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Expert Testimony in Cases of Battered Women Defendants: Influence of Defendant
Characterization, Testimony Explicitness and Juror Gender on Individual Juror and
Group Jury Decisions

By Alison J. Davis

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of
Master of Arts
Department of Psychology
Carleton University

Ottawa, Ontario
July 8, 1997
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and Research acceptance of the thesis

**“Expert Testimony in Cases of Battered Women Defendants:
Influence of Defendant Characterization, Testimony
Explicitness and Juror Gender on Individual
Juror and Group Jury Decisions”**

Submitted by Alison J. Davis, B.A.
in partial fulfillment of the requirements for
the degree of Master of Arts

Thesis Supervisor

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July, 1997

Abstract

Mock jurors ($N = 341$) were exposed to a simulated trial involving a woman charged with the murder of her abusive husband. The purpose of this study was to investigate the influence of expert testimony on simulated jurors' beliefs and decision-making with regard to battered women. It also sought to examine the influence of different characterizations of the women (BWS or social agency) as presented by expert witnesses as well as the explicitness of this testimony (general, case-specific, or case-explicit) for the purposes of establishing a plea of self-defense, and the role of the gender of the jurors. Participants were randomly assigned to one of six conditions in a mixed 2 (characterization of defendant) $\times$ 3 (explicitness of testimony) $\times$ 2 (gender) $\times$ 5 (Private Belief in Guilt Ratings) design. Although the results of this investigation demonstrated that the testimony of the defendant exerted a greater influence on jurors' decisions expert testimony influenced jurors by reducing pre-existing misconceptions of battered women. While BWS and social agency testimony tended to yield equivalent juror and jury decisions, case-explicit testimony resulted in the most unfavourable perceptions and the most stringent verdicts for the defendant. Gender differences were also observed. Women jurors tended to evaluate the defendant and expert witness as more credible, perceived the defendant more favourably and rendered more lenient verdicts as compared to the male jurors.

Acknowledgements

I would like to gratefully thank Kim Matheson whose suggestions and critiques were of great assistance and whose encouragement was always appreciated. Special acknowledgment are also be extended to Isabel MacKay and Fiona MacGregor who assisted in gathering the data for this endeavour. I would also like to recognize those individuals who committed their time and acting abilities to the investigation and to whom I am particularly indebted; Randy Davis, Norma Simmons, Garry Fee, Frank Leach, Mike Eustace, Doug Simmons, Kelly Gerow, Jeff Duffy, Nancy Delaney and Barb Kelly. Finally, I would like to extend my gratitude to my family and to Randy whose constant support and reassurance was unwavering.

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Battered Women Defendants: Influence of Defendant Characterization, Testimony
Explicitness and Juror Gender on Individual Juror and Group Jury Decisions

The pervasive existence of violence against women has been a significant concern for feminist and legal scholars and has resulted in extensive investigations of this violence. Current sources indicate that as many as 1 in 4 women are assaulted by their male partners at least once during the course of their lives (The Canadian Panel of Violence Against Women, 1993). According to homicide surveys in 1991, 64% of all female homicide victims were killed by their male partners, and in 1992, 97% of all domestic homicide victims were female (Canadian Centre for Justice Statistics, 1992; 1993). Many of these incidents are alleged to have been the culmination of years of prior abuse by their male partner. As the rate of domestic violence continues to exist at an alarmingly high rate the criminal justice systems have encountered a significant number of women who are charged with the murder of their abusive spouses.

Research in this field has indicated that the women who resort to killing their partners have typically experienced particularly severe and traumatic abuse (Browne, 1987; Jones, 1980; Walker, 1984). They have often suffered psychological, physical and sexual abuse over the course of many years or in some cases even decades. It is not uncommon for them to have experienced being slapped, punched, kicked, burned or raped and to have suffered such extreme injuries as broken or dislocated bones, concussions, hemorrhaging, miscarriages, or burns (Browne, 1987; Ewing, 1987).

Browne (1987), conducted a study in which she found a number of commonalities among women who had committed homicides against their abusive partners. As compared to battered women who did not kill, those who resorted to lethal acts of self-defense had abusers that were likely to become intoxicated on a daily basis, often used recreational drugs, and had made previous threats to kill their wives. Physical attacks were more frequent, the victims had sustained more numerous and more severe injuries than those who did not resort to murder, and were more often raped and forced into other sexual acts by their abusive partner. The results of this study suggest that the situations of women who resort to the use of violence to defend themselves against their abuser are especially traumatic and desperate.

Efforts to investigate the particular circumstances and psychological implications of being an abused woman has led to the development of the construct known as “battered woman syndrome” (Walker, 1979). The existing literature and research in this area has resulted in the application of battered woman syndrome in the defense of women who have killed their abusers to help overcome the obstacles that these women face within the courts.

Obstacles against the effective defense of battered women who kill are twofold in cases alleging that the defendant’s actions occurred in self-defense. First, jurors often hold inaccurate preconceptions of battered women which preclude them from evaluating these defendants in terms of their subjective experiences (Aubrey & Ewing, 1989; Dodge & Greene, 1991; Ewing & Aubrey, 1987; Greene, Raitz & Lindblad, 1989). Secondly, the laws of self-defense discriminate against the

experiences and actions of women in general and battered women in particular (Sagawa, 1987; Schneider, 1980; Sheehy, Stubbs & Tolmie, 1992). Laws of self-defense assume that the parties involved in an altercation are equivalent in terms of physical strength and stature, require that evidence be evaluated according to a standard of “reasonableness” without recognition of the potential for mitigating circumstances, and imply that self-defense is only legitimate in cases of direct physical confrontation. Each of these assumptions of a plea of self-defense necessarily exclude the experiences of a battered woman. Because of the often incompatible physical strengths between the battered women and their abusers, many women take action with the assistance of weapons or in the absence of direct confrontation as a means to balance the power structure between them. Additionally, the abuse experiences that these women suffer cannot be viewed in light of what the courts have referred to as the “reasonable man’s interpretation” of a self-defense situation since these experiences are not within the realm of the “reasonable man’s” life experiences and are not deemed relevant to the reasonableness of the woman’s actions.

The presentation of information that seeks to clarify these issues on behalf of battered women defendants has typically been provided to the courts in the form of expert witness testimony. In such cases expert witnesses, most commonly psychologists or psychiatrists, testify on behalf of the battered woman in an effort to provide an alternate framework for viewing her experiences and actions prior to, and leading up to the time of the murder. It is also applied in an attempt to educate jurors

with regard to their misconceptions of the women. The ultimate purpose of expert testimony is to educate the jury about experiences and realities that are perhaps foreign to them. By doing so, it is expected that jurors will fulfill their role as triers more effectively and informatively. Since most individuals acting as jury members can probably not adequately understand or relate to the position of these women, expert testimony has acquired a particularly essential role in these criminal court proceedings.

Expert testimony has been utilized to help establish a number of legal defenses, including insanity and self-defense. Testimony seeks to illuminate and educate jurors about the commonly held misperceptions of battered women and their experiences, and to portray abused women who kill in a rational and undistorted manner. Without the assistance of expert evidence, jurors find it particularly difficult to understand why a woman would remain with a man who violently beats her, why she wouldn't simply leave the situation, and why she might believe that lethal action is the only available alternative (Dodge & Greene, 1991; Follingstad, Polek, Hause, Deaton, Bulger & Conway, 1989; Greene, Raitz & Lindblad, 1989; Sagawa, 1987).

Since its original application in 1979, the admissibility of such testimony has experienced an uncertain future. Over the past 17 years, battered women syndrome evidence has been judged inadmissible by various courts on the grounds that it would unduly sway the jury in favor of these defendants, that the evidence was not adequately established on scientific research, and that the testimony was already within the common knowledge of jurors who were assessing the cases (Brinegar

Cross, 1982; Hoffman, 1981; Leary, 1985; Pipkin, 1989). The current tendency, however, is to admit this form of evidence on behalf of these women defendants (Neuberger Blowers & Bjerregaard, 1994).

Preliminary consideration for the admissibility of expert testimony has rested on the concerns that expert testimony not usurp the function of the jury. In other words, the courts have argued that testimony that is too case-specific is speaking to the ultimate issue of which the jury is expected to decide. The courts are recognizing, however, that experts who present evidence as to the particular factors that were critical to a certain defendant's situation are not over-stepping the boundaries of the jury as was previously believed. In fact, the research is beginning to suggest that a certain degree of specificity or explicitness on the part of the expert witness is ultimately necessary for the jury to function effectively in these cases (Brekke & Borgida, 1988; Schuller, 1992).

Current forms of expert testimony, particularly those emphasizing battered women syndrome have also come under attack recently on the grounds that they tend to portray these women as passive and helpless individuals who are disturbed, disordered, and mentally ill (Bowker in Gelles & Loseke, 1993; Mahoney, 1991; Martinson, MacCrimmon, Grant & Boyle, 1991). As a result of these concerns, a number of feminist and legal scholars have proposed alternative forms of testimony which portray the women in a more favourable, rational, and less demeaning manner and which focus on the social realities of battered women's experiences rather than

their psychological profiles (Bowker in Gelles & Loseke, 1993; Dutton, 1993; Mahoney, 1991; Martinson et al., 1991; Sheehy, Stubbs & Tolmie, 1992).

The purpose of this study was to address a number of issues inherent to the role of expert testimony as it pertains to the defense of battered women who kill their abuser. Of particular interest was an examination of the specific roles and functions that the testimony plays within the criminal justice system and its potential to assist jurors in their role as triers of fact. The ability of an expert witness to alter previously held beliefs about battered women and their relationships was examined. The research additionally contrasted two forms of expert testimony, the more traditional “battered women syndrome”, and a recently proposed alternative that has become known as the “social agency perspective”. Following this an examination of the literature and court decisions with regard to varying degrees of case-specificity of expert testimony will be presented. Of particular interest to this paper was the effect that varying degrees of explicitness have on juror and jury decisions. On the basis of the existing literature in this area the recently conducted jury simulation study is presented and the results discussed in an attempt to further evaluate and clarify the role and effectiveness of expert witnesses who testify on behalf of battered women who have committed murder.

Admissibility of Expert Testimony

Since its initial introduction to the American court system in the case of *Ibn Tamas v. United States* (1979), the admissibility of expert testimony in cases of battered women who kill their abuser has been at issue in Canada and the United

States on a number of grounds. In order for expert testimony to be deemed admissible, the courts have established a number of legal standards that must be met. Considerations of the relevancy of the testimony to the case, the need for experts to be adequately qualified, and the possibility that jurors may be unduly swayed by the testimony of an individual deemed to be an “expert” in the field must all be addressed. Specific standards require that the testimony provide the jurors with information that is beyond their common understanding, that it must bear on the issues or facts to be decided, must be deemed scientifically reliable, and not prejudice the jury in any way (Brinegar Cross, 1982; Leary, 1985).

In the past, expert evidence on battered women syndrome has been judged inadmissible by various courts on the grounds that it was irrelevant to the issues at hand, and that the information to be presented existed within the understanding of the jury and therefore did not require an expert. As the research will establish, however, these judgments are unjustified. Others have further argued that the content of the testimony was not established on a commonly accepted area of scientific knowledge (Brinegar Cross, 1982; Hoffman, 1981; Leary, 1985; Pipkin, 1989). Concern as to the empirical support for certain components of current forms of testimony, however, may be warranted and is addressed by the current research endeavour. Since these initial rulings there has been a general consensus among the courts to admit expert testimony in the defense of battered women to the point that it is now presented as

part of the regular course of proceedings in most criminal cases (Kaas, 1982; Neuberger Blowers & Bjerregaard, 1994).

Juror Misconceptions of Battered Women

One of the greatest obstacles to battered women in the criminal justice system is the previously existing stereotypes or misconceptions of their situations as held by jurors. For this reason a significant role of expert testimony is to dispel myths that jurors may hold with regard to battered women. A significant amount of research has supported the notion that jurors and the lay public do prescribe to a number of false assertions about battered women and hence the judged inadmissibility of expert evidence on these grounds is unwarranted. Ewing and Aubrey (1987) investigated the degree to which the general population from which jurors are selected hold erroneous and stereotyped beliefs about battered women. The results of this study indicated that a significant proportion of their sample believed that the battered woman was at least partially responsible for the abuse, that the battered woman was masochistic, and that she was emotionally disturbed if she remained in the situation. Most suggested that she could simply leave, and that the violence could be resolved through counseling. Aubrey and Ewing (1989) conducted an additional study to determine whether differences between voters and undergraduate psychology students would be obtained on various measures assessing knowledge of battered women. Consistent with their earlier findings the results indicated that 16% to 84% of voters and 21% to 88% of students endorsed similar misconceptions to the previous study. Despite greater

levels of education, a factor which often implies greater liberalism in terms of beliefs and attitudes, students remained relatively uninformed about battered women and their situations. Although gender differences were noted on certain items measured by the study, the results suggest that male and female voters and students were equally likely to endorse stereotypes.

On the basis of these earlier findings a research endeavour was undertaken to explore the existence of misconceptions held by actual American jurors awaiting jury selection for various civil and criminal cases (Greene, Raitz & Lindblad, 1989). These jurors generally agreed that many battered women suffer from anxiety and depression, that a battered woman might believe that her husband would kill her, that leaving would result in further harm, and that she might feel helpless to change her situation. On the other hand, jurors were uninformed of the dependency that these women often feel on their partners, that they could be persuaded to stay by promises by the batterer never to hurt them again, that they might believe that deadly force was necessary, or might feel at fault for their own situation and further indicated that a woman who chooses to remain within such a situation must not be suffering. A second experiment further suggested that this sample believed that certain assertions apply to women within lower but not to those of higher socioeconomic status. Subjects did not believe that a woman of high SES might truly believe that she was helpless to stop the beatings, that she would be likely to show signs of extreme anxiety and depression, or that a woman in such a situation would stay with her

husband because she feels dependent on him (Greene, Raitz & Lindblad, 1989). These studies provide empirical support for the notion that the general public and actual jurors commonly endorse misconceptions of battered women and further illuminate the need for expert testimony to educate juries in terms of the research evidence on battered women.

In an attempt to address the scientific basis for battered women syndrome testimony which addresses juror misconceptions a study was designed to assess the degree to which researchers in this area would reach a consensus regarding the realities of being a battered woman (Dodge & Greene, 1991). As mentioned previously expert testimony has occasionally been deemed inadmissible for the purposes of defending battered women who kill on the grounds that it could not be legitimately demonstrated as a commonly accepted area of scientific knowledge. Researchers were provided with 18 statements and were asked to indicate the degree to which they agreed or disagreed with them. The results indicated that 82% to 98% of all researchers were significantly agreeable on 14 of the 18 statements thereby supporting the application of this form of testimony. A significant consensus occurred when at least 80% of respondents answered with a score of 2 or less on a 7 point scale with 1 reflecting strong agreement and 7 strong disagreement with the statement. These results were then compared to those of jurors awaiting jury selection in the United States. Once again, jurors demonstrated that they were misinformed on many of the items on which the researchers had established a high

degree of consensus, lending further support to the idea that such testimony is both relevant and instrumental in the defense of battered women.

Despite research which continues to suggest that jurors and the general population from which they are chosen hold views of battered women that are inconsistent with research findings, few studies have formally investigated the ability of expert witnesses to educate juries on these issues. Most studies asserting to have assessed this relation have simply compared acquittal rates or reductions in charges for battered women who kill upon manipulation of expert testimony. It is then assumed that less stringent verdicts imply increasingly accurate perceptions of these women. Rather than assuming that lenient verdicts imply formal changes in an individual's beliefs of battered women, the current research investigation measured these changes directly by measuring juror's beliefs prior to, and then following exposure to expert testimony.

Consistent with previous research the present study proposed that jurors would endorse a number of misperceptions of battered women to further support the basis for admissibility of expert testimony on the grounds that knowledge of battered women is beyond the ken of the average juror. It predicted that following exposure to expert testimony juror's beliefs would be more consistent with research findings concerning battered women and their experiences as measured by the second assessment.

Establishing Legal Defenses for Battered Women Who Kill

A significant role of expert testimony in cases such as these is to provide a framework for evaluating the applicability and appropriateness of the particular legal defense that has been submitted on behalf of the battered woman. Such testimony is usually called by the defense to help establish that the actions of the battered woman were not only reasonable in light of her history of abuse and trauma, but, also that her reactions were justified in light of the threat of violent abuse. Historically these defenses have included insanity or self-defense. Despite previous applications of the insanity plea, the defense is inconsistent with what is now known about battered women and is seldom applied to these cases at the present time. Contrary to an insanity defense most battered women defendants are aware at the time of their offense that their actions are unlawful, were aware of the probable consequences of those actions, and know that their actions are both legally and morally wrong. A defect of moral reasoning is simply not evident in most cases. Moreover, although many may be emotionally charged at the time of the offense, the actions taken by these defendants are not the result of an impaired mental state, but, are instead the result of a rational decision to protect themselves from death or serious injury (Stuesser, 1990).

As a result, currently the most applied legal defense for battered women is “not-guilty by reason of self-defense” (Ewing, 1990; Kinports, 1988). In order for a plea of self-defense to be deemed tenable Section 34 (1) and (2) of the Canadian

Criminal Code asserts that anyone who is assaulted is justified in repelling the assault if they held a reasonable apprehension of death or injury, reasonable force was used, and the individual reasonably believed that they could not have otherwise protected themselves from the attack.

The very definition of self-defense has been problematic for battered women. The necessity for women to support the assertion that they reasonably believed themselves to be in danger of death or injury has been difficult since many of these women take action against their abuser in the absence of direct confrontation. It is not uncommon for these women to defend themselves either in expectation of an ensuing episode, in the wake of a beating, or while the abuser is retreating, resting, or sleeping (Kinports, 1988; Rosen, 1986). Although the Canadian Criminal Code no longer requires that the danger of death or injury be “imminent” (Watt & Fuerst, 1995) it is likely that a reasonable apprehension of death will be interpreted in light of the degree to which it is imminent. Regardless of these technical changes a reasonable apprehension of death remains an elusive concept to operationalize. Particularly difficult for jurors to comprehend is how a retreating or sleeping man could pose a reasonable threat of violence or death. Also problematic is the legal requirement of reasonable force. Many jurors fail to understand that a battered woman might view her only means of ensuring her safety as requiring the application of deadly force, even when the abuser has only threatened with words or fists. When a woman fights back with the use of a deadly weapon it is automatically considered

to be unreasonable and excessive. Gender expectations are such that an aggressive woman is perceived as irrational and unstable despite the circumstances in which she reacts (Castel, 1990). It is the function of expert testimony to help establish the constant state of fear of violence and death with which battered women must contend, and its applicability to establishing the requirement of reasonable apprehension of threat. It further seeks to legitimize the woman's final decision to take the life of her abuser by instructing the jury with regard to her lack of viable options and the legitimacy of the force that is used to defend against her attacker.

While various reports of specific cases have focused on the success of self-defense applications (Rosen, 1986) evidence from court decisions indicate that success with the defense is more the exception than the rule (Browne, 1987; Ewing, 1987; Finkel, Meister, & Lightfoot, 1991; Kinports, 1988; Schuller, 1992; Schuller & Vidmar, 1992). Ewing (1987) presented the results of an analysis of 100 battered women who committed murder. Of the 85 who pleaded not-guilty by reason of self-defense (NGRSD), 63 were convicted of murder, manslaughter, or other form of criminal homicide and only 22 were acquitted. In 44 of these 85 cases an attempt was made to introduce expert testimony on behalf of the defendant and in 26 cases it was deemed admissible. Among these 26 cases approximately one third resulted in acquittal, while in all cases in which it was excluded all of the women were convicted. What is particularly noteworthy of this analysis is that approximately one-third of these 100 women had committed the crime sometime after the final battering

incident had ended, while no threats were being uttered, or while the batterer was asleep, resting, or otherwise pre-occupied. It remains unclear, however, how many acquittals were rendered under these conditions.

As noted previously, the idea that a battered woman might perceive her situation in terms of reasonable threat of violence is difficult for jurors to comprehend without the assistance of expert testimony. Even when such testimony is presented in court, however, acquittals on the grounds of self-defense remain uncommon (Browne, 1987; Cipparone, 1987; Ewing, 1987; 1990; Gillespie, 1989; Talbot, 1988). These results suggest that expert testimony is not exerting the influence that was expected or hoped, or that it is perhaps unwittingly portraying women in ways that are inconsistent with a self-defense ideation. Of course, many factors inherent to expert testimony itself may play more crucial roles in determining the effectiveness of the defense than simply whether or not expert testimony was presented on the defendant's behalf. Such factors may include the content, credibility or format of the presentation of expert evidence.

Battered Woman Syndrome

Various forms of expert testimony have been developed to help support a defense of NGRSD for battered women who kill. The most commonly applied perspective for the purposes of defending battered women on trial has come to be referred to as "battered woman syndrome" (BWS). On the basis of the pioneering work of Lenore Walker in 1979, BWS has come to reflect the essence of what it

means to be a battered woman, particularly from a psychological standpoint. The term BWS is applied to women who have suffered repeated exposure to severe psychological and physical abuse at the hands of an intimate partner (Walker, 1979). It is a theory that attempts to illuminate the unique psychological stressors that influence these women and the decisions that they ultimately make. The syndrome itself refers to a series of characteristics or symptoms which are commonly presented by battered women and which are assumed to be the product of the abusive environment.

Walker (1979) proposed two perspectives which have attempted to portray the circumstances surrounding the abusive situation and which formulate the foundation of the expert testimony. The two perspectives reflect the ideas of a cycle theory of violence and that of learned helplessness which is an extension of Seligman's work on conditioned responses (Seligman, 1975). The cycle component proposes that abusive relationships exist within a cyclical process involving three distinct stages; a tension building phase, an acute battering incident, and a loving contrition stage. The first stage consists of verbal abuse from the batterer, minor bickering, and an overall sense of tension which exists between the partners. Common to this stage are attempts by the woman to maintain an environment of calm and serenity. Over time this tension escalates to a point where the batterer erupts into an acute battering incident which is characterized by violent and uncontrollable rage and abuse. This is the point at which severe injury may be sustained by the woman. This eruption of abuse is then ensued by a period of loving contrition on the part of

the abuser, characterized by apologies, remorse, and promises that the abuse will never happen again. Unfortunately, however, the abuse is likely to recur. The literature suggests that as time progresses the incidents of abuse become both more frequent and more severe such that the woman learns to predict very accurately when the ensuing incident will occur, as well as the probable degree of severity. It is this very cycle that keeps the battered woman in a constant state of fear and terror of her partner and in the relationship in which she suffers.

