

CRIMINAL



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Stephanie Benson: She kept saying three things: "I didn't mean to hurt my child. I don't remember what happened. I just got my period."

Phoebe Judge: About 30 years ago, something started happening in courtrooms that caught the world by surprise. Lawyers began to attribute criminal behavior to PMS, or premenstrual syndrome. The first time was in England. A woman named Sandy Smith was found guilty of murdering her coworker, but her lawyer argued she was suffering from PMS, and the judge gave her probation — for murder. Then shortly after, the PMS defense was tried out in the U.S. in a case that pitted scientists against feminists against lawyers.

I'm Phoebe Judge. This is Criminal.

Talk Show Host: Serious topic here, folks. She beat her kids and she blames her PMS. Should PMS be used as a legal defense? We'll find out. Take a break, stay with us. [Applause fades out.]

Stephanie Benson: Shirley was on the bed, passed out or in a state of semi-unconsciousness. The child came in after specifically being told not to come in the room because Shirley was sick

and couldn't take care of her kids, that they had to stay in the other room. She came in and she jumped on her, and she reacted in a reflexive way. She said that the daughter said to her, "Mommy, you hit me."

Phoebe Judge: Shirley Santos was 24 years old in 1981, a single mother with six kids in Brooklyn. This is her lawyer, Stephanie Benson.

Stephanie Benson: She herself called the police. And not only did she call the police — she didn't have a phone. She had to go to a neighbor, to whom she said, "Look, I just got my period and I think I might've hurt my child."

Phoebe Judge: But if we're saying that PMS at this point in the early '80s wasn't in the lexicon, why did she know to attribute something to that?

Stephanie Benson: She didn't say PMS, she never said PMS. This is what she knew happened to her at this time of the month, and maybe it doesn't take a Ph.D. for a woman to know why she feels crappy.

Phoebe Judge: A few hours later, Santos was arrested. Court documents show that her 4-year-old child had bruises and welts. Her kids were taken away. In 1981, lawyer Stephanie Benson was also 24 years old, working for legal aid. She was assigned to Shirley Santos.

[Archival audio.]

News Anchor: Had you done any research or reading or anything on PMS as a legal defense, maybe as it related to the British cases beforehand, or was this something just came to you out of the blue?

Stephanie Benson: It came to me out of the blue, and I was ... [Fades out.]

[Archival audio ends.]

Phoebe Judge: This is Benson on MacNeil/Lehrer that year. Based on what she found, Benson felt she could correlate Santos' behavior with what doctors were learning about PMS. There were cases of women whose symptoms were so severe, they felt capable of hurting themselves or others. She filed a motion to dismiss the case, outlining for the court all of the ways in which her client was "a victim of PMS."

[Music.]

Today, we're used to women saying I have PMS. We haven't exactly moved beyond stereotypes about women being crazy at that time of the month. These jokes are everywhere, even on pretty forward-thinking shows, like Modern Family.

[Modern Family clip.]

Luke Dunphy: God, they're going to ruin everything.

Phil Dunphy: I know. We just need to be extra sensitive.

Claire Dunphy: Phil, honey, when do we need to leave?

Phil Dunphy: Whatever's good for you, sweetie. Maybe 20 minutes?

Claire, Haley, and Alex Dunphy: [All screeching.] 20 minutes? [Inaudible screeching.] Seriously?

Phil Dunphy: Whenever you're ready.

[Clip ends.]

Phoebe Judge: But back in the '80s and '90s, it really was new and hard to make sense of.

[Archival audio.]

Broadcaster: And we are a responsible broadcast and we appreciate that point. Okay, now let's get a man's point of view here. Your comment?

Guest 1: I just was wondering if you'd open up the door for, you know, is a high testosterone level an excuse to rape somebody?

Guest 2: They have something called premenstrual syndrome. What about postmenstrual syndrome? Does that exist?

[Archival audio ends.]

Phoebe Judge: Not only was it totally out of left field to assert that a woman's period could be debilitating, but it had very problematic implications.

[Archival audio.]

Interviewer: What would be the consequences if PMS were admitted as a legitimate defense in court, in your view?

Barbara Newman: It's much more significantly a sword to be used against women than a shield for them.

Phoebe Judge: This is Barbara Newman, one of the prosecuting attorneys in the Santos case.

Barbara Newman: No woman could ever be trusted with any position of responsibility, including having children, having the care and custody of children. This could justify assaults upon a woman. The man could say, "This woman was out of control. I had to kill her," and there's the woman dead on the floor and not in a position to refute it.

