

Battered woman syndrome as a criminal defense

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Battered woman syndrome, although not a diagnosable mental disorder, is being successfully used as a criminal defense at both the federal and the state level. The authors briefly critique the clinical concept of battered woman syndrome and review current federal and state case law relevant to its use as a criminal defense. Despite the fact that the U.S. Supreme Court has yet to hear a case involving testimony concerning battered woman syndrome, its scope as a criminal defense is expanding.

Battered woman syndrome is not a diagnosable mental disorder. No reference is made to it in the *Diagnostic and Statistical Manual of Mental Disorders III-Revised*, which contains the accepted nomenclature for psychiatric disorders in the United States and Canada.¹ Yet the term "battered woman syndrome" and its use as a legal defense, usually in violent felony cases, continue to gain acceptance among legal and mental health professionals. Our intent in this article is twofold: first, to briefly review and critique the clinical

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concept of battered woman syndrome; and second, to review current federal and state case law relevant to its use as a criminal defense.

Battered woman syndrome: the clinical concept

Physical assaults by males against their spouses have historically been considered a family problem rather than a legal one. In the United States it was legal for a man to batter his wife until 100 years ago.²

In 1765 Sir William Blackstone wrote in his commentaries on English law:

. . . the law thought it reasonable to intrust him with this power of chastisement, in the same moderation that a man is allowed to correct his . . . children.

Husband and wife, in the language of the law, are styled baron and feme . . . if the feme kills her baron, it is regarded by the law as a[n] . . . atrocious crime . . . and therefore the law denominates her crime a species of treason, and condemns her to the same punishment as if she had killed the king.³

Alabama was the first state to abolish a husband's right to assault his wife, in 1871.⁴ North Carolina did so three years later, but introduced the "curtain rule": if no permanent injury was inflicted, and neither malice, cruelty, nor dangerous violence was shown by the husband, it was deemed prudent to leave the parties alone.⁵ Browne⁶ noted that this rule continues to be used to rationalize nonintervention by law enforcement and the judiciary in domestic-violence complaints.

Spousal assault is no longer legal in any jurisdiction in the United States.⁷ Browne⁸ contended, however, that policies and procedures regarding domestic violence are still inconsistent across jurisdictions, police officers still routinely classify assaults between partners as misdemeanors rather than as

felonies,⁹ and abused women may be allowed to drop charges more often than victims of other crimes.

The term "battered woman syndrome"¹⁰ is used to describe both a pattern of violence against a woman by her mate and its psychological impact upon her. The typical pattern of violence consists of three stages: a tension-building period characterized by relatively minor incidents of assault; an overtly violent battery or series of batteries; and a contrite, loving period between violent events when the male expresses remorse toward his female victim.

The psychological impact on the female victim in battered woman syndrome begins with the predominance of feelings of helplessness and guilt and their corollary, lowered self-esteem. These internal affect states lead to a pattern of "learned helplessness," characterized by passive and submissive behavior and the narrowing of a cognitive capacity to exercise choice. The woman holds contradictory beliefs that the male partner is loving, yet could and would kill her. She becomes convinced that there is no escape.¹¹

Browne¹² argues, however, that although the battered woman syndrome was conceptualized to address misconceptions surrounding spousal abuse, it contributes to the "psycho-pathologizing" of the victim. In other words, a *syndrome* suggests a disorder, illness, or maladjustment. The *DSM III-R*¹³ research category of Self-Defeating Personality Disorder includes many of the traits described in the battered woman syndrome literature: rejects or renders ineffective the attempts of others to help her; incites angry or rejecting responses from others and then feels hurt, defeated, or humiliated; rejects opportunities for pleasure; engages in excessive self-sacrifice.