Learned helplessness is the second component of Walker's perspective and serves to explain why the battered woman remains with her abuser rather than simply leaving the abusive situation. Over time the battered woman comes to learn that there is little that she can do to relieve herself of the situation and that as a result of prior failed attempts to control the abuse, and of the abuser's threats of retaliation should she attempt to escape, she lapses into a state of learned helplessness and depression. The result is a sense of futility to respond to the situation, a belief that regardless of her actions she is ultimately trapped and unable to escape.

In response to these basic tenets, a clinical syndrome has been proposed to capture these psychological reactions to battering experiences and have been presented in the form of a profile. Although it is often presented as a formally defined clinical syndrome, BWS is actually not a clinical diagnosis in and of itself. The syndrome is currently one of the traumatic experiences subsumed under the general diagnosis of Post-Traumatic Stress Disorder according to the American Psychiatric Association (Diagnostic and Statistical Manual Fourth Edition (DSM-IV),

1994). Most recently, testimony supporting the common diagnosis of Post-Traumatic Stress Disorder (PTSD) among battered women has been added to evidentiary testimony to defend battered women who kill (Dutton, 1993; Dutton & Goodman, 1994). Recent sources have suggested that as many as 31% to 60% of battered women who have sought help from domestic violence programs and as many as 89% of those living in shelters are believed to meet PTSD diagnostic criteria (Gleason, 1993; Houskamp & Foy, 1991; Kemp, Rawlings & Green, 1990; West, Fernandez, Hillard & Schoof, 1990).

PTSD is characterized as the “development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one’s physical integrity...” (American Psychiatric Association, 1994, p.424). An individual’s response to the battering events must include intense fear, horror, and the sense of helplessness to which we referred previously. Persistent re-experiencing of the trauma, avoidance of stimuli that are representative of the trauma, symptoms of increased arousal and numbing of general responsiveness are among the established criteria for a clinical diagnosis of these syndromes.

Taken together, Walker’s theory of domestic violence with its emphasis on the cycle of violence and learned helplessness, and research on PTSD as it relates to battering situations are critical elements in the expert witness’ framework to assist in explaining why a battered woman might remain within the abusive relationship and why she might perceive the need to use deadly force to defend her life. While the

escalating cycle of violence helps to establish the constant fear and terror that the woman feels, learned helplessness helps to illuminate the woman's rationale for remaining with the abuser, and the symptoms of PTSD, particularly the consistent heightened arousal, explicate the sense of constant threat and terror even in the absence of direct confrontation with the abuser. As the cycle of abuse continues to establish itself within the relationship, the victim learns to accurately predict both the probable timeframe and severity of the ensuing abuse incident. This information is expected to assist in establishing the reasonableness of reacting to a non-confrontational incident with lethal actions. With this information, it is expected that jurors will more readily and informatively evaluate the subjective state of mind of the battered woman when she faces her abuser in those final moments.

Despite minimal success of the application of BWS and PTSD to battered women in the legal forum (Rosen, 1986; Walus-Wigle & Meloy, 1988) this approach has been contended on a number of levels. Lodged at the very foundation of BWS is the criticism that few abusive relationships actually go through the stages that Walker has proposed (Faigman, 1986; Schuller & Vidmar, 1992; Talbot, 1988). Support for this criticism is found in Walker's own research on battered women and their relationships. According to the research on which the cycle theory was originally formulated, Walker presents empirical support only for the existence of the individual stages and not for the cycle itself. In fact her own findings indicated that only 65% of the battering relationships that she sampled involved a tension building phase, and in less than 60% of the cases was there a period of loving contrition. As a result, there

exists a legitimate concern for the degree to which this aspect of BWS testimony is adequately established on empirical grounds.

Of additional concern for this form of testimony is that the presentation of psychological syndromes to jurors is misinterpreted as being of such an empirically established nature that they are deemed “scientific”. By this we mean that the apparent medicalization of the term “battered woman syndrome” may lead to the falsely held belief that it is a medical diagnosis and therefore a more legitimate label. Myers (1993) argues for instance that judges and juries remain uninformed about the scientific status of syndrome evidence. For this reason as well as the fact that such evidence is presented by an “expert” in the field, the information may be accepted uncritically. This of course has potentially significant ramifications for an unbiased evaluation of trial facts. Jurors may find for the defendant simply because the presented information is assessed as beyond their realm of experience and beyond their layperson interpretation so that they accept the information as fact with little evaluation of its validity or deserved credibility.

The perceived inconsistency between the issue of learned helplessness and the lethal actions taken by the battered woman against the abuser is of notable concern for BWS evidence. Jurors may see these two factors as mutually exclusive, determine that the woman does not therefore fit the syndrome, and is then held accountable for her criminal actions (Ewing, 1987; Faigman, 1986; Schuller & Vidmar, 1992; Martinson et al., 1991; Talbot, 1988).

Consistent with this, critics have been concerned that this form of testimony creates a separate and distinct stereotype to which all battered women must conform (Bowker, 1993; Crocker, 1985; Jenkins & Davidson, 1990; Mahoney, 1991; Martinson et al., 1991; Sagawa, 1987; Schneider, 1986). As a result, battered women who kill are caught between the stereotype of a “reasonable man” and that of the “typical battered woman”. The result is a restricted framework from which to make comparisons about a particular defendant. If the accused does not meet the parameters as set out in the clinical criteria for BWS or PTSD then she is denied the opportunity of this defense and having reacted to her battering situation in a lethal manner, she will likely be judged outside of the framework of that of a “reasonable man”. There exists therefore no latitude for the diversity of individual experiences of battered women. In the case of BWS testimony, the defendant either meets the criteria as set out by the syndrome or she doesn’t. In turn it is simply the degree of fit with the proposed stereotype that determines the applicability of this evidence. Unless the defendant meets each of these stringent criteria and displays evidence of learned helplessness she will be denied the assistance of expert testimony for her defense. The probable result will conceivably be that jurors will assess the defendant as both legally and morally responsible for her course of action without an understanding of her individual circumstances.

Perhaps the most staunch criticisms of BWS are those of feminist scholars who suggest that by emphasizing the existence of syndromes and disorders the testimony pathologizes the experiences of women who have been forced to suffer

abuse as the result of victimization. In essence, the testimony reinforces the stereotypes of passivity, pathology, mental illness, and character weaknesses of the woman (Browne, 1987; Dutton, 1993; Finkel, Meister & Lightfoot, 1991; Mahoney, 1991; Sagawa, 1987; Schuller, 1992; Stubbs, 1992). They argue that testimony should instead focus on the pathology of the abuser, so that the women are not held accountable for their own abuse. Justification for these concerns are provided by numerous empirical studies which have found that BWS testimony is indeed related to jurors interpretations of the defendant within a framework of diminished capacity, insanity, and overall instability (Finkel, Meister & Lightfoot, 1991; Kasian, Spanos, Terrance & Peebles, 1993; Stubbs, 1992; Schuller, 1992). Although this form of testimony may occasionally result in more lenient verdicts or less commonly in an acquittal it continues to place the blame on women for their own suffering and suggests that if they were more psychologically stable that they would not be in the position in which they have found themselves. As such, the testimony portrays the woman's circumstances as an "excuse" rather than "justification".

Many feminist scholars have argued that the experiences of battered women be viewed not in light of psychological variables, but, rather as the result of social and political influences (Bowker, in Gelles & Loseke, 1993, Comack, 1987). By this it is meant that the processes of socialization which have historically indoctrinated an acceptance of domination of women by men, of violence against women, sex-role stereotypes, and attitudes that the experiences of women are not as significant as those of men, have resulted in the continued existence of abusive intimate

relationships. It is further suggested that the legal and judicial processes have helped to keep women in volatile situations because of an unwillingness to accept the seriousness of such situations and their failure to make the necessary legislative changes to safeguard women from violent environments (Archer, 1989). These concerns highlight the significance of social as opposed to psychological concerns.

BWS evidence has undoubtedly assisted in the defense of some battered women who have killed their abusers following years of suffering (Ewing, 1987; Rosen, 1986). Despite occasional success and as the result of the frequent criticisms launched against this testimony, a number of suggestions have been made with regard to potential alternatives to this standard evidence to improve the applicability of the expert evidence to more battered women defendants and for the purposes of aiding the jurors and judges who must ultimately determine the appropriateness and legitimacy of the testimony. Most of these recommendations focus on the elimination of the portrayed passivity of the defendant, supporting a framework of reasonableness and rationality rather than disorder and illness, and emphasize the battered woman's social reality in terms of the ineffectiveness or inexistence of social alternatives available to her. They additionally propose broadening the issues of expert testimony to the general effects of battering and avoiding criteria for clinical diagnosis (Comack, 1987; Crocker, 1985; Dutton, 1993; Sheehy, Stubbs & Tolmie, 1992). This is intended to increase the potential applicability to defendants who might not otherwise be able to benefit from expert testimony because their reactions or experiences deviate from the norm of the "typical" victim.

In light of these criticisms of the BWS approach to the legal defense of battered women who kill, and given that not-guilty verdicts are the exception and not the rule in these cases, it seems both justified and pertinent that alternatives to this form of testimony be evaluated in the hopes of improving the legal defense of abused women. As such it seems prudent that a form of testimony that is both successful in gaining lenient verdicts, redirects blame away from the victims of abuse thereby eliminating the pathologizing and irrational perspective of domestic assault be established. At the heart of these considerations and in response to these criticisms lies a social framework that has recently been presented as one alternative to BWS. This perspective has been recently referred to as the “social agency perspective” (Schuller, 1996).

Social Agency Perspective

A substantial body of research has accumulated suggesting that battered women are not nearly as passive and helpless as they have previously been portrayed (Bowker as cited in Gelles & Loseke, 1993; Dobash & Dobash, 1984). In a sample of over 1,000 battered women, Bowker found convincing evidence that the women were active social agents who were attempting to create a safer environment for themselves and their families. Among the most common personal strategies that were applied were attempts to talk the men out of battering them, running away or hiding, shielding themselves from the physical attacks, physically fighting back, turning to friends, shelters, police, physicians, lawyers and so on. For some of the women, these strategies proved ineffective and simply resulted in an escalation of

violence from the abuser. Increasingly severe attacks following the application of these strategies and the escalation of abuse even in the wake of separation from the abuser are legitimate concerns for battered women. Battered women's active measures are often ineffective for removing themselves from the domination of the abuser and they are sometimes left with few alternatives to the abusive environment.

Social agency perspectives of battered women include consideration of the existence of the legal and other institutional provisions of assistance. The greatest emphasis in this area has surrounded police response and availability of battered women's shelters. Until very recently, officers of the law lacked the legal authority to make mandatory arrests. Domestic disputes were typically relegated to a category of minor concern and were believed to be most effectively dealt with by the couple involved. Police response was limited to temporary separation or the provision of mediating services. Only a minority of cases, approximately 3% to 21%, resulted in formal arrests being made (Buzawa & Buzawa in Gelles & Loseke, 1993). As a result, many battered women were left to cope with their batterers without any form of legal assistance. Current laws in Canada now require that officers treat all requests for assistance in domestic assaults with the same priority as any other life-threatening call and lay charges when reasonable grounds exist, even in those cases in which the victim chooses not to lay charges herself or refuses to provide a statement (Ontario Police College, 1995). Once charges have been formally laid, the perpetrator may be detained in custody, though typically only for a short period of time, and then released with conditions.

Despite these legislative changes, women continue to be placed at risk.

Battered women commonly argue that any police involvement, let alone the laying of formal charges against their abuser, leads to an escalation of abuse as retribution for their actions. Although release conditions for batterers often require that the abuser have no direct contact with their victim, many men return to the home seeking retribution and submit the women to particularly severe violence or even death. The commonality of incidents of abuse that occur following separation has led to the creation of the term "separation assault". It is not uncommon for women who have managed to escape the abusive environment to be sought out and abused (Hirshel, Hutchison & Dean, 1992). In fact, a large proportion of the battered women who are eventually killed by their batterer are not living with them at the time of their death (Dutton, 1993, Ewing in Mahoney; Sherman, Smith, Schmidt & Rogan, 1992; Sheehy, Stubbs & Tolmie, 1992). Policing agencies are essentially unable to provide the safeguards necessary to ensure that the abuser will not return to the home to re-establish his pattern of abusive behaviours. The common choice of battered women to not involve the police, or to refrain from gaining assistance once initial assistance has been provided is warranted given these circumstances.

Criticisms of battered women's shelters have also been presented by proponents of these social perspectives. Concerns reflect the very small number of shelters as compared to the potentially huge population of women who could benefit from their services, waiting periods even in potentially crisis situations, time

limitations for remaining within these shelters, and the lack of financial assistance from governmental agencies to fund these programs (Castel, 1990; Dutton, 1993).

Economic considerations are of additional concern to battered women who are sometimes forced to remain within their abusive environments because of a general lack of job skills, or financial support to establish independence from their batterer (Archer, 1989; Bowker in Gelles & Loseke, 1993; Dutton, 1993; Ewing, 1987). Many of these women do not work either by choice or by force and many have limited access to finances as the result of the domination and control of the abuser. If these women have children to care for, they must be certain that they can adequately support themselves and their families before leaving can be considered as a serious option. Unfortunately, this is an opportunity available to only a small proportion of women in these cases (Bowker in Gelles & Loseke, 1993; Castel, 1990; Ewing, 1987).

Social perspectives on battered women have further taken into account the issues of shame, failure, and public sin that the battered women believe that they will have to face in the event that others learn of her situation. Feelings of being responsible for the path that their lives have taken, and feelings of failure are common among abused women (Bowker in Gelles & Loseke, 1993; Dobash & Dobash, 1984; Walker, 1979). Bowker also addresses the loss of social identity and way of life that these women will necessarily suffer should they find themselves in positions where they may be able to escape. "Victims maintain their social identities through most if not all of the violence. For a woman, ending the violence often

means losing all that is familiar in her life” (as cited in Gelles & Loseke, p.159). This reflects the idea that battered women may come to identify themselves as a “mother”, a “wife”, or a “battered woman”. Even though the social identification of being a battered woman is a negative one, these women may have known no other existence. The thought of removing that identity can be extremely traumatic, and may take a significant period of time before that progression can be made.

For the battered woman who kills, each of these identified variables play a significant role in helping to establish the reasons why a battered woman might remain within the abusive relationship, and why she might reasonably believe that taking her abuser’s life is the only available alternative. From a social perspective, the socialization of domination and control of women, societal acceptance of violence against women, lack of social alternatives, the relative ineffectiveness of the alternatives that do exist, as well as economic and social identity influences should all be incorporated into expert testimony. In this way battered women will be portrayed as victims of their social realities rather than of their psychological reactions to the abuse that they have suffered. Rather than evaluating personality traits or profiles of the defendant as responsible for the continuation of the abusive relationship, it is the existence of external forces which preclude alternatives to the abuse environment. Her choice of lethal action is then expected to be assessed in terms of a rational and reasonable outcome of these decisive environmental factors.

In response to criticisms that BWS testimony creates a second stereotype to which battered women must conform a social agency perspective does not present

evidence in such a manner as to create such a stereotype. Since the focus of this evidence is concerned with forces external to the woman it is not necessary for the defendant to fit a distinct character profile in order to benefit from expert testimony on her behalf. As such, expert testimony focusing on an agency perspective of the battered woman would be applicable to more cases involving battered women and not only to those who meet the criteria for a clinical diagnosis of BWS.

A recent study attempted to evaluate the relative effectiveness of expert testimony employing the standard BWS evidence in comparison to this alternative “social/agency” perspective in a simulated jury study (Schuller & Hastings, 1996). The study additionally manipulated the degree to which the defendant was active in attempting to remove herself from the abusive environment. This was reflected by evidence of prior attempts to fight back against the abuser, attempts to leave, or requests for assistance on prior occasions. Results of this study indicated that both the traditional BWS evidence and social/agency perspective were equivalent in gaining not-guilty verdicts by reason of self-defense as rendered by individual jurors. Group deliberations and final jury verdicts were not assessed by this study. Guilty verdicts, however, were common to both conditions, particularly verdicts of manslaughter. Guilty verdicts were in fact rendered in more than 55% of juror’s decisions. The defendant’s prior response similarly had little impact on individual juror verdicts. A comparison between a no expert control condition and conditions presenting expert testimony indicated that the presence of expert testimony did exert an effect upon verdicts rendered. Jurors exposed to expert testimony tended to render

more lenient verdicts regardless of testimony content. Since this is the first research endeavour to compare these different forms of testimony and since the author's hypotheses regarding the differential effects of testimony content were not supported, a critical analysis of the study's experimental manipulations may be warranted.

Upon detailed inspection of the experimental manipulations involved in this study a number of issues became salient with regard to the lack of differences that were observed between the two content conditions. Although the two forms of testimony were alleged to represent contrasting content areas Schuller and Hasting concede that the study was not designed to represent a true dichotomy. As such there were certain content areas with considerable overlap as well as further distinctions that could have been made, but, were not included for the purposes of their study. For instance, in both the BWS and social agency testimonies, Lenore Walker's stage theory of the cycle of violence was presented to jurors, fear of retaliation as a general concern, and misconceptions of battered women by the general public. Relatedly, no distinction was drawn between the social versus psychological implications of separation assaults, nor were the social implications of violence against women and various other social issues addressed within the social agency testimony that would further dichotomize the approaches. In order to address these additional distinctions in relation to the manipulations of expert testimony the current study incorporated more distinct content areas with the expectation that significant effects would then be found between the two forms. The BWS conditions addressed the commonality of anxiety, depression and low self-esteem among battered women, the fear of

retaliation should a battered woman manage to escape as explained in terms of a psychological perspective, as well as the cycle of violence according to the stage perspective as set out by Lenore Walker and the resulting state of learned helplessness (American Psychiatric Association, 1994; Dutton & Goodman, 1994; Faigman, 1986; Kasian et al., 1993; Kinports, 1988; Talbot, 1988; Walker, 1979; Walker, 1983; Walker in Gelles & Loseke, 1993). In contrast, the social agency conditions placed battering within a context of social concern by examining the severity of abuse against women in terms of current statistics pertaining to the prevalence of wife assault, described the cycle of violence not in terms of a 3 stage cycle, but, rather in terms of the increased frequency and severity of attacks over time, addressed the fear of retaliation in light of separation assaults as a social issue and research suggesting the high frequency of these assaults, public sin and stigma that society has placed upon battered women, concern for the loss of social identities that the victim will necessarily suffer in the event that she manages to leave, lack of adequate social support networks that enable a battered woman to leave the abusive environment, current laws which place abused women in even greater danger if assistance is sought, as well as economic considerations (Bowker in Gelles & Loseke, 1993; Buzzawa & Buzzawa in Gelles & Loseke, 1993; Castel, 1990; Crocker, 1985; Dutton, 1993; Mahoney, 1991; Martinson et al, 1991; Pagelow, 1992; Rittenmeyer, 1981; Rosen, 1986; Schuller & Hastings, 1996; Schneider, 1986; Sherman et al., 1992).

By incorporating a more dichotomous manipulation of expert testimony it was expected that differential effects of testimony content would become evident in juror's perceptions of the defendant and would then be reflected in the verdicts rendered. It was hypothesized that the more encompassing and less stereotypic nature of the social agency perspective would be viewed as increasingly applicable to the defendant's circumstances and would result in more lenient verdicts than the BWS approach in which the focus is more stringent and restrictive in terms of its generalizability to a particular defendant. Furthermore, because of the tendency of jurors exposed to BWS testimony to view these defendants within a framework of diminished capacity or instability, it was subsequently expected that a self-defense plea would be evaluated as less consistent and tenable than in conditions involving exposure to the social agency testimony.

Explicitness/Specificity of Expert Testimony

Related to concerns regarding the stringency and restricted generalizability of current expert testimony content are issues pertaining to the appropriate scope of such testimony. Consistent with these previous considerations are suggestions that in many cases defendants at trial are simply seen as an exception to the "typical" defendant to which the testimony alludes and jurors subsequently fail to make use of the testimony (Brekke & Borgida, 1988). In direct contrast to this are concerns that overly explicit testimony with regard to a specific defendant usurp the function of a jury whose role it is to determine the credibility of a witness' testimony to a particular defendant's actions (Brinegar Cross, 1982; Hoffman, 1981; Pipkin, 1989).

The degree to which expert witnesses can make direct reference to the actions and experiences of a defendant has therefore received considerable attention. Once testimony on battered women was deemed admissible by the courts it was necessary to determine the scope of the issues to which the expert could testify. Since 1979, the courts have gradually allowed increasingly detailed and specific testimony about battered women defendants to the point that case-specific evidence is the current standard (Neuberger Blowers & Bjerregaard, 1994). Restrictions to the permitted explicitness of testimony resulted from concerns that the expert invade the province of the jury, or speak to the ultimate issues of the case (Brinegar Cross, 1982; Mosteller, 1989; Pipkin, 1989). The ultimate issues in trials of battered women who kill are whether or not the defendant reasonably acted in self-defense, whether she had a reasonable belief of death or bodily injury, and whether reasonable force was utilized.

To date, testimony in cases of battered women is either general or case-specific (Gordon, 1996). The first involves the presentation of base rates or general research on battered women. This format of testimony presents only information about the “typical” battered woman with no reference to the defendant on trial. As such, jurors are expected to assess the degree to which the defendant typifies this information to determine whether the testimony is applicable to her and her particular circumstances. Research has suggested that a base rate fallacy exists in cases involving the presentation of group characteristics in the absence of evidence

concerning a particular defendant (Brekke & Borgida, 1988). In the case of a battered woman defendant the fallacy reflects the idea that base rates or group probability data on battered women are more likely to be applied by jurors when they are made specific to the case, or linked directly to the defendant than when no such reference is made. It was therefore predicted that testimony without reference to the particular defendant would be less effective in their defense (Brekke & Borgida, 1988; Schuller, 1992; Schuller & Vidmar, 1992).

The second format of testimony incorporates the presentation of general research findings on battered women, but, offers in addition to this a clinical opinion concerning the battered woman on trial (Martinson et al., 1991; Schuller, 1992; Talbot, 1988). This testimony may or may not include an opinion as to the state of mind of the defendant at the time the act was committed, and whether a defense of self-defense is reasonable given the particular circumstances. Since testimony has historically focused on BWS, this clinical opinion most often proffers a diagnosis of BWS or PTSD. Since this testimony makes the general evidence more directly pertinent to the defendant jurors were expected to make use of the testimony more readily and in turn assess the credibility of the defendant in an increasingly positive light. These juries should then render more lenient verdicts.

