

VALIDITY OF BATTERED WOMEN'S SYNDROME IN CRIMINAL CASES INVOLVING BATTERED WOMEN

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Introduction

The Violent Crime Control and Law Enforcement Act of 1994, Section 40507 of Title IV, the Violence Against Women Act, mandated a report concerning "medical and psychological testimony on the validity of battered women's syndrome as a condition." Accordingly, the purpose of this report is to review the literature concerning scientific and clinical knowledge on battering and its effects, the implications of this scientific knowledge for criminal cases involving battered women, and the role of expert testimony in criminal cases involving battered women. The relevant knowledge base includes information about the nature and dynamics of domestic violence involving intimate partners, the psychological and social impact of battering, victims' responses to battering, and the social and psychological context in which battering occurs.

Criminal Case Contexts in Which Battering is an Issue

In criminal court proceedings the dynamics and effects of battering can become issues in:

- The self-defense or insanity defense of a battered woman accused of murdering or assaulting the perpetrator.
- Charging and sentencing in such cases.
- The duress defense of a battered woman accused of criminal or illegal conduct through the instigation or coercion of a perpetrator.

- The prosecution of cases of domestic violence.
- Addressing misconceptions about domestic violence that might be held by judge or jury.

To Support a Plea of Self-Defense

Battered women sometimes use physical force, including the use of weapons, in response to their batterers' violent behavior toward them and other family members. These women may be charged with a criminal offense. In such cases, the legal defense of self-defense is often introduced. Of course, not all women who use violence against an intimate partner do so in self-defense.

The elements of self-defense in situations where the effects of battering are particularly relevant require that the defendant reasonably believed (a) that deadly force was necessary to protect herself or others against death or serious bodily harm used or threatened by the batterer and (b) that the use of force was immediately necessary to protect against death or serious bodily injury.¹ Most state courts do not require a duty to retreat, but factfinders may, nevertheless, find this issue to be relevant in their deliberations. Thus, evidence and testimony may be introduced to assist the triers of fact in deliberations concerning the specific elements of self-defense.²

To Support a Defense of Insanity

The defense of insanity requires a defendant to have had a severe mental illness, defect, or disorder at the time of the alleged criminal acts. Further, this condition must have impaired the defendant's mental capacity to such an extent that either (s)he did not understand the nature and consequences of what (s)he was doing or did not understand that what (s)he was doing was wrong.³ Although this defense is used infrequently in cases involving battered women, it may apply in some instances.

An insanity defense claims that the battered victim's mental capacity was impaired, in contrast to a defense of self-defense or duress, which offers that the battered victim acted in response to a reasonable perception of danger. When the condition of legal insanity is related to domestic violence, testimony by experts can be offered to explain how traumatic reactions and their associated symptoms may preclude the victim from knowing right from wrong or appreciating the consequences of her actions at the time of the criminal acts.

To Support Mitigating Factors in Charging and Sentencing

Information about battering and its effects has been used by prosecutors in determining the severity of the charge that a battered woman should face in a trial and, during the sentencing phase, to show the existence of mitigating factors in the battered woman's criminal behavior.⁴ Information considered in charging and sentencing may include the history of violence against the battered woman, the battered woman's efforts to protect herself and obstacles to those efforts, the social and psychological impact of violence on her, and the context in which the violence occurred.⁵

To Support a Defense of Duress

Batterers use physical force, intimidation, and coercion to control their victims' thoughts, feelings, and behaviors.⁶ Some women, in an attempt to avoid further violence and abuse, comply with the batterer's explicit or implicit demands.⁷ For some, compliance means being an accomplice to or actively engaging in illegal behavior, perhaps involving drug-related activity, fraud, theft, or even violence toward others. When a battered woman has participated in these and other criminal acts in response to the batterer's coercion, threats, or actual violence, a defense of duress is often introduced.

In order to successfully argue a defense of duress, the judge or jury must find that the defendant reasonably believed that participating in a crime (a) was necessary to avoid a specific and immediate threat of serious harm to self or others and (b) was the only way to avoid this harm.⁸ Thus, for a battered woman to prove duress, she must demonstrate her reasonable belief that criminal behavior was necessary in order to avoid the batterer's violent or abusive behavior. Describing the pattern, over the course of the relationship, of a battered woman's compliance in the context of the batterer's violence or threats can provide a framework for jury evaluation of whether the alleged criminal conduct resulted from duress or coercion.

To Support the Prosecution of Crimes Involving Domestic Violence

District attorneys may introduce evidence and testimony on battering and its effects in efforts to prosecute domestic violence perpetrators.⁹ Testimony may be used to explain a battered victim's recantation of an earlier statement, lack of cooperation with the prosecution, or other conduct of the victim.¹⁰ A battered victim may recant an earlier statement of abuse, often at the point when she reconciles with the batterer or when she is coerced by the batterer by threats of violence or withdrawal of economic support. In some cases, a battered woman may recant a self-incriminating statement only after the batterer has been arrested, and it is safer to do so. Testimony can be useful for explaining to the factfinder the various reasons why battered victims may respond in these ways.

To Explain Misconceptions Related to Domestic Violence

Both prosecution and defense attorneys may introduce testimony to explain to the factfinder what may be misconceptions about battering and its effects. It has been shown that lay persons generally hold misconceptions related to domestic violence.¹² These misconceptions, when held by the triers of fact, can negate either the occurrence or seriousness of violence, as well as the victim's response of fear and intimidation.

Determining potential misconceptions relevant to a particular case depends, obviously, on the facts of that case. For example, a victim's alcohol or drug- abuse history may lead the jury to believe, erroneously, that the victim caused the battering. In another example, when a battered woman fights back against the batterer, her behavior could be construed as evidence of mutual battering, or even that she was the primary aggressor. Evidence and testimony can be useful to assist the factfinders in sorting out these issues.

