The Use and Success of Designer Defenses in Criminal Trials

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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

<table>
<thead>
<tr>
<th></th>
<th>M'Naghten</th>
<th>ALI</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>As the result of mental disease or</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>defect</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did not know what he was doing</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did not know what he was doing was</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>wrong</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Could not stop himself from</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>committing the act</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Victim Likable</th>
<th>Defendant Likable</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>0.0%</td>
</tr>
<tr>
<td>Yes</td>
<td>15.2%</td>
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</table>

Trial Results

<table>
<thead>
<tr>
<th>Success of Plea</th>
<th>Battered Child</th>
<th>Battered Woman</th>
<th>Automatism</th>
<th>Sleepwalking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>30</td>
<td>17</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Not Successful</td>
<td>13</td>
<td>10</td>
<td>10</td>
<td>3</td>
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<tr>
<td>Successful</td>
<td>57%</td>
<td>41%</td>
<td>17%</td>
<td>75%</td>
</tr>
<tr>
<td>Not guilty</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>NGRI</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Hung jury</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Guilty of lesser charge</td>
<td>11</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Guilty – no punishment</td>
<td>1</td>
<td>0</td>
<td>0</td>
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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. Ganal

- Orlando Ganal
  - Waipahu, Hawaii 1996
  - Ganal 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.
  - Ganal 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?

<table>
<thead>
<tr>
<th></th>
<th>Defense worked</th>
<th>Defense didn’t work</th>
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<td>Number of cases</td>
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### The Defendant Likeable?

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Number of cases</td>
<td>10</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>Worked</td>
<td>7</td>
<td>3</td>
<td>0</td>
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<tr>
<td>Did not work</td>
<td>2</td>
<td>4</td>
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<tr>
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### The Victim Likeable?

<table>
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<tbody>
<tr>
<td>Number of cases</td>
<td>15</td>
<td>6</td>
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</tr>
<tr>
<td>Worked</td>
<td>8</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Did not work</td>
<td>4</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Unknown</td>
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### Sex of the defendant

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<thead>
<tr>
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<tbody>
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<tr>
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<td>Did not work</td>
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### Bench or Jury

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</thead>
<tbody>
<tr>
<td>Number of cases</td>
<td>8</td>
<td>2</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Worked</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Did not work</td>
<td>3</td>
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<td>4</td>
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<tr>
<td>Unknown</td>
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### Previous Psychological Problems

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<tbody>
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<td>11</td>
</tr>
<tr>
<td>Worked</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Did not work</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
<td>2</td>
<td>2</td>
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</table>
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 childbirth
  - 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?

<table>
<thead>
<tr>
<th></th>
<th>Defense worked</th>
<th>Defense didn’t work</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases</td>
<td>14</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>Jury Trial</th>
<th>Bench Trial</th>
<th>Plea Bargain</th>
<th>Unknown</th>
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<tbody>
<tr>
<td>4</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
</tbody>
</table>
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?

<table>
<thead>
<tr>
<th></th>
<th>Defense worked</th>
<th>Defense didn’t work</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases</td>
<td>1</td>
<td>5</td>
<td>1</td>
</tr>
</tbody>
</table>
**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

<table>
<thead>
<tr>
<th></th>
<th>Jury Trial</th>
<th>Bench Trial</th>
<th>Plea Bargain</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Cases</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

### 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

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