Schuller (1992) conducted two studies to assess whether differences in testimony explicitness would affect individual juror or group jury verdicts. In the first of two studies she examined the influence of a no expert control condition

relative to a general expert testimony condition which presented general research findings, and to testimony which included an opinion that the defendant met the criteria for the diagnosis of BWS on individual juror perceptions and verdicts. Study results indicated that as expert testimony became increasingly explicit with regard to the defendant, favourable perceptions of the defendant increased and more lenient verdicts were rendered by individual jurors. Whereas verdicts in the no expert condition were as likely to be “guilty of second degree murder” and “manslaughter” with few NGRSD verdicts, the general expert condition resulted in equivalent verdicts of “manslaughter” and NGRSD with few verdicts of “second degree murder”. Verdicts in the specific testimony condition increasingly reflected the least stringent verdicts of manslaughter and NGRSD.

A second study was conducted to examine whether or not these same patterns would emerge when group jury verdicts were examined. These results indicated that although the presence of expert testimony influenced final verdicts with trends toward leniency, and as testimony became increasingly explicit with regard to the defendant guilty verdicts tended to be rendered in the form of manslaughter as opposed to second degree murder, few differences were reflected in verdicts between the general and specific testimony conditions. When manslaughter and second degree verdicts were collapsed into a “guilty verdict” category a total of 7 guilty verdicts were rendered in the no expert condition as compared to 8 in the general expert condition, and 7 for specific testimony. The number of NGRSD verdicts were

identical across all three conditions. The results of this research suggest that although there seemed to be a trend toward leniency as case specificity increased inclusion of a clinical opinion did little to improve the woman's argument on the grounds of self-defense.

Additional measures are apparently necessary to assist jurors with the task of evaluating the evidence and generalizing this evidence to particular women defendants. A recent review of court decisions with regard to admitting increasingly explicit scopes of testimony is presented by Neuberger Blowers & Bjerregaard (1994). Between 1979 and 1994 a total of 72 cases of battered women who killed their abusers were admitted into American courts. Of these 72, 31 were permitted to present general research findings on battered women, 15 were permitted to submit additional opinions or diagnoses of BWS on behalf of the defendant, and 7 were allowed to address what has been considered to be the ultimate issue, the state of mind of the defendant at the time the crime was committed and hence, whether or not self-defense was a legitimate and reasonable plea for that defendant. These recent decisions suggest that the legal system has recognized the necessity for increasingly explicit testimony from expert witnesses and that it is not sufficient to simply address group characteristics, or add a simple diagnosis to testimony without establishing sufficient grounds for that diagnosis.

Contrary to the concerns of many legal scholars studies have indicated that jurors do not simply accept testimony uncritically from expert witnesses as fact or

reality (Brekke & Borgida, 1988; Schuller, 1992; Schuller & Hastings, 1996). Rather, they continue to assess the facts by means of their own frameworks for experiences. Concerns about usurping the responsibility of juries with regard to ultimate issues (Brinegar Cross, 1982; Hoffman, 1981; Neuberger Blowers & Bjerregaard, 1994; Pipkin, 1989) seem additionally unwarranted. To the contrary, the previous research suggests that the scope of expert testimony is not yet adequately individualistic in nature for jurors to effectively make use of the presented information about a given defendant. The current research investigation sought to evaluate more critically the influence of the scope of testimony and issues of which an expert is permitted to address. It did so as a means to further clarify the notion that increasing the specificity or scope of expert testimony may not only be warranted but necessary to further establish the specific reality and experiences of that defendant to assist jury members in evaluating the woman's individual circumstances. It was proposed that as testimony became more explicit with regard to the defendant and her circumstances that juries would render increasingly lenient verdicts.

Gender Influences on Juror Perceptions and Verdicts

One of the most consistent findings of research on battered women who kill suggests that male and female jurors assess these defendants very differently. Most research in this field has indicated that women tend to perceive these female defendants more favourably and support more lenient verdicts. Men on the other

hand tend to evaluate battered women defendants more harshly and generally impose more severe verdicts (Follingstad et al., 1989; Kasian et al., 1993; Schuller, 1992; Schuller & Hastings, 1996; Schuller, Smith & Olson, 1994). In their 1996 study, for instance, Schuller and Hastings presented evidence after which more than 65% of male jurors rendered verdicts of guilt as compared to only 48% of women jurors. As compared to their female counterparts men further rated the woman defendant as experiencing less fear, having more options, as being less trapped in the relationship and found the woman's claim less plausible. Interestingly, these same male jurors perceived the defendant as more psychologically stable than the women jurors. Consistent with these findings are those of Schuller et al. (1994). Male jurors in this sample attributed greater responsibility to the defendant, were less likely to believe the defendant's claim of self-defense and were more likely to suggest harsher punishment for her actions.

Although these gender differences are particularly salient at the individual juror level, when decision making is followed throughout the course of group deliberations, gender differences tend to demonstrate tempering effects. When pre-deliberation verdicts are compared to post-deliberation verdict choices there is a tendency for males to become increasingly favourable to the defendant and render less stringent verdicts while females become slightly less lenient and somewhat more unfavourable. Despite the temperance of differences between male and female

jurors, women continue to be somewhat more lenient and favourable to the defendant post-deliberation (Kasian et al., 1993).

Given these findings it was expected that similar gender differences would be observed in the present study. It was expected that women would evaluate the defendant more favourably and would render more lenient verdicts than men, but that these differences would be reduced throughout jury deliberations.

Proposed Manipulations and Research Hypotheses

The presented jury simulation was an attempt to further clarify the results of previous studies that have assessed the influence of expert testimony on individual juror and group jury decision-making. The purpose of the study was to address the general issues of beliefs and knowledge change in terms of the ability of expert testimony to influence simulated jurors' knowledge of battered women following exposure to expert testimony. It sought to investigate two specific aspects of expert witness testimony that may influence an effective defense of the accused namely the characterization of the defendant as suffering from a clinical syndrome as the result of the abusive environment versus her being an active social agent, and the scope or specificity of expert testimony.

Despite an abundance of research demonstrating that jurors hold stereotypes of battered women, few attempts have been made to formally assess the degree of influence of expert witnesses on specific beliefs of battered women. This study therefore addressed this issue by measuring beliefs of battered women prior to participation in the study and subsequent to exposure to expert testimony. Study

participants were expected to endorse various misconceptions about battered women prior to their participation in the study. Exposure to expert testimony concerning battered women and their experiences was expected to educate jurors with regard to the reality of the plight of battered women such that they would endorse fewer misconceptions on the second administration as compared to the pre-measure and would endorse beliefs more consistent with current research in the field. Since the content of expert testimony differed between the BWS and social agency testimony conditions it was expected that certain misperceptions would be altered differentially as consistent with that testimony.

Of additional interest to the study was the influence of the characterization of the defendant as provided by an expert witness, and the explicitness or specificity of the expert testimony as it pertains to the particular defendant. In order to manipulate the characterization of the defendant, battered women were presented in light of the battered woman syndrome, or in contrast, as active social agents in their environment and who are ultimately influenced by the lack of social alternatives to the abusive environment. The syndromized (BWS) condition reflected an essentially psychological perspective. Information concerning Post-Traumatic Stress Disorder and BWS was provided in terms of the clinical criteria for diagnosis. Testimony further reflected research on learned helplessness and the typical psychological reactions to physical violence. Alternatively, battered women were described as active in their attempts to remove themselves from their environment, but who are restricted by inadequate or unavailable alternatives in the community. This latter

approach therefore focused on more socially determined influences, and provided an increasingly social perspective from which to view battered women. Neither Post-Traumatic Stress Disorder nor learned helplessness was addressed by the expert in this condition. On the basis of similar research in this area, and despite the expert's indication to the contrary, it was hypothesized that jurors exposed to standard battered women's syndrome evidence would more frequently assess the defendant according to a diminished capacity perspective and as suffering from mental illness at the time of the killing, would perceive the defendant as being trapped within the relationship due to psychological factors, and endorse her actions as excusable, but, not justified in comparison to those exposed to the social agency perspective. As a result of these implications it was further predicted that jurors exposed to BWS testimony would perceive the plea of self-defense as less tenable and render fewer not-guilty verdicts. Since social agency testimony does not present the defendant within a framework of diminished capacity, it was expected that the self-defense plea in these conditions would be deemed more appropriate to the defendant's case and would result in more lenient verdicts.

The second manipulated factor reflected the degree to which the expert made direct reference to the defendant and sought to address the degree of testimony explicitness that is most effective in the defense of battered women who kill. Conditions involving "general testimony" included the presentation of research concerning battered women in general. No direct reference to the defendant was

made and jurors were therefore required to determine the extent to which this information accurately portrayed the defendant without assistance from the expert. A “case-specific” condition included general research concerning battered women and additionally provided an opinion by the expert witness that the defendant fit the appropriate characterization of battered women and that her ultimate actions seemed reasonable given her circumstances. A third degree of explicitness was additionally proposed for the purposes of this research investigation. The proposed “case-explicit” testimony condition further expanded upon these currently applied testimonies by incorporating very explicit links between the general research and the defendant on trial throughout the expert’s testimony. The presentation of research findings on battered women by the expert delineated very specifically the evidence for the consistency between the defendant’s experiences and reactions and the accepted research thus providing a more individualistic focus. The expert witness additionally testified that her final actions against the abuser seemed reasonable given her circumstances. In light of previous research it was expected that as expert testimony became more explicitly related to the defendant, verdicts would become increasingly lenient and would therefore more consistently result in verdicts of NGRSD.

It was further predicted that an interaction between the characterization of the defendant and the explicitness of testimony would affect juror’s perceptions of the defendant and the verdicts that they rendered both at the individual and group jury

level. While it was expected that the effectiveness of BWS evidence would increase as testimony became increasingly explicit the predictions for conditions involving the social agency were quite different. Due to the specific criteria addressed within the BWS conditions it was predicted that as testimony became increasingly case-specific the defendant would be deemed to fit the standard of the typical battered woman and jurors would render increasingly lenient verdicts. In contrast to the increasing applicability of BWS across conditions, the less defendant-specific and less stereotypical nature of the social agency perspective was predicted to result in consistent frequencies of NGRSD verdicts even as testimony became increasingly explicit.

It was also expected that individual ratings of private belief in the defendant's guilt would decrease as evidence was presented throughout the trial, and that the largest reduction in endorsements of guilt would occur immediately following the presentation of expert testimony since it was this testimony that portrayed the defendant most favourably. Since the study was specifically interested in the role of expert testimony we predicted that even after the presentation of the defendant's emotionally laden testimony that the expert testimony would have a further effect on reducing personal endorsements of the defendant's guilt. Due to the expected increase in generalizability to the defendant's case in all social agency conditions it was expected that these conditions would demonstrate the most pronounced reductions in endorsements of guilt even as compared to those exposed to the most explicit BWS evidence.

In light of previous research on juror decisions in cases of battered women who kill gender differences were anticipated. Male jurors were expected to endorse greater misperceptions of battered women prior to exposure to the trial than women jurors. Subsequent to testimony of trial participants male jurors were expected to endorse fewer misperceptions as compared to their pre-trial beliefs, however, they were also expected to endorse more misperceptions than female jurors post-trial. As such, female jurors were subsequently expected to endorse more favourable perceptions of the defendant, and to judge the defendant and the expert witness as more credible than their male counterparts. Although women jurors were expected to render more lenient verdicts than men regardless of the particular experimental manipulations these differences were expected to be reduced over the course of the deliberation process. Reductions of initial gender differences in verdict choice were expected to evolve in terms of males rendering less stringent and females increasingly stringent final verdicts.

Method

Participants

A subject pool of 341 subjects were sampled from among first year psychology students at Carleton University who participated in exchange for course credit. The mean age of study participants was 21 ($SD = 5.49$). A total of 179 females and 162 males completed the study. A total of 60 juries, each comprised of 4 to 8 jurors, were drawn (Davis, Kerr, Atkin, Holt & Meek, 1975; Kerr & MacCoun in Wrightsman, Kassin & Willis, 1987). Of these 60 juries, 9 were composed of 4

members, 23 of 5 members, 12 of 6 members, 10 of 7 members, and 6 of 8 members. All juries consisted of at least one male and one female representative. Potential subjects were told that they were going to be playing the role of a juror in a simulated criminal court case in which a woman has been charged with the second degree murder of her abusive husband. They were notified that the study may be disturbing for some individuals and that discretion was advised. Subjects were further informed that they would be expected to participate as a jury member during trial deliberations and that these deliberations would be videotaped for purposes of the study.

Materials

Videotapes. Six videotapes simulating a trial of a young woman accused of the second degree murder of her husband were presented. Each videotape was approximately 90 minutes in length. 60 juries were randomly assigned to one of the six conditions portrayed within each tape.

Actors appearing in the tapes included friends and family volunteers of the researcher. Trial transcripts (Appendix N) were based on actual legal cases, case studies of battered women who have been accused of killing their abuser, current police practices in cases of spousal abuse, as well as from information presented in previous jury simulation research (Dobash & Dobash, 1979; Ewing, 1987; Gillespie, 1989; Kasian et al., 1993; Ontario Police College, 1996; R v. Lavallee, 1990; Schuller & Hastings, 1996; Walker, 1984). The basic case facts were as follows. The trial involved a 24-year old woman who had suffered emotional and physical abuse at the hands of her husband for more than 3 years. Prior to the killing, the defendant's

husband had been drinking after which the defendant and her husband began to argue. The defendant was forced to have sexual intercourse at gunpoint, and was threatened with death before the next morning. At that time the defendant's husband fell asleep allegedly as the result of the alcohol consumption. As her husband lay in their bed the defendant picked up the rifle that had been used to threaten her and shot him three times in the back and head. The defense entered a plea of self-defense and alleged that as the result of continued abuse over the course of their 3-year marriage, alienation from friends and family, and following prior attempts to leave the marriage without success the defendant was left with no alternative but to take the life of her husband before he could take hers. The prosecution conceded that the defendant was a battered woman, but that help had been offered to her on a number of occasions and she chose not to accept it. Their argument further attested that the act committed by the defendant was the result of rage and revenge for the abuse that she had suffered, could not have occurred as the result of a reasonable apprehension of death or injury since the deceased lay sleeping when he was shot, and that the defendant should have made use of many alternatives available to her.¹

Material for the BWS testimony was based on previously conducted research, actual case studies, as well as material presented by legal scholars (American Psychiatric Association, 1994; Dutton & Goodman, 1994; Faigman, 1986;

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¹ Criminal code definitions presented by the judge reflected Canadian legislation as compared to the American legal definitions which may vary (eg. legal definitions of self-defense in the United States continue to require that the defendant's belief in the threat of physical harm or death be imminent. Imminence, however is no longer reflected in the Canadian definition). The legal response to batterers and battered women who kill followed current Canadian legislation.

Kasian et al., 1993; Kinports, 1988; Talbot, 1988; Walker, 1979; Walker, 1983; Walker in Gelles & Loseke, 1993). Content for the social/agency perspective was similarly derived from prior research investigations and is based on the recommendations of numerous literary works (Bowker in Gelles & Loseke, 1993; Buzzawa & Buzzawa in Gelles & Loseke, 1993; Castel, 1990; Crocker, 1985; Dutton, 1993; Mahoney, 1991; Martinson et al, 1991; Rittenmeyer, 1981; Schuller & Hastings, 1996; Schneider, 1986; Rosen, 1986; Pagelow, 1992; Sherman et al, 1992).

Both forms of expert testimony addressed common misperceptions of battered women: the effects of physical differences between men and women on battered women's experiences, the fear and anxiety that the women experience on a daily basis even in the absence of direct confrontation, that a battered woman might believe her partner could kill her and might believe that deadly force is necessary, the existence of battering relationships among all social classes, that no woman deserves to be beaten regardless of the situation, as well as the frequency and severity of the abuse that these women often suffer. While BWS testimony described the battering experience in terms of a clinical syndrome and PTSD, depicted the 3 stage cycle of violence as set forth by Walker (1979), and learned helplessness, the social agency perspective did not address any of these issues. Instead, social agency testimony focused instead on the socialization of dominance and violence against women, highlighted the various active measures taken by many battered women prior to resorting to violence, critically evaluated the lack of social alternatives for battered women, and addressed other social factors such as the lack of deterring effects of

mandatory arrest. In both the BWS and social agency conditions the expert explicitly testified that a battered woman's response to the battering experiences are not the result of pathology or mental instability, but, rather a normal response to trauma.

Specificity of expert testimony was manipulated by the extent to which the expert made direct reference to the defendant. In the general testimony conditions, no reference to the defendant was made. General research findings on battered women and their circumstances were presented without mention of the degree of fit between the "typical battered woman" and the defendant. In the case-specific conditions these same research findings concerning battered women were presented with the additional testimony that the defendant's situation was consistent with what is generally known about battered women. In other words a number of statements were made concerning a clinical opinion of the defendant and her state of mind at the time of the killing. For instance, in the BWS condition the expert presented evidence concerning research pertaining to battered women, the women's constant state of fear, their resulting state of learned helplessness in addition to the cyclical pattern of the abusive incidents, and evidence in contradiction of commonly held misconceptions of wife abuse. Following this testimony the expert then offered the clinical opinion that the defendant fit the syndrome and patterns as presented in the expert's earlier testimony, that the actions of the battered woman were indeed reasonable given her circumstances, and that her actions should be evaluated as measures of self-defense. In the final case-explicit conditions general research findings regarding battered women were explicitly linked to the circumstances of the

defendant throughout the expert's testimony. Whereas in the case-specific conditions the clinical opinion was left to the end of the expert's testimony, explicit specific testimony consistently delineated the commonalities between the defendant's case and other cases of battered women who kill for jurors as a means to provide an alternative framework from which to view the defendant's actions and state of mind prior to and at the time of the killing.

Other than the cross-examinations of the expert witness and the closing arguments of the defense attorney, which reflected the appropriate manipulations within that condition, all additional witness testimony was held constant. Trial proceedings simulated a true court trial and therefore included the presentation of opening statements by the judge, prosecuting and defense attorneys. Witnesses for the prosecution included the arresting officer, coroner, dispute officer and emergency room physician and for the defense the defendant and a clinical psychologist as the expert witness.² Each witness was cross-examined. Closing arguments of the attorneys, and the judge's closing charge concluded the trial.³

Each of the videotapes reflected the appropriate characterization of the defendant (syndromization vs social agency), and specificity or explicitness of the testimony itself (general testimony, case-specific testimony, or case-explicit testimony).

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² The gender of the expert witness (female) remained consistent across testimony conditions.

³ All court transcripts were reviewed by a Canadian defense attorney for appropriateness of arguments and court procedure.

Questionnaires

Beliefs of Battered Women Scale. This belief questionnaire is an 18-item measure that asked respondents to endorse the degree to which they agreed or disagreed with a number of statements concerning battered women (Appendix A). Potential responses ranged from (1) to (7) with (1) reflecting strong agreement and (7) strong disagreement. Low scores indicate consistency with empirical research while high scores reflect endorsements of misconceptions and stereotypes about battered women that are inconsistent with the research. This questionnaire was developed for the express purpose of this study and incorporates items from the battered woman questionnaires used by Aubrey and Ewing (1989), Dodge and Greene (1991), Ewing and Aubrey (1987) and Greene et al., (1989) in similar research. Since this is not a standardized scale a factor analysis was necessarily conducted on the 18 items to determine the number of different dimensions measured by the instrument. Inter-item reliabilities were then assessed for each of the subscales.

Private Belief in Guilt Rating Scale. On an 11-point scale, subjects were asked to indicate whether they believed that the defendant should be convicted (+5) or should not be convicted for killing her husband (-5) (Appendix B). Subjects were informed that their personal ratings need not reflect whether or not they believed that the legal requirements have been established for the various verdicts. These ratings are therefore not a reflection of legal culpability, but, reflect instead moral determinations. Subjects were also informed that their final rating scale,

administered after the jury has reached a verdict need not reflect that group decision. For the purposes of the final administration of this measure, ratings reflect the belief that the defendant should or should not be convicted. No distinction was made between manslaughter and second degree murder.

Credibility Checklist. Jurors were asked to indicate on a 5-point scale the degree to which they found the witnesses credible (5) or not credible (1) (Appendix C). Although the credibility of the domestic dispute officer, emergency room physician, defendant, and expert witness were assessed only the credibility of the defendant and expert witness were of interest to this study.

Manipulation Check. Jurors were asked to respond on a 7-point scale to a series of questions concerning statements made regarding specific experimental manipulations (Appendix D). A score of (0) reflects complete disagreement with the statement and (6) complete agreement. Statements reflected such manipulations as the extent to which the expert referred directly to the defendant, the psychological versus sociological orientation of testimony, and jurors' perception of the defendant in terms of how active she was in attempting to remove herself from her environment. Of the 17 items included within this questionnaire 9 were expected to assess the actual experimental manipulations, 5 to assess the characterization of the defendant, and 2 to assess testimony explicitness. Two additional items were included as part of this questionnaire to evaluate the reliance of jurors on the testimony presented by the defendant and the expert witness, but were not included as explicit manipulations

checks. These items will be analyzed separately. The remaining 8 questions were included as fillers.

Tally sheet. These are the sheets on which each individual juror registered their belief in the guilt or innocence of the accused (Appendix E). Subjects were asked to complete as many tally sheets as necessary until an unanimous verdict was reached. Each tally sheet provided three verdict options: guilty of second degree murder, guilty of manslaughter, or not-guilty by reason of self-defense. Only the first and final tallies were coded for each individual juror.

Personal Questionnaire. This open-ended questionnaire requested that subjects indicate their personal reasons for their individual verdict choice and beliefs regarding guilt (Appendix F). These reasons could reflect moral issues, legal issues, or both. Responses were coded for reference to the expert or the expert's testimony. References to the defendant were coded for positive endorsements of the expert or her testimony, negative endorsements of the expert or her testimony and reference to specific elements of BWS and social agency perspectives. These responses were coded (0) if no reference to the item was made and (1) if the juror included reference to the item in their responses. A single coder blind to the experimental condition coded the responses.

Perceptions of the Defendant. This 8-item measure assessed jurors perceptions of the defendant and her actions to determine the degree to which they believed her actions were within her control, that she was mentally unstable at the time and so on (Appendix G). Respondents were instructed to indicate along a

continuum the degree to which they agreed with the 8 items. A score of (-3) indicated that the respondent strongly disagreed and a score of (+3) indicated complete agreement. For the purposes of data reduction a principal components analysis was performed to reduce the items to subscale dimensions.