The clinical issues that remain unresolved in battered woman syndrome are several. First, are there certain personality disorders, such as borderline, self-defeating, or dependent

personality disorder,¹⁴ that predispose the clinical development of battered woman syndrome? Second, do *situational* (husband's assaults) and *state* (helplessness, guilt) factors create the syndrome, rather than any contribution from more enduring *traits* of the woman? Third, does battered woman syndrome actually exist, or is it a clinical fiction that implies psychopathology when there is none? And fourth, should battered woman syndrome be more accurately defined as a socio-cultural event, an extreme statement of the misogyny endemic in American and Western European culture?¹⁵ These questions deserve further empirical research.¹⁶

Evolving state and federal case law

In 1984 the U.S. Supreme Court refused to hear a case involving testimony concerning battered woman syndrome, although Justices Brennan and Marshall dissented.¹⁷ The Supreme Court has yet to hear such a case. But the past nine years have seen an increasingly successful use of the battered woman syndrome as a defense in the courts. In 1979 Virginia was a leader in recognizing battered woman syndrome, exemplified by its opinion in the Supreme Court of Appeals in *State v. Dozier*.¹⁸

In late 1979 the District of Columbia followed with its decision in *Ibn-Tamas v. U.S.*,¹⁹ which inspired other courts²⁰ to recognize battered woman syndrome as a criminal defense. The court in *Ibn-Tamas* ruled that expert testimony about battered woman syndrome must provide insight into a relevant aspect of the defendant's relationship with her husband that the jury could not otherwise gain in evaluating her self-defense testimony.²¹ The court also ruled that the probative value, or the weight the expert's testimony would have, would overshadow the possible risk of confusing issues or passions for the jury.²²

Mrs. Ibn-Tamas had been physically and verbally abused by her husband throughout her three-year marriage: a pattern of intermittent violence followed by periods of harmony. He hit her in the face and neck with his fists, threatened her life with a gun, kicked her, and hit her with various objects.

On the morning of the killing, Dr. Ibn-Tamas kicked his wife in the stomach and threatened her with a gun, although she was pregnant with their second child. She later testified that her husband kept loaded weapons throughout the house. Thinking he was going to grab the gun with which he had earlier threatened her, she picked it up and discharged it at his feet to warn him. Shortly thereafter she killed him.

The court stated that being a battered wife may have substantial bearing on behavior and perceptions at the time of the killing. Testimony regarding the symptoms of battered woman syndrome is therefore central to a self-defense claim and should be admissible.²³

In 1980 a county court of New York State denied a new trial to a woman convicted of second-degree murder of her former husband.²⁴ The defendant claimed newly discovered evidence on her behalf based upon a theory of "learned helplessness," or psychological paralysis, as identified in battered woman syndrome.²⁵ Her claim failed, and the new trial was denied, because the court held that "learned helplessness" was not newly discovered evidence as defined by statute.²⁶

That same year New Hampshire's Supreme Court allowed an expert's testimony on battered woman syndrome to rebut the defendant's claim of insanity in *State v. Baker*.²⁷ Donald Baker was convicted of attempted murder of his wife. He claimed he was not guilty by reason of insanity and was allowed the testimony of two psychiatrists. They opined that he was insane at the time of his crime. The prosecution then presented expert testimony regarding battered woman syndrome. Evidence of his wife's having been abused had

already been heard. The expert testified that current research did not indicate mental illness as an important cause of wife beating and that, in his opinion, the defendant's marriage fell within the parameters of the descriptions of battered woman syndrome. On cross-examination, one of the defense psychiatrists came to the same conclusion. The jury found the defendant guilty, and his conviction was upheld on appeal.

The defendant's mental state

An issue repeatedly addressed by the courts is whether the expert's testimony would help the jury to evaluate, perceive, and draw a conclusion regarding the defendant's mental state at the time of the criminal offense.

In *State v. Dozier*,²⁸ Deborah Dozier was tried and convicted of first-degree murder for shooting and killing a man with whom she had intermittently lived for a decade. The judgment was reversed due to an assignment of error in a jury instruction that deprived Dozier of constitutionally guaranteed due process. The *Dozier* court also stated that since the primary theory of the defense was self-defense, she was entitled to elicit testimony regarding previous physical beatings received at the hands of the deceased. Testimony was found essential for the jury to fully evaluate the mental state of the defendant at the time the crime was committed.