The Relevance of Scientific and Clinical Knowledge Concerning Battering and Its Effects in Criminal Court Proceedings

Following is a brief review of the current "scientific, technical, or specialized knowledge."¹³ relevant to criminal cases involving battered women. As discussed above, battering and its effects have become an issue primarily in criminal cases in which (1) a battered woman is being tried for a crime and introduces a defense of self-defense, coercion, or insanity, (2) a battered woman has been charged or convicted of a crime, and evidence of battering or its effects is offered to reduce the seriousness of the charges or the severity of the sentence, or (3) a batterer is being tried for murder or assault and the battered woman's behavior or responsibility for the abuse is raised as part of the defense of the batterer. In these instances research studies of battering and its effects are relevant. Research on the dynamics of battering relationships and on a woman's perception of danger in such relationships is pertinent to the defenses of self-defense and coercion. Studies of the consequences of battering on a woman's state of mind, including traumatic stress reactions and disorders associated with battering, are relevant to an insanity defense and issues of diminished capacity. Research identifying patterns of coercive behavior in battering relationships and a victim's coping behaviors is relevant to explaining the seemingly dysfunctional behavior of battered women--an issue raised in charging and sentencing battered women and prosecuting batterers.

This review is representative of the breadth of current and relevant information. By its nature, knowledge is in a process of continual revision,¹⁴ based on new observations and empirical research findings. The information presented here is drawn from the interdisciplinary fields of domestic violence and traumatic stress, which reflect work in psychology, psychiatry, sociology, nursing, criminal justice, and other disciplines.

The Nature and Dynamics of Domestic Violence

Definition

Domestic violence is defined as a pattern of coercive control characterized by the use of physical, sexual, and psychologically abusive behaviors.¹⁵ Additionally, coercion of the domestic violence victim may be achieved through behaviors directed toward children, property, pets, or others. ¹⁶ Violence or the threat of violence toward one's children is often a powerful means of coercing the battered woman. Prior physical or sexual violence toward the battered woman, or knowledge of such behavior on the part of the batterer, enhances the coercive property of the batterer's subsequent psychologically or emotionally abusive behaviors.¹⁷ For example, intimidating gestures or comments acquire a very singular meaning when the batterer has shown a willingness to actually harm his partner. Recognizing the variety of coercive behaviors used by a batterer to exert control over his partner helps to accurately characterize the relationship context within which a battered woman's behavior is considered by the factfinder.

In empirical studies, researchers may operationalize their definitions of domestic violence differently. Definitional and other methodological differences can produce divergent research results. For example, one study may examine violence by measuring the occurrence of aggressive behavior, whereas another may measure extent of injury. Thus, it is important to recognize that variations in results from different empirical studies may reflect methodological differences rather than contradictions in the substantive nature of domestic violence issues.

Prevalence

Empirical research supports the conclusion that physical aggression in intimate relationships is frequent and widespread. For example, nationally representative survey studies conclude that 15 to 35 percent of married, dating, and cohabitating couples experienced one or more act(s) of physical aggression in the previous year.¹⁸ However, most of this physical aggression (e.g., solely acts of pushing, shoving, and slapping) does not lead to serious physical injury. More serious acts of physical aggression, such as punching, beating, choking, or use of a weapon, that could result in serious physical injuries, are relatively rare in the general population. Serious physical violence is estimated to occur between fewer than 5 percent of couples. For example, the National Crime Victimization Survey found that in 1992-1993, approximately 1 percent of women in the sample reported being assaulted by an intimate partner with intent to injure. This survey requires that acts of domestic violence involve an injury and be labeled as a crime by the respondent to be reported. Thus, minor physical acts are unlikely to be reported, and the survey is more likely to capture episodes of physical aggression that are considered serious by respondents.¹⁹ Experiencing acts of serious physical aggression is highly prevalent in certain samples, such as women seeking help for domestic violence (e.g., women in shelters, women seeking civil restraining orders, and women involved in episodes of domestic violence that were reported to the police). The vast majority of serious physical assaults are perpetrated by males against their female partners.²⁰

Patterns of violence and abuse

Several distinctive patterns characterize some batterers' behavior before, during, and after episodes of physical assaults against their intimate partners. Understanding these patterns can clarify the nature of the batterer's coercive control and his partner's behavior in response. These patterns differ in the frequency, severity, and type of violence, the situations that elicit violence or coercion, and the aftermath of violence for both victim and perpetrator. The nature of violence can also change over the course of a relationship.

One characteristic pattern found in some, but not all, battering relationships has been termed the "cycle of violence."²¹ This pattern is characterized by a series of stages with differing levels of positive and negative emotional engagement, coercion, and physical aggression. These stages may include tension-building, acute-battering, and contrite-loving phases. For example, Walker found that 65 percent of a sample of battered women reported indicators of a tension-building phase before episodes of assaults, and 58 percent reported a contrition phase following them.²² Where present in a particular relationship, the cycle of violence can be one of the factors useful in understanding the reasons a battered woman remained in, or returned to, an abusive relationship, since such women might believe the violence may not recur, given its episodic nature and the apparent contrition of the perpetrator.

The "cycle of violence" is not the only pattern of abusive behavior found in battering relationships. For example, another pattern may consist of long periods of time between acute battering episodes. Battered women in relationships characterized by this pattern might reasonably believe, in the period between episodes of battering, that the violence would not recur and, thus, remain in the relationship. Campbell, in a study of the relationship status of battered women over time, found that some battered women who had remained with their batterers had not been revictimized for periods of at least one year.²³

Identifying the unique patterns of violence and abuse in a specific case also may facilitate understanding of the battered woman's response. A pattern of battering in which episodes of violence occur suddenly and abruptly can explain why a battered woman might reasonably believe there was little time to seek help--once any indication of recurrent violence was detected--and act preemptorily to avoid harm. Similarly, if a batterer's typical response to the battered woman's effort to end the relationship is to become reconciliatory, a sudden departure from that pattern (e.g., threats) may signal an escalation of violence. If a battered woman is sensitive to such a change in the pattern of

the batterer's behavior, this may affect her appraisal of the degree of danger to herself and invoke new or customary coping responses (e.g., flight or preemptive attack).²⁴

In sum, this body of knowledge can assist the factfinder in understanding how the particular pattern of batterer behavior has influenced the battered woman. Research on the prevalence of intimate partner violence suggests that serious domestic violence occurs in a relatively small proportion of couples and is rare enough that attorneys, judges, and the general public may not have had direct experience with it. Their understanding of the features and dynamics of domestic violence may be drawn from limited or secondhand experience or from media reports of a small number of domestic violence cases. To the extent that such individuals play a role in charging, prosecuting, defending, trying, or rendering a verdict when domestic violence and its effects are raised in court proceedings, this limited understanding of the unique experiences of battered women can affect decisionmaking in cases where perpetrator and victim behavior do not conform to preconceived notions. The introduction of scientific research findings and clinical experience on the nature and dynamics of battering and its effects, both in general and in particular cases, can provide a more informed context for the police, attorneys, judges, and juries to make determinations in criminal court proceedings.

