

# THE ADMISSIBILITY OF NON-DSM SYNDROMES IN COURT: FROM PTSD TO COMPLEX PTSD

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# EDUCATIONAL OBJECTIVE

- To discuss the various non-DSM stress related syndromes that have been described in both scientific-clinical and legal arenas, their admissibility in Court according to the post-Daubert standard and the need to have them somehow incorporated with-in the official DSM classification.

# Novel Mental Disorders

1. In recent years attorneys have put forth new mental or social disorders either **to excuse or mitigate** otherwise criminal behaviors or to lay the foundation for civil litigation
2. The acceptance of these novel mental disorders or syndromes has both **value and caveats.**

# Frye v. United States

## DC 1923

- ...“While the courts will go a long way in admitting expert testimony deduced from well recognized scientific principles or discovery , the thing from which the deduction is made must be sufficiently well established to have gained general acceptance in the particular field in which it belongs” ...

# Daubert v. Merrell Dow Pharmaceuticals US Supreme Court 1993

1975 Federal Rules of Evidence and not the Frye provide the standard for admitting expert scientific evidence in a federal trial

## Rule 702 :

- 1. If scientific, technical or others specialized knowledge will assist the Trier of fact to understand the evidence or to determine a fact at issue, a witness qualified by knowledge, skill, training and experience may testify in the form of an opinion
- 2. The trial judge shall ensure that the experts testimony both rests on a reliable foundation and is relevant to the task at hand.

# PREMISES I

- Post-Daubert standard of admissibility of scientific expert evidence, assigns the trial judge the task of ensuring that an expert testimony both rests on **reliable foundation** and be **relevant** to the task at hand.
  1. Can be tested
  2. Subject to peer review
  3. Its known potential error rate is known
  4. Maintenance of standards controlling its operation
  5. Accepted within the relevant scientific community.

# PREMISE II

- DSM III-IV diagnosis such as PTSD, which have evolved from concepts such as “irritable heart syndrome” and the “shell shock syndrome”, have helped expert testimony in providing the legal system with specific constructs to describe professionally accepted syndromes, improving overall diagnostic reliability.

# PREMISE III

- Courts and , legislatures are increasingly confronted with claims that Syndromes, both old and new, should be the basis for two types of legal change:
  1. The creation of new affirmative defenses
  2. The expansion of old affirmative defenses.

# PREMISE IV

- There is a need to prove that a Syndrome is a real mental disorder, which may be sufficiently serious to cause mitigation or excuse in a criminal case, describe behavior which may enhance the credibility of a victim or defendant or prove damages in civil case.

# PREMISE V

- New Syndrome evidence used to negate the requisite mens rea in criminal cases, needs to confront the fact that mental abnormality, including severe mental disorder, rarely negates the mens rea require by the definition of the offense.
- **(a mental disorder may give people crazy reasons for doing what they do, but it virtually never negates the defendant's intention, knowledge, conscious awareness of risk etc.)**

# PREMISE VI

- Despite the professional recognition of a Syndromes existence, public policy concerns may negate its acceptance in Criminal court if it is perceived to be a cop-out defense and in Civil court if it threatens administrative and corporate bullying tactics used to achieve an outcome.
- **(In the later case, where experts evaluate the validity of the claims and the scope of damages, post Daubert application, means considering alternative hypothesis for symptom presentation, such as malingering, exaggeration or misattribution).**
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# PREMISE VII

- The types of novel testimony currently offered in the courts range from the highly subjective soft science of psychology and psychiatry to objective hard sciences of microbiology, chemistry, pathology etc.
- Application of the Frye Test to these novel testimony addresses legitimate concerns for the reliability of the scientific evidence offered as well as a concern for the uniformity of judicial the decision-making process.

