



Update of the “Battered Woman Syndrome” Critique

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Battering and the effects of battering are complex phenomena, which often are not well understood by the lay public. In addition to physical injury, individuals who have experienced battering often confront an array of psychological issues that differ in both type and intensity. The effects of domestic violence vary according to the social and cultural contexts of individuals' lives and include differences in the pattern, onset, duration, and severity of abuse. Importantly, this context is also determined by institutional and social responses to the abuser and to the survivor of abuse and many other factors characteristic of both persons in an abusive relationship: level of social support, economic and other tangible resources, critical life experiences (e.g., prior trauma, violence history, developmental history), and cultural and ethnic factors (Dutton, 1996; Dutton, Kaltman, Goodman, Weinfurt, & Vankos, 2005; Heise, 1998).

Although individual women experience and respond to battering differently, a number of reactions are common among those who have been exposed to these traumatic events. “Battered woman syndrome” (BWS), a construct introduced in the 1970s by psychologist Lenore Walker, is sometimes used in an attempt to explain common experiences and behaviors of women who have been battered by their intimate partners (Walker, 1989; Walker, 2006). However, through more than three decades of accumulated empirical research, we have come to recognize major limitations in both the original and revised conceptualizations of BWS, as well as with the term itself (Osthoff & Maguigan, 2005). The use of BWS to describe the experience

of women who have been victimized by intimate partner violence or to explain their response to such violence and abuse is both misleading and potentially harmful. As currently defined, the construct of BWS has several important limitations: (1) BWS is often not relevant to the central issues before the court in a specific case, (2) BWS lacks a standard and validated definition, (3) BWS does not reflect current research findings necessary to adequately explain either the experience of individuals who have been battered or their behavior in response to battering, and (4) BWS can be unnecessarily stigmatizing (Biggers, 2005; Ferraro, 2003). This paper reviews the definition, evolution, and utilization of BWS in the courts, and offers a critique of its framework and its use.

What is Battered Woman Syndrome?

BWS is a term typically used to refer to women's experiences that result from being battered. It has evolved from a term used to describe a broad range of the victim's (e.g., learned helplessness) and abuser's (e.g., cycle of violence) behaviors to a mental health disorder describing symptoms experienced by an individual following traumatic exposure (e.g., Posttraumatic Stress Disorder, PTSD).

Learned Helplessness

Initially, BWS was conceptualized as “learned helplessness” (Walker, 1977), a condition originally conceptualized by Seligman and his colleagues (Miller & Seligman, 1975) to describe the failure of dogs to escape a punitive environment, even when

given the opportunity to do so. The theory was later used to explain depression in humans (Abramson, Seligman, & Teasdale, 1978). Walker (1977) applied the theory of learned helplessness to describe women's seeming lack of effort to leave or escape an abusive relationship or their failure or inability to take action to protect themselves and their children.

Seligman and colleagues (Peterson, Maier, & Seligman, 1993) have clearly refuted Walker's use of learned helplessness by stating that

In sum, we think the passivity observed among victims/survivors of domestic violence is a middling example of learned helplessness. Passivity is present, but it may well be instrumental. Cognitions of helplessness are present, as is a history of uncontrollability. But there may also be a history of explicit reinforcement for passivity. Taken together, these results do not constitute the best possible support for concluding that these women show learned helplessness (p. 239).

Seligman and colleagues further argue that passivity may be instrumental behavior that functions to minimize the risk of violence, instead of reflecting "learned helplessness" as it was originally conceptualized. Some women who have been battered may *appear* helpless or intentionally use "passive" behavior (e.g., giving in to demands) to stay safe. Indeed, research with low-income African-American women who have experienced domestic violence showed that, as violence toward women increased, they increased their use of both passive (placating) and active (resistance) strategies for dealing with the violence (Goodman, Dutton, Weinfurt, & Cook, 2003). Further, as Seligman suggested, women sometimes use strategies that may seem passive or tantamount to "doing nothing," but these may actually be active efforts to reduce the risk of violence and abuse to themselves and their children. Indeed, the intended and actual function of a particular strategy is understood only in the context of

the lives of the individual woman and her partner, as well as their relationship together.