Battered Woman's Appraisal of Danger

Psychology offers a guide to understanding the processes by which an individual appraises a situation as threatening--a matter central to the legal elements of both self-defense and duress. Understanding an individual's appraisal of a situation as dangerous involves consideration of the actual threat behavior, the dangerousness of the situation, and the resources at hand for responding to that threat.²⁵ Thus, most people would consider that a woman is endangered in situations in which a batterer is physically assaultive or directly threatens an imminent assault; in other situations, where the threat is not immediate, a woman's history of being battered is relevant to her perception of the dangerousness of the situation and its likely outcome.²⁶ Analysis of the influence of a history of battering on a woman's appraisal of danger can contribute to understanding her reaction to a threatening situation. Where the appraisal of threat by a woman is high and/or her appraised resources for responding to threat behavior are low, an expected response would include fear or anxiety, physiological arousal, and behaviors intended either to avoid or alter the situation.²⁷ Thus, testimony can be offered to assist the factfinder in understanding the battered woman's appraisal of threat, i.e., her perception of danger at the time of a criminal act, as well as her response to that threat.

Threat behavior may be considered dangerous based solely on its objective nature, considering the disparity between two individuals in size, weight, strength, and/or skill in using physical force. Examples of such threat behavior include explicit or implicit threats to harm (e.g., threats to injure, maim, kill, or sexually assault) as well as actual violent behavior (e.g., punching, pushing down a flight of stairs, sexual assault, or use of a weapon). In addition, a batterer's unique history of abuse and violence may provide his victim with added information against which to determine the meaning of his subsequent behavior. For example, intimate partners generally learn to read the subtle nuances of each other's behavior more clearly than can others. Persons who are oppressed or victimized, such as prisoners of war or hostages, have a great incentive to read their oppressor's behavior accurately. This principle applies to battered women in their abusive relationships.²⁸ That is, a battered woman's appraisal of the threat implicit in a batterer's behavior is based on his pattern of prior violence and abuse. When she has been exposed to severe violence by her partner on previous occasions, she has had the unfortunate opportunity to learn the behavioral clues that signal danger. Thus, the meaning of threat behavior can best be understood in light of a woman's unique history and her knowledge of her partner's prior behavior, as well as by the objective properties of the threat behavior.

Generally, the severity of threat behavior influences the extent to which that behavior is reasonably appraised as dangerous.²⁹ "Actual or threatened death or serious injury, or a threat to the physical integrity of self or others"³⁰ is defined as a traumatic event within the medical and psychological community. However, once a batterer has engaged in severe violence toward his partner, any implied or low-level violence can be understood as, potentially, a reasonable and imminent threat to her physical integrity. Even in situations where minor violence or threats do not actually escalate to serious violence, it is the batterer, not the battered woman, who determines to what point the violence escalates and at what point it ceases.³¹

The timing of threat behavior also influences the extent to which such behavior is appraised as dangerous.³² Sometimes the batterer's threat is perceived as certain or inevitable, but not necessarily as immediate. Some battered women report as credible their batterers' threats to kill, maim, or seriously injure them at some point in the future.

Sometimes, these threats are in connection with the battered woman's stated intention or actual attempts to leave;³³ at other times they arise from a batterer's knowledge that his partner is no longer available to him (e.g., when she has begun a new relationship or filed for divorce). This pattern of violence has been referred to as "separation abuse."³⁴ In these instances, the incubation, or period of anticipation, heightens the stress or fear associated with the threat.³⁵ That is, if a batterer has made threats to kill the battered woman, and she perceives this outcome to be inevitable, the passage of time since the threat serves to enhance the level of fear. Even when a battered woman attempts to cope with or in some way reduce that fear (e.g., denial, minimization, substance abuse, attempts to leave, and reports to the police), any renewed indication that the batterer is willing to act out the threat can trigger the full intensity of her fear reaction.

A battered woman's threat appraisal also can be influenced by her state of mind at the time the threat is made. Her prior exposure to violence can result in negative psychological sequelae, altering her state of mind in such a way as to enhance the salience of the batterer's threat. Specifically, domestic violence can lead to posttraumatic stress reactions, including posttraumatic stress disorder (PTSD),³⁶ in which certain behaviors or events can cause the battered woman to act or feel as if prior severe violence were recurring, even if it is not. This experience may include "reliving the experience, illusions, hallucinations, and dissociative flashback episodes, including those that occur on awakening or when intoxicated." ³⁷ Additional research supports the conclusion that violence negatively impacts battered women in other ways, for example, economic loss,³⁸ loss of employment,³⁹ and increased health-care utilization.⁴⁰ The scholarly literature documents the negative emotional, social, educational, and physical impact of domestic violence on children.⁴¹ The negative effects on children of witnessing violence can serve as an additional stressor for battered women, thus increasing their distress and/or decreasing their capacity to cope effectively.

To summarize, a battered woman's appraisal of the batterer's threat behavior can best be understood in terms of her unique history with the batterer. Of course, in some cases, an understanding of the threat is obvious, even without knowledge of such history. Knowledge about factors that influence an individual's appraisal of threat can assist the jury in determining whether a battered woman perceived a specific situation as dangerous, particularly in cases in which self-defense or the duress defense are raised. In self-defense, the battered woman claims that her use of force was justified as a response to danger; in a duress defense, the claim is that the battered woman's criminal activity was a means to avoid such danger.

