sup>21</sup>  $t = 0.9, n.s.$

responsibility and provocation,<sup>22</sup> or those who combined self-defence and diminished responsibility.<sup>23</sup>

### *b) Multiple defences*

Female defendants were more likely than their male counterparts to run a single defence.<sup>24</sup> However, there were no significant differences between the samples in terms of running more than one defence.<sup>25</sup>

### *c) Plea*

Male defendants were more likely than female defendants to plead guilty to murdering a partner.<sup>26</sup>

## **C. Defendants whose victim(s) was not a partner**

This section discusses defendants whose victim was not a partner and relates, as the previous section did, principally to the defences of diminished responsibility, provocation and self-defence. Tables A1 and A2 in the Appendix provide greater detail about the types of defences run by defendants in different types of relationship.

? 73.9% (377/510) of male defendants murdered victims who were not partners.

? 64.7% (119/184) of all female defendants murdered non-partners.<sup>27</sup>

### **1. Male defendants**

? 6.6% (25/377) ran diminished responsibility

? 15.9% (60/377) ran provocation

? 16.4% (62/377) ran self-defence

? 58.9% (222/377) ran a single defence

? 15.9% (60/377) ran two defences

? 6.4% (24/377) ran three defences

? 2.1% (8/377) ran four defences

? 12.2% (46/377) pleaded guilty.

? In 4.5% (17/377) of cases the defence was not clear.

### **2. Female defendants**

? 16.9% (20/119) ran diminished responsibility

? 14.4% (20/119) ran provocation

? 6.8% (8/119) ran self-defence

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<sup>22</sup> 9.2% (9/98) of male and 9.4% (6/64) of female defendants ran diminished responsibility and provocation together (whether or not in conjunction with other defence(s), and this difference is not significant,  $t = 0.1$ , n.s.

<sup>23</sup> 1%(1/98) of male defendants and 1.6% (1/64) of female defendants ran self-defence and diminished responsibility together (whether or not in conjunction with other defence(s), and this difference is not significant either  $t = 0.3$ , n.s.

<sup>24</sup>  $t = 2.2$ ,  $p > 0.05$ .

<sup>25</sup> Where two defences were run:  $t = 0.8$ , n.s.; where three defences were run:  $t = 1.1$ , n.s.; where four defences were run,  $t = 0.3$ , n.s.

<sup>26</sup> The difference is highly significant:  $t = 2.8$ ,  $p > 0.01$ .

<sup>27</sup> The relationship between the defendant and the victim could not be discerned in one case which explains why the number of defendants who murdered partners and the number of defendants were not partners does not equal the total number of defendants in the study.

? 56.8% (67/119) ran a single defence  
? 17.8% (21/119) ran two defences  
? 10.2% (12/119) ran three defences  
? 1.7% (2/119) ran four defences

? 10.2% (12/119) pleaded guilty.  
? In 4.2% (5/119) of cases the defence was not clear.

### **3. Comparing those whose victim was a partner with those whose victim was not a partner**

#### *a) Defences run*

Strong differences emerged in terms of the defences run by male defendants who murdered partners as compared to those whose victims were not partners. Male defendants who murdered partners were more likely to run diminished responsibility,<sup>28</sup> provocation<sup>29</sup> and self-defence<sup>30</sup> than those who murdered non-partners.

Those who murdered partners were also more likely to run combinations of these three defences. 2.1% (8/377) of male defendants who murdered non-partners combined diminished responsibility with provocation, as compared to 9.2% (9/98) of those who murdered partners.<sup>31</sup> 1.1% (4/377) combined provocation with self-defence, in comparison with 6.1% (6/98) of male defendants who murdered partners.<sup>32</sup>

The only area where there was no significant difference between the two groups is in respect of self-defence and diminished responsibility. 1.6% (6/377) of male defendants who murdered non-partners and 1%(1/98) of those who murdered partners combined self-defence and diminished responsibility.<sup>33</sup>

A different pattern was evident in respect of female defendants. Whether or not they murdered partners had little effect on the extent to which diminished responsibility-or provocation were run.<sup>34</sup> However, female defendants who murdered partners were more likely than those who murdered non-partners to run the defence of self-defence.<sup>35</sup>

They were also more likely to combine provocation and self-defence and 7.2% (11/64) of female defendants who murdered partners and 5.9% (7/119) who murdered non-partners did so.<sup>36</sup> Furthermore, 9.4% (6/64) who murdered partners

<sup>28</sup> 17.3% (17/98) of male defendants who murdered partners ran diminished responsibility (p 12, above) compared to 6.6% (25/377) who murdered non-partners,  $t = 3.3$ ,  $p > 0.01$ .

<sup>29</sup> 37.8% (37/98) of male defendants who murdered partners ran provocation (p 12, above) compared to 15.9% (60/377) who murdered non-partners,  $t = 4.8$ ,  $p > 0.01$ .

<sup>30</sup> 7.1% (7/98) of male defendants who murdered partners ran self-defence (p 12, above) compared to 16.4% (62/377) who murdered non-partners,  $t = 2.3$ ,  $p > 0.05$ .

<sup>31</sup>  $t = 3.4$ ,  $p > 0.01$ .

<sup>32</sup>  $t = 3.1$ ,  $p > 0.01$ .

<sup>33</sup>  $t = 0.4$ , n.s.

<sup>34</sup> 9.4% (6/64) who murdered partners (p 12, above) and 16.8% (20/119) who murdered non-partners ran diminished responsibility,  $t = 1.4$ , n.s.

25% (16/64) who murdered partners (p 12, above) and 14.4% (20/119) who murdered non-partners ran provocation,  $t = 1.8$  n.s.

<sup>35</sup> 17.2% (11/64) who murdered partners (p 12, above) and 6.7% (8/119) who murdered non-partners ran self-defence,  $t = 2.2$ ,  $p > 0.05$ .

<sup>36</sup>  $t = 2.4$ , n.s.

compared with to 2.5% (3/119) who murdered non-partners combined diminished responsibility with provocation, and this difference was significant.<sup>37</sup> No significant difference was apparent in respect of the small number of defendants who combined self-defence and diminished responsibility.<sup>38</sup>

#### *b) Multiple defences*

In terms of the numbers of defences run in conjunction with one another, the only difference between male defendants who murdered partners and those who murdered non-partners related to the running of a single defence, with those who murdered partners being less likely to run a single defence. 58.9% (222/377) of those whose victims who were not partners as compared to 44.9% (44/98) of those who murdered partners ran a single defence.<sup>39</sup>

Whether or not the victim was a partner made no significant difference to the number of defences run by female defendants.<sup>40</sup>

#### *c) Plea*

Again, differences in relation to plea between defendants who had murdered partners and those who murdered victims who were not partners arose only in respect of male defendants, who were more likely to plead guilty if they had murdered a partner.<sup>41</sup> No such difference was found in respect of female defendants.<sup>42</sup>

### **D. Defendants who murdered in a domestic context**

In this section those defendants who were deemed to have committed murder 'in a domestic context'<sup>43</sup> are considered. In addition to considering this group as a whole, additional factors present at the time of the murder, namely violence from the victim, provocative behaviour and infidelity, are taken into consideration. This research indicates that women who commit murder are more likely to do so in a domestic setting than men. 42.9% (79/184) of female defendants and 28.6% (146/510) of male defendants fell within this definition.<sup>44</sup>

61.6% (90/146) of male defendants who murdered in a domestic context murdered a spouse, a partner or a former partner (as before, this group will be referred to collectively as 'partners') and 19.2% (28/146) murdered relatives. 75.9% (60/79) of the female defendants in this group murdered partners<sup>45</sup> and 20.3% (16/79) murdered relatives. Table 3A in the Appendix gives more detail about the types of relationships the defendants in this category had with their victim(s).

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<sup>37</sup>  $t = 2$ ,  $p > 0.05$ .

<sup>38</sup> 1.6% (1/64) who murdered partners ( $p = 12$ , above) and 0% (1/119) who murdered non-partners combined self-defence and diminished responsibility,  $t = 1.9$ , n.s.

<sup>39</sup>  $t = 2.5$ ,  $p > 0.05$ . Where two defences were run,  $t = 1.5$ , n.s.; where three were run,  $t = 0.5$  and where four were run  $t = 0.1$ .

<sup>40</sup> Where a single defence was run,  $t = 0.8$ , n.s.; Where two defences were run,  $t = 0.3$ , n.s.; where three were run,  $t = 0.5$  and where four were run  $t = 0.7$ .

<sup>41</sup> 12.2% (46/377) of male defendants known to have murdered victims who were not partners pleaded guilty as compared to 20.4% (20/98) of male defendants who killed partners ( $p = 12$ , above),  $t = 2.1$ ,  $p > 0.05$ .

<sup>42</sup> For female defendants 10.2% (12/119) pleaded guilty where the victim was not a partner and 4.7% (3/64) did so where the victim was a partner,  $t = 1.3$ .

<sup>43</sup> What constitutes a domestic context and the issues that arise in relation to interpretation are discussed above at p 3.

<sup>44</sup> The difference is highly significant:  $t = 3.6$ ,  $p > 0.01$ .

<sup>45</sup> As before, this term includes spouses and former partners.

Amongst these defendants, the only area of difference between male and female defendants related to self-defence. 24.1% (19/79) of female defendants and 9.6% (14/146) of male defendants ran self-defence.<sup>46</sup> This finding is similar to the pattern which emerged in relation to defendants who murdered partners, where self-defence, and self-defence coupled with provocation, were the only areas of difference between the groups, with female defendants being more likely to have run these defences. This is perhaps to be expected given that 75.9% (60/79) of female defendants who committed domestic murder did so against partners, indicating a significant overlap amongst those who fall within each category.

There was no significant difference between the proportion of female defendants who ran diminished responsibility, which was 15.2% (12/79), and that of male defendants, which was 15.8% (23/146).<sup>47</sup> Higher numbers pleaded provocation but the respective proportion of defendants doing so for each group did not differ significantly; 41.8% (33/79) of female defendants and 34.2% (50/146) of male defendants who committed domestic murder ran provocation as a defence.<sup>48</sup> In each of these cases the defendants may have run other defences in addition.

There were no significant differences between the two groups in terms of combinations of the three defences, although the numbers involved are relatively small which makes it more difficult to determine trends. 13.9% (11/79) of female defendants and 7.5% (11/184) of male defendants ran diminished responsibility and provocation,<sup>49</sup> 13.9% (11/79) of female defendants and 6.8% (10/146) of male defendants ran self-defence and provocation,<sup>50</sup> and 3.8% (3/79) of female defendants and 1.4% (2/146) diminished responsibility and provocation.<sup>51</sup> In each case additional defences may have been run.

### **1. Violence from victim**

There was little evidence in either sample of any violence<sup>52</sup> from the victim before the murder. The absence of any comment in the judges' report about the presence of violence does not, however, necessarily mean that none occurred.

The study found that, amongst the cases of domestic murder 5.1% (4/79) of female defendants had experienced violence from the victim before the murder and 2.7% (4/146) of male defendants had done so.<sup>53</sup>

The numbers involved are therefore too small to derive any meaningful conclusion from a comparison of the defences run in these cases. *a) Male defendants*

One of these four cases also involved infidelity by the victim and is indicated below by\*. Defences run in these four cases are as follows:

? 1 ran provocation\*

? 1 ran diminished responsibility, provocation and lack of intent

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<sup>46</sup> The difference is highly significant:  $t = 2.9$ ,  $p > 0.01$ .

<sup>47</sup>  $t = 0.1$ , n.s.

<sup>48</sup>  $t = 1.1$ , n.s.

<sup>49</sup>  $t = 1.5$ , n.s.

<sup>50</sup>  $t = 1.7$ , n.s.

<sup>51</sup>  $t = 1.2$ , n.s.

<sup>52</sup> Violence refers here to physical violence.

<sup>53</sup> It is no surprise that analysis of these proportions did not indicate a statistically significant difference, given the small numbers involved:  $t = 0.8$ , n.s..

? 2 ran provocation and lack of intent.

As is clear, provocation was run in each case.

*b) Female defendants*

One of these cases also involved infidelity by the victim and is indicated below by\*. In addition, two involved other provocative conduct and are indicated by†. Defences run in these four cases are as follows:

- ? 2 ran diminished responsibility and provocation\*
- ? 2 ran provocation, self-defence and lack of intent†

As with the male defendants provocation was run in each case.

**2. Infidelity**

Male defendants who committed murder in a domestic context were more likely than female defendants to have been acting in response to infidelity on the part of the victim. 13% (19/146) of male defendants as compared to 3.8% (3/79) of female defendants fell into this category.<sup>54</sup>

*a) Male defendants*

Three of the 19 cases also involved other 'provocative' conduct and are indicated below by\*. Defences run in these 19 cases are as follows:

- ? 7 ran provocation alone
- ? 1 ran diminished responsibility alone
- ? 1 ran diminished responsibility and provocation\*
- ? 1 ran diminished responsibility; provocation was left to the jury
- ? 1 ran diminished responsibility and provocation and lack of intent\*
- ? 2 ran provocation and lack of intent
- ? 1 ran provocation and an "other" defence
- ? 1 ran lack of intent and an "other" defence
- ? 1 ran lack of intent alone

Three of the 19 pleaded guilty. One of these involved other "provocative conduct".\*

Therefore provocation was run or put to the jury in 68.4% (13/19) of cases involving a male defendant where the victim has been unfaithful.

*b) Female defendants*

One of the three cases also involved violence from the victim and is indicated below by\*. The following defences were run in these three cases :

- ? 1 ran provocation
- ? 1 ran an "other" defence
- ? 1 ran diminished responsibility and provocation\*

Therefore provocation was run in two of the three cases where the victim had been unfaithful.

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<sup>54</sup> t = 2.2, p > 0.05.



### 3. Other 'provocative' conduct

There was no difference between the two groups in relation to other 'provocative' behaviour. 15.2% (12/79) of female defendants and 10.3% (15/146) of male defendants committed murder in response to some sort of provocative behaviour but this difference is not statistically significant.<sup>55</sup>

#### a) Male defendants

Defences run in these 15 cases are as follows:

- ? 1 ran provocation alone
- ? 1 ran provocation and self-defence
- ? 1 ran diminished responsibility, provocation and self-defence\*
- ? 1 ran diminished responsibility, provocation, self-defence and lack of intent
- ? 1 ran an "other" defence; provocation was left to the jury
- ? 2 ran provocation and lack of intent
- ? 1 ran provocation and an "other" defence
- ? 1 ran self-defence and lack of intent
- ? 2 ran an "other" defences

Three of the 15 pleaded guilty.

No defence was apparent in one case.

Therefore provocation was run or put to the jury in 53.3% (8/15) of cases involving a male defendant where there has been other provocative conduct by the victim. Without the defendants who pleaded guilty the proportion increases to 66.7% (8/12).

It might have been expected that provocation would have necessarily been run where there was provocative conduct. However, determining what constitutes provocative conduct is something of a subjective exercise<sup>56</sup> and it may be that in some cases there was behaviour which appeared from the report to be provocative but, in the trial, was not deemed so by the defence or the judge.

#### b) Female defendants

Two of the 12 cases also involved violence from the victim and are indicated below by †. Defences run in these 12 cases are as follows:

- ? 3 ran provocation alone
- ? 2 ran provocation, self-defence and lack of intent†
- ? 1 ran diminished responsibility and provocation
- ? 1 ran an "other" defence; provocation was left to the jury.
- ? 1 ran an "other" defence; self-defence and provocation were left to the jury.
- ? 1 ran diminished responsibility, provocation and lack of intent; self-defence was left to the jury
- ? 1 ran diminished responsibility, provocation and lack of intent
- ? 1 ran diminished responsibility and lack of intent; provocation was left to the jury

One of these defendants pleaded guilty.

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<sup>55</sup>  $t = 1.1$ , n.s.

<sup>56</sup> As discussed in Part 1, above.

As would perhaps be expected, provocation was either run or left to the jury in 100% (12/12) of these cases.

### **E. Defendants who murdered in victim's home**

54.3% (100/184) of female defendants compared to 22.2% (113/510) of male defendants committed murder in the victim's own home. The difference between these two proportions is extremely significant,<sup>57</sup> and thus it can be said that women who commit murder are more likely than men to do so in the home of their victim. This category may include cases where the defendant was also in his or her own home, if both the defendant and the victim shared a home.

There were, however, no significant differences in terms of the defences run in these cases. 12% (12/100) of the female defendants in this category ran diminished responsibility and 13.3% (15/113) of the male defendants did so.<sup>58</sup> 17% (17/100) of female defendants and 21.1% (24/113) of male defendants ran provocation.<sup>59</sup> Self-defence was run by 8% (8/100) of female defendants and 10.6% (12/113) of male defendants.<sup>60</sup>

### **F. Conclusion**

The results set out in Part III show that women convicted of murder are more likely than their male counterparts to have committed the offence in a domestic setting, more likely to have killed a partner and more likely to have carried out the offence in the home of the victim. This does not mean that partners and relatives are more at risk from women than from men because, in each category, the actual numbers of male defendants who commit such murders are higher. It is the way in which the type of murder is distributed across each sex that differs.

Male defendants who commit murder in a domestic context are more likely than female defendants to have done so in response to infidelity.

The results also suggest that women convicted of murdering a partner are more likely than men to run self-defence or self-defence coupled with provocation. A similar finding emerged in respect of female defendants who commit murder 'in a domestic context', who also appear to be more likely to run self-defence than their male counterparts. The results indicate that men who murder partners are more likely to run diminished responsibility, provocation and self-defence than those who murder victims who are not partners. No such finding emerged in respect of women.

According to the research, women who murder partners are more likely than men to run a single defence. Male defendants who murder a partner are less likely than male defendants whose victim was not a partner to run a single defence, whereas for women no such difference occurred.

Without information relating to manslaughter cases, the extent to which wider conclusions can be drawn is limited.

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<sup>57</sup> (t = 8.1, p > 0.01).

<sup>58</sup> The difference between the groups is not significant (t = 0.3, n.s.).

<sup>59</sup> The difference between the groups is not significant (t = 0.8, n.s.).

<sup>60</sup> The difference between the groups is not significant (t = 0.7, n.s.).

## PART IV: MINIMUM TERMS

Table 3 shows the mean tariffs imposed by the trial judge and the Lord Chief Justice<sup>61</sup> on male and female defendants respectively.<sup>62</sup> Table 4 breaks this information down to show the level minimum term imposed where the murder is of a partner. The figure in brackets shows the total number of defendants in respect of whom information on minimum term was available.

**Table 3: Minimum Term on life sentence**

	Minimum Term set by trial judge (in years)	Minimum Term set by LCJ (in years)
<b>Male defendants</b>	14.9 (483)	14.8 (308)
<b>Female defendants</b>	12.9 (166)	12.7 (146)

**Table 4: Minimum Terms in respect of male and female defendants**

	Mean minimum term set by trial judge (in years)	Mean minimum term set by LCJ (in years)
<b>Male defendants who kill partners</b>	13.9 (93)	13.7 (54)
<b>Female defendants who kill partners</b>	12.6 (55)	12.7 (49)
<b>Male defendants where victim not partner</b>	15.1 (356)	15.1 (232)
<b>Female defendants where victim not partner</b>	13 (110)	12.7 (97)

<sup>61</sup> This includes cases where the LCJ has agreed with the trial judge about the level of minimum term.

<sup>62</sup> Where a minimum term spans a period, e.g. it is set between 12 and 14 years, the results have been calculated on the basis of the mid point, e.g. 13 years.

## **A. Differences in minimum term according to whether victim a partner**

There is a highly significant difference between the mean minimum term recommended by the trial judge in respect of male and female defendants,<sup>63</sup> with female defendants receiving a lower minimum term than male defendants. This does not necessarily indicate an inherent unfairness in the process since Table 3 does not supply details about the facts in individual cases upon which the decisions were made.

## **B. Differences in minimum term according to whether victim a partner**

### **1. Male defendants**

In terms of the minimum term recommended by the trial judge, the difference between the mean minimum term recommended for male defendants who murder partners and that recommended for those who murder people who are not partners is highly significant.<sup>64</sup> Judges recommend a significantly lower minimum term where male defendants have murdered partners or ex-partners rather than other types of victim.

### **2. Female defendants: difference in tariff according to whether victim a partner**

A different result is produced in respect of female defendants. Whether or not the victim is a partner does not affect the level of tariff imposed by the trial judge to any significant extent.<sup>65</sup>

## **C. Differences in minimum term between male and female defendants**

### **1. Where victim is a partner**

The tariffs set by the trial judge in respect of female defendants who murder partners are significantly lower than those imposed on male defendants who do so.<sup>66</sup> However, these results must be looked at in light of the results set out in the previous section which show that judges set lower tariffs in respect of female defendants regardless of the type of victim.

### **2. Where victim is not a partner**

Similarly, where the victim is not a partner female defendants receive lower tariffs than male defendants.<sup>67</sup>

## **D. Conclusion**

The differences between men and women are present regardless of the type of victim involved. The clearest trend which emerges is that men who murder victims who are not their partners or former partners are likely to receive higher recommended minimum terms than those who murder partners. There is an overall picture of lower minimum terms being recommended for female defendants, while female defendants who murder victims who are not partners are not likely to receive a significantly different recommended minimum term from those who murder partners.

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<sup>63</sup>  $t = 5.9, p < 0.01$

<sup>64</sup>  $t = 3.5, p < 0.01$

<sup>65</sup>  $t = 0.5, n.s.$

<sup>66</sup>  $t = 2.2, p > 0.01$

<sup>67</sup>  $t = 4.7, p > 0.01$

## PART V: METHODS OF KILLING

*Table 5: Methods of killing*

	Male defendants	Female defendants
<b>Knife</b>	28.8% (147/510)	37.5% (69/184)
<b>Punching/kicking</b>	6.7% (34/510)	9.2% (17/184)
<b>Gun</b>	10.8% (55/510)	5.4% (10/184)
<b>Strangulation</b>	7.5% (38/510)	7.6% (14/184)
<b>Poison</b>	0.2% (1/510)	1.1% (2/184)
<b>Heavy object</b>	1.4% (7/510)	8.2% (15/184)
<b>Hammer</b>	5.1% (26/510)	1.6% (3/184)
<b>Glassing</b>	0.2% (1/510)	0% (0/184)
<b>Arson</b>	1.8% (9/510)	0% (0/184)
<b>Suffocation</b>	0.8% (4/510)	6% (11/184)
<b>Run over</b>	0.4% (2/510)	0% (0/184)
<b>Drowning/drowning &amp; strangulation</b>	0.6% (3/510)	1.6% (3/184)
<b>Shaking</b>	0.2% (1/510)	0.5% (1/184)
<b>Axe</b>	0.2% (1/510)	1.1% (2/184)
<b>Knife &amp; hammer/heavy object</b>	1% (5/510)	3.8% (7/184)
<b>Strangulation &amp; hammer/heavy object</b>	0.4% (2/510)	1.1% (2/184)
<b>Knife &amp; strangulation</b>	0.4% (2/510)	0% (0/184)
<b>Gun &amp; heavy object/hammer</b>	0.2% (1/510)	0% (0/184)
<b>Knife &amp; punching/kicking</b>	1.6% (8/510)	2.7% (5/184)
<b>Gun &amp; strangulation</b>	0.4% (2/510)	0% (0/184)
<b>Strangulation &amp; punching/kicking</b>	0.2% (1/510)	2.2% (4/184)
<b>Hammer &amp; punching/kicking</b>	0.2% (1/510)	0% (0/184)
<b>Strangulation &amp; suffocation</b>	0% (0/510)	0.5% (1/184)
<b>Other</b>	12.2% (62/510)	8.2% (15/184)
<b>Missing</b>	25.7% (131/510)	1.6% (3/184)

## ANNEX

### 1. Defences run by defendants in various types of relationships

Tables 1A and 2A show defences run by male and defendants, respectively, in various types of relationship.

The number in brackets out of which the proportion is calculated relates to the number of defendants in that particular type of relationship. For example, 27 of the male defendants were convicted of murdering their wives so the proportions in the first row are calculated using 27 as the total.