# BASIC RULES GOVERNING THE ADMISSIBILITY OF EXPERT EVIDENCE

- The Federal rules of evidence contain at least five rules (702, 104. 703, 401 and 403), which are directly applicable to the admissibility of Expert Testimony:

# RULE 702

- Provides that if scientific, technical or other specialized knowledge will assist the trier of fact (must be helpful), to **understand** the evidence or **determine** a fact at issue, a witness, **qualified** as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

# Rule 104

- The witness must be qualified and preliminary questions for the court concerning the qualifications of the person to be a witness or the admissibility of evidence, shall be determined by the court

# RULE 703 (Frye test)

- Experts must base their opinions on reliable facts and data which requires that the Court **may make an independent evaluation** of the reliability of the data underlying expert opinion to assess whether the facts or data upon which an expert bases an opinion or inference is of a type reasonably relied upon by experts in the particular field .

# **RULE 401 (Relevancy test)**

- The evidence must have a tendency to make the existence of any fact that is of consequence to the determination of an action, more probable or less probable than it would be without the evidence.

# RULE 403

- Authorizes the exclusion of even relevant testimony “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury”
- The proponents of expert testimony, bears the burden of proving its admissibility under 702 and 703 by preponderance of the evidence.

# U.S. Supreme Court

- **In the past, the USSC has been extraordinarily predisposed to admitting all relevant evidence without special regard to its scientific reliability .**
- **Barefoot v. Estelle (Texas 1983)**, In regards to the admissibility of expert opinion regarding future dangerousness, the court stated; “relevant unprivileged evidence should be admitted and its weight should be left to the fact finder via cross exam or presentation of contrary evidence by opposing party”  
**Justice Blackmun** in his **dissent** stated; “unreliable evidence is widely acknowledged to be prejudicial”.

# SYNDROME EVIDENCE AND EXISTING DOCTRINES

- A **syndrome** is a constellation of sign and symptoms which is unique as a group but may contain signs and symptoms common to other syndromes. It is the particular combination of symptoms which make the syndrome specific. The clinical diagnosis of any syndrome involves comparing the individual's behavior and symptoms with the behavior and symptoms of others in similar circumstances.

# Syndrome Evidence

- As quoted in Fish's Clinical Psychopathology, "any discussion of the classification of psychiatric disorders, must begin with the frank admission that the final classification of disease must be based on etiology, and until we know the causation of mental illnesses, we must use some variety of classification which helps us care for our patients and encourage research.

# Syndrome Evidence

- Though a Syndrome cannot be used diagnostically, its value is to describe general reactions to known or assumed causes and explain unexpected behaviors, serving a corrective function.
- When courts decide to admit syndrome evidence, a higher degree of validity and science will be required with-in a criminal context than when it is used , for credibility purposes, i.e., to correct any misunderstanding about any unusual reactions of a trial participant.

# Syndrome Evidence

- In order for Syndrome evidence to have theoretical value, three propositions must be established.
  - 1. The general public must misperceive the social reality regarding relevant group behavior.
  - 2. The expert or the jury, must be able to identify when a person is a member of the relevant group.
  - 3. A well defined group behavior or group character must exist in response to a set of conditions assumed or proven to be present in the case.

# Syndrome Evidence

- The APA, christened the first psychological syndrome in 1980 when PTSD was officially recognized in the DSM III, after contemplating other diagnostic categories such as “gross stress reaction” in 1952, “traumatic Neurosis” in 1966, and “adjustment reaction of adult life” in 1968, all of which were used to describe psychiatric pathology in relation to an acute traumatic event.

# Prolonged Duress Stress Disorder (PDSD)

- Excluded were those adaptation syndromes that resulted from chronic stress exposure (an accumulation of small individually non-life threatening incidents), whose severity of symptoms (some of which were psychosomatic), and behavioral outcome (reenactment or self destructive behavior) , were directly related to the magnitude and duration of the stress exposure, the age of the victim at the time of exposure and the sense of captivity experienced by the victim .