Cycle of violence

Another early definition of BWS referred to the "cycle of violence" (Walker, 1984), a theory that describes the dynamics of the abuser's behavior, which is characterized in three stages: tension building, acute battering, and contrite loving. The theory suggests that the abuser keeps the survivor within his control largely by the contrite loving behaviors that follow even severe violence. There is little empirical evidence testing the cycle of violence theory. Walker's own early research showed that only some of the women interviewed in her study reported patterns of abuse consistent with this theory, with 65% of all cases reporting evidence of a tension-building phase and 58% of all cases reporting evidence of loving contrition afterward (Walker, 1984). Further, a recent study (Copel, 2006) of the patterns of abuse in a small sample of women with physical disabilities did not find a contrite loving phase in the aftermath of abuse.

Posttraumatic stress disorder

In an attempt to standardize criteria for BWS, Walker (1992) revised the definition to be synonymous with posttraumatic stress disorder (PTSD), a psychological condition which results from exposure to a traumatic event. Indeed, PTSD is described in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR; American Psychiatric Association, 2000). Many single instances of domestic violence, and certainly the cumulative pattern of violence and abuse over time, easily meet the DSM-IV-TR criteria of a *traumatic stressor*. These criteria are (1) events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or other and (2) intense fear, helplessness, or horror. The *symptoms* that defined PTSD include (1) intrusive symptoms (images, thoughts, perceptions, nightmares; distress at exposure to cues that symbolize or remind one of the traumatic event; physiological reactivity to exposure to internal or external cues that resemble

the traumatic event), (2) emotional numbing¹ (feeling detached or estranged, inability to recall important aspects of the trauma) and behavioral avoidance (efforts to avoid thoughts, feelings, conversations associated with the trauma and activities, places and people that arouse recollections of the trauma), and (3) hyperarousal (difficulty sleeping, anger and irritability, difficulty concentrating, hypervigilance, exaggerated startle response) (American Psychiatric Association, 2000). The psychometric validity of PTSD symptoms has been recently validated with women exposed to intimate partner violence (Krause, Kaltman, Goodman, & Dutton, 2007).

Walker again revised the definition of BWS in 2006 to include not only the three symptom clusters of PTSD (re-experiencing, numbing of responsiveness, hyperarousal), but also three additional criteria (disrupted interpersonal relationships, difficulties with body image/somatic concerns, and sexual and intimacy problems) (Walker, 2006). Many “associated features” (e.g., impaired ability to regulate emotion, dissociative symptoms, shame, feeling permanently damaged, hostility, social withdrawal, feeling constantly threatened, impaired relationships with others) often accompany PTSD, but these are not included in the criteria for its diagnosis. Walker has not provided a rationale for selecting a particular subset of these associated features and for including them as criteria for BWS.

During the 1980s, BWS was included in educational programs and materials of many domestic violence advocates, in trainings for lawyers and judges and was used by some therapists and counselors to describe the experiences of women exposed to domestic violence. Having a scientific-sounding term like BWS to describe what they learned from talking and working with women who had experienced domestic violence proved useful in some cases; it increased credibility with other professionals and the general public. However, as the field developed, more and more practitioners grew to understand the problems and limitations of using BWS; most stopped using the term. During the past 15 years, numerous articles and books have been published discussing the limitation of BWS (Ferraro, 2003; Ferraro, 2006; McMahon, 1999;

Schuller, Wells, Rzepa, & Klippenstine, 2004; Stark, 2007; USDOJ/DHHS, 1996). Instead, today many practitioners use the term “battering and its effects” to describe the experiences of women exposed to domestic violence (Osthoff & Maguigan, 2005). Even so, it is important to note that some experts and attorneys continue to utilize the term BWS in their work.