Maine's 1981 Supreme Court opinion in *State v. Anaya* vacated the judgment of manslaughter when the court found reversible error had been committed by excluding testimony related to the battered woman syndrome.²⁹ Linda Anaya was convicted of manslaughter after police responded to a call and found Williams, her lover, lying on the floor of her apartment, stabbed and unconscious. Shortly thereafter he died. There was overwhelming evidence, uncontested on appeal, proving that the defendant stabbed Williams.

Ms. Anaya's roommate had called the police several times to intervene when Williams threatened to kill the defendant with a knife and kicked her. She was subsequently treated for a concussion and for facial and head injuries, and she appeared frightened when Williams threatened to kill her if she left him. Both Ms. Anaya and Williams had attempted suicide on various occasions throughout these episodes of domestic violence. Ms. Anaya finally killed Williams during an argument.

Two experts' testimony was denied at trial. The first was a psychologist qualified to testify about battered woman syndrome, but his testimony was excluded as being irrelevant, prejudicial, and confusing to the jury. Second, an internist who had treated the defendant's injuries was not allowed to answer defense counsel's questions regarding battered woman syndrome and the defendant.

The Maine Supreme Court wrote that testimony concerning battered woman syndrome was a crucial factor to determine whether Ms. Anaya was guilty of murder or of manslaughter, since she acted in self-defense. The prosecution argued that because the defendant never attempted to leave Williams, she could not have been fearful of him, and her abuse was a "loving game"; therefore, expert testimony was essential to her defense. The experts must further be allowed to testify because it "may have . . . a substantial bearing on her perceptions at the time of the killing"³⁰ and was central to her self-defense claim.

In *State v. Kelly*³¹ a reckless-manslaughter conviction was reversed and remanded for a new trial due to the exclusion of an expert's testimony concerning battered woman syndrome. In May 1980 Gladys Kelly stabbed her husband to death with a pair of scissors. She claimed self-defense, fearing as he assaulted her that he would kill her if she did not act.³²

The Kellys' stormy marriage lasted seven years. Ernest Kelly periodically attacked Gladys, especially when he drank alcohol. During these weekly assaults Ernest would threaten to kill her, and if she tried to leave him, he would threaten to dismember parts of her body. Frequently moving out of the house after an attack, Ernest Kelly would later return, promising to change his ways.

On the day he was killed, Ernest Kelly was walking home with his wife and daughter. He grabbed Gladys, choked her, bit her leg, and punched her in the face. Two men from the gathering crowd separated them. After Gladys looked for and found her daughter, she saw Ernest running toward her with his hands raised. She thought he had armed himself and was returning to kill her. Gladys tried to scare him with the scissors from her pocketbook, but instead she stabbed him.

The *Kelly* court ruled that the subject of battered woman syndrome was beyond the understanding of the average juror and therefore was suitable for explanation by an expert at trial. The average juror was helpless in understanding a subject that was not a matter of common knowledge.³³

Guidelines were written by the court to determine when an expert's testimony would be admissible. First, the proposed expert's testimony must be reliable, demonstrated by satisfying the state's standard of acceptability for scientific evidence. This is done by proving that the theory is widely accepted among the profession through substantial authoritative scientific writings and judicial citations.³⁴ Second, the witness must have sufficient expertise.³⁵ And third, the testimony must be relevant to the self-defense claim.³⁶

The court in *Kelly* found that the expert met all these requirements and his testimony should be allowed. Because Gladys Kelly believed she was about to be killed by her husband, the offered expert testimony was directly relevant

to her self-defense claim. Testimony was also material to establish the honesty of Mrs. Kelly's belief that she was in imminent danger of death.³⁷

In *Rock v. Arkansas*³⁸ the U.S. Supreme Court held in a 5-4 decision that hypnotically refreshed testimony could not be excluded from trial *per se*. Individual assessments must be made to determine the credibility of such testimony to maintain the defendant's right to speak on her own behalf.

Vickie Rock killed her husband during a struggle over a gun. After two hypnosis sessions she recalled that the gun went off when her finger was not on the trigger. Expert testimony substantiated her claim that the gun was defective. Although not central to the battered woman syndrome defense, this case highlights the need for research concerning various forms of amnesia or dissociative states that may occur at the time of a domestic homicide that may be partially caused by a history of battering.