# APA 2001 Annual Meeting Anxiety Symposia

- The co-morbidity of extreme stress and severe mental illness, highlights the need for more research and clinical awareness, including the consideration of “**Complex PTSD**” in the official psychiatric nomenclature, which could include the following diagnostic criteria:

# Complex PTSD

- Impairment of affective regulation
- Chronic self destructive acting out behaviors
- Amnesic and dissociative episodes
- Alterations in relationship to self
- Distorted relationships
- Somatization
- Loss of sustaining beliefs
- Intrusive trauma re-experiencing symptoms
- Avoidance
- Substance abuse

# Complex PTSD

- Is the result of an accumulation of many small individually non-life-threatening incidents to which the person “accommodates”, within the context of “captivity” (confusion, lack of means to escape, entrapment, lack or loss of control, dis-empowerment and learned helplessness).
- It includes, repeated exposure to horrific scenes, repeated violations such as verbal abuse, physical abuse, emotional and sexual abuse and repeated intrusions both physical and psychological such as corporate bullying, stalking, harassment, domestic violence etc.

# Enduring Personality Change after Catastrophic Event ICD-10

- While **DSM-IV** researchers, proposed, but was not accepted **DESNOS**, which focused on the effect of traumatic events on early development and chronic stress exposure of civilians.
- **ICD-10** researchers included the above diagnostic category to describe a long term condition which can last two or more years, that is the result of severe trauma of adulthood such as exposure torture, or to a prolonged hostage situation which can result in distrust, social withdrawal, emptiness, hopelessness, dependency, problems modulating aggression, hiper-vigilance, irritability and alienation.

# Syndrome Evidence to aide an affirmative defense

- Syndrome defenses require that the jury hear evidence about how members of certain group typically act and then determine if the defendant indeed belongs to that group.
- The use of evidence regarding group behavior to correct stereotypes and restore credibility, may distort a jurors analysis of the case.
- Excusing condition requires the existence of some mental pathology that impairs rationality or behavior controls.

# Syndrome Evidence to aide an affirmative defense

- While established diagnostic categories have been tested for reliability, many Syndromes have not, therefore, evidence for the scientific validity and diagnostic reliability to expand existing doctrines of excuse defense such as self defense, insanity, duress, heat of passion, extreme mental and emotional disturbance and diminished responsibility may be warranted.

# Syndrome Evidence to aid an affirmative defense

- Even if a new syndrome meets a reasonable standard of content validity, there may be little or no evidence that the evaluators can reliably determine whether a person suffers from the “new syndrome”.
- The conclusion that “new syndrome evidence” should be excluded by the courts does not follow, however the courts legislatures and advocates should be sensitive to these clinical and scientific caveats.
- Fundamental fairness requires permitting defendants to use any credible evidence to cast doubt on the prosecution’s case including the “mens rea” required by the offense.

# Affirmative Defenses (exculpatory)

- Insanity: Local definition
- Self defense: Using a reasonable amount of force against an aggressor when he/she reasonably believes that he/she is in imminent danger of serious bodily harm and the use of force is necessary to avoid this danger. Eminent danger is defined as the appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense.

# Affirmative Defenses (exculpatory)

- **Coercion or Duress:** When the person acts or fails to act because, they had a reasonable belief that immediate death or serious bodily harm would follow if they did not participate in the crime and there was no reasonable opportunity for the defendant to escape death or serious bodily injury, or to notify authorities before the crime was completed. Coercion or duress must be immediate, and of such a nature, as to induce a well grounded fear of death or serious bodily injury if the act is not done. One who has full opportunity to escape, without danger, in order to avoid the act, cannot invoke this defense.

# Affirmative Defenses (mitigating)

- **Heat of Passion:** Results from a provocation that would have caused a reasonable person to react the same way.
- **Extreme mental and emotional disturbance:** When a significant mental disturbance has affected the defendant's mind for a substantial period of time, simmering in the unknowing subconscious and the inexplicably coming to the fore. (People v. Patterson)
- **Diminished responsibility:** When a person suffers from an abnormality of the mind that diminishes his rationality.