Use of BWS in Expert Testimony

Expert testimony about battering and its effects has been introduced in a wide range of criminal and civil cases. Most typically, it has been introduced by the defense in cases involving women who are criminally charged, especially women who have killed their abusers. It can also be offered by the prosecution in criminal cases, usually to explain why the survivor of a crime has recanted or is unwilling to participate in the prosecution, or to explain other behaviors that might be difficult for jurors to understand without the aid of expert testimony (e.g., why don't the survivors leave, why would a survivor return to an abuser, why did the survivor act emotionally unaffected right after a shooting). Expert testimony about battering and its effects has also been introduced in civil matters, such as child custody cases, marital dissolution, tort, or personal injury cases. Here we will focus more heavily on the use of the testimony in criminal cases, and more specifically in self-defense cases, although many of the issues described here are also applicable to other uses of expert testimony.

It is in the legal (rather than clinical) arena that BWS continues to be most firmly embedded and to receive the most attention. Indeed, the term BWS appears in some state statutes, as well as in numerous legal decisions. Even today, it is not uncommon to hear about cases that involve expert testimony on BWS. Notwithstanding widespread misconception, BWS is not a legal defense. Regrettably, even to this day, many myths persist about a specialized legal defense using the BWS. Osthoff and Maguigan (2005) outline five basic misconceptions related to the legal defense of women exposed to domestic violence. The most central misconception is that

defendants who have been battered invoke a separate “battered syndrome defense.” There is no special “battered women’s defense” or “battered woman syndrome defense” (Maguigin, 1991; USDOJ/DHHS, 1996). Other important misconceptions are that expert testimony is only about BWS and that it is based on an analysis of the victimization dynamic only, excluding information about women’s strengths, including responsibility (e.g., taking care of her children, providing economic resources to her family), agency (e.g., making decisions intended to protect herself and her children from violence and abuse), and capacity (e.g., competence to act independently and endurance to continue functioning in the face of great adversity).

Both expert and lay testimony about battering and the effects of battering may be useful in support of (but not to replace) already existing legal defenses, such as self-defense or duress when the defendant in a criminal case is a woman who has experienced domestic violence. Also, it may be offered to explain the defendant’s behavior to support a different criminal defense or defense theory other than self-defense or duress and/or to negate the specific intent element of a crime.

In criminal cases involving a woman who has experienced domestic violence as the defendant, it is necessary for jurors to understand *why* the defendant did what she did. The context of her behaviors – including her motivation – is essential for determining the ultimate issues in a criminal case. For example, a homicide can be ruled as murder if judged to be premeditated “cold-blooded” intent to kill, or it can be ruled as justifiable if understood as an act of self-defense from a “reasonable” perception of danger. When the defendant is a woman who has been battered, what she did (and in some cases, did not do) is not always understandable to the lay individuals on the jury. Judges and jurors can hold myths and misconceptions, which may result from their limited experiences with women who have been battered, and bring these misunderstandings and biases to the bench or jury box. Without information to better understand the defendant’s experiences and behaviors, judges and jurors often inaccurately evaluate and unfairly judge the defendant. For

example, they may not understand why the defendant did not “simply” leave the batterer, assuming that leaving would have made the woman safe. As a result, they may blame the woman for the abuse she experiences. They may believe that unless the defendant had previously reported the abuse, she is not to be believed when she later asserts self-defense against an abusive partner. It is essential that judges and jurors have the information necessary to fairly understand a defendant’s situation, especially when jurors are asked to put themselves “in the defendant’s shoes.”

