

Traumatic Paralysis: An Affirmative Defense for Battered Women Who Cannot Defend
Themselves or Others.

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Introduction

Eighteen-year old Sarah Snodie watched her boyfriend, Donnell McKennie, torture and eventually kill her 17-month old son, Drake London. Sarah Snodie explained to the police that McKennie struck Drake so many times she lost count.¹ McKennie also assaulted Sarah twice the same day. An autopsy revealed Drake London died of massive head injuries.² Donnell McKennie received a 45-year sentence after being convicted of first-degree reckless homicide and Sarah Snodie received a ten-year sentence for felony child neglect.³

Sarah Snodie received a devastating prison sentence. Not only did she witness her child being killed by her abuser she was charged for failing to aid her child or for failing to save her child's life. A woman who does not defend herself or her children against an abuser does not fit within any model that would garner sympathy from any court or jury. When the abuser kills the woman's child, the law treats her as an accomplice to the murder. The criminal justice system fails to understand the trauma that a woman like Sarah Snodie suffered within the relationship with the abuser. An examination of the relationship between Snodie and McKennie under a psychological rubric would have given the court a greater understanding of the trauma Snodie suffered.

If the law perceives that a woman failed to protect her child, she is generally prosecuted to the fullest extent of the law. Many women have not only been charged

¹ Kenosha County District Attorney's Office Criminal Complaint, Case No. 1997CF000047, (Filed January 21, 1997).

² Id.

³ Sarah Snodie and Donnell McKinney, Wisconsin Circuit Court Access, available at www.wcca.wicourts.gov.

with failure to render aid but many are charged as accomplices to the murder.⁴ No current affirmative defense gives an adequate response to the troubling question of why a woman would allow a man to physically abuse, or worse kill, her child. The psychological state of the woman must be examined.

The law allows women who kill their abusers an affirmative defense of insanity or self-defense with the foundation of battered woman syndrome. A woman may give testimony and have witnesses explain the length and depth of the abuse she endured. She is also allowed expert testimony to explain the mental anguish and trauma she suffered at the hands of her abuser.

A woman who does not kill but cannot save the life her child should be given the same opportunity to use an affirmative defense to explain the duration and intensity of her abusive relationship. This woman also suffers from battered woman syndrome. The failure to act is just as harrowing as the act of killing. To explicate the failure of the woman to act, the relationship between the woman and her abuser must be scrutinized under the theory of traumatic bonding.

Traumatic bonding does explain the emotional tie that binds the abused woman to the relationship. Even with intermittent violent episodes, women who suffer from traumatic bonding find difficult if not impossible to leave such relationships. These are battered women who cannot protect themselves or their children. The affirmative defense of duress can explain how the intermittent abuse can render a woman incapable of defending herself or her children.

⁴ Cf. Corey Kilgannon, *For a Notorious Victim, Some Things Never Heal*, N.Y. Times (February 10, 2004) available at www.nytimes.com/2004/02/10/nyregion/10profile.html, detailing the upcoming release of Joel Steinberg from prison for the murder of his adopted child and his former mate Hedda Nussbaum whom Steinberg abused as well. Nussbaum testified at his trial about the abuse she and the child suffered at his hands.

The criminal justice community has not universally accepted battered woman syndrome as a means to defend women who are charged with murdering the abusers.⁵ Several cases reveal courts are hesitant to accept the rubric of battered woman syndrome under the guise of self-defense without there being an imminent threat to a woman's life. The legal community questions whether such conclusions can be drawn about the existence of battered woman syndrome. Dr. Lenore Walker's studies and analysis are attacked as being statistically inconclusive at best and at worse labeling battered women with a psychological disorder when the abuser is the actual culprit. The use of battered woman syndrome as a self-defense claim has also garnered controversy. The non-confrontational cases where the abuser is killed are the most troubling for the court to allow defense counsel to use self-defense claims and allow expert testimony on battered woman syndrome. Many courts fail to distinguish the use of self-defense under the traditional model of immediate threat of death or great bodily harm versus the use of battered woman syndrome to explain the pervasive and threatening environment in which battered women live.⁶

The use of an affirmative defense of duress with the underpinning of traumatic bonding as the component to bolster the abused woman's assertion of her inability to protect herself or her child is deemed *traumatic paralysis*. To assert a claim of traumatic paralysis three components must be present: 1) a history of abuse in the relationship must be present; 2) the woman has to be traumatically bound to her abusive partner; and 3) the

⁵ Cf. Alafair S. Burke, *Rational Actors, Self Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C.L. Rev. 211-316 (2002). Burke argues Battered Woman Syndrome does not withstand empirical scrutiny and the basis of Dr. Lenore Walker's research is flawed. Burke also argues that BWS would not be admissible under *Daubert v. Merrell Dow Pharmaceuticals* [509 U.S. 579 (1993)] standards for expert testimony.