Procedure

A pre-test measure on the Beliefs of battered women Questionnaire was obtained during mass-testing at Carleton University. Information concerning the study was then posted to recruit potential subjects. This recruiting announcement (Appendix H) informed subjects that the study expected them to play the role of a juror in a simulated criminal court case involving a woman charged in the murder of her abusive husband. It further informed students that the content would be explicit and that discretion was advised. They were additionally informed that they would be expected to participate as a jury member in order to reach a unanimous verdict and that these deliberations would be videotaped. Participants who then responded to the recruiting announcement were randomly assigned to one of the six conditions, 1) BWS/ general testimony 2) BWS/ case-specific testimony 3) BWS/ case-explicit testimony 4) social agency/ general testimony 5) social agency/ case-specific testimony 6) social agency/ case-explicit testimony.⁴

Upon arrival for participation students were reminded of the nature and content of the study in addition to the information provided by the recruiting

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⁴ Subjects were instructed that they were to decline participation if they were not Canadian residents, if they were under the age of 18, have been convicted of a criminal offense, or have had direct experience as a battered woman. These criteria are based on those most commonly used to screen potential jurors in Canadian jury selection procedures.

announcement. Due to the emotional and explicit content of the trial and deliberations subjects were instructed that they could discontinue their participation at any time during the course of the study without penalty. All participants were then asked to read and sign a general informed consent form to this effect (Appendix I).

The experimenter remained in the room with the participants during the trial proceedings only. Each tape was stopped four consecutive times: following the opening statements of the judge, prosecutor and defense attorney, following the witnesses for the prosecution and the testimony of the defendant, following the expert witness for the defense, and following the closing arguments of the defense attorney, prosecuting attorney, and the judge's charge. At each interval subjects completed the Private Belief in Guilt Rating Scale.

Following the completion of the trial proceedings, jurors completed a credibility checklist and several questions concerning the experimental conditions that served as a manipulation check for the researchers. At this time subjects completed a second Beliefs of battered women Questionnaire. Jurors were reminded that the deliberations would be videotaped and were asked to complete an informed consent form to this effect (Appendix J).

Prior to deliberations each jury confidentially nominated a foreperson to represent the jury and were informed of what these duties entailed (Appendix K). The foreperson was instructed to take tallies over the course of the deliberation proceedings until a unanimous verdict was reached. Each foreperson was provided with Criminal Code definitions of the three verdict options (Appendix L). The legal

basis for a finding of second degree murder involved intent to cause death or bodily harm that the defendant knew was likely to cause death. A verdict of manslaughter required that the defendant be provoked such that there was no time for the passion to cool, and self-defense involves a reasonable apprehension of death or grievous bodily harm, that the defendant reasonably believed that she could not have otherwise protected herself, and that reasonable force was used in her defense. Tally sheets were left for the foreperson to distribute for the purposes of recording individual choices between the three verdict options. The maximum time allotted for the deliberations was 70 minutes. If no verdict had been reached at this time, the jury was declared hung.

Upon completion of the deliberations jurors completed a final Private Belief in Guilt Rating. A questionnaire requesting their reasons for their personal decision in the case was then distributed as was an additional questionnaire assessing their perceptions of the battered woman and her experiences.

All participants were debriefed both in verbal and written form (Appendix M). This debriefing included a description of the purpose of the study, the particular conditions of the respective juries, clarified unresolved legal issues, and addressed any concerns or questions raised by the participants. The debriefing package also included a list of contact numbers for the purpose of providing accessible resources for legal aid, counselling services, as well as police contacts and services for victims of abuse.

Results

Manipulation Check

In order to ensure that the experimental manipulations effectively distinguished between the two defendant characterizations and between the three degrees of explicitness analyses of items measuring these effects were conducted. A total of nine items were taken from the manipulation check questionnaire to assess these effects. Seven were used to test the effects of the characterizations of the defendant while the remaining two questions were used to assess the effects of testimony explicitness. As the result of low reliabilities on the subscales produced by a principal component analysis all items were evaluated individually. Items assessing characterization were submitted to a one-way multivariate analysis of variance (MANOVA) for testimony content and items assessing explicitness were similarly submitted to a one-way MANOVA with testimony explicitness as the independent variable.

The analysis involving the characterization of the defendant produced a significant multivariate effect, Pillais= .12; $F(5, 332)= 9.28, p < .001$. Follow-up univariate F-tests indicated a significant effect on only two of the seven items. As expected, conditions involving testimony concerning BWS were perceived as more psychological in nature ($M = 4.37, SD = 1.13$) than the social agency testimonies ($M = 4.11, SD = .93$), $F(1, 336)= 5.09, p < .03$ ($\eta^2 = .02$); similarly social agency testimonies were perceived as more socially oriented ($M = 4.28, SD = 1.04$) than

those involving BWS ($\underline{M} = 3.65$, $\underline{SD} = 1.10$), $F(1, 336) = 29.59$, $p < .001$ ($\eta^2 = .08$).

No significant differences between the two characterizations were obtained for perceptions of the defendant's activeness in removing herself from her abusive situation, the defendant's degree of social support, the applicability of a defense of insanity, applicability of the defense of NGRSD, or for the degree to which the defendant was perceived as suffering from a psychological disorder (see Table 1). Although the effect sizes suggest that the manipulation was relatively weak these analyses confirm that the effects of the manipulations of testimony characterization in terms of the psychological versus social orientations were in the expected directions.

The one-way MANOVA for testimony explicitness also produced a significant multivariate effect, Pillais = .11; $F(4, 670) = 9.53$, $p < .001$, on the two items assessing its influence. Univariate F-tests demonstrated a significant effect of explicitness on ratings of the degree to which the expert made direct reference to the defendant, $F(2, 335) = 14.96$, $p < .001$ ($\eta^2 = .08$). Since all pairwise comparisons were conducted, Tukey's-HSD procedure was applied to control for Type I error. No differences were obtained between the perceived number of references made by the expert within the general conditions ($\underline{M} = 3.22$, $\underline{SD} = 1.49$) and the expert in the case-specific conditions ($\underline{M} = 3.43$, $\underline{SD} = 1.16$), $t(336) = -1.26$, ns. A significant difference was demonstrated between the case-explicit testimony and that of case-specific testimony $t(336) = -3.90$, $p < .001$, in that the expert presenting the case-explicit

Table 1

Table of Means and Standard Deviations for the Manipulation Check Analyses as Presented as a Function of Characterization

	Characterization of the Defendant					
	BWS		Social Agency		<u>F</u>	<u>p</u>
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>		
Active	3.05	1.49	3.12	1.49	.22	ns
NGRSD	3.97	1.82	3.98	1.39	.03	ns
Social Support	2.36	1.62	2.30	1.70	.16	ns
Insanity	2.71	1.91	2.48	1.89	1.10	ns
Psychdisorder	4.64	1.19	4.41	1.39	2.64	ns
Psychological	4.37	1.13	4.11	.935	.15	.02
Social	3.65	1.10	4.28	1.04	29.09	.001

Note. Potential range of responses= 0 to 6

Active = degree of defendant's activeness in removing herself from her abusive environment

NGRSD = appropriateness of the defense of "not-guilty by reason of self-defense"

Social Support = degree of social support available to the defendant

Insanity = appropriateness of the the defense of "not-guilty by reason of insanity"

Psychdisorder = degree of psychological disorder

Psychological = psychological orientation of testimony

Social = social orientation of testimony

testimony was rated as making frequent references to the defendant ($M = 4.09$, $SD = 1.13$) while jurors exposed to case-specific testimony indicated fewer references to the defendant ($M = 3.43$, $SD = 1.16$). A significant difference similarly existed between case-explicit and general testimony, with those exposed to general evidence indicating significantly fewer references by the expert to the defendant ($M = 3.22$, $SD = 1.49$) as compared to the expert within the case-explicit conditions, $t(336) = -5.12$, $p < .001$. No significant effect of explicitness was obtained for the degree to which the expert's testimony was applicable to the defendant, $F(2, 335) = 1.95$, ns. These findings and the moderate effect size for references to the defendant indicate that the experimental manipulation of testimony explicitness resulted in effects consistent with expectations.

Juror Beliefs and Knowledge of Battered Women

In order to evaluate jurors' beliefs of battered women an exploratory principal component analysis was conducted on the questionnaire assessing these beliefs. Due to the lack of variability among responses two items were excluded from the analysis.⁵ An examination of responses to individual items indicated that the data was moderately positively skewed for most items and demonstrated values for kurtosis that violated the assumption of normality. To rectify this situation log

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⁵ Item 7 "A woman never deserves to be beaten" ($SD = .53$, skew = 7.81, kurt = 71.20) and item 16 "A woman has every right to refuse to have sex with her partner without fear of being beaten" ($SD = 1.00$, skew = 4.32, kurt = 18.5) were excluded.

transformations were applied to all items (mean scores were detransformed for the purposes of reporting and interpretation).

Since this measure was administered on two occasions, separate principal component analyses were conducted on each set of responses. The measures were submitted to an orthogonal rotation. Although both analyses produced a 3 component structure, 4 items proved problematic in that they loaded most highly on different factors on the pre and post measures. As such, the study's theoretical rationale was applied to rectify the problematic component structure and to ensure equivalent components for the purposes of analyzing both the pre and post measures of attitudes. The resulting structure consisted of a 4 component solution with the first factor consisting of 9 items, the second of 4, the third of 2, and the fourth of a single item (retained due to its theoretical importance). Dimensions consisted of items that had loadings greater than .36 (one loading indicating a value of .26 was maintained as a result of the theoretical meaning of the item and its appropriateness to the factor) on at least one principal component analysis and loaded most highly on a particular factor. The first component reflected Belief in a Battered Women's Restricted Options, the second Belief in Battered Women's Suffering, the third Belief in Psychological Manifestations of Abuse, and the last the Inability of Police and Social Services to Prevent Abuse (see Table 2 for factor loadings on pre-measure and Table 3 for factor loadings on post-measure). Contributing items for each component were

Table 2

Table of Factor Loadings For Pre-Measure of Beliefs of Battered Women

	Factor 1*	Factor 2*	Factor 3*
Anxiety	.11	.86	.25
Blame	.73	.27	.24
Deadly Force	.56	.37	.10
Dependent	.70	.09	.29
Depression	.15	.85	.23
Helplessness	.62	.40	.15
Kill	.67	-.02	.21***
Masochistic	.31	.07	.72
Police and Counselling	.20	.24	.35**
Predict	.09	.36	.56
Promises	.73	.17	.29
Sexual Assault	.41	.60	.07***
SES	.16	.16	.76
Suffer	.43	.04	.50
Threat	.62	.14	.18***
Trapped	.65	.45	.13
Cronbach Alpha's	.87	.69	.90

Note. * Factor 1 on pre-measure corresponds to Factor 1 on post-measure
 Factor 2 on pre-measure corresponds to Factor 3 on post-measure
 Factor 3 on pre-measure corresponds to Factor 2 on post-measure

** Item reflecting the ability of police and social services to prevent battering was used to create a 4th factor.

*** Items proved problematic for factor structure between pre and post measures and were subsequently grouped according to theoretical rationale

Table 3

Table of Factor Loadings for Post-Measure of Beliefs of Battered Women

	Factor 1	Factor 3	Factor 2
Anxiety	.14	.87	.18
Blame	.67	.20	.35
Deadly Force	.65	.15	.34
Dependent	.52	.07	.42
Depression	.16	.90	.13
Helplessness	.61	.42	-.04
Kill	.44	.09	.61
Masochistic	.38	.01	.68
Police and Counselling	.55	.12	.06
Predict	.16	.25	.39
Promises .	.54	.03	.51
Sexual Assault	.34	.49	.25
SES	-.20	.18	.75
Suffer	.29	.28	.53
Threat	.26	.29	.36
Trapped	.71	.41	.17
Cronbach Alpha's	.85	.90	.70

averaged (with appropriate items reverse coded) to produce a single score on each component. On all subscales a low score reflected greater awareness and knowledge of the circumstances of battered women. Cronbach Alpha's indicated that all subscales were reliable (see Table 2 and 3). The fourth subscale which consisted of a single item was analyzed individually as the result of its problematic factor structure between the pre and post-measures and due to the differential effects that BWS and social agency characterizations were expected to exert on this item. Of the items included in this questionnaire it was this item that was expected to most strongly differentiate between the two characterizations.

An examination of the overall means for the pre-measure of beliefs of battered women indicated that participating jurors were reasonably well informed of the experiences of battered women and demonstrated responses that were a legitimate reflection of the actual experiences of these women. Each of the subscales indicated that subjects were reasonably informed of the restricted options for battered women in terms of the women's frequent inability to leave the abusive relationship ($\underline{M} = 2.13$, $\underline{SD} = .91$), they similarly indicated that jurors understood the suffering that battered women experience within these relationships ($\underline{M} = 2.19$, $\underline{SD} = 1.01$), and that they were relatively informed of the psychological manifestations of physical abuse ($\underline{M} = 2.42$, $\underline{SD} = 1.35$). Only the Inability of Police and Social Services to Prevent Abuse subscale indicated that prior to exposure to the trial jurors were somewhat

unaware of the restricted ability of social services to ensure the safety of victims of physical abuse ($\underline{M} = 3.20$, $\underline{SD} = 1.78$).

Given that jurors were expected to endorse fewer misconceptions of battered women subsequent to exposure to expert testimony in addition to the further expectation that the testimony characterizations would have differential effects on certain items, the four subscales were submitted to a mixed 2 (characterization) x 3 (explicitness) x 2 (gender) x 2 (interval) MANOVA. No significant multivariate main effects for characterization, Pillais= .02; $\underline{F}(8, 478) = .72$, ns, or explicitness were obtained, Pillais= .03; $\underline{F}(4, 238) = 1.55$, ns.

Results of the analysis revealed a significant multivariate effect for gender, Pillais= .09; $\underline{F}(4, 238) = 6.19$, $p < .001$. Significant univariate effects of gender were noted on jurors' Belief in Battered Women's Restricted Options, $\underline{F}(1, 241) = 21.75$, $p < .001$ ($\eta^2 = .08$), Belief in Battered Women's Suffering, $\underline{F}(1, 241) = 18.38$, $p < .001$ ($\eta^2 = .07$), knowledge of Psychological Manifestations of Abuse, $\underline{F}(1, 241) = 6.84$, $p < .01$ ($\eta^2 = .03$) and the Inability of Police and Social Services to Prevent Abuse, $\underline{F}(1, 241) = 4.30$, $p < .04$ ($\eta^2 = .02$). As expected, all subscales indicated that male jurors were less knowledgeable of battered women's circumstances than their female counterparts. Female jurors were more likely to be aware of the restricted options for battered women ($\underline{M} = .96$, $\underline{SD} = .82$) as compared to male jurors ($\underline{M} = 2.35$, $\underline{SD} = .89$), more knowledgeable of the degree to which battered women suffer within their abusive relationships ($\underline{M} = 1.89$, $\underline{SD} = .86$) as compared to their male counterparts ($\underline{M}$

= 2.29, $SD = 1.04$), more likely to agree that battering often has psychological ramifications for the victim ($M = 2.17$, $SD = 1.33$) than males ($M = 2.46$, $SD = 1.24$), and were more likely to agree that police and counseling services cannot be relied upon to prevent battering ($M = 3.07$, $SD = 1.71$) than the men ($M = 3.49$, $SD = 1.83$).

A significant main effect of interval was also obtained at both the multivariate level, Pillais = .12; $F(4, 238) = 8.03$, $p < .001$ ($\eta^2 = .12$), and at the univariate level for Beliefs Concerning Battered Women's Suffering, $F(1, 241) = 25.77$, $p < .001$ ($\eta^2 = .10$), and the Psychological Manifestations of Abuse, $F(1, 241) = 9.47$, $p < .002$ ($\eta^2 = .04$). This multivariate significance, however, was further qualified by a characterization by interval interaction, Pillais = .05; $F(4, 238) = 2.90$, $p < .02$ ($\eta^2 = .05$). Univariate F-tests revealed a significant characterization by interval interaction for the Belief in Battered Women's Suffering subscale only, $F(1, 241) = 3.84$, $p < .05$ ($\eta^2 = .02$).

With regard to the significant interval main effect for the Belief in Psychological Manifestations of Abuse subscale, consistent with expectations, jurors were less likely to be aware of these ramifications of abuse on the pre-measure ($M = 2.42$, $SD = 1.35$) as compared to the measure obtained subsequent to exposure to the trial ($M = 2.19$, $SD = 1.23$).

Analysis of the simple effects of characterization on the Belief in Battered Women's Suffering subscale indicated no significant differences on the pre-measure,

$F(1, 241) = .32$, ns, nor on the post-measure $F(1, 241) = 2.47$, ns. Analysis of the simple effects of interval at each level of characterization, however, indicated a significant effect for both the BWS conditions, $F(1, 251) = 6.37$, $p < .01$ ($\eta^2 = .02$) and the social agency conditions, $F(1, 251) = 23.89$, $p < .001$ ($\eta^2 = .09$). In particular, prior to the trial jurors within the BWS conditions were less likely to believe that a battered woman is truly suffering if she remains within the abusive relationship ($M = 2.18$, $SD = 1.05$) as compared to the post-measure ($M = 1.97$, $SD = .90$). A similar pattern was noted for jurors in the social agency conditions ($M = 2.19$, $SD = .96$ on premeasure; $M = 1.95$, $SD = .96$ on post-measure). It is therefore unclear how the expert's characterization of the defendant qualified the effects of time of measurement on beliefs that battered women are truly suffering even if she remains within the relationship. No significant effects of testimony characterization were obtained for Beliefs in Battered Women's Restricted Options or for the Inability of Police and Social Services to Prevent Battering.

Jurors' Private Belief in Guilt of the Defendant

In addition to evaluating final juror verdict choices this study was interested in assessing the changes in perceptions of the degree of guilt of the defendant throughout the trial. In order to evaluate changes in perceptions of guilt, jurors' ratings were submitted to a mixed 2 (characterization) x 3 (explicitness) x 2 (gender) x 5 (interval) analysis of variance (ANOVA). The analysis involved three between-subject variables, characterization, explicitness, and gender, and one within-subject

variable, that of interval. The summary table for this analysis is presented in Table 4.

No significant effects were observed for characterization, $F(1, 329) = .27$, ns, or explicitness, $F(2, 329) = 2.63$, ns. A significant main effect for gender, $F(1, 329) = 27.37$, $p < .001$ ($\eta^2 = .08$) indicated that males held stronger beliefs that the defendant should be convicted ($M = -.79$, $SD = 3.37$) as compared to female jurors ($M = -2.32$, $SD = 2.93$). This analysis further indicated a main effect for interval, $F(3, 876) = 27.93$, $p < .001$ ($\eta^2 = .08$).⁶ Multiple comparisons within interval were conducted using four consecutive pairwise comparisons. Since these comparisons were planned but not orthogonal a Bonferroni correction was applied to control for family wise error. Results of this analysis indicated that jurors' perceptions of guilt of the defendant were highest at the beginning of the trial as measured by the rating subsequent to the opening statements (time 1; $M = -.67$, $SD = 2.57$) compared to the rating measured subsequent to the witnesses for the prosecution and the defendant (time 2; $M = -1.92$, $SD = 2.99$), $t(226) = 10.23$, $p < .001$. Although the mean guilt ratings were lowest subsequent to exposure to the expert testimony (time 3; $M = -2.03$, $SD = 3.21$) they were not significantly different to those measured subsequent to the defendant's testimony (time 2), $t(226) = 1.21$, ns. The rating of guilt measured after the expert witness' testimony (time 3) did indicate that jurors were somewhat less inclined to convict her than they were subsequent to the closing arguments (time 4) ($M = -1.82$, $SD = 3.48$), $t(226) = -2.60$, $p < .01$. Finally, no differences were noted between the rating of guilt measured after the closing statements of the trial (time 4;

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⁶ A test of sphericity indicated that the sphericity assumption was violated and a Huynh-Feldt epsilon correction was necessary.

Table 4

Summary Table for Jurors' Private Belief in Guilt

Source	SS	df	MS	F	Signif F
Between Subjects					
Within cells	11771.96	329	35.78		
C	9.77	1	9.77	.27	NS
E	188.39	2	94.20	2.63	NS
Gender	979.43	1	979.43	27.37	.001
C x E	32.70	2	16.35	.46	NS
C x Gender	91.80	1	91.80	2.57	NS
E x Gender	52.58	2	26.29	.73	NS
C x E x Gender	35.20	2	17.60	.49	NS
Within Subjects (Epsilon Corrected)					
Within Cells	4662.73	1316	3.54		
Interval	395.85	2.66	98.87	27.93	.001
C x Interval	34.58	2.66	8.63	2.44	NS
E x Interval	50.01	5.32	6.23	1.76	NS
Gender x Interval	23.88	2.66	5.95	1.68	NS
C x E x Interval	27.50	5.32	3.43	.97	NS

C x Gender x Interval	2.04	2.66	.50	.14	NS
E x Gender x Interval	6.84	5.32	.85	.24	NS
C x E x Gender x Interval	29.65	5.32	3.72	1.05	NS

$\underline{M} = -1.82$, $\underline{SD} = 3.48$) as compared to ratings measured subsequent to the deliberations (time 5; $\underline{M} = -1.52$, $\underline{SD} = 3.88$), $t(226) = -1.90$, ns. Overall, perceptions of guilt were somewhat neutral prior to exposure to witness testimony, decreased following exposure to the prosecution witnesses and the defendant, and were maintained after the expert witness. Opinions concerning the defendant's guilt increased slightly again after the closing statements and these opinions were maintained throughout the deliberations.

Impact of Defendant and Expert Testimony on Juror Decisions

Since the prediction that the expert testimony would reduce jurors' perceptions of guilt in addition to that of the defendant was not realized, a more direct measure of the potential effects of these witnesses was sought. Subjects' self-reported ratings of the degree to which they relied upon the testimony of the defendant when assessing the case, and the weight they allotted to the testimony of the expert witness were examined. A paired t-test comparison on these two items indicated that jurors relied more heavily upon the testimony of the defendant when rendering their decisions ($\underline{M} = 4.09$, $\underline{SD} = 1.19$) than upon the expert witness ($\underline{M} = 3.23$, $\underline{SD} = 1.39$), $t(340) = -10.03$, $p < .001$.

In order to assess the differential effects of testimony characterization, testimony explicitness, and gender of the jurors on these two variables the ratings were submitted to a 2 (characterization) x 3 (explicitness) x 2 (gender) MANOVA. The effects of characterization and explicitness were both nonsignificant (F 's < 1).

