

BATTERED WOMAN SYNDROME: MISUNDERSTOOD?*

Abstract: This comment addresses some of the issues which feminists have expressed about the Battered Woman Syndrome (BWS) and its use as grounds for self-defence in cases where women kill their batterer partners. These concerns appear to include the concept of "learned helplessness" which is presumed to reinforce stereotypes about both women's passivity and their irrationality; the medicalising of women's experiences; the use of expert witnesses; the failure of BWS to be successful in all its court appearances or to apply to all women who have lived in a battering situation. The author argues that much of these perceptions are based upon a misunderstanding of the cycle of violence, learned helplessness and BWS; that in fact BWS does not portray the woman as sick but as perpetrating a justifiable act of homicide. Although not perfect, Australian defendants in comparable situations should have the opportunity to use BWS as a means of exoneration and to broaden the narrow interpretation of self-defence.

As Stubbs' article indicates, the use of Battered Woman Syndrome (BWS) in the American courts has not been without its detractors.¹ Further the attempts to introduce it into the Australian criminal justice realm have also met with opposition both from the traditional patriarchal establishment and from segments of the feminist community. This brief note is an attempt to address the concerns of the latter since it seems that as women with an ideological commitment to helping other women it is a particular shame that we are not able to see that our positions are not really that far apart. Let the debate at least be based upon what is known and not upon misunderstandings or erroneous preconceptions.

Although Lenore Walker's theoretical approach has been criticized by a few legal scholars, the plethora of supportive articles and studies which have appeared recently should also be heeded.² Since 1979, BWS evidence has been presented in hundreds of trials, often during the appellate level.³ There is no way of determining its exact rate of success as measured by the acquittal of the women, however we do know from the numerous studies already mentioned that it has resulted in verdicts of innocence for some. Those who fault its use by pointing to either its lack of total success or the criticisms targeted at Walker's methodology may be missing the point. Cases which introduce BWS that do not result in acquittal could be reflective of the jury's lack of acceptance or the defendants' not fulfilling the diagnostic criteria. It is both fallacious and illogical to conclude that the syndrome itself has been found as lacking in legitimacy by the court. In

* *Editor's Note:* The article which follows is a response by Patricia Weiser Eastale to 'Battered Woman Syndrome: An advance for women or further evidence of the legal system's inability to comprehend women's experience?' by Julie Stubbs, which was published in Contemporary Comment in the last issue of this journal. A brief response by Julie Stubbs appears at the end of Eastale's article.

1 Kuhl, A, "Battered Women Who Murder: Victims or Offenders" (1985) in *The Changing Roles of Women in the Criminal Justice System*, Illinois, Waveland Press Inc; Rittenmeyer, S, "Of Battered Wives, Self-Defence and Double Standards of Justice" (1981) 9 *J of Crim Justice* at 389.

2 A few of the major books/articles include Walker, L, *Terrifying Love* (1989); Blackman, J, *Intimate Violence* (1989); Gillespie, C, *Justifiable Homicide* (1989); Thyfault, R, "Self-Defence: Battered Woman Syndrome on Trial" (1984), 20/3 *Cal West Law Review* at 485; Walus-Wiggle, J, and Meloy, J, "Battered Woman Syndrome as a Criminal Defence" (1988), 16/3 *J of Psych and Law* at 389.

3 Note that the syndrome has been presented as a sub-type of post-traumatic syndrome disorder. The latter has been used to explain the behaviour and attitudes of individuals who have survived some type of disaster or captivity.

fact it has acquired enough to merit two State governors granting clemency to the females imprisoned for killing their batterer spouses.⁴

Most importantly, BWS has assisted in what one would hope is the aspiration of all feministic individuals: the reinterpretation of what is considered reasonable self-defence from a monolithic perspective based on male-male interactions to an interpretation that looks at the unique experiences of being both female and a battered victim in western industrial societies. Specifically, the American jurors and judges in these cases have been compelled to recognize that what constitutes immediacy for a victim of BWS is not the same as what is imminent danger for a man. Moreover, myths of masochism and innate passivity are confronted when testimony is provided explaining why the woman had no other recourse but to kill; in other words, why she didn't leave.