⁶ For a description of the cases see *infra* notes 28, 32 and 40 and accompanying text. discussing the acceptance of battered woman syndrome in trial court.

traumatic bonding must render the abused woman unable to protect herself or others because of the persistent abuse by her partner. Traumatic paralysis can assist defense counsel in explaining the plight of women like Sarah Snodie and Hedda Nussbaum.⁷

Parallels can be drawn between the use of duress as an affirmative defense with traumatic paralysis as the psychological foundation and self-defense with battered woman syndrome as the psychological foundation. Women who react violently against their abusers are given leeway by the courts to explain their trauma. Women who suffer the inverse trauma and who fail to protect themselves or their children should be allowed to assert their defense before the court as well.

My analysis unfolds in four sections. I conduct an in-depth examination of Dr. Lenore Walker's studies of battered women and the foundational structure of battered woman syndrome. Battered woman syndrome is next displayed as the psychological foundation of self-defense claims for women who kill their abusers. I then analogize how traumatic bonding and the psychological effects of women bound to their abusers is of a similar nature to battered woman syndrome. Lastly, I explore how duress can be used as affirmative defense in supporting a claim of traumatic paralysis and the inability of women to protect themselves or others.

The Battered Woman

Lenore Walker sought to explain why women stay in abusive relationships. She interviewed over 120 women and found consistent themes in their stories. The women interviewed were a mixed group that represented all ages (17-76 years of age), races,

⁷ An important difference must be examined between the two women. Hedda Nussbaum's charges were dropped after the prosecutor recognized the years of abuse suffered by Joel Steinberg left her too weak to intervene. The Sarah Snodie's prosecutor did not consider such arguments and prosecuted her to the fullest extent of the law. Race certainly plays a factor in such charging decisions.

religions, educational levels, cultures and socioeconomic groups.⁸ The relationships spanned from the short term of three months to the longest being fifty-three years. Walker detailed nine commonalities amongst battered women.:1) low self-esteem; 2) believes common myths of battering relationships; 3) believes in the traditional feminine sex-role stereotype; 4) accepts responsibility for batter's actions; 5) suffers from guilt and denies her feeling of terror and anger; 6) presents passive public face but can manipulate home environment to stave off violence or death; 7) suffers from severe stress reactions: 8) uses sex to establish intimacy; and 9) seeks no outside assistance.⁹ In seeking to explicate the lives of the women Walker interviewed, she amassed two theories: learned helplessness and the cycle of violence.

In *The Battered Woman*, Walker detailed the experiments of Martin Seligman to explain learned helplessness.¹⁰ Seligman placed dogs in cages and administered electrical shocks at random and varied intervals.¹¹ The dogs quickly learned that no matter what response they attempted, they could not control the shocks. Initially, the dogs sought escape through various movements that did not lessen the shocks.¹² Eventually, the dogs ceased further voluntary activity and became compliant, passive and submissive.¹³ Even when the researchers gave the dogs an escape route, the dogs would not respond.¹⁴ Seligman's theory was further refined and reformulated, based on later

⁸ Lenore Walker, *The Battered Woman*, 31 (Harper & Rowe) (1979).

⁹ Walker, *supra* note 5, at 31.

¹⁰ *Id.* p. 46.

¹¹ Walker, *supra* note 5, See M.E.P Seligman, S.F Maier and J Geer, *The Alleviation of Learned Helplessness in Dogs*, 73 *Journal of Abnormal Psychology* 256-262 (1968).

¹² *Id.*

¹³ Walker, *supra* note 9, at 46.

¹⁴ *Id.*

laboratory trials with human subjects.¹⁵ Walker conflates Seligman's research to explain why battered women lose their powers of discrimination and self-preservation.

