

42nd ANZAPPL CONGRESS

Melbourne, 21 November 2024

The challenge of the validity of evolving constructs and theories of intimate partner violence in the courtroom

Dr Jackie Short



WOMEN'S

REFUGE

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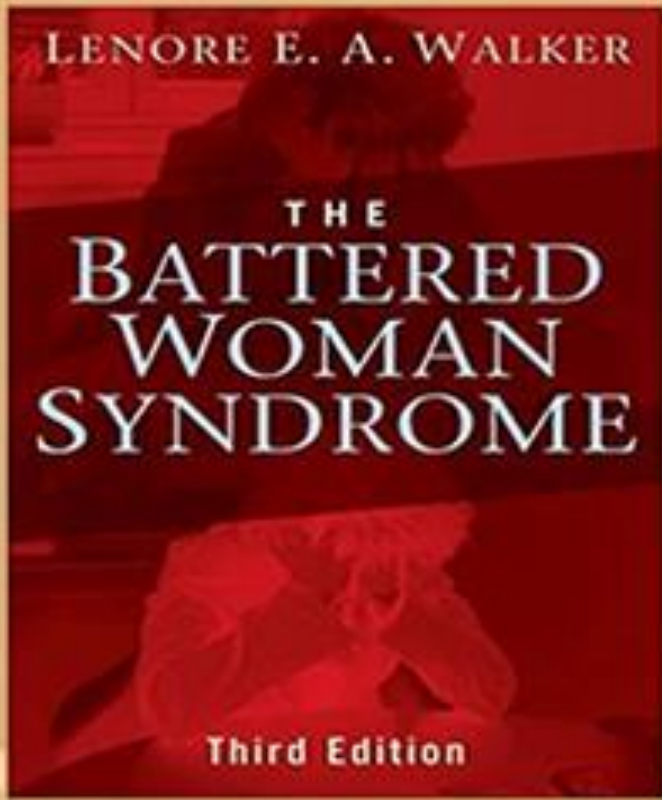
PLS 10

WOMEN'S
REFUGE

“There is always the danger of the husband doing something more serious. Your client must protect her situation”.

The Guardian, 30 October 1997.





