

The Use and Success of Designer Defenses in Criminal Trials

Michael G. Aamodt, Heather Mitchell, Richard
Gray, Brittany Taylor, and Amanda Alfaro
Radford University

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Concept of Mitigation or Diminished Capacity

- Consideration for Murder
 - Intent (1st degree murder)
 - Reduced capacity – drunk, angry (2nd degree murder)
 - Reckless, negligent (manslaughter)
- Not Guilty due to Self-defense
- Insanity
 - Guilty but Mentally Ill (GBMI)
 - Not Guilty by Reason of Insanity (NGRI)
 - Chronic
 - Temporary

Definition of Insanity

Summary of Definitions

	M'Naghten	ALI	Federal
As the result of mental disease or defect	✓	✓	✓
Did not know what he was doing	✓		✓
Did not know what he was doing was wrong	✓	✓	✓
Could not stop himself from committing the act		✓	

Designer Defenses

- Coined by Barbara Kirkland
- “New and curious psychological syndromes concocted complete with the requisite expert testimony to exonerate someone who is definitely sane, frequently psychopathic, and most frequently deserving of punishment.”
- Key Points
 - Person committed the crime
 - They knew what they were doing, knew it was wrong, and could control their behavior
 - They have a “mental disorder” – you just can’t find it in the DSM-IV
 - Their sentence should be minimal because the crime was not their fault

Myth of the Twinkie Defense

- 1979
- Supervisor Dan White kills San Francisco Mayor George Moscone and Supervisor Harvey Milk
- White defense argues that he was depressed and not acting normal
 - Martin Blinder
- White charged with murder but jury returns verdict of voluntary manslaughter (sentenced to 7 years, 8 months)
- Press labels “Twinkie defense”
- White paroled 1-6-84 after 5 years and 1 month
- Committed suicide on 10-21-85

Our Study

- Research legal cases to find examples of designer defenses
- Research Questions
 - How often are they used?
 - Do they work?
 - If so, under what circumstances?
- Our hypothesis: Designer defenses would work best when the jury needed a reason to find the person not guilty
 - Victim “needed killing”
 - Defendant was likable

Analysis Hurdles

- Did the case provide enough information?
- Separating the actual effect of the designer defense on the verdict from other factors
- What is success?
 - Not guilty
 - Reduced sentence
 - Guilty but no punishment
 - Hung jury
- No control group with which to compare success rates

Results

193 Cases of “Designer Defense”

- Battered Child Syndrome (30)
- Cultural Defense (24)
- Battered Woman Syndrome (21)
- Postpartum Depression (17)
- Automatism (14)
- Sleepwalking (13)
- Homosexual Panic Disorder (9)
- Black Rage (6)
- Adopted Child Syndrome (7)
- PMS (4)
- Prozac Defense (4)
- Vietnam Syndrome (3)
- Battered Spouse (3)
- Urban Survival Syndrome (2)
- Mob Mentality (2)
- Mother Lion Defense (2)
- Genetics Defense (2)
- God Told Me To (2)

“One Hit Wonders”

- Twinkie Defense
- Automatism of Penfield
- Clerambault-Kandinsky Syndrome
- Crocodile Dundee Syndrome
- Distant Father Syndrome
- Rock and Roll Defense
- Meek Mate Syndrome
- Minister Made Me Do It
- Sleep Apnea
- Steroid Defense
- Transient Situational Disturbance
- Unhappy Gay Sailor Syndrome
- Computer Addiction
- Fan Obsession Syndrome

Usually Used in Homicide Cases

- Homicide (75.9%)
 - Homicide (71.4%)
 - Attempted homicide (3.0%)
 - Solicitation of murder (1.5%)
- Assault (4.1%)
- Drunk driving (3.1%)
- Sexual assault/rape (2.0%)
- Robbery (1.5%)

Who Plead?

- 59.9% were men
- Race
 - 66.3% were white
 - 11.2% were African American
 - 9.0% were Asian
 - 7.9% were Hispanic
 - 3.4% were Native American Indian

Aspects of the Trial

- Type
 - Jury (77.5%)
 - Bench (18.6%)
 - Plea bargain (3.9%)
- Use of Expert Witness
 - Yes (52.7%)
 - Not attempted (28.6%)
 - Attempted but judge disallowed (16.5%)
 - Used but jury instructed to ignore (2.2%)

Did the Defense Work?

- No (49.4%)
- Yes (50.6%)
 - Reduction in sentence (24.4%)
 - Not guilty (11.3%)
 - NGRI (8.1%)
 - Guilty but no punishment (5.6%)
 - Hung jury (1.3%)

Factors Related to Success

- | | |
|----------------------|-----------------|
| ■ Victim Likable* | ■ Trial Type |
| ■ No (64.9%) | ■ Bench (54.2%) |
| ■ Yes (37.9%) | ■ Jury (45.5%) |
| ■ Defendant Likable* | ■ Use of Expert |
| ■ No (16.2%) | ■ No (45.0%) |
| ■ Yes (65.3%) | ■ Yes (42.6%) |
| ■ Sex of Defendant | |
| ■ Male (44.4%) | |
| ■ Female (62.1%) | |

Success Rate by Likability

Victim Likable	Defendant Likable	
	No	Yes
No	0.0%	60.0%
Yes	15.2%	37.5%

Trial Results

Success of Plea	Battered Child	Battered Woman	Automatism	Sleepwalking
Cases	30	17	12	12
Not Successful	13	10	10	3
Successful	57%	41%	17%	75%
Not guilty	3	2	0	4
NGRI	0	1	1	3
Hung jury	2	0	0	0
Guilty of lesser charge	11	4	1	2
Guilty – no punishment	1	0	0	0

Cultural Defenses

Cultural Defense

- The cultural defense uses the excuse that the defendant's culture has different laws, social interactions, and traditions than the United States
- The crime committed in the U.S. would not have been a crime in the defendant's native country
 - Examples:
 - Killing spouse, child molestation, killing own children, kidnapping, and rape.