Learned helplessness has three basic components: 1) information about what will happen; 2) cognitive representation about what will happen (learning, expectation, belief, perception); and 3) behavior towards what does happen.¹⁶ It is the second or cognitive representation component (the belief system) that leads to faulty expectations, which make response and outcome mutually exclusive.¹⁷ The disjointed belief system of the cognitive representation and the belief that the woman has no control over outcome no matter what her response leads to cognitive, motivational and emotional disturbances. The expectation may or may not be accurate. Whether the woman has control over the response variables or not, if she *perceives* she does not have control then the learned helplessness phenomena arises.¹⁸ If a woman believes she does have control over response variables, even if she does not, learned helplessness is not present. Therefore, the actual controllability is not as important as the belief or expectation of controllability.¹⁹

Walker summarizes the debilitating effect of learned helplessness on human problem solving skills.

Repeated batterings, like electrical shocks, diminish the woman's motivation to respond. She becomes passive. Secondly, her cognitive ability to perceive success is changed. She does not believe her response will result in a favorable outcome. The learning ability becomes hampered and the repertoire of responses

¹⁵, Lenore Walker, *The Battered Woman Syndrome*, 86 (Springer) (1984).

¹⁶ Walker, *supra* note 5, at 47.

¹⁷ Walker, *supra* note 12, 86..

¹⁸ *Id.*

¹⁹ Walker, *supra* note 12, *Battered Woman*, at 47.

from which she can choose is narrowed. Thus, battered woman become blind to her options.²⁰

The cyclical nature of the violence compounds the battered woman's experience of learned helplessness.

The question of why women stay in violent relationships can be answered by stating that many battered women do not believe that they are in violent relationships.²¹ The Walker Cycle Theory of Violence elucidates the compelling question of why women stay in violent relationships. Walker's tension reduction theory details three distinct phases associated in a recurring battering cycle: 1) tension building; 2) the acute battering incident; and 3) loving contrition.²² Battered women endure the first two phases to experience the love and contrition of the last phase. The unfortunate reality for these relationships is that battered women risk their lives waiting for the approach of the last phase.

Walker acknowledges battering incidents take place during the first phase but the gravity of the violence of the acute battering incident distinguishes this phase. The second phase is uncontrollable, destructive and brief. This phase causes the severest physical violence to battered women and psychological stress due to not knowing when the acute violent incident will occur. Women involved in long-term battering relationships provoke the acute battering incident to cease living with the anticipation of violence. The batterer attempts to discipline the woman after her behavior infuriates him enough to justify his violent behavior. Walker finds the violence the batterer uses to

²⁰ Walker, supra note 5, Summary of 48-50.

²¹ Walker explains that the third phase of the cycle theory of violence involves the batterer convincing his victim that the abuse was a one-time incident that will never happen again. *Battered Woman*, p. 66.

²² Walker, supra note 12, at 95.

impose authority is so brutal that the batterer exceeds his original intent and leaves the woman severely beaten. Thus, the batterer becomes guilt-ridden and contrite.

The batterer adopts the persona of a charming, affectionate, apologetic mate who promises the battered woman that he will never engage in such violent behavior again. Walker explains what the battering partner has supposedly learned from the violent encounter: the batterer promises never to act in such a fashion again and the batterer believes he has taught the battered woman not to engage in behavior that would trigger another violent encounter. The battered woman in this phase is particularly vulnerable to the batterer (or any friends or family members he may engage on his behalf). Walker notes that immediately after a violent encounter, the women are convinced of their desire to cease being victims. However, once the women resumed contact with their violent mates, the relationship resumes. The women face pressure not to destroy the family—even if the batterer is to blame for the rift in the relationship. Battered women convince themselves they will no longer suffer abuse. The batterers adopt behavior that the women idealize, thus, prolonging the relationship and endangering the lives of the woman *and the batterer*.

Self Defense and Battered Women

Defenses to criminal charges fall into two categories—justifications and excuses. A justification defense allows the defendant to contend that the state may be able to prove the charge beyond a reasonable doubt, but the defendant was justified in her actions and should not be held criminally responsible. Self-defense is the paramount justification defense. An excuse defense allows the defendant to commit a criminal act

(understanding that the defendant intended to commit the crime) but not be held responsible for the act due to insanity or duress. Entrapment and insanity are the most notable excuse defenses.