Those feminists who object to all or aspects of this do not repudiate the end result but object to the means that achieve that end.⁵ At least part of the objections seem to be based upon several misunderstandings about the syndrome and what it conveys to the court. First, they maintain that this type of defence minimises the role of the abuser and the self-protection element of the woman's behaviour; she is presented as a woman out of control once again, so the argument goes. On the contrary, BWS evidence portrays the defendant's killing as entirely rational and justified in the face of on-going violence. This is the crux of the matter; BWS expert testimony has enabled these women's actions to be seen as reasonable self-defence. Their actions are *not* explained as due to psychological disability; if so pleas and verdicts would involve insanity and *not* self-defence. On the contrary, the court learns that if battered women's actions are placed within a standard of what is reasonable for those who experience BWS, the killings are justified. They are not sent to mental health facilities for treatment but are entirely exonerated.

Second, it is believed by some that BWS further reinforces the stereotype of women's temperament as dependent and innately helpless; particular umbrage is taken at the use of the term 'learned helplessness'. What the critics are ignoring here is that in fact learned helplessness is a gender neutral term which has been used most frequently in fact to describe the psychological consequences for men who have been held captive in prisoner of war camps or as hostages. The term is applied to individuals who have endured situations of chronic terror; as a consequence they lose their ability to make choices. Put into this context, the battered woman's inability to leave the violent home becomes comprehensible to the court and is no longer seen as a manifestation of women's archaically stereotyped weakness and helplessness. Thus, it seems to be the term itself which is objected to although if placed into the context of hostages in general, the word does not ascribe any gender-related personality dependence but stresses the situational aspect.

Third, it is argued that not all women experience the repetitive three stages of the cycle of violence, particularly the contrition phase, and that therefore BWS should not be used since it would not fit all battered women's experiences. However, no one, including the

4 This was reported in *Criminal Justice Newsletter* 1991, 2 January and 1 March.

5 See the discussion by Martinson, D, et al on the case of *Lavallee v The Queen* 55 CCC (3d) 397 1990 in 25 *UBC Law Review* 1991 25.

most ardent advocates of BWS, is saying that all victims of domestic violence develop BWS. Some leave the relationship early on; for others the three stages do not take place in such a manner as to generate the learned helplessness, low self-esteem and isolation which result in the syndrome. However, those who question the validity of the cycle itself are perhaps looking at the description a bit simplistically. Walker basically states that a low degree of abuse ultimately peaks, after which, at some point, there is a cessation of violence. If both parties remain together, the theory states that each stage will repeat over time with the violence increasing in severity. However, since there is no clear cut point at which stage one becomes stage two, the woman living in the situation has no way of knowing when violence will occur and when it will escalate. This exacerbates her state of terror — the unknown element. Those who deny the existence of the stages seem to be looking for clear-cut phases, with very specific earmarks, for example, apologies in the contrition stage instead of seeing that there are time periods in the relationship, probably either lengthy or brief, when the basher is not violent.

Lastly, some object to the medicalizing of women's experiences; affixing the label 'sick' to the actions of a female who acts 'aggressively' or violently and the failure to hear the words of the individual woman but needing experts to validate her experience. This seems to be another misunderstanding. BWS is not described by its adherents as a mental illness but as a transient psychological state arising out of particular environmental factors. Not only is the etiology external to the woman, BWS symptomology disappears when the woman is out of the battering situation. In the cases presented by Walker and others, the defendants are not portrayed as 'sick' but as people who survived horrific acts of violence and ultimately acted in self-preservation.

