

The Use of Battered Woman Syndrome in U.S. Criminal Courts

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Although not recognized by any edition of the Diagnostic and Statistical Manual of Mental Disorders, battered woman syndrome (BWS) has been offered as a defense in U.S. criminal courts for several decades. This article reviews examples of criminal cases in which BWS has been used in the United States as well as the implications of BWS for the practice of forensic psychiatry. Historically raised in cases of self-defense, BWS has also been used in criminal defenses involving duress, as well as by prosecutors to explain witness recantations. Case law suggests that expert witness testimony on BWS is often admissible in jurisdictions across the United States, yet its use in criminal defenses has received mixed responses from various courts. We examine limitations on the use of BWS in criminal courts and the potential use of posttraumatic stress disorder as an alternative and more reliable diagnosis in similar legal contexts.

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Intimate partner violence (IPV) is a phrase used to describe physical, sexual, or psychological violence between romantic or sexual partners.¹ Many different forms of violence (such as stalking, hitting, rape, or stabbing) may qualify as IPV, which can complicate research on the prevalence and incidence of IPV.² Nonetheless, existing evidence suggests the experience of IPV is common among both women and men in the United States. Smith *et al.* noted in a 2015 study that collected survey data from more than 10,000 U.S. adults, that 36 percent of women and 34 percent of men had experienced contact sexual violence, physical violence, or stalking by at least one intimate partner.² Approximately one in four women and one in ten men had experienced one of these forms of IPV and reported an IPV-related

impact (e.g., being fearful, requiring medical care, missing work) during their lifetime.²

Acknowledgment of IPV in legal systems often mirrors larger societal trends.³ Male-perpetrated IPV has been historically accepted or condoned as a part of heterosexual marriage in many countries.⁴ For example, Buzawa and Buzawa noted in a 2003 review, “British common law has endorsed conceptions of male dominance over woman’s bodies” since the 17th century (Ref. 4, p 60). The book described how a husband who killed his wife might be charged with a less serious crime (e.g., manslaughter rather than murder) if she had committed adultery, since adultery by a wife was viewed as a serious provocation.⁴ Female-perpetrated IPV has not always received similar acceptance: “Until 1946, English courts assumed that wives did not experience rage as men did, and adultery was not available as an excuse to women who killed philandering husbands” (Ref. 4, p 60). Kulwicky noted in a 2002 study examining honor crimes in the Middle East (i.e., killing of women by male family members due to perceptions that she dishonored them) that, “criminal laws in Jordan, Syria, and Lebanon that involve honor crimes allow for leniency or excuse from penalty the men who commit such crimes” (Ref. 5, p 83).

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In the United States, IPV has been increasingly viewed in terms of its harms; still, prosecution of IPV has often lagged behind these trends. The first laws that barred domestic battery date back to the colonial era, yet between 1633 and 1802 there were just twelve cases of domestic violence brought before Plymouth Colony Courts.^{4,6,7} In *Bradley v. State* (1824), the Supreme Court of Mississippi affirmed the conviction of a husband for assault and battery against his wife because he failed to show he “confined himself within reasonable bounds;” the court held that a husband could use “moderate chastisement” in case of emergency to discipline his wife (Ref. 8, p 158). More recent years have “witnessed a veritable explosion in the number of laws enacted to combat the problem of woman battering” and IPV more broadly; nonetheless, as noted by Corsilles in 1994, “in many cases, police still fail to arrest offenders, prosecutors still decline to file charges, and, if they do file charges, they often undercharge, and subsequently recommend dismissal” (Ref. 9, pp 853, 854–855). In the wake of the 1994 Violence Against Women Act, among other legislation, research suggests IPV may be more likely to lead to prosecution than before.¹⁰ Garner and Maxwell noted in a 2010 review that nearly 28 percent of reported IPV offenses and 62 percent of IPV-related arrests in the United States result in prosecution.¹⁰

Multiple factors contribute to potential gaps between the prevalence and the prosecution of IPV, including varying legal standards for defining IPV, the stigma of reporting IPV, difficulty proving IPV that takes place in private settings, and the trauma of IPV on victims.^{4,6,7,10–13} Further influencing prosecution of IPV is the growing recognition that IPV may be bidirectional.^{14–16} The public often casts women as the sole victims of IPV; still, as noted by Hatters Friedman, “women in relationships can be violent in self-defense, but they can be violent aggressors, and take part in mutual bi-directional relationship violence” (Ref. 14, p 274). Whitaker *et al.* noted in a 2007 study that 4,609 (24%) of 18,761 heterosexual relationships in the United States had some degree of IPV and, among those relationships, 2,270 (50%) included bidirectional IPV.¹⁷