**Table 1A: Defences run by male defendants in various types of relationships**

	<b>Dimin Respons</b>	<b>Provo-cation</b>	<b>Self-defence</b>	<b>Insanity</b>	<b>Lack of intent</b>	<b>Other defence</b>	<b>Guilty plea</b>
<b>Married</b>	18.5% (5/27)	25.9% (7/27)	0% (0/27)	0% (0/27)	14.8% (4/27)	25.9% (7/27)	18.5% (5/27)
<b>Engaged</b>	0% (0/2)	50% (1/2)	0% (0/2)	0% (0/2)	0% (0/2)	0% (0/2)	50% (1/2)
<b>In a relationship</b>	6.8% (3/44)	6.8% (14/44)	11.1% (3/44)	0% (0/44)	38.6% (17/44)	31.8% (14/44)	20.5% (9/44)
<b>Former partner/spouse</b>	36% (9/25)	36% (9/25)	12% (3/25)	0% (0/25)	44% (11/25)	32% (8/25)	20% (5/25)
<b>Related</b>	13.3% (4/30)	13.3% (4/30)	6.7% (2/30)	3.3% (1/30)	36.7% (11/30)	33.3% (10/30)	13.3% (4/30)
<b>Friends/acquaintances</b>	5.3% (9/169)	18.3% (31/169)	17.8% (30/169)	0% (0/169)	29% (49/169)	58% (98/169)	11.2% (19/169)
<b>Neighbours</b>	5.9% (1/17)	17.6% (3/17)	23.5% (4/17)	0% (0/17)	41.2% (7/17)	35.3% (6/17)	17.6% (3/17)
<b>Colleagues</b>	0% (0/2)	50% (1/2)	50% (1/2)	0% (0/2)	0% (0/2)	0% (0/2)	50% (1/2)
<b>Strangers</b>	7.9% (7/89)	14.6% (13/89)	19.1% (17/89)	0% (0/89)	22.5% (20/89)	48.3% (43/89)	13.5% (12/89)
<b>Other</b>	5.7% (4/70)	11.4% (8/70)	11.4% (8/70)	0% (0/70)	28.6% (20/70)	64.2% (45/70)	10% (7/70)
<b>Missing</b>	0% (0/35)	8.6% (3/35)	14.3% (5/35)	2.9% (1/35)	20% (7/35)	68.6% (24/35)	2.9% (1/35)
<b>Total</b>	42	94	73	2	128	255	68

**Table 2A: Defences run by female defendants in various types of relationships**

	<b>Dimin Respons</b>	<b>Provo-cation</b>	<b>Self-defence</b>	<b>Insanity</b>	<b>Lack of intent</b>	<b>Other defence</b>	<b>Guilty plea</b>
<b>Married</b>	3.5% (1/29)	3.4% (1/29)	3.4% (1/29)	0% (0/29)	27.6% (8/29)	69% (20/29)	6.9% (2/29)
<b>In a relationship</b>	16.7% (4/24)	37.5% (9/24)	25% (6/24)	0% (0/24)	20.8% (5/24)	45.8% (11/24)	4.2% (1/24)
<b>Former partner/spouse</b>	18.2% (2/11)	54.5% (6/11)	36.4% (4/11)	0% (0/11)	45.5% (5/11)	45.5% (5/11)	0% (0/11)
<b>Related</b>	20.8% (5/24)	12.5% (3/24)	4.2% (1/24)	0% (0/24)	20.8% (5/24)	62.5% (15/24)	4.2% (1/24)
<b>Friends/ acquaintances</b>	26.1% (12/46)	26.1% (12/46)	8.7% (4/46)	0% (0/46)	41.3% (19/46)	60.9% (28/46)	4.3% (2/46)
<b>Neighbours</b>	0% (0/9)	22.2% (2/9)	22.2% (2/9)	0% (0/9)	66.7% (6/9)	44.5% (4/9)	11.1% (1/9)
<b>Strangers</b>	14.3% (1/7)	0% (0/7)	14.3% (1/7)	0% (0/7)	14.3% (1/7)	57.1% (4/7)	14.3% (1/7)
<b>Other</b>	6.5% (2/32)	0% (0/32)	0% (0/32)	0% (0/32)	12.9% (4/32)	71% (22/32)	22.6% (7/32)
<b>Missing</b>	0% (0/1)	0% (0/1)	0% (0/1)	0% (0/1)	0% (0/1)	100% (1/1)	0% (0/1)
<b>Total</b>	27	33	19	0	53	110	15

### **3. Defendants who murdered partners: whether defence run alone or combined**

#### **1. Male defendants who murdered partners**

19.2% (98/510) of male defendants murdered partners. Twenty pleaded guilty, and in four cases the defence was not clear.

The following defences were run by the remaining defendants:

##### *Single defences*

- ? 7 ran diminished responsibility alone
- ? 12 ran provocation alone
- ? 5 ran lack of intent alone
- ? 17 ran "other" defence(s)

##### *Multiple defences*

- ? 3 ran diminished responsibility and provocation
- ? 1 ran diminished responsibility and self-defence; provocation was left to the jury
- ? 1 ran diminished responsibility; provocation was left to the jury
- ? 3 ran diminished responsibility, provocation and lack of intent
- ? 1 ran provocation, self-defence, lack of intent and "other" defence(s)
- ? 1 ran diminished responsibility, provocation, lack of intent and "other" defence(s)
- ? 1 ran provocation, self-defence and lack of intent
- ? 6 ran provocation and lack of intent
- ? 2 ran lack of intent; provocation was left to the jury
- ? 1 ran lack of intent and "other" defence(s); provocation was left to the jury
- ? 1 ran lack of intent and "other" defence(s); provocation and self-defence were left to the jury
- ? 2 ran provocation and self-defence
- ? 5 ran lack of intent and "other" defence(s)
- ? 2 ran provocation and "other" defence(s)
- ? 1 ran self-defence and lack of intent
- ? 1 ran diminished responsibility, lack of intent and "other" defence(s)
- ? 1 case involved lack of intent being left to the jury

#### **2. Female defendants who murdered partners**

34.8% (64/184) of female defendants murdered partners. Three pleaded guilty, and in two cases the defence was not clear.

The following defences were run by the remaining defendants:

##### *Single defences*

- ? 3 ran provocation alone
- ? 2 ran self-defence alone
- ? 6 ran lack of intent alone
- ? 28 ran "other" defence(s)



### *Multiple defences*

- ? 5 ran lack of intent and "other" defence(s)\*
- ? 2 ran provocation and self-defence
- ? 3 ran diminished responsibility and provocation
- ? 5 ran provocation, self-defence and lack of intent
- ? 1 ran diminished responsibility, provocation and lack of intent
- ? 1 ran provocation self-defence, lack of intent and "other" defence(s)
- ? 1 ran self-defence; provocation was left to the jury
- ? 1 ran lack of intent; provocation was left to the jury
- ? 3 ran an "other" defence; provocation was left to the jury
- ? 1 ran an "other" defence; provocation and self-defence were left to the jury
- ? 1 ran lack of intent and "other" defence(s); provocation was left to the jury
- ? 1 ran lack of intent and "other" defence(s); self-defence was left to the jury
- ? 1 ran diminished responsibility, provocation and lack of intent; self-defence was left to the jury
- ? 1 ran diminished responsibility, self-defence and "other" defence(s); provocation was left to the jury

### **4. Relationship of defendant and victim in cases of domestic murder**

Table 3A shows the relationship of the defendant with his or her victim in cases where the murder was committed in a domestic context.

**Table 3A: Relationship of defendant and victim in cases of domestic murder**

	<b>Proportion of male defendants</b>	<b>Proportion of female defendants</b>
<b>Married</b>	18.5% (27/146)	36.7% (29/79)
<b>Engaged</b>	1.4% (2/146)	0% (0/79)
<b>In a relationship</b>	28.1% (41/146)	29.1% (23/79)
<b>Former partner/spouse</b>	13.7% (20/146)	10.1% (8/79)
<b>Related</b>	19.2% (28/146)	20.3% (16/79)
<b>Friends/ Acquaintances</b>	12.3% (18/146)	2.5% (2/79)
<b>Neighbours</b>	0.7% (1/146)	0% (0/79)
<b>Colleagues</b>	0% (0/146)	0% (0/79)
<b>Strangers</b>	1.4% (2/146)	0% (0/79)
<b>Other</b>	4.8% (7/146)	1.3% (1/79)
<b>Missing</b>	0% (0/146)	0% (0/79)

## **APPENDIX E**

# **SYNOPSIS OF SAMPLE OF CASES OF FEMALE DEFENDANTS CONVICTED OF MURDER 1974 - 2003<sup>1</sup>**

### **Killings by mothers of their young children**

1. D, aged 25, asphyxiated her two children, aged 1 year and 4 months respectively. She did not plead diminished responsibility, although the trial judge described her as “clearly mentally ill or psychologically damaged or both”, because her defence was that she had not perpetrated the killings. The trial judge recommended a minimum term of 10 years while the LCJ recommended 8 years. The trial was in 1998.
2. D, aged 27, asphyxiated her two children, aged 1 year and 5 months respectively. Another child, by a previous marriage, had previously died of “cot death” in 1989. Her defence was that the children had died from natural causes. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was in 1995.
3. D, aged 37, asphyxiated her 4 months old son. She denied killing the child. The trial judge referred to an “act of madness” committed to gain relief from a life of strain living with a husband who was regularly drunk and abusive. The trial judge recommended a minimum term of 12 years. The trial was in 2002.
4. D, aged 33, asphyxiated her daughter, aged 2 years. She pleaded not guilty to murder on the basis that the death was an accident. The judge in the absence of the jury asked defence counsel if D intended to plead diminished responsibility. In the event it was not pleaded. The judge, referring to the psychiatric report which had been prepared and also to a previous conviction for arson following a domestic dispute in 1987, thought that D was unbalanced.

### **Killings of female relatives**

5. D, aged 47, and her brother strangled her sister-in-law. The motive is described as “obscure”. It may have been as a result of a belief that V’s dowry had been inadequate. There was general bad feeling between D’s family and V. D’s defence was that she was not a party to the killing. The trial judge recommended a minimum term of 20 years while the LCJ recommended 14. The trial was in 1987.
6. D, aged 38, together with her husband, killed V her 85-year-old mother-in-law. The motive was possibly financial gain as V had £13000 in a suitcase. There may

<sup>1</sup> Cases where there have subsequently been successful appeals against conviction have been deleted.

also have been annoyance that V had soiled a carpet. D and her husband ran “cut throat” defences and D also pleaded lack of intent. The trial judge recommended a minimum term of 16 years while the LCJ recommended 15 years. The trial was in 1997.

7. D, aged 44, together with her male lover, killed a 7-year-old girl following prolonged and terrible abuse, deprivation and torture. D was the great aunt of V who had been sent by her parents to this country from Africa in the hope that she might have a better future. D pleaded not guilty to murder on the basis that she was not a party to the killing and, alternatively, lack of intent. The trial judge recommended a minimum term of 25 years while the LCJ recommended 20/22 years. The trial was in 2000/2001.
8. D, aged 48, asphyxiated V, her 89-year-old aunt, because she stood to inherit on V's death. D denied that she had killed V. The trial judge recommended a minimum term of 11/12 years while the LCJ recommended 12 years – it was noted that D had cared for V for a number of years. The trial was in 1993.
9. D, aged 45, together with her two sons, strangled V, her 19-year-old daughter. It appears to have been an “honour” killing in that V was pregnant but not by her husband. V was killed because of the shame that she had brought upon the family. D denied being a party to the killing. D did not plead provocation but one of her sons did – unsuccessfully. The other son was acquitted. The trial judge recommended tariffs of 17 years while the LCJ recommended tariffs of 14 years. The trial was in 1999.
10. D, aged 27, fatally stabbed V, her mother. The motive is unclear – possibly “a sudden flare up” or possibly a dispute over money. What defence was run is not recorded. The trial judge recommended a minimum term of 18 years while the LCJ recommended 15/16 years. The trial was in 1997.
11. D, aged 63, fatally stabbed V, her 69-year-old sister. She pleaded not guilty to murder on the basis of provocation. The nature of the provocation is unclear – possibly some form of argument. The trial judge recommended a minimum term of 12 years. The trial was in 2003.
12. D, aged 46, asphyxiated V, her 89-year-old grandmother. She said that she did so in response to V saying that she wanted “to end it all”. At trial she denied the confessions which she had made to the police in interview. The motive was unclear but the trial judge was in no doubt that it was not a case of “mercy killing”. From the Report, it is impossible to discern what defences were run. The trial judge recommended a minimum term of 12 years. The trial was in 2003.
13. D, aged 43, killed V, her 70-year-old mother, by hitting her with a heavy object inflicting 69 injuries. There was a heated quarrel between V and D at V's home. Pleaded not guilty to murder on the basis of both diminished responsibility and provocation. With regard to the latter, D claimed that V had brought up D's unhappy past, in particular her suffering sexual abuse as a child, and had slapped D in the face. In relation to diminished responsibility, a psychiatrist for the defence testified that D had psychotic symptoms amounting to abnormality of mind. D believed that she had, with V's complicity, been sexually abused as a

child. In addition, on the night before the killing, D had behaved strangely towards the neighbours. The psychiatrist for the Crown was of the view that the behaviour towards the neighbours was due to alcohol and he could find no evidence of mental disorder or abnormality of mind. The trial judge, after referring to D's long history of mental health problems and the fact that she was suffering from mild depression at the time of the murder, recommended a minimum term of 14 years. He also said that she was particularly vulnerable to stress and liable to overreact in a quarrel. He also felt that the quarrel had nothing to do with any abuse, real or imagined, of D as a child. The trial was in 2003.

14. D was aged 34 and V was her 68-year-old mother. V was incontinent and immobile. She could be very demanding of attention. The burden of looking after V fell on D. D was a heavy drinker but not alcoholic. On the evening in question, D was the worse for drink and in the course of the evening strangled V. D pleaded not guilty to murder on the basis of lack of intent and diminished responsibility. In addition, the trial judge left provocation to the jury at the request of the Crown. D had claimed that V had been abusive to her during the course of the evening. Both the trial judge and the LCJ recommended a minimum term of 3 years. The trial judge said that it was the lowest tariff he had ever recommended saying that the jury might easily have convicted of manslaughter out of sympathy. He referred to provocation in the non-legal sense of the strain of living with a very demanding invalid. The trial was in 1992.
15. D, aged 17, and her boyfriend and co-D were, unknown to their respective parents, having sexual intercourse. V was D's 13-year-old sister and she threatened to disclose the nature of the relationship. As a result V was strangled. D denied being a party to the killing. The trial judge recommended tariffs of 9 years while the LCJ recommended 10 years. The trial was in 1987.
16. D was aged 19 and V was her 75-year-old great aunt. D was married to her co-D. They were experiencing financial problems. V kept a considerable sum of money in her house and she was killed so that D and her husband could steal the money. D pleaded guilty to murder. The trial judge recommended a minimum term of 10 years while the LCJ recommended 12 years, observing that it would have been higher but for her youth. D's husband was convicted of murder and the recommended tariff for him was 9 years. The trial was in 1986.

#### **Killings of female neighbours**

17. D, aged 40, was trying to steal property from V's house. V, aged 76, surprised D who responded by fatally stabbing V. D pleaded not guilty to murder on the basis of lack of intent. The trial judge recommended a minimum term of 15 years while the LCJ recommended 14/15. The trial was in 1996.
18. D1 and D2 were both aged 18. They fatally stabbed V, the 70-year-old neighbour of D1. They were both "high on drink and drugs". It seems that they attacked V because she had complained about the behaviour of the younger sister of D1. Both pleaded guilty to murder. The trial judge recommended tariffs of 16 years while the LCJ, in the light of their youth, recommended tariffs of 14 years.

19. D, aged 21, lived with her male partner and co-D in a hostel. Also living in the hostel was V and her male partner. D had been drinking in a pub with V and V's partner. There was a row between D and V's partner. This was followed by an incident outside the pub. When D got home she told her partner what had happened. They both then left their room to confront V's partner. Instead they encountered V. V was fatally stabbed. Although it is not absolutely clear from the Report, it seems that D pleaded that she was not a party to the killing but that if she did it was in self-defence. She may also have raised provocation. Both D and her partner were convicted of murder. The trial judge and the LCJ both recommended a minimum term of 10 years for D and 11 years for her partner. The trial was in 2002.
20. D, aged 31, and her male co-D committed a robbery in which they asphyxiated V, aged 78. Each pleaded not guilty to murder on the basis of lack of intent. Both the trial judge and the LCJ recommended a minimum term of 14 years. The trial was in 1985.

#### **Killings of female partners/lovers/ex-partners/ex-lovers**

21. D, aged 26, and V, a 23-year-old woman, were in a long-term lesbian relationship that was characterised by violent arguments. The fatal stabbing occurred on a day when both had had a lot to drink. Another row took place that led to the stabbing. D pleaded self-defence claiming that V had attacked her with a knife. The trial judge left provocation to the jury although it had not been expressly raised by D. The trial judge recommended a minimum term of 12 years while the LCJ recommended 8/9. The trial was in 1998.
22. D, aged 31, had previously been in a lesbian relationship with V. There was probably an unsatisfactory attempt to revive the relationship shortly before V's murder. The killing may have occurred in the course of a row – the trial judge thought that if there was a row it was verbal rather than physical, at least on the part of V. It ended with D fatally stabbing V. D pleaded not guilty to murder and ran defences of accident, self-defence, lack of intent and provocation. From the report it is not clear what the provocation was alleged to consist of. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was in 1996.
23. D, aged 19, was in a lesbian relationship with V, aged 30. The relationship broke down and D killed V. D denied killing V stating that it must have been someone else. The trial was in 2003.

#### **Killings of female friends and acquaintances**

24. D1 was aged 15 and D2 aged 17. D1 knew V, aged 71. They encountered V in the street and returned with her to V's home. There they perpetrated a motiveless attack, fatally punching and kicking V. They ran "cut throat" defences. The trial judge recommended tariffs of 7 years while the LCJ recommended tariffs of 8 years. The recommended tariffs reflected the youth of D1 and D2. The trial was in 1999.

25. D, aged 39, and her male partner killed V, aged 24, by punching and kicking her. V had told D that she wanted to have sex with D's partner. D and her partner had an argument and they then both attacked V. D pleaded lack of intent as a result of intoxication as did her partner. In addition, D pleaded provocation and diminished responsibility. The trial judge recommended a minimum term of 14/15 years while the LCJ recommended 14 years. The trial was in 2000.
26. D1 was aged 17, D2 aged 18 and D3 aged 20. In addition, there were two male co-Ds. V was aged 18 and was both epileptic and schizophrenic. The defendants decided to rob her of her jewellery and to have "some fun" at her expense. Effectively, they tortured V over several days. Each of the defendants denied being a party to the killing. The trial judge recommended tariffs of 20 years for each of the defendants, the LCJ recommended tariffs of 18/20 years. The trial was in 1999.
27. D, aged 29, fatally stabbed V, aged 18. The motive is unclear. There is a suggestion that D's boyfriend "influenced" D to kill V because he was jealous of their friendship. There is a hint that D and V might have been lovers. D pleaded not guilty to murder on the basis of diminished responsibility. All the experts agreed that she was suffering from an abnormality of mind and the issue was whether it had substantially impaired her mental responsibility for the killing. Both the trial judge and the LCJ recommended a minimum term of 14 years. The trial was in 1996.
28. D, aged 28, and her male co-D were both alcoholics. So too was V, aged 60. They all lived in a squat. The motive for the killing seems to have been a desire to obtain the use of V's benefit book. V was strangled. Each defendant denied being a party to the killing. Both the trial judge and the LCJ recommended a minimum term of 10 years for D and 12 years for her co-D. The trial was in 1993.
29. D1 was aged 24 and D2 was aged 26. In addition, there were two male co-Ds. D2 was formerly married to one of the male co-Ds. The other male co-D had had sexual relations with both D1 and D2 and also with V, aged 16. V was tricked into going to the house of one of the defendants where she was falsely imprisoned and tortured. She was then driven to a remote location, doused in petrol and set alight. The motive is not clear. All the defendants denied being a party to the killing. Both the trial judge and the LCJ recommended tariffs of 25 years for D1 and D2, and tariffs of 18 years for each of the male co-Ds. The trial was in 1993.
30. D, aged 23, and her partner and male co-D had been drinking. D was jealous of V, aged 19, because V had become involved in sexual relations with D's partner. V, who was disabled and had some mental impairment, craved for the friendship of D and her partner. Quite what precipitated the fatal punching and kicking of V is not clear. D and her partner had argued about his association with V and both had been drinking. D pleaded not guilty on the basis that she was not a party to the killing. She alternatively pleaded lack of intent and provocation. The trial judge recommended tariffs of 15 years for each of the defendants, while the LCJ recommended tariffs of 18 years. The trial was in 1997.

31. D, aged 30, thought that V had stolen an allowance book. As a result she fatally punched and kicked V. D pleaded guilty to murder. The trial judge recommended a minimum term of 13/16 years. The trial was in 2003.
32. D was aged 45. A “menage a trois” was formed involving D, D’s husband and V, aged 21. D found the arrangement disagreeable. She left her husband and then planned that V should be killed. She involved others in the plan – two male co-Ds and a female co-D, the latter having a long-standing grudge against V. V was strangled. D denied being a party to the killing. She and the two male co-Ds were convicted of murder. The female co-D was convicted of manslaughter on the basis of diminished responsibility. Both the trial judge and the LCJ recommended tariffs of 20 years for D and one male co-D. For the other male co-D, they each recommended a minimum term of 10 years. The trial was in 1998.
33. D, aged 43, fatally shot V who was having an affair with D’s husband. She did so after having twice attempted suicide. She was suffering from depression. She pleaded not guilty to murder on the basis of diminished responsibility. Four eminent psychiatrists testified on behalf of the defence. A fifth “equally eminent” psychiatrist testified for the Crown. In addition, at the request of the provocation, the trial judge left provocation to the jury. The trial judge recommended a minimum term of 14 years. The trial was in 2003.
34. According to the trial judge, the context was a lesbian relationship, which D had initiated. It appears that D, aged 38, advertised for a female companion. This was not for the purpose of a sexual relationship – D was happily married with children. V, aged 28. Responded to the advertisement and did want a sexual relationship. On the evening in question, D, D’s husband and V were all staying together on a caravan site. Earlier in the evening when D and V had gone to use the site toilet, V had kissed D against D’s will. The fatal stabbing of V was preceded by a row in which D made it clear that she did not want a sexual relationship with V. D pleaded self-defence and provocation but did not testify. D had agreed in interview that although V had produced a knife she had given it to D before D stabbed V. V was stabbed 60 times. The plea of provocation seems to have been based on the fact that V had produced a knife and had questioned aggressively D’s feelings towards her. Both the trial judge and the LCJ recommended a minimum term of 12 years. The trial was in 1989.
35. D, aged 19, had previously been the neighbour of V, aged 84. After returning to live with her family, D still occasionally visited V. The motive for the murder is unclear but at the time D was under the influence of solvents/drink. In addition, £200 stolen from V was found on D. D pleaded not guilty to murder on the basis of lack of intent due to solvent abuse. In addition, the trial judge left provocation to the jury. D did not testify but in interview she said that V had suggested that D might have been responsible for the death of D’s mother. The trial judge recommended a minimum term of 12 years saying that he was left with an uneasy feeling that it was D herself who harboured a guilt complex about her mother’s death. The LCJ recommended a minimum term of 12 years saying that it would have been 14/15 had she been older. The trial was in 1991.



36. In this case there were two Vs, one female, aged 27, and one male and, aged 21. D was aged 24 and was a friend of her 22-year-old male co-D. The latter had been in a relationship with the female V and she was the mother of his child. She had recently left him to live with the male V. The male co-D, out of anger and jealousy, set fire to a manufacturing unit, which was immediately above the property which the Vs lived in. The male V burned to death and the female victim died when she jumped from the burning building (her children were thrown to safety). It was the Crown's case that D had deliberately inflamed her co-D's feelings and had actively encouraged him to set fire to the building. D pleaded not guilty to murder on the basis of lack of intent. It is difficult to tell whether diminished responsibility was raised. The trial judge referred to D as being intellectually subnormal, her intelligence being that of a nine-year-old. He said that her moral culpability was low. He also stated that he directed the jury to disregard any alternative verdict by reason of diminished responsibility and to concentrate upon manslaughter in the "ordinary sense of the word". From the Report one cannot ascertain what tariffs were recommended. The trial was in 1977.

#### **Killings of female strangers**

37. D, aged 21, fatally stabbed V, aged 23. D believed that a third party, T, had put it about that D's brother had committed a burglary. Having consumed a considerable amount of alcohol, D armed herself with a knife and went to the house where T lived in order to confront her. V lived with T and intervened. D punched V in the face whereupon V pushed D away. D then took out the knife and stabbed V. D pleaded not guilty to murder on the basis of lack of intent but the judge left the issues of self-defence and provocation to the jury. Both the trial judge and the LCJ recommended a minimum term of 9 years. The trial was in 1995.
38. D, aged 23, killed V, aged 75. Over 50 stab wounds were inflicted culminating in a "terrible gash to the neck, which severed the jugular vein". D had a previous conviction for the manslaughter of her stepfather. D pleaded not guilty claiming that she had not perpetrated the killing. Alternatively, she pleaded not guilty to murder on the basis of diminished responsibility. It was agreed that she got sexual satisfaction from masturbating to her fantasises of violence. All the expert witnesses agreed that she suffered from an abnormality of mind – the judge described it as "extreme psychopathic disorder". D was convicted of murder. Both the trial judge and the LCJ recommended a minimum term of 10 years. The trial was in 1994.

#### **Killings of "other" females**

39. D, aged 50, killed the wife and baby daughter of a work colleague. The motive is unclear. She pleaded not guilty to murder on the basis that she had not perpetrated the killings. The trial judge recommended a minimum term of 14 years while the LCJ recommended 12/14 years. The trial was in 1987.
40. D1, aged 43, and D2, aged 40, ran a brothel. V was a young prostitute who worked for them. There was no obvious motive for the killing. The defendants ran "cut throat" defences and in addition D2 pleaded not guilty to murder by virtue of

diminished responsibility. The trial judge and the LCJ recommended tariffs of 15 years. The trial was in 1995.