Defense attorneys have used Dr. Walker's theories of learned helplessness and the cycles of violence to launch defenses that explain the psychological trauma of being victim in a battering relationship.²³ Many jurors pose the same questions friends and families of battered woman ask—why stay in a violent relationship. Dr. Walker's theories help to explain what battered woman cannot articulate. A defense attorney must choose whether she will use Walker's theory of battered woman syndrome as a justification or excuse to the crime charged. The insanity defense carries a heavier burden because of past political and legal changes.

The Insanity defense is extremely hard to utilize. The attempted assassination of former Pres. Ronald Regan by John Hinckley and his being found not guilty by reason of insanity in 1982 destroyed the use of the insanity defense. Following the Hinckley case, Congress altered the U.S. Federal and military standards for the insanity defense, limiting it to the so-called "cognitive prong" of the ALI test²⁴--- that a defendant would not be responsible if "as a result of severe mental disease or defect, [he] was unable to appreciate the nature and quality or the wrongfulness of his acts."²⁵ Altogether, ¾ of the states and the Federal government have imposed some form of insanity defense reform

²³ Many legal scholars do not accept Dr. Walker's analysis of battered women having a psychological syndrome. See Robert Schopp, Barbara Sturgis & Megan Sullivan, *Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse*, 1994 U. Ill. L. Rev. 45 (1994).

²⁴ American Academy of Psychiatry and the Law, *Lets Talk Facts About the Insanity Defense* (January 9, 1996), (Revised September 2003) available at www.psych.org/public_info/insanity citing American Law Institute (ALI). That test holds that a person would "not [be] responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law."

²⁵ American Academy of Psychiatry and the Law, *supra* note 22.

since Hinckley's 1982 acquittal. The insanity defense is not often used, and when used is frequently unsuccessful. According to a 1991 eight-state study funded by the National Institute of Mental Health, the insanity defense was used in less than one percent of the cases in a representative sampling of cases before those states' county courts.²⁶ The study showed that only 26 percent of those insanity pleas were argued successfully.²⁷ Most studies show that in approximately 80 percent of the cases where a defendant is acquitted on a "not guilty by reason of insanity" finding, it is because the prosecution and defense have agreed on the appropriateness of the plea before trial.²⁸ That agreement occurred because both the defense and prosecution agreed that the defendant was mentally ill and met the jurisdiction's test for insanity.

Creative defense attorneys have no choice but to use self-defense to explain the battered woman's violent reaction to her mate. Even greater hurdles exist depending upon which type of self-defense rubric counsel uses. Courts were reticent to accept an affirmative defense such as self-defense without proof of immanent or immediate threats of great bodily harm or death.²⁹

The classic model of self-defense falls into categories of perfect and imperfect. The Model Penal Code explicates the use of a perfect self-defense model in the use of deadly force: when the defendant believes that such force is immediately necessary to protect himself on the present occasion against death, serious bodily injury, forcible rape

²⁶ American Academy of Psychiatry and the Law, *supra* note 22

²⁷ *Id.*

²⁸ *Id.*

²⁹ *St. v Norman*, 378 S.E.2d 8, 324 N.C. 253 (N.C. 1989). North Carolina Supreme Court over turned a lower court opinion that granted a new trial to the defendant for being denied the right to a self-defense instruction. The court found the defendant killing her husband in his sleep did not rise to imminent fear of death or great bodily harm even though she claimed she was a battered woman.

and kidnapping.³⁰ Additionally the use of deadly force must be justified by a reasonable belief standard: the privilege of self-defense is based on reasonable appearances, rather than on objective reality--a person is justified in using force to protect himself if he subjectively believes that such force is necessary to repel an imminent unlawful attack, even if appearances prove to be false.³¹ Perfect self-defense requires both subjective honesty on the part of the defendant and objective reasonableness. The defendant must actually and honestly believe that deadly force is necessary for her protection and it requires a finding that her belief was objectively reasonable.³² If the subjective and objective elements are met, then the defendant may be completely exonerated.³³

