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BATTERED WOMAN SYNDROME
Paul C. Giannelli
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The battered woman syndrome (BWS) describes a pattern of violence inflicted on a woman by her mate. In 1979, Dr. Lenore Walker, one of the principal researchers in this field, published her seminal text, *The Battered Woman*. She described a battered woman as follows:

A battered woman is a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights. Battered women include wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman. L. Walker, *The Battered Woman* xv (1979)

Dr. Walker's initial findings were based on a nonrandom sample of 110 battered women who were mostly white and middle-class. A later study, published in her second book, involved a more representative sample of 435 women. In the second book, Walker defined the syndrome by incidents of violence. "A battered woman is a woman . . . who is or has been in an intimate relationship with a man who repeatedly subjects or subjected her to forceful physical and/or psychological abuse." Two acute battering incidents qualified as "repeated" incidents. L. Walker, *The Battered Woman Syndrome* 203 (1984).


CYCLE OF VIOLENCE

The violence associated with this type of relationship is neither constant nor random. Instead, it follows a pattern. Dr. Walker identified a three-stage cycle of violence. L. Walker, *The Battered Woman* at 55-70.

The first stage is the "tension building" phase, during which small abusive episodes occur. These episodes gradually escalate over a period of time.

The tension continues to build until the second stage — the acute battering phase — erupts. During this phase, in which most injuries occur, the battering is out of control. Psychological abuse in the form of threats of future harm is also prevalent.

The third phase is a calm, loving period during which the batterer is contrite, seeks forgiveness, and promises to refrain from future violence. This phase provides a positive reinforcement for the woman to continue the relationship in the hope that the violent behavior will not recur. The cycle then repeats itself.

In addition, the batterer is often extremely jealous of the spouse's time and attention, a factor that further isolates her from friends and outside support. Note, "Self-Defense: Battered Woman Syndrome on Trial," 20 Cal. W. L. Rev. 485, 487 (1984). Moreover, numerous obstacles, both psychological and economic, often prevent the battered spouse from leaving her mate. Walker used Martin Seligman's theory of "learned helplessness" to explain the woman's condition. L. Walker, *The Battered Woman* at 43-54.


CRITICISMS

The evidentiary use of the BWS is not without its critics. In 1986, Professor Faigman questioned the validity of the underlying research:

"The prevailing theories of battered woman syndrome have little evidentiary value in self-defense cases. The work of Lenore Walker, the leading researcher on battered woman syndrome, is unsound and largely irrelevant to the central issues in such cases. The Walker cycle theory suffers from significant methodological and interpretative flaws that render it incapable of explaining why an abused woman strikes out at her mate when she does. Similarly, Walker's application of learned helplessness to the situation of battered women does not account for the actual behavior of many women who remain in battering relationships. Faigman, "The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent," 72 Va. L. Rev. 619, 647 (1986)."

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Faigman, however, does argue that “courts should allow juries to consider valid social science research and the battered woman's own history of abuse in evaluating her self-defense claim.” Id. at 622.


A 1992 review of the research literature, however, indicates that BWS now has attained, to a large extent, scientific acceptance. Citing a survey of experts in the field, Schuller and Vidmar conclude:

The degree of expert consensus shown in the Dodge and Greene survey tends to suggest that the scientific literature bearing on a battered woman's circumstances and situation is sound. There are, however, some aspects of the testimony — the cycle pattern of violence and the development of learned helplessness — that are not universal across battering relationships. Schuller & Vidmar, "Battered Woman Syndrome Evidence in the Courtroom: A Review of the Literature," 16 Law & Hum. Behav. 273, 281 (1992) (citing Dodge & Greene, "Jury and Expert Conceptions of Battered Women," 6 Victims & Violence 271 (1991) (18-item survey of 45 professionals who have published in the field)).