Thus, expert testimony can be useful to aid the factfinder in determining the “ultimate issue” (e.g., in a self-defense case, reasonable perception of immediate danger), as well as to educate the factfinder about common myths and misconceptions (Maguigin, 1991). Expert testimony may cover a wide range of topics, such as domestic violence and abuse, characteristics of abusers, the emotional and physical effects of violence and abuse on women and children exposed to domestic violence, women’s efforts to protect herself and her children, women’s use of strategies to cope with domestic violence, including the use and responsiveness of community resources, the impact of domestic violence on economic stability, employment, and social and family relationships and the influence of contextual factors (e.g., race and ethnicity, economic status, prior trauma history, alcohol and substance abuse, physical and mental health status) on battering and the effects of battering.

What is Wrong with Battered Woman Syndrome?

Even though expert witness testimony can be useful in cases involving domestic violence, there are serious limitations of using BWS as the framework for this work. Where expert testimony is used to explain an individual’s state of mind or behavior, to support a particular defense, or to bolster credibility (when allowed) in situations that might otherwise seem unreasonable or unlikely (Parish, 1996), a packaged “syndrome” can be convenient and have the perceived legitimacy of a “diagnosis” (Schuller

& Hastings, 1996). A number of factors, however, make this package particularly problematic. The most fundamental of these concerns is the lack of relevance of BWS to the issues before the court. A second concern is the lack of a standard and validated definition of BWS with which to guide experts' use in evaluation and testimony. Third, BWS does not adequately incorporate the vast scientific literature on victims' response to battering. Finally, BWS suggests a pathology that can stigmatize the defendant unnecessarily and inaccurately.

BWS may not be relevant to the issues before the criminal court.

An initial limitation of BWS testimony is that it may not be relevant to the specific issues before the court in a particular case; that is, PTSD (whether referred to as BWS or not) simply may not be relevant for those issues which require explanation by the expert witness.

For example, BWS may not be helpful for explaining why a woman returns to an abuser after separating or fails to call police. She may be reluctant to tell others about the abuse. Expert witness testimony may be needed to challenge mischaracterizations when a woman is well-educated, has access to economic resources, or has specialized training (e.g., police officer) since a judge or jury often does not understand how such a woman could not simply leave or protect herself against an abusive partner. BWS is not particularly relevant for these issues. A woman who appears unemotional right after or right before shooting her abusive husband may be thought merely to have killed in "cold blood." PTSD may be relevant here, but dissociation as a part of acute stress disorder may be even more accurate. Certain experiences that an abused woman may have had (e.g., substance abuse history, prostitution, criminal history) can easily lend themselves to victim blaming. Expert witness testimony may be required to understand how these experiences do not necessarily negate the reality that the woman may have been abused by her partner, or that she perceived her partner's behavior as an imminent threat to her safety. These particular

experiences may make it even more difficult for a woman who is being abused to seek help and effectively protect herself and her children from abuse. Typically, BWS is not adequate or perhaps even relevant to these issues.

According to Federal Rule 702, "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" (Federal Rule of Evidence, 2009). There is a great deal of scientific literature that can be brought to bear and is potentially helpful to understand the evidence and to determine facts in issue in domestic violence cases. However, BWS is simply insufficient to this task.

First and foremost, an expert witness needs to know the relevant questions for which expert testimony is needed. Too often an attorney will begin with one question: "Does she have BWS?" without considering the particular relevance of this question to the defense theory or considering how the defendant's particular abusive history is specifically relevant to her conduct. The goal of the expert testimony in most cases is not to "prove" that the defendant has been battered. Rather an expert can help the jury understand better the defendant's experience of abuse and why those experiences are legally relevant. For example, in self-defense cases, perhaps the most relevant question is, "What factors would inform the court to better evaluate the defendant's assertion that she was in immediate danger?" *When the expert focuses his or her evaluation on this question, the result is an analysis of those factors that support or fail to support the reasonableness of the defendant's perception of immediate danger, given the circumstances.*

Since the expert cannot testify to the ultimate issue, the expert offers to the court an analysis that allows the trier of fact to make a more informed decision about these "ultimate" issues. BWS is neither necessary nor sufficient to explain the defendants' perception of immediate danger. Relying on

BWS as the primary explanation for the defendant's perception of danger offers the untenable formulation that only when the defendant has a clinical diagnosis of PTSD is her perception of danger reasonable. BWS is simply not a sufficient explanation for this central question or most other questions typically posed to the expert witness in criminal cases involving a woman who has experienced domestic violence

BWS lacks a standard definition and evidence of scientific validity.