# Review of the Abuse Excuses and other “Cop-outs”

- **Advocates** claim that Syndrome suffering defendants conduct should be “justified” rather than “excused”, claiming that the person engaging in the unlawful conduct is acting with **reasonable** beliefs and for the **right** reason.
- **Opponents** fear that innumerable excuse claims such as “TV Intoxication Syndrome”, “Children of Holocaust Survivor’s Syndrome” and the “Twinkie Defense” will proliferate.

# Battered Woman Syndrome

- First described by Leonor Walker in her 1979 book. BWS describes the stages of a physically and psychological abusive relationship with a mate and the effect of each stage of the relationship on the battered woman:
  - **1. Tension building stage: minor incidents of physical and verbal abuse take place**
  - **2. Violent Battering stage : where serious injury is caused**
  - **3. Contrition or reinforcement stage: men asks for forgiveness, vows his love and promises to never batter**

# Battered Woman Syndrome

- **IBN-Tamas v.US (DC court of appeals 1979)**  
“Expert testimony to BWS which was given by a clinical psychologist in support of a defendant’s claim of self defense to killing her husband was not inadmissible on grounds that it would invade the province of the jury or that it’s probative value was outweighed by its prejudicial effect. However the record is insufficient, in regard to its ultimate admissibility, without consideration of witness qualification and determination as to whether witness methodology for identifying and studying BWS had attained general acceptance”.

# Battered Woman Syndrome

- **Bechel v. State, (Okla. Appeals Ct. 1992)**  
“BWS is a substantially, scientifically accepted theory for the purpose of determining admissibility of evidence. Questions regarding its methodology can be dilucidated in cross exam.”
- **BWS is admissible in all 51** states in pursuing a traditional self defense case
- **BWS expert testimony is used to describe a woman’s perception of danger, its eminence, the reasonableness of those perceptions and what actions she felt were necessary to protect herself**

# Stockholm Syndrome

- Was first described by an FBI special agent Conrad Hassle, in 1973 after 4 persons who were held hostage for six days during a bank hold-up, developed positive feelings towards their captors. According to Frank Ochberg, a psychiatrist at NIMH and consultant to FBI, the following characterizes persons who display the syndrome which is promoted by the duration and intensity of the captivity.
  1. The victim develops positive feelings towards his captors which the hostage-taker reciprocates.
  2. The victim develops negative feelings towards the authorities responsible for his rescue.

# Stockholm Syndrome

- The syndrome was **use by Patricia Hearst's** defense team after she was charged with armed robbery against a bank in San Francisco while a member of the SLA . The defense team argued she had been “kidnapped”, “brainwashed” and “induced” to rob for fear she would be killed (duress). The defense was not successful and she was convicted.

# Rotten Social Back-round Syndrome

- **This RSBS evidence consists of evidence that a defendant's abusive /violent childhood conditions including squalor, abuse, abandonment and alcoholism, leads to an inability to control behavior.**
- This evidence has been accepted in the sentencing phase of capital punishment cases as mitigating evidence. According to the USSC, included in the 8th and 14th amendment is the requirement that sentencing bodies consider mitigating factors individual to each capital defendant.

# Rotten Social Background Syndrome

- **US v. Alexander (USDC of Appeals 1972)**
- Rejected the defense. But Judge Bazelon in his dissent, proposed that the trial Judge's rejection of the RSBS evidence, may have resulted in an unfair trial for the defendant, because the defendant was not able to use this defense to show he lacked moral responsibility for then murder. Judge Bazelon suggested that although the defendant's mental impairment was not severe enough to render him insane, the jury might have acquitted him after hearing evidence of his back-round including exposure to various societal problems such as racism.

# Rotten Social Background Syndrome

- **Williams v. Talyor** , the USSC recently held that Williams had a valid complaint of ineffective assistance to counsel because the defense attorney did not present evidence of Williamson's history of abuse, commitment in foster homes, squalor or borderline mental retardation.
- The use of this excuse in death penalty cases is a double edge sword, (unless state code prohibit using it as an aggravator), since this evidence could strengthen the issue of future dangerousness

# Black Rage Syndrome

- **BRS was first described by two psychiatrists (Grier and Cobb) in their 1968 book called “Black Rage”, who argue that because of the pervasive pattern of racism in the US, black develop a “cultural Paranoia” which leads them to view whites as their enemy.**
- A BRS defendant, who through expert testimony can convince a jury that there is a reasonable explanation or excuse for his mental condition may merit a partial exoneration, mitigating a conviction.