Negative Psychological Consequences of Domestic Violence

An extensive and continually expanding research literature supports the assertion that domestic violence is associated with a wide range of traumatic psychological reactions. Recognition of the effects of trauma dates back more than 200 years.⁴² Trauma theory,⁴³ explains the psychological and physical impact of traumatic experiences, including violence, on victims. Research on a wide variety of both acute and chronic trauma has established that exposure to serious traumatic events can lead to exceptional mental states both during and following the trauma. Such altered mental states during trauma exposure can include amnesic states, in which aspects of traumatic events cannot be recalled or are otherwise blocked from consciousness, and dissociative states, in which no awareness exists of the self or of events during the course of exposure to the traumatic event. Some altered mental states following trauma exposure can include flashbacks and other forms of reexperiencing the trauma, a generalized flattening of affect to avoid overwhelming emotions associated with the trauma, and pathological feelings of shame or guilt ("survivor guilt").⁴⁴ Such exceptional mental states associated with psychological reactions to trauma exposure can explain puzzling aspects of the battered woman's state of mind and behavior, either during the abusive relationship or in relation to alleged criminal behavior associated with the trauma of battering. In criminal cases in which a woman is accused of assaulting her abuser, the woman's psychological reactions to chronic or acute battering during the period preceding or during the assault may so impair mental capacity as to support a defense of insanity: the claim that a battered woman's mental condition impaired her capacity to such an extent that either she did not understand the nature and consequences of what she was doing, or she did not understand that what she was doing was wrong.⁴⁵ Similarly, traumatic psychological reactions can explain some puzzling patterns of behavior following assaults that may create an impression of culpability, such as an inability to remember events and their sequence, the absence of emotional reactions to the events, hostile or angry reactions, or a wish to be punished for the assault.

A woman's mental state during an assault on her abuser can be determined by her immediate intense reaction to perceived danger or by posttraumatic reactions to prior trauma. Traumatic stress reactions are initiated when an

individual's normal coping processes are overwhelmed during exposure to events that threaten physical harm or an individual's life, psychic identity, or integrity. Traumatic stress reactions can be initiated by such threats to self or valued others. Traumatic stress responses during traumatic events can include fear or terror, dissociation, and amnesia. Altered mental states and dysfunctional behavior can continue in the aftermath of exposure to traumatic events as posttraumatic stress reactions. Chronic forms of posttraumatic stress reactions may meet the criteria for the psychiatric diagnosis of posttraumatic stress disorder,⁴⁶ the symptoms of which include persistent reexperiencing of the traumatic events in such forms as flashbacks, distressing dreams, or reenactments of the traumatic events; persistent avoiding of stimuli associated with the traumatic event and/or a numbing of general responsiveness; and persistent symptoms of heightened physiological arousal as manifested in, for example, hypervigilance, irritability, or sleep difficulties.⁴⁷

As described briefly in the preceding section, a battered woman's perception of danger in certain circumstances can reflect previous experience of psychic trauma. Thus, when a battered woman suffers from posttraumatic stress disorder based on previous violence in either a current or former relationship, she may experience a new situation as dangerous due to reexperiencing prior trauma through flashbacks and similar psychological reactions. In this example, the battered woman's experience of fear is genuine. However, it is based not on the objective reality of the current situation but, rather, on her psychological reaction, triggered by an event similar to or symbolic of a previously traumatic (e.g., violent) experience.⁴⁸ In some cases, the triggering process may occur upon awakening or while intoxicated.⁴⁹ Consider an example where, on a prior occasion, a battered woman had been severely beaten by her husband following an argument about her work. At some later point when her husband begins to talk about her work, the woman may experience the situation, specifically the fear, as though the beating was recurring. In this example, the fear may be due not to any actual danger of the moment but, rather, to a triggering of fear that originated from previous danger or harm. This situation must be distinguished from the more common one described earlier in which the battered woman's perception of danger is based on her ability to detect cues in her partner's behavior that signal actual impending danger. Similarly, physiological *hyperarousal*, which can be manifested as hypervigilance for signs of danger in the environment, physical exhaustion and psychic confusion from sleep deprivation, and paranoid states, can affect her perception of events or her ability to cope with perceived threats.

In criminal proceedings in which a woman is accused of assaulting her abuser, posttraumatic psychological reactions and accompanying behavioral responses can affect the woman's demeanor and response to the offense and her ability to aid in her defense. Such reactions and behavior can include nightmares and flashbacks, avoidance of thoughts and feelings associated with the trauma, difficulty with concentration or memory, sleep disturbance, depression, low self-esteem, suicidal thoughts, anxiety, dissociation, anger or irritability, somatic or health problems, social withdrawal, and substance abuse.⁵⁰ Thus, presence of a posttraumatic stress reaction may explain a battered woman's apparent lack of, or atypical, emotion when testifying or talking about her experience with violence. In some cases, the battered woman may report these events as though she has no feeling or emotion related to them, as if on "automatic pilot." The posttraumatic psychological response of dissociation, or the separation of feelings about an event from the knowledge of it, can account for this behavior. In other cases, a woman's flat affect may be explained by attempts to avoid thinking or experiencing emotions associated with her traumatic experiences. In other instances yet, the battered woman may talk about her battering experience with anger or hostility. This behavior may be misinterpreted to suggest that she is an aggressor or, at least, an unlikely victim. This explanation fails to account for the normal reaction of anger as part of the psychological sequelae to the experience of a traumatic event.⁵¹ In fact, it can be an indication of progress in the health process following victimization when a battered woman recognizes her anger at her partner for his violent behavior toward her.⁵²

Some women are unable to remember traumatic aspects of the battering or their actions during such episodes even when they want to, due, in part, to a dissociative amnesia resulting from exposure to violence⁵³ or even to neurological damage associated with head injuries resulting from the battering. Therefore, they are unable to participate effectively in their own defense. In other cases, posttraumatic guilt, shame, or depression may seriously weaken a woman's desire to avoid punishment for the assault.