People vs. Kimura

- Fumiko Kimura
 - Santa Monica, California 1985
 - Kimura found out that her husband was cheating on her.
 - 33-year old Fumiko Kimura walked into ocean with intentions to commit suicide and kill her two children. Kimura survived, but her children both died.
 - Kimura was trying to commit "oyaku-shinju," a Japanese custom of parent-child suicide, which is acceptable when a spouse is cheating.
 - Charged with two counts of first-degree murder.
 - Plead guilty
 - Received 1 year in jail, that had already been served during the hearing.

State vs. Ganai

- Orlando Ganai
 - Waipahu, Hawaii 1996
 - Ganai found out that his wife was cheating on him.
 - Killed mother-in-law and father in law in pursuit of cheating wife, shot own son, tracked down wife's lover and burned down the lover's brother's home killing him and his two children.
 - Ganai argued that in his Malaysian culture, when stress builds up one "runs amok."
 - Charged with first degree murder
 - Received life without parole

Did the Defense work?

	Defense worked	Defense didn't work	Unknown
Number of cases	10	9	2

The Defendant Likeable?

	Likeable	Not likeable	Mixed
Number of cases	10	10	1
Worked	7	3	0
Did not work	2	4	1
Unknown	1	2	0

The Victim Likeable?

	Likeable	Not likeable	Mixed
Number of cases	15	6	0
Worked	8	3	0
Did not work	4	3	0
Unknown	3	0	0

Sex of the defendant

	Male	Female
Number of cases	17	4
Worked	8	2
Did not work	7	0
Unknown	2	2

Bench or Jury

	Bench	Jury	Never went to trial	Unknown
Number of cases	8	2	4	7
Worked	4	1	4	3
Did not work	3	1	0	4
Unknown	1	0	0	1

Previous Psychological Problems

	Previous Psychological Problems	No Previous Psychological Problems	Unknown
Number of cases	3	9	11
Worked	1	4	5
Did not work	1	3	4
Unknown	1	2	2

Analysis Hurdles

- Many cases, but not much information.
- The likeability of defendant hard to determine.
- Lack of experience with legal documents.

Postpartum Depression Psychosis

Postpartum Depression/Psychosis

■ Definition:

- 80% of women experience depression following child birth
- Symptoms = sadness, lack of energy, trouble concentrating, anxiety, and feelings of guilt and worthlessness
- Affects the well-being and functions of the mother
- Can happen anytime within the first year after childbirth
- Psychosis occurs in rare, serious cases

Sheryl Lynn Massip

- 1987, California
- Mid-twenties year of age
- Ran over her 6 week old son repeatedly with her car, killing him
- Attempted to cover up the murder
- Confessed when discovered
- Charged with 2nd degree murder, then lessened to voluntary manslaughter
- Found NGRI by jury

Sharon Comitz

- 1985, California
- Dropped her 1 month old son off a bridge, killing him
- Convicted of manslaughter
- Received a sentence of 8-20 years in prison

Did the Defense work?

	Defense worked	Defense didn't work	Unknown
Number of cases	14	4	5

Variables That Couldn't Be Analyzed

- Victim Likeability
 - All were likeable
- Defendant Sex
 - All were women
- Type of Crime
 - All were homicide

Type of Trial

Jury Trial	Bench Trial	Plea Bargain	Unknown
4	2	2	15

Successful Cases

- NGRI (8 cases)
- Reduced sentence (2 cases)
- No jail time (4 cases)

Analysis

- Success was common in horrific or unusual crimes

Homosexual Panic Disorder

Same sex attack due to sexual proposition

Jonathan Schmitz

- 1995, Michigan
- 25 years old
- Homosexual crush revealed on the Jenny Jones Show
- Schmitz shot and killed admirer after show aired
- Received a lessened sentence from 1st degree to 2nd degree murder
- 25-50 years in prison sentence

Aurelio Rivera

- 1984, Arizona
- Stabbed and killed a homosexual man after the victim made a sexual advance on the defendant
- Received a life sentence with a 1st degree murder conviction

Did the Defense work?

	Defense worked	Defense didn't work	Unknown
Number of cases	1	5	1

Defendant/Victim Likeability

- Through a consensus of our research group
- All defendants viewed as not likeable by the jury
 - Prejudice against the victim's sexual orientation
- All victims were viewed as likeable by the jury
 - Attacked due to sexual orientation

THESE COULD BE ARGUED

- Schmitz case

Variables That Could Not Be Analyzed

- Defendant Sex
 - All were men
- Type of Crime
 - All were homicide

Type of Trial

Jury Trial	Bench Trial	Plea Bargain	Unknown
6	0	0	1

Analysis

- Analysis
 - Only one case was found as successful and the defendant was given a lesser sentence
 - The only case to have a success in some form was in result of the incident occurring on national television
- Research Hurdles
 - Little information found for certain cases
 - Gender specific = No importance

QUESTIONS



Contact Information

Michael G. Aamodt, Ph.D.
Department of Psychology
Radford University
Radford, VA 24142-6946
(540) 831-5514
maamodt@radford.edu