# Black Rage Syndrome

- In 1846 a NYS appellate court found a man insane as a result of the brutality he suffered as a black man in NY.

In 1994 Ferguson's attorney's intended to persuade the jury that their client should not be held accountable for his actions on the Long Island Train Massacre in 12/7/93, based on a "black rage syndrome". Ferguson refused the defense, fired his attorneys and represented himself.

# Black Rage Syndrome

- While those afflicted with BRS may qualify as legally insane in that they act without deterrence and a sense of blameworthiness necessary to inflict punishment in a utilitarian scheme, public policy would dictate otherwise. However, **proof of extreme mental and emotional disturbance based on an acute or chronic provocation, could render a defendant's crime eligible for mitigation or diminished capacity.**

# Urban Survival Syndrome

- **Urban Survival defendants assert that growing up in an indigent, violent urban neighborhood, , triggers a heightened sense of fear or danger causing them to commit criminal acts that would seem irrational to the ordinary person.**
- The syndrome was first introduced in 1993 in *State v. Osby*. Daimon Osby a 17y/o black man shot and killed two other black men who had threatened him with a gun two weeks before. Trial resulted in a hung jury and during second trial the evidence was not admitted. Osby was convicted.

# Urban Survival Syndrome

- **People v. Goetz , NYS 1986** Defendant claimed that post traumatic experiences (he had been assaulted in 1981 and 1984), caused him to believe he was in eminent danger when 4 unarmed black youths approached him in a train and demanded he give them five dollars. Though indicted for attempted murder, assault and weapon possession, the charges were dismissed by the lower court and reinstated by the appeals court based on the reasonableness of his perceptions . He was acquitted on all counts and convicted of carrying an unlicensed weapon.

# Neonaticide Syndrome

- **Neonaticide** is the killing of a newborn with-in 24 hours after giving birth.
- **Neonaticide Syndrome:** describes a behavioral pattern of a typical neonaticide offender which includes the following profile:
  - **age between 15-38**
  - **passive and isolated women**
  - **use of denial and disassociation**

# Neonaticide Syndrome

- **People v. Wernick (NYS Appeal Div 1996)** The court did not allow the defense to present testimony on Neonaticide syndrome , because a Frye hearing had not yet validated the syndrome . The defense team may have failed to make clear from the outset, their intention to introduce syndrome evidence.
- At present the law on admissibility of expert testimony has changed and state courts no longer have to use a Frye hearing to probe the reliability of novel scientific evidence.

# Neonaticide Syndrome

- **Daubert is a more lenient evidentiary standard** requiring the judge to determine whether the methodology underlying the experts reasoning is valid focusing more on the method used rather than the conclusions reached, and whether the syndrome evidence will assist the Trier of fact understand the evidence and determine a fact at issue.
- The credibility of the neonaticide syndrome is bolstered by the fact that medical literature recorded the pattern of behavior, long before it was used as a defense.

# Syndrome Evidence for Credibility Purposes

- When Syndrome evidence is used to bolster credibility of a victim or to correct misunderstanding about unusual reactions of a trial participant, the requirements of validity are much less exacting from a scientific perspective, and the dangers of jury misuse, while real, are less grave.
- Syndrome evidence in these cases may be used to prove abuse, intent or to affirm the child's credibility.

# Battered Child Syndrome

- First named by Kempe in 1962, the syndrome, which had long been observed by radiologists, is described as a **pattern of multiple fractures of long bones at various stages of healing which do not tend to occur accidentally, periosteal swellings either of which may be accompanied by subdural hematomas.**

# Battered Child Syndrome

- **State v. Atkins, NC 1998;**
- Having suffered extensive injuries over a four week period leading to his death, battered child syndrome evidence was deemed relevant and admissible to demonstrate premeditation and deliberation and probative and necessary to demonstrate to the jury aggravating circumstances.