41. D, aged 27, was a prostitute who was trying to escape from the tentacles of her "pimp". She met V, who was in her seventies, in a pub. V befriended D and invited her temporarily to her home. Later, however, V asked D to leave and D resented this. D fatally stabbed V and seriously wounded another lady. D pleaded guilty to murder and wounding with intent. The trial judge recommended a minimum term of 15 years while the LCJ recommended 13/14 years. The trial was in 1999.
42. D, aged 24, was having an affair. V was the wife of D's lover. D was consumed with jealousy of V and fatally stabbed V. D pleaded guilty to murder. The trial judge and the LCJ each recommended a minimum term of 14 years. The trial judge commented that D had a history of depression and had been manipulated and used by V's husband. The trial was in 1999.
43. D, aged 26, fatally stabbed V, aged 31, who was the wife of D's lover. The motive was jealousy. D pleaded not guilty to murder but it is not possible to discern what defences were run. The LCJ recommended a minimum term of 10 years. The trial was in 1983.
44. D, aged 33, together with her male partner and co-D was charged with murdering V, a drug courier. V was suspected by D's partner of having cheated him over a drug transaction. D denied being a party to the killing. The trial judge recommended a minimum term for D of 12 years while the LCJ recommended 10 years. The trial was in 2001.
45. D, aged 36, together with two male co-Ds murdered V. V was the girlfriend of one of the two male co-Ds and she was due to testify against him in relation to a charge that he had assaulted her. V was killed in order to silence her. D pleaded not guilty on the basis that she was not a party to the killing. The trial judge and the LCJ each recommended a minimum term of 10 years. The trial was in 1999.
46. D, aged 31, fatally stabbed V, aged 22, who was the lover of D's husband. D pleaded not guilty on the basis that she had not perpetrated the murder, rather it had been committed by D's husband. The trial judge recommended a minimum term of 10 years while the LCJ recommended 11 years.
47. D, aged 31, worked in a care home for the elderly. V, aged 66, was one of the residents. D had previously stolen money from V and the judge said that the motive for D killing V was theft. D pleaded not guilty to murder on the basis that she had not killed V. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 1992.
48. D, aged 36, was infatuated with the husband of V. She had made efforts to divide V from her husband by writing anonymous letters to the husband suggesting that V was having an affair. When D realised this strategy was having no effect, she decided to eliminate V. D involved her 19 year old son by falsely telling him that V had hired a man to rape D. V was fatally stabbed. D and her son ran "cut throat"

defences. Both were convicted of murder. The trial judge and the LCJ each recommended a minimum term of 18 years for D and 9 years for her son.

49. D, aged 35, targeted V, aged 84, who regularly left her flat unsecured. V surprised D in the course of burgling V's premises whereupon D fatally stabbed V. D denied that she had perpetrated the killing. The trial judge recommended a minimum term of 16 years. The trial was in 2003.
50. D, aged 36, worked a nurse in a care home. V was an elderly resident. There was no evidence that V was unhappy or uncomfortable. D killed V by administering a strong sedative. At trial D pleaded not guilty to murder on the basis of lack of intent and diminished responsibility. The psychiatrists agreed that she suffered from an abnormality of mind but the personality disorder came close to meaning no more than that she acted inappropriately. The trial judge recommended a minimum term of 15 years. The trial was in 2001.
51. D, aged 17, became infatuated with one of her teachers. V was his wife, aged 33. He had become tired of his wife and the result was that V was strangled. D was charged as an accessory to V's murder. She denied that she was a party to the killing. The trial judge and the LCJ each recommended a minimum term of 5 years for D and 12 years for V's husband. The trial was in 1988.
52. D, aged 16, was the girlfriend of her male co-D, aged 17, who in turn was the uncle of V, an 18 month old baby girl. For some inexplicable reason, while at V's home, they punched, kicked and shook V thereby killing her. Each denied being a party to the killing. The trial was in 1982.
53. D, aged 19, strangled V, aged 90. There was no clear motive although a small amount of money was stolen following the murder. D pleaded guilty to murder. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was in 1979.
54. D, aged 21, together with her male co-D, who pleaded guilty at an earlier trial, target V, aged 79 and living on her own. Their motive was burglary/robbery. D was killed by being hit repeatedly with a brick. D pleaded guilty to murder after being found fit to plead. The trial judge recommended a minimum term of 13 years for D and 15 years for her co-D. The trial was in 1975.
55. D, aged, 57, was infatuated with a married man. He was having an extra marital affair with another woman, V aged 46. D thought that she would get her man if she eliminated V. She hired T who fatally stabbed V. T pleaded guilty to murder at an earlier trial and subsequently gave evidence for the Crown at D's trial. D's defence was that she had hired T in order to merely frighten V. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 1984.
56. D, aged 34, was a compulsive shoplifter. V, aged 37, worked as a shop assistant at a jewellery shop. When interviewed by police D said that she had a compulsive hatred for everyone connected with the jewellery trade. She said that she had become desperate because the fact that she had been shoplifting for 8 years was about to be revealed (but not by V). Her career as a teacher would be in ruins,

she could not face the situation at home (she lived with her parents) and so had decided to commit murder. At trial, she said that all of what she had said in interview was an invention. Rather she had gone to the shop intending to steal. V discovered her, she panicked and then left the shop. From the Report, although it is not absolutely clear, it appears that the defence was that V was alive when D left the shop and was in fact killed by someone else. The LCJ recommended a minimum term of 14 years. The trial was in 1978.

57. D, aged 33, was besotted with her 29-year-old male co-D. V had previously given evidence against him in a trial. He took his revenge on V and D was a willing and enthusiastic partner in the killing. There is some suggestion that there was sexual jealousy on the part of D. At trial D and her co-D ran “cut throat” defences. D also pleaded duress —the trial took place before the House of Lords decision in *Howe*. The trial judge and the LCJ each recommended a minimum term of 15 years for D and 25 years for her co-D. The trial was in 1985.
58. D, aged 38, had been engaged to T. T broke off the engagement and married V, aged 29. D brooded over this and eight months later shot V. D denied that she was a party to the killing of V. The trial judge recommended a minimum term of 10 years and the LCJ recommended 10/11 years. The trial was in 1991.

#### **Killings of male relatives**

59. D, aged 28, and her husband suspected V, who was her 16-year-old brother-in-law, of sexually abusing their children. They decapitated V. D pleaded not guilty to murder on the basis that she was not a party to the killing. Her husband changed his plea to guilty in the course of the trial. The trial judge and the LCJ recommended tariffs of 18 years. The trial was in 1997.
60. In this case there was also a male charged with the murder. He pleaded guilty at an earlier trial and was a Crown witness in D’s trial. D, aged 24, killed V, her father aged 47, by dousing him in petrol and setting him alight. V was a drug user and D was angry because her brother had recently suffered a brain haemorrhage brought on by the excessive use of alcohol and drugs. D perceived V as promoting this by encouraging and supporting his son in the abuse. D pleaded not guilty to murder on the basis that she was not a party to the killing. Alternatively, she pleaded lack of intent. The defence called expert evidence that, at the time of the killing, D was suffering from acute stress disorder and, although present at the scene, was not participating. In the light of this evidence, the trial judge thought that it was necessary to leave diminished responsibility to the jury. In addition, although the defence had not raised it, the trial judge, with the agreement of counsel, left provocation to the jury. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 1995.
61. D, aged 31, together with two male co-Ds killed V, her father aged 55. V was an alcoholic. He was frequently violent towards D but did not sexually abuse her. One night D, who had nowhere to live, went to V’s house in the company of the two male co-Ds. V wanted them to leave and was abusive. Something started the violence (the trial judge said that it was unclear whether V had struck D) and it culminated in a ferocious attack on V. D pleaded not guilty to murder on the basis that she was not a party to the killing. She did not expressly raise provocation but

the trial judge left it to the jury (as he did in the case of one of the co-Ds – the other pleaded guilty to murder). The trial judge and the LCJ each recommended a minimum term of 15 years for D, 17 years for the male co-D who was found guilty and 13 years for the male co-D who pleaded guilty. The trial was in 1999.

62. D, aged 61, was the mother of V, aged 41. V was a criminal and drug addict. Over the years he had made D's life a misery. In the two years before his death V had disappeared but shortly before his death he suddenly arrived at D's home. D took him in. V then started to drink heavily and take his drugs. His drug-dealing friends started to come to D's home. D now resented V's presence and was angry. In interview, D claimed that she killed V after he had said, "I can't live in the junkies world any more". In his Report the trial judge did say that he thought that V probably did ask D to kill him, that D was almost as drunk as V and that D was angry with V and wanted to be rid of him. D pleaded not guilty on the basis of diminished responsibility. She had a long history of psychiatric treatment for depression and had been an in-patient on many occasions. Two experts called by the defence testified that V's return had caused a depressive illness which amounted to an abnormality of mind so as to substantially impair her mental responsibility for the killing. The experts called by the Crown were of the view that it was too mild to amount to an abnormality of mind while one found that she was distressed rather than depressed. The trial judge, having referred to "many" mitigating factors, recommended a minimum term of 5 years. So did the LCJ. The trial was in 1999.
63. D was aged 28 and V was her stepfather, aged 44. Her co-Ds were her mother (see case 117 below) and two male co-Ds who were not related to D or V. D and her mother hated V. They ensnared the two male co-Ds into the plot by disguising the fact that V was married to D's mother. Instead, they said that V was a police informer who had informed on D's stepfather. D (and her mother) denied being a party to V's killing. The trial was in 1975.
64. This was a carefully planned murder in a family context. The motive was not absolutely clear but there appears to have been marital disharmony and an incident in India involving V which D and her family found particularly shaming. V, aged 37, was the brother-in-law of D and he was killed by D, her brother and her sister, who was V's wife (see case 1119). D, and V's wife, pleaded not guilty to murder on the basis of not being a party to the killing. Alternatively, they pleaded lack of intent. The trial judge and the LCJ each recommended tariffs of 10 years for D and her sister and 12 years for D's brother. The trial was in 1989.
65. D, aged 36, attended a family celebration at a pub of which V, her brother aged 37, was the manager. The function was to celebrate the sixtieth birthday of their father. Both D and V had previous convictions for offences of violence. They all started drinking. An argument ensued in the course of which there was a fight between D and V. D was punched, headbutted, knocked to the ground and kicked by V. V went into the pub's private quarters to clean himself up. A few minutes later, D picked up a knife, went to V's quarters and inflicted three fatal stab wounds. The Crown was unwilling to accept a plea to manslaughter. D pleaded not guilty to murder on the basis of self-defence and provocation. She did not testify. The trial judge, having said that he would not have been surprised

had the jury returned a manslaughter verdict, recommended a minimum term of 10/12 years. The LCJ recommended 8 years. The trial was in 1990.

### **Killings of male neighbours**

66. D, aged 19, was charged together with three male co-Ds, with the murder of V, aged 48. There was a background of ill feeling between all the defendants and V – in part this revolved around the alleged behaviour of V's teenage daughter. By chance, on the day of the killing the defendants and V were all in attendance at the local hospital. Because of delays at the hospital, their paths crossed and the tensions surfaced and escalated. It ended up with V being chased, falling over and suffering a fatal injury. Non-fatal blows were inflicted on V after he had fallen to the ground. D pleaded not guilty to murder on the basis that she was not a party to the killing. Alternatively, she pleaded lack of intent. She did not raise provocation, although two of her co-Ds did, albeit unsuccessfully. All were convicted of murder and the Court of Appeal upheld their convictions. The trial judge recommended tariffs for all four defendants of 7/9 years, while the LCJ recommended 9 years. The trial was in 2001.
67. D, aged 35, together with her male co-D, killed V, aged 35. Her co-D harboured several grievances against V, the main one being that V was responsible for the break up of his relationship with his girlfriend (who was not D). Both of the defendants had been drinking when they attacked V. D pleaded not guilty to murder on the basis that she was not a party to the killing. Her co-D unsuccessfully raised provocation. The trial judge and the LCJ each recommended a minimum term of 7 years for D and 12 years for the co-D. The trial was in 1992.
68. D, aged 26, committed a robbery together with her two male co-Ds. V, aged 65, was killed in the course of the robbery. D pleaded not guilty to murder on the basis of lack of intent. The trial judge and the LCJ each recommended a minimum term of 10 years. The trial was in 1995.
69. D, aged 33, had been the victim in several violent and abusive relationships. V, aged 39, had in the past threatened her because of an incident which he suspected she had been involved in. Apparently, V was known to regularly beat his wife. On the day in question, V came to D's house. He was unarmed but, according to D, abusive and threatening towards her. She responded by fatally stabbing him. D pleaded not guilty to murder on the basis of accident, self-defence, lack of intent and provocation. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was in 2002.
70. D, aged 26, and her two male co-Ds committed a robbery on V, aged 65, in the course of which V was killed. D pleaded not guilty to murder on the basis of lack of intent due to intoxication through drink and drugs. The trial judge and LCJ each recommended a minimum term of 10 years. The trial was in 1995.

### **Killings of spouses, male partners, ex-spouses and male ex-partners**

71. D, aged 28, killed her partner. Their relationship was volatile and, at times, violent. Each had been violent to the other. V was stabbed to death. D pleaded

not guilty to murder and maintained that a stranger in the course of a “road rage” incident had killed V. She repeated this version of events in a TV appeal. Although she had not raised the issue of provocation, the trial judge left it to the jury. The trial judge and the LCJ each recommended a minimum term of 14 years. The trial was in 1997.

72. D, aged 33, together with her lover killed V who was her husband and aged 34. The motives were that D wanted to live with her lover and also to claim insurance monies payable on V's death. D pleaded not guilty to murder on the basis of lack of intent. The trial judge and LCJ each recommended a minimum term of 16 years. The trial was in 1995.
73. This was a re-trial as the Court of Appeal had quashed D's original conviction. D, aged 39, together with her lover murdered V, her husband. V had discovered that D was having an affair. V had a previous conviction for manslaughter of his first wife when he discovered that she was having an affair. It was because of this that the trial judge refers to divorce never having been an option for D. D pleaded not guilty to murder on the basis of lack of intent. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was in 1999.
74. D, aged 43, had been the long time lover of V who was a serving prisoner. V was on weekend leave when he was murdered. The motive for the killing is not clear but it was suggested that D wanted to start a new relationship with her male co-D. The fatal shooting was perpetrated by her male co-D. D pleaded not guilty to murder on the basis that she was not a party to the killing. The trial was in 1991.
75. D, aged 32, was having an affair with her male co-D. V, her husband, was killed because D wanted to continue the affair and she stood to gain £25000 from V's death. D pleaded not guilty on the basis that she was not a party to the killing. The trial judge and the LCJ each recommended a minimum term of 17 years for D and 16 years for her co-D. The trial was in 1999.
76. D, aged 36, set fire to and killed V, her husband. The motive for the killing is unclear. D admitted setting fire to V but she pleaded not guilty to murder on the basis of lack of intent. D did not give evidence but witness statements from others (which were not ultimately adduced in evidence) suggested previous mutual violence on the part of D and V. D did not raise provocation but the trial judge left the issue to the jury. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 1994.
77. D, aged 43, together with three male co-Ds murdered V her 56-year-old husband. The marriage had become loveless and D had started an affair with one of her co-Ds. She also stood to gain financially from V's death. From the Report it is difficult to ascertain what defences were run – there is no reference to self-defence, diminished responsibility or provocation. All the defendants were convicted of murder. The trial judge recommended a minimum term of 18/20 years while the LCJ recommended 20 years. The trial was in 1991.
78. D, aged 37, and V, aged 42, were both alcoholics. On the day of the murder there was an argument about the amount of money which V was spending on alcohol. The police were called to the premises but, having arrived, were told by D to

leave. Shortly after V was fatally stabbed. At her trial D pleaded not guilty to murder on the basis that V's death had been an accident and alternatively lack of intent. D did not testify but she had told police that V impaled himself on a knife which she was holding when he came forward as if to strangle her. In his Report the trial judge said that he was in no doubt that V was seated when he was killed. D did not seek to raise provocation and the trial judge, with the agreement of counsel, did not leave it to the jury. D did not plead diminished responsibility. The trial judge recommended a minimum term of 15 years while the LCJ recommended 14 years. The trial was in 2001.

79. D, aged 23, and her two brothers killed V, her ex-husband and his current girl friend. D hated V and believed that he was responsible for the death through a drug overdose, of a close friend of her and her brothers. The girl friend of V was killed simply because she had witnessed V's murder. D pleaded not guilty to murder on the basis that she was not a party to the killings. The trial judge and the LCJ each recommended a minimum term of 20 years. The trial was in 1994.
80. D, aged 33, and V were in a quarrelsome and mutually violent relationship. V's murder, by stabbing, was the culmination of a final row. It is unclear what sparked that row – possibly drink/drugs. D pleaded not guilty to murder on the basis of self-defence. She also raised provocation. In his Report, the trial judge referred to D's "violent temperament" and said that she was no battered wife. She was excitable and impulsive and gave "as good as she got, maybe better". He added that the picture she sought to present of being a patient, unresisting victim of repeated violence was false. The trial judge and the LCJ each recommended a minimum term of 13 years. The trial was in 1996.
81. D, aged 22, fatally stabbed V, her ex-partner aged 52. On the day of the murder V had been drinking heavily. D, who had also been drinking heavily, arrived at V's home. There was a row over a dog that culminated in a frenzied knife attack by D on V. D pleaded not guilty to murder on the basis of lack of intent due to intoxication. The LCJ recommended a minimum term of 10 years. The trial was in 1986.
82. D, aged 22, fatally stabbed V, her husband. V had lost his job and told D. A row ensued and she became angry when V said that it was not his fault. D pleaded not guilty to murder on the basis that V's death was an accident and alternatively lack of intent. D did not raise provocation but the trial judge left it to the jury. The trial judge and the LCJ each recommended a minimum term of 8 years. The trial was in 1998.
83. D, aged 31, was in a relationship with her male co-D. They wanted V, aged 29 and the estranged husband of D, "out of the way". Each defendant pleaded not guilty to murder on the basis of not being a party to the killing. The trial judge and LCJ each recommended a minimum term of 14 years.
84. V, aged 23, and a violent criminal and police informer, had been and was D's lover. D had also been the lover of one of her male co-Ds and was the mother of his child. That co-D wanted V to stay away from D. Another male co-D hated V because he thought that V had attacked his property and had also physically abused his daughter. V was shot fatally. D pleaded not guilty to murder on the



basis that the most that she had envisaged was some action being taken by the co-Ds to frighten V. The trial judge and LCJ each recommended a minimum term of 10 years for D. In respect of each of the two male co-Ds, the trial judge recommended tariffs of 25 years while the LCJ recommended 22 years. The trial was in 1996.

85. D, aged 44, and V, aged 60, had started an affair in 1992 and set up home together in 1999. It was a stormy relationship with frequent rows, mainly because of V's drinking. There was, however, little in the way of physical violence and D was the dominant partner. In September 1999 D moved out. On the night of the murder she returned to fetch some of her belongings. She then went to her sister's flat and subsequently returned to V's house. V was very drunk. There was along noisy argument. D went to the kitchen and fetched a 12" knife. She stabbed V twice, in the heart and abdomen, using extreme force. She pleaded not guilty to murder on the basis of diminished responsibility and/or provocation. In his Report the trial Judge commented that the medical evidence on the issue of abnormality of mind was "not compelling". He did also observe, however, that D had been sexually abused as a child, that she was damaged, vulnerable and lonely. The provocation was said to have been that V had told D that he had had sex with another woman in the bed which D had bought and that he had called D "a whore" - something she found very painful because when she was aged 16 she had been forced to work as a prostitute. D also said that V had grabbed her by the hair to compel her to indulge in oral sex. D said that she found that repellent as she had previously been forced to do that by her mother's employee who had been sexually abusing her. The trial judge noted that there was a period of minutes after the last provoking act and that she had chosen the largest knife available in the kitchen. The trial judge and the LCJ each recommended a minimum term of 9/10 years. The trial was in 2000.
86. D, aged 37, fatally stabbed her partner. The Report describes the relationship between D and V as involving "extreme violence". D pleaded not guilty to murder on the basis that V's death was an accident. She said that she had a knife in her hand for the purpose of chipping potatoes and that she accidentally stabbed V when she swung her arm in his direction. The defence did not expressly raise provocation but the trial judge left the issue to the jury. It is not clear what the provocation might have been. The trial judge recommended a minimum term of 10/12 years while the LCJ recommended 9 years. The trial was in 1998.
87. D, aged 41, was convicted of soliciting the death of V, her husband. They were going through divorce proceedings. V had sworn an affidavit in which he stated that D, in order to obtain employment, had claimed falsely to have academic qualifications. In addition, he was contesting custody of their daughter. The Crown's case was that D wanted V "out of the way". She denied that she had solicited the murder. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 1993.
88. D, aged 49, was estranged from V, her husband. She was obliged to pay him £14000 for his share of the house in which they had been living but which she now wanted for herself. She wanted to avoid paying that sum. She recruited her brother to the plot to murder V. D pleaded not guilty to murder on the basis that

she was not a party to the killing. Her brother unsuccessfully relied on provocation on the basis that he believed that V had been mistreating D. Trial judge recommended a minimum term of 13 years for D while the LCJ recommended 14/15 years. Each recommended a minimum term of 12 years for D's brother. The trial was in 1996.

89. D, aged 48, was bigamous and engaged in other relationships. V was her husband, aged 60. A possible motive for V's murder was financial as D stood to gain from his will. V died from an insulin overdose and D's plea of not guilty to murder was based on the claim that V had self-administered the insulin. The trial judge and the LCJ each recommended a minimum term of 16 years. The trial was in 1993.
90. D, aged 48, together with her two male co-Ds – one of whom was D's lover – murdered D's husband, V. The motive was partly financial but also so that D could continue the affair with her lover. D pleaded not guilty to murder on the basis that she was not a party to the killing. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 1993.
91. D was aged 35. Her husband, V, was paralysed from the waist down following a road accident. He had been awarded £75000 damages. D's motive for killing V, which was by injecting insulin, is not clear. It could have been financial and/or a desire to be rid of a severely physically disabled husband. D pleaded not guilty to murder submitting that the cause of death was not insulin poisoning but septicaemia. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 2000.
92. D, aged 24, and her male co-D were lovers. V was D's husband and he was killed so that they could continue their affair. Both pleaded guilty to murder. The trial judge recommended tariffs of 12 years while the LCJ recommended tariffs of 10/11 years. The trial was in 1995.
93. D, aged 42, strangled V, her 60-year-old male partner after she had been drinking. She pleaded not guilty to murder on the basis of provocation, namely his incessant talking which prevented her from sleeping and also her jealousy (unjustified) concerning his infidelity with a 19-year-old female neighbour. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was 1995.
94. D, aged 20, together with a male co-D killed V, her ex-partner. D was jealous because V had begun to live with another woman. At trial D pleaded not guilty to murder on the basis that she was not a party to the killing. Alternatively, she pleaded lack of intent. The trial judge and the LCJ each recommended a minimum term of 14 years. The trial was in 1997.
95. D, aged 55, killed V, her 56-year-old husband because she was angry on account of his infidelity. She pleaded not guilty to murder on the basis of diminished responsibility and provocation. The jury rejected the defences and the trial judge referred to the fact that the killing was premeditated and that D had used her daughter to lure V to the location where D stabbed him. The trial judge recommended a minimum term of 8 years. He thought the mitigating facts – V's

conduct towards D and the effect on her – justified a substantially reduced tariff. The trial was in 2003.

96. D, aged 39, became infatuated with a man (her co-D) and wanted V, her 38-year-old husband, eliminated so that she could continue her affair. D pleaded not guilty to murder on the basis of lack of intent. The trial judge recommended a minimum term of 16/17 years while the LCJ recommended 15 years. The trial was in 1989.
97. D, aged 44, had been the partner of V, aged 47. When they had lived together, which was as long ago as 1982, V was violent towards D. V had continually blamed D for the fact that their children were heroin users. In the weeks before his murder, V had sent D abusive and threatening letters. One read “watch the roads”. D carried this letter on her person in case anything should befall her. On the day in question, V went to D’s house as he had concerns about the well being of his grandchild. A male friend accompanied him. There was a confrontation. V was persuaded by his friend to leave. D, having armed herself with a knife, followed them. A heated argument broke out, each abusing the other. D stabbed V thirteen times, although only one blow was fatal. D pleaded not guilty to murder on the basis of self-defence, She alternatively raised lack of intent and also provocation. The trial judge recommended a minimum term of nine years commenting that, although the jury had rejected provocation, it was likely that at the time of the offence D had been under stress for several weeks because of the threatening letters, she had the frightening experience of V invading her home with another powerful man and her fear turned to anger fuelled by V’s abusive comments. The trial was in 2003.
98. D, aged 30, went to a restaurant with V, her 22-year-old male partner. At some point she told V that she wanted to leave the restaurant. V told her to eat her meal. She tried to leave on three occasions but V pushed her down. There was some sort of row. She tried to get up again. V grabbed her and she stabbed him once. Witnesses described D as “furious on edge” and “seething”. D pleaded not guilty to murder on the basis of self-defence. Alternatively, she pleaded lack of intent and also provocation. The trial judge in his report said that the only provocation was that V had told D to eat her meal. He said that, contrary to D’s claim, no witness had testified to hearing V threaten to batter D. The trial judge was unimpressed with D’s claim that V had regularly assaulted her and he commented unfavourably on her sustained and unjustified attacks on V’s character. He recommended a minimum term of 9 years. The trial was in 2002.
99. D, aged 41, and V, aged 78, were lovers. They had been drinking. They then returned to D’s home. V drank some more and became very drunk. A row developed and D said that V had poked her in the eye with his finger. She said that she retaliated by hitting him two or three times with her sandal. She could not remember any more. V sustained 82 injuries from which he died. D pleaded not guilty to murder on the basis of diminished responsibility and also raised provocation. The expert witnesses agreed that D suffered from an abnormality of mind but according to the Crown it was a mild disorder. The trial judge and the LCJ each recommended a minimum term of 11 years, the trial judge noting that V was frail in comparison to D and there was evidence that D had struck V a number of times in the past. The trial was in 2002.