Common law recognizes the use of imperfect self-defense. The traditional common law rule is that if any element necessary to prove self-defense is lacking, the defense is wholly unavailable to a defendant.³⁴ Some states now recognize a so-called "imperfect" or "incomplete" defense of self-defense to murder, which results in conviction for the lesser offense of either voluntary or involuntary manslaughter.³⁵ For example, a defendant who fails to satisfy the "reasonableness" component, although his

³⁰ § 8.02 Model Penal Code, Self Defense: Use of Deadly Force, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>

³¹ § 8.04 Model Penal Code, Self Defense: Reasonable Belief, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>

³² Ogle, Robin and Jacobs, Susan: Self Defense and Battered Woman Who Kill. Connecticut: Westport (2002).

³³ *St. v. Allery*, 682 P.2d 312 (Wash. 1984). The defendant's conviction for second degree murder was overturned by the Washington Supreme Court because the trial court gave an inadequate instruction on the defendant suffering from battered woman syndrome and the defendant's subjective belief based upon the history of violence in the relationship.

³⁴ § 8.05 Model Penal Code, "Imperfect" Self-Defense Claims, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>

³⁵ § 8.05 Model Penal Code, *supra* note 33.

belief was genuine, might be able to assert an "imperfect" or "incomplete" claim of self-defense, mitigating his crime to manslaughter.³⁶

The Model Penal Code recognizes three categories of the use of an imperfect self-defense for battered women.³⁷ Confrontational homicides are cases in which the battered woman kills her partner during a battering incident.³⁸ In such cases, an instruction on self-defense is almost always given. It is now routine for a court to permit a battered woman to introduce evidence of the decedent's prior abusive treatment of her, in support of her claim of self-defense.³⁹ Non-confrontational homicides are cases the battered woman kills her abuser while he is asleep or during a significant lull in the violence.⁴⁰ Courts are divided on whether self-defense may be claimed if there is no evidence of threatening conduct by the abuser at the time of the homicide, although the majority position is that homicide under such circumstances is unjustified.⁴¹ Most controversial of the imperfect self-defense cases is the third-party killer cases. The battered woman hires or importunes another to kill her husband, and then pleads self-

³⁶ 8.05 Model Penal Code, supra note 33. See also *St. v. Necaize*, 466 So.2d 660 (La. 1990). The court affirmed the lower court decision that allowed the trial court to include the necessity to retreat as part of the defendant's self-defense instruction to the jury. The jury denied the defendant did not act in self-defense.

³⁷ § 8.06 Model Penal Code, Battered Women's Syndrome, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>

³⁸ § 8.06(1) Model Penal Code, Battered Women's Syndrome, "Confrontational" Homicides, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>

³⁹ Id. Cf. Beth Bjerregaard and Anita Neuberger Blowers, *The Appropriateness of the Frye Test in Determining the Admissibility of the Battered Woman Syndrome in the Courtroom*, 35 U. of Louisville J. of Fam. L. 1-23 (1996/1997). The authors review inconsistent admissibility standards set by differing jurisdictions for battered woman syndrome and argue that the courts mistakenly focus on the theory of battered woman syndrome and not the methodology used by Walker. They contend that the Frye test is inappropriate to determine the admissibility of expert testimony on battered woman syndrome.

⁴⁰ § 8.06(2) Model Penal Code, Battered Women's Syndrome, "Non-Confrontational" Homicide, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>.

⁴¹ § 8.06(2) Model Penal Code supra note 34. See also *St. v. Gallegos*, 719 P.2d 1268 (N.M. App. 1986). The court overturned the conviction of the defendant for voluntary manslaughter after she shot, stabbed and killed her ex-husband while he slept in bed. The defendant was not allowed to raise battered woman syndrome as part of her claim of self-defense. This decision has been severely criticized. See Schoop, supra note 22.

defense.⁴² Courts have unanimously refused to permit instructions in third-party hired-killer cases.⁴³

Self-defense claims can be used effectively to defend women who kill their abusers. Battered woman syndrome aids even women who kill in non-confrontational situations. Traumatic bonding can be used in a similar fashion to explain *inaction* instead of reaction to violent relationships.