Constitutional rights

The issue of the defendant's constitutional rights and their possible violation in relation to battered woman syndrome was first addressed in *People v. Minnis*.³⁹ The Illinois Appellate Court held that reversible error was committed when the defendant was not allowed to rebut evidence about her consciousness of guilt for the murder and dismemberment of her husband.

Ms. Minnis was convicted of first degree murder, and since the death penalty was not sought, she was sentenced to 25 years' imprisonment for killing her husband. A fact of the case that influences the record is that the body of the defendant's husband was dismembered by her, placed in plastic bags, and deposited in garbage dumpsters throughout

the city. The head, neck, upper torso, and hands were never recovered, and the defendant testified to having thrown them into the river.

Ms. Minnis stated that she was subjected to weekly beatings, usually for her failure to bring home enough women for sexual encounters with her husband. He ostensibly wanted these women because she was not sexually pleasing to him and they could improve her sexual prowess.

The weekend he was killed, the defendant's husband brought home a man with whom he engaged in anal intercourse while forcing his wife to watch: "If you just do what you're supposed to do, I wouldn't have to do this."⁴⁰ Later that evening he threatened to kill her, forcing her to fellate him and have vaginal intercourse. He then began to choke her. She kicked him off her with the force of her knees; he fell back and didn't move.

After realizing he was dead, she decided to dismember the body so no one would know what had taken place that weekend. The cause of death was never determined, although dismemberment was never completely ruled out.

The defense argued that with the fact of dismemberment before the jury, an explanation of it was necessary because the average juror could not comprehend such actions. After extensive argument, however, the court ruled that evidence of battered woman syndrome would be excluded. The trial court reasoned that dismemberment had nothing to do with the admissibility of battered woman syndrome, since it was relevant only to the mental perceptions of the defendant at the time of the killing; i.e., how imminent was the danger in her perception. The batterer, furthermore, was not in a position to present an imminent danger at the time of his dismemberment.

The Illinois Appellate Court found that conduct of the defendant at the time of the husband's death and afterward was influenced by her history as a battered woman. The abuse suffered by her at the hands of her husband caused an emotional reaction to the shock of the situation of his death. The defendant had testified to her thoughts while she was sawing off his hands: "At least he won't beat me no more . . . I hated his hands. They hurt me so bad."⁴¹

Since the reasons for dismembering the body were plainly at issue, and because the prosecutor used this as evidence to prove Ms. Minnis's consciousness of guilt, a clear right to rebut the state's evidence existed. Concern was expressed by the appellate court that the defendant's constitutional right to present a defense was denied; therefore, exclusion of the expert's testimony should not have been allowed.

In *U.S. v. Gordon*⁴² the voluntariness of the defendant's waiver of her *Miranda*⁴³ rights arose in relationship to her mental state as a battered woman. The *Gordon* court allowed the admission of expert testimony to establish that Ms. Gordon was suffering from battered woman syndrome and to determine whether this prevented her from voluntarily waiving her *Miranda* rights.

Karen Gordon was convicted of murder and conspiracy to commit murder. Following the shooting death of her husband, an Air Force sergeant, she had consented to take two polygraph exams and to sign a confession. On appeal, expert testimony was proffered that Ms. Gordon was a battered woman and exhibited symptoms of "learned helplessness" that prevented her from making a voluntary waiver of her *Miranda* rights. Opinion testimony of experts explained that Ms. Gordon was acting in a "survival mode" and was not considering the consequences of her acts.⁴⁴

The *Gordon* court also refused to find any improper government conduct during the investigation of Sgt. Gordon's

death. During the government's 24-day investigation in October and November 1985, Karen Gordon stated that one of the government agents had exhibited acts of friendship during her interrogation. He held her hand and bought her beer and cigarettes. The expert testified that as a battered woman, Ms. Gordon would have perceived this as sexual harassment. In view of all the facts surrounding the investigation (Ms. Gordon being free to leave at any time during the first polygraph exam, and being offered, but refusing, food), the court held that there was no governmental coercion that forced Ms. Gordon to involuntarily waive her *Miranda* rights prior to the exams.⁴⁵