100. D, aged 43, had been married to V for nine months. It was an unhappy marriage punctuated by bitter arguments. D came to hate V and she stood to gain £400000 from his death. D pleaded not guilty to murder on the basis that she was not a party to the killing of V. The trial judge and the LCJ each recommended a minimum term of 20 years. The trial was in 1996.
101. D, aged 47, had been married to V for 25 years. D fatally stabbed V. The motive for the killing is unclear. There was evidence from D and neighbours that there had previously been acts of threats or violence by V towards D. According to neighbours, such acts were infrequent and at worst involved V raising his walking stick and hitting D on the legs or shoulders. D pleaded not guilty to murder on the basis that she had not killed V but rather that he had been accidentally killed by their dog. D did not raise provocation. After discussion with counsel, the trial judge left provocation to the jury. This was presumably on the basis that D had testified that V was occasionally violent towards her. The trial judge asked V if she wished to expand on the violence, which she had been subjected to, but she declined the invitation. The trial judge recommended a minimum term of 11 years. The trial was in 2003.
102. D, aged 41, was married to V. The marriage was unhappy and D was hoping to emigrate with their children in order to start afresh. In the two years prior to V's death, D had called the police to the family home on more than one occasion. D pleaded not guilty to murdering V on the basis that she was not the assailant. She relied unsuccessfully on an alibi. The trial judge recommended a minimum term of 15/16 years while the LCJ recommended 15 years. The trial judge noted that it was possible, although by no means certain, that previously D had been either physically or mentally abused by V. The trial was in 2001.
103. D, aged 44, had been in a long standing relationship with V. She had, however, started an affair with one of her male co-Ds. V was killed so that D could continue that affair. It is not clear from the Report what defences were run. The trial judge recommended a minimum term of 16 years for D and 17 years for each of her two male co-Ds. The trial was in 2003.
104. D, aged 31, was married to V, aged 44. D was having a passionate affair with her male co-D. V was killed so that D could continue the affair. D pleaded not guilty to murder on the basis that she was not a party to the killing. Her lover pleaded guilty to murder. The trial judge recommended a minimum term of 16 years while the LCJ recommended 15 years. The trial was in 2001.
105. D, aged 36 and addicted to heroin, had been in a brief sexual relationship with V, aged 25. She blamed V for the death of her unborn baby when they had been in the relationship. She pleaded not guilty to murder on the basis of self-defence and alternatively provocation. D manufactured injuries to her face to make it look as though she had killed V in self-defence. The trial judge recommended a minimum term of 16 years. The trial was in 2003.
106. V was the ex-partner of D, aged 42. V, who was a small man, called at D's flat, acted boorishly and refused to leave when asked to. V, however, had not acted violently. It ended with D flourishing two knives and fatally stabbing V. D pleaded not guilty to murder on the basis that V's death was an accident. The trial judge

left self-defence and provocation to the jury. The trial judge recommended a minimum term of 11 years. The trial was in 2003.

107. D, aged 26, was the estranged wife of V. It had been a stormy marriage. D had become the lover of her male co-D. V was killed because D hated him. The co-D pleaded guilty in the course of the trial. D pleaded not guilty to murder on the basis that she was not a party to the killing. The trial judge recommended a minimum term of 14 years for D while the LCJ recommended 14/16 years. In respect of the co-D, the trial judge recommended 12/14 years while the LCJ recommended 14 years.
108. D, aged 38, was the long-term partner of V. The suggestion is that V had sado-masochistic tendencies, which he indulged in. D had formed a relationship with one of her two male co-Ds. V was shot so that that relationship could continue. All three defendants pleaded guilty to murder. The trial judge recommended a minimum term of 14 years for D and 12 years for each of the co-Ds. The LCJ recommended a minimum term of 12 years for each of the defendants. The trial was in 2002.
109. D, aged 36, was the common law wife of V. The motive for the killing is not entirely clear but the killing had been preceded by D's three children being taken into care on account of V's paedophile tendencies, something D had not been aware of. She had also lost her father shortly before the murder of V. The murder may have been an act of revenge. D pleaded not guilty by reason of diminished responsibility. The expert witnesses agreed that D had mild retardation. One psychiatrist diagnosed clinical depression at the time of the killing. Another said that it was a possibility but that it was more likely that D was simply very angry with V. The trial judge recommended a minimum term of 8 years while the LCJ recommended 8/10 years. The trial was in 2002.
110. D, aged 20, was the ex-partner of V, aged 34. She fatally stabbed him. She pleaded not guilty to murder on then basis of self-defence. Alternatively, she pleaded lack of intent and provocation. D, who had recently given birth, claimed that V had raped her at knifepoint. The trial judge and LCJ each recommended a minimum term of 6 years. The trial judge in recommending the tariff referred to D's very difficult background and the way that V had exploited her – the latter he thought was a very strong mitigating factor. The trial was in 2001.
111. D, aged 20, had for a period of 9 months been in a relationship with V, aged 38. They did not share a bed but had sexual intercourse on four occasions. Occasional violence seems to have erupted as a result of V's wish to have sexual intercourse with V more regularly but she "seems to have given as good as she got" despite the disparity in size. There was a final row in which V tormented D about her lesbian relationships and in the course of which D was struck in the face by V. D fatally stabbed V. She pleaded not guilty to murder on the grounds of lack of intent, diminished responsibility and provocation. The basis of the provocation plea was that V had taunted her about her lesbian relationships and had struck her. There is no detail regarding the basis of the provocation plea. Having described the verdict of the jury as "tough" the trial judge recommended a

minimum term of 10 years while the LCJ recommended 9/10 years. The trial was in 1997.

112. D, aged 32, was the partner of V. The motive for the killing appears to have been jealousy on D's part because another woman visited V. D fatally stabbed V. D pleaded not guilty to murder on the basis of self-defence. Alternatively, she pleaded lack of intent and provocation. Her case was that V had commented that the sore on her mouth looked like it was from a man with syphilis and that V had picked up a knife. It was her case that she had seized the knife from him and struck out in self-defence. From the judge's remarks it appears that this was a case where excessive force was used in self-defence. The trial judge and the LCJ recommended a minimum term of 9 years. The trial was in 2001.
113. D, aged 45, was married to V, aged 47. One of her two male co-Ds was her lover, then latter in turn recruiting the other male co-D. D's lover wanted her to leave V but she would not do so for reasons that were never explained. Her lover then suggested killing V. D pleaded not guilty to murder on the basis of lack of intent. The trial judge and LCJ recommended tariffs of 14 years. The trial was in 1992.
114. D, aged 50, and V were business partners and lived together. It was a turbulent relationship with D being subject to verbal, but not physical, abuse on the part of V. The Crown's case was that D hired contract killers to shoot V. D pleaded not guilty to murder on the basis that she was not a party to the killing. The trial judge recommended a minimum term of 14 years while the LCJ recommended 16 years. The trial was in 2001.
115. D, aged 34, was the long-term partner of V. The Crown's case was that D fatally attacked V out of bitter resentment and anger that V would not marry her. D pleaded not guilty to murder on the basis of self-defence. She claimed that in the morning V had raped her anally and was threatening to do so in the evening. She said that this was particularly obnoxious to her as she had been sexually assaulted as a child. The judge left the issue of provocation to the jury. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was in 2001.
116. D, aged 48, was the ex-spouse of V, aged 68. She was dissatisfied with the financial arrangements following their divorce. Initially she tried unsuccessfully to solicit others to murder V. D pleaded not guilty to murder claiming that V had died from a heart attack. The trial judge, having described the case as "unusual" declined to recommend a minimum term. He added, "the jury may have decided that even to render unconscious is to cause serious injury". The trial was in 1986.
117. See case 63 above.
118. D, aged 33 and described as of "impeccable character", had for some months been in a relationship with V, aged 28. It was probably a tempestuous one. D wanted V to leave for good. V, who had an appalling criminal record, called at D's flat to collect his clothes. D had left them on the communal landing, some of them slashed. There was an altercation which culminated in D stabbing V. D pleaded not guilty on the basis that she had been panic stricken and had stabbed V in self-defence. The trial judge, having referred to D's agoraphobia and depression

and that the offence was committed out of sheer misery, recommended a minimum term of 8 years as did the LCJ. The trial was in 1989.

119. See case 64 above.
120. D, aged 51, fatally stabbed V, her 51-year-old husband. He was her third husband and they were both alcoholics. There was a history of rows with neighbours calling the police. On occasions D had use violence towards V, who was a mild man, and the police had attended the home. Latterly D had told neighbours that she would kill V using a knife. It appears that she did not want V to die before August 1987, as he then became entitled to a pension. D pleaded not guilty to murder on the basis of self-defence, alternatively lack of intent and also provocation. D pleaded provocation on the basis that V had been violent when he had tried to get back a small bottle of vodka that D said she had confiscated. The trial judge recommended a minimum term of 10 years while the LCJ recommended 11 years. The trial was in 1988.
121. D, aged 42, was married to V, aged 40. She was physically disabled from birth and was simple, naïve and weak. V was a demanding and difficult husband. While V was in hospital, D met T one of her male co-defendants. She became infatuated with him. His feelings were restricted to removing V from the matrimonial home and settling comfortably in himself. V was not prepared to go. V threatened divorce and his solicitor sent letters demanding that T vacate the premises. The trial judge doubted that D or T had the nerve or intellect to kill V. However, In addition to T, W was also staying in the matrimonial home. He lacked neither nerve nor intellect. He took a dislike to V because V reminded him of his own father. W took the lead in planning and executing the killing, by asphyxiation, of V. D pleaded not guilty to murder on the basis that she was not a party to the killing. The trial judge and the LCJ each recommended tariffs of 11 years for D and T. In respect of W, they each recommended a minimum term of 12 years. The trial was in 1988.
122. D, aged 39, was estranged from V, her husband aged 30. D was simultaneously having affairs with her two male co-defendants. Together they planned the killing of V. The two male-defendants were convicted of murder at an earlier trial. D pleaded not guilty to murder and although the Report is not absolutely clear on what basis she pleaded not guilty it was most probably that she was not a party to the killing. The LCJ recommended a minimum term of 12 years. The trial was in 1978.
123. D, aged 39, had been cohabiting for 6 months with V, aged 30. They were both heavy drinkers. On the day of the murder they were living temporarily in a bed-sit. They went out drinking. On returning home, they had a quarrel in the course of which D struck V. V fell asleep and 40 minutes later D took a knife and fatally stabbed V. In interview, she said that she had only wanted to injure V sufficiently badly to put him in hospital. D pleaded not guilty to murder on the basis of provocation. From the Report it is not clear what precisely the provocation was alleged to be. She did claim that V regularly beat her and took her money. The trial was in 1977.

124. D, aged 18, strangled V, aged 15, with whom she was in a relationship. The motive for the killing is not clear. There is a suggestion that it may have been because V had accused D of sexually interfering with little boys. D denied that she had killed V – she claimed that a 15-year-old boy perpetrated it. The trial was in 1983.
125. D, aged 31, was charged with the murder of V, aged 40, together with one male and two female co-defendants. V was the husband of one of D's female co-defendants. D started an affair with V. She, however, grew disenchanted with V and wanted to be free to pursue an affair with her two male co-defendant. D pleaded not guilty to murder on the basis that V's death from narcotic poisoning was an accident. She had given him 15 sleeping pills to calm him down as he was sexually pestering her. All three co-defendants were acquitted. The motive for the murder is not entirely clear – the trial judge was thought that D had found it necessary to kill V in order to pursue her affair. Equally, he thought it unlikely that V was killed for financial reasons. The trial was in 1982.

In the Report there is no suggestion that D pleaded provocation. In 1982, however, D applied for an extension of time in which to apply for leave to appeal against conviction. Her ground was that the trial judge failed to satisfactorily put to the jury the defence case based on provocation. Her application was refused both by the single judge and the Court of Appeal.

126. D, aged 41, was estranged from V, her 50-year-old husband. She had started a relationship with her male co-defendant. V was eliminated so that they could continue their affair. Both defendants pleaded guilty to murder. The trial judge and the LCJ each recommended tariffs of 13 years. The trial was in 1987.
127. D, aged 28, was married to V, aged 26. The marriage was not harmonious due, it seems, to D's spendthrift and slovenly habits. To ease their financial problems D and V took in lodgers. Two of these lodgers were D's male co-defendants, aged 18 and 20. D persuaded them to kill V. Her motive was to obtain the insurance money payable on V's death. D pleaded not guilty on the basis that she was not a party to the killing. The trial judge and LCJ each recommended a minimum term of 12 years for D. In respect of the co-defendants they each recommended tariffs of 10 years. The trial was in 1988.
128. D, aged 42, was married to V aged 56. D had started an affair with one of her two male co-defendants and, according to the Crown, V was killed so that the affair could continue. D pleaded not guilty on the basis that she was not a party to the killing. From the Report it appears that D did not plead provocation although there is a suggestion that she was disenchanted with V's sexual infidelity. The trial judge and LCJ each recommended a minimum term of 8 years for D. The tariffs which they each recommended for the male co-defendants were considerably higher – 14 and 12 years respectively.
129. D, aged 20, was married to V, aged 19. It appears that on the day in question both D and V had drunk a considerable amount. V was fatally stabbed. D denied that she had been a party to his killing. She did not give evidence but from what said in interview it appears that her case was that somebody had stabbed V in the street outside their home. The trial judge thought that there had been a row,



she had stabbed V and then instantly regretted what she had done, as witnessed by the fact that she immediately called the emergency services. At the time she was five months pregnant. The trial judge recommended a minimum term of 7 years while the LCJ recommended 8/9 years. The trial was in 1994.

130. D, aged 31, was married to V, aged 63. V was killed the day after they had married and the motive seems to have been financial. D and her brother were charged with V's murder. They ran "cut throat" defences and both were convicted of murder. The trial judge recommended tariffs of 20 years while the LCJ recommended tariffs of 18 years. The trial was in 1983.
131. D, aged 35, was the partner of V, aged 43. D was charged with the murder, by stabbing, of V and the attempted murder of F, a female. D pleaded not guilty to murder on the basis of provocation. She said that she had walked into her bedroom and had found V and F having sexual intercourse. The prosecution case was that D, V and F had all been sharing the same bed but that, in any event, V and F were not having sexual intercourse. Although convicted of V's murder, D was acquitted of the attempted murder of F. She was, however, convicted of causing grievous bodily harm with intent. The trial judge thought the jury had arrived at the correct verdict although he had fully expected the jury to convict of manslaughter. The trial was in 1974.

#### **Killings of male friends and male acquaintances**

132. D, aged 29, together with two male co-defendants, murdered V, aged 27 (punching and kicking). One of the male co-defendants was her partner and V was baby-sitting for them. They suspected V of interfering with their children. V denied this although he may have admitted masturbating in front of the children. At the time of the murder D had been drinking. She pleaded not guilty and relied on lack of intent. The trial judge left provocation to the jury although it had not been raised by D. The trial judge and the LCJ recommended a minimum term of 10 years for D, while for her male co-defendants the trial judge recommended 18 years and the LCJ 10 years. The trial was in 1991.
133. D, aged 32, and V were both alcoholics and were acquaintances. On the day of the murder V visited D. As he had been on previous occasions, V was abusive and unpleasant to D and there was an argument. It ended with D fatally stabbing V. D pleaded self-defence, lack of intent and provocation. The trial judge said that, although of low intelligence, D was manipulative and had at one stage sought to cover up the crime by a suggestion that an entirely innocent woman had committed it. Both he and the LCJ recommended a minimum term of 13 years. The trial was in 1997.
134. D, aged 28, fatally stabbed V. D pleaded guilty to murder. The trial judge said that D genuinely believed that V had sexually assaulted her when she was a child. In recommending a minimum term of 14 years, he described it as an act of revenge with intent to kill. The LCJ recommended a minimum term of 11/12 years. The trial was in 1998.
135. D was aged 30. V, aged 34, was a heavy drug user who demanded from and was given drugs by those who feared him. He had previously threatened with a knife

D, her male partner and their child. D and her partner decided to kill V after he had forced D's partner to make cash withdrawals from the post office and also had taken his methadone. D's partner pleaded guilty to murder. D denied that she was a party to the killing. The trial judge recommended tariffs of 11 years, while the LCJ recommended tariffs of 9/10 years because of the presence of "non-legal provocation". The trial was in 1999.

136. D1 and D2 were aged 28 and 39. There was also a male co-defendant. V was an acquaintance. The three defendants had all been drinking heavily. They went to V's flat in a hostile mood seemingly because of a conviction that V had previously sexually assaulted D2 and also had stabbed her sister. At the flat V was hit with a heavy object and died. D1 and D2 pleaded not guilty to murder on the basis that they were not parties to the killing, alternatively on the basis of lack of intent and finally on the basis of diminished responsibility. The basis of the diminished responsibility plea was alcohol dependence syndrome. The trial judge and the LCJ both recommended a minimum term of 13 years for D1 and 16 years for the male co-defendant. The trial judge recommended a minimum term of 12 years for D2 while the LCJ recommended 10/11 years. The trial was in 1997.
137. D, aged 17, together with her male partner, were befriended by V, aged 67. They had been living in V's home. They had stolen his Visa card and wished to be able to use V's home in order to deal in drugs. They killed V (strangulation) and then went on a spending spree with the Visa card. D pleaded not guilty to murder on the basis that she was not a party to the killing. Alternatively, she relied on diminished responsibility. It was accepted that she had psychiatric problems. Both the trial judge and the LCJ recommended a minimum term of 10 years. The trial was in 2000.
138. D, aged 33, and who denied that she was a prostitute, had struck up a casual relationship with V, aged 69. V's relationships with women were generally very promiscuous and he was into both hard and soft pornography. V was killed by D attacking him with a hammer. She pleaded not guilty to murder on the basis of provocation. She said that she had been given some alcohol by V and had fallen asleep. She woke up in V's house to find herself being filmed with a camcorder. She thought V had been abusing her. She was physically sick and on returning to the room V commanded that she make herself available for further abuse. D claimed that V had "taken advantage" of her. The defence, having called expert evidence, abandoned a defence of diminished responsibility following contrary evidence from two witnesses for the Crown and a ruling by the trial judge that, if she sought to rely on diminished responsibility, he would rule that D's previous convictions for robbery were admissible. The trial judge recommended a minimum term of 16 years while the LCJ recommended 14/15 years. The trial was in 1999.
139. D, aged 34, together with her male co-defendant, decided to rob V, a 52-year-old acquaintance of D. In the course of the robbery V was punched and kicked and died from his injuries. "Cut throat" defences were run. The trial judge and the LCJ both recommended tariffs of 14 years. The trial was in 2000.

140. D, aged 25, had just left prison after serving two years for robbery. She spent the first night of her release at the home of V, who was aged 31. V was reluctant to let her stay any longer. D left but returned two days later and fatally stabbed V. Her defence was that she had not perpetrated the stabbing. The trial judge and the LCJ both recommended a minimum term of 12 years. The trial was in 1994.
141. D, aged 19, was accustomed to visiting V, aged 76. V used to give her money. D and her male co-defendant decided to burgle V's premises. V was killed in order that he could not identify them as the perpetrators. D's defence was that her co-defendant had gone further in attacking V than she had anticipated. The trial judge recommended a minimum term for D of 15 years while the LCJ, on account of her age, recommended 13. Both recommended a minimum term of 17 years for the co-defendant. The trial was in 1997.
142. D was aged 25 and V was the ex-partner of her mother. D, who had drunk ten pints of cider and was of large build, fatally punched and kicked V because she thought he had called her four year old son a "nonce". She told police that V had done so before and that earlier that day he had referred to her family as "nonce cases". Her plea of not guilty to murder was on the basis that she had not killed V, alternatively lack of intent. She also raised provocation claiming that she was more susceptible to what had been said by V because of the death of her daughter two years previously and also because two men (one the brother of her son's father) had sexually abused her sister. The trial judge recommended a minimum term of 10 years. The trial was in 1997.
143. D, aged 35, had known V a long time. He was both a father figure but also a person who, according to D (and the trial judge said that there was some supporting evidence), had in the past raped D and sexually abused her daughter. D had no settled accommodation and was staying with V. She had taken her normal cocktail of drugs and consumed a large amount of alcohol. A verbal altercation developed and V mentioned D's mother in a way, which D described as the "last straw". Over a period of thirty minutes to one hour she injected V with insulin and he died. She pleaded not guilty to murder on the basis that she had not injected V – the trial judge referred to her suggesting that her son had injected V. The trial judge recommended a minimum term of 12 years while the LCJ recommended 11/12 years. The trial was in 1997.
144. D, aged 26, killed V, aged 78, by hitting him with a heavy object. It appeared that they knew each other and V was in the habit of making sexual demands. The motive for the killing is described as "unexplained". D denied that she had inflicted the injuries resulting in V's death. The trial judge recommended a minimum term of 15 years, while the LCJ recommended 14 years. The trial was in 1994.
145. D, aged 21, had been living with V for a short term. It appears that an altercation started because she wanted V to leave. Both were regular users of drugs and both were intoxicated when D fatally stabbed V. D pleaded not guilty to murder on the basis of self-defence, lack of intent, provocation and diminished responsibility. The trial judge recommended a minimum term of 9 years, noting that the medical

evidence presented a strong case in support of diminished responsibility, albeit that it was not successful. The trial was in April 2003.

146. D, aged 42, and her male co-defendant had been drinking in a pub with V, aged 25. They all ended up in D's house where from some inexplicable reason V was fatally stabbed. The defendants ran "cut throat" defences but also provocation. It is not possible to gauge what the provocation was supposed to consist of. The trial judge and the LCJ both recommended tariffs of 15 years.
147. D was aged 39 and V was aged 51. V had previously been a lodger in D's house. D's male co-defendant had succeeded to the tenancy of V's room. V had, however, kept in contact with D. In 1996 V, while very drunk, had violently assaulted D. he was reported to the police and was cautioned. At a hearing in November 1996 D relating to contact with her children, D was granted less contact than she had been hoping for. She attributed this in part to the physical injuries, which she had sustained two weeks earlier at the hands of V. Accordingly, she harboured a deep sense of resentment against him. Three weeks later D and her male co-defendant fatally kicked and stamped on V. Both defendants pleaded not guilty to murder on the basis of lack of participation in the killing and alternatively lack of intent. The trial judge and the LCJ thought there was a lot of mitigation. The trial judge described D as "warm hearted" whose life had been ruined through addiction to alcohol and poor control over her temper. He recommended a minimum term of 9 years while the LCJ recommended 8/9 years.
148. D, aged 36, and V, aged 59, were among a group of alcoholics known to each other. They all congregated in a flat and started drinking. Initially, the atmosphere was good but it changed when D accused V of being responsible for a serious assault for which D had been charged. V was then violently and fatally kicked and stamped on. D and a male co-defendant were charged with V's murder. Another man had been involved and most probably inflicted most of the fatal injuries but he died before the date of trial. D denied that she was a party to the killing. The trial judge and the LCJ both recommended a minimum term of 12 years. The trial was in 2002.
149. D, aged 42, murdered V, her flat mate. Her defence to murder was diminished responsibility. There was disagreement amongst the expert witnesses as to whether her depression amounted to clinical depression and whether the depression and her alcoholism – "the whole package" – was sufficient to substantially impair her mental responsibility. The trial judge recommended a minimum term of 12 years while the LCJ recommended 10 years. The trial was in 2002.
150. D was aged 41. The Crown's case was that D desperately wanted to secure from V, aged 47, the title deeds to the house in which D lived but which V owned. While V was serving a prison sentence, D made a further attempt to secure the property. The Crown alleged that, fearful of V finding out, D in 1990 hired T to kill V. Instead, T informed V of the plot. V then taunted D that he was still alive. Although the dispute over the house continued, the relationship between D and V seemed to improve. At one point V teased D by saying, "you could have

poisoned me". Nevertheless, in 1992 they were frequently in each other's company, although still continuing to litigate over the house. The Crown's case was that D then resorted to arsenic and in April 1992 laced V's food with fatal results. Two months earlier (February) V had been violently sick after eating a meal that D had prepared. The post mortem revealed that arsenic in the hair of V at locations consistent with arsenic ingestion not only in April but also in February. D denied that she had killed V. Both the trial judge and the LCJ recommended a minimum term of 20 years. The trial was in 1993

Subsequently the Court of Appeal was invited to receive fresh evidence from a consultant psychiatrist who had examined D in 1997. He concluded that V was suffering from mental disorder and a severe depressive illness at the time of the murder. The Court of Appeal declined to receive the evidence.