BWS – even as currently conceptualized – lacks both a standard definition and evidence of scientific validity for many of the purposes for which it is used. As stated, BWS is not recognized in the DSM-IV-TR. Although the International Classification of Diseases, 10th Version (ICD-10; World Health Organization, 1993), classifies “battered spouse syndrome” and “effects of abuse of an adult” as maltreatment syndromes, these do little to clarify the definition for use in legal matters. Although numerous articles have been written about BWS, few include validation through empirical research. The term BWS does appear in several state laws, but its definition is not consistent from state to state when a definition is actually included in the language of the statute, which often it is not.

If it is argued that BWS is really just PTSD, then BWS is entirely redundant and there is no need for a separate term. Clear and well-validated criteria for a PTSD diagnosis exist. Expert testimony relying primarily on PTSD can – and is – used by expert witnesses in court. However, it is only appropriate to do so when PTSD is relevant for explaining a particular issue before the court that might not otherwise be well understood by the jury or judge. PTSD might well explain important issues before the court in *some* cases. An example is when a woman's perception of danger is explained by an intrusive recollection or subjective experience of “reliving” *prior* domestic violence that may be “triggered” by events leading to the criminal act (e.g., shooting). In this example, the focus is on the woman's internal psychological state (e.g., PTSD), not on external events to explain the perception of threat posed by

the abuser's behavior. While this explanation “fits” some battered women who might – due to PTSD – experience objectively nonthreatening events as threatening and might respond in self-defense, it fails to account for many women's accurate understanding of unique danger cues learned over repeated incidents of violence and abuse from their abusive partners.

Indeed, there is a large scientific literature pertaining to PTSD, including empirical research, theoretical and conceptual articles, and clinical case studies. And, a significant portion of this research includes victims of domestic violence and sexual assault, as well as other types of traumatic events, such as child abuse, vehicle accidents, terrorism, and combat. At this point in time, the scientific community does not distinguish PTSD arising from one type of trauma vs. another. When the diagnostic criteria are met, a PTSD diagnosis is appropriate regardless of trauma type. However, clear scientific evidence for PTSD does not translate to support of the construct of BWS. There is no “type” of PTSD called BWS.

The inclusion of associated features in Walker's 2006 revised definition of BWS further contributes to the lack of standardization in its definition. The reliability of several of the measurement scales used in Walker's study (2006) to “operationalize” BWS using these additional indicators of BWS is unacceptably low. Further, no threshold level of these additional criteria for defining BWS was described. For example, how much or what kind of body image distortion is required to meet criterion for BWS? Does sexual dissatisfaction refer to an abusive partner or someone else and how much dissatisfaction is required to be considered BWS? Again, how much loss of the perception of power and control is necessary? Regrettably, Walker's newer definition has clouded the criteria for assessing BWS even more than had previously been the case. Perhaps more importantly, these issues really have little relevance for many issues raised in criminal cases?

Without standard and validated criteria, we do not have a way to determine with reliability who meets criteria for BWS and who does not. This is a

problem in the legal context because, without a scientifically accepted definition or standard criteria, the use of BWS can fail to meet basic standards of scientific reliability and, therefore, may be inadmissible as expert testimony in court under the scientific reliability prong according to *Daubert v. Merrill Dow Pharmaceuticals* (1993). In sum, because it is not clear what is meant when we say BWS and because we do not have a clear way of measuring the condition, BWS is not even a good shorthand term for explaining the experience of women who have been abused by their intimate partners. Thus, the lack of a clear definition of BWS makes it difficult for jurors and judges, attorneys, parties to a legal case and the lay public, to understand even what is being referred to when the term BWS is used.