Dr. Lenore Walker
Expert On Battered Woman Syndrome

Cycle of Violence





Martin Seligman

Learned
Helplessness



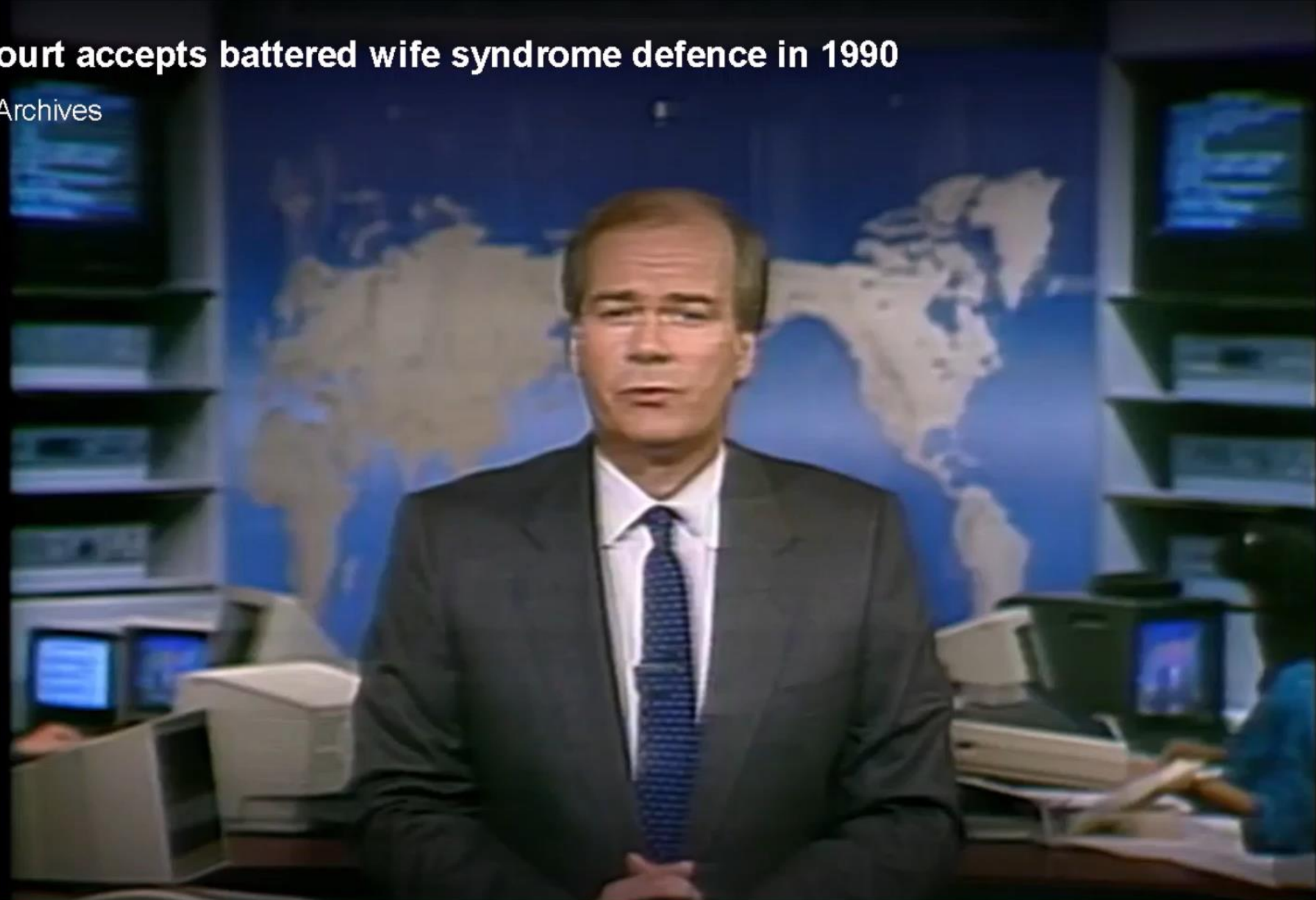
Learned Helplessness

Supreme Court accepts battered wife syndrome defence in 1990

35 years ago | Archives



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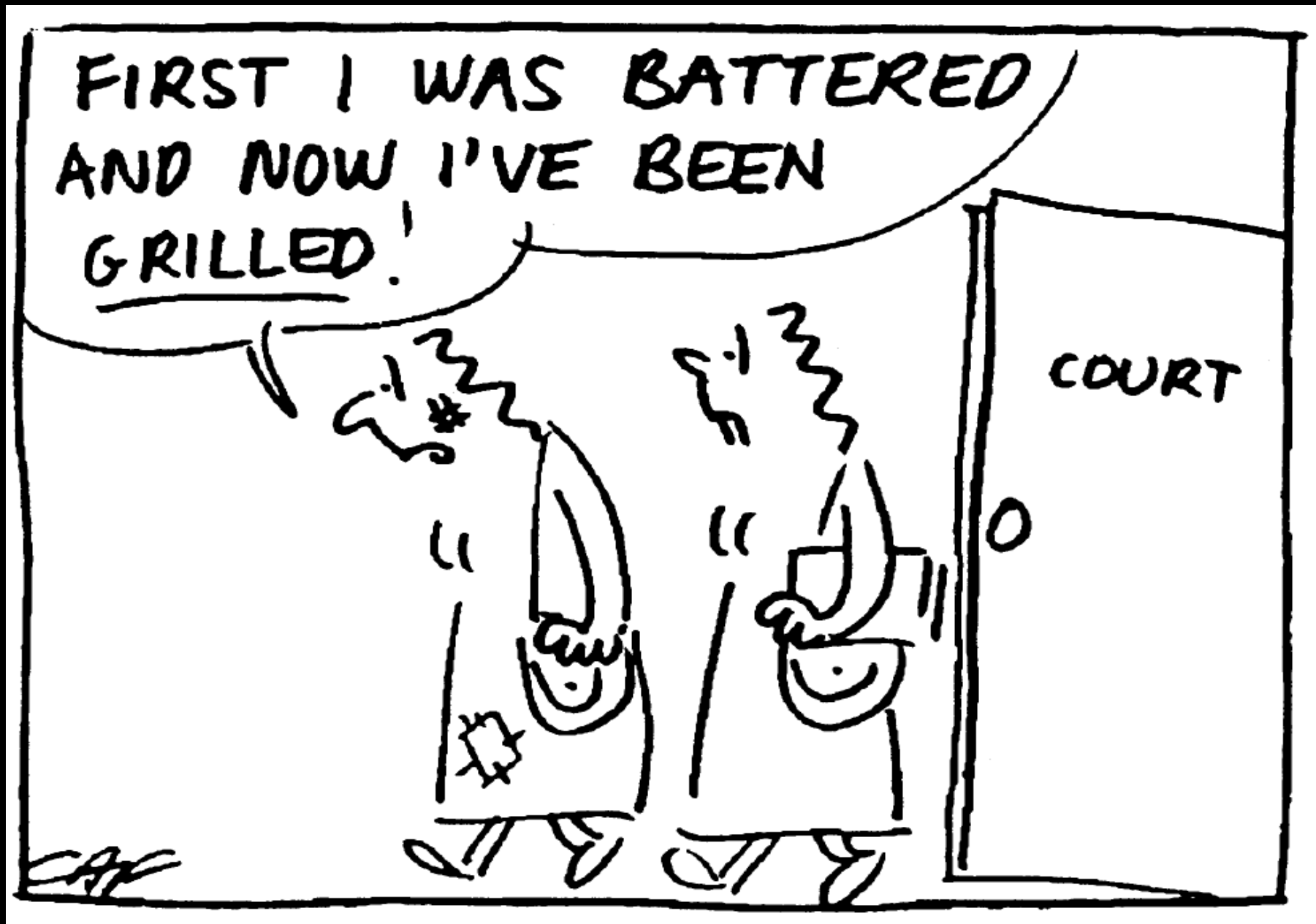
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- The syndrome was properly the subject of expert testimony, subject to satisfactory proof that it is regarded by experts competent in the field as an accepted field of scientific knowledge
- &
- evidence relating to BWS was relevant to the issue of duress.

Runjancic & Kontinnen v R (1991) 53 A Crim R 362.



“The battered wife syndrome, as such, is not the defence. If you are looking for a defence do not just look at the battered wife syndrome. It is part of the history of what the defence put into the whole case...”

the judge referred to

“a cumulated set of circumstances, a cumulated attitude of mind, which had been built up in the way she had been treated by Jan Hill and the way in which Olga had been treated, or the two women had been treated, in relation to when they were there and when they were not there and all of those other matters”.

R v Kontinnen, South Australian Supreme Court, 27 March 1992







“The court, the barristers & the jury didn’t have an appreciation of what impact this course of action had & we had to understand it before we could launch an appeal...”

Vera Baird (UK Solicitor General) 2008





Section 48 Crimes Act 1961

1. A subjective view of the circumstances as the accused believed them to exist, and
2. An objective view of the reasonableness of the force used in self-defence in those circumstances (as the accused believed them to be).

“ The reality of the syndrome [battered woman syndrome] facts are not in question. The syndrome and its effects have been discussed in this court... and in other Commonwealth jurisdictions. It hardly needs to be said that a battered woman has no more right to kill or injure than any other person, man or woman. And so the fact that a woman suffers from this syndrome is not in itself a defence; the syndrome is not in itself a justification for the commission of a crime. But where it exists - and whether it exists will be a matter for evidence in every case - the woman's actions, and her culpability for them, must be assessed in the light of contemporary knowledge of its effects on the mind and the will.