Although a framework for describing negative psychological consequences of battering that focuses on traumatic stress reactions may explain many of the behavioral and psychological responses of battered women, especially those who have experienced chronic and severe violence, it should be emphasized that a wide range of other responses may be involved. Many battered women have the personal resources to cope with their battering experience, ensure eventual safety for themselves and their children, and function with minimal mental health

problems. Another common mental health outcome of battering is acute or chronic depression.^{s4} In many cases, symptoms of depression (or of many other mental health problems experienced by battered women) will be maintained during the battering relationship but will quickly or gradually remit after the woman has been able to terminate the abusive relationship.^{s5} It is also often the case that mental health problems will emerge after termination of an abusive relationship due to stress (e.g., serious loss of income from leaving the relationship, locating employment and child care, and lack of an intimate relationship) associated with establishing an independent life for the woman and any children.

Offering evidence of posttraumatic stress reactions or other mental health problems or disorders as an explanation for the reactions or behavior of a particular battered woman, of course, requires that an individual, face-to-face evaluation be made by a qualified expert. Possible clinical diagnoses relevant to diminished mental capacity that, if sufficiently serious, have been associated with battering include anxiety disorders (including PTSD and acute stress disorder (ASD)), dissociative disorders, brief psychotic disorder, disorders of extreme stress not otherwise specified (DESNOS), depressive disorders, and substance-related disorders.⁵⁶ Of course, symptoms of these disorders may exist prior to the traumatic experience and, therefore, are not caused by it. However, preexisting disorders may be exacerbated by the traumatic experience of violence.

Behavioral Patterns of Victims of Domestic Battering

One consequence of the negative psychological and social sequelae to battering is that victims sometimes engage in patterns of behavior that may be misinterpreted if not considered within the context of a battering relationship. Among such behavior patterns are continued involvement in an abusive relationship, use of physical aggression toward an abuser, and lack of cooperation in the prosecution of an abuser. These behaviors may be misinterpreted in legal proceedings as indicating that the alleged abuse was not serious or that the abused woman is primarily or partly responsible for the abusive behavior that occurred.

Continued involvement in an abusive relationship

A frequently raised issue in legal proceedings is why a battered woman did not terminate an allegedly abusive relationship or, if she did leave, why she returned to the abuser. An implication that may be drawn is that the abusiveness of the relationship is being exaggerated by the victim, as demonstrated by her failure to terminate the relationship. A number of factors or obstacles make terminating an abusive relationship difficult. Major factors addressed here include a lack of economic and other tangible resources, fear of retaliation, and emotional attachment. Other factors include the desire to provide children with a father in the home, shame and embarrassment, and denial of the severity of abuse.

Economic Factors. The lack of economic and other tangible resources makes leaving or staying away difficult for some battered women.⁵⁷ Without money, transportation, shelter, child care, and a source of income or support, a woman leaving an abusive relationship has no means of providing for herself and her children. Without these resources, she may risk losing custody of her children to the batterer or some other family member with more adequate means. Resources, such as shelters and advocacy services, to aid battered women in leaving abusive relationships and establishing independent households are severely limited in most communities throughout the country.

Separation Abuse and Fear of Retaliation. Another reason that may keep battered women from leaving abusive relationships has been termed "separation abuse"⁵⁸--retaliation for a woman's efforts to separate from the abuser or to end the relationship. The battered woman may fear retaliation through harm to herself, her children, other family members, friends, or coworkers. Even when a battered woman is able to secure safety for herself, she may not be able to do the same for parents or coworkers; when the batterer is unable to attain access to the battered woman, he may turn to other important people in her life. When battered women are killed, they are more likely than not to be separated from their batterers at the time of death.⁵⁹ Jealousy and possessiveness on the part of the batterer are common in domestic homicides.⁶⁰ Thus, a battered woman's fear that her abusive partner will escalate his violence toward her at the point she attempts to separate from or end the relationship with him is validated, generally, by homicide statistics.⁶¹

A battered woman may fear retaliation through the batterer's threat to seek custody of her children or to keep them from her by kidnapping or other means. It has been shown that batterers seek custody at higher rates and are

awarded custody no less often than nonbatterers.⁶ There is often no more powerful obstacle to terminating an abusive relationship than when a woman faces the possibility that her children will be taken from her either through custody decisions that favor the batterer, kidnapping, or homicide. A threat that the batterer will continue his coercion of the battered woman through manipulation of the courts in custody battles and other litigation can represent a significant barrier to terminating a violent relationship.

Emotional Attachment. Emotional attachment is yet another significant factor in explaining why battered women are often reluctant to leave an abusive relationship. In spite of past violence, some women hope that their abusive partner's violence will cease, much in the way that marital partners maintain hope that difficulties in a troubled marriage will be resolved. For battered women, the hope is often built on the batterer's apologies, promises, kindnesses, and gifts during the contrite phase of the cycle of violence.⁶³ Another explanation for a battered woman's emotional attachment to an abusive partner is based on traumatic bonding,⁶⁴ a process similar to that which occurs in captive prisoners of war or hostage victims. In traumatic bonding, a battered woman who experiences chronic and escalating violence can come to see the batterer as all-powerful, on the one hand, and to believe that she cannot survive without him, on the other.

Understanding these and other obstacles to leaving or staying away from a battering relationship assists the factfinder in considering the context of a battered woman's efforts to resist, escape, and cope with a violent relationship. Without an appreciation of this context, the factfinder's deliberations may rest on faulty assumptions, for example, that a woman who remains in an alleged abusive relationship has exaggerated or lied about the fact of violence.

Victim's use of physical aggression toward the abuser Stereotypes and misconceptions about battered women interfere with the factfinder's ability to consider relevant issues in a criminal case involving domestic violence.⁶⁵ One common stereotype is the view that battered women are passive or helpless, that they do not call the police, fight back, or actively resist the violence against them. Although early observations portrayed battered women as passive and suffering from learned helplessness,⁶⁶ more recent work documents that many battered women engage in active efforts to resist, avoid, escape, and stop the violence against them.⁶⁷

A recent Bureau of Justice Statistics study⁶⁸ reported that 40 percent of battered women fought back physically, and another 40 percent fought back verbally. Results from other studies support the conclusion that it is not uncommon for battered women to resist the batterer's violent behavior.⁶⁹ However, battered women's efforts to protect themselves have been shown to make the situation worse at times, escalating the batterer's violent behavior and increasing the odds of injury to the victim.⁷⁰ Thus, evidence of a battered woman's use of physical or verbal aggression does not necessarily imply that she was the primary aggressor or that battering was mutual.