151. D, aged 30, and her male co-defendant mistakenly believed that V, aged 49, was a paedophile who had sexually abused his own daughter. As a result they tortured V to death. D denied that she was a party to the killing. The trial judge and the LCJ both recommended that D's tariff should be 15 years. For the male co-defendant, the trial judge recommended 17 years and the LCJ recommended 16 years. The trial was in 2002.
152. D, aged 31, and who had previous convictions for offences of violence, suspected V of stealing her handbag. As a result she fatally stabbed him. She pleaded not guilty to murder on the basis that she had not perpetrated the killing and alternatively on the basis of diminished responsibility. Two psychiatrists testified on behalf of the defence. One stated that there was an abnormality of mind – clinical depression. The other spoke of an explosive personality disorder. He also referred to a disordered personality and intoxication. Each was of the view that there was an abnormality of mind that substantially impaired her mental responsibility for the killing. The psychiatrist for the Crown agreed that there was an abnormality of mind but declined to express an opinion on the "ultimate question". Both the trial judge and the LCJ recommended a minimum term of 12 years. The trial was in 1992.
153. D, aged 19, and her male co-defendant murdered V, aged 46. The trial judge said that D had not the slightest reason for doing him any harm. Alcohol may have been a factor. D pleaded not guilty to murder on the basis of diminished responsibility. The trial judge recommended a minimum term of 15 years. It is not known what the LCJ recommended. The trial was in 1985.
154. D was aged 16. There were two male co-defendants aged 17. V, aged 53, was a homosexual. The male co-defendants thought that V was a molester of young boys and also that he had sexually abused D. They doused him in paraffin and set him alight. D pleaded not guilty to murder on the basis that she was not a party to the killing. Alternatively, she pleaded both lack of intent and diminished responsibility. In respect of D, both the trial judge and the LCJ recommended a minimum term of 5 years. The recommended tariffs for the male co-defendants were 15 and 13 years. The trial was in 1992.
155. V, aged 25, had for a number of years pestered D, aged 20. He had also issued the odd threat. D was not interested in him. On the night in question, D went to a

club where she expected to meet her boy friend. V was there. There was an altercation on the stairway between D and V and D said that V struck her twice in the face. As a result D fetched a knife from the kitchen and returned to confront V. At her trial D said that she fetched the knife to protect herself but denied that she had stabbed V. D pleaded not guilty to murder on the basis that she had not stabbed V. Alternatively she pleaded lack of intent and also provocation. Both the trial judge and the LCJ recommended a minimum term of 5 years. The LCJ described it as a “very unusual case”. He spoke of a background of “posturing behaviour” by V and he referred to D’s youth.

There was a postscript. There was an appeal against conviction to the Court of appeal that was dismissed. The House of Lords refused the petition for leave to appeal. The basis of the appeal was that the trial judge had failed to direct that the “reasonable person” shares such of the accused’s characteristics that would affect the gravity of the provocation – in this case it was submitted that it was particularly necessary because of D’s exceptionally religious background and the previous sexual approaches by V. The trial was in 1986.

156. D1 was aged 16 and D2 was aged 17. There were a number of co-defendants (male and female) who were all acquitted. V was aged 16. There had been a history of some trouble, not particularly serious, between two rival groups of young people. The group of which D1 and D2 were a part encountered V in the street. V was fatally stabbed. Both D1 and D2 pleaded not guilty to murder on the basis of lack of intent. D1 also pleaded provocation, although from the Report it is difficult to ascertain what the provocation consisted of. Both the trial judge and the LCJ recommended tariffs of 8 years. The trial was in 1993.
157. D, aged 42, shared a flat with V, aged 44. It was not a sexual relationship. The flat became a mecca for local cider drinkers. V was an alcoholic but was placid when in drink. There were frequent rows and often violence. V had to make frequent visits to the hospital because of the violence that he suffered. On the night of the murder there was drinking, sounds of violence and neighbours heard V crying and pleading. He was fatally stabbed. D, and a male co-D, were charged with V’s murder. Each pleaded not guilty on the basis of not being a party to the killing. Alternatively, each pleaded lack of intent. Both the trial judge and the LCJ recommended a minimum term of 10 years for D and 8 years for the male co-D. The trial was in 1988.
158. D, aged 29, lived with her male partner and co-D. There had been friction between the latter and V, aged 51. D and her partner went to a pub where V was. D entered the pub and accused V of having previously hit her partner. The latter appeared and challenged V to a fight. While the two men were fighting (without weapons), D fatally stabbed V. D pleaded not guilty to murder on the basis of lack of intent and diminished responsibility (her partner pleaded not guilty on the basis that he had no knowledge that D had a knife). He was acquitted. Evidence was called by both the Crown and the defence to the effect that D suffered from a chronic depressive anxiety which sometimes caused panic attacks. D said that she had used the knife unwittingly in the course of a panic attack. While all the doctors agreed that if this was true it was a proper case of diminished responsibility, the prosecution psychiatrist and the jury rejected the “panic attack”

explanation – the judge was of the view that they were right to do so in the light of the evidence. The trial judge recommended a minimum term of 10/12 years and the LCJ recommended 10 years. The trial was in 1990.

159. D, aged 22, lived with her male lover. V, aged 23, lived in the flat above them. Earlier in the day all three, along with others, had been drinking. There had been some altercation between D's lover and V. They all returned home. D's lover was in bed in a drunken stupor when V knocked on the door saying that he wanted to speak to him. D refused V entry and this led to a quarrel and exchange of abuse. According to D, V hit her in the face. V then fetched a knife from the kitchen and stabbed V five or six times. D pleaded self-defence, lack of intent and provocation. The trial was in 1982. The recommended tariff could not be discerned from the Report.
160. The two defendants, D1 aged 46, and D2, age unknown, were casual friends of V, aged 37. One of them had previously had sexual intercourse with V. There was some resentment that V had made slanderous remarks relating to the defendant with whom he had had sexual intercourse. On the day in question they had all been drinking together in the pub. V went home. Later D1 and D2 arrived at his home and killed him with a hammer. D1 pleaded not guilty to murder on the basis of provocation – the basis of the plea is not clear. She was convicted of murder. D2 pleaded not guilty to murder on the basis of lack of intent and diminished responsibility. She was convicted of manslaughter. Before sentencing D2 the trial judge established that the basis of the jury verdict was lack of intent rather than diminished responsibility. In respect of D1 the trial judge recommended a minimum term of 10 years while the LCJ recommended 12 years. The trial was in 1990

#### **Killings of male strangers**

161. D, aged 16, together with five male co-Ds killed V, a young man, by throwing him off a bridge into the Thames. V drowned. The killing took place in the context of a street robbery. At trial the defendants ran "cut throat" defences. The trial judge set a minimum term of 10 years. The trial was in 2000.
162. D, aged 16, along with three male co-Ds killed V, aged 26. They led V away from a town centre intending to beat him up in a quiet place. The motive was not clear and it is difficult to discern what defences were run. It is possible that D denied being a party to the killing. The trial was in 2001.
163. D, aged 29, fatally shot V, aged 38. It was a "contract" killing. D pleaded guilty. The trial judge and the LCJ each recommended a minimum term of 12 years. The trial was in 1994.
164. D, aged 31, and her male co-D met V in a pub. They decided that they would commit a burglary/robbery against V. They all took a mini cab to V's home. There, in the course of a burglary, they murdered V. D pleaded not guilty to murder on the basis of lack of intent. The LCJ recommended tariffs of 12/13 years. The trial was in 1985.

### **Killings of “other” males**

165. D, aged 37, hired two contract killers to murder V, aged 16, because V had previously committed a robbery against her lover. V was strangled. D pleaded not guilty to murder on the basis that she was not a party to the killing. The trial judge recommended a minimum term of 16/18 years while the LCJ recommended 17 years. The trial was in 2000.
166. D, aged 20, was a prostitute and V was one of her clients. At one stage she had stayed at V's flat for several months. The motive for the fatal stabbing of V appears to have been that V was threatening to report D to the police for having stolen a ring that belonged to V's mother. D was charged with a male co-D and they ran “cut throat” defences – the male co-D was acquitted. The trial judge recommended a minimum term of 16 years while the LCJ recommended 14/15 years. The trial was in 1997.
167. D, aged 43, along with five male co-Ds killed V, aged 16. The background was that D's son – who was one of the co-Ds – had been beaten up by a gang which included V. D drove the co-Ds around looking for V. D pleaded not guilty to murder on the basis that she was not a party to the killing. The trial judge and LCJ each recommended a minimum term of 14 years. The trial was in 2000.
168. D, aged 27, and her male co-D had previously stolen property from V, aged 79. It appears V realised that he was being “scammed” by them, became angry and ordered them out of his house. The male co-D fled but D fatally stabbed V. D denied that she had killed V. The trial judge recommended a minimum term of 15 years while the LCJ recommended 14/15 years. The trial was in 1994.
169. D, aged 27, and her male co-D hired a mini cab intending to rob the driver, V. V was fatally stabbed. At trial the defendants ran “cut throat” defences – the male co-D was convicted of manslaughter. The trial judge recommended a minimum term of 13 years while the LCJ recommended a minimum term of 14 years. The trial was in 1995.
170. D, aged 18, together with a male co-D fatally stabbed V, aged 64. The motive appears to have been robbery. The defendants ran “cut throat” defences. The trial judge recommended a minimum term of 15 years. The trial was in 2002.
171. D, aged 20, was a prostitute and V, aged 75, was a client. He had considerable savings and she asphyxiated him in order to obtain those savings. She pleaded not guilty to murder on the basis of lack of intent. The trial judge and the LCJ each recommended a minimum term of 15 years. The trial was in 2002.
172. D, aged 27, met V, aged 55, on the day before the killing. Sexual intercourse took place. The next day was spent drinking in pubs. D strangled V in the evening. D pleaded guilty but there was a Newton trial because she claimed that V had made unwarranted sexual advances – the trial judge rejected D's version of events. He recommended a minimum term of 13 years. The trial was in 2003.
173. D, aged 38, and her male co-D sought to blackmail V, aged 68, by exposing his homosexuality. The attempt was unsuccessful and in order to prevent him identifying them, they asphyxiated V. D pleaded guilty to murder and her male co-



D was convicted of manslaughter on the basis of lack of intent. The trial judge and LCJ each recommended a minimum term of 14 years. The trial was in 2001.

174. D, aged 22, and her husband selected V, aged 30, as a murder victim because he bore a striking resemblance to the husband. The plan was to kill V and then for D to claim that her husband had been killed with a view to obtaining £76000 under a life insurance policy. At an earlier trial, D's husband pleaded guilty to murder. D pleaded not guilty to murder. From the Report it is difficult to establish what defences were run – on the facts outlined it is difficult to envisage that either self-defence or provocation was relied upon. There is nothing in the Report to suggest that D pleaded diminished responsibility. It is also not possible to discern what tariff was recommended – in the case of the husband the trial judge recommended a minimum term of 20 years. The trial was in 1984.
175. D, aged 33, was a prostitute. Her sister-in-law, another prostitute, had picked up V, aged 51. The intention was that V would have sex with at least one of them. There was an argument about payment and V, who was drunk, made racist remarks about D's sister-in-law. This incensed D who was married to a black man. D fetched a knife and fatally stabbed V. D pleaded not guilty to murder on the basis that she had not stabbed V. The judge left self-defence and provocation to the jury. The Crown would have accepted a plea to manslaughter on the basis of diminished responsibility. The trial judge commented that had she done so, he would have imposed a discretionary life sentence. It is not possible to discern what tariff was recommended. The trial was in 1984.
176. D, aged 26, killed V, aged 73. Neither the relationship between the parties nor the motive for the killing is discernible. It is also not possible to identify what defences were run. The trial judge recommended a minimum term of 12 years.

# **APPENDIX F**

## **THE MODEL PENAL CODE'S PROVOCATION PROPOSAL AND ITS RECEPTION IN THE STATE LEGISLATURES AND COURTS OF THE UNITED STATES OF AMERICA, WITH COMMENTS RELATING TO THE PARTIAL DEFENSES OF DIMINISHED RESPONSIBILITY AND IMPERFECT SELF DEFENSE**

### **Provocation:**

1. The Model Penal Code (hereafter MPC) proposal, Section 210.3(1)(b), is of course known to you. I quote it here for ready reference in this memorandum:

Criminal homicide constitutes manslaughter when . . . a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. 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.

2. The proposal is explained and defended in the commentaries to the Code's provisions on manslaughter, Section 210.3. See American Law Institute, Model Penal Code and Commentaries, Part II, Sections 210.0 to 213.5 (1980). The commentaries constitute a critical explication of this area of law and worth your attention, the more so because it also contains commentary on two other subjects within your reference, diminished responsibility and imperfect self defense.
3. The proposal is in terms founded on the rationale of provocation as an excuse and makes two significant changes in the law.

(1) First, there are no limitations on when a jury is permitted to return a manslaughter verdict that derive from how the defendant came to be disturbed – it is enough that he acts under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. Thus the traditional limitations as to what acts could constitute adequate provocation -- on words as provocation, on cooling off time, on the effect of mistake and so forth -- are gone. To this extent it accomplishes what Section 3 of your Homicide Act of 1957 accomplished and what some American jurisdictions had already accomplished. Also part of the proposal is the reformulation of the traditional requirement of reasonableness to avoid the awkwardness of the standard of the reasonable person (who kills?) by asking rather whether there is reasonable explanation or excuse for the defendant's disturbance. To refer to these features of the MPC proposal I will use the common shorthand, EED.

- (2) Second, the MPC introduces a potentially radical subjectivity into how the determination of reasonableness would be made; i.e., from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be. I will refer to this as the actor's situation standard.
4. Now as to the reception of the MPC proposal in the states: I need to clarify the sentence on this subject in my casebook that caught your eye. The sentence relies on the cited study by Professor Singer [The Resurgence of Mens Rea, 27 B.C. L. Rev. 243 (1986)], but I find now that Singer's statement did not distinguish which of the features of the MPC's proposal were adopted and which not.
  5. Of the some thirty four jurisdictions that revised their criminal codes in the post MPC era none adopted the MPC proposal whole, although five adopted it almost whole, omitting the term "mental" from the MPC's phrase "extreme mental or emotional disturbance." (Possibly the reason was to forestall evidence of mental abnormalities, but as we shall see it did not achieve that effect.) These are Arizona, Arkansas, Connecticut, Kentucky and New York.
  6. About a dozen other states adopted some of the Code's features but only with significant alterations, either explicitly requiring a provocative act or rejecting the radical subjectivity of "the actor's situation" standard, or both, or in some other ways. (These statutes are in Annex B.) Delaware, Guam, Hawaii and Montana require that the reasonableness of the explanation or excuse be determined "from the viewpoint of a **reasonable** person in the actor's situation." Delaware in addition rules out any emotional disturbance or provocation for which the accused was responsible. Oregon makes a similar change, requiring that the reasonableness of the explanation must be determined from the standpoint "of an **ordinary person**" in the actor's situation. It also changes the MPC's proposal by requiring that the circumstances be taken not as the actor's see them, but as he "**reasonably**" sees them. Utah requires the standpoint of a "**reasonable person**" and under "**the then existing circumstances.**" New Hampshire simply requires that the extreme mental or emotional disturbance be "**caused by extreme provocation.**" North Dakota adopts the extreme emotional disturbance language, "**but only if occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.**"
  7. It is apparent from these modifications of the MPC formula that the sticking points were the degree of subjectivity it imported and its omission of the explicit requirement of a provocative action, both of which served to create a great and largely unguided discretion in the jury. One may surmise that similar concerns were shared by those jurisdictions that rejected the MPC altogether, either at first or on reconsideration. For example Maine and Ohio adopted the MPC formulation, or much of it, but subsequently replaced it with more traditional formulations. The available documentation is skimpy, however, and does not reveal the reasons for the change. (See Annex B for the relevant citations.) And in Wisconsin, where the legislature had not enacted any of the MPC reforms, the Ohio Supreme Court reversed a murder conviction (of a battered woman, it happens) for failure to give a voluntary manslaughter instruction and did so in an opinion that explicitly adopted the MPC standard. *State v. Hoyt*, 124 N.W.2d 47 (Wisc. 1960). However soon thereafter the court withdrew that opinion and

substituted another reaching the same conclusion on traditional grounds. 128 N.W.2d 645 (Wisc 1965). Mysteriously, no explanation is given.

8. Nevertheless, in some respects the MPC proposal had an important impact on the law. For even though only six jurisdictions adopted it whole, a larger number, as we just saw, adopted some of its features, notably the EED formulation, which eliminated constraints on what legally could count as provocation and required that disturbance to be reasonable rather than the killing. These states, together with the five that adopted the MPC virtually whole, are sometimes referred to in the literature as the “reform” jurisdictions.
9. The upshot in these states has been to achieve one of the principal objectives of the MPC proposal -- to enlarge the freedom of the jury and to confine the role of the courts. One sees this in the reluctance of courts in these jurisdictions to exclude mitigating evidence offered by the defendant to explain or excuse his disturbance - almost anything goes. And while this has been seen by some as making the law more just to the individual, it has not evoked rejoicing in all quarters. I offer the following comments from a recent article for two reasons, first to convey the breadth of the evidence allowed in these cases, and second to exhibit an important reason why some do not think this an unmixed blessing (Victoria Nourse, *Passion's Progress*, 106 Yale L. J. 1331, 1332 (1997)):
10. A significant number of the reform cases I studied involve no sexual infidelity whatsoever, but only the desire of the killer's victim to leave a miserable relationship. Reform has permitted juries to return a manslaughter verdict in cases where the defendant claims passion because the victim left, moved the furniture out, planned a divorce, or sought a protective order. Even infidelity has been transformed under reform's gaze into something quite different from the sexual betrayal we might expect--it is the infidelity of a fiancée who danced with another, of a girlfriend who decided to date someone else, and of the divorcée found pursuing a new relationship months after the final decree. In the end, reform has transformed passion from the classical adultery to the modern dating and moving and leaving. And because of that transformation, these killings, at least in reform states, may no longer carry the law's name of murder.
11. The force of this criticism is blunted by two facts, that the issue is only mitigation, not exculpation, and that in the cases the author refers to the jury rejected the defense and convicted of murder. Still the point has force, since remitting issues to the bare sympathies of the juries invites the illicit and the prejudiced, particularly troublesome when the prejudice tends to be part of the culture, as it is to some degree with sex roles and behavior.
12. The same expansion of allowable evidence shows up, of course, in other contexts than romantic ones. And in many cases manslaughter instructions have been required where the traditional law would clearly not have countenanced them; cases, for example without any provocative action at all, or where the provocative action occurred long before the homicide. Examples of such cases are set out at pages 420-425 of Kadish and Schulhofer, *Criminal Law and its Processes: Cases and Materials* 6<sup>th</sup> Edition.

13. But it is hard to generalize safely about American law, with its many jurisdictions. While my sense that the courts in reform jurisdictions have on the whole interpreted the MPC formulation consistently with its obvious intent, you will find some courts continuing with old ways. I call to your attention two cases in my casebook where courts couldn't quite get themselves to apply the reformed law. In the Walker case, 6<sup>th</sup> Ed. at 424-25, the court balked at requiring a manslaughter instruction in a case involving a drug dealer who shot and killed another over a money dispute. As the dissent pointed out, the statute required otherwise, but it was too much for the court to allow provocation to be raised in this seamy fact situation. . And in the Raguseo case at 436 the Supreme Court of Connecticut, a state which borrowed the MPC proposal whole, quite plainly departed from the statutory standard by approving an instruction to the jury to assess the situation from the viewpoint of a reasonable person of ordinary intellect instead of that of a person in the actor's situation. In addition, while courts in some reform states have read the new law as dispensing with the need for a triggering event (see *People v. Casassa*, 6<sup>th</sup> edition at 420, and the two Connecticut cases at top of page 424), others have not. See, for example, *Spears v. Commonwealth*, 30 S.W.3d 152 (Ky. 2000); *State v. Bishop*, 753 P.2d 439 (Utah, 1988), both of which insist on the need for a triggering event. Attachment to the old ways is strong and sometimes law reform is like turning a large vessel at sea – it takes a while.
14. You ask for my opinion of the EED formulation. As you might infer from what I have said in describing the thinking behind the MPC, I think it is a felicitous and useful improvement over the traditional formulation. It might be considered a drawback that it has the effect of enlarging the circumstances in which this defense can be raised, but it does seem to me to be very hard sensibly to lay down in advance, as the traditional law did, the precise few circumstances in which great rage could be a defense. And I think the EED formula hits the nail on the head in asking whether there is reasonable explanation or excuse for the mental disturbance, since in these cases the basis of the mitigation is precisely the emotional disturbance, the hot blood of old, and the relevant question is whether the jury can identify with (find “reasonable explanation or excuse” for) the actor being in that state. This formulation might have assuaged the irritation of Lord Hoffman in *Smith (Morgan)* with having to ask the jury to consider “the reasonable glue sniffer” or “the reasonable depressed person.” So in my view this part of the MPC proposal has it right. I feel otherwise about the other, more controversial feature of the MPC proposal, the “actor's situation” standard.
15. The MPC directs that the judgment of the reasonableness of the actor's disturbance be made from the viewpoint of a person in the actor's situation. What aspects of the individual did the MPC have in mind, and how have the courts applied the standard? The drafters tell us that the ambiguity of “the actor's situation” was deliberate. Plainly it was meant to cover physical characteristics of the defendant (e.g, blindness or other physical handicap), and not meant to cover moral or character defects (in the Commentary they put the example of a fanatic political assassin). However, what other personal characteristics of the defendant should be included in the judgment and what not was to be left to the jury to decide according to “whether the actor's loss of self control can be understood in terms that arouse sympathy in the ordinary citizen.” As the drafters saw it, even

such character traits as an “exceptionally punctilious sense of personal honor or an abnormally fearful temperament” might not be “wholly irrelevant to the ultimate issue of culpability”. (Commentaries 62). This therefore was going a very long way toward a subjective standard with not much more than a gesture toward an objective standard. Evidence of what kinds of abnormalities or peculiarities in the actor’s situation would be admissible to support a manslaughter verdict? Would *R. v. Smith (Morgan)* have to be decided as it was in the House of Lords? I believe so, as I say in my 7<sup>th</sup> edition, at page 424.

16. Perhaps the Code’s inclusion of **mental** as well as emotional disturbance is a clue that they had mental abnormalities in mind, as is the statement in the Commentaries:

“The term ‘situation’ . . . is designedly ambiguous and is plainly flexible enough to allow the law to grow in the direction of taking account of abnormalities that have been recognized in the developing law of diminished responsibility. . . . Like blindness or other physical infirmities, perhaps it should be that certain forms of mental abnormality should be regarded as a part of the actor’s ‘situation’ that is relevant to the moral assessment of his conduct.” American Law Institute, Model Penal Code and Commentaries, Part II, Sections 210.0 to 213.5 at 72, 73 (1980).

17. Cutting the other way, however, is the strong position the Code takes against the doctrine of diminished capacity. So at p.71 of the Commentaries to Section 210.3 the Reporter states:

[P]rovocation focuses on circumstances that would so move an ordinary person to kill that the defendant’s act of succumbing to that temptation, although culpable, does not warrant conviction for murder. It seeks to identify cases of intentional homicide where the situation is as much to blame as the actor. Recognizing diminished responsibility as an alternative ground for reducing murder to manslaughter undermines this scheme. Unlike provocation, diminished responsibility is entirely subjective in character. It looks into the actor’s mind to see whether he should be judged by a lesser standard than that applicable to ordinary men.

18. Consistent with that view the MPC does not adopt a diminished responsibility provision, reasoning that:

By evaluating the abnormal individual on his own terms, . . . it blurs the law’s message that there are certain minimal standards of conduct to which every member of society must conform. By restricting the extreme condemnation of liability for murder to cases where it is fully warranted in a relativistic sense, diminished responsibility undercuts the social purpose of condemnation. (Ibid)

19. One would suppose that this reasoning would require that evidence of defendant’s mental abnormalities would be rejected also in assessing his “situation” under the MPC extreme emotional disturbance formula -- presumably

a similar blurring of the law's message would be involved even though the jury does have to find the actor's (abnormal) disturbance reasonably explicable. In any event, that's not what the commentaries said; and courts in the handful states that adopted this standard have tended to accept the relevance of such evidence in interpreting "the actor's situation." For example, the Kentucky Supreme Court has held that the presence of mental illness is relevant to a subjective evaluation of the reasonableness of defendant's response to provocation. *Fields v. Commonwealth*, 44 S.W.3d 355 (Ky. 2001). For a similar view in New York see *People v. Casassa*, 6<sup>th</sup> Ed, at 420. For Connecticut, see *State v. Zdanis*, 438 A.2d 696, 700 (1980), where the Supreme Court expressed the view that expert psychiatric testimony was of "utmost importance." What this has meant in particular prosecutions is suggested in Professor Singer's review, referred to above, of cases in the few jurisdictions that adopted the actor's situation standard, 27 B.C.L. Rev. at 298:

[P]sychiatric evidence has been admitted, though not always found credible, to explain why a high school counselor killed a student who threatened to expose the counselor's use of marijuana, why a husband shot his estranged wife after the last of many arguments, why a defendant walked into his brother's house one morning and shot him without saying a word, and why a boyfriend stabbed his former girlfriend with a steak knife when she refused his proffered gift of a bottle of liquor.