The widespread legal acceptance of BWS is a product of the work of feminist scholars, who have attacked the traditional law of self-defense as based upon a male-oriented perspective. Such scholarship, however, also recognizes that the BWS may perpetuate stereotypes: "Dwelling stereotypes are likely to become the focus of the trial process. While the prosecution attempts to discredit the defendant for not living up to the standard of a 'good woman', the defense counters with an equally distorted portrayal of the defendant as ultra-feminine: a passive, helpless victim." Jenkins & Davidson, "Battered Women in the Criminal Justice System: An Analysis of Gender Stereotypes," 8 Behav. Sci. & Law 161, 169 (1990).

See also Crocker, "The Meaning of Equality for Battered Women Who Kill Men in Self-Defense," 6 Harv. Women's L. J. 121, 1985) ("She is held liable for having lived as a woman, and she is held responsible for having reacted, even if only once, as a man"); Schneider, "Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering," 9 Women's Rts. L. Rptr. 195, 216-17 (1986) ("Yet, to the degree that the explanation is perceived to focus on her suffering from a 'syndrome', a term which suggests a loss of control and passivity, the testimony seems to be inconsistent with the notion of reasonableness..."); Mahoney, "Legal Images of Battered Women: Redefining the Issue of Separation," 90 Mich. L. Rev. 1 (1991) ("Yet the expert testimony on battered woman syndrome and learned helplessness can interact with and perpetuate existing oppressive stereotypes of battered woman.").

Another author suggests, however, that most proposals for law reform concerning this subject are based on two assumptions, both of which are wrong. The first assumption is that a majority of cases involve nonconfrontational situations (e.g., spouse asleep or hired killer); however, a survey of the cases reveals that approximately 75% of the cases involve confrontations. Maguigan, "Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals," 140 U. Pa. L. Rev. 379, 397 (1991) (surveying appellate decisions). The second assumption is that traditional self-defense law excluded a female perspective. The author argues that while it is true that self-defense law developed in cases with male defendants, it is not true that the law ignored "the context of a battered woman's actions." Id. at 405.

ADMISSIBILITY: SELF-DEFENSE

The admissibility of expert testimony on BWS has produced much commentary and initially divided the courts. It was first introduced in the 1979 case of Ibn-Tamas v. United States, 407 A.2d 628, 634-35 (D.C. 1979), aff'd on appeal after remand, 455 A.2d 893 (D.C. 1983).

Several different evidentiary issues are raised.

Relevancy


This seems wrong. While being a battered woman by itself is no defense to homicide, the syndrome may explain two elements of a self-defense claim: (1) the defendant's subjective fear of serious injury or death and (2) the reasonableness of that belief. See generally W. LaFave & A. Scott, Criminal Law § 5.7 (2d ed. 1984); 2 P. Robinson, Criminal Law Defenses § 132 (1984).


For example, the evidence explains why a battered woman has not left her mate. According to the New Jersey Supreme Court, "[o]nly by understanding these unique pressures that force battered women to remain with their mates, despite their long-standing and reasonable fear of severe bodily harm and the isolation that being a battered woman creates, can a battered woman's state of mind be accurately and fairly understood." State v. Kelly, 97 N.J. 178, 196, 478 A.2d 364, 372 (1984). See also Fielder v. State, 756 S.W.2d 309, 319 (Tex. Crim. App. 1988).

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v. Minnis, 118 Ill. App. 3d 345, 356-57, 455 N.E.2d 209, 218 (1983) (BWS “might extend to [explain] dismemberment” of husband after killing, a point which the prosecution legitimately exploited.)


Battered Child Defense

In State v. Janes, 64 Wash. App. 134, 822 P.2d 1238 (1992), rev. granted, 119 Wash. 2d 1001, 832 P.2d 488 (1992), these arguments were applied to a “battered child.” The court reasoned that “[n]either law nor logic suggests any reason to limit to women recognition of the impact a battering relationship may have on the victim’s actions or perceptions. . . . [C]hildren are both objectively and subjectively more vulnerable to . . . violence than are adults.” Id. at 142, 822 P.2d at 1243.