The analysis did indicate a significant multivariate effect for gender, Pillais= .04; $F(2, 328) = 7.27$, $p < .001$ ($\eta^2 = .04$). Univariate F-tests indicated significant effects for gender on jurors' reliance on the testimony of the defendant, $F(1, 329) = 12.07$, $p < .001$ ($\eta^2 = .04$), and their reliance on the testimony of the expert witness, $F(1, 329) = 5.87$, $p < .02$ ($\eta^2 = .02$) in that females gave greater weight to the defendant's testimony ($M = 4.30$, $SD = 1.01$) than did male jurors ($M = 3.85$, $SD = 1.32$) and female jurors similarly gave greater weight to the expert witness' testimony ($M = 3.41$, $SD = 1.33$) than did their male counterparts ($M = 3.04$, $SD = 1.43$).

Credibility Ratings

In order to evaluate the credibility of the defendant and expert witness across conditions, ratings of their credibility were submitted to a 2 (characterization) x 3 (explicitness) x 2 (gender) MANOVA. No significant differences were obtained for the effects of characterization, $F(2, 328) = .75$, ns, or explicitness, $F(4, 658) = 2.17$, ns. Results of this analysis did reveal a significant main effect for gender at the multivariate level, Pillais= .10; $F(2, 328) = 17.67$, $p < .001$. Univariate F-tests further indicated an effect of gender on perceptions of the credibility of the defendant, $F(1, 329) = 21.19$, $p < .001$ ($\eta^2 = .08$) and the expert, $F(1, 329) = 26.94$, $p < .001$ ($\eta^2 = .06$). Female jurors perceived the defendant to be more credible ($M = 4.07$, $SD = .85$) than did male jurors ($M = 3.62$, $SD = .95$), and similarly rated the expert witness as more credible ($M = 4.06$, $SD = .89$) than male jurors ($M = 3.51$, $SD = 1.07$). No additional effects were obtained for this analysis.

Perceptions of the Defendant

For the purposes of data reduction a principal component analysis was conducted on the Personal Perceptions Questionnaire. The analysis produced an initial 2 component solution based on eigenvalues greater than 1. These 2 factors accounted for 82.6% of the total explained variance (33.2% and 49.4% respectively). Items with loadings greater than .59 were retained for each subscale (see Table 5). The final solution indicated that the first component consisted of 4 items and appeared to reflect Socially Determined Responses to Abuse (SDRA). The second component also consisted of 4 items and reflected Psychologically Determined Responses to Abuse (PDRA). A mean score on each of these two scales was then generated for each subject (with appropriate items reverse coded). High scores on both subscales reflected perceptions that the defendant's actions were not determined by social factors and reflected perceptions of the defendant's psychological instability and diminished capacity. To assess scale reliabilities Cronbach Alpha coefficients were generated. The SDRA subscale produced a coefficient of .69 and PDRA a coefficient of .57. Despite the low reliabilities for each scale the two factors were maintained given that the theoretical meaning of the components were consistent with research hypotheses. A measure of the degree of correlation between the two subscales produced a value of -.33. As jurors' perceptions of the psychological instability of the defendant increased their perceptions of the defendant being trapped as the result of social determinants decreased.

Table 5

Factor Loadings for Perceptions of the Defendant

	Factor 1	Factor 2
Helpless	-.14	.59
Trapped psychologically	-.19	.60
Mentally unstable	.11	.76
Trapped socially	-.60	.34
Actions under her control	.23	-.61
Social agency options	.75	-.11
Force not justified	.69	-.02
Only way to protect herself	-.79	.14

In order to evaluate individual jurors' perceptions of the defendant, responses on the two scales were examined using a nested 2 (characterization) x 3 (explicitness) x 2 (gender) MANOVA. These analyses were nested since this measure was administered subsequent to the deliberations and responses were likely not independent of the jury in which members participated. The original analysis indicated a significant finding for the jury within condition effect, Pillais= .74; $F(72, 280) = 2.28$, $p < .001$, but not for the gender by jury within condition effect, Pillais= .48; $F(72, 280) = 1.23$, ns. As a result, the effect of this latter interaction was pooled into the within-subject error term.

No significance for the effect of defendant characterization was observed for either the Socially Determined or Psychologically Determined Responses subscales, Pillais= .05; $F(2, 35) = 1.00$, ns. A significant multivariate effect of testimony explicitness was obtained, Pillais= .27; $F(4, 72) = 2.80$, $p < .03$ and univariate F-tests revealed a significant effect on Socially Determined Responses to Abuse, $F(2, 36) = 4.82$, $p < .02$ ($\eta^2 = .21$), but not for Psychologically Determined Responses to Abuse, $F(2, 36) = .53$, ns. Multiple comparisons of testimony explicitness revealed that jurors exposed to the general and case-specific testimony equivalently believed that the defendant was trapped as the result of social circumstances $t(36) = .58$, ns ($M = -.31$, $SD = 1.40$ and $M = -.56$, $SD = 1.41$ respectively), and combined were more likely to believe that social circumstances restricted the defendant's options in comparison to those exposed to case-explicit testimony $t(36) = -5.02$, $p < .003$ ($M = .12$, $SD = 1.31$).

Juror Verdicts

As compared to group jury verdicts which involved a single verdict representing all jury members, the study was interested in evaluating individual juror verdicts prior to the deliberation period and then subsequent to deliberations to evaluate changes in verdict choice as the result of the deliberations. These measures also differ from jurors' ratings of private belief in guilt in that juror verdicts required subjects to formally choose between 3 verdict choices. Juror verdicts were coded as (1) for second degree murder, (2) for manslaughter, and (3) for not-guilty by reason of self-defense. Therefore, lower scores on this measure indicated verdicts that held the defendant as increasingly responsible for her actions. In order to assess the effects of the independent variables on the recommended verdicts a nested mixed 2 (characterization) x 3 (explicitness) x 2 (gender) x 2 (time of measurement) ANOVA was conducted with characterization, explicitness, and gender as the between-group variables and time of measurement (pre and post) as the within-subject variable. The results indicated that the jury within condition effect was highly significant, $F(54, 221) = 8.79, p < .001 (\eta^2 = .68)$ as was the gender by jury within condition effect, $F(54, 221) = 1.59, p < .01 (\eta^2 = .28)$. With regard to the within subject effects, the jury within condition by interval effect was significant, $F(54, 221) = 1.97, p < .001$, and the effect of gender by jury within condition by interval was also marginally significant, $F(54, 221) = 1.31, p < .09$. Table 6 presents the summary table for this analysis. Given these results, all further analyses took the significant effects into

Table 6

Summary Table Involving Nested Mixed ANOVA on Individual Juror Verdicts

Source	SS	df	MS	F	Signif F
Between Subject					
Nest within C x E (Error 1)	114.50	54	2.12	8.79	.001
Gender x Nest within C x E (Error 2)	20.72	54	.38	1.59	.01
Error 1					
C	.18	1	.18	.08	NS
E	9.63	2	4.82	2.27	NS
C x E	2.24	2	1.12	.53	NS
Error 2					
Gender	4.98	1	4.98	12.99	.001
Gender x C	.00	1	.00	.00	NS
Gender x E	.43	2	.22	.56	NS
Gender x C x E	.42	2	.21	.55	NS
Within Subjects (Error 3)					
Error 3	26.33	221	.12		
Interval	.05	1	.05	.44	NS

Nest within C x E x Interval (Error 4)	12.70	54	.24	1.97	.001
Gender x Nest within C x E x Interval (Error 5)	8.41	54	.16	1.31	.09
Error 4					
C x Interval	.20	1	.20	.87	NS
E x Interval	.34	2	.17	.71	NS
C x E x Interval	2.20	2	1.10	4.67	.01
C x E @ Interval					
Pre	.38	2	.19	.21	NS
Post	5.82	2	2.91	2.01	NS
E by BWS x Interval	2.36	3	.79	5.39	.001
E by SA x Interval	1.87	3	.62	4.29	.01
Interval @ C x E					
BWS/Gen	.12	1	.12	.83	NS
SA/Gen	.22	1	.22	1.52	NS
BWS/Case-Sp	2.22	1	2.22	15.26	.001
SA/Case-Sp	.46	1	.46	3.17	NS
BWS/Case-Ex	.01	1	.01	.09	NS
SA/Ex	1.19	1	1.19	8.17	.01
Error 5					
Gender x Interval	2.02	1	2.02	12.94	.001
Gender @ Interval					
Pre	2.45	1	2.45	7.43	.01
Post	.01	1	.01	.16	NS
Interval @ Gender					
Males	.38	1	.38	2.42	NS
Females	1.25	1	10.25	8.04	.01
Gender x C x Interval	.14	1	.14	.93	NS

Gender x E x Interval	.26	2	.13	.84	NS
Gender x C x E x Interval	.34	2	.17	1.08	NS

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consideration as appropriate error terms.

Neither the characterization of the defendant $F(1, 54) = .08$, ns, nor the degree of testimony explicitness, $F(1, 54) = 4.82$, ns, resulted in significant effects. The analysis did reveal a significant main effect for gender, $F(1, 54) = 12.99$, $p < .001$ ($\eta^2 = .19$) with males endorsing more stringent verdicts ($M = 2.37$, $SD = .63$) than did female jurors ($M = 2.55$, $SD = 1.16$). However, this main effect of gender was further qualified by a significant gender by interval interaction $F(1, 54) = 12.94$, $p < .001$ ($\eta^2 = .19$). An analysis of the simple effects of gender at each interval indicated a significant effect at pre-deliberation, $F(1, 36) = 7.43$, $p < .01$ ($\eta^2 = .17$), but not at post-deliberation, $F(1, 36) = .16$, ns ($\eta^2 = .05$). As expected, at pre-deliberation females demonstrated mean ratings that reflected not-guilty verdicts ($M = 2.59$, $SD = .60$) while males demonstrated mean ratings that reflected a verdict of manslaughter ($M = 2.30$, $SD = .71$), $F(1, 36) = 7.43$, $p < .01$ ($\eta^2 = .17$). At post-deliberation the mean ratings of both male and female jurors reflected verdicts of manslaughter ($M = 2.43$, $SD = .56$ and $M = 2.50$, $SD = .56$ respectively), $F(1, 36) = .16$, ns. The simple effects of interval for each gender revealed a significant effect for females, $F(1, 222) = 8.04$, $p < .01$ ($\eta^2 = .04$), but not for males $F(1, 222) = 2.42$, ns. Mean ratings for females tended to reflect verdicts of manslaughter more frequently at post-deliberation ($M = 2.50$, $SD = .56$) than at pre-deliberation ($M = 2.59$, $SD = .60$) (see Table 7 for pre and post-deliberation frequencies presented as a function of gender). This analysis further indicated a significant characterization by explicitness by

Table 7

Frequencies of Pre and Post Deliberation Verdicts as Function of Gender

	Gender		
	Males N = 162	Females N = 179	Total N = 341
Pre-Deliberation			
Guilty of 2 nd degree murder	24 (14.8%)	10 (5.6%)	34 (10.0%)
Guilty of manslaughter	66 (40.7%)	53 (29.6%)	119 (34.9%)
NGRSD	72 (44.4%)	116 (64.8%)	188 (55.1%)
Post-Deliberation			
Guilty of 2 nd degree murder	5 (3.1%)	6 (3.4%)	11 (3.2%)
Guilty of manslaughter	84 (51.9%)	76 (42.5%)	159 (46.6%)
NGRSD	73 (45.1%)	97 (54.2%)	171 (50.1%)

interval effect, $F(2, 54) = 4.67, p < .01 (\eta^2 = .15)$. An examination of the simple interactions of interval by explicitness at each level of characterization indicated a significant effect for BWS testimony, $F(3, 218) = 5.39, p < .001$, and for social agency testimony, $F(3, 218) = 4.29, p < .01$. Given these results a further analysis of the simple main effects of interval within each level of explicitness revealed a significant effect for jurors in the case-specific presentation of BWS, $F(1, 218) = 15.26, p < .001 (\eta^2 = .07)$. Jurors exposed to BWS/case-specific testimony tended to render more not-guilty verdicts at pre-deliberation ($M = 2.65, SD = .58$) than at post-deliberation ($M = 2.46, SD = .54$). Simple main effects of interval for those exposed to the social agency testimony revealed a significant effect for case-explicit testimony, $F(1, 218) = 8.17, p < .01 (\eta^2 = .04)$. When social agency testimony was explicit pre-deliberation verdicts were less harsh ($M = 2.32, SD = .70$) than those subsequent to the deliberations ($M = 2.21, SD = .60$) (see Table 8).

Jury Composition

Since the gender composition and number of jurors varied between juries an analysis was undertaken in order to assess the effects of these factors on the final verdicts of group juries. The ratio of males to the total number of jury members was computed for the purposes of determining the effects of gender composition on final group verdicts. Final verdicts were analyzed according to a 2 (characterization) x 3 (explicitness) analysis of covariance (ANCOVA) with the ratio of males to total

Table 8

Table of Means and Standard Deviations for Pre and Post Deliberation Verdicts as a Function of Characterization by Explicitness

	Time of Measurement							
	Pre				Post			
	Explicitness							
	Gen.	Spe.	Exp.	Total	Gen.	Spe.	Exp.	Total
Characterization								
BWS	2.52 .63	2.65 .58	2.34 .67	2.50 .63	2.57 .50	2.46 .54	2.39 .49	2.47 .51
Social Agency	2.29 .70	2.58 .67	2.32 .70	2.40 .69	2.38 .64	2.78 .42	2.21 .60	2.46 .53
Total	2.41 .67	1.62 .63	1.33 .69		2.48 .57	2.62 .48	2.30 .55	

Note. Potential range of responses = 1 to 3.

number of jury members as one covariate and the total number of jury members as a second. Results of the analysis demonstrated that there was no significant effect of the gender covariate, $t(53) = .56$, ns, nor for the size of the jury $t(53) = .76$, ns. Given the lack of significant results for both covariates they were not used in further analyses.

Jury Verdicts

Given the infrequency of second degree murder verdicts at the group jury level (2 of 60), manslaughter and second degree murder verdicts were collapsed to form a “guilty” verdict. Of the 60 final jury verdicts, 33% of verdicts were guilty, 30% were hung, and 37% were not-guilty.

Final jury verdicts of not-guilty (0) hung (1) and guilty (2) were analyzed according to a 2 (characterization) x 3 (explicitness) ANOVA.⁷ No significant effects were noted as the result of testimony characterization, $F(1, 54) = .00$, ns. An examination of frequencies indicated that the BWS and social agency testimonies resulted in NGRSD verdicts 30.0% and 43.3% of the time, respectively. Further results of the analysis revealed a significant main effect for explicitness, $F(2, 54) = 3.48$, $p < .04$ ($\eta^2 = .11$). A table of final verdicts is presented in Table 9 and a graphical depiction for this analysis is presented in Figure 1. Contrary to

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⁷ Chi-square analyses could not be conducted given the expected cell frequencies of < 5 . Given that higher scores reflected increasing perceptions of guilt, the use of ANOVA was viewed as appropriate.

Table 9

Frequency of Final Jury Verdicts as a Function of Characterization by Explicitness

	Testimony Explicitness							
	General		Case-Specific		Case-Explicit		Total	
	Characterization							
	BWS	SA	BWS	SA	BWS	SA	BWS	SA
Final Verdict								
Not-Guilty	4	4	4	6	1	3	9	13
Hung	5	2	3	3	5	0	13	5
Guilty	1	4	3	1	4	7	8	12
Total								
Not-Guilty	8		10		4			
Hung	7		6		5			
Guilty	5		4		11			

Figure 1

Jury Verdicts Presented as a Function of Testimony Explicitness

expectations, juries within the case-explicit conditions demonstrated mean ratings reflecting more stringent verdicts ($M = 1.35$, $SD = .81$) compared to the mean ratings for those within the general and case-specific conditions combined ($M = .78$, $SD = .81$).

Length of Deliberations

Given the expectations concerning the effects of defendant characterization and testimony explicitness it was subsequently expected that juries within certain conditions would require a longer deliberation period than others. As a result of the increasingly applicable nature of the social agency testimony it was predicted that juries exposed to this testimony would spend less time in deliberations than those exposed to the BWS testimony. It was expected that jurors exposed to BWS would need greater time to determine the degree to which the defendant fit the syndromized characterization. Those exposed to the more explicit testimonies would be likely to spend less time deliberating than those exposed to the less explicit evidence. Case-explicit testimony would require less consideration of case facts overall and less time to determine that the defendant fit the characterizations since this was stated explicitly in the expert's testimony.

In order to evaluate the effects of the experimental manipulations on the total time in deliberation a 2 (characterization) x 3 (explicitness) ANOVA was conducted. The results of this analysis yielded no significant differences for the main effect of

defendant characterization, $F(1, 54) = 2.68$, ns, the main effect of explicitness, $F(2, 54) = .65$, ns, or the interaction between characterization and explicitness, $F(2, 54) = 2.96$, ns. On average, juries spent 38.5 minutes ($SD = 23.1$) in deliberations.

Discussion

The purpose of this jury simulation study was to evaluate the role of expert testimony on juror beliefs of battered women and on individual and group jury verdicts in cases of battered women who kill. More specifically, the study intended to examine the ability of an expert to educate jurors concerning the experiences of battered women and to assess variations of testimony with respect to the manner in which the defendant was characterized, and the degree of explicitness of that evidence on the decision making processes of simulating jurors. The role of gender in cases of battered women who kill and the potentially differential response to expert testimony was additionally of interest. The various findings of this research endeavour have significant implications for the theoretical underpinnings of the investigation and practical application of expert testimony within the legal system.

One of the primary interests of the investigation was the influence that expert testimony would exert on jurors' beliefs of battered women. Prior to their participation in the study jurors were expected to demonstrate perceptions that were not consistent with the actual experiences of battered women. Subsequent to exposure to expert testimony jurors were expected to endorse beliefs more consistent with the realities of battered women. Responses to the belief measure obtained prior

to study participation indicated that this sample of jurors was relatively informed of the experiences of battered women and indicated fewer distortions than evidenced among previous samples (Aubrey & Ewing, 1989; Dodge & Greene, 1991; Ewing & Aubrey, 1987; Greene, Raitz & Lindblad, 1989). Jurors in this sample seemed to be aware of battered women's restricted options, the psychological manifestations of abuse, and the suffering that these women must endure. Misperceptions of battered women and their circumstances were most apparent in terms of responses concerning the reliability of police and social services to prevent battering, although even these beliefs were not overly inconsistent with the experiences of battered women in that jurors were at least somewhat inclined to agree that police and other social services cannot be relied upon in these situations. Although the overall accuracy of beliefs among this sample may have resulted from characteristics relating to their level of education, it may also be the case that the community has become increasingly aware of the experiences of women within battering relationships.

Despite the absence of overtly uninformed beliefs, exposure to expert testimony resulted in further reductions in the misinformation held by participants. Regardless of experimental condition, subsequent to exposure to the trial jurors tended to become increasingly aware of the psychological manifestations of abuse, and the legitimacy of the suffering of battered women. Since the post-measure of beliefs of the experiences of battered women was administered only after both the defendant and the expert had testified it cannot be ascertained decisively that it was

the expert's testimony that was responsible for the increased awareness of battered women as opposed to the testimony of the defendant. It was, however, the expert who most explicitly raised and discussed these issues and who is most likely responsible for these evidenced changes. In spite of their different orientations in terms of their social and psychological frameworks, the BWS and social agency testimonies equally emphasized the restricted options of battered women. While both characterizations similarly emphasized the commonality of anxiety and depression among battered women it was expected that the greater emphasis on other psychological symptoms of abuse of the BWS evidence would make these psychological consequences more apparent. The expectation of greater awareness of the psychological manifestations of abuse among the BWS jurors was not subsequently supported. These findings suggest that it was the commonality of issues to both testimony characterizations that resulted in the greater evidence of change among jurors' beliefs.

Given that most jurors were particularly well informed of a battered woman's restricted options as measured prior to the investigation it is not surprising that significant reductions of misperceptions were not observed subsequent to the conclusion of the trial. On the other hand, given the less informed nature of jurors concerning the ability of police and social services to prevent battering, it was initially surprising when no significant reductions on this item were observed. Since this subscale consisted of a single item it is possible that the lack of reductions may

have simply been the result of an experimental artifact potentially resulting from an inadequately sensitive measure. Alternatively, these findings could have resulted from respondents' need to feel that law enforcers can protect society and particularly those in special need of assistance. To acknowledge that we may be beyond protection in times that it is most necessary is a frightening prospect and one that many individuals may be inclined to discount. Jurors may have been reluctant to admit that the police cannot always be relied upon even in the face of testimony attesting to this fact. This explanation is particularly compelling given the lack of differences found among the effects of the BWS and social agency testimonies. Since a substantial portion of the social agency testimony concentrated on the current inability and lack of resources of police to provide adequate protection for victims of abuse and BWS did not speak to these issues greater reductions were expected to be evidenced by these jurors as compared to those exposed to BWS testimony. Perhaps with continued exposure to the realities of the limitations of law enforcers in these cases and to perspectives such as that of social agency with its continuing reinforcement of the social issue of separation assaults, greater awareness may transpire concerning the limits of police assistance. Unfortunately, no additional data accumulated by the study is able to clarify the issues concerning the sensitivity of the measure or the predisposition of jurors with regard to the ability of police to protect victims of abuse and as such it must be left to the future research to further address this area before the observed results can be definitively understood.

It was also expected that expert testimony would result in significant reductions in jurors' perceptions of the guilt of the defendant. Results of the analyses concerning the differential effects of defendant characterization as presented by the expert indicated no differences among jurors' ratings of private belief in guilt. Contrary to the researcher's expectations, the social agency testimony did not result in a greater reduction of jurors' ratings of the defendant's guilt than the BWS. Both testimonies resulted in equivalent reductions among guilt ratings, but, neither differed significantly from the ratings taken subsequent to the defendant. The defendant's own testimony seemed to exert a greater influence on jurors' perceptions of guilt than that of the expert. While one might argue that the experimental manipulations failed to have the desired effect analyses of the manipulation checks indicate otherwise. Despite relatively small effect sizes which suggest that the manipulation was weak, juror's perceptions of the psychological and social orientations of the testimonies were consistent with the researcher's expectations.