20. My view of this (actor's situation) feature of the MPC? Since your goal is to allow trial judge to escape from "the continuing nightmare" of the present state of the English law I could not recommend you follow the MPC here. As I said, the EED feature of the MPC might help both judges and juries understand better the role of reasonableness in the equation and so lighten the nightmare. But I can't say the same for the actor's situation feature. It leaves the jury with virtually no guidance except their bare visceral response in determining what abnormalities in the actor's situation should count and which not, and efforts by trial judges to develop some guidance (out of what?) would probably maintain the nightmarish experience you describe.
21. Another difficulty with the actor's situation standard is that it is not true to the rationale of this partial defense as I conceive it, and as the MPC itself conceived it: namely, to allow the jury to mitigate the severity of punishment for murder where they can say that given the circumstances in which the defendant found himself they or any other normally law abiding person who be enraged and sorely put to control himself. Indeed, this is the rationale Professor Wechsler, the draftsman and dominating intellectual influence of the MPC, had formulated in his classic 1937 article (*A Rationale of the Law of Homicide*, 37 Colum. L. Rev. 1261, 1281):

Provocation . . . must be estimated by the probability that [the provocative] circumstances would affect most men in like fashion. . . . Other things being equal, the greater the provocation, measured in that way, the more ground there is for attributing the intensity of the actor's passions and his lack of self-control on the homicidal occasion to the extraordinary

character of the situation in which he was placed rather than to any extraordinary deficitncy in his own character.

22. By individualizing the standard to include an assessment of the actor's own situation, including in effect, his abnormalities, the MPC departs from that rationale in a major way. That is so because in leaving to the jury to decide on its own whether some non-ordinary or non-reasonable feature of the actor's personality bears on punishment, it asks, in effect, whether the jury regards it as just to mitigate the punishment in view of the actor's *differences* from the ordinary or reasonable person. This is related to tension I suggested just above between MPC's positions on provocation and diminished responsibility.
23. In short, I believe the EED feature of the MPC is worth your serious attention while the actor's situation feature would only deepen the nightmare you speak. So, since you appear to ask my opinion, I would suggest considering what many states have done, retaining the EED formulation but rejecting its highly subjective qualification.

#### **Diminished Responsibility**

24. On diminished responsibility, you are quite right in your assumption that there is no American equivalent to Section 2 of the Homicide Act. However, the California Supreme Court once improvised a doctrine which served the same function of reducing murder to manslaughter. This is a bit of a discretion but you may find it of interest.
25. This doctrine was also called diminished responsibility (or capacity) but it was theorized differently: the lesser punishment was required where defendant's mental abnormality negated the mens rea of murder, not because it simply diminished his responsibility in any general sense. Under the California statute murder was (and is) defined as a killing done with "malice". The Court chose to interpret this ancient term in disregard of its long encrusted meaning, preferring instead to read it in its dictionary, non technical sense of moral turpitude. So, concluded the Court, where, because of a mental abnormality 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 and may be held at most for voluntary manslaughter. *People v. Conley*, 411 P.2d 911 (1966). Most of us thought (I certainly do) that there was not much to be said for this remarkable interpretation, except perhaps that it served as a weapon in that Court's continuing battle against capital punishment. Only two or three states followed, but the end came with a California statute in 1982 (the result of a popular voter initiative!) declaring that "As a matter of public policy there shall be no defense of diminished capacity [or] diminished responsibility." California Penal Code Section 28(b). The whole episode is a chapter in the American struggle over capital punishment and perhaps of little concern to you beyond its general interest. Of course, you know that struggle, at least so far, but I should point out that both the diminished capacity of the defendant in the general sense (as well as his having acted with "extreme emotional or mental disturbance", I should add) are usually given in capital punishment statutes as mitigating factors for the jury to consider.



26. Back to the text, as it were. In my discussion of provocation I compared the provocation defense with the diminished responsibility defense (in its usual sense) and quoted the MPC's reasons for rejecting the latter. I believe it is implicit in what I said that, for what it is worth, I agree -- for the reasons given by the MPC Commentary, and as well because there is no reliable way to gauge degrees of responsibility. I do not believe that psychiatric evidence on this issue has been very useful, and I doubt that it ever could be in view of the intractable conceptual difficulty of defining degrees of responsibility.
27. You ask my opinion of the recommendation of Professors Macky and Mitchell to combine the defenses of provocation and diminished responsibility. Since I am not partial to the latter defense alone plainly I would not like it better in combination. Still, if diminished responsibility were to be retained I would think it better to keep it separate because to combine the defenses would tend to confuse their very separate underlying rationales that I tried earlier to describe.
28. You raise an interesting question when you imply that the "extreme emotional disturbance" language of the MPC may be seen as at least a kin to the diminished responsibility defense. I think that's right if one focuses just on that phrase and take it in its popular sense as a euphemism for mental abnormality. Some states have apparently been concerned about precisely this and therefore changed emotional disturbance to emotional distress; e.g., Oregon and Utah. But in view of the qualifying phrase that follows, "for which there is reasonable explanation or excuse," and the draftsman's explication of the theory of this defense in the Commentary it would appear that what was intended was an updated, more informative, and, may I say, cooler reformulation of heat of passion. I believe I am confirmed in this by the cases in jurisdictions which adopted the MPC language. Therefore the use of the phrase by Professors Macky and Mitchel is a significant variant of the MPC proposal indeed. I should add that the variant they use does appear in a number of capital punishment states as one of the mitigating factors juries should consider. Here, of course, the intent is to put an altogether subjective standard, unqualified by the need for there to be reasonable explanation or excuse for it.

### **Imperfect Self Defense**

29. At page 813-14 of the Sixth Edition of my casebook you will find a note on the subject which you may find helpful. But I regret I can't say much to your question of how it has worked in those states that have accepted it. The case annotations from the states that adopted this approach are sparse and unhelpful, and very much the same is true of the literature on the subject. While the MPC's proposal put the issue in play in the 'sixties and 'seventies little attention has been devoted to reporting on how this defense has worked out in practice. All I can offer is these few observations from my own experience, which for your purposes I expect will be neither here nor there.
30. The defense has been offered in battered women cases of course (e.g., *State v. Leidholm*, 334 N.W.2d 811 (N.D. 1983), a sleeping husband case). While it would seem suited to such relatively sympathetic cases and one which defenders of battered women should welcome, a defense concern in this country has been that it can offer an easy compromise for a jury resistant to find a full justification in

reliance on battered woman syndrome evidence. That would not be a problem in jurisdictions which do not accept this evidence, but I don't know the position of your courts on the subject; certainly in this country it has become widely accepted.

31. Where the imperfect self defense rule is accepted it becomes in effect a lesser included defense whenever self defense is raised. That can produce cases like the battered women cases, but also those like the notorious prosecution in the mid 'nineties in California of the Menendez brothers, two young men who laid in wait and shot and killed their parents, and then defended by claiming parental abuse over the years. Some jurors were strongly enough convinced to hold out for manslaughter under an imperfect self defense instruction the trial judge had offered. Only after a mistrial and a second prosecution were they convicted of murder. How much to fault this defense rather than the occasional weirdness of some juries (in California!) is open to question.
32. So I have to fail you on your first question. Let me go to your second, which I take to be to respond to your expressed reservations about such a defense. Your Consultation Paper well describes the case for it – the culpability of a person who kills out of a mistaken but genuine belief that he has to in order to save his life from an imminent threat is no murderer. If his belief were reasonable we say he was legally and morally justified, so his fault lies only in his misapprehending the situation.
33. Why then, you ask, should this person not be acquitted rather than held for manslaughter? Where criminal liability can be grounded on unreasonable mistake, as it can in this country, a principled answer is that given by the Model Penal Code – he may be held for a crime of negligent or reckless homicide. Where objective criminal liability of this kind is rejected I don't think there is a principled answer to your challenge. My best surmise, however, is that there would still be an answer, but it would be a practical one: absent the reasonableness of the actor's belief, too much would be left for the jury to make of the defendant's bare and unsupported self assertions of his beliefs. This would be enough to explain the law's traditional reluctance to permit an honest but unreasonable belief to exculpate.
34. However, should not this reasoning lead to disallowing a partial defense as well as a total one? That, I take it, is the thrust of your challenge and it seems to be a fair one. A response would perhaps have to rest on the distinction between exculpatory and mitigative defenses. So while the concern for abuse of the defense carries the day against principle when the risk is an unjust acquittal, it does not do so when the risk is only that of lesser though still significant punishment.

## **ANNEX A**

### **Statutes Influenced by Model Penal Code's Provocation Proposals**

#### ***ARIZONA***

AR ST S 5-10-104 Manslaughter.

(a) A person commits manslaughter if:

(1) He causes the death of another person under circumstances that would be murder, except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believes them to be;

#### ***CONNECTICUT***

CT ST § 53a-54a. Murder

(a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception; except that in any prosecution under this subsection, it shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be, provided nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

(b) Evidence that the defendant suffered from a mental disease, mental defect or other mental abnormality is admissible, in a prosecution under subsection (a) of this section, on the question of whether the defendant acted with intent to cause the death of another person.

CT ST S § 53a-55. Manslaughter in the first degree: Class B felony

(a) A person is guilty of manslaughter in the first degree when: (1) With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or (2) with intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he committed the proscribed act or acts under the influence of extreme emotional disturbance, as provided in subsection (a) of section 53a-54a, except that the fact that

homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subsection;

**DELAWARE**

DE ST TI 11 § 632 Manslaughter; class C felony.

A person is guilty of manslaughter when:

(3) The person intentionally causes the death of another person under circumstances which do not constitute murder because the person acts under the influence of extreme emotional disturbance; or

DE ST TI 11 § 641 Extreme emotional distress.

The fact that the accused intentionally caused the death of another person under the influence of extreme emotional distress is a mitigating circumstance, reducing the crime of murder in the first degree as defined by § 636 of this title to the crime of manslaughter as defined by § 632 of this title. The fact that the accused acted under the influence of extreme emotional distress must be proved by a preponderance of the evidence. The accused must further prove by a preponderance of the evidence that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. The reasonableness of the explanation or excuse shall be determined from the viewpoint of a reasonable person in the accused's situation under the circumstances as the accused believed them to be. Extreme emotional distress is not reasonably explained or excused when it is caused or occasioned by the accused's own mental disturbance for which the accused was culpably responsible, or by any provocation, event or situation for which the accused was culpably responsible, or when there is no causal relationship between the provocation, event or situation which caused the extreme emotional distress and the victim of the murder. Evidence of voluntary intoxication shall not be admissible for the purpose of showing that the accused was acting under the influence of extreme emotional distress.

**GUAM**

GU ST T. 9, § 16.50. Manslaughter Defined and Classified.

(a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable

explanation or excuse (The reasonable ness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.);

## **HAWAII**

HI ST § 707-702 Manslaughter.

(2) In a prosecution for murder or attempted murder in the first and second degrees it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was, at the time the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be.

## **KENTUCKY**

KY ST S 507.020 Murder

(1) A person is guilty of murder when:

(a) With intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution a person shall not be guilty under this subsection if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of manslaughter in the first degree or any other crime;

## **MONTANA**

45-5-103. Mitigated deliberate homicide

(1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

**NEW HAMPSHIRE**

NH ST S 630:2 Manslaughter.

I. A person is guilty of manslaughter when he causes the death of another:

(a) Under the influence of extreme mental or emotional disturbance caused by extreme provocation but which would otherwise constitute murder; or

**NEW YORK**

NY PENAL § 125.20 Manslaughter in the first degree

A person is guilty of manslaughter in the first degree when:

1. With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or

2. With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined in paragraph (a) of subdivision one of section 125.25. The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subdivision; or

NY PENAL § 125.25 Murder in the second degree

A person is guilty of murder in the second degree when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution under this subdivision, it is an affirmative defense that:

(a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime; or

**NORTH DAKOTA**

ND ST 12.1-16-01 Murder.

2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under

circumstances which would be class AA felony murder, except that the person causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in that person's situation under the circumstances as that person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

## **OREGON**

OR ST S 163.115. Murder, affirmative defenses; felony murder; sentence

(1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

OR ST S 163.135. Extreme emotional disturbance; expert testimony; psychiatric examination

(1) It is an affirmative defense to murder for purposes of ORS 163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance when such disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act, and for which disturbance there is a reasonable explanation. The reasonableness of the explanation for the disturbance shall be determined from the standpoint of an ordinary person in the actor's situation under the circumstances as the actor reasonably believes them to be. Extreme emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

(2) The defendant shall not introduce in the defendant's case in chief expert testimony regarding extreme mental or emotional disturbance under this section unless the defendant gives notice of the defendant's intent to do so.

## **UTAH**

UT ST 76-5-203 Murder.

(4) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another or attempted to cause the death of another:

(i) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse; or

(ii) under a reasonable belief that the circumstances provided a legal justification or excuse for his conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) Under Subsection (4)(a)(i) emotional distress does not include:

(i) a condition resulting from mental illness as defined in Section 76-2-305; or

(ii) distress that is substantially caused by the defendant's own conduct.

(c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the reasonable belief of the actor under Subsection (4)(a)(ii) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(d) This affirmative defense reduces charges only as follows:

(i) murder to manslaughter; and

(ii) attempted murder to attempted manslaughter.



## ANNEX B

### The Ohio and Maine Reversal

Ohio flip-floped on the MPC formulation of provocation. Their statute currently reads:

#### 2903.03 Voluntary manslaughter

(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another or the unlawful termination of another's pregnancy.

(B) Whoever violates this section is guilty of voluntary manslaughter, a felony of the first degree.

But the notes to the statute indicate that prior to 1982 a MPC formula was used:

Publisher's Note to H 511 Comment: A 1982 amendment of this section changed the language "while under the influence of extreme emotion stress" to "while under the influence of sudden passion or in a sudden fit of rage." The Committee Comment to H 511 should be read in light of this amended language.

Maine also flip-floped on the MPC formulation. The current statute reads:

#### § 204. Aiding or soliciting suicide

1. A person is guilty of aiding or soliciting suicide if he intentionally aids or solicits another to commit suicide, and the other commits or attempts suicide.

2. Aiding or soliciting suicide is a Class D crime.

But prior to this formulation, the MPC formulation was in place and even survived an amendment process:

#### **1975 Amendment.**

Laws 1975, c. 740, § 41, repealed and replaced par. B of subsec. 1, which prior thereto read:

"B. Causes the death of another human being under circumstances which would be criminal homicide in the first or 2nd degree except that he causes the death **under the influence of extreme emotional disturbance or extreme mental retardation**. The defendant shall prove by a preponderance of the evidence the presence and influence of such extreme emotional disturbance or mental retardation. Evidence of extreme emotional disturbance or mental retardation may not be introduced by the defendant

unless the defendant at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for cause permit, files written notice of his intention to introduce such evidence. In any event, the court shall allow the prosecution a reasonable time after said notice to prepare for trial, or a reasonable continuance during trial."

**1977 Amendment.**

Laws 1977, c. 510, § 41, repealed and replaced this section, which prior thereto read:

"§ 204. Criminal homicide in the 4th degree.

"1. A person is guilty of criminal homicide in the 4th degree if he:

"A. Recklessly causes the death of another human being; or

"B. Causes the death of another human being under circumstances which would otherwise be criminal homicide in the first or 2nd degree except that the actor causes the death **while under the influence of extreme mental or emotional disturbance upon adequate provocation.**

"2. Criminal homicide in the 4th degree is a Class B crime, provided that it is a defense which reduces it to a Class C crime if it occurs as the result of the reckless operation of a motor vehicle."

**Professor S Kadish**

February 10, 2004

# APPENDIX G

## A SOCIOLOGICAL HISTORY OF PROVOCATION AND DIMINISHED RESPONSIBILITY

1. The purpose of this Appendix is to explain the background to, and socio-political context of, the introduction of the partial defences of provocation and diminished responsibility. A considerable period (12<sup>th</sup> to 19<sup>th</sup> centuries) is covered in the historical analysis of provocation. In contrast, the relevant period for diminished responsibility is much shorter (that partial defence having only been created in England and Wales by statute in 1957). A brief historical review in relation to diminished responsibility follows that relating to provocation.<sup>1</sup>

### THE HISTORY OF PROVOCATION

2. In Consultation Paper No 173 we focused on the more recent history of provocation, that is, its legal development from the 17<sup>th</sup> century to date. Here we expand on this, not only commenting on the earlier history of provocation dating back to the 13<sup>th</sup> century, but also looking at wider sociological developments and the concomitant developments in the criminal justice system as a whole.

3. Radzinowicz wrote:

[C]riminal law is but one element in any system of criminal justice. Its growth, character and indeed its ultimate effect are largely determined by the character and degree of development of other component parts.<sup>2</sup>

4. We examine some of these component parts and other broader factors influencing the development of the doctrine of provocation. Then, as now, provocation was inextricably linked to the nature of culpable homicide offences, applicable punishments and contemporary sentiments and sensibilities. Beginning as far back as the 1100s, when culpable homicides were emendable (remediable through compensation to a victim's family)<sup>3</sup> we consider the use and restriction of Royal pardons, the excessive application of the death penalty and the development and use of secondary punishments. We also outline the jury's role in seeking to avoid strict application of death penalty statutes, highlighting the role of provocation in such decisions, and the effect such measures had on the development of the substantive law.
5. To understand these legal changes better, we consider the broader social developments surrounding them, such as the sense of lawlessness in medieval times spawning strict legislation to feign a sense of control. This in turn is linked to

<sup>1</sup> From para 85 onwards.

<sup>2</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) p 24.

<sup>3</sup> Although it is thought that by the 12<sup>th</sup> century culpable homicide was no longer emendable, certain types of homicide continued to be considered as emendable until well into the 13<sup>th</sup> century. See generally J M Kaye, "The Early History of Murder and Manslaughter" (1967) 83 LQR 365 at p 367, n 11a.

the role of the jury in mitigating the application of such laws. We touch on the struggle for reform and the opinions of those who influenced the development of the criminal justice system. We also assess the impact of the challenge to improve social morals and tackle drunkenness followed by the creation of a national police force and how these social and political developments coincided with the initiation of legal constructs such as the archetypal reasonable man.

6. Through expounding these broader factors, inextricably linked to the development of the partial defence of provocation, we hope to elucidate the background that has informed and guided our recommendations.

## **The Law on Murder 1100 – 1900**

### ***The Twelfth and Thirteenth Centuries***

7. One might assume that the crime of murder is easy to define. Not so. The legal definition of murder has changed dramatically over the years, from a very limited concept, to a broader offence, and is still the root of many debates, with public perception of the offence significantly at variance with the law.
8. Whereas today in England and Wales a murder conviction can be obtained even if it is shown the defendant did not intend to *kill*, historically, murder was a much narrower offence.
9. From Anglo-Saxon times to the mid-twelfth century the most serious form of culpable homicide was limited to killing another in secret or by stealth and it was a capital offence.<sup>4</sup> In this sense it has been argued that murder was distinguished from other forms of culpable homicide on the basis of the manner in which the act of killing another was carried out.<sup>5</sup> Homicide by stealth was thought to be more serious because it caught the victim unawares, unable to prepare any defence against the attack.
10. Historically, when a homicide occurred, two different actions could be brought: proceedings under the King's jurisdiction (a public prosecution) and an appeal for felony of death, which was equivalent to a private prosecution by interested parties, usually the relatives of the victim.<sup>6</sup> By the thirteenth century all felonious homicides had, at least in principle, been brought under the King's jurisdiction and were capital offences,<sup>7</sup> although in some areas certain types of homicide were still considered emendable.<sup>8</sup>
11. Culpable homicide was divided into two categories: felonious homicides and non-felonious homicides. Felonious homicides were killings committed with *malitia*

<sup>4</sup> See J Horder, *Provocation and Responsibility* (1992) p 6 and generally, J Hostettler, *The politics of Criminal Law Reform in the Nineteenth Century* (1992) p 92.

<sup>5</sup> See generally J M Kaye, "Early History of Murder and Manslaughter" (1967) 83 LQR 365 pp 383-391.

<sup>6</sup> See J M Kaye, "The making of English Criminal Law" [1977] Crim L R 4 p 6 and The Year and a day rule in Homicide, Law Commission Consultation Paper No 136, p 6.

<sup>7</sup> J Horder, *Provocation and Responsibility* (1992) p 6.

<sup>8</sup> J M Kaye, "Early History of Murder and Manslaughter" (1967) 83 LQR 365 p 367.

*praecogitata* (malice aforethought). Such crimes were capital crimes and therefore non-emendable. Under the King's jurisdiction it was possible to receive a *pardon de gratia* (pardon of grace) but such pardons were mainly given in return for substantial favours. They were generally granted before any trial began and provided immunity from further proceedings.<sup>9</sup>

12. Non-felonious homicides included justifiable homicides and excusable homicides. The killing of escaping thieves or the killing of an outlaw resisting arrest would be justified and the defendant would be acquitted. A non-felonious homicide would be excusable on two broad grounds: where the killing was committed in self-defence or where the killing was committed by accident.
13. Self-defence was narrowly defined. The defendant must have done everything possible to avoid retaliation and should have backed away from the threat as far as physically possible. Conversely accident was broadly defined. It included all unintentional homicides. A finding of excusable homicide was pardonable by the Crown. This *pardon de cursu* from the King was required, but was granted almost automatically.<sup>10</sup>
14. At this time there was no specific defence of provocation, but Horder argues that early cases indicate a de facto operation of the defence long before it was recognised as an established legal doctrine.<sup>11</sup> Once we have outlined the development of the substantive offences of culpable homicide, we will look at the role of the jury in the application of the available defences and how this influenced the emergence of the doctrine of provocation.

### ***The 1390 Statute and beyond***

15. Prior to the 1390 Statute,<sup>12</sup> which effectively broadened the definition of murder,<sup>13</sup> culpable homicides were basically divided into two types: those committed by secrecy or stealth (murders) and those committed otherwise.
16. In a society where homicides were "a daily fact of life"<sup>14</sup> it may be thought odd that the legal definition of murder was limited to those undertaken at night, in secrecy or by stealth. However, this may have been because in the comparatively lawless and inadequately policed medieval society, where poor medical treatment made death from assaults much more likely, the act of killing did not, inherently, attract the level of horror it does today. As Green points out:

The execution of those who slew of a sudden would have meant not only a dramatic increase in the numbers sent to death, but also the

<sup>9</sup> Horder, *Provocation and Responsibility* (1992) p 6. See also T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 427 – 438.

<sup>10</sup> "as a matter of course". *Ibid.*

<sup>11</sup> J Horder, *Provocation and Responsibility* (1992) p 10 – 11.

<sup>12</sup> 13 Rich. 2, stat. 2, c. 1 (1390) cited by TA Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 462.

<sup>13</sup> See para 21 ff below.

<sup>14</sup> T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 415.

frequent condemnation of neighbours and friends, persons of generally good reputation.<sup>15</sup>

17. Kaye's research<sup>16</sup> on murder in the 1300's has led him to assert that "a very common, one might even say the normal, sequence of events in homicide cases was the drunken quarrel, followed by brawling and fighting, leading to immediate recourse to the knife or club which every man carried."<sup>17</sup> He believes that the reason the criminal law was "indifferently administered" and therefore many homicides went unpunished, was because "most killings were of the pot-house variety, committed by people of no great rank or substance upon others of a like sort."<sup>18</sup>
18. The recorded motives for homicide focus on "gain, or vengeance, or some petty quarrel"<sup>19</sup> There was little evidence of organised crime in the thirteenth century or of the participation in criminal activities by persons of rank.<sup>20</sup> The fourteenth century, however, tells a different story. Armed bandits were sometimes organised by people of rank and they would rob and murder on the highways. In this environment attacks of vengeance took the form of more organised crime.<sup>21</sup>
19. In the mid 14<sup>th</sup> Century parliament was facing two major concerns: the increasing number of professional homicides by ambush, not then necessarily included within the strict technical definition of murder at night by stealth, and the frequency with which offenders were granted a royal pardon. Both of these factors were contributing to a growing sense of increasing crime and insecurity.<sup>22</sup>
20. In order to address these concerns the 1390 Statute effectively broadened the definition of murder by listing those offences for which royal pardons would not be available. It stated:

[N]o charter or pardon from henceforth shall be allowed before any justice for murder, or for the death of a man slain by await, assault, or mallice prepensed, treason or rape of a woman.<sup>23</sup>

21. In Kaye's view "The Statute caught the definition of Murder in a state of transition, when ancient notions of ambushing were giving way to a more recently promulgated idea that pre-meditation, spite or malevolence were the identifying

<sup>15</sup> *Ibid*, at 416.

<sup>16</sup> Fellow of the Queen's College, Oxford, author of articles referred to in footnotes 4 and 7 above and elsewhere.

<sup>17</sup> J M Kaye, "Early History of Murder and Manslaughter" (1967) 83 LQR 365 p 370.

<sup>18</sup> *Ibid*, p 380.

<sup>19</sup> *Ibid*.

<sup>20</sup> *Ibid*.

<sup>21</sup> *Ibid*.

<sup>22</sup> T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 415 and J Horder, *Provocation and Responsibility* (1992) p 10.

<sup>23</sup> J Horder, *Provocation and Responsibility* (1992) p 10. The Latin read "[Q]e null chartre de pardon desore soit alowe devant qiconqes Justices pur murdre mort de homme occys par agait assault ou malice prepense treson ou rape de femme ...".

features of the worst kinds of homicide.”<sup>24</sup> In essence it re-defined murder as an assault that was planned and deliberated and moved away from the much narrower focus on murder at night by stealth.