Not all victims of IPV kill their partners, and the killing of one partner by another represents an extreme of IPV. Women may kill their partners because of a variety of motives, such as money,

infidelity, child custody, substance use, medical illness, and divorce.¹⁸ Yet criminal cases in which women have responded to recurrent IPV by killing their husbands have drawn particular attention to the social, medical, and legal complexities of IPV. Within the legal system, the theory of battered woman syndrome (BWS) has emerged as one potential psychological basis for explaining why a woman might kill her husband.

BWS was defined by Lenore Walker in 1979, who described a battered woman as “a woman, 18 years of age or over, who is or has been in an intimate relationship with a man who repeatedly subjects or subjected her to forceful physical and/or psychological abuse” (Ref. 19, p 203). Walker based much of her theory of BWS on research involving learned helplessness in animals, and later, she sought to confirm this theory by studying 400 battered women in six states from 1978 to 1981.¹⁹ She hypothesized that battering occurred as a cycle: a tension building phase, an acute battering phase, and a reconciliation phase.¹¹ Since the inception of BWS almost forty years ago, Walker has revised the description of BWS to include “a cluster of psychological sequela from living in a violent relationship,” which can include “emotional, cognitive, and behavioral deficits, which negatively influence [a woman] from leaving a relationship after the battering occurs” (Ref. 19, pp 1–2).

Despite limited research to support its validity and reliability, BWS was quickly adopted for use as a defense in criminal contexts in the United States and other countries, including Canada and the United Kingdom.^{20–23} A number of scholars have since raised questions about the legal use of BWS and this syndrome has not been recognized as a psychiatric condition by any edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).^{6,20,24–26} Alternatively, posttraumatic stress disorder (PTSD) has been recognized by the DSM for nearly 50 years, and this diagnosis is also commonly raised in U.S. criminal proceedings.^{1,27,28} Due to the similarities in symptom clusters or clinical histories, some scholars have now argued that BWS represents a form or subset of PTSD.^{29,30}

We review examples of the types of criminal cases in which BWS has been used in the United States, including by defendants in cases of self-defense and duress, and its use by prosecutors in criminal contexts. We also explore how judicial acceptance of PTSD has informed the legal standards involving

BWS, and the ways in which PTSD might provide an alternative and potentially more reliable method for understanding defendants' responses to IPV.

Self-Defense

The use of expert witness testimony regarding battering and its effects largely arose in cases of self-defense. Regarding criminal cases, a 1996 Congressional report found "over three-quarters of the states have found expert testimony admissible to prove the defendant is a battered woman or that she 'suffers from battered woman syndrome'" (Ref. 31, p 5). The report also noted that as many as 12 states had passed statutes specifically allowing the use of expert witness testimony on battering and its effects in criminal contexts.³¹

A self-defense claim traditionally requires defendants to prove that they were confronted with an unprovoked attack; that the threat of injury or death was imminent; that the degree of force used was objectively reasonable; and that they had objectively reasonable fear of being injured or killed without the use of force.³² In self-defense cases where expert witness testimony on BWS is offered as a justification, the adherence to the above elements is often disputed on appeal. For example, in *State v. Kelly* (1982), the defendant was charged with the murder of her husband.³³ She sought to introduce testimony on BWS and argued that, in the setting of being choked repeatedly by her husband earlier that day, she stabbed him in an act of self-defense. The trial court excluded this testimony as irrelevant and found her guilty of manslaughter. On appeal, she argued, and the Supreme Court of New Jersey later agreed in 1984, that expert witness testimony on BWS was relevant to show the objective reasonableness of the defendant's perception of danger.