Studies have shown that the average juror cannot understand the above or the other aspects of what is reasonable behaviour for a battered woman.⁶ Just as experts would be necessary to explain the actions of Patty Hearst or the conduct of a political hostage who killed for his captors, so too are experts necessary with BWS. Most people are incapable of intuitively understanding what it is like to live within a violent home; they evaluate normalcy or reasonableness of response based upon their own perceptions of reasonable which are created out of their own often limited experience. Although in an idealistic sense it would of course be nice to have women speak about their lives and be heard and understood, it seems that individuals with a commitment to obtaining justice for these battered women who have killed need to recognize that, as Scutt puts it, women are the 'incredible' witnesses.⁷ Experts are needed to explain to the jury and the judge exactly how the defendants' behaviour does conform to the requirements of self-defence by describing what is reasonable for someone in that situation. Since expert testimony is generally only admitted if the subject contains material beyond the ken of the jury (for example, scientific or medical phenomena), the use of the label 'syndrome' is critical.

6 Kromsky, D F and Cutler, B L, "The Battered Woman Syndrome: A Matter of Common Sense?" (1989) *2/3 Forensic Reports* at 173.

7 Scutt, J, "The Incredible Woman: A Recurring Character in Criminal Law" (1991), paper presented at the Australian Institute of Criminology Conference on Women and the Law. Discussion on the lack of credibility of women also appears in Martinson, *ibid*.

Clearly the use of BWS is fraught with controversy. However, the bottom line ought to be, what happens to that woman who, physically, emotionally, sexually and mentally violated for years, kills her tormentor/jailor? In a recent appeal before the New South Wales Superior Court, such a woman's sentence of eight years was upheld.⁸ Although the judge reiterated in his judgement the history of degradation and violence which the appellant endured, and the results of psychological tests which showed marked low self-esteem and high dependency (typical of BWS), he lacked the expert framework in which to place her actions. He could not justify her use of an axe or the fact that the deceased had been asleep. It was explained that she had lost control, had been provoked. Thus, she had been found guilty of manslaughter instead of murder. The judge was incapable of seeing her actions as self-protection; to understand the imminent state of danger in her mind. BWS and its experts can provide that framework and such women's actions can be exonerated. That should be the bottom line for all those who are concerned with the validation and recognition of the experiences of women and equal treatment in our courts. Is it evangelical to recognize that such grounds for self-defence have worked overseas and should be on offer for women in Australia? Few, if any defences are without their critics. However the precedent has not been to restrict evidence and litigation approaches to the arguments or theories which have achieved universal approval. Justice is best served by permitting their presentation in open courts of law which can evaluate the merit of BWS.

PATRICIA WEISER EASTEAL[†]

THE (UN)REASONABLE BATTERED WOMAN? A RESPONSE TO EASTEAL

I welcome Patricia Weiser Easteal's response to my article in the hope that it may provoke more of a debate around the issue of Battered Woman Syndrome (BWS) which is complex, fraught and has the potential to have a huge practical significance for a woman charged with killing an abusive spouse. The promise of utilising the defence to win the acquittal of a battered woman on trial for such an action is very appealing. However, the potential dangers of the strategy for other women must also be anticipated and acknowledged.

Easteal argues, on the basis that some women have been acquitted at trial after invoking the Battered Woman Syndrome as a defence in other countries, that the BWS defence should be actively pursued in Australia. She claims that criticisms of BWS are ill-founded and based on a misunderstanding of the syndrome. The BWS is presented by Easteal as a strategy which helps reinterpret what represents reasonable self defence, confronts myths of masochism and passivity and demonstrates the rational and justifiable nature of the actions of the battered woman who kills an abusive partner.

There are a number of issues which are potentially problematic in the use of BWS and which are not addressed adequately by Easteal's response.

⁸ *Regina v Whalen* (Unreported, NSW Court of Criminal Appeals, April 1991).

[†] Senior Criminologist, Australian Institute of Criminology, Canberra.