The National Crime Victimization Survey found that more than 50 percent of women in the interviewed sample who had been assaulted by an intimate partner had reported at least one assault to the police,⁷¹ although police response to domestic violence (as opposed to stranger violence) is slower and less likely to result in a written report or a search for evidence.⁷² Many battered women, however, are reluctant to call police based on concerns about racial or ethnic discrimination against their male partners by police or court systems. Further, social norms maintaining that violence in the home is a private matter⁷³ are also obstacles to calling the police.

Thus, it should not be assumed that a battered woman who has remained in an abusive relationship has been passive or helpless in that situation. Rather, the battered woman's efforts to respond to the violence against her and her children in the past and the outcome of those efforts⁷⁴ should be examined in a criminal case involving a battered woman. However, based on a number of factors outside of the battered woman's control (e.g., police response, court decisions regarding custody and visitation, economic resources), and, in spite of the battered woman's previous efforts, the threat of violence may continue or even escalate.

Battered women actively respond to violence and abuse in many other ways, both during an ongoing assault and subsequent to it. These include telling family or friends about the violence, fleeing from the batterer, legally separating and divorcing, seeking shelter residence, filing for civil protection orders, complying with the batterer's demands, hiding from the batterer, and others.⁷⁵ Ironically, maintaining contact with the batterer, in order to minimize or more accurately gauge the level of danger, is a strategy employed by some battered women. This type

of information can inform the factfinder's analysis about a particular battered woman's response to violence and abuse in the criminal case at hand.

Lack of cooperation in prosecuting the abuser

Battered women may recant previous reports or testimony about the batterer's violence or may not cooperate with a district attorney in prosecuting a batterer. Various factors may explain this behavior, including the victim's psychological reactions to violence. For example, fear of the batterer can explain why a battered woman may attempt to "protect" him from negative legal consequences of his violent behavior. Even when a battered woman has called the police, she may attempt to avoid the batterer's retaliation by refusing to pursue criminal charges or to testify against him at trial.

Another explanation of a battered woman's reluctance or refusal to be involved in the prosecution derives from her avoidance reactions associated with PTSD. She may miss appointments to talk with the prosecutor or fail to appear in court. By avoiding having to remember or to talk about prior violence, the battered woman may also effectively postpone experiencing painful and distressing emotions.

Critique of "Battered Woman Syndrome"

Evidence and testimony in criminal cases concerning battering and its effects have often been presented in an attempt to establish that the behavior of an alleged victim falls within the parameters of the "battered woman syndrome."⁷⁶ However, the term "battered woman syndrome" does not adequately reflect the breadth or nature of knowledge concerning battering and its effects.⁷⁷ The scientific and clinical literature offers a large body of information relevant to various issues considered by the factfinder in criminal cases involving battered women, and the term "battered woman syndrome" has been used to signal a shorthand reference to that body of knowledge. However, use of the term "battered woman syndrome," in the context of the knowledge developed within the past 20 years, is imprecise and, therefore, misleading. The knowledge pertaining to battering and its effects does not rest on a singular construct, as the term "battered woman syndrome" implies. Thus, the term "battered woman syndrome" is not adequate to refer to the scientific and clinical knowledge concerning battering and its effects germane to criminal cases involving battered women.

There is no "battered woman defense,"⁷⁸ *per se*. Offering evidence of the effects of battering does not, in itself, constitute a legal defense.⁷⁹ That is, the question of "battered woman syndrome" is not the ultimate issue in a criminal case involving a battered woman. Rather, testimony about battering and its effects is offered to assist factfinders in their determination of the ultimate issues, which are case-specific and are reflected in questions such as:

- Did a battered woman reasonably believe she was in danger of harm when she assaulted her abuser?
- Did a batterer threaten or coerce the battered woman into participating unwillingly in a crime?

Following is a discussion of the problems that exist with use of the term "battered woman syndrome" in criminal cases involving battered women.

As Conceptualized in the late 1970s, "battered woman syndrome" encompassed a condition of "learned helplessness" in the battered woman that was hypothesized to explain her inability to protect herself against the batterer's violence.⁸⁰ Application of the learned helplessness theory to situations involving battered women who face actual danger has been challenged as a misinterpretation of the original learned helplessness theory.⁸¹ Further, as discussed above, empirical evidence contradicts the view of battered women as helpless or passive victims; rather, it supports the idea that battered women continue to make active efforts to resist, escape, or avoid violence.⁸²

Another early formulation of "battered woman syndrome" incorporated the cycle of violence theory.⁸³ The cyclical pattern of the batterer's behavior, including phases of tension building, acute battering, and contrition, was cited to explain women's reluctance to leave battering relationships. Where the cycle of violence is identified within a particular battering relationship, it may be useful to explain why, in spite of repeated occurrences of violence, the battered woman remained in, or returned to, an abusive relationship. Alternatively, it may be useful to explain why she was able to recognize the inevitability of a subsequent violent episode. Nevertheless, the scientific literature does not support a universal "cycle-of-violence" pattern in battering relationships, although this pattern is recognized

in some relationships.⁸⁴ As discussed previously, some battered women report violence that occurs suddenly with no observable tension-building phase prior to a beating. Nor are all battering relationships characterized by a contrite, loving phase following a beating. Some women report no history of apologies or acts of kindness, while others report that, over time, these behaviors following a beating have diminished. Perhaps most importantly, a "cycle of violence" is not necessary to define a battering relationship or explain why a battered woman remains within it.