The use of BWS has also shaped legal interpretations about the immediacy of perceived threats in self-defense cases. This was demonstrated in *State v. Hundley* (1985), where a defendant argued self-defense after she had shot and killed her abusive husband.³⁴ On appeal, the Kansas Supreme Court noted that, "this is a textbook case of the battered wife, which is psychologically similar to hostage and prisoner of war cases. [She] had survived her husband's brutal beatings for ten years. Her bones had been broken, her teeth knocked out and repeated bruises inflicted, but she did not leave him" (Ref. 34, p 478). The court noted that the use of the term

"immediate" during jury instruction of a traditional self-defense case "obliterates the nature of the buildup of terror and fear which had been systematically created over a long period of time. 'Imminent' describes the situation more accurately" (Ref. 34, p 479). As a result of these findings, the court held that the trial court had committed a reversible error, reversing the judgment and remanding the case for a new trial.

Expert testimony on BWS has also been introduced in imperfect self-defense cases to demonstrate a defendant's subjective reasonableness in her fear of imminent harm.³⁵ Imperfect self-defense is a partial affirmative defense where a defendant admits guilt and seeks to mitigate punishment. This typically occurs when the batterer is not imminently threatening harm, but when the defendant acts violently to prevent future IPV. For example, in *People v. Humphrey* (1996), a defendant tried to introduce testimony on BWS after she was charged with killing a man with whom she had been living.³⁶ On the day prior to the offense, he had hit her, threatened to kill her, and shot a gun at her while intoxicated. The following day, after he had started to drink and hit her again, she shot him. At trial, the defendant presented expert witness testimony on BWS, as well as her own nonexpert testimony regarding living with an abusive man. The jury found her guilty of voluntary manslaughter, which was later affirmed in a court of appeal. On further review, the Supreme Court of California reversed this judgment, finding that the trial court should have allowed the jury to consider evidence on BWS regarding both whether the defendant believed it was necessary to kill in self-defense and the subjective reasonableness of her belief.³⁶

More recent cases continue to demonstrate the ways in which the use of BWS may shape judicial interpretations related to self-defense, particularly about imminency of threats. In *State v. Peterson* (2004), a Maryland appellate court supported the use of BWS as a defense for a defendant who shot and killed her abusive husband while he was watching television.³⁷ Specifically, the Court of Special Appeals noted that the husband had been "threatening to kill the appellee on a daily basis, and taunting her with details about how he would carry it out" (Ref. 37, p 1151). Even though he was not assaulting or threatening her at the time when she shot him, the court found that the chronic nature of this abuse,

as well as her statements that he would not kill her when she shot him, supported “a strong inference that [the defendant] was in fear of imminent harm” (Ref. 37, p 1151). The appellate court affirmed a decision to grant postconviction relief to the defendant, ordering a new trial, partly due to defense counsel’s failure to introduce BWS evidence for the purposes of the defense of imperfect self-defense.

BWS has also been raised regarding self-defense in criminal cases involving a group of perpetrators, rather than the actions of the woman alone, as exemplified by a recent case in Maryland. In *Porter v. State* (2017), the defendant solicited a third-party to kill her abusive husband, who agreed to do so for \$400 and eventually shot the husband.³⁵ After a jury found her guilty of first-degree murder, among other charges, she appealed, arguing that the jury had not received adequate instructions regarding BWS and its relevance regarding imperfect self-defense. The Court of Appeals of Maryland later reversed and remanded for a new trial, holding that she had “presented sufficient evidence that she feared imminent harm to be entitled to an imperfect self-defense jury instruction” (Ref. 35, p 1065).

Duress

Defendants have also raised BWS as part of duress defenses in U.S. criminal proceedings. To prove duress, a battered woman must typically demonstrate a reasonable belief that her batterer intended to hurt her and that her behavior in violation of the law was necessary to avoid such harm.³⁸ Not all courts have accepted BWS as an explanation for a duress defense, particularly with increasing time or social degrees of separation between a woman’s experiences of IPV and her alleged crimes. For example, in *State v. Riker* (1994), a defendant argued that her history of abuse from previous romantic relationships lead to symptoms of BWS and that she was thereby reasonable in perceiving a threat of harm from a man other than her batterer.³⁹ Nonetheless, the trial court held, and the Washington Supreme Court later affirmed, that testimony on BWS was inadmissible when applied to a “nonbattering, nonintimate relationship” (Ref. 39, p 50).