22. Following this statute the jury had to determine whether or not an assault causing death had been committed with malice aforethought because, if it had been, a Royal pardon would not be available. The Crown’s right to issue pardons was now limited to cases of self-defence or accident, or cases where *malice prepense* was absent.<sup>25</sup> This was the beginning of a more recognised distinction between levels of culpability in homicide offences. The focus was placed on the intent with which the action was committed.

23. This distinction meant that the jury now faced a more complex question in homicide trials and Horder notes that judges developed new terminology to explain to the jury the moral differentiation that should be made between cases deserving of a pardon and those that should not evoke such reprieve.<sup>26</sup> For example, in 1403 a grand jury was instructed:

Also you will inquire about all sorts of homicides both of those who lie in wait through malice aforethought [*par malice deuant pourpense*] in the peace of homes and other places [and who] murder people and of those who slay men through a hot-blooded mêlée [*chaude melle*] ...<sup>27</sup>

24. Horder views the “introduction” of this question following the 1390 Statute as *ex post facto* and rather ironic. He asserts that judges would have been well aware that juries had already been deciding such issues through their fact-finding powers for many years.<sup>28</sup>

### ***The Role of the Jury***

25. The shift from emendable homicides to the classification of all felonious homicides as capital, coupled with the restriction of royal pardon, meant that where previously a superficial wound from a fight that led to death may have been an emendable homicide, the punishment at law was now death. Thus, there was no legal distinction between the murderer who killed by stealth and the unfortunate brawler who killed in hot blood. Whilst these were the formal rules, their operation in small community settings where the killings took place differed somewhat.

26. When a body was discovered the local Coroner carried out a fact-finding mission through speaking to friends and relatives of the deceased and other local parishioners. He would then order the sheriff to arrest and charge the suspect. The jury was chosen from the surrounding area. Close relatives of the deceased and

<sup>24</sup> J M Kaye, “Early History of Murder and Manslaughter” (1967) 83 LQR 365 p 367.

<sup>25</sup> J M Kaye, “Early History of Murder and Manslaughter” (1967) 83 LQR 365 p 368.

<sup>26</sup> J Horder, *Provocation and Responsibility* (1992) p 10.

<sup>27</sup> *Ibid*, also cited by T A Green, “The Jury and the English Law of Homicide 1200-1600” (1976) 74 Michigan Law Review 413 p 467, n 200 (where the expression chance medley appears in place of “a hot-blooded mêlée”). Green states the earliest reference to chance medley he has found dates from 1388.

<sup>28</sup> J Horder, *Provocation and Responsibility* (1992) p 11.

anyone known to bear a grudge against the defendant were prohibited from serving on the jury, but familiarity with the facts of the case, the defendant and previous offences was thought to be an advantage.<sup>29</sup>

27. The legal distinction between felonious and non-felonious homicides, as expounded above, was largely consistent up to the sixteenth century. Green believes this was due to the jury's complete control as finders, interpreters and selectors of facts. The jury's sworn evidence to the judge was determinative of factual issues. This role allowed jurors freedom to develop the facts to fit the law and achieve their desired result in the case. This freedom created *de facto* classifications of culpable homicide that in turn formed the basis of the later legal distinction between murder and manslaughter.<sup>30</sup>
28. Horder shows how the jury used their wide fact finding powers to fit provocation cases into one of the two types of non-felonious excusable homicide; accident and self-defence. Among other examples he includes the 1341 case of Robert Bousserman who returned home to find his wife having intercourse with another man, John Doughty. According to the Coroner's report Bousserman proceeded to kill Doughty with a hatchet. The jury's rather improbable version of events involved Doughty sneaking into Bousserman's property one night to find Mr. and Mrs. Bousserman fast asleep. The wife then awoke and quietly jumped into bed with Doughty. Bousserman was awoken by a noise, went to look for his wife, and was no doubt a little shocked to find her in bed with Doughty, whereupon the jury found Doughty attacked him and injured him with a knife. As the facts were presented, Doughty then locked Bousserman in his own home preventing him from escaping and leaving him without option other than to kill his captor by a single blow to the head with a hatchet.<sup>31</sup>
29. As presented, these facts allow a clear case of latter day provocation to be excused, and therefore pardoned *de cursu*, under the guise of the narrowly defined self-defence. The jury was setting *de facto* standards of what was excusable in homicide.

### ***Changes to the mens rea of murder***

30. Although the distinction formalised in the 1390 statute between simple homicide and murder was initially applied with relative success Green doubts that the Statute was observed after the 1430's. Its demise removed the need for distinction between levels of homicide and the term "murder by malice aforethought" lost its narrow meaning and was used in all homicide indictments.<sup>32</sup>

<sup>29</sup> T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 423.

<sup>30</sup> T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 420 - 427

<sup>31</sup> J Horder, *Provocation and Responsibility* (1992) p 9.

<sup>32</sup> See T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 473. Green cites the Latin form of the phrase used in indictments "*ex malitia precogitata insultum fecit percussit et felonice interfecit et murdravit*" (of malice (aforethought?) [the suspect] made an assault, struck and feloniously slew and murdered the deceased).



31. Green therefore concludes that, although one cannot be sure exactly what *malitia precogitata* meant by the 15<sup>th</sup> century, it certainly did not require any degree of intent beyond that required for general felonious homicide.
32. However, a combination of procedural reforms, statutory limitations and common law precedents over the late fifteenth and early sixteenth centuries saw the re-emergence of distinctions in homicide, along similar lines to those initially passed in the 1390 statute.
33. Procedural reforms in the course of the 16<sup>th</sup> century limited the jury's role as fact selectors. The production of evidence instead became the role of the justice of the peace and the court instructed the jury in the light of this evidence.
34. The changes removed much of the jury's power to construe the facts in order to obtain a socially acceptable outcome, and in turn passed on this power to the bench. This provided opportunity for development of the law of homicide and meant the judge could more effectively pressure the jury into conforming with precedent, even where it may have conflicted with contemporary social mores.<sup>33</sup>
35. However, it also meant that where previously the jury could have achieved an outcome by manipulation of the facts to suit the established legal structure, the legal structure now had to develop in order to be seen to do justice.
36. Statutory developments limiting the use of Benefit of Clergy (see paragraphs 41 – 44, below) forced the courts to define the distinctions between murder and manslaughter with greater precision. In doing so, murder again became associated with homicides committed with malice aforethought. Green charts the reflection of this development in early sixteenth century legal writings.<sup>34</sup> He cites the distinction outlined in the 1510 edition of *The Boke of Justyces of Peas* as clarifying contemporary usage:

Murder is properly where a man by malice prepensed lies in wait to slay a man and according to that malicious intent and purpose he slays him so that he who is slain makes no defense against him, for if he does it is manslaughter and not murder ... And manslaughter is where two men or more meet and by chance medley they fall at affray so that one of them slays the other; [this] is but felony ...<sup>35</sup>

37. However, the concept of malice aforethought became distorted. One of the most pressing problems facing parliament was that of homicide in the course of theft. Such intentional killings often lacked the premeditation required for murder, and therefore may have escaped the ultimate penalty. In the mid to late sixteenth

<sup>33</sup> See T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 499.

<sup>34</sup> T A Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 pp 476 – 479.

<sup>35</sup> See TA Green, "The Jury and the English Law of Homicide 1200-1600" (1976) 74 Michigan Law Review 413 p 477 citing *The Boke of Justyces of Peas* f. 4a/b (2<sup>nd</sup> ed. 1510).

century the courts dealt with this by treating such cases as murder even though the lack of premeditation was acknowledged.<sup>36</sup>

38. In order to tackle this problem, by the late sixteenth century the legal fiction *implied malice* had been created to weave 'deserving' homicides into the web of premeditated murder. The required malice was implied where the actus reus of the homicide involved, amongst others, the killing of a policeman, killing in the course of a felony and killing in the course of unlawful violence.
39. This legal construct was expounded and developed by legal theorists of the day. In 1583 Crompton explained it thus.<sup>37</sup>

It would seem that there are two kinds of malice, implied and express malice: implied malice is when a man kills another suddenly but without the latter making any defence, as when the latter is climbing over a stile, or something of that kind: and express malice is when it is known that there is malice between the parties.

40. Whereas previously provocation cases had been factually manipulated by juries to fit within the narrow exceptions to excusable murder (see paragraph 28, above) this option was now largely foreclosed. Instead, the doctrine of implied malice had sprung up and in its wake lay the issue of how to deal with circumstances where, although malice could be implied, society might view the homicide as less culpable and demand a lesser sentence. Chance-medley and the formal doctrine of provocation grew out of this need to define occasions where the fiction of implied malice could be rebutted so that the verdict was not murder but manslaughter on the basis of lack of premeditation. As we shall see below, this distinction was crucial because a manslaughter verdict left open the possibility of benefit of clergy.

### ***Benefit of Clergy***

41. This institution stemmed from the historical division between secular and religious legal authority. It was based on the Church's right to try and punish ordained clergy for alleged crimes. The Crown retained the right to try defendants at first instance and would then hand them over to the Church for a retrial under Canon law and punishment. The 'benefit' lay in the fact that penalties for offences at canon law were less severe than those for the same offences at common law. Where at common law a homicide would probably have led to the death penalty, with the advantage of benefit of clergy, a convict might have received no more than a temporary prison sentence.
42. In the fifteenth century the test for those eligible for benefit of clergy became very lax. Defendants could merely feign literacy or recite the words *Miserere mei Deus* from Psalm 51 to be exempted from the criminal process.<sup>38</sup> As a result of the increased use and fraudulent abuse of benefit of clergy Parliament resolved to

<sup>36</sup> See J Horder, *Provocation and Responsibility* (1992) pp 15 – 16, citing *Herbert's Case* (1558), *Burchet's Case* (1574) and *Emerie's Case* (1585).

<sup>37</sup> As translated and cited by J Horder, *Provocation and Responsibility* (1992) p 17.

<sup>38</sup> See J Hostettler, *The Politics of Criminal Law Reform in the Nineteenth Century* (1992) p 92, and J Horder *Provocation and Responsibility* (1992) p 11.

decrease its availability. In 1488 a statute was enacted to prevent repeated reliance on benefit of clergy. It ordered that those who had pleaded it once be branded according to the offence committed.

43. This rather arcane and otherwise unremarkable anomaly of benefit of clergy is of utmost importance to the development of the doctrine of the law on homicide and the doctrine of provocation. In 1547 Parliament passed another statute further restricting the use of benefit of clergy by excluding its availability for murder but not for manslaughter. As a direct result of this statute the courts began to pay much closer attention to the distinction between murder, committed by malice aforethought, and manslaughter by chance medley. It had become, quite literally, a matter of life and death.

44. Benefit of Clergy was abolished in 1827.<sup>39</sup>

### **Chance-Medley**

45. The doctrine of chance-medley emerged in the mid-sixteenth century as the courts began to interpret the intentions of Parliament. Originally homicide was divided into murder and chance-medley on the basis of whether the killing was deliberate or accidental. There was no requirement of premeditation and both were capital crimes. However, through judicial interpretation the distinction became focussed on the presence or absence of premeditation.

46. By Coke's time chance-medley was understood as referring to "an angry brawl or encounter in the course of which a person was killed." Kaye believes that Coke merely assumed chance-medley meant roughly the same as *chaude-mellee* in France, and the doctrine developed accordingly.<sup>40</sup> Hostettler also links this interpretation to "the growth of the affray type of murder in the new social circumstances of the sixteenth century."<sup>41</sup>

47. Its development was influenced by the legally constructed presumption of implied malice as described above.<sup>42</sup> This doctrine, which applied in the most brutal but non-premeditated murders, could be rebutted in certain circumstances, one of which was chance-medley.<sup>43</sup>

48. *Salisbury's case*<sup>44</sup> was decided in 1553, only six years after the 1547 statute removing the possibility for benefit of clergy for murder convicts. It is an interesting case because it is the first case to fully report a manslaughter verdict. The case involved an ambush planned by one Richard Salisbury and his men, against Ellis

<sup>39</sup> 7 & 8 Geo4, c.28, s.6.

<sup>40</sup> J M Kaye, "Early History of Murder and Manslaughter" (1967) 83 LQR 365 p 376.

<sup>41</sup> J Hostettler, *The Politics of Criminal Law Reform in the Nineteenth Century* (1992) p 92.

<sup>42</sup> See paras 38 and 39 above.

<sup>43</sup> However, Horder notes that the mid-sixteenth century commentators did not speak of rebutting the presumption, only of circumstances in which manslaughter could still be found even where malice might have otherwise been implied. See J Horder, *Provocation and Responsibility* (1992) pp 17-19.

<sup>44</sup> (1553) Plowd. Comm 100.

and his men, which resulted in an affray. The defendant, John Vane Salisbury, happened upon the scene without any foreknowledge of its origins and thereupon intentionally killed one of Ellis' servants.

49. Horder comments that the judges in this case “were well aware of the implications of a judicial ruling that manslaughter was the appropriate verdict”,<sup>45</sup> in the light of the statutory provision removing benefit of clergy for murder. They held that he was guilty of chance-medley manslaughter on the grounds that he did not have malice aforethought. Horder claims that the decision confirms as a matter of law that which had been recognised for many years as a matter of fact:

[The decision in *Salisbury's Case*] seems to confirm that it is the fact that the killer has been provoked by the sight of his master engaged in a fight that is the rationale for mitigating the unpremeditated killing, and not the mere fact of the servant's lack of premeditation itself.<sup>46</sup>

50. Indeed, within 60 years of this decision judges treated such circumstances (witnessing a master or kinsman under attack) as a head of provocation in order to reduce murder to manslaughter.
51. The immediate impact of the widening of manslaughter was the availability of either benefit of clergy or a royal pardon and thus the avoidance of capital punishment. It seems that while Parliament was attempting to restrict the operation of mercy through legislation, the precedents established in court were ensuring it continued. Previously the jury had been able to manipulate the facts to achieve the desired result. However, as this avenue of mercy was diminished by restrictive legislation, the social will appears to have found legal form through common law precedents.

### ***Inconsistent application of the death penalty and increasing use of alternative punishments.***

52. Until the seventeenth century, alternative punishments, such as transportation and imprisonment, were used infrequently. The deterrent effect of transportation was doubted and prisons were known to be “centres of corruption”.<sup>47</sup> In this environment the use of benefit of clergy and the royal prerogative of mercy were crucial to avoiding capital sentences.
53. However, following the Restoration, the use of royal pardons conditional upon transportation increased for clergyable offences. In 1679 such conditional pardons were given a statutory basis in the Habeas Corpus Act<sup>48</sup> and were extended to all offences in 1707.<sup>49</sup> The 1800's also saw an increase in the use of imprisonment

<sup>45</sup> J Horder, *Provocation and Responsibility* (1992) p 13.

<sup>46</sup> J Horder, *Provocation and Responsibility* (1992) p 14.

<sup>47</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) pp 31 – 32.

<sup>48</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) pp 109 – 110.

<sup>49</sup> 4 Geo 1, c11 provided for transportation for both clergyable and non-clergyable offences if conditionally pardoned.

with hard labour for felonies and other punishments such as public or private whippings.

54. Prior to the Restoration, justice had been administered in a severe but haphazard manner. Froude writes of spasmodic intervals of extraordinary severity, when twenty thieves might have been seen hanging together, which might be followed by periods when justice “was scarcely executed at all.”<sup>50</sup> The monarchy may have been restored but an overwhelming sense of insecurity remained. In the early 1700’s London was menaced by the existence of unruly mobs threatening public safety and creating chaos and disorder. Although the rebellion of 1745 was crushed, the sense of anxiety and insecurity of the era was not so easily extinguished. Severe legislation, in the form of many capital offences, was intended to create a sense of social control for political purposes. The fact it was rarely implemented in practice only further indicates the extent of the rift between political rhetoric and social reality.<sup>51</sup>
55. In spite of the increase of capital offences on the statute book, Radzinowicz charts the decrease in the use of the death penalty through the eighteenth and nineteenth centuries.<sup>52</sup> From 1749 to 1758 his research shows that two out of three offenders capitally convicted were executed. From 1790 to 1799 this figure decreased to one in every three. Between 1800 and 1810 only one in every seven defendants sentenced to death was actually executed, with a precise breakdown of one in seven between 1800 to 1802 and only about one in every ten between 1808 and 1810. Specifically, in relation to murder, in 1810 of the 28 defendants committed to trial for murder, one was not prosecuted, 14 were acquitted, and while 13 were convicted, only 2 were executed.<sup>53</sup>
56. These results lead one to question whether the law in this epoch correlated with the moral standards of the community. While public attitudes were moving away from the implementation of the death penalty the legislature was refusing to reform capital statutes. Rather, it continued to legislate new capital offences with more vigour than ever before. In response, the jury and the bench continued to evade a strict application of the law as best they could. The law was out of kilter with public attitudes.
57. In this environment, following the procedural restrictions on jury manipulation of the facts in murder cases, and the restriction of more arbitrary escape from the death penalty through royal pardons and benefit of clergy, the doctrine of provocation solidified through common law precedent. In 1830 Jeremy Bentham published a pamphlet calling for the abolition of the death penalty for all offences including

<sup>50</sup> J A Froude, *History of England* (1870) Vol. 3, p 220-221 cited by L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) p 161 at note 54.

<sup>51</sup> See L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) p 10 for a list of the various offences punishable by death.

<sup>52</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) pp 91-103.

<sup>53</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) p 152.

murder. Perhaps, had the courts not enshrined the defence of provocation in the law of the land, it would not have been another 127 years before Bentham's demands were met.

58. By the nineteenth century, although the English Criminal Law remained the severest in Europe on statute, the use of the death penalty had decreased dramatically and transportation and imprisonment had largely superseded all other punishments. Radzinowicz notes that in 1805 an "overwhelming majority" of those convicted "were sentenced to transportation or imprisonment." The figures he cites show "the ratio of capital to other convictions was one in eight, while that of executions was approximately one in forty." He argues this shows that "the death penalty was only chosen as the most appropriate penalty in a small number of cases."<sup>57</sup>
59. Reflection on this period suggests that while Parliament continued to increase the number of capital offences, and political rhetoric required the toughest approach to crime, the judiciary sought to mitigate the severity of legislation. The emergence of the doctrine of provocation is only one example of this tendency.
60. While cases of felonious homicide committed with malice aforethought still attracted the death penalty, its general demise and the concomitant increase in the use of alternative punishments coincided with and complemented the development of the doctrine of provocation. Increased social acceptance of an adequate secondary punishment most probably added an air of legitimacy to a verdict of manslaughter by provocation and may thereby have inadvertently encouraged the development of this common law doctrine.

### **Changing Standards of Morality and the Establishment of the Police Force**

61. Reviewing the era, Radzinowicz blames the increase in crime and insecurity on "an utterly inadequate and often corrupt police, disorganised prisons – even then a public scandal – and the gravely inefficient administration of the Poor Law."<sup>58</sup> He records the problems of widespread alcoholism, lack of constructive social policy and moral laxity and notes that the rate of pubs to dwellings in London was one in eight in Westminster, one in five in Holborn, and one to four in St. Giles.<sup>59</sup>
62. Fielding's tract "An Inquiry into the Causes of the Increase of Robbers" (1750) viewed the increase in delinquency as a social issue, influenced by the constantly changing structure and manners of society.<sup>60</sup> As with many of the reformers of this

<sup>57</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) p 160.

<sup>58</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) p 401

<sup>59</sup> *Ibid*, at 400.

<sup>60</sup> L Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume 1, The Movement for Reform* (1948) pp405 – 407.

era, Fielding viewed the vices and pleasures of the lower strata of society as dangerous. He advocated an extension of the criminal law to penalise such behaviour, but did not view corresponding vices of the upper classes as similarly damaging.

63. These arguments provided the basis for the burgeoning movement for the reformation of manners at the end of the eighteenth century. While there was a pressing need for reformation of the police force in order to maintain order and enforce the law, there was little political will for such reform. Instead, political and religious leaders joined together to persuade communities to unite and be vigilant against crime together. There was a cry for social cohesion, not only practically, but also morally.
64. Several societies were formed, such as the Society for the Suppression of Vice and the Encouragement of Religion. Implied within their aim was a mandate to ensure the law was respected and, more importantly, applied, especially in relation to vice. Wilberforce believed it was his divine calling to safeguard the morals of his country, and he argued that legislative measures were necessary, alongside religion, to uphold moral standards.
65. While these movements were not directly concerned with either the offence of murder or the partial defence of provocation, the movement as a whole influenced social standards which are in turn reflected in the development of the doctrine of provocation. As will be seen below, provocation developed in a casuistic fashion, responding primarily to these changes in the moral and social standards of behaviour.
66. At a practical level, despite the efforts of the Societies, an effective police force was desperately needed to provide a uniform approach to law enforcement and the prevention of crime, but widespread scepticism of the police and fear of despotic state control kept the topic a political taboo.
67. A small, but not insignificant, impetus for reform of the police force came in 1811. In the space of two weeks the small community of Ratcliffe Highway in Wapping, in the east end of London, was hit with the separate murders of two whole families in a most brutal fashion. The fear generated by these events caused great consternation for the Home Secretary in London and the news reached communities throughout England. Not least of the worries was the inadequate manner in which the local police dealt with the inquiry, arresting suspects randomly on unjustifiable grounds and making little headway. There was widespread belief that such murders could only be the work of foreign nationals due to the increasing numbers of foreign sea men in England, and three Portuguese fishermen were held for a time but then released without charge. Eventually some headway was made with the discovery of the owner of the murder weapon, a maul. Although several Portuguese suspects were still in detention one John Williams, who had lodged with the owner of the implement, was arrested. His guilt was never proven

because he hanged himself after his first interview, but it was asserted that he and he alone was to blame for murdering both families.<sup>61</sup>

68. The fear generated by these horrific events led to suggestions for modifications to the existing police force, but there was still fear of giving the police any power of pre-emptive arrest on the basis of mere suspicion. This fear was gradually eroded over the coming years under the influence, in particular, of the work of Edwin Chadwick, who campaigned for a preventative police force on the basis of Jeremy Bentham's utilitarian principles.<sup>62</sup>
69. In concert with Chadwick's work, and following on from the failure of the new moral order to prevent tragedies such as the Radcliffe murders, the Metropolitan Police Force was established in 1829. Although at first this new, more centralised, preventative police force was limited to certain areas of central London, and met with some hostile criticism, the overall impact on the reduction of crime rates and controlling of rioters helped to win over public opinion.<sup>63</sup> The success of the Metropolitan Police Force led to the 1835 Municipal Corporations Act and the 1839 Rural Constabularies Act, which permitted the establishment of rural police forces. However, it was not until the 1856 Police Act that rural forces became obligatory.
70. With the backbone of the early nineteenth century quest for moral and social order and responsibility, and the eventual creation of a preventative police force, the England of the late 1800's was a safer community. Alongside a more developed definition of the offence of murder, and more readily accepted alternatives to capital punishment, there was now less need for weapons to be carried habitually or for resort to duelling. Whereas provocation may have initially developed as a defence for the duelling gentleman reacting in hot-blooded anger to a slight against his honour, as the common social order changed, the common law followed.

### **Changes in the Law of Provocation**

71. The understanding of what behaviour was capable of constituting "provocation" evolved from the eighteenth to the twentieth century reflecting changes in contemporary standards as to what was acceptable behaviour and a desire to ensure that there were appropriate limits as to what could constitute "provocation".
72. In the early eighteenth century case of *Mawgridge*<sup>64</sup> the defendant initially insulted a woman. On the victim's request that he leave the room, he proceeded to throw a bottle at the victim. The victim responded in kind and the defendant then drew his sword and stabbed the woman. The jury's verdict was murder. The victim's response of throwing a bottle was held not to be provocation. Lord Holt CJ stated what conduct was capable of constituting "provocation":

<sup>61</sup> See generally L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume III, The Reform of the Police* (1956) chapter 11, pp 315 - 347.

<sup>62</sup> See generally L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750: Volume III, The Reform of the Police* (1956) chapter 15, pp 448 - 474.

<sup>63</sup> See generally T A Critchley *A History of Police in England & Wales 900-1966*.

<sup>64</sup> [1707] Kel J 119; 84 ER 1107.



First, if one man upon angry words shall make an assault upon another, either by pulling him by the nose, or filliping upon the forehead, and he that is so assaulted shall draw his sword, and immediately run the other through, that is but manslaughter ...

Secondly, if a man's friend be assaulted by another, or engaged in a quarrel that comes to blows, and he in the vindication of his friend, shall on a sudden take up a mischievous instrument and kill his friend's adversary, that is but manslaughter ...

Thirdly, if a man perceives another by force to be injuriously treated, pressed, and restrained of his liberty, though the person abused doth not complain, or call for aid or assistance; and others out of compassion shall come to his rescue, and kill any of those that shall so restrain him, that is manslaughter ...