Traumatic Bonding

Donald Dutton and Susan Painter elaborated the theory of traumatic bonding espousing that powerful emotional attachments are seen to develop from two specific features of abuse relationships: power imbalances and intermittent good treatment.⁴⁴ Dutton and Painter present compelling findings as to why women stay in violent relationships. The initial abuse incidents in the relationship are perceived to be an anomaly and coupled with the lack of severity and post-incident contrition by the man, operates to strengthen the affective attachment at a time when the belief has not yet formed that the abuse will be repetitive and inescapable.⁴⁵ Repeated incidents of greater severity tend to shift the woman's cognition to the belief that the violence will recur unless she does something to prevent it.⁴⁶ By the time the woman realizes that the abuse is inescapable, the traumatically produced emotional bond is quite strong.

The common structures of traumatic bonding are the power imbalance where the maltreated person perceives herself to be subjugated or dominated by the other and

⁴² § 8.06(3) Model Penal Code, Battered Women's Syndrome, Third Party Hired Killer Cases, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>.

⁴³ *Id.*

⁴⁴ Donald Dutton, and Susan Painter, *Emotional Attachments in Abusive Relationships: A Test of Traumatic Bonding Theory*, 8 *Violence and Victims* 105-120 (1993).

⁴⁵ *Id.* at 106.

⁴⁶ *Id.*

intermittent abuse.⁴⁷ Dutton and Painter found that attachment to a person or group larger than the self can increase feelings of personal power but also can create a microcosm in which the subordinate individual feels powerless.⁴⁸ Social psychologists have found that unequal power relationships can become increasingly imbalanced over time to the point where the power dynamic itself produces pathology in individuals.⁴⁹ The 1978 Zimbardo, Haney and Banks prisoner study reported anxiety and depression only after four days in volunteer subjects playing the role of “prisoners” who were relegated to powerlessness in simulated prison situation.⁵⁰ Lewin, Lippitt and White reported increased redirected aggression in powerless members of autocratic groups and Bettelheim reported Jewish prisoners’ compulsive copying of the behavior and expressed attitudes of the Nazi prison guards, which he described as “identification with the aggressor”.⁵¹ Where a person of high power (dominator) is intermittently punitive, subjugated persons might adopt the dominator’s assumed perspective of themselves and internalize or redirect aggression towards others similar to themselves.⁵²

As the power imbalance magnifies, the subjugated person feels more negative in the self-appraisal, more incapable of fending for herself, and is thus, increasingly more in need of the dominator.⁵³ The cycle of relationship produced dependency and lowered self-esteem is repeated, eventually creating a strong affective bond from the low to high

⁴⁷ Sutton, supra note 45, at 108.

⁴⁸ Id.

⁴⁹ Dutton, supra note 38, at 107.

⁵⁰ Id, citing P.G. Zimbardo, C. Haney & W.C. Banks, *A Pirandellian Prison: The Mind is a Formidable Jailer*, N.Y. Times Magazine, April 8, 1972 at 38-60.

⁵¹ Dutton, supra note 45, at 107 citing K. Lewin, R. Lippitt & R. White, *An Experimental Study of Leadership and Group Life*, in T.M. Newcombe & E.L. Hartley eds., *Readings in Social Psychology*, (Holt, Reinholt & Winston 1947).

⁵² Id.

⁵³ Id.

power person.⁵⁴ Concomitantly, the person in the high power position develops an inflated sense of their own power (just as the lower person develops an exaggerated sense of their own powerlessness), which masks the extent to which they are dependent on the low person to maintain their feeling of as Erich Fromm puts it “the transformation of impotence into omnipotence”.⁵⁵

The omnipotence, however, is predicated on the dominator’s ability to maintain absolute control in the dyadic relationship. When the symbiotic roles that maintain the relationship are disturbed, the masked dependency of the dominator on the subjugated person is revealed.⁵⁶ In romantic relationships, as well as in cults, power imbalances magnify so that each person’s sense of power or powerlessness feeds on itself.⁵⁷ In the process, both persons become welded together to maintain the psychological subsystem that fulfills the needs created, in part, by the power dynamic itself.⁵⁸ In battering relationships, physical abuse can serve to maintain the power differential and, when coupled with emotional abuse, *including threats against the woman and her children* and a generalized feeling of powerlessness felt by the victim, can serve to maintain the relationship homeostasis.⁵⁹

The second feature of traumatic bonding situations is that the abuse occurs intermittently. The dominator intermittently and periodically maltreats the dominated by threats, verbal and/or physical abuse.⁶⁰ The offset is likely to be characterized by the onset of positive behaviors, which Walker describes as the contrition phase of the abuse

⁵⁴ Dutton, *supra* note 45, at 107.