The reductions among jurors' private belief in the defendant's guilt subsequent to the testimony of the defendant and the inability of the expert to exert an additional effect suggest that it was the emotionally-laden testimony of the defendant that exerted the most influence upon jurors' belief in her guilt. Supporting this finding was that when asked to explicitly indicate the degree to which they relied upon the testimony of the defendant and that of the expert, jurors indicated that the expert's testimony influenced their formulations of their belief in the defendant's

guilt or innocence, but, that the defendant's testimony weighed more heavily in their beliefs. If it was indeed the defendant's testimony that exerted such reductions in perceptions of guilt and by virtue of the difference in guilt ratings between the opening testimonies and that of the defendant, the guilt ratings of jurors favourable to the defendant may have reached a threshold after which further reductions would be unlikely. Since this investigation did not include a no expert control condition it is unclear what degree of effect the expert witness exerted on the decisions of jurors if any.

It is also possible that the timing of the expert's testimony was a factor in the lack of influence of this evidence. Since jurors were consistently exposed to the expert subsequent to the defendant it is difficult to ascertain whether the effects of a varying order of testimony would differentially influence the results. In such a case the expert's testimony could potentially exert a more significant influence if presented earlier in the trial and prior to the testimony of the defendant. Preliminary research has indicated that the timing of expert testimony and the resulting effects of that testimony may indeed be related (Brekke & Borgida, 1988). Brekke and Borgida demonstrated that the effects of expert testimony in a rape trial were most pronounced when the expert was presented prior to the complainant rather than subsequent to her. Although the timing effects exerted an influence on jurors' ratings of the usefulness of the expert's testimony it had no influence on the final decisions that were rendered. It is likely that the relative influence of expert testimony to that of the defendant would be affected in a case involving a battered women who kills,

but it is not likely that perceptions of the defendant or final decisions in the case would be altered since the same information would be proffered regardless of the order of presentation. Further research is necessary to determine whether these potential timing effects exist in cases of battered women who kill and which outcome measures may be subsequently affected. Alternatively, it may be the case that the gender of the expert witness may have influenced jurors in a manner unfavourable to her. Participating jurors may have been more strongly affected by a male as compared to female expert witness. While research in this area has not yet examined the influence of the gender of an expert witness considerations that the witness' gender may have influenced jurors' determinations of her credibility, the relative influence of this expert testimony as compared to that of the defendant and the perceptions of the defendant's guilt suggest an area for future investigation.

The analysis concerning jurors' perceptions of the defendant provides additional information for the purposes of understanding the views of jurors within each of the two characterization conditions and the potential effects of these perceptions on individual juror and group jury verdicts. It was hypothesized that jurors exposed to standard BWS evidence would more frequently assess the defendant according to a diminished capacity perspective. Even though the expert within the BWS condition explicitly testified that the defendant's actions were justified and were the normal result of traumatic abuse, the diminished capacity orientation was expected as the result of the testimony's emphasis on psychological reactions that suggest pathology and psychological distress. As a result of these

implications jurors exposed to BWS testimony were expected to perceive the plea of self-defense as less tenable. The social agency perspective with its focus on the lack of social alternatives for battered women, emphasis on the inability of police and social services to protect battered women, the inability of battered women to escape due to their abuser's domination and control, and one that was developed to alleviate the possibility of presenting the defendant within a framework of diminished capacity was expected to be perceived as increasingly consistent with a self-defense plea.

Contrary to these expectations, the defendant was perceived similarly despite the manipulation of testimony characterization. Upon closer investigation of responses jurors in both the syndromization and social agency conditions indicated that the defendant's actions were partly due to the lack of social alternatives and partly as the result of psychological factors. These results make clear the psychological as well as social orientations of jurors' decisions. Although BWS strongly emphasizes the psychological manifestations of abuse, jurors exposed to this testimony exhibited conscious awareness of the social limitations for battered women and the justifiability of their actions as demonstrated by these endorsed perceptions of the defendant. Similarly, those exposed to social agency testimony comparably endorsed diminished capacity perceptions of the defendant even though the expert in this condition explicitly testified otherwise. Given these findings it seems apparent that jurors may have applied information obtained prior to their participation within the trial to the defendant and came to their conclusions based on this previously

acquired information rather than upon the particular evidence of the expert.

Unfortunately, these specific perceptions were not measured previous to exposure to the trial and therefore do not allow us to conclusively resolve these issues. Responses on the belief scale, however, support these conjectures since most jurors seemed reasonably knowledgeable of the experiences of battered women prior to their participation in the study.

The fact that the social agency testimony was no less stigmatizing or pathologizing than BWS strongly suggests that jurors have preconceived perceptions of the defendant and that it is not the testimonies themselves that resulted in these effects. It is perhaps that the standard BWS evidence has for so long portrayed battered women who kill in a helpless and mentally unstable manner that the community has come to perceive these defendants in this way and in turn bring these attitudes into the jury box. At the present time these individuals are perhaps hesitant to relinquish this personification of battered women given the long standing existence of BWS and its emphasis on clinical criteria and portrayals of battered women as helpless. In light of this historical portrayal it is not surprising that the social agency perspective was unable to overcome these deeply ingrained societal beliefs to instill stronger perceptions of justification and rationality. Future investigations should attempt to assess these preconceived perceptions of battered women prior to exposure to expert testimony. Of particular interest would be perceptions of mental instability, entrapment due to psychological factors versus entrapment due to the domination and

control of the abuser, the degree to which a battered woman's actions are under her control, and the perceived justifiability of these actions. This would permit us to determine more specifically whether these perceptions indeed precede any effects of different expert testimonies.

Perhaps the most significant findings of this study were the lack of differential effects of testimony characterization on individual juror and final group jury verdicts. Although the findings were not consistent with the expectations of the research they are consistent with the findings concerning jurors' perceptions of the defendant and with Schuller and Hasting's (1996) previous work in this area. Despite the application of more distinct content areas both the BWS and social agency testimonies were equivalently successful in gaining verdicts of NGRSD. While the less stereotypical nature of the social agency testimony did not improve upon the current rate of success of the standard BWS evidence within the justice system it seems to present a legitimate alternative to the more traditional testimony characterizations of battered women.

Given that the defendant in this case was deemed to fit the diagnosis of PTSD and BWS by the expert witness in the case-specific and case-explicit testimony conditions it seems warranted that further investigations into the differential effects of testimony characterization be conducted in cases where the defendant does not meet all of the criteria set forth by these clinical syndromes. In such cases stronger effects of defendant characterization may be more likely than in the present situation

since jurors exposed to BWS would be less likely to find the defense of self-defense tenable as a result of the defendant not qualifying as a typical battered woman. In a case where a defendant does not meet the criteria as set out by BWS or PTSD a second expert would likely testify on behalf of the prosecution to detail the criteria for which the defendant does not fit (John Bradford, personal communication, February, 1997). Additionally, the cross-examination of the defense expert would be particularly rigorous in these cases thereby potentially influencing jurors who are assessing the credibility of these witnesses. Preliminary research has suggested that the strength of a cross-examination can differentially alter the perceptions of the various witnesses. One investigation demonstrated that while the strength of the cross-examination of an expert witness in a child sexual abuse case actually influenced few final judgements, male jurors exposed to a weak cross-examination of the expert perceived the child complainant to be less reliable. Jurors exposed to strong cross-examination conditions perceived the complainant as equally reliable (Kovera, Levy & Borgida, 1994). The likely outcome of the influence of a second expert and a rigorous cross-examination in a battered woman criminal case is potentially devastating for a defendant who has legitimately acted in self-defense, but, who may not demonstrate all of the required criteria for a clinical diagnosis. In a case such as this the social agency perspective would allow an increasingly objective trial in that the circumstances and actions of the defendant could be presented to and assessed by a jury without the stringent restrictions of BWS and PTSD. Moreover, since the social agency evidence is less defendant specific in that it does not define

specific parameters for the battered woman to meet, it is less amenable to being undermined by virtue of particular defendant characteristics. As a result, the social agency perspective would be likely to result in a more effective and reasonable outcome for the defendant than that of BWS.

This investigation was further interested in the main effects of testimony explicitness on juror and group jury decision making. It was predicted that as testimony became increasingly case-explicit with regard to the experiences of the defendant on trial that jurors' ratings of guilt would respectively decrease, perceptions of the defendant were expected to become increasingly favourable, individual and group jury verdicts would become more lenient, and the length of time required for the jury deliberations would decrease. Results of these analyses, however, did not support these contentions. No evidence of influence of testimony explicitness was observed on ratings of the defendant's guilt, perceptions of the defendant, individual juror verdicts, or length of the deliberations.

Of particular interest for this investigation was the finding that not only did the increasing degree of testimony explicitness not improve the success of a not-guilty by reason of self-defense plea, but, in fact could result in the opposite effect. The most explicitly oriented testimony resulted in significantly fewer verdicts of not-guilty and less favourable perceptions of the defendant in that these jurors were less likely to believe that social circumstances restricted the defendant's options as compared to the general and case-specific combined. Since the expert was endorsed

as equally credible across all conditions of explicitness it seems that the issue is not one of the credibility of the expert specifically. The information presented by the expert may have been deemed credible by the jurors exposed to the case-explicit testimony, but, the manner in which it was presented in terms of the detail and explicit discussion of ultimate issues may have been perceived by jurors in a negative manner. It is possible that the detail of the evidence that was presented by the expert within the case-explicit conditions portrayed her in a manner consistent with overt persuasion rather than “objective” education. Jurors may have reacted negatively to the expert’s attempt to alleviate some of their responsibility as triers of fact and by addressing the ultimate issues of which jurors are expected to determine given the evidence before them. These negative reactions to the expert may have subsequently resulted in more stringent verdicts.

Although contrary to the investigation’s intent it is also possible that jurors exposed to the general and case-specific evidence perceived the defendant as a “typical” victim in light of the more generic content and less individualized nature of these testimonies. Since the defendant could then be assessed according to the “typical battered woman” standard jurors may have felt justified in treating the defendant with leniency. While the purpose of the case-explicit testimony was to present in detail how the defendant’s experiences and actions were consistent to those of a typical battered woman the intense focus of the expert on the defendant’s circumstances may have diluted the testimony concerning the consistency of the

defendant's experiences to the standard of the typical victim. Perceiving her as an exception to the typical battered woman jurors may have then used the expert's testimony against her and rendered more stringent verdicts.

Other potential influences on the stringent verdicts of jurors exposed to case-explicit testimony might include the effect of trial length. By virtue of the amount of additional information that was presented in the explicit as compared to general and case-specific conditions testimony length also increased. It is therefore possible that jurors exposed to the longer conditions began to tire toward the end of the trial and reacted to this tiring by rendering more extreme verdicts. However, regardless of case-explicitness jurors within all conditions spent comparable amounts of time deliberating suggesting that these tiring effects were not responsible for the case-explicit verdicts.

In further support of the speculations concerning the effects of testimony explicitness on individual and group jury verdicts was the analysis that directly evaluated the effect of the manipulation itself. Consistent with the manipulations jurors within the case-explicit conditions indicated that the expert made more direct references to the defendant. However, those exposed to the general testimony indicated that the expert had made reference to the defendant as often as jurors exposed to the case-specific testimonies. Given that the expert within the general conditions made no reference to the defendant on trial these results seem extremely pertinent to the lack of differences among perceptions of the defendant and final

verdicts for those exposed to the general and case-specific testimonies. Jurors within the general testimony conditions seemed to have made the links between the general research and the defendant for themselves. When asked to then indicate the degree of direct reference made by the expert they mistakenly attributed testimony to the expert that was never made. As a result of attributing these references to the expert the general and case-specific testimonies exerted similar influences on jurors' decisions. It also seems prudent that additional research investigate the underlying dynamics through which increasingly case-explicit evidence portrays the defendant in a negative manner and results in more stringent verdicts for the defendant. Including questions concerning the degree to which the defendant conforms to the standard of the "typical battered woman" would address the speculations of the present researcher. Since the case-explicit testimony was expressly developed to increase the applicability of evidence concerning battered women to the defendant on trial these findings were particularly surprising. Additional investigations into this matter might consider evaluating jurors' responses to the explicit delineation of the ultimate issues by the expert such as the appropriateness of the self-defense plea and the defendant's thoughts and intentions at the time the killing takes place and whether they believe the intent of the expert is to educate jurors on issues of which they may be unaware or simply to persuade the jurors to render a verdict in favour of the defendant. This would address whether the jurors felt overtly impelled by the expert to favour the defendant and whether they simply reacted against this explicit attempt to persuade.

In what initially seems to be a contradiction to these potential effects of

testimony explicitness are the verdict choices of individual jurors prior to the deliberations and then subsequent to them. Although the mean ratings for case-explicit jurors were the most stringent at both times of measurement and a trend toward significance was noted for the between group effects for testimony explicitness they were not significantly different to those of jurors in the general or case-specific conditions. Although at first glance these findings seem contradictory they are partially explained by the differential manner in which individual verdicts and group jury verdicts were coded. Whereas group jury verdicts included hung juries and collapsed second degree and manslaughter verdicts to form a guilty verdict, individual juror choices maintained the distinction between second degree murder and manslaughter and naturally could not be considered hung. While a jury could be considered hung at the group jury level individual verdict options within that jury could vary significantly and could alter the mean ratings for jurors within this condition both pre and post-deliberation. In this case the variability among individual juror verdicts within all conditions of testimony explicitness made it more difficult to observe significant differences. In light of these methodological distinctions the differential results are not necessarily inconsistent.

Of additional relevance, however, was the shift toward stringency in individual juror verdicts following the deliberations. Significant differences were observed for those exposed to the case-specific presentation of BWS testimony. In this case verdicts tended to reflect more lenient verdicts at pre-deliberation and more

stringent verdicts post-deliberation. In light of the previous findings concerning the effect of testimony explicitness it may be that during the deliberations jurors raised issues that brought into question the degree to which the defendant fit the criteria for BWS and PTSD, despite the expert's statement to the contrary. The effects of the deliberations tended to have a similar effect on jurors exposed to the case-explicit presentation of the social agency testimony. While the mean ratings for this condition indicated verdicts of manslaughter at pre-deliberation jurors tended to render increasingly stringent verdicts over the course of the deliberations. Jurors apparently raised issues in contradiction of the innocence of the defendant. Perceiving her as an exception to the standard jurors may have found it easier to render a conviction. Jurors concerned with these issues may have swayed the remaining jurors to acknowledge these potential inconsistencies and to render more stringent verdicts. The results of the analyses evaluating the effects of expert testimony on individual juror verdicts suggest that the process of deliberating ultimately influenced jurors to render more stringent verdicts. These findings in turn imply that greater emphasis must be placed on the effects of these deliberations in cases of battered women who kill.

The differential effects of the deliberations on male and female jurors further indicate that the deliberations are a critical element within the court process. While the deliberation process tended to result in alterations among the verdicts of females, with not-guilty verdicts changing to manslaughter, it did not exert similar altering

effects on the decisions of male jurors. In this investigation males were particularly rigid in their verdict preferences as demonstrated by the pre and post verdict choices, favoured more stringent verdicts, and seemed to influence the female jurors toward their position. At post-deliberation male and female jurors tended to render comparable verdicts, with mean ratings suggesting verdicts of manslaughter.

Although the preliminary hypotheses of this investigation predicted that a jury's gender composition would be predictive of their final verdict the lack of significant effects is consistent with the findings of the post-deliberation verdicts of individual jurors and with those of Kasian et al., (1993), who similarly found that a jury's gender composition was not predictive of their final group verdicts. Despite the fact that most juries consisted of greater proportions of females and although the research concerning individual juror decisions suggests that female jurors may be more consciously aware of the experiences of battered women and may be better able to identify with these victims, these orientations became almost obsolete throughout the deliberation process. Taken together these findings suggest once again that the deliberation process can exert a greater influence on final verdicts than the orientations of the majority prior to deliberating. Although any number of factors may influence the manner in which a jury deliberates a jury members' ability to articulate and communicate their position and to persuade others may play a significant role in overcoming the predisposing effects of gender or other mediating variables. For instance, if a jury consisted of 6 members and 5 of these members were female we

would predict more lenient final verdicts given the previously demonstrated gender differences. If however, the lone male was able to articulate his rationale for a verdict of manslaughter to the remaining members and exhibited a persuasive disposition, it is quite possible that alterations in final verdicts might occur. It is also possible that interpretations of the legal stipulations for the various verdict options remained elusive until the jurors were able to articulate their interpretations to the other jury members. Since any number of potential personality characteristics or group process influences may be responsible for these findings additional research regarding potentially influential variables on a deliberating jury is required before conclusions may be drawn.

Given these findings, an in-depth investigation into the deliberation process in cases of battered women who kill deems serious consideration. Of particular interest would be the dynamics of these deliberations in terms of the individuals who participate most readily, the role of and manner in which the various individuals form cohesive groups and how these groups persuade or dissuade other group members, the role of the foreperson in directing the deliberations, the specific content of these discussions, the primary issues that are raised and how they are dealt with by the various jury members. Although the perceptions and verdict choices of the various jury members present potential variables of interest in these cases, only the final group jury verdicts are critical at trial. As such it is essential that researchers begin to

more closely examine the deliberation process in an attempt to identify the key variables involved in this dynamic process.

Among the most consistent and influential effects on jurors in the present investigation were those concerning the influence of gender. This is not surprising considering the results of previous research investigations. Overall, female jurors tended to endorse beliefs more consistent with the experiences of battered women as compared to male jurors. In light of these findings it seems that perhaps women jurors can relate more strongly to the socialization of violence against women and can more readily identify with victims of such abuse. It may be that individuals who are very consciously aware of the effects of the socialization of violence against women and the restricted options of women who are victims of abuse are more likely to endorse beliefs consistent with the reality of being a victim. Therefore, it is also possible that a man who possesses such awareness would likely perceive the defendant and other women like her more favourably than a woman who exhibits no such consciousness. A currently unpublished thesis by MacKay (1997) supports this hypothesis. This study conducted on the same sample of jurors as the current study examined the role of gender, feminist consciousness, and feminist identification on perceptions of guilt of the battered woman defendant. Results of this investigation indicated that gender was correlated with feminist philosophy, and that both gender and feminist orientation were related to beliefs in the defendant's guilt. As compared to the male jurors, female jurors tended to demonstrate greater feminist

consciousness and identification and in turn rendered more lenient verdicts. Those males who demonstrated high levels of feminist consciousness and identification also tended to render more lenient verdicts.

Based on these theoretical predictions and the results of previous investigations on battered women who kill it was similarly predicted that male jurors would be less favourable and less responsive to the testimony of the expert witness and the defendant given their potential lack of insight into the experiences of battered women as compared to the female jurors. On the other hand, however, it was also possible that male jurors could potentially gain more from expert testimony than female jurors who may be previously aware of the limitations confronting victims of abuse. Results of the investigation confirmed that female jurors were more likely to find both witnesses credible and to rely on the testimonies of the defendant and expert witnesses when coming to their personal decisions in the case as compared to their male counterparts. Finally, consistent with the work of Kasian et al., (1993) and the predictions of the researcher was the finding that male jurors tended to render more stringent verdicts than females and these differences were most pronounced pre-deliberation. These gender findings are also consistent with those found in previous studies involving crimes against the person such as in rape trauma (Dubreuil, Gerzon & Spanos, 1990) and child abuse cases (Kovera, Levy, Borgida & Penrod, 1994). In these cases women jurors are more likely to favour the victims of abuse than their male counterparts. In contrast to these types of cases are those

involving crimes against property (robbery, theft etc.) wherein gender differences are not so readily apparent (Walsh, 1984). These results support the hypothesis that women could more readily identify with the experiences of the defendant as compared to the male jurors and may have subsequently been more receptive to the testimony of the expert. By virtue of the findings concerning gender greater attention on the potential mediating variables seems warranted. Although the constructs of feminist consciousness and identification provide possible explanations for the effects of gender the research is far from conclusive.

While this investigation has highlighted critical information concerning the impact of testimony characterization, testimony explicitness, the influence of a juror's gender, and the exerted influence of the deliberation process on group decisions for those involved in both research and applied settings it is important to address some of the limitations of research simulations. Although unfortunate, it is necessary to relinquish a certain degree of external validity in order to exert experimental control. Were it not for this control over the experimental design potential confounds would render conclusions almost impossible for such research. In fact, simulation research provides the only permissible method of obtaining information concerning the judgments of jurors since the law prevents real court jurors from revealing the basis for their decisions.

One of the more problematic limitations of simulated research is the degree to which simulating jurors invest themselves within the exercise. Since the simulated

defendant is not a genuine individual whose future lays in the hands of the jury a certain degree of realism and seriousness may be relinquished. Simulated jurors may not consider the evidence as seriously as real jurors and might be more likely to either acquit or convict without the degree of certainty or care that would be expected of jurors in true cases. In order to emphasize the seriousness of the endeavour jurors were made aware that they would be videotaped during the deliberations in the hopes of instilling a sense of responsibility to the proceedings.

A second limitation is of course the length of the trial and deliberations. A case such as this would take approximately two weeks to present the testimonies of the witnesses and may take as long as a day or more for the deliberations to conclude. As a result, the extensiveness of information presented to jurors is significantly restricted in jury simulations. It is therefore possible that information that was necessarily excluded from the simulated trial may have resulted in either more stringent or more lenient verdicts depending on what information was excluded. The emphasis of the testimonies on only the most salient aspects of real court evidence in these cases may have been expected to more strongly differentiate between the investigation's manipulations of defendant characterization since irrelevant or potentially misleading evidence would be averted. These effects were not realized. However, despite the lack of strong effects and the fact that the trial segment of this study lasted only a total of 2 hours the most critical information from each witness who would testify in a legitimate case was presented and relative to the length of the

trial the allotted time for the deliberation process gave adequate time to reach a well-considered decision.

Although the use of university students would seem a concern for this investigation, previous research in this area has suggested that it should not influence the generalizability to any significant degree. Research concerning beliefs of battered women have demonstrated comparable proportions of individuals who hold misperceptions among student and non-student samples (Aubrey & Ewing, 1989). Moreover, the study conducted by Schuller and Hasting (1996) concerning the effects of BWS and social agency evidence took the influence of student and non-student samples into consideration. Comparisons of the two samples demonstrated few differences. In addition to these findings the results of the present investigation indicated that the university sample rendered comparable verdicts to those demonstrated by actual juries within the courts (Ewing, 1987). This in turn provides further support for the study's external validity. In light of the comparable decisions of the simulated and true court jurors the restricted variability among the sample's beliefs of battered women and their demonstration of fairly liberal attitudes seemed not to have affected the results of the investigation in a significant manner.