Fourthly, when a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter: for jealousy is the rage of a man, and adultery is the highest invasion of property ...<sup>65</sup>

73. This judgment demonstrates that what was capable of constituting provocation was confined to a limited number of defined categories. Ashworth submits that the link between these four categories of provocation is that of "unlawfulness".<sup>66</sup> Horder refutes this however, asserting that "Ashworth's analysis of the early modern law lacks ... a theory or frame of reference for explaining the gravity of provocation, which is grounded in an account of 'the natural feelings of [that] past time'".<sup>67</sup>

74. The development of the partial defence of provocation has been influenced by the social circumstances in which it has operated. Although the early case law does not specifically refer to the social context, its significance was identified in 1949 by Lord Goddard CJ:

At a time when society was less secure and less settled in its habits, when the carrying of swords was as common as the use of a walking stick at the present day, and when duelling was regarded as involving no moral stigma if fairly conducted, it is not surprising that the courts took a view more lenient towards provocation than is taken to-day when life and property are guarded by an efficient police force and social habits have changed.<sup>68</sup>

75. It would appear that in the early eighteenth century conduct of a kind which would now be considered trifling was considered a grave affront. One can only speculate how such behaviour would have been viewed by the agricultural labourer. Such "trifling" affronts by one member of the nobility to another probably

<sup>65</sup> *Ibid*, at pp 135-137, 1114 – 1115.

<sup>66</sup> "The Doctrine of Provocation" (1976) 35 CLJ 292 at p 293-4.

<sup>67</sup> *Provocation and Responsibility* (1992) p 25.

<sup>68</sup> *Semini* [1949] 1 KB 405.

had a significance that would puzzle the modern observer and may well have similarly puzzled contemporaries of different social strata.

76. Horder argues that proving “purity of will” was the key to escaping a murder conviction. From the earliest examples of provocation cases, where the jury sought to fit the facts within the narrow self-defence exception, they did because the defendant killed with intent as a last resort, and not from “corrupt intention”. It was not based on there being no intention to kill,<sup>71</sup> This can be linked to the development of the doctrine of implied malice in murder – demonstrating ‘purity of will’ would rebut the presumption of implied malice. The acts amounting to provocation outlined in *Mawgridge* range from rather trivial insults to serious offences, but can be drawn together under the banner of defending honour. To this extent, the early doctrine of provocation may have operated to excuse a gentleman, whose vices were seen to be less socially damaging, more readily than it may have a vagabond. A man defending his honour was acting out of a pure will. Not to have done so would have been a social disgrace. However, social disgrace is often a class specific concept.
77. The more subjective approach taken to the question of whether the defendant was provoked at the time of action in early case law backs up Horder’s theory that emphasis was on the ‘purity of will’ of the individual defendant. In *Oneby*<sup>72</sup> the length of time permissible between the provocative act and the response was said to vary because “it will require a longer time in some, for reason to get the better of their passions, than in others”.<sup>73</sup> This test was applied in *Lynch*<sup>74</sup> where in summing up it was stated that the jury should consider whether there was “time and interval sufficient for the passion of a man proved to be of no very strong intellect to cool ...”.<sup>75</sup>
78. A shift of emphasis starts to emerge in the mid-nineteenth century. In *Kirkham*<sup>76</sup> the analysis is still explicitly focussed on the lack of malice,<sup>77</sup> but the judgment concludes that the defendant:

must be excused if the provocation was recent and he acting on its sting, and the blood remained hot, but you must consider all the circumstances, the time which elapses, the prisoner’s previous conduct, the deadly nature of the weapon, the repetition of the blows, because, though the law condescends to human frailty, it will not indulge human ferocity. It considers man to be a rational being, and requires that he should exercise a reasonable control over his passions.<sup>78</sup>

<sup>71</sup> *Provocation and Responsibility* (1992) p 8.

<sup>72</sup> 2 Ld. Raym 1485; 92 ER 465.

<sup>73</sup> *Ibid*, at p 1494.

<sup>74</sup> (1832) 5 C & P 324; 172 ER 995.

<sup>75</sup> *Ibid*, at p 325.

<sup>76</sup> (1837) 8 C&P 115; 173 ER 422.

<sup>77</sup> *Ibid*, at p 117.

<sup>78</sup> *Ibid*, at pp 118-119.

79. Following the emergence of the “reasonable man” in *Welsh*<sup>79</sup> the courts increasingly emphasised the need for a reasonable relationship between the provocation and the response.<sup>80</sup> Whereas, initially, proportionality had been employed to test whether or not the killing had been perpetrated with the “wickedness” associated with malice prepensed, over time it was transformed into an objective test. Where there was no reasonable relationship between the provocation and the response, and the “reasonable man” would not have reacted to the provocation as the defendant did, the defence failed.<sup>81</sup>
80. The late nineteenth and early twentieth centuries saw the courts limiting provocation through a new and restricted understanding of mens rea for murder and the introduction of the “reasonable man”. It is possible that these restrictions may have been related to a new social order evolving following the campaign for public morals and the presence of the new police force in mid-nineteenth century. As the country adapted to the new social order, it would appear that the courts found a new legal focus. However, it is not clear how consistent the courts were in their application of the reasonable man test in practice. The Report of the Royal Commission on Capital Punishment (1949–1953) noted the conflicting tendencies in the evolution of provocation law in England.
81. On the one hand the courts have limited the scope of provocation recognised as adequate to reduce murder to manslaughter, and subjected it to increasingly strict and narrow tests. On the other, the greater severity of the law has at times been tempered by leniency in its application. Juries, sometimes with the encouragement of the Judge, sometimes in the face of his direction, have returned verdicts of manslaughter where, as a matter of law, the most favourable interpretation of the evidence could scarcely justify them in doing so. Successive Home Secretaries have been ready to recommend the exercise of the Prerogative of Mercy where the prisoner has been convicted of murder but has acted under substantial provocation of a kind or degree insufficient in law to reduce the crime to manslaughter.
82. Each of these tendencies reflects corresponding developments in the evolution of society. The distinction between murder and manslaughter was first elaborated at a time when the common mischief to be guarded against was the occurrence of set fights with deadly weapons. Later it had to be adapted to a changed situation, where the common mischief was the taking of inordinate vengeance for comparatively trifling injuries, such as returning a box on the ear by a pistol shot or a deadly stab. In a more civilised society the citizen was expected to react less violently to provocation that was not gross.<sup>82</sup>
83. In “The Politics of Criminal Law” Hostettler identifies “a long standing problem of endeavouring to distinguish murder and manslaughter by means of concepts of intention, premeditation, and provocation.” He concludes, “It remains, perhaps, the

<sup>79</sup> (1869) XI Cox CC 336, 338.

<sup>80</sup> See generally *Mancini v DPP* [1942] AC 1, *Duffy* [1949] 1 All ER 932 and *McCarthy* [1954] 2 QB 105.

<sup>81</sup> See *McCarthy* [1954] 2 QB 105 and *Bedder* [1954] 1 WLR 1119.

<sup>82</sup> See Report of the Royal Commission on Capital Punishment (1953) Cmd 8932 paras 134 – 135 at pp 49-50.

clearest example of the criminal law's failure to break out of the structure imposed by the responses of legislature and judges alike to feudal ideas and the consequences of the benefit of clergy."<sup>83</sup>

84. History shows that provocation cannot be divorced from contemporary social reality, nor from the framework of the law on homicide within which the defence operates. This remains true today. The reforms suggested in this report step away from ancient legislative and judicial responses to "feudal ideas and the consequences of benefit of clergy". As history demonstrates and modern justice dictates, any review of provocation necessarily involves the study of how levels of culpability can and should be judged on contemporary social standards.

#### **THE HISTORY OF DIMINISHED RESPONSIBILITY**

85. The defence of diminished responsibility was first introduced in English law by the Homicide Act 1957. In this section, the law relating to mental illness in murder trials prior to the 1957 Act will be briefly outlined, as will the general political and social climate from the late 1940s through to the late 1950s.

#### **The effect of mental illness on a trial for murder prior to the 1957 Act**

86. Prior to the enactment of the 1957 Act, there were a limited number of ways in which a person's mentally disordered state might affect the outcome of criminal proceedings for murder:

- 1) A defendant's mental state *at the time of committing the offence* may have been such as to give rise to a verdict of not guilty by reason of insanity.<sup>84</sup> In 1957, and until 1992, a verdict of not guilty by reason of insanity following trial on indictment resulted in a mandatory order that the defendant be admitted to a special hospital for an indeterminate period.<sup>85</sup> The test for insanity was a narrow one, and already over 100 years old.<sup>86</sup> Given the mandatory hospital order made following a verdict of not guilty by reason of insanity, it might be thought that prior to 1957 defendants would prefer not to seek such a verdict but rather plead guilty and hope for as lenient a sentence as possible. This was indeed the case in respect of allegations other than murder, which did not carry the mandatory death sentence. Accordingly, prior to 1957, the defence of insanity was, in practice, only very infrequently pleaded to offences other than murder.
- 2) The defendant, by reason of mental disorder, may have been unable to understand or participate meaningfully in the criminal proceedings. The focus was on the state of the defendant's mind, not at the time of the alleged offence,

<sup>83</sup> J Hostettler, *The Politics of Criminal Law Reform in the Nineteenth Century* (1992) p 93.

<sup>84</sup> The defence was not confined to murder.

<sup>85</sup> This mandatory disposal still applies in respect of offences for which the sentence is fixed by law – murder. For other offences, a wider range of disposals is now available by virtue of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, which came into force on 1 January, 1992.

<sup>86</sup> The requirements for the defence of insanity were, and still are, contained in the M'Naghten Rules. These were derived from *M'Naghten's Case* (1843) 10 Cl & F 200; 8 ER 718.

but *at the date of trial*. The test for determining whether the defendant was *fit to plead* (or to be tried) was not that laid down in the M’Naghten Rules but was similar in the following respect. The jury had to focus on the defendant’s cognitive capacity to comprehend the nature of a criminal trial and follow its proceedings. If the jury found that the defendant was unfit to plead, another jury would decide whether he or she had done the act or made the omission charged. If the jury found that the defendant had not committed the conduct element of the offence, an acquittal would follow. If they found that the defendant had done the act or made the omission charged, the court had to order admission to a special hospital where the defendant might be detained without limitation of time.

- 3) The defendant may have pleaded not guilty on the basis of automatism.<sup>87</sup> The automatism plea is an assertion by the defendant that the conduct was involuntary.<sup>88</sup> Like the defence of insanity, its application is not confined to murder. The defendant is asserting that the conduct happened either against or, at least, without his or her will. In that sense, there is a denial of responsibility. Examples were provided by Humphreys J in *Kay v Butterworth*.<sup>89</sup> One is where D, driving his motor car, is attacked by a swarm of bees and is disabled from controlling the vehicle. Alternatively, he is struck by a stone and rendered unconscious. Lord Goddard CJ said that in each of those examples the defendant “could not really be said to be driving at all”.<sup>90</sup> In neither example is the defendant mentally disordered. The relevance of mental disorder to automatism arose where the involuntary nature of the defendant’s conduct was caused by a “disease of the mind”. In such cases, despite the conduct being involuntary, the courts held that, as a matter of law, what was being raised was not the issue of automatism but the defence of insanity.<sup>91</sup> Thus, if successful, the defendant was not acquitted of the offence but found to be “guilty but insane”. The reasons for the law adopting this stance related to public policy.<sup>92</sup>

### **The social and political context of the 1957 Act**

88. During the late 1940s and the 1950s there was considerable consensus between the two main political parties, Labour and Conservative. This was reflected in both

<sup>87</sup> There has been considerable academic discussion as to whether automatism is a denial that the conduct element of the offence has been committed or rather that the defendant lacked the fault element of the offence.

<sup>88</sup> The word “involuntary” in the context of offences against the person has three different meanings. In relation to the defendant’s conduct it means “unwilled” or “unconscious”. Such conduct amounts to automatism. In addition, the word is used to describe one of two kinds of manslaughter recognised at common law. Here the word is used in relation to the defendant’s state of mind, not conduct. Finally, the word is used in relation to the specific act of becoming intoxicated. Here it means blameless or non-culpable.

<sup>89</sup> (1945) 61 TLR 452, 453.

<sup>90</sup> *Hill v Baxter* [1958] 1 QB 277, 283.

<sup>91</sup> *Kemp* [1957] 1 QB 399.

<sup>92</sup> See Partial Defences to Murder, Consultation Paper No 173, paras 6.35 and 6.48.

the style of government and the range of policies pursued in domestic affairs including penal policy.<sup>93</sup>

89. In 1951 the Conservative Party, under Sir Winston Churchill, was returned to office and in 1955 won its second consecutive term in office, but with Sir Anthony Eden as Prime Minister. The issue of capital punishment reached its peak under Eden's premiership, with the second of the 1950s most controversial hangings. The first involved Derek Bentley, aged only 19, with epilepsy and a mental age of 11. He was hanged in 1953 for his part in the murder of PC Sidney Miles.<sup>94</sup> Forty-five years later the Court of Appeal overturned Bentley's conviction and a full posthumous pardon was issued.<sup>95</sup>
90. The hanging of Ruth Ellis two years later for the murder of David Blakely attracted further public attention to the issue. One thousand people stood silently outside Holloway prison in protest on the morning of the hanging. The case brought to the fore the debate about whether capital punishment could be justified in a civilised society. The Criminal Cases Review Commission referred Ellis's case to the Court of Appeal in 2003. The court upheld the conviction, stating that, in view of the material facts, there "could not in 1955 have been any basis for the jury to find that there was in law provocation at the relevant time".<sup>96</sup>
91. The issue of capital punishment had been considered by the Royal Commission on Capital Punishment 1949 – 1953 which published its Report in 1953.<sup>97</sup> It concluded that the outstanding defect of the law of murder was that it provided a single punishment for a crime widely varying in culpability
92. Chapters 4 and 5 of the Royal Commission's Report were devoted to Insanity and Mental Abnormality. Specifically, Chapter 5 addressed the issue of diminished responsibility. The Report noted<sup>98</sup> that under English law no account was taken of forms of mental abnormality that were not so extreme as to render an accused person unfit to plead or wholly irresponsible for his actions. The sole exception was to be found in the provisions of the Mental Deficiency Act 1913 that authorised the courts to order the removal of mental defectives convicted of criminal offences, other than capital cases, to appropriate institutions instead of passing sentence.
93. The Report observed<sup>99</sup> that by contrast the position was entirely different in Scotland where the doctrine of diminished responsibility enabled the courts to take account of lesser forms of mental abnormality in the cases of persons charged with murder.

<sup>93</sup> Perhaps a major area of difference was their respective approaches to industry, and in particular the issue of nationalisation.

<sup>94</sup> Appeal dismissed, *Bentley*, *The Times* 14 January 1953.

<sup>95</sup> [2001] Cr App R 21.

<sup>96</sup> [2003] EWCA Crim 3930. See also EWCA Crim 3556.

<sup>97</sup> (1953) Cmd 8932.

<sup>98</sup> Para 374.

<sup>99</sup> Para 377.

94. The Royal Commission was of the view that although some “mental defectives” can properly be held wholly irresponsible, the majority should rather be regarded as having a diminished responsibility. It stated:

The diminution of responsibility may in borderline cases be relatively small, but it can never be excluded, and in our opinion it would not ever be right to carry out the sentence of death in any case where a prisoner is certifiable as a mental defective. It is indeed undesirable that the sentence of death should even be pronounced in such a case... .<sup>100</sup>

95. The Report, nevertheless did not recommend the introduction of diminished responsibility as a defence (partial or otherwise) to murder. The reason was not that it was envisaged that juries would find the issue too difficult, or would tend to err in the direction of undue leniency. Rather, it was that, whereas murder and insanity, were both rare occurrences and often went together, forms of mental abnormality which caused diminution of responsibility were of frequent occurrence and were potentially relevant to a wide range of offences. It was felt, however, that the Royal Commission’s terms of reference did not permit examination of whether diminished responsibility should be available as a defence of general application affecting liability to and punishment for all crimes.
96. With regard to murder the Report concluded that the introduction of a defence of diminished responsibility would be so “radical” an amendment of English law that it could not be justified for the “limited” purpose of avoiding the death sentence in cases of murder.<sup>101</sup>
97. Instead, the Royal Commission, with one member dissenting, concluded that the test of responsibility laid down by the M’Naghton Rules was so defective that the law on the subject ought to be changed. They concluded that it would be better if the Rules were enlarged so as to cover defect of will as well as reason.<sup>102</sup> Nine of the twelve commissioners regarded it as preferable for the Rules to be abrogated. Instead, the jury should be asked to determine whether, at the time of the act or omission, the accused was suffering from either a disease of the mind or mental deficiency to such a degree that he ought not to be held responsible.<sup>103</sup> Thus, the concept of *mental deficiency* was to be introduced into the defence of *insanity*; a defence that would be applicable to all offences tried on indictment.
98. In 1956, amid a mounting anti-capital punishment campaign, Sydney Silverman MP introduced a Private Member’s Bill in Parliament, proposing the abolition of the death penalty. Mr Silverman’s Bill was defeated in the House of Lords.
99. It was against the background of the defeat of Mr Silverman’s Bill and the Report of the Royal Commission, that the Homicide Bill was debated in Parliament. It received the Royal Assent on 21 March 1957. Whilst in legal terms, the

<sup>100</sup> Para 385.

<sup>101</sup> Para 413.

<sup>102</sup> Paras 313 and 333. Mr Fox-Andrews dissented.

<sup>103</sup> Dame Florence Hancock, Mr Macdonald and Mr Radzinowicz dissented from this conclusion.

introduction of diminished responsibility was an important step, the 1957 Act was most popularly known for the restrictions it placed upon the use of capital punishment. Except for a residual class of cases,<sup>104</sup> the death penalty was abolished for murder by Part II of the 1957 Act.<sup>105</sup>

100. The introduction of diminished responsibility, as a partial defence to murder alone, was contrary to the conclusions and recommendations of the Royal Commission on Capital Punishment. Nevertheless, the Government felt that such a defence was warranted. In introducing the clause which was to become section 2(1) of the 1957 Act the Home Secretary remarked:

A new defence will be open to those who, although not insane in [the] legal sense, are regarded in the light of modern knowledge as insane in the medical sense and those who, not insane in either sense, are *seriously* abnormal, whether through mental deficiency, inherent causes, disease or injury.<sup>106</sup>

101. Supporting the clause, Mr Rees-Davies MP referred to the defence of diminished responsibility in Scots law:

The Scots, with their very admirable common sense, have an anomaly which lawyers cannot defend but which works out in practice  
...<sup>107</sup>

102. Two months after the Homicide Act 1957 received Royal Assent, the Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency 1954 – 1957 was published.<sup>108</sup> It noted that

public opinion in general is moving towards a more enlightened attitude [toward mental illness], which is fostered and encouraged by the progress which has been made in the last fifty years in the understanding and treatment of mental disorders.<sup>109</sup>

103. Whilst the provisions in the Homicide Act 1957 were clearly drafted prior to this Report, it is interesting to note the shift which appeared to be occurring simultaneously in societal and legal perceptions of mental disorder.

<sup>104</sup> Including murder in the course or furtherance of theft; murder by shooting or explosion; murder in the course of avoiding lawful arrest or escaping legal custody; murder of a police officer acting in the execution of his duty; murder by a prisoner of a prison officer acting in the execution of his duty and repeated or multiple murders.

<sup>105</sup> The death penalty for all murders was abolished by the Murder (Abolition of Death Penalty) Act 1965, section 1.

<sup>106</sup> *Hansard* (HC) 15 November 1956, vol 560, col 1154. (emphasis added)

<sup>107</sup> *Hansard* (HC) 15 November 1956, vol 560, col 1213.

<sup>108</sup> (1957) Cmnd 169.

<sup>109</sup> *Ibid*, at para 67.



# **APPENDIX H**

## **PERSONS AND ORGANISATIONS WHO PARTICIPATED IN THE CONSULTATION PROCESS**

### **Academics**

Professor Andrew Ashworth, Faculty of Law, University of Oxford

Professor Sue Bailey, Lancashire School of Health and Postgraduate Medicine, University of Central Lancashire

James Chalmers, School of Law, University of Aberdeen

Dr Lisa Claydon, University of West of England

Kate Cook, Manchester Metropolitan University

Sally Cunningham, University of Leicester

Professor Ian Dennis, University College, University of London

Professor Susan Edwards, Buckingham Law School

Catherine Elliott, Kingston University

The late Professor DW Elliott

Professor John Gardner, Faculty of Law, University of Oxford

Peter Glazebrook, Faculty of Law, University of Cambridge

Russell Heaton, Department of Academic Legal Studies, Nottingham Trent University

Jonathan Herring, Faculty of Law, University of Oxford

Tony Hobbs, Department of Law, Keele University

Jessica Holroyd, University of Luton

Dr Jeremy Horder, Faculty of Law, University of Oxford

Professor Adrian Howe, University of Central Lancashire

Arlie Loughnan, London School of Economics, University of London

Professor Ronald Mackay, De Montford Law School, De Montfort University, Leicester

Timothy Macklem, King's College, University of London

Professor Barry Mitchell, Coventry University

Professor Terence Morris, Professor Emeritus of Criminology and Criminal Justice, University of London

Professor Alan Norrie, School of Law, Kings College, University of London

Professor David Ormerod, University of Leeds

Nicky Padfield, Faculty of Law, University of Cambridge

Simon Parsons, School of Law, Southampton Institute

Antje Pedain, Faculty of Law, University of Cambridge

Professor JR Spencer QC, Faculty of Law, University of Cambridge

Professor GR Sullivan, Department of Law, University of Durham

Graham Virgo, Faculty of Law, University of Cambridge

### **Government departments and public bodies**

Criminal Cases Review Commission

Crown Prosecution Service

**Judiciary**

HHJ Bathurst Norman

HHJ Brodrick

Mr Justice Stanley Burnton

Mr Justice Butterfield

Lord Justice Buxton

Judge Advocate Camp (Assistant Judge Advocate General)

HHJ Frank Chapman

Mr Justice Curtis

HHJ Elgan Edwards DL

Mr Justice Elias

HHJ Peter Fox QC, Honorary Recorder of Middlesbrough

Mr Justice Gage

HHJ Geake

HHJ Henry Globe QC

HHJ Ann Goddard QC

HHJ Clement Goldstone QC

Mr Justice Gross

Mrs Justice Hallett DBE

HHJ Richard Hawkins

Lord Justice Kennedy

HHJ Madison, Honorary Recorder of Manchester

HHJ Mott

Mr Justice Penry-Davey

Mr Justice Pitchers

Mr Justice Poole

Mr Justice Richards

HHJ John Roberts

HHJ Jeremy Roberts QC

Lord Justice Rose (on behalf of the Rose Committee)

Mr Justice Royce

Lord Justice Sedley

Mr Justice Silber

Mr Justice David Steel

HHJ James Stewart QC

HHJ Michael Stokes QC

HHJ Robert Taylor

Mr Justice Treacy

HHJ John Griffith Williams QC, Honorary Recorder of Cardiff

**Individuals**

T H Aldridge

George Armstrong  
Catherine Bailey  
Commander Andre Baker, Metropolitan Police Specialist Crime Directorate  
T Bryant  
Annette Chambers  
Geoff Cole  
Pat Craven  
Jennifer Drew  
Nina George  
Peter Gordon  
R A Jordan  
Lynda Kelly  
Christine Mann  
Ajay Motee  
Andrew Pearce  
Geoffrey Pearce  
Susan Puffett  
Colin Richardson  
Dr Keith J B Rix, Consultant Forensic Psychiatrist  
M T Roberts MBE  
D C Sage  
Jane Shaw  
Christine Skidmore  
Dr Richard Turner  
Ian Tyes  
Sue Tyler  
Dr Eileen Vizard, Consultant Child and Adolescent Psychiatrist  
Sharon Waugh  
Colonel David Whitaker  
Brian Williams  
Maggie Williams

**Non-governmental organisations**

Adhikar in Waltham Forest Domestic Violence Forum  
Brent Women's Aid  
Enfield Domestic Violence Forum  
Greater Manchester Campaign Against Domestic Violence  
Jewish Women's Aid  
JUSTICE  
Justice for Women  
Keighley Women's Aid  
LIBERTY  
London Borough of Barking and Dagenham Domestic Violence Forum

The Mankind Initiative  
Middlesbrough Domestic Violence Forum  
NACRO  
Northern Ireland Women's Aid Federation  
Refuge  
Rights of Women  
Rotherham Domestic Violence Forum  
Southall Black Sisters  
Victim Support  
Women's Aid Federation of England  
Women's Resource Centre

**Practitioners**

Vera Baird QC, MP  
Sir Louis Blom-Cooper QC  
Linda Dobbs QC ,Chair of Criminal Bar Association  
Anthony Donne QC, Leader of the Western Circuit  
Mike Dyer, Tyndallwoods Solicitors  
Andrew Edis QC  
Carolyn Graham, Senior Crown Prosecutor  
Carey Johnston QC Barrister,  
Maura McGowan QC,  
Geoffrey Mercer QC  
Jane Miller QC  
Clare Montgomery QC  
Edward Rees QC  
David Steer QC, Leader of the Northern Circuit  
Spencer Stephens, Purcell Parker Solicitors

**Professional organisations**

The Association of Women Barristers  
The Bar of the Wales and Chester Circuit  
The Criminal Bar Association  
Criminal Cases Review Commission  
Justices' Clerks Society  
The London Criminal Courts Solicitors' Association  
The Police Federation of England and Wales  
Police Superintendents Association of England and Wales  
The Royal College of Psychiatrists  
Society of Labour Lawyers Criminal Law Group  
Warwickshire Police Service, Chair of the Association of Chief Police Officers

**Other**

Dewar Research