# Shaken Baby Syndrome

- When the infant's head, being held, and shaken so violently that the brain is shaken inside the skull causing bruising and tearing of blood vessels inside the head.
- Used in babysitter case to prove intent.

# Failure to Thrive Syndrome

- When an infant presents growth failure, psychomotor retardation, social and language problems, is withdrawn, apathetic and lethargic maintains an infantile posture or presents auto-erotic behavior.
- Used to prove neglect

# Munchausen by Proxy

- **A disorder in which a person persistently fabricates symptoms of illness on behalf of another, causing that person to be regarded as ill.**
- First described in 1977 by a pediatrician as an extreme form of child abuse.
- During the 1990' s, attempts were made to equate the existence of the illness with lack of offender accountability for his/her behavior. The outcome, after deliberation by several experts, was that the term Syndrome be dropped.
- In 1993, Tanya Reid, a licensed practical nurse, was convicted in Texas for the death of her 8 month old child. She had been convicted of child endangerment, based on MBP.

# Munchausen by Proxy

- **People v. Coulter NYS Dist, Ct. 1999**

Prosecution was required to establish a Frye hearing to prove that MSBP was generally accepted in the field of psychiatry and neurology, and that expert testimony would assist the jury in rendering a verdict.

- **State v. Hocevar Mont. 2000**

The Daubert standards of admissibility do not apply to MSBP, since it has been in the literature since 1977 and is not a novel condition.

# Child Sexual Abuse Syndrome

- **Profiling CSAS**, assumes that a sexually abused child show certain characteristics, not common to children who have not been sexually abused, that these characteristics can be detected by a trained expert and that expert's diagnosis of sexual abuse, is evidence that the crime has occurred. Two subcategories of CSAS;
- **1. Child Accommodation Syndrome:** involves secrecy, helplessness, entrapment, delayed conflictive disclosure retraction, recantation and pseudo-maturity
- **2. Damaged Goods Syndrome:** depression, guilt, negative self image, sexual promiscuity, somatization, difficulty relating to others and a tendency to re-enact the abuse.

# Child Sexual Abuse Syndrome (before 1986)

- **State v. Myers Minn. Supreme Ct.** : Expert testimony diagnosing a child complainant as suffering from some symptoms typical of sexually abused children and diagnosing the complainant as a victim of sexual abuse was admissible
- **State v. Kim, Hawaii Supreme Ct.** Sustained the Judge's discretion allowing an expert give the opinion that the complainant was telling the truth against the notion that such expert testimony ; invaded the province of the jury, was not a proper subject matter for expert opinion, or that it's probative value was outweighed by it's prejudicial effect.

# Child Sexual Abuse Accommodation Syndrome

- **Davenport v. State, Okla. Crim App 1991:**  
CSAAS may be admitted based on its scientific reliability. Before such testimony is admitted, it must be proven to the satisfaction of the court that the Syndrome is generally accepted in the medical community as reliable.
  1. **The syndrome is testified to by an expert subject to cross examination.**
  2. **The expert testifies to the basis of such testimony , its general acceptance and his knowledge of the syndrome.**
  3. **The expert testifies only about the back-round and nature of the syndrome and does not state an opinion as to whether a particular child suffers from the syndrome, but leaves that to the jury.**

# Opposite View requiring advance notice

- **State v. Rimmasch Utah 1989** “ Scientific principles and techniques underlying experts profile testimony concerning the profile typical of children who purportedly had been abused, **are not so inherently reliable** as to be eligible for judicial notice and thus foundation must be laid. Child abuse consists of a long list of vague, and sometimes conflicting psychological characteristics that are relied upon to establish fact or injury in a specific case as well as the cause and there is no general acceptance of child abuse profile evidence as determinative of abuse by either the legal or the scientific community.”