The current investigation attempted to improve upon many of the previous research endeavours attempting to assess the effects of expert testimony on jurors by requiring jurors to deliberate. The large majority of jury simulations have failed to incorporate a deliberation process into their designs. This is of concern given that the

decisions of individual jurors in true court trials are only relevant in so much as they contribute to the decisions of the jury as a unit. As demonstrated by this investigation the deliberation process resulted in altered verdict choices of individual jurors in many cases despite their predispositions. It seems reasonable to argue therefore that the suggestions of previous authors that the individual decisions observed in their research investigations are predictive of jury verdicts of true court trials are not supported by empirical evidence. As such this investigation has significantly improved upon these designs by virtue of incorporating such a critical process.

Despite the enhancement over previous research that often failed to include deliberations a decision concerning the adequate size of the deliberating jury groups was of consideration for the research. While actual criminal juries consist of 12 members the present study included as few as 4 jury members to a maximum of 8. Addressing the potential effects of jury size on trial decisions are a number of preliminary examinations of civil cases. These investigations have suggested that the decisions of 6 as compared to 12 member juries were comparable. While the length of time that juries spent in deliberations was sometimes affected their final decisions were not (Davis, Kerr, Atkin, Holt & Meek, 1975; Kerr & MacCoun in Wrightsman, Kassin & Willis, 1987). In further support of these reports the present study directly evaluated the effects of jury size and similarly determined that regardless of size the final decisions of the juries were indeed comparable. In light of

these results the potentially limiting generalizability due to jury size is not considered a significant limitation.

In addition to the previously suggested areas for future research many of the findings concerning the effects of testimony characterization, explicitness, and the influence of a juror's gender on individual and group jury decisions have implications for the application of new testimony formats in the courts. In a practical manner it is hoped that the results of this research investigation and the issues that it has in turn raised will assist attorneys, judges, expert witnesses, and jurors in their various roles as triers of fact. Although the less stereotypical nature of the social agency testimony did not exert the expected effects on jurors it is important that we continue to place the experiences of battered women within a social context so that we don't continue to re-victimize those who have suffered the extremes of abuse. Although it seems that the previous portrayal of battered women as passive and mentally unstable has engrained itself within the perceptions of the public it is hoped that with time they will come to understand the true nature of these women and their experiences. Perhaps it is simply a matter of time and familiarity before a social agency perspective or an alternative perspective is perceived as more applicable to the experiences of battered women than that of the standard BWS evidence. Seeing that it was no less successful than the traditional testimony the potential application of such perspectives provides hope for the future of battered women and those who have been forced to take the lives of their abusers.

Finally, this investigation demonstrated that a more explicit scope of testimony does not necessarily present the defendant in a more favourable manner. At this point in time, therefore, expert witnesses within the criminal justice system should refrain from attempting to present too detailed a portrayal of the battered woman for fear that jurors may perceive her as untypical of other battered women and subsequently use the testimony against her, or perceive the expert as attempting to persuade rather than educate. Until research can more definitively identify the elements of this testimony that was unfavourable for the defendant a general or case-specific format of testimony seems most strongly warranted.

This research investigation has attempted to provide information concerning the impact of various forms of expert witness testimony on individual juror beliefs and group jury decisions. Although not all of the experimental predictions were realized it is perhaps more important that we have a greater understanding of attitudes and perceptions of the battered woman who kills and have a greater awareness of the potential influences of various testimonies on jury verdicts. It is hoped that further research in this area will provide us with additional information concerning the legal response to battered women who kill, the specific role and influence of expert testimony, and the response of jurors and juries to the experiences of battered women. Before alternative testimonies such as the social agency perspective and case-explicit formats are submitted to the courts it is imperative that we understand their potential effects on triers of fact so that the ramifications for these defendants

can be predicted before they have the opportunity to be detrimental to them. This investigation has made a significant attempt to consider these potential effects and it is hoped that future investigations will provide additional information concerning the development of other alternatives to the presently applied BWS evidence in the courts.

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Appendix A

Beliefs of Battered Women Questionnaire

Juror Number _____

Please rate the extent to which you agree with the following statements:

Strongly Agree							Strongly Disagree
1	2	3	4	5	6		7

-
- _____ 1. A battered woman might believe that her partner could kill her.
- _____ 2. A battered woman might stay with her partner because she feels dependent on him.
- _____ 3. Once violence has been used in a relationship it is always a potential threat, even if it is never used again.
- _____ 4. A battered woman might be persuaded to stay with her partner if he promised never to hurt her again.
- _____ 5. Most battered women believe that they are helpless to stop the beatings.
- _____ 6. A woman in an abusive situation might blame herself for the violence inflicted upon her.
- _____ 7. A woman never deserves to be beaten.
- _____ 8. A battered woman might believe that using deadly force against her partner is the only way for her to stay alive.
- _____ 9. Most battered women believe that they are trapped in their relationship with the batterer and are unable to leave.

- _____ 10. Battered women are often sexually assaulted by their partners.
- _____ 11. The fact that a woman chooses to remain in a battering relationship does not mean that she is not suffering.
- _____ 12. Battering relationships are as likely to exist among middle and upper socioeconomic classes as lower socioeconomic classes.
- _____ 13. A woman who has been abused by her partner can often predict violence before it actually occurs.
- _____ 14. If the victim remains this is not at all an indication that she is masochistic.
- _____ 15. Police and counseling services cannot be relied upon to prevent battering.
- _____ 16. A woman has every right to refuse to have sex with her partner without fear of being beaten.
- _____ 17. Most BW show signs of anxiety.
- _____ 18. Most BW show signs of depression.

Appendix B

Juror _____

Private Belief Questionnaire

With this questionnaire, you are being asked to circle the one number that best describes your private belief that Judy Richards should or should not be convicted. You are not being asked to state whether you believe there is sufficient evidence to convict in a court of law. Rather, it is asking about your personal and private belief.

Please circle the one number that best describes your private belief about whether Judy Richards should or should not be convicted.

-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
Certain Judy Richards should not be convicted					Completely Unsure	Certain Judy Richards should be convicted				

Appendix C

Juror _____

Credibility Ratings

How credible were each of the trial participants on a scale of 1 to 5?

	Not Credible			Very Credible	
Officer McCarthy (dispute officer)	1	2	3	4	5
Dr. Tast (medical doctor)	1	2	3	4	5
Judy Richards (defendant)	1	2	3	4	5
Dr. Johnson (expert for defense)	1	2	3	4	5

Appendix D

Manipulation Check

1. How detailed did you find Dr. Johnson's testimony?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Detailed						Detailed

2. How clear and easy to comprehend did you find Dr. Johnson's testimony to be?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Clear						Clear

3. How applicable to the defendant was the information presented by the expert witness (Dr. Johnson)?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Applicable						Applicable

4. How active do you believe Judy Richards was in attempting to remove herself from her abusive situation?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Active						Active

5. To what extent do you believe Judy had adequate social support available (ie. from friends, relatives, social services, etc.) to remove herself from the abusive situation?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Adequate						Adequate

6. To what degree do you believe Judy is suffering from a psychological disorder as a result of being a battered woman?

0	1	2	3	4	5	6
Not at all			Slightly			Very Much

7. To what degree did you find the expert's testimony convincing with regard to the argument presented?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Convincing						Convincing

8. To what degree do you feel that the deceased's drinking behaviour should influence formulations of guilt or innocence of Judy Richards?

0	1	2	3	4	5	6
Should not be			Slightly			Should very much
an Influence						be an Influence

9. To what degree was the expert's testimony psychological in nature?

0	1	2	3	4	5	6
Not at all						Very
Psychological						Psychological

10. To what degree was the expert's testimony sociological (social) in nature? (To what degree were social issues emphasized)?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Sociological						Sociological

11. To what extent did the arguments of Dr. Johnson (defense expert) include direct reference to the defendant during her testimony?

0	1	2	3	4	5	6
Not at all			Slightly			Very much

12. In your opinion, how appropriate is the defense of "not-guilty by reason of self defense" to the given case?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Appropriate						Appropriate

13. In your opinion, how appropriate would a plea of "not-guilty by reason of insanity" have been in this case?

0	1	2	3	4	5	6
Not at all			Slightly			Very
Appropriate						Appropriate

14. How much did you rely on the testimony of Judy Richards in formulating your private belief of her guilt or innocence?

0	1	2	3	4	5	6
Not at all			Slightly			Very much

15. To what extent did the cross-examination of Judy Richards (defendant) discredit her testimony?

0	1	2	3	4	5	6
Not at all			Slightly			Very much

16. How much did you rely on the testimony of Dr. Johnson (expert for defense) in formulating your private belief of Judy Richards guilt or innocence?

0	1	2	3	4	5	6
Not at all			Slightly			Very much

17. To what extent did the cross-examination of Dr. Johnson discredit her testimony?

0	1	2	3	4	5	6
Not at all			Slightly			Very much

Appendix E

Tally Sheet

Juror Number _____

Tally Number _____

On the basis of the evidence my vote is that Judy Richards is

Guilty of second degree murder _____

Guilty of manslaughter _____

Not-guilty by reason of self-defense _____

Appendix F

Personal Questionnaire

Please list as briefly as possible the reasons for your personal decision in the case.

Appendix G

Personal Perception's of the Defendant

Given the following rating scale, please indicate the extent to which you agree or disagree with the following statements.

-3	-2	-1	0	1	2	3
Disagree Completely			Neutral			Agree Completely

- _____ 1. The defendant perceived herself as helpless in the relationship.
- _____ 2. The defendant was trapped in the relationship because of psychological factors.
- _____ 3. The defendant was mentally unstable at the time of the killing.
- _____ 4. The defendant was trapped because of her husband's domination and control.
- _____ 5. The defendant's actions were under her control.
- _____ 6. If the defendant would have made the seriousness of her situation clear, social agencies (i.e, police, shelters) would have provided the defendant with the necessary help she needed to leave her situation, and thus represented an option other than having to kill her husband.
- _____ 7. While the defendant's use of force was excusable, I don't feel that it was justified.
- _____ 8. The defendant's use of deadly force was the only way for her to protect herself.

Appendix H

Announcement for Recruiting

Participation in this study requires that you play the role of a juror in a simulated criminal court case. Students will be asked to watch a videotape of a simulated trial, and then deliberate as a jury to a final verdict. The subject matter of this trial may involve allegations of abuse against women, and will further deal with the issue of homicide. Deliberations will be videotaped, however, all videotapes will remain strictly confidential. If you are interested in participating in this study, please leave your student number below. This experiment will require 3 1/2 hours, thereby giving students a maximum of 3 (2+1) course credits and a lottery ticket for \$100 for participation. Each sheet below indicates a specific date and time for participation. You will therefore not be called to arrange a timeslot, you will only be contacted to confirm your participation in the session that you have chosen.

Appendix I

Informed Consent Form

The purpose of an informed consent is to ensure that you understand the purpose of the study and the nature of your involvement. The informed consent must provide sufficient information so that you have the opportunity to determine whether you wish to participate in the study.

You are about to watch a videotape of a simulated trial wherein the defendant, an allegedly abused woman has killed her husband. Some individuals may find the issue of wife assault along with other aspects of the trial to be offensive and upsetting and you are under no obligation to continue with the study. You may withdraw from the study at any time without penalty. As part of the procedure you will be asked to complete a series of questionnaires. After viewing the videotape, as a member of a jury, you will be required to spend up to a maximum of 70 minutes in deliberation. These deliberations will be videotaped. The purpose of this study is to examine how juries reach decisions in such trials. It is hoped that your participation will provide us with some insight into the matter.

I am aware that my participation in this study is voluntary. If for any reason, at any time, I wish to leave the study I may do so without having to provide an explanation. Furthermore, I am aware that the data gathered during this study is confidential and anonymous to my personal identity.

I have read the above form and with the understanding that I can withdraw at any time and for whatever reason I consent to participate in today's jury simulation study.

Participant's Signature

Date

Investigator's Signature

Appendix J

Informed Consent Form

Your task as a jury will be to reach an unanimous decision concerning the guilt or innocence of the accused, Judy Richards. You will attempt to reach an unanimous verdict during deliberations in which you and the other members of the jury discuss the case. The experimenter will not be present during these deliberations.

Very little is known about how juries reach their decisions because by law, jury deliberations are held in secret, and justifications for jury verdicts are not required. In order to understand this process more fully we would like to videotape your deliberations.

I understand that I am completely free to withdraw at this point in time or at any subsequent time during or following the deliberations. Furthermore, I am also aware that the deliberation videotapes will remain completely confidential and anonymous with respect to my personal identity.

I have read the above form and with the understanding that I can withdraw at any time I consent to the videotaping of the deliberations.

Participant's Signature

Date

Investigator's Signature

Appendix K

Duties of the Foreperson (to be read aloud to the jury)

Before beginning any deliberations I, as foreperson, will tally the jury for their opinions concerning the guilt or innocence of the defendant. I will do this by asking all of the jurors to indicate on their ballot if they believe the defendant to be guilty or not guilty. I as the foreperson will also participate in the vote by indicating on my ballot if I think the defendant is guilty or not guilty.

Afterwards, the deliberations will begin and will continue until we reach an unanimous decision concerning the guilt or innocence of the defendant. At various times during the deliberations, I will tally the jury for their opinions concerning the guilt or innocence of the defendant. We can take as many tallies as we need in order to reach an unanimous decision.

Appendix L

Murder

229. (212) Culpable homicide is murder

- a) where the person who causes the death of a human being
  - i) means to cause his death, or
  - ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;
- b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or
- c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

Murder Reduced to Manslaughter

232. (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.
- (2) A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.
- (3) For the purposes of this section, the questions
- a) whether a particular wrongful act or insult amounted to provocation
  - b) whether the accused was deprived of the power of self-control by the provocation that he alleges he received are questions of fact, but, no one shall be deemed to have given provocation to another by doing anything that he had a legal right to do, or by doing anything that the accused incited him to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

Self-Defence Against Unprovoked Assault

34. (34) (1) Every one who is unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force that he uses is not intended to cause death or grievous bodily harm and is no more than is necessary to enable him to defend himself.
- (2) Every one who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if
- a) he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes; and
  - b) he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

Appendix M

Debriefing Information

We wish to thank you for your participation in this study. Your participation will help us to understand more about how jurors make decisions in trials involving battered women who have killed their abusers and will offer a new contribution to this field.

At this time we would like to emphasize the extreme seriousness of the crimes of wife abuse and murder. Victims of wife abuse often suffer severe psychological and physical repercussions. Unfortunately many individuals hold various misconceptions or stereotypes with regard to battered women. Of utmost importance is for people to become aware and to understand that women are not responsible for the abuse that they may be subjected to, and that they are the victims of traumatic and brutal abuse. Often, many barriers make it difficult or impossible for these women to escape from the violence of their partners. Financial restraints, fear for the safety and well-being of their children, psychological trauma, inadequacy of social alternatives, and fear of reprisal should she indeed leave are all factors that influence the lives of these women. Under no circumstances should a woman be held responsible for her partner's abusive actions.

The purpose of the study in which you have participated was to investigate the influence of two factors on individual juror and group jury decision making. Both of these factors pertained to the influence that expert witness testimony plays in jury decisions. More specifically this study manipulated the characterization of the defendant by the expert witness as either suffering from battered woman syndrome, or as a social agent who was trapped in the relationship as the result of the lack of social alternatives. The other variable of interest was the specificity, or explicitness of the expert testimony as it pertained to the particular defendant. Expert testimony was either very general and without reference to the particular defendant, of a standard specific nature where a diagnosis or statement that the defendant fit the particular characterization, or a much more explicit-specific testimony which explicitly delineated the relationship between general findings of battered women and how that research pertained to the defendant on trial.

We would like to inform you that your responses to the Battered Women Questionnaire and Feminism Scales administered during mass-testing will be used as premeasures for the purposes of this study. We will therefore have two measures for each student on the Battered Woman Questionnaire that will be used as pre and post testimony indications of attitudes. It is expected that individual beliefs of battered women may change as a function of the particular expert testimony to which you were exposed. The measure of attitudes toward feminism will be analyzed to

determine whether such attitudes influence juror judgments of guilt or innocence of the defendant.

The videotapes of the trial were not true court trials but rather simulated trials in which actors played the roles of the various individuals. We therefore have no actual verdicts for these cases.

We appreciate your taking the time to participate in the previous study, particularly since it can be a somewhat lengthy and emotional process. We recognize that the nature and content of the trial and the deliberations may be upsetting and for these reasons we ask that you contact either myself or any one of the agencies listed below should you feel the need to speak to someone about your concerns or issues pertaining to the study. If you have questions or comments with regard to the study please do not hesitate to contact the following individual.

Alison Davis (Primary Researcher)

If you have ethical concerns with regard to the study please contact one of the following two individuals.

Dr. L. Paquet 520-2600 EXT. 2689 (Chair of the Ethics Committee, Carleton University)

Dr. W. Jones 520-2600 Ext. 2648 (Chair of the Psychology Department, Carleton University)

Contact Sheet

Police Phone Numbers

Emergency 911
Ottawa 236-1222
Nepean 236-1222
Gloucester 236-1222
Kanata 267-2677

24 Hour Distress Lines

Ottawa Distress Centre 238-3311
Rape Crisis Line 562-2333
Sexual Assault Centre 234-2266
Assault Victims 1-800-387-8603
Amethyst Women's Centre (Substance Abuse) 237-6000

Individual/Family Counselling

Catholic Family Centre 233-8478
Family Service Centre 725-3601
Carleton University Counselling Services 520-6600

Legal Help

Community Legal Services 241-7008
Legal Aid 238-7931

Services for Abused Women

Gloucester Services for Abused Women 745-4818 (English only) 745-3665 (Francais seulement)
Interval House 234-5181
Maison d'Amitie 747-0020
Nelson House 225-3129
Women's Shelter 789-8300

Appendix N
Trial Transcripts

Judge's Opening Statements

Members of the jury, Mrs. Judy Richards is charged with the second degree murder of her husband, Peter Richards. Under section 229a of the Canadian Criminal Code culpable homicide is defined as murder when the person who causes the death of a human being means to cause his death. Furthermore, under section 231 (1) (2) of the Canadian Criminal Code, murder is 2nd degree when it is both planned and deliberate. The court recognizes 2nd degree murder as distinct from manslaughter in that in the case of manslaughter, the act is committed in the heat of passion or caused by sudden provocation.

At the initial arraignment on June 26, 1996, Mrs. Richards submitted a plea of not-guilty to the charge of 2nd degree murder by reason of self-defense. In order for the plea of self-defense to be accepted under the law, section 34 states that three conditions must be met. Everyone who is unlawfully assaulted and who causes death in repelling the assault is justified if they held a reasonable apprehension of death or grievous bodily harm, that the action could not have otherwise been prevented, and the force used was no more than was necessary to defend themselves.

Your duty, members of the jury will be to listen to all of the arguments presented by both the crown prosecutor and the defense attorney. Before arriving at a

decision regarding the validity of Mrs. Richard's plea, you must remember that Judy Richards is presumed innocent of the charge, and that the burden of proof is on the prosecutor. Mrs. Richards is entitled to a fair trial by her peers, and you the jury have been selected to fulfill this role.

We will now hear the opening statements from the prosecuting and defense attorneys.

Opening Statements for the Prosecution

Members of the jury- you are about to hear the case of the Crown vs. Mrs. Judy Richards. Over the course of this trial you will hear from the defense how Mrs. Richards was abused and mistreated by her husband, the deceased, Peter Richards, for a period of more than 3 years. You will hear evidence presented by the defense as to how he inflicted not only physical damage upon her, but, also how he subjected her to incidents of mental torture and cruelty. They will also tell you how Mrs. Richards tried to do everything in her power to stop her husband from hurting her and their infant son, and how in the end the only way she could find to stop him was to shoot him. A very heart-wrenching and emotional story indeed- one that I'm sure the defense will want you to keep in mind.

The prosecution concedes that Peter Richards was not an ideal husband and that the evidence surrounding the case suggests that he often lost his temper with his wife. Mr. Richards, however, is not on trial here. It is Judy Richards that is on trial for murder... second degree murder... planned and deliberate homicide. What you must remember throughout this trial, and what you must ultimately use to make your final decision in this case are the facts, and once the facts of this case become known, the law is clear.

The first fact of this case is that Mrs. Richards killed her husband. Mrs. Richards has admitted from the outset that she was the one who took her husband's life. The issue for this trial therefore is not one of who killed Mr. Richards. The

question, rather, is whether or not Mrs. Richards is legally culpable in the death of her husband. She claims that she killed her husband Peter in self-defense. But I will ask you to keep in mind the definition of self-defense throughout the trial. Self-defense is a tenable plea if and only if the defendant was in danger of death or serious bodily harm at the time of the incident, and that reasonable force was used to protect herself from this threat.

I intend to prove to you that Mrs. Richards was not danger of death or serious bodily harm at the time of her husband's death and I will do this by presenting the facts of the case. Now, as I stated before we know that Mrs. Richards killed her husband. What you the jury are unaware of however, is that Judy Richards killed her husband as he lay sleeping in their bed. Now, while the Crown concedes that Mr. Richards was angry and perhaps even often aggressive over the course of their 3 year marriage, Mrs. Richards was at no point during the time that she had to pick up the rifle, enter the bedroom, and pull the trigger, in danger of death or serious bodily injury. Again I emphasize that Mrs. Richards killed her husband while he lay sleeping. No confrontation, no provocation, no threat. Secondly, I intend to prove that even if Mrs. Richards did believe herself to be in danger, she certainly did not use reasonable force. Mrs. Richards pulled the trigger of the gun on her sleeping husband not just once... not even twice... but three separate times. Mrs. Richards shot her husband three times in the head and back with a rifle containing hollow point bullets. As the prosecution I maintain that this is indeed excessive force.

The self-defense plea offered by Mrs. Richards is not appropriate. Mrs. Richards, was not defending herself from an attack when she killed her husband. She was angry and sought revenge for the poor treatment that she sometimes received from Mr. Richards. That's what this case comes down to. Judy Richards was furious with her husband and desperately wanted revenge. No matter what Mr. Richards may have done, he did not deserve to die, particularly in such a violent and vicious manner. Again I reiterate that Mrs. Richards was in no imminent danger of death at the time of the shooting because her husband was sound asleep when it happened. There are many legal alternatives open to women in abusive situations. Mrs. Richards should have pursued these venues rather than blowing her husband in two with a semi-automatic rifle.

The Crown will present evidence showing that Mrs. Richards was in full control of the situation at the time of the murder and consequently, with deliberate mal-intent, killed her husband in cold blood. For these reasons, members of the jury, I ask you find Mrs. Judy Richards guilty of murder in the second degree.

