

The Use of Psychological Experts in Cases of Domestic Violence



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**DAWN M. HUGHES, PH.D., ABPP
CLINICAL & FORENSIC PSYCHOLOGIST**

Forensic Psychology



**The application of the science and
profession of psychology to provide
relevant information to a legal
question.**

Expert Testimony on Battering and Effects

- Many victims of intimate partner violence experience varying degrees of psychological consequences.
- The traumatic and psychological consequences of repeated victimization may be relevant to a person's alleged criminal actions.
- Generally speaking, lay individuals do not truly understand domestic violence.
- Psychological expertise can dispel myths and misconceptions about domestic violence.

Expert Testimony on Battering and Effects

Expert testimony on *battering and its effects* can be based on and supported by an extensive body of scientific and clinical knowledge on the dynamics of domestic violence and traumatic stress reactions.

Expert testimony on *battering and its effects* provides relevant information important to the fact finders for purposes of their deliberations in criminal cases involving battered women.



Battered Woman Syndrome

vs.

Battering and Its Effects

National Institute of Justice (1996)



There is **no** single profile of a
battered woman.

There is **no** specific
“battered woman’s defense.”

Limitations of Battered Woman Syndrome

- Legal construct
- Not a psychiatric diagnosis
- Lacks clear, specific, objective diagnostic criteria
- Does not adequately characterize the breadth of empirical data in the field of intimate partner violence

Criminal Defenses

- Justification / Self-Defense
- Insanity / Mental Disease or Defect
- Extreme Emotional Disturbance
- Coercion or Duress
- Mitigating Factors at Sentencing

Questions for a Psychological Expert



If there are no DIRs *or* Orders of Protection *or* Medical Records does that mean that she is not a battered victim? Or that the abuse was not serious?

If she stayed with her abuser, what does that say about the severity of violence?

Questions for a Psychological Expert



Did a battered victim use violence against her partner as well? Is this evidence that she is not a victim?

Was an abused individual's conduct significantly influenced by PTSD or other traumatic psychological effects?

What if she does not remember some or all of the criminal incident?

Questions for a Psychological Expert

Did a battered woman *reasonably believe* she was in danger of harm when she assaulted her abuser?

Are there empirically validated **RISK FACTORS** that have been associated with **severe and/or lethal domestic violence** and are they present in this case? Does that help explain her “reasonable” perception of fear?

Battering and Its Effects: Identifying Intimate Partner Abuse

- I. Analysis of the Dynamics of the Abusive Relationship
 - × Physical Abuse
 - × Psychological Abuse
 - × Sexual Abuse
 - × Coercive Control
 - × Stalking Behaviors
- II. Victim’s Strategic Responses to Abuse
 - × What were the effectiveness of those strategies?
 - × What she did may be just as important as what she did not do.
- I. Social, Cultural, and Psychological Context in Which the Abuse Occurs
- IV. Psychological Consequences of Abuse

Psychological Expert Testimony: Options

General Testimony

- Your client is *not* evaluated
- Expert provides testimony on scientific and clinical knowledge regarding domestic violence
- No opinions offered on your client's psychological state of mind

Case-Specific Testimony

- Your client undergoes a forensic psychological evaluation
- May trigger an adverse exam
- Places unique facts of your case in a framework of what is known in the literature about battering and its effects

Forensic Psychological Evaluation

A thorough, competent and ethical forensic psychological evaluation involves a commitment to impartiality and freedom from bias.

The standard methodology includes an integration of multiple sources of data, including psychological testing, collateral interviews, record review (medical, psychological, legal, etc.), and a reliance on the psychological literature on the issue at hand.

Impartiality of the Forensic Evaluator

VS.

Role of the Therapist

Greenberg & Schuman (1997)

Core Components of the Forensic Evaluation

- I. Initial Attorney Consultation
- II. Review of External Data/Case Materials
- III. Psychological Evaluation
 - Informed Consent
 - Semi-Structured Clinical Interview
 - Psychological Testing
 - Domestic Violence / Trauma Assessment
- IV. Collateral Interviews *(if necessary and if available)*
- V. Communication of Findings
 - Consultation to the Attorney
 - Report Writing
 - Deposition and/or Courtroom Testimony



Asking About Abuse



Asking About Abuse

In my job, I have an opportunity to meet and talk to many people. They tell me many private things. Sometimes they are scared or embarrassed to talk to me. I want you to know that you can talk to me and tell me things. I would like to understand you better and help you. So, if it is okay with you, I am going to ask you some personal and possibly upsetting questions.

Asking About Abuse



- Interview your client alone. Victims often feel much shame and embarrassment when talking about abuse. Asking sensitive and personal questions in front of others or in a public place (courthouse) may hinder disclosure.
- Be gentle, sensitive, and non-judgmental.
- Look the person in the eye, even if they don't look back.
- Don't fidget. Sit still. Be focused.

Asking About Abuse



- Ask, “*What happened next?*” and “*What else happened?*” Don't assume. Pause. Wait. This takes time. Be patient.
- Be confident in your questioning, but not condescending. Use a respectful tone of voice.
- Offer reassurance. “*I know this is difficult for you. You're doing fine.*” “*Do you need a break?*”

Asking About Abuse



- Ask behavioral and descriptive questions – avoid labels .
- **DON'T SAY** *Does your boyfriend abuse you? or Have you been raped? or Have you experienced domestic violence?*
- How do you fight in your house?
- Are there things that happen in your house that make you feel scared or not particularly safe? Have you ever been afraid of your partner?

Asking About Abuse



- Have you ever felt scared during a fight?
- Has your partner ever pressured you to have sex? Do you feel that you can say no to sex?
- Has your partner ever threatened to hurt you or kill you?
- Has your partner ever choked you?
- Do you have guns in your home? Does your partner have access to guns?

Selected Resources

Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges (June 2009).

<http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence>

The validity and use of evidence concerning battering and its effects in criminal trials. United States Department of Justice and Health and Human Services. (Parish, 1996 / NCJRS # 160972) <http://www.ncjrs.org>

Understanding women's experiences parenting in the context of domestic violence: Implications for community and court-related service providers.

Violence against women online resources. (Jaffe, P.G. & Crooks, C.V. 2005).

<http://www.vaw.umn.edu>

Lawyer's Manual on Domestic Violence

<http://www.nycourts.gov/ip/womeninthecourts/DV-Lawyers-Manual-Book.pdf>

THANK YOU !

CONTACT INFORMATION

Dawn M. Hughes, Ph.D., ABPP
Clinical and Forensic Psychologist
274 Madison Avenue - Suite 604
New York, New York 10016

Tel: (212) 481-7044

Email: hughes@drdawnhughes.com