The court further stated that without government misconduct there can be no "Fifth Amendment . . . and, *ipso facto*, no *Miranda* violation."⁴⁶ The *Gordon* court concluded that if psychological coercion occurred, it was a product of the defendant's mental state as a battered woman, and not a result of the tactics used to investigate the crime.⁴⁷

In *Martin v. Ohio*⁴⁸ the Supreme Court ruled in another split decision that Ohio had not violated Earline Martin's constitutional rights when it placed on her the burden of proof regarding her claim that she was defending herself when she killed her husband. The Supreme Court held that states have the right to make such determinations.⁴⁹

Summary

Battered woman syndrome has become widely recognized and successfully used as a criminal defense since 1979. Crucial facts are necessary for the defense to work. First, the syndrome should shed light on the defendant's mental state at the time of the offense; second, the symptoms suffered by the defendant should negate the necessary intent to commit the crime; third, the jury should not be able to draw such

conclusions without an expert's testimony; and fourth, the battered woman syndrome should be central to the claim of self-defense, if one is made.

Conclusion

The scope of battered woman syndrome as a criminal defense is expanding, as evidenced by its successful use in a federal drug-smuggling case.⁵⁰ Future probable uses of battered woman syndrome may evolve from self-defense claims to duress, coercion, and rebuttal of insanity defenses; and for crimes other than murder, such as smuggling, robbery, theft, arson, or other charges that must be coupled with intent.

Notes

1. American Psychiatric Association, *DSM III-R* (Washington, D.C.: American Psychiatric Association, 1987). Outside the United States and Canada, mental and emotional disorder is currently categorized in the *International Classification of Disease, Ninth Edition*.
2. Browne, A., *When Battered Women Kill* (New York: The Free Press, 1987).
3. Blackstone, W., *Commentaries on the Laws of England, Book 4* (Philadelphia, Pa.: R. Welsh & Co., 1897), pp. 444, 1602.
4. *Fulgham v. State*, 46 Ala. 146-7 (1871).
5. *State v. Oliver*, 70 N.C. 60, 61-2 (1874).
6. Browne, *supra* note 2, 167.
7. U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (Washington, D.C.: U.S. Government Printing Office, 1982).
8. Browne, *supra* note 2, at 168-9.
9. See also Tong, R., *Women, Sex, and the Law* (Totowa, N.J.: Rowman and Allenheld, 1984).
10. Walker, L., *The Battered Woman Syndrome* (New York: Springer Publishers, 1984).

11. *Id.*; see also Seligman, M. E. P., Maier, S. F., & Solomon, R. L., "Unpredictable and uncontrollable aversive events," in Bush, F. R. (ed.), *Aversive Conditioning and Learning* (New York: Academic Press, 1971) for the beginning experimental paradigms that explored the concept of "learned helplessness." The notion of contradictory perceptions of others being alternately held in consciousness may also imply certain primitive defenses, such as splitting, found in borderline levels of personality organization. See Kernberg, O. F., *Borderline Conditions and Pathological Narcissism* (New York: Jason Aronson, 1975); Meloy, R., *The Psychopathic Mind* (Northvale, N.J.: Jason Aronson, 1988); Goetting, A., "Patterns of homicide among women," *Journal of Interpersonal Violence*, 3:3-19, 1988.
12. Browne, *supra* note 2, at 177.
13. American Psychiatric Association, *supra* note 1, at 371-4.
14. American Psychiatric Association, *supra* note 1.
15. See, e.g., Cameron, D. & Frazer, E., *The Lust to Kill* (New York: New York University Press, 1987). The proliferation of "syndromes" begs the question What *isn't* a "syndrome" in the universe of habitual human behavior? The history of malingering is partially the history of certain behaviors being defined as disorders or syndromes and consequently being socio-economically rewarded. Syndromes can reach the realm of the absurd. See, e.g., Lees-Haley, P. R., "Litigation response syndrome," *American Journal of Forensic Psychology*, 6:3-12 (1988) for a serious but failed attempt to create a new disorder.
16. An unpublished study presented at the midwinter meeting of the Society for Personality Assessment, 1988, found that a sample of female domestic homicide offenders displayed significantly less psychopathology as measured by the MMPI than samples of male domestic or stranger homicide offenders. This tendency toward normal profiles is consistent with the "state" hypothesis noted above and needs further research (paper presented by Seth C. Kalichman, Ph.D., University of South Carolina, Columbia, S.C. 29208). Other studies have focused on the motivation and characteristics of the wife batterer: the need to exert power in relationships combined with an absence of verbal resources to do so significantly differentiated wife assaulters from other groups of married males (Dutton, D. & Strachan, C., "Motivational needs for power and spouse-specific assertiveness in assaultive and non-assaultive men," *Violence and Victims*, 2:145-56, 1987); assaultive males read or view significantly greater amounts of pornographic materials, and are more sexually aggressive toward their battered wives, than comparison groups of nonassaultive males (Sommers,