Defendants who can demonstrate the proximity of IPV and its influence on their alleged crimes may be more likely to succeed with duress defenses related to BWS; or courts may be willing to at least consider this evidence in criminal proceedings under these

circumstances. Expert witness testimony on BWS was found admissible in *United States v. Marenghi* (1995), where the defendant was charged with conspiring to possess and distribute a controlled substance.⁴⁰ The defendant sought to introduce expert witness testimony regarding “the process by which Defendant was rendered entirely submissive to her boyfriend through physical and emotional abuse” (Ref. 40, p 97). In a pretrial hearing to address, in part, whether BWS was relevant to establishing the defense of duress, the U.S. District Court of Maine noted that, “this expert testimony may be characterized as explaining how a reasonable person can, nonetheless, be trapped and controlled by another at all times, even if there is no overt threat of violence at any given moment” (Ref. 40, p 95).

Recent cases continue to demonstrate how the admissibility of expert witness testimony on BWS may depend on the circumstances of a duress defense. Testimony on BWS addressing IPV in a previous relationship was excluded in *United States v. Navedo-Ramirez* (2015).⁴¹ In this case, the defendant was charged with drug and weapon offenses after selling cocaine to undercover officers alongside her ex-boyfriend. She testified that her ex-boyfriend continued to abuse and threaten her after the relationship had ended. She also unsuccessfully sought to introduce expert testimony on the nature of BWS to address whether she acted out of duress or had the necessary *mens rea* for the charged offenses.⁴¹ After she was convicted, she appealed on the basis of the exclusion of this expert witness testimony, among other arguments. The U.S. Court of Appeals for the First Circuit affirmed the trial court decision on this matter, noting that she had already broken off her relationship with the ex-boyfriend and that “the threats to which [the defendant] testified were such that any person, unaided by expert testimony, could readily appreciate their impact” (Ref. 41, p 568).

By comparison, in *United States v. Lopez* (2019), a defendant had purchased a firearm for an ex-boyfriend and sought to argue that her previous experiences of IPV and ongoing threats from this man were relevant when considering her actions.⁴² Specifically, she tried to introduce expert witness testimony on BWS to address whether she had a well-grounded fear that the man would harm her and her family and whether she had a reasonable opportunity to escape. The district court did not allow this expert witness testimony, finding it would not have been

useful to the jury, but the court did provide jury instruction on the duress defense and allowed the defendant to testify about her experiences of IPV. She was eventually convicted on felony gun charges; she appealed based on this exclusion of expert witness testimony. On appeal, the U.S. Court of Appeals for the Ninth Circuit vacated the conviction and remanded the case for a new trial, holding that “expert testimony on BWS is not categorically excludable and may be relevant to a defense of duress” (Ref. 42, p 826).

Lopez-Correa v. United States (2020) offers another recent example supporting the potential use of BWS as part of a duress defense.⁴³ In 2010, the defendant pleaded guilty to aiding and abetting in the production of child pornography. At the sentencing hearing, she presented evidence that she had been taken hostage by her co-defendant, that he had physically and sexually abused her, and that her actions were committed within the context of this abuse. Later, she appealed her conviction, arguing, *inter alia*, that she experienced ineffective assistance of counsel because her attorney encouraged her to plead guilty to a crime she did not commit and failed to introduce “duress, coercion and BWS defenses before being convicted” (Ref. 43, p 26). The U.S. District Court for the District of Puerto Rico vacated her conviction and found that, had she been able to present evidence of BWS and a duress defense, “more likely than not, no reasonable juror would find her guilty beyond a reasonable doubt” (Ref. 43, p 53).

Prosecutorial Use

In contrast to the use of BWS as part of a criminal defense, BWS has also been raised by prosecutors in U.S. criminal proceedings related to victims. At least a dozen U.S. states have allowed prosecutors to offer expert witness testimony on battering, which is often used to explain otherwise inconsistent behaviors, such as a victim recanting a statement or staying in a relationship with an abusive partner.³¹ For instance, in *State v. Borrelli* (1993), a woman initially gave a written statement to police indicating her husband had assaulted her but she later recanted this statement at trial.⁴⁴ The prosecution introduced expert witness testimony to assist the jury in understanding behaviors consistent with a battered woman. The husband was convicted and later appealed, arguing, *inter alia*, that it was improper to allow expert witness testimony on BWS that impeached the victim’s

testimony. The Connecticut Supreme Court held that expert witness testimony was admissible and affirmed the convictions. The court noted that the expert did not examine the victim or offer an “opinion as to whether she was a battered woman” but that the testimony was offered in a general manner “to provide an interpretation of the facts that a lay jury might not have perceived because of its lack of experience with battered women” (Ref. 44, p 1111).