More recently, "battered woman syndrome" has been construed as indicating that a battered woman suffers from PTSD as a reaction to her experience of physical violence.⁸⁵ A diagnosis of PTSD requires a specific constellation of symptoms. These include intrusion of the traumatic memory into the individual's consciousness, avoidance of thoughts and feelings associated with the traumatic experience or numbing of general responsiveness, and symptoms characterized by increased arousal (e.g., difficulty sleeping or concentrating, hypervigilance). Prevalence studies of battered women have found the rates of PTSD range from 31 to 84 percent.⁸⁶ Diagnosed in a particular case, PTSD may be relevant to a number of issues in that case.⁸⁷ For example, indication that the battered woman suffered PTSD at the time of an alleged criminal act may help the factfinder to understand her state of mind. However, nothing in the scholarly literature suggests that PTSD is necessary, generally, to establish the relevance of battering and its effects to the various elements of criminal cases involving battered women.

Restricting the definition of "battered woman syndrome" to PTSD is problematic. Within the last decade, the scientific and clinical literature has documented a broad range of emotional, cognitive, physiological, and behavioral sequelae to traumatic events such as battering. Our understanding of the complexity and variability of traumatic response to violence continues to increase rapidly.⁸⁸ Any of these reactions to trauma, when characteristic of the battered woman, may be relevant to the factfinder in considering the various issues in the case. Limiting the scope of consideration of the mental health consequences of battering to PTSD alone excludes other potentially relevant and important information necessary for the factfinders in their deliberations.

Finally, the term "battered woman syndrome" evokes a stereotypic image of battered women as pathological or maladjusted.⁸⁹ Accordingly, expert testimony can mistakenly suggest to the factfinder that it is a battered woman's aberrant psychological condition that explains, for example, her acting in self-defense, committing a crime under duress, or recanting her testimony about her partner's battering. While psychological trauma associated with battering may be central to this explanation by the expert witness, the battered woman's greater acuity in detecting danger from an abusive partner, in some cases, is the more salient factor. Generally, the term "battered woman syndrome" falls to incorporate the social and psychological context necessary to "see what she sees and know what she knows" in considering the defendant's actions.

In sum, "battered woman syndrome" is an inadequate term to represent the scientific and clinical knowledge concerning battering and its effects. Nevertheless, evidence and testimony on battering and its effects serves an important function in assisting the factfinder to consider the context of a battered woman's actions.

Expert Testimony in Cases Involving Battered Women

Expert testimony on battering and its effects is introduced in criminal cases involving battered women by both defense counsel and prosecuting attorneys. It is used by defense counsel to support various types of criminal defenses including self-defense, duress, and insanity. Expert witness testimony may also be used by the defense in conjunction with the sentencing phases of a trial for purposes of mitigation. Prosecutors use expert testimony in domestic violence prosecution cases to explain such matters as the battered victim's recantation or lack of cooperation with the prosecution. Further, both the prosecution and defense use expert witness testimony to provide an explanation for what may be misconceptions about battered women, battering, and its effects.⁹⁰ It is not the role of the expert witness to determine the ultimate issues (for example, whether it was reasonable for the battered woman to have held the perception that she was in danger). However, expert testimony is offered to assist in the determination of these issues.

A general framework for admissibility of expert testimony in criminal cases is provided in Rule 702 of the congressionally enacted Federal Rules of Evidence:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert

by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

It follows, therefore, that the framework for expert testimony in criminal cases involving battered women rests on the "scientific, technical, and other specialized knowledge base" concerning battering and its effects. Thus, information based on the expert witness' "knowledge, skill, experience, training, or education" provides the basis for his or her expert testimony.

A 1977 Supreme Court of Washington decision, *State v. Wanrow*,⁹¹ ruled in a self-defense case involving a woman defendant that she was "entitled to have the jury consider her actions in the light of her own perceptions of the situation."⁹² Counsel successfully argued that the jury instructions offered at trial did not take into account the woman's perspective, thereby failing to correctly apply the existing standard of self-defense: "requiring the jury to consider the defendant's action 'seeing what (s)he sees and knowing what (s)he knows,' taking into account all the circumstances as (s)he knew them at the time."⁹³

In addition to testimony offered by the defendant, evidence concerning a battered woman's perceptions and the relevant circumstances in a situation in which she has been charged with a crime can be introduced through expert testimony. Such expert testimony has been introduced in criminal cases involving battered women since the late 1970s.⁹⁴ Based on a recent analysis, "expert testimony on battering and its effects is admissible, at least to some degree, or has been admitted (without any discussion of the standards for admissibility) in every state..."⁹⁵ Expert testimony in criminal cases involving battered women was developed initially to explain "the common experiences of, and the impact of repeated abuse on, battered women..."⁹⁶ That is, expert testimony is offered to show the trier of fact the context of a battered woman's actions.⁹⁷ This type of expert testimony, generally, has been referred to as social framework testimony: "employing social science research...to provide a social and psychological context in which the trier can understand and evaluate claims about the ultimate fact."⁹⁸

Expert testimony offered in cases involving battered women is either general or case-specific. A number of considerations influence which form of expert testimony is offered in a particular case. These include the facts of the case, case law or state statutes governing expert evaluation and testimony, available resources, and case strategy. General testimony is based on an understanding of the scientific and clinical,⁹⁹ knowledge about domestic violence and its effects on battered women. In this type of testimony, there is no attempt to form opinions or conclusions related to a specific case.

Case-specific testimony provides information about a particular battered woman and the context in which domestic violence occurred; it places the unique facts of a specific case in a framework of what is known in the literature about battering and its effects. Case-specific testimony, or conclusions about a particular battered woman, requires a face-to-face evaluation of the battered woman, in addition to a review of relevant documents and other information. A suggested approach to case-specific expert testimony about battering and its effects is patterned after a clinical hypothesis-testing model of assessment.¹⁰⁰ Based on consultation with the attorney, an expert can generate a set of questions, or hypotheses, related to battering and/or its effects relevant to a particular case. The expert can then analyze data pertaining to the particular battered woman, relying on all the information obtained in the evaluation process. This information is later distilled either to support or refute the questions to which the expert will be asked to respond. This approach fits a model of clinical assessment routinely used in empirically based clinical practice.¹⁰² Furthermore, the process is straightforward and makes explicit the relevant questions for inquiry by the expert witness.