Phoebe Judge: The Santos case may have been the first in the U.S., but the other cases that got the public's attention made the diagnosis seem even more serious. Like Sandy Smith in England, we mentioned earlier. She was charged with murder after she stabbed her coworker repeatedly. Or Christine English, who ran down her lover with her car and pinned him after the

affair went south. After the two violent cases in England and now Santos, it looked like PMS as a defense was gathering steam.

Dr. David Rubinow: I became interested because my branch chief at the time said, "I have met an endocrinologist and he claims that there are four women in his practice who attempted suicide during the luteal phase of their menstrual cycle."

Phoebe Judge: This is Dr. David Rubinow, chair of the Department of Psychiatry at the University of North Carolina at Chapel Hill and founder of the Women's Mood Disorder Clinic there. Today, he specializes in the most severe form of PMS. It has its own name: premenstrual dysphoric disorder, often just PMDD.

Dr. David Rubinow: PMS or PMDD is triggered by changes in reproductive hormones, estrogen or progesterone. But that triggering occurs only in a subgroup of women, a group of women who are susceptible to hormone-induced mood changes. And we don't understand exactly what causes that susceptibility, but it is a biologically triggered syndrome. And we can demonstrate that. I can take someone who has PMS, PMDD, and I can eliminate her syndrome by stopping her ovarian steroid secretion, and PMDD will go away.

Phoebe Judge: So this is kind of the evidence that this isn't just all in her head.

Dr. David Rubinow: Exactly.

Dr. Nada Stotland: Well, it's not really a diagnosis. It's a social belief.

Phoebe Judge: This is Dr. Nada Stotland. She's a psychiatrist in Chicago specializing in women's mental health and was president of the American Psychiatric Association from 2008 to 2009.

Dr. Nada Stotland: If we really believe that, are we going to screen every woman before she gets a responsible job? What about all the flight controllers and the pilots and the surgeons? Do you think 7% of female surgeons or 5% are disabled for several days a month? I don't believe it. And I do have an objection to having this diagnosis listed as a psychiatric diagnosis without any comparable investigation of the impact of male hormones on men.

Phoebe Judge: Why?

Dr. Nada Stotland: Because women's hormones are used as an excuse to think that women are unstable, obnoxious. We talked about, at one point, do you want a woman to have the red telephone in the president's office? That's a very dangerous and a negative understanding of women and a denigration of their legitimate problems.

Phoebe Judge: Back in the '80s in Brooklyn, the Santos case got more and more complicated. Shirley Santos totally undermined her own case when she told her TV reporter, "It's not like I'm going to get my period so bad I start wailing on my child." It was a mess. It's still unclear whether she was pressured by the reporter, or if she actually didn't believe her own defense. The lawyers made a deal. Santos pled guilty to a reduced charge, down from felony assault to a simple harassment violation, not even a misdemeanor, and she went home without her kids.

Why don't you think this has been part of the legal discourse since then?

Stephanie Benson: You have to have a very special mixture. You have a woman, and women don't commit that many crimes, a violent crime, women don't commit that many violent crimes.

Dr. David Rubinow: I personally do not believe that PMS causes murder.

Phoebe Judge: Again, Dr. David Rubinow, head of UNC's Women's Mood Disorder Clinic.

Dr. David Rubinow: I do think that someone who has antecedent behavioral problems may experience further compromise of their ability to regulate their behavior when they become increasingly symptomatic during the pre-menstrual state, but women with really severe PMDD do not kill people.

Phoebe Judge: We talked to other scientists, just asked them: could it actually be this bad? They said, yes, in some rare instances, PMDD could manifest itself so severely that a woman would be taken out of her ordinary mental state. And last year, the American Psychiatric Association put PMDD in their big book of mental disorders, the DSM-5. They classified it as a depressive disorder, saying the move was based on strong scientific evidence. So the science has evolved. What remains to be seen is whether or not public opinion has, too.

[Archival audio.]

Talk Show Host: Okay, before we go, I just want to get a — give us a round of applause if you think that PMS should be a valid legal defense. Do you believe it? [Light applause.] Well, I guess that's ... Who thinks it should not be a valid, legal defense? [Enthusiastic applause.] All right.

[Archival audio fades out.]

[Music.]

Phoebe Judge: Criminal is produced by Eric Mennel, Lauren Spohrer, and me. Special thanks to Katie Davis. Julianne Alexander does our episode art. If you like what we're doing, you can subscribe in iTunes, and if you'd like, leave us a review. We're on Facebook and Twitter, @CriminalShow. This program is part of the PRX STEM Story Project, made possible by the Alfred P. Sloan Foundation.

I'm Phoebe Judge. This is Criminal.