# Parental Alienation Syndrome

- **Programming or brainwashing the child by one parent to denigrate the other causing the following cluster symptoms:**
- The child sustains a campaign to denigrate the other parent with weak frivolous rationalizations for the deprecation, shows no ambivalence or guilt over the cruelty expressed and spreads the animosity to friends and extended family of the alienated parent.

# Parental Alienation Syndrome

- **PAS** is used in custody disputes and is considered a form of emotional abuse.
- **PAS** has been the topic of over 133 peer reviewed articles and has been recognized in courts of law (over 66 cases), after hearings devoted to demonstrate whether PAS satisfied the Frye Test.

# Rape Trauma Syndrome

- **Rape Trauma Syndrome** was described in the 1974 by A. Burgess and L. Holstrom in the *APA Journal* and was with described as having two stages: an acute and a re-organizational stage. RTS presents both PTSD symptoms and additional symptoms such as ; fear, guilt, humiliation, depression, anger sexual dysfunction and disruption in core belief systems about the self and others.
- **RTS** is used in courts to prove that the sexual abuse occurred or to bolster victim credibility

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# Rape Trauma Syndrome

- Almost all states refuse to admit testimony of RTS to prove that the victim was raped, since symptoms of rape trauma victims vary widely, could be cause by other stressors.
- Courts have also held that RTS is not beyond the Ken of the average juror and its prejudicial effect out weights its probative value .

# Sexual Harassment Syndrome

- **First described in 1984 by R.Tong in “Women, Sex and the Law”. The cluster symptoms were based on a survey data from student victims who displayed : depression, helplessness, isolation, irritability, fear anxiety and substance abuse after being harassed.**
- **Victims of sexual harassment may display seemingly contradictory emotional response to harassment. They may feel angry at the harasser but hesitate to report for fear of reprisal. They may hold themselves responsible, become isolated and alienated.**

# Sexual Harassment Syndrome

- **Most Sexual Harassment Syndromes** will fall with-in the scope of a **Complex PTSD** diagnosis where **somatic complaints** may be the first presentation, fear of exposure, avoidance and re-traumatization via the litigation process. An expert may be called upon to help the jury understand the reasons for delay reporting.
- **Somatic:** headaches, eating disorder, GI disturbances, hormonal imbalances.
- **Psychological:** anxiety, depression, insomnia, flashbacks, hipervigilance
- **Behavioral:** denial, shock, disbelief, avoidance, silence, embarrassment, anger, confrontation

# Sexual Harassment Syndrome

- Harassment is designed to diminish, oppress and control or eradicate the targeted person. The function of the behavior is to **gain mastery** over the relationship, such that compliance serves as its own reward. In order to accomplish this the harasser escalates intimidation in a rather predictable sequence into entrapment and ultimate submission.

Expert testimony may become relevant to explore the harassing relationship, the victims behavioral outcome (to prove un-welcomeness or delay in reporting), or to profile the harasser.

# Summary

- 1. The current system of blame and punishment, is coherent and fair in principle and can accomodate the claim for new excuses.**
- 2. Modification of existing doctrines of excuses in support of justification claims, is preferable to the wholesale creation of new excusing conditions.**
- 3. Traditional doctrines of negation of mens rea and legal insanity, though relevant, are not helpfull to syndrome suferers seeking exoneration or mitigation.**

# Summary

- **Judicial reaction to Novel expert testimony, has been uneven and inconsistent.**
- **Whether ultimately admissible or not in Court, the expert witness may assist the trier of fact as**
  1. **An Educator;** to understand the evidence that has already been admitted by another witness.
  2. **A Scientist,** to assist the jury in determining a fact at issue, providing new information as well as an opinion on the case.

# Self Assessment Questions

- 1. What is the fundamental difference between the Frye standard and the Daubert standard regard the acceptance of expert testimony in court
- 2 . What is the usefulness of presenting Syndrome evidence in court, and what are its caveats.

**BEGINNING**

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