A 2004 decision by the Supreme Court of California in *People v. Brown* provided another noteworthy example regarding the use of BWS by the prosecution.⁴⁵ At trial, a victim had provided conflicting testimony compared with her prior statements to police, and the prosecution had offered expert witness testimony to “explain that domestic violence victims often later deny or minimize the assailant’s conduct” (Ref. 45, p 575). After being convicted of charges related to domestic violence, the defendant appealed, arguing that the prosecution had “failed to show that the victim here was a battered woman because it offered no proof that defendant had abused her on more than one occasion” (Ref. 45, p 575). The court affirmed the conviction and found that, “even though the evidence showed only one violent incident” (Ref. 45, p 584), evidence of the behavior patterns between the defendant and the victim “suggested the possibility [of] a ‘cycle of violence’” (Ref. 45, p 583) and supported the use of expert witness testimony regarding BWS.

In addition to explaining why IPV victims might recant statements or provide conflicting narratives, prosecutors might introduce expert witness testimony on BWS to explain why someone might stay in an abusive relationship. In *Thomas v. State* (2006), a man appealed his conviction for aggravated assault and battery, arguing, among other matters, that the admission of expert testimony on BWS improperly introduced character evidence against him.⁴⁶ At trial, the prosecution had “used the testimony in closing argument to explain why someone who had been abused would go back into or stay in the abusive relationship” (Ref. 46, p 355). On appeal, the Wyoming Supreme Court affirmed the conviction, reasoning that the expert witness testimony had generally testified about “behaviors associated with the syndrome” rather than addressing characteristics of the defendant, batterers, or the specific victim (Ref. 46, p 354).

Continued Use of BWS versus PTSD

Courts have demonstrated a willingness to consider the use of BWS by both the defense and prosecution in many jurisdictions across the United States. This is true for both general expert witness testimony regarding the characteristics of BWS and specific testimony regarding an individual's experiences with IPV and its relevance to criminal proceedings. Although BWS has been commonly used in cases of self-defense, it has also been introduced as part of duress defenses, as well as by prosecutors to explain inconsistencies in the behaviors of IPV victims. Despite the prevalence of criminal cases that involve BWS in the United States, several concerns have been raised about the continued use of BWS in criminal proceedings.

First, research supporting the use of BWS as a stand-alone psychiatric diagnosis remains limited. The initial development of BWS was in many ways grounded in research-based findings, such as animal models of learned helplessness and studies of battered women. At the same time, a number of scholars have pointed out methodological limitations regarding research on BWS, including the "lack of control groups, problems with interviewing methods and data analysis, and absence of data supporting some of [Walker's] conclusions" (Ref. 47, p 508). Although numerous studies have been conducted regarding the experiences of women and IPV, the validity and reliability of BWS as a clinical diagnosis (as opposed to a legal construct) remains controversial.^{25,48,49} For example, the DSM has undergone four updates since the development of the theory of BWS, yet BWS remains absent from the publication.²⁶

Second, the language of BWS is no longer preferred. A 1996 report from the U.S. National Institute of Mental Health and the National Institute of Justice noted that "the term 'battered woman syndrome' is no longer useful or appropriate" and recommended transition to the terminology "on battering and its effects" (Ref. 31, p vii). Among other concerns, the report expressed alarm that the use of the term syndrome could carry "connotations of pathology or disease, or it may create a false perception that the battered woman 'suffers from' a mental defect" (Ref. 31, p vii). The use of the phrase BWS also risks disregarding the experiences of men, nonbinary individuals, and people who endure IPV in nonheterosexual or nonmonogamous relationships.^{14,50-52} As a result, some have used or argued

for the use of alternate terminologies, such as "battering syndrome," "battered partner syndrome," or "battered person syndrome."^{52,53} In addition, the use of BWS seems to imply a predictable response to battering, even though the experience of IPV may manifest itself from a psychiatric standpoint in different ways among different victims.^{13,31}