⁵⁵ Id, citing Erich Fromm, *The Anatomy of Human Destruction*, (Fawcett Crest 1973) and R. Geller, *Abused Wives: Why do they stay?*, 38 *Journal of Marriage and the Family* 659-668 (1976).

⁵⁶ Id.

⁵⁷ Dutton, *supra* note 45, at 107.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

cycle.⁶¹ Thus the victim is subject to alternative periods of aversive/negative arousal and the relief/release associated with removal of aversive arousal.⁶² The situation of alternating periods of aversive/negative arousal and relief/release is an experimental paradigm within which learning theory known as intermittent reinforcement/punishment which is highly effective in producing persistent patterns of behavior that are difficult to extinguish or terminate and which develops the strongest experimentally produced emotional bonds.⁶³

Rajecki, Lamb and Obmascher reviewed emotional bonding in infants and assessed the major theories of infantile attachment, including those on both human and animal attachment.⁶⁴ One criterion for the comparative evaluation of these theories was their relative ability to explain “maltreatment effects”.⁶⁵ In reviewing the literature on maltreatment effects, Rajecki, et al. found conclusive evidence for enhanced infant animal attachment under conditions of intermittent maltreatment in birds, dogs and monkeys.⁶⁶ Attempts to inhibit infants’ bonding to abusive attachment objects were found to inevitably fail unless: 1) they were persistent and consistently abusive and 2) an alternate attachment object existed.⁶⁷

When physical punishment is administered at intermittent rates and when it is interspersed with permissive friendly contact, the phenomenon of traumatic bonding seems most powerful.⁶⁸ A.E. Fischer attempted to inhibit the social responses of young

⁶¹ Walker, supra note 15, at 86.

⁶² Dutton, supra note 45, at 107.

⁶³ Dutton, supra note 45, at 108.

⁶⁴ Id, citing D.W. Rajecki, M. Lamb & P. Obmascher, Toward a General Theory of Infantile Attachment: A Comparative Review of Aspects of Social Bonding, 3 Behavioral and Brain Sciences 417-464 (1978).

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Dutton, supra note 45, at 108.

dogs, and found that an indulged-punished group showed 231% of the human orientation of the consistently indulged group.⁶⁹ As Rajecki and his colleagues concluded, “the data show that inconsistent treatment (i.e. maltreatment by, and affection from, the same source) yield accentuation of attempts to gain proximity to the attachment object”.⁷⁰

Extrapolating animal studies to explain human behavior may be debatable but Dutton and Painter reviewed many studies to garner their conclusions. In analogizing the previously mentioned studies to explain the emotional bonding of battered women, Dutton and Painter cite Bruce Rounsaville: “one feature that may weigh in favor of staying is the intermittent nature of the abuse. . . many battered women described highly pleasant periods of reconciliation between episodes. . . This pattern was conducive to ignoring the problem or thinking of it as an aberrant, exceptional part of the relationship”.⁷¹ Dutton and Painter also detail Walker’s cycle of violence theory to bolster their findings that the emotional aftermath of a battering incident for the battered, usually guilt and contrition, leads him to attempt to make amends via exceptionally loving treatment and thus his improved behavior serves to reduce the aversive arousal he himself created, while also providing reinforcement for this partner to stay in the relationship.

The power imbalance and intermittent abuse of traumatic bonding seeks to explain why women not only do not leave abusive relationships but do not protect

⁶⁹ Dutton, supra note 45, at 108, citing A. E. Fischer, *The Effects of Differential Early Treatment on the Social and Exploratory behavior of Guppies* (1955) (unpublished doctoral dissertation, on file with Pennsylvania State University)

⁷⁰ Dutton, supra note 65, at 108.

⁷¹ Id, citing Bruce Rounsaville, *Theories of Marital Violence: Evidence from a Study of Battered Women*, 3 *Victimology* 1-2, 11-31 (1978).

themselves or their children. Integrating traumatic bonding with the affirmative defense of duress can explain why women suffer from traumatic paralysis .