BWS does not adequately incorporate current research.

The state of knowledge concerning battering and its effects has increased dramatically in the past three decades since BWS was first introduced. Simply, scientific knowledge continues to expand on an ongoing basis as new research is completed. A qualified expert witness is compelled to rely on the most rigorous available scientific evidence that is pertinent to an evaluation of a defendant and providing expert testimony.

When an expert witness is called to testify in a legal matter involving battering and its effects, he or she is required to have command of the current scientific literature as the foundation for sound theoretically- and empirically-based testimony. It is clear from the current scientific literature what advocates have known, which is that no single profile adequately characterizes women's experiences following domestic violence. BWS is often used to describe victims as if they all experience similar effects from having been exposed to battering and all respond in the same way. For example, we know that patterns of violence and abuse vary across women, as does their desire to remain in relationships, the extent to which they stay or leave (Bell, Goodman, & Dutton, 2007), and the extent of traumatic effects (Dutton et al., 2005). BWS is often

used as if it were a standard against which to determine whether a particular woman is justified in her actions against an abusive partner, is credible as a woman claiming to have experienced domestic violence, or deserves consideration in some other way. While we know that there is a range of common reactions to being battered by an intimate partner (Dutton, Hohnacker, Halle, & Burghardt, 1994), how an individual woman experiences or reacts to being battered will vary depending on her psychological, social, cognitive and practical circumstances. Given this reality, it is not appropriate to describe "the profile of a battered woman" or to describe the effects of battering as a "syndrome."

The expert witness must rely on the continually expanding body of existing scientific literature to develop a formulation in each case about factors that address pertinent questions posed to the expert. This body of scientific knowledge, which provides relevant information for the issues before the court, is extensive. A few of these research areas include primary stress appraisal ("How do victims evaluate the seriousness of actual and threatened violence and abuse?"), secondary stress appraisal ("What options do abused victims perceive that they have to deal with violence and abuse?"), coping ("What do victims actually do to deal with violence and abuse?"; "Why don't victims leave or do other things that some others might expect?"), traumatic stress reactions ("What are the traumatic and related mental health effects of being exposed to violence and abuse?"), and social and cultural context ("How does having children, poverty, gender, racism, immigration status, heterosexism, and other social and cultural factors influence a victim's experience of violence?" "How do these factors influence the way in which she responds to it?"). Notably, there is very little empirical research on BWS *per se*.

A full discussion of alternatives to BWS as a framework for expert testimony in cases involving battering is beyond the scope of this paper. Briefly, these include expert testimony referred to as "social agency" (Schuller et al., 2004; Schuller & Hastings, 1996) or social framework (Monahan & Walker, 1988) testimony, both of which are available gener-

ally to criminal defendants and are not specific to the defense of victims of domestic violence. Another option is simply referring to the testimony as about “battering and its effects” (Osthoff & Maguigan, 2005; USDOJ/DHHS, 1996). These three approaches all refer to the idea that the issues presented to the expert can be explained in terms of the context in which victims experience violence and abuse – relying on the available scientific literature and the expert’s experience to inform that testimony.

BWS can be stigmatizing.

For whom is BWS intended to explain experience and behavior? The answer is not clear. BWS is sometimes used as if to describe the experiences of *all* women who have experienced domestic violence. At other times, it is used to describe a stereotypic image of the so-called “good” or “sympathetic battered woman.” The “image” of a woman who has experienced domestic violence is often clouded by stereotypes based on race, culture, ethnicity, social and economic class, and sexual orientation.