Conclusions

The body of relevant scientific and clinical knowledge in the scholarly literature strongly supports the validity of considering battering as a factor in the reactions and behavior of victims of domestic violence. Evidence and testimony about battering and its effects provide information germane to factfinders' deliberations in criminal cases involving battered women. There exists an extensive body of scientific and specialized knowledge derived from the disciplines of the social, behavioral, and health sciences, that contributes to an understanding of domestic violence and traumatic stress reactions.

Although the term "battered woman syndrome" is inadequate to characterize either the reactions or behaviors of battered women, much progress has been made under this rubric toward the admissibility of battering and its effects

as considerations in criminal trials. A more accurate representation of battering and its effects includes a range of issues on the nature and dynamics of battering, the effects of violence, battered women's responses to violence, and the social and psychological context in which domestic violence occurs. These issues are relevant in charging, trying, and sentencing battered women in criminal cases involving battering and in prosecuting batterers.

Expert testimony on battering and its effects is supported by an extensive body of scientific knowledge on the dynamics and consequences of domestic violence; this knowledge base will continue to expand with advances in the fields of social, behavioral, and health sciences. An effective framework for expert testimony must permit both general and specific application of research findings to cases involving battered women.

Notes

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23. See Campbell, J.C., Miller, P., Cardwell, M.M., and Belknap, R.A. (1994). Relationship status of battered women over time. *Journal of Family Violence*, 9(2), 99-111.

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34. *Id.*
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36. See Kemp, A., Green, B.L., Hovanitz, C., and Rawlings, E.I. (1995). Incidence and correlates of posttraumatic stress disorder in battered women: Shelter and community samples. *Journal of Interpersonal Violence*, 10(1), 43-55; Kemp, A., Fawling, E.I., and Green, B. (1991). Posttraumatic stress disorder in battered women: A shelter sample. *Journal of Traumatic Stress*, 4(1), 137-148; Riggs, D., Rothbaum, B.O., and Foa, E. (1995). A prospective examination of symptoms of posttraumatic stress disorder in victims of nonsexual assault. *Journal of Interpersonal Violence*, 10(2), 201-214; Saunders, D. (1994). Posttraumatic stress symptoms profiles of battered women: A comparison of surveys in two settings. *Violence and Victims*, 9(1), 31-44.
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64. Dutton, at supra note 28; Graham and Rawlings, at supra note 28.
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71. Bachman, at supra note 68; Gondolf and Fisher, at supra note 67.
72. Bachman, at supra note 68.
73. Bachman, at supra note 68.

74. Dutton, at supra note 69.
75. Gondolf and Fisher, at supra note 67; Bowker, at supra note 67.
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85. American Psychiatric Association, at supra note 30.
86. Kemp et al., at supra note 36; Saunders, D.C. (1994). Posttraumatic stress symptom profiles of battered women: A comparison of survivors in two settings. *Violence and Victims*, 9(1), 3144; Astin, Lawrence, and Foy (1993). Posttraumatic stress disorder among battered women: Risk and resiliency factors. *Violence and Victims*, 8(1), 17-28.
87. See Dutton, M.A., and Goodman, L. (1994). Posttraumatic stress disorder among battered women: Analysis of legal implications. *Behavioral Sciences and the Law*, 12, 215-234. for a discussion of PTSD as it applies to forensic cases involving battered women.
88. See *Daubert v. Merrill Dow Pharmaceutical, Inc.*, 113 S. Ct. 2786 (1993): "scientific conclusions are subject to perpetual revision" at 16.
89. See Schneider at supra note 77 (1986 Law Reporter article); See P. Jenkins and B. Davidson (1990). Battered women in the criminal justice system: An analysis of gender stereotypes. *Behavioral Sciences and the Law*, 8, 171-180; See A. Browne (1987). *When battered women kill*. New York: The Free Press.
90. See Parish, at supra note 4, at 35 for a legal discussion of the scope and relevance of expert testimony.
91. 88 Wash. 2d 221, 559 P. 2d 548 (1977).
92. See E.M. Schneider and S.B. Jordan (1981). Representation of women who defend themselves in response to physical or sexual assault. In E. Bochnak (Ed.), *Women's self-defense cases*. Charlottesville, VA: The Michie Company, pp. 1-39.
93. *Id.* at 20.
94. See, for example, *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. Court of Appeals, 1979) which remanded a case to the trial court for reconsideration of the decision to exclude expert testimony. Also see Macpherson, S., Ridolfi, K., Sternberg, S., and D. Wiley (1981). Expert testimony. (Appendix G), In E. Bochnak (Ed.), *Women's self-defense cases: Theory and practice*. Charlottesville, VA: The Michie Company for list of 50 trial court cases involving expert testimony on the subject of battering. Also see L.E. Walker (1989). *Terrifying love: Why battered women kill and how society responds*. New York:

Harper and Row, Publishers for a discussion of a 1977 case involving a battered woman charged with homicide in which Dr. Walker testified as an expert witness.

95. Parrish, at supra note 4.
96. Schneider, at supra note 77, at 198.
97. Maguigan, at supra note 2.
98. See Vidmar, N., and Schuller, R.A. (1989). Juries and expert evidence: Social framework testimony. *Law and Contemporary Problems*, 133.
99. Specialized knowledge is that based on experience, training, or skill such as that acquired by a battered women's advocate or shelter worker, counselor, or law enforcement officer. Specialized knowledge is contrasted with scientific knowledge which is derived from scientific research.
100. Nelson, R.O., and Hayes, S.C. (1986). *Conceptual foundations of behavioral assessment*. New York: The Guilford Press; Bellack, A.S., and Hersen, M. (Eds.). (1988). *Behavioral assessment: A practical handbook*. New York: Pergamon Press.
101. In some cases, there may be too little information to generate answers to a particular hypothesis or question.
102. Nelson and Hayes, at supra note 98; Bellack and Hersen, at supra note 100.

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