Third, given the limitations of BWS from both psychiatric and legal standpoints, some have argued that posttraumatic stress disorder (PTSD) may be a more reliable and useful diagnosis for consideration in these types of criminal contexts. PTSD is an established mental disorder with a breadth of research regarding its characteristics, pathophysiology, and treatment across varying populations around the world.⁵⁴ For instance, PTSD may explain how a woman could develop symptoms related to the trauma of a single occurrence of battery, or how a previous incidence of battery may lead to hypervigilance in future encounters. PTSD also considers a range of possible responses and allows for the acknowledgment that not all traumatic events may result in relevant impairments in functioning. These varied responses to trauma are supported by a meta-analysis that found IPV survivors had a 64 percent prevalence of PTSD, and that female survivors of IPV developed PTSD at rates between 31 percent and 84 percent.⁵⁵ Research has also indicated that a greater severity and frequency of physical violence is related to greater likelihood of development of PTSD.⁵⁶

Because of the overlap in characteristics between PTSD and BWS, a number of mental health professionals have argued that BWS represents a subcategory or type of PTSD.^{29,57} Currently, the DSM-5 describes IPV in its section on other conditions that may be a focus of clinical attention under the category of Adult Maltreatment and Neglect Problems.²⁶ Additional research into trauma- and stress-related disorders, particularly circumstances in which IPV occurs repeatedly, could help clarify the ways in which BWS and PTSD might intersect, including whether BWS should be formalized with criteria, potentially as a subset of PTSD as proposed in academic literature.^{29,57}

It is important to recognize that PTSD is far from a perfect diagnostic entity, and its use in criminal proceedings also brings its own set of challenges.²⁸ U.S. courts have often, but not always, allowed expert testimony regarding PTSD as part of criminal

defenses, with some courts excluding testimony on PTSD as irrelevant or presenting an insufficient basis for a given criminal defense.²⁸ Although potentially helpful for explaining different reactions to IPV, the variety of criteria for PTSD suggest that this diagnosis could be used in a wide range of contexts in criminal proceedings, which may pose challenges to courts tasked with interpreting the applicability of this diagnosis to any specific legal contexts. Galatzer-Levy and Bryant examined DSM-5 criteria and estimated there were “636,120 ways to have posttraumatic stress disorder” (Ref. 58, p 651). Another challenge to using PTSD in the context of IPV and criminal proceedings is the distinct time courses (e.g., duration of clinical disturbance greater than 1 month) in its diagnostic criteria, whereas abusive relationships may be ongoing or occur over varying time periods.²⁶

Conclusion

Since its introduction more than 40 years ago, BWS has often been raised by female defendants pursuing traditional or imperfect self-defense cases. Despite the limitations in research literature on BWS, criticism of BWS in scholarly literature, and the lack of recognition of BWS as a psychiatric diagnosis in the DSM-5, the use of BWS in U.S. criminal courts persists, including in cases outside of typical self-defense. Case law suggests that expert witness testimony on BWS is often admissible in jurisdictions across the United States, yet its use in criminal defenses has received mixed responses from different courts. The concept of BWS has evolved in recent years, as there is growing recognition that IPV does not affect women alone and the perpetration of IPV can take many forms. In addition, PTSD has emerged as an alternative diagnosis with a broad evidence base across a variety of populations, widespread use in clinical contexts, and diagnostic flexibility that may account for variations in victim reactions to IPV.

Given the existence of standard PTSD criteria in the DSM-5, as well as frequent use of PTSD in clinical settings, forensic psychiatrists may feel more comfortable evaluating and testifying about PTSD than about BWS in forensic practice. Forensic psychiatrists may also feel better prepared to offer input on management (e.g., disposition, medications, psychotherapy) with defendants or victims with PTSD as opposed to those labeled with BWS in criminal cases.

Given the historical and ongoing use of BWS in U.S. criminal courts, forensic psychiatrists may find themselves asked to comment on BWS in legal contexts. In these instances, they would be well-advised to review the development of the theory of BWS, limitations regarding its evidence base, and precedent regarding its use in expert witness testimony in their local jurisdictions.⁵⁹ Regardless of whether a specific forensic psychiatric case involves PTSD or BWS, the prevalence and evolving understanding of IPV suggests U.S. criminal courts will often continue to turn to expert witness input regarding what is known and unknown about IPV and its psychiatric sequelae.

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