- E. & Check, J., "An empirical investigation of the role of pornography in the verbal and physical abuse of women," *Violence and Victims*, 2:189-209, 1987).
17. *Moran v. Ohio*, 469 U.S. 948 (1984).
 18. 255 S.E.2d 552 (1979).
 19. 407 A.2d 626 (1979).
 20. See, e.g., *Fennell v. Goolsby*, 630 F. Supp. 451 (1985), at 458-9.
 21. *Ibn-Tamas v. U.S.*, 407 A.2d, at 636.
 22. *Id.* at 639.
 23. *Id.* In *Ibn-Tamas v. U.S.*, 455 A.2d 893 (1983), the District of Columbia Court of Appeals, on remand, held that evidence did not permit but one interpretation, and the trial judge was not compelled as a matter of law to admit the expert testimony; where the trial court excluded the testimony, the court of appeals would not substitute its judgment on such a discretionary ruling.
 24. *People v. Powell*, 424 N.Y.S.2d 626 (1980).
 25. *Id.* at 630.
 26. *Id.* at 631-2.
 27. 424 A.2d 171 (1980).
 28. 255 S.E.2d 553 (1979).
 29. 438 A.2d 892 (1981).
 30. *Id.* at 894.
 31. 478 A.2d 364 (1984).
 32. *Id.* at 368.
 33. *Id.* at 379.
 34. *Id.* at 380. In California, *People v. Kelly*, 17 Cal.3d 24 (1976) established a two-prong test for admissibility of new scientific technique: the reliability of the method must be established, usually by expert testimony; and the witness so testifying must be properly qualified as an expert to give an opinion on the subject. But the court was compelled to note in *People v. McDonald*, 37 Cal.3d 351 (1984), and in *People v. Mendibles*, 245 Cal. Rptr. 553 (1988), that this "Kelly-Frye" rule applies to novel devices or processes, *not* to expert medical testimony. "Such a diagnosis need not be based on certainty, but may be based on probability; the lack of absolute scientific certainty does not deprive the opinion of evidentiary value. . . . Further, a medical diagnosis based on medi-

cal literature will not be viewed as a new scientific technique, but simply the development of an opinion from studies of certain types of cases'' (*People v. Mendibles* at 557).

35. *Id.* at 381.
36. *Id.* at 369.
37. *Id.* at 375.
38. 483 U.S. _____, 97 L.Ed.2d 37, 107 S. Ct. _____ (1987).
39. 455 N.E.2d 209 (1983).
40. *Id.* at 214.
41. *Id.* at 218.
42. 638 F. Supp. 1120 (1986).
43. *Miranda v. Arizona*, 384 U.S. 436 (1966).
44. *U.S. v. Gordon*, 638 F. Supp. at 1139.
45. *Id.* at 1140-41.
46. *Id.* at 1142.
47. *Id.* at 1142.
48. 107 S. Ct. 1098 (1987).
49. Only in Ohio and South Carolina is the claim of self-defense an affirmative defense, placing the burden of proof on the defendant to prove the claim.
50. On September 24, 1987, a U.S. District Court jury in San Diego, California, acquitted a female defendant who used a battered woman syndrome coercion defense in a federal drug-smuggling case (*U.S. v. Fernandez-Fernandez*, No. 86-0611K, S.D. Cal., Sept. 24, 1987).