It is in relation to those effects, the effects on mind and will, as they bear on the particular case, that the syndrome becomes relevant. Thus, as we will explain, it may be relevant to an issue of self defence (as it was in *R v Lavelle*), or to an issue of provocation (as was recognised in *R v Ahluwalia*) or to an issue of duress (as in *R v Runjancic*)”.

The] constellation of symptoms [that] may occur and are commonly seen in association with an interpersonal stressor (eg....domestic battering..) [include]: impaired affect modulation, self-destructive and impulsive behaviour; dissociative symptoms; Somatic complaints; feelings of ineffectiveness, shame, despair, or hopelessness; feeling permanently damaged; A loss of previously sustained beliefs; social withdrawal; feeling constantly threatened; Impaired relationships with others; or a change from the individual's previous personality characteristics.

(DSM, 1994, para.309.81)

PTSD (DSM-5, 2013)

- A. Exposure to actual or threatened death, serious injury, or sexual violence
- B. Intrusions
- C. Avoidance
- D. Changes in cognitions and mood
- E. Arousal & reactivity
- F. Duration more than 1 month
- G. Clinically significant distress or impairment of function
- H. Due to event, not due to physiological effects of a substance or medical condition

PTSD (ICD-11, 2018)

- Exposure to an extremely threatening or horrific event or series of events
- Re-experiencing
- Avoidance
- Complex PTSD**
- Persistent perceptions of heightened current threat
- Must last for at least several weeks
- Significant impairment in personal, family, social, educational, occupational, or other important areas of functioning

DSM-5 PTSD

Exaggerated negative beliefs about themselves, the world or other people

Persistent negative emotions

Feeling detached or estranged from others and finding it impossible to experience positive emotions

Having distorted thoughts about what caused the event or events and the consequences