Other courts have rejected this view, at least in nonconfrontational situations. See Whipple v. Duckworth, 957 F.2d 418, 421-24 (7th Cir. 1992) (exclusion of syndrome evidence did not violate constitution because accused offered no evidence that he was in immediate danger), cert. denied, 113 S.Ct. 218 (1992); Jahnke v. State, 682 P.2d 991, 1008 (Wyo. 1984) (“battered son” testimony rejected because the defendant was not under attack at the time of the killing).


Beyond Jurors Knowledge

A second issue is whether BWS evidence is a proper subject for expert testimony. In 1981, the Ohio Supreme Court held that this subject is “within the understanding of the jury” and thus inappropriate for expert testimony. State v. Thomas, 66 Ohio St. 2d 518, 521, 423 N.E.2d 137, 140 (1981), overruled by State v. Koss, 49 Ohio St.3d 213, 551 N.E.2d 970 (1990).


The research appears to support this conclusion; it “suggests that jurors are misinformed on some aspects of wife abuse and that some jurors are likely to be more misinformed than others. Nevertheless, the surveys have not found overwhelming endorsement of the ‘myths’ about abuse.” Schuller & Vidmar, “Battered Woman Syndrome Evidence in the Courtroom: A Review of the Literature,” 16 Law & Hum. Behav. 273, 283 (1992).

Scientific Basis


As noted earlier, the research now supports the latter cases.

Recent Trend


Nevertheless, one court has held that the refusal to admit BWS evidence is not unconstitutional. Tourlakis v. Morris, 738 F. Supp. 1128, 1140 (S.D. Ohio 1990).

Limitations on Admissibility

Several limitations on admissibility should be noted. First, some courts permit experts to explain the syndrome only in general terms, describing the salient characteristics of BWS. Accordingly, the expert “should not be allowed to testify as to the ultimate fact that the particular defendant actually suffers from battered woman syndrome.” State v. Hennun, 441 N.W.2d 793, 799 (Minn. 1989).

Similarly, some courts refuse to recognize the use of BWS evidence in "muder-for-hire" cases. E.g., People v. Yaklich, 833 P.2d 758, 760 (Colo. App. 1991); State v. Martin, 666 S.W.2d 895, 899-900 (Mo. App. 1984). The opposing view is that the battered woman may justifiably believe she is in "imminent" danger even though she is not being beaten or threatened at the time of the killing.


ADMISSIBILITY: OTHER CASES

BWS evidence has been offered for purposes other than self-defense. In most of these cases the syndrome is used by the prosecution rather than the defense.

In Arcoren v. United States, 929 F.2d 1235 (8th Cir. 1991), cert. denied, 112 S.Ct. 312 (1991), the defendant was charged with aggravated sexual abuse. His estranged wife reported the assault but then recanted her grand jury testimony at trial. The prosecution introduced BWS evidence to explain the wife's conduct. On appeal the Eighth Circuit affirmed, finding "no persuasive reason" to limit BWS testimony "to cases in which it is offered to bolster a claim of self-defense." Id. at 1241.

Other cases have reached a similar result. In State v. Baker, 120 N.H. 773, 775-76, 424 A.2d 171, 172-73 (1980), the court upheld the introduction of BWS evidence to rebut an insanity defense in the trial of a husband for the attempted murder of his wife.

In State v. Ciskie, 110 Wash. 2d 263, 281, 751 P.2d 1165, 1170-71 (1988), BWS evidence was admitted in a rape prosecution to explain why the victim had not left the defendant or reported the abuse.

As one court has noted: "It would seem anomalous to allow a battered woman, where she is a criminal defendant, to offer this type of expert testimony in order to help the jury understand the actions she took, yet deny her that same opportunity when she is the complaining witness and/or victim and her abuser is the criminal defendant." State v. Frost, 242 N.J. Super. 601, 612, 577 A.2d 1292, 1267 (A.D.), cert. denied, 127 N.J. 321, 604 A.2d 596 (1990). See generally Note, "Using Battered Woman Syndrome Evidence in the Prosecution of a Batterer," 76 Iowa L. Rev. 553 (1991) (offering prosecutors guidelines for the introduction of BWS evidence).