BWS often evokes the image of a woman who ends up “snapping” and killing her abusive partner. BWS often creates a stigmatizing image of pathology, which may affect the decision-making of judge, jury, clinician, and/or researcher (Schuller et al., 2004). Interestingly, some research using simulated jurors found that testimony utilizing BWS and PTSD in combination was associated with jurors’ opinions focusing on the women’s deficits, a pathological view of the hypothetical defendant, even more than BWS alone (Terrance & Matheson, 2003). Although BWS is intended to explain the experience of women who have been abused, the use of “syndrome” language defined essentially as a mental disorder (PTSD) helps to create an image of pathology. Ironically, a woman with PTSD may *also* reasonably perceive immediate danger, but not *because of* PTSD. Nevertheless, the image of PTSD or BWS runs counter to the self-defense argument that the defendant’s perception of immediate danger was reasonable for someone in her circumstances and therefore that her actions were justifiable under the law. It is difficult to argue that a

defendant who is viewed as “flawed,” “damaged,” “disordered” or “abnormal” by virtue of a mental health diagnosis (PTSD) should be justified in her actions based on the *reasonableness* of her perceptions. Her perceptions – and even her actions – may be *understandable*, given her history of domestic violence and its impact on her (e.g., PTSD). However, this argument is likely to be insufficient for a straightforward self-defense claim².

Expert testimony to explain a victim’s experience and behavior must also rely on information about non-psychological effects of battering, including disruption of a woman’s economic stability and employment, impairment in physical health, and alterations in her view of the world and others in such a way as to influence her trust of others and sense of safety in day-to-day life. Women can feel trapped in an abusive relationship because of the very real threat of further violence, lack of economic resources, and lack of institutional and social support (Anderson et al., 2003; Fleury, Sullivan, & Bybee, 2000). In most cases, a woman’s behavior is best characterized as logical within the context of her abuser’s behavior and functional in its attempt to stop the violence and abuse, not the product of a mental health problem. Although emotional dependence and feelings of hopelessness may keep a woman in a relationship with an abusive partner (Short, McMahon, Chervin, Lezin, Sloop, & Dawkins, 2000), these emotions are not defined as a mental disorder. Even when mental health problems, such as PTSD and depression, result from battering, and influence a woman’s decisions or her behavior, they are usually only a part of it. Empirical evidence has found that predictions of risk of future assault by women who have experienced domestic violence are often correct (Bell, Cattaneo, Goodman, & Dutton, 2008; Cattaneo, Bell, Goodman, & Dutton, 2007; Heckert & Gondolf, 2004; Weisz, Tolman, & Saunders, 2000).

If a women’s behavior is not understood in the full context of their lives, important decisions in a legal case can be incorrectly influenced by stereotypes or assumptions about how or why women who are battered behave the way that they do. In

sum, the concept of BWS does a poor job of describing for the court the range of experiences or behaviors of women exposed to domestic violence. Thus, in the courtroom, the use of BWS by those with scientific knowledge and specialized experience with domestic violence fails to serve those who demand, and deserve, the very best: jurors and judges and, ultimately, women who have endured domestic violence.

Conclusion

The conceptualization of BWS helped the field focus on the fact that battering has adverse effects on those who have been exposed to it. Over three decades later and an accumulation of a wealth of scientific knowledge, BWS is now recognized as a flawed model (Rothenberg, 2002, 2003), even as a shorthand reference. Its use persists, in part, because it conveniently packages in a single phrase a far more complex issue. Indeed, we need to understand the unique experiences of each defendant informed by the large and continually growing body of scientific literature that is pertinent for understanding an individual's experience and reaction to having been exposed to domestic violence. This information can be invaluable in support of expert testimony for explaining the state of mind and behavior of a woman who has experienced domestic violence and who has been charged with criminal conduct that was influenced by her history of violence and abuse.

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Endnotes

¹ Emotional numbing and behavioral avoidance symptoms are combined in a single symptom cluster in the DSM-IV-TR diagnostic criteria.

² In some states, this situation may give rise to an "imperfect self-defense," but this option varies across jurisdictions.