Duress Defense

The affirmative defense of duress operates on a construct similar to self-defense. The threat of death or great bodily harm must be present and a criminal act is committed because of such a threat. However, duress seeks to explain the circumstances of *acting with a codefendant* instead of acting against a threat of violence. There are five elements to the general principle of the duress defense: 1) another person issued a specific threat to kill or grievously injure the defendant or a third party, particularly a near relative, unless he committed the offense; 2) the defendant reasonably believed that the threat was genuine; 3) the threat was "present, imminent, and impending" at the time of the criminal act; 4) there was no reasonable escape from the threat except through compliance with the demands of the coercer; and 5) the defendant was not at fault in exposing himself to the threat.⁷²

The MPC version of duress is broader: (1) he was compelled to commit the offense by the use, or threatened use, of unlawful force by the coercer upon his or another person; and (2) *a person of reasonable firmness in his situation would have been unable to resist the coercion.*⁷³ The common law (or general principle) of duress differs greatly from the MPC version. The MPC duress defense abandons the common law requirement

⁷² §13.01 Model Penal Code, Duress: General Principle, available at <http://www.lexisnexis.com/lawschool/resource/summaries/html/crim/tocFull.htm>. Burke, *supra* note 5, at 258, finds that courts are reluctant to apply battered woman syndrome to duress cases because the syndrome describes subjective beliefs and is therefore irrelevant to whether the objective test under the duress defense have been met.

⁷³ § 13.03 Model Penal Code, *supra* note 68. See also Joshua Dressler, *Exegesis of the Law of Duress: Justifying the Excuse and Searching for Its Proper Limits*, 62 S. Cal. Rev. 1331-1386, criticizing the use of duress as an "I'm only human" defense. Dressler argues duress lacks the moral authority to excuse the actions of defendants unless the defendants have reflected or retained society's legitimate expectations of moral strength.

that the defendant's unlawful act be a response to an imminent deadly threat. An even greater distinction is the general principle of duress does not allow its use in charges of murder.⁷⁴ The MPC does allow the use of duress as an affirmative defense against a murder charge.⁷⁵

A defense attorney can argue that the effects of traumatic bonding does leave an abused woman so compliant and helpless that her lack of action can be argued as the coercive effects being in a long-term abusive relationship. Illinois statutes do recognize in general that defendants can be compelled to commit crimes against their will.⁷⁶ The effect of being physically and emotionally abused becomes so pervasive that the woman is not only unable to defend herself; she became an unwitting accomplice in the death of her own child. The legal hurdle will be that the inaction of the abused woman can be equated to criminal defense. The multifaceted components of traumatic paralysis can overcome such a hurdle.

⁷⁴ Dressler, *supra* note 72, at 1373 discusses the moral quagmire that a jury would face in case of a defendant asserting a duress defense to murder. "A jury might rightly expect people to manifest the utmost moral strength—even at some point chose death—when they have reason to know that they are playing a part even a minor role, in an especially barbaric scenario".

⁷⁵ *Cf. People v. Pollock*, 202 Ill.2d 189, the Illinois Supreme Court overturned the conviction of the defendant for first degree murder and aggravated battery of a child. The defendant's boyfriend was convicted of killing her two-year old daughter. The defendant was held accountable for the murder as well. The trial court misstated the jury instruction by claiming the defendant "knew or should have known" that her boyfriend was abusing her child thus imposing a negligent state of mind versus a knowing state of mind. No allegations of abuse existed but the case highlights how mothers are held accountable for the death of their children when their boyfriends commit the murders. Duress would give assist these women when they suffer the additional burden of an abusive relationship and losing their child.

See also *People v. Burton*, 338 Ill.App. 3d 406 (2003) where the Illinois Appellate court overturned the conviction of a mother who failed to intervene to save her daughter's life. The trial court sentence the boyfriend to life imprisonment for killing the daughter and defendant to life for aiding and abetting by not intervening. Based on the *Pollock* decision, the court overturned the defendant's conviction.

⁷⁶ 720 Ill. Comp. Stat. § 5/7-11 (1961).

Compulsion.

(a) A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or will be inflicted upon him if great bodily harm, if he reasonably believes death or great bodily harm will be inflicted upon him if he does not perform such conduct.