BWS evidence has also been introduced in sentencing proceedings. E.g., United States v. Johnson, 956 F.2d 894, 901-02 (9th Cir. 1992); United States v. Whitetall, 956 F.2d 857, 864 (8th Cir. 1992) (Sentencing guidelines "permit consideration of battered-woman syndrome as a basis for departure from the guidelines.")

RELATED ISSUES

Several other issues concerning the battered wife syndrome have arisen. One court has ruled it error for the prosecution to rebut BWS evidence with evidence of the defendant's prior aggressive acts toward the victim. State v. Kelly, 102 Wash. 2d 188, 193-99, 685 P.2d 564, 569-71 (1984). This type of rebuttal evidence is inadmissible because it is character evidence.

Ineffective Assistance of Counsel

Several cases raise claims of ineffective assistance of counsel. In one case the Sixth Circuit ruled that a defense counsel's failure to introduce expert testimony on the battered woman syndrome did not constitute ineffective assistance. Meeks v. Bergen, 749 F.2d 322, 328-29 (6th Cir. 1984).

In another case, however, the Pennsylvania Supreme Court reached the opposite result. Commonwealth v. Stonehouse, 521 Pa. 41, 57-58, 555 A.2d 772, 781 (1989) (failure to introduce BWS evidence constituted ineffective assistance of counsel).

A California appellate court concurred in a case where defense counsel admitted that he had "never heard" of such a defense, and BWS evidence would have helped dispel "many of the commonly held misconceptions about battered woman. As the record reflect[ed], the prosecutor exploited several of these misconceptions in urging the jury to reject appellant's self-defense claim." People v. Day, 2 Cal. App. 4th 405, 416, 2 Cal. Rptr. 2d 916, 922 (1992).

Victim Examinations

The courts are split on whether a defendant who intends to introduce BWS evidence is required to submit to an examination by prosecution experts.

In United States v. Vega-Penarete, 137 F.R.D. 233 (E.D.N.C. 1991), the court ruled that the prosecution "should have the opportunity to respond to the defendant's expert testimony on the Battered Wife Syndrome with testimony of its expert who has also examined the defendant." Id. at 235. See also State v. Briand, 130 N.H. 650, 657-58, 547 A.2d 235, 240 (1988) (Independent evaluation required); State v. Myers, 239 N.J. Super. 158, 169-70, 570 A.2d 1260, 1266 (same), cert. denied, 127 N.J. 323, 604 A.2d 598 (1990).

In Hickson v. State, 589 So. 2d 1366, 1369 (Fla. App. 1991), however, a Florida appellate court held that offering BWS evidence did not waive the Fifth Amendment
privilege against self-incrimination, and thus an examination by a prosecution expert was impermissible.

The Minnesota Supreme Court in State v. Hennum, 441 N.W.2d 793, 799-800 (Minn. 1989), resolved the issue on different grounds. The court ruled that only generalized information about BWS is admissible, and thus a defense expert is not permitted to express an opinion about the particular defendant. This rule of limited admissibility obviates the need for an adverse examination by prosecution experts because defense experts will not be allowed to testify based upon a defense examination of the defendant.


Right to Expert Assistance

Finally, an indigent defendant may have the right to expert assistance in introducing BWS evidence. In Dunn v. Roberts, 963 F.2d 308 (10th Cir. 1992), the 10th Circuit ruled that the accused had such a right in support of a duress defense.

REFERENCES

Books and articles on BWS include:

Representing Battered Women Who Kill (S. Johann & I. Osanka eds. 1989);
C. Ewing, Battered Woman Who Kill (1987);
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Schneider, "Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense," 15 Harv. C.R.-C.L. L. Rev. 623 (1980);