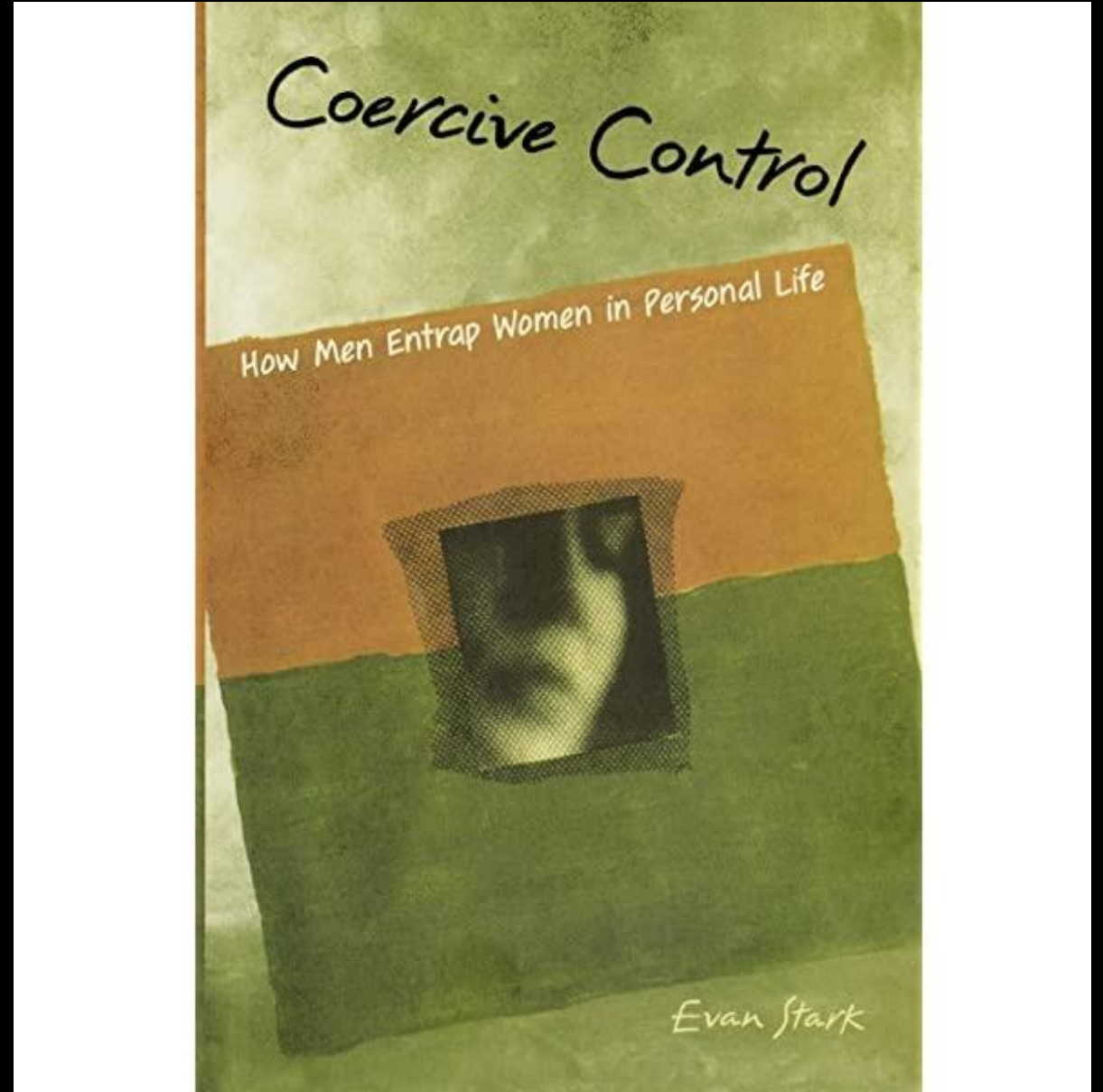
Less interest in significant events

ICD-11 Complex PTSD

Beliefs about oneself as diminished, defeated or worthless, accompanied by feelings of shame, guilt or failure related to the traumatic event

Problems in affect regulation (such as marked irritability or anger, feeling emotionally numb)

Difficulties in sustaining relationships and in feeling close to others



INTERPERSONAL VIOLENCE

OXFORD

Evan Stark

COERCIVE
CONTROL

How Men Entrap Women in Personal Life

SECOND EDITION

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Defining coercive control

'coercive control' targets a

- victim's **autonomy, equality, liberty,**
- **social supports** and **dignity**

in ways that compromise the capacity for

- independent, self-interested decision making, vital to escape and effective resistance to abuse.'




Stark, E 2012. Re-presenting Battered Women: Coercive Control and the Defense of Liberty. Violence Against Women: Complex Realities and New Issues in a Changing World. Les Presses de l'Université du Québec

“It was a carefully orchestrated attack designed to terrorise & intimidate the complainant, in order to ensure she never attempted to escape your control or reported your behaviour to authorities *again*”.

R v Chase [2017] NZHC 244

“I am going to stop sleeping with a knife under my pillow out of fear. I am going to get my self-esteem & confidence back. I will wear my hair down whenever I want to. I will wear tights every day. I am going to be late when I want to be. I am going to work wherever I want to work. I will talk to whoever I please & make all the friends in the world. I am going to love my family unconditionally. I am going to play sport.”



A photograph of Karen Anne Riddelle, a woman with long dark hair, wearing a dark blazer over a white collared shirt. She is standing in a courtroom, looking slightly to her right. The background is a plain, light-colored wall.

Karen Anne Riddelle has been acquitted of murder but found guilty of the manslaughter of her husband in November 2008 after enduring years of domestic violence. PHOTO / NZME

Thank you!

Questions?

In New Zealand, expert testimony is admissible in criminal courts if it meets the following criteria:

- **Substantial help:** The expert's opinion must be likely to help the fact-finder understand other evidence or determine a key fact in the case.
- **Reliability:** The expert's opinion must meet a threshold of reliability.
- **Proper qualification:** The expert must have specialized knowledge or skill in the relevant area, gained through study, training, or experience.
- **Impartiality:** The expert must be impartial and comply with the Code of Conduct.