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In Brief:

Update of the “Battered Woman Syndrome” Critique

Battering and the effects of battering are complex phenomena, which often are not well understood by the lay public. In addition to physical injury, individuals who have experienced battering often confront an array of psychological issues that differ in both type and intensity. The effects of domestic violence vary according to the social and cultural contexts of individuals’ lives and include differences in the pattern, onset, duration, and severity of abuse. Importantly, this context is also determined by institutional and social responses to the abuser and to the survivor of abuse and many other factors characteristic of both persons in an abusive relationship: level of social support, economic and other tangible resources, critical life experiences (e.g., prior trauma, violence history, developmental history) and cultural and ethnic factors (Dutton, 1996; Dutton, Kaltman, Goodman, Weinfurt, & Vankos, 2005; Heise, 1998).

Although individual women experience and respond to battering differently, a number of reactions are common among those who have been exposed to these traumatic events. “Battered woman syndrome” (BWS), a construct introduced in the 1970s by psychologist Lenore Walker, is sometimes used in an attempt to explain common experiences and behaviors of women who have been battered by their intimate partners (Walker, 1989; Walker, 2006). However, through more than three decades of accumulated empirical research, we have come to recognize major limitations in both the original and revised conceptualizations of BWS, as well as with the term itself (Osthoff & Maguigan, 2005). The use of BWS to describe the experience of women who have been victimized by intimate partner violence or to explain their response to such violence and abuse is both misleading and potentially harmful. As currently defined, the construct of BWS has several important limitations: (1) BWS is often not relevant to the central issues before the court in a specific case, (2) BWS lacks a standard and validated definition, (3) BWS does not reflect current research findings necessary to adequately explain either the experience of individuals who have been battered or their behavior in response to battering and (4) BWS can be unnecessarily stigmatizing (Biggers, 2005; Ferraro, 2003). This paper reviews the definition, evolution, and utilization of BWS in the courts, and offers a critique of its framework and its use.

BWS is a term typically used to refer to women’s experiences that result from being battered. It has evolved from a term used to describe a broad range the victim’s (e.g., learned helplessness) and abuser’s (e.g., cycle of violence) behaviors to a mental health disorder describing symptoms experienced by an individual following traumatic exposure (e.g., Posttraumatic Stress Disorder, PTSD). Notwithstanding widespread misconception, BWS is not a legal defense. Notwithstanding widespread misconception, BWS is not a legal defense. Regrettably, even to this day, many myths persist about a specialized legal defense using the BWS. Osthoff and Maguigan (2005) outline five basic misconceptions related to the legal defense of women exposed to domestic violence. The most central misconception is that defendants who have been battered invoke a separate “battered syndrome defense.” There is no special “battered women’s defense” or “battered woman syndrome defense” (Maguigan, 1991; USDOJ/DHHS, 1996).

Even though expert witness testimony can be useful in cases involving domestic violence, there are serious limitations of using BWS as the framework for this work. Where expert testimony is used to explain an individual’s state of mind or behavior, to support a particular defense, or to bolster credibility (when



allowed) in situations that might otherwise seem unreasonable or unlikely (Parish, 1996), a packaged “syndrome” can be convenient and have the perceived legitimacy of a “diagnosis” (Schuller & Hastings, 1996). A number of factors, however, make this package particularly problematic. The most fundamental of these concerns is the lack of relevance of BWS to the issues before the court. A second concern is the lack of a standard and validated definition of BWS with which to guide experts’ use in evaluation and testimony. Third, BWS does not adequately incorporate the vast scientific literature on victims’ response to battering. Finally, BWS suggests a pathology that can stigmatize the defendant unnecessarily and inaccurately.

We need to understand the unique experiences of each defendant informed by the large and continually growing body of scientific literature that is pertinent for understanding an individual’s experience and reaction to having been exposed to domestic violence. This information can be invaluable in support of expert testimony for explaining the state of mind and behavior of a woman who has experienced domestic violence and who has been charged with criminal conduct that was influenced by her history of violence and abuse.