Opening Statement for the Defense

Members of the jury, my learned colleague, Mr. Lewis, has alluded to the fact that Judy Richards was treated poorly by her husband Peter. What he has conveniently forgotten to mention is that Judy Richards was both psychologically abused and brutally beaten over the course of their 3 year marriage. The Crown has also told you that Judy Richards should have used one of the many alternatives that are available to these women such as the legal system, or she simply should have left her husband in order to avoid being beaten and abused by him.

In a normal situation, with normal individuals I might agree with what Mr. Lewis has proposed. But, what the defense will show is that the activity in the Richards home was not that of a normal family. Mr Richards had much more than just a nasty temper as was suggested by my colleague. As you will learn, Judy was quite literally a prisoner in her own home, and was consequently subjected to what amounts to torture plain and simple. This was far from a normal situation.

On the evening of her husband's death, Judy Richards' life had been threatened- her husband had told her that he was going to kill her and had shown her the weapon that he was going to use to do it. I want you to imagine the terror that such a threat would evoke. Based on his past behaviour Judy absolutely believed that this was no idle threat, and she indeed believed that she was in imminent danger of death.

So why didn't she go to the police at this point? Judy will tell you why she didn't enlist the help of the police that night. She did not believe that the police had

the power to stop her husband from doing what it was that he wanted to do, even if that meant killing her. Judy did not feel that the police would be able to protect her in the long run, or, for that matter would even take her present complaint seriously. How did she know this? She had enlisted assistance from the police on a prior occasion and to no avail. In fact, in calling the police on this occasion, she placed herself in even greater danger from her husband.

So why didn't she just leave? Judy could not leave her situation earlier because she had a baby, no money, and nowhere to go. Besides, her husband had threatened to track her down and force her back even if she did leave. Members of the jury, there are many documented cases of violent men tracking down wives or girlfriends who tried to leave them, and many of these same men have eventually killed these women.

Again I ask you to imagine what life would be like if you had to run and hide from someone who you believed would kill you if they found you. Imagine the terror of such an existence. Judy believed her husband's threats, she was terrified for her life and she felt that she had no one to turn to for help.

Did she use excessive force? At the time of her husband's death, Judy was suffering from the physical consequences of her husband's latest attack. She was both physically and emotionally exhausted. She was terrified for her life and the life of her young son. Members of the jury, Judy knew she had to ensure that she would not suffer retribution from her husband... She knew that if he survived, she would ultimately die by his hands. Judy had no other way to protect herself from the man

who for over 3 years would attack her repeatedly and violently. Indeed, Judy's fear ran so deep that she was not even sure that she had killed her husband even after the third bullet was released.

You will hear testimony from an expert witness who will provide evidence of the horrific experiences of battered women. This expert will provide convincing testimony as to why these women are often unable to escape from the domination and abuse of their violent partners, why women like Judy do indeed believe themselves to be in imminent danger even in the absence of direct confrontation by the abuser, and why these women sometimes resort to an aggressive, yet necessary, means of self defense.

Members of the jury, the defense maintains that Judy Richards did indeed kill her husband in self-defense. As the evidence will show, Judy believed that her life was in imminent danger, and she did what was necessary to protect herself and her baby from her husband's overwhelming rage and violence. For this reason, I ask you to find Judy Richards not-guilty by reason of self-defense.

Testimony of Officer Burke

Pro: Please state your name and occupation for the record.

Off: My name is James Burke and I am presently an officer with the Ottawa Police Force.

Pro: Please tell the court Officer Burke what happened on the morning of June 25, 1996.

Off: Well, my partner Officer Andrews and I received a call about 2:11 a.m. on the car radio informing us to respond to a possible homicide at 3212 Thorngate Road.

Pro: Officer, did you know at that time who had made the call to the police?

Off: Yes, the dispatcher informed us that the alleged victim's wife had placed the call for assistance from their home and had stated something like "I think I just killed my husband. Please send someone over".

Pro: What happened once you arrived at the Richards' home?

Off: When we approached the home everything seemed very quiet and dark. Because of the nature of the call we had our weapons drawn and proceeded into the house. When we entered the house we could hear a young child crying from the direction of the back of the home. As we entered the house to our immediate right was the front livingroom.

Pro: Please tell the court what happened next.

Off: Well, the defendant, was sitting in a chair holding a rifle across her lap. I told her to put down the weapon and to move away from it. At first she didn't seem to hear me so I repeated the statement, but, she just kept looking at me. At this time I had my gun pointed directly at her and was moving slowly towards her. She didn't move at all and continued to stare at me as I approached her. When I got over to where she was sitting I reached over and slowly removed the gun from her lap. She released the rifle to me without a struggle. I then gave the gun to Officer McCarthy to hold. At that point Mrs. Richards muttered something to the effect of "he's in the back bedroom" so Officer McCarthy stayed with her as I went towards the back of the house.

Pro: What happened once you reached the bedroom?

Off: I could see the body of a man lying on the bed which was covered in blood. I felt for a pulse but there didn't seem to be much point. His head was gaping open

and he was bleeding profusely from his back, chest, and head. By this time a homicide squad and ambulance had arrived at the scene. Before going back to where Mrs. Richards and the

other officer were I went to find the child and brought him back to the living room. We then read Mrs. Richards her rights. She was taken into custody and escorted to the station.

Pro: Did Mrs. Richards say anything to you during this time?

Off: The only words that Mrs. Richards spoke were in regard to her son. She kept asking me about the baby, where I was taking him, and who was going to look after him. We explained to her at that time that he was going to be taken by Children's Aid until alternative arrangements could be made.

Pro: What was Mrs. Richards demeanour like at this time?

Off: She was very quiet and very calm.

Pro: Was Mrs. Richards crying on the way to the station?

Off: No sir she wasn't.

Pro: Did Mrs. Richards wring her hands, appear agitated, or give any indication to you that she was at all upset?

Off: No. She didn't.

Pro: No further questions.

Cross-Examination of Officer Burke

Def: Officer Burke, when you entered the house you stated that you actually approached Mrs. Richards even though she had a weapon. Isn't that an unusual way to proceed?

Off: Yes, it is. The gun was pointed down the hallway away from me though, towards the bedroom, and I just didn't think that she was going to do me any harm. She seemed almost dazed so...

Def: What do you mean by dazed?

Off: She had kind of a far away look in her eyes and wasn't really responding to the questions I was asking her.

Def: Would it be fair to say then Officer Burke that on the basis of Mrs. Richards actions that morning that she seemed to be in a state of shock following the shooting.

Off: Yes, I believe that's a fair assessment.

Def: Thank you Officer.

Testimony of Coroner

Pro: Please state your name and occupation for the court.

Cor: My name is Dr. Bradley Learner and I have worked at the Ottawa Coroner's Office as chief forensic coroner for 13 years.

Pro: Please describe for the jury the nature and extent of Peter Richards' wounds and the resulting consequences.

Cor: The deceased Mr Richards died of severe blood loss as the result of sustaining 3 gunshot wounds from a 22 calibre semi-automatic rifle. The initial wound was sustained to the base of the skull through the left temporal lobe. The final two shots were sustained to the upper back and proceeded to exit through the left chest cavity.

Pro: On the basis of these fatal wounds were you able to establish the range from which the bullets were fired?

Cor: Yes, I was. From the size and presentation of the wounds it was estimated that the bullet to the head was fired at extremely close range, 30 centimetres at most. The 2 bullets to the back were probably fired from approximately 50 centimetres.

Pro: So what you are saying Dr. Learner is that Mrs. Richards was holding the rifle directly over her husband's body... almost right up against his body when she pulled the trigger, is that correct?

Cor: Yes, that's correct.

Pro: Were you able to establish the position of the body at the time of the shooting and whether the victim was awake or asleep at the time?

Cor: Upon analysis of the body and the crime scene in terms of blood spatter patterns, entry and exit wounds and so on, it was established that the victim was lying in a reclined position with his back to the defendant. The victim's eyes were closed at the time that he was shot. It was therefore my final determination that Mr. Richards was indeed asleep at the time of the shooting.

Pro: And were you able to determine which of the 3 bullets killed Peter Richards, Dr.?

Cor: Yes. The first fired shot would have been enough to kill him.

Pro: Thank you Dr. Nothing further.

Cross-Examination of Coroner

Def: Dr. Learner, from your report it appears that at the time of his death, Mr. Richards had a blood alcohol count of .24. Is this considered high?

Cor: Well, the legal limit is .08, and based on his body weight I would estimate that he was quite intoxicated at the time of his death.

Def: A blood alcohol count of .24 for a man of Mr. Richards' height and weight is approximately equivalent to how many drinks?

Cor: It would be equal to approximately 12 drinks.

Def: From the results of the autopsy that you conducted was there any evidence to suggest that Mr. Richards was an alcoholic?

Cor: Judging from the condition of his liver and spleen, I would conclude that he was a fairly heavy drinker.

Def: As well Dr., your report states that there were bruises on Mr. Richards right hand. Were they sustained recently?

Cor: Yes, I would say they were sustained during the 48 hours prior to his death.

Def: Was it possible that these bruises were the result of Mr. Richards having hit his fist against something? Say for example, Mrs. Richards' face or body?

Cor: It's possible. He would have had to hit her pretty hard though for that to be the cause of those bruises.

Def: Thank you Dr. That's all for now.

Testimony of Dispute Officer: Officer McCarthy

Pro: Please state your name, occupation, and relationship to the accused.

Off: My name is Officer McCarthy and I am a police officer with the Ottawa Police Force. I first met Mrs. Richards in August of 1995.

Pro: How did this meeting come about?

Off: My partner and I were responding to a domestic dispute call at the Richards home.

Pro: Please describe what happened after you first arrived?

Off: Well, it was Mr. Richards who answered the door and asked me what the matter was and why we were there. When I told him that we had received a call from his wife asking for help he just laughed and said that they had just been having a little argument, but, it was nothing serious and that everything was all right. I asked to speak with Mrs. Richards, but, her husband insisted that that wouldn't be necessary and that he appreciated our response. I insisted, however, and he called her to the front door. I could tell that she had been crying and there appeared to be a swelling under her right eye. Mr. Richards had his arm around her shoulders and was being rather affectionate and loving towards her. She was hesitant about talking to me at first. She kept looking at her husband. I asked her why she had called and eventually the story came out that he had hit her couple of times and that she was worried because she was pregnant. Mr. Richards started getting a bit agitated at this point and insisted that she was exaggerating the situation.

Pro: Go on Officer.

Off: When I asked him about her eye he said that he had made her upset and that she had slipped and hit the door frame and added that she was very clumsy. When I asked Mrs. Richards to confirm the story she just started to cry. Her husband insisted that he had told the truth and that there was no point in continuing the discussion. Assuming that there was more to the story, I asked Mrs. Richards to speak to me without the presence of her husband. I could see that she was afraid to say anything while her husband was there so I told her that my partner would take her husband out of the house so that we could talk alone.

Pro: What happened after Mr. Richards was taken out of the house?

Off: After they had left I told Mrs. Richards that it was my duty to arrest Mr. Richards for assault.

Pro: Did Mrs. Richards ask you not to press charges against her husband?

Off: Yes, she did.

Pro: And what happened next?

Off: Since Mrs. Richards had admitted to us and had notified the dispatcher that she had been assaulted by her husband and with the additional bruising on Mrs. Richards' face I was forced by law to make an arrest regardless of her own wishes to press or not press charges. When I explained this to Mrs. Richards she became visibly upset. She asked me what would happen to him once he was arrested. I told her that usually, in cases like this, once formal charges are laid that Mr. Richards would spend 24 to 48 hours in jail and would be released at that time.

Pro: Could Mr. Richards have returned home at this point?

Off: The current law in Canada requires that the accused be released on an undertaking or under their own recognizance with conditions. Mr. Richards would be placed under legal obligation not to associate either directly or indirectly with his wife, he was not to return to the family home or consume alcohol, and was notified that he would be arrested and charged if he violated any of these conditions.

Pro: Now how do you as police officers ensure that these conditions are being adhered to?

Off: In this case we required that Mrs. Richards inform us if her husband attempted to contact her so that a formal arrest could be made.

Pro: So what happened, Officer McCarthy, after your partner returned with Mr. Richards to the house?

Off: Well, Mr. Richards seemed calm upon entering the house and told his wife that he was sorry that he had frightened her like he did. I then informed Mr. Richards that we were required to make an arrest and formally charge him with assault. He was then read his rights and taken into custody.

Pro: How was Mrs. Richards reacting to this sequence of events?

Off: She was very quiet and visibly upset with the situation. As Mr. Richards was being led to the police car he turned to Mrs. Richards and screamed names and insults at her. That's when she broke down and started to cry.

Pro: Did anything occur after Mr. Richards was removed from the home.

Off: I stayed behind with Mrs. Richards for a few minutes in order to take a statement from her to use when the formal charge was being laid and to make sure that she was all right. The statement would ensure that she would not have to appear in court in person. She was told that if she did not file such a statement, and if she refused to appear in court that the judge would order a bench warrant to subpoena her to testify. If this bench warrant is then ignored the consequences can be serious. Before I left I gave her the name and number of Interval House, a shelter for battered women and told her to call them if she felt the need. I also left my own name and badge number. I told her not to hesitate to contact us if she ever required our services once her husband was released particularly in the event that he should attempt to contact her. Then we left to take Mr. Richards to the station.

Pro: Now we know from reports that Mr. Richards did return to the family home once he was released. Did Mrs. Richards contact you to notify you that her husband had breached the conditions of his release or for further assistance after that night?

Off: No. She did not.

Pro: So then Mrs. Richards knowingly and deliberately remained in this abusive situation with her husband despite the police intervention that was offered to her.

Off: Yes she did.

Pro: Thank you Officer, nothing further.

Cross- Examination of Officer McCarthy

Def: Once you have made an arrest of this nature what measures do you take to ensure that the batterer does not contact the victim or return to the home?

Off: Both the accused and the victim are notified of the serious nature of breaching these conditions. More specifically, however, little can be done other than relying on the victim to notify us of such breaches.

Def: So then the police do not provide surveillance or other such measures to ensure that the batterer does not return?

Off: No, surveillance of that nature is beyond our capabilities. We have neither the manpower nor finances to provide such extensive protection.

Def: So essentially then Mr. Richards could have returned home once he was released to beat her again or maybe even kill her this time? Is that true?

Off: Unless Mrs. Richards notified us of his breach of the conditions then there was little that we could do.

Def: When you spoke with Mrs. Richards that night did you get any indication that Mrs. Richards was in fear of her husband?

Off: Yes, I clearly remember the look of terror in Mrs. Richards' eyes whenever her husband looked at her. Even when he wasn't standing right there you could tell she was afraid of him.

Def: On average Officer, how many domestic disputes do you get called to on a weekly basis?

Off: It depends really, sometimes 3, sometimes more.

Def: And of those 3 or so disputes how many arrests and charges are made against the husbands or boyfriends?

Off: Out of 3 or so calls, we might make 1 or possibly 2 arrests. It all depends on whether or not the victim tells us what happened and if there is adequate evidence to process the charge.

Def: Are you aware Officer McCarthy of situations where despite the known legal consequences a batterer has returned to the home to beat or kill the victim as punishment for pressing charges in the first place?

Off: Yes, I am aware of such situations.

Def: Would you concede then Officer that some of these women might not notify you that the batterer has returned because they are in such fear of future retaliation for informing the police?

Off: Yes. That's possible.

Def: So then you might also concede that Judy Richards perhaps failed to report her husband to the authorities not because she had simply decided to put up with the abuse, but, rather because she was afraid of her husband and what he might do if she attempted to contact the police again.

Off: Yes, I suppose that is possible.

Def: No further questions your Honor.

Testimony of Dr. Tast

Pro: Please inform the court of your name and occupation.

Dr: I am Dr. William Tast, and I am currently a physician in the emergency unit at the Ottawa General Hospital.

Pro: When did you first have contact with Judy Richards?

Dr: I met the defendant after she was admitted to our unit on December 9, 1994. She was admitted to the unit after suffering from two broken molars, she had sustained a broken left arm, and had 2 broken ribs. As well, Mrs. Richards had severe facial lacerations that required 8 stitches and her blood pressure was weak due to blood loss.

Pro: How did Mrs. Richards explain how she had sustained these injuries Dr.?

Dr: She told me that she had tripped over a shoe lying on the floor and had subsequently fallen down the stairs.

Pro: Was Judy alone at the hospital?

Dr: No actually her husband Peter was with her at all times.

Pro: Did Mr. Richards seem concerned about his wife and her injuries Dr.?

Dr: Yes, he did. As a matter of fact he insisted on being present during the whole examination, even when I performed an internal examination on her to check the condition of the fetus.

Pro: Did Mrs. Richards give you any reason at all to doubt that she had indeed fallen down the stairs. Did she indicate at any time that her injuries may have occurred as the result of abuse.

Dr: No there was nothing really that she said or did.

Pro: Did you ask Mr. Richards' how his wife had sustained her injuries?

Dr: Yes, I did and he similarly told me that she had tripped and fallen.

Pro: Now Dr. Was it not possible that Mrs. Richards actually could have sustained the injuries by falling down the stairs as both she and her husband told you? Was this absolutely implausible?

Dr: No. It was not totally implausible, it was simply an unlikely cause of the injuries that she had demonstrated.

Pro: Now, assuming as you did Dr. that Mrs. Richards' injuries were caused by events other than a fall, did you then offer additional assistance if she decided to seek it at a later date?

Dr: Yes, I told her that I was concerned about her injuries and should she wish to discuss her case further that I would be available to do so. I then gave her my name and telephone number at the hospital as well as an after-hours number where I could be reached at any time.

Pro: And did Mrs. Richards ever accept the assistance that you offered to her?

Dr: No, she did not.

Pro: Did you see Mrs. Richards again after she was admitted with these injuries?

Dr: Yes. I saw her during the early hours of Sunday morning, June 25, 1996... the morning of the shooting. She was brought in by two police officers who wanted her to be examined.

Pro: And what was her physical condition?

Dr: She had numerable contusions above her left ear, the top of the left ear was torn and the inside of her mouth had been bleeding from lacerations from her teeth. She had a severely swollen jaw, 2 cracked ribs and bruises on her left thigh. I was also concerned about internal damage. Subsequent x-rays showed that she had a severely bruised right kidney and had sustained some internal bleeding.

Pro: What was her emotional condition?

Dr: The defendant seemed to be in a tremendous state of shock. Her affect was poor and she wasn't responding coherently to questions. She knew where she was, but, little else was discerned at that time. She was very calm and demonstrated no emotion with regard to the events which were taking place. As a result of my concern for her condition, both physical and emotional, I proceeded to make an appointment for her to see Dr. Johnson, a clinical psychologist who is part of the family violence unit at the hospital.

Pro: Was that the last time you saw Mrs. Richards?

Dr: Yes it was.

Pro: Nothing further.

Cross-Examination of Dr. Tast

Def: When you first saw Mrs. Richards at the hospital did you believe her when she told you that she had sustained her injuries after falling down the stairs?

Dr: No, I did not.

Def: Why not?

Dr: The extent of her injuries were not entirely consistent with this explanation, particularly not the head injuries.

Def: Did you confront Mrs. Richards with your opinion?

Dr: Yes, I told her that her injuries were more severe than would be expected as the result of such a fall, but, she continued to insist that she had fallen down the stairs and said that her husband could confirm her story. She refused to discuss it any further. She appeared very upset and agitated. I gave her a prescription for a sedative and cautioned her on the use of the drug as she was about 7 months pregnant at the time.

Def: In your professional opinion Dr., would her injuries have been consistent with someone having beaten her up?

Dr: Yes, I thought it was highly probable.

Def: Did you have any suspicions as to who may have done this to her?

Dr: Yes. I had some indication by the way Mrs. Richards was acting in the presence of her husband that he was likely battering her. She was extremely agitated and seemed very frightened in his presence. I found out much later that Judy's husband had been released from jail earlier that day for previously assaulting his wife.

Def: Why would Mrs. Richards lie about her injuries?

Dr: There could be many reasons, but, often in cases like this the women don't say anything because they are afraid of what their husbands will do if they tell anyone about what's been going on.

Def: Are you not required by law Dr., to report suspected cases of wife abuse to the police to help these women gain the assistance that they so often require?

Dr: Yes, we are in cases where sufficient evidence exists. Unfortunately in this case I only had my suspicions. There was simply not enough direct evidence to report my suspicions of domestic assault to the police. We try to do everything in our power to help a woman in cases such as this to feel at ease and to trust us, but, ultimately we have to wait until she's ready to talk.

Def: Do you have suspicions as to why Mrs. Richards never contacted you to make use of the assistance that you had offered?

Dr: I think that Mrs. Richards was probably too afraid to let anyone know what was going on. Judging from her injuries, if her husband had indeed inflicted them, he was a potentially dangerous man.

Def: The morning after the shooting when Mrs. Richards was escorted to the hospital by the police you say that Mrs. Richards had sustained contusions above her ear, a torn ear, bleeding from the mouth, swollen jaw, cracked ribs, bruises on her face and thighs, bruised kidney, and internal bleeding. Would you classify these injuries as serious Dr. Tast?

Dr: Yes, absolutely. Not only were the injuries very serious, but, the internal bleeding could have been life threatening. Furthermore, Mrs. Richards was very lucky, if the broken ribs had been cracked even an eighth of an inch more, she could have suffered a punctured lung. This is a very serious medical condition.

Def: Had these injuries been sustained recently Dr.?

Dr: Yes, probably within 24 hours of her being brought in.

Def: Thank you doctor. You may step down.

Testimony of Mrs. Richards

Def: Mrs. Richards, please inform the court of your age and how long you have known your husband.

J: I am 24 years old. I met Peter when I was 20, and we got married when I was 21...so I had known him for 4 years.

Def: How did you meet your husband?

J: I first met Peter when we were both working in Gander. About a year after we started dating he told me that he was considering taking a job in Ottawa with the National Research Council. He said that if I wanted to come with him that we could get married before we left. He told me not to worry and that I would find a job really easily so that shouldn't be a factor in my decision. My Mom was concerned that I was making a hasty decision and that I should wait until Peter got settled in before I decided what I would do, but, I was in love with Peter so we got married a few months before we left.

Def: When you moved to Ottawa did you continue to have contact with your family or friends?

J: Even once I made the decision to move and get married my Mom kept insisting that I had made a mistake and that one day I would realize it. After a while Peter started referring to my Mom as "the domineering wench" who was trying to run my life. He told me that if she couldn't be supportive of our life together then she shouldn't be a part of it. I didn't have a lot of friends in Edmonton, Mom and I had only moved there for my final year of high school and I had already lost touch with a lot of the friends that I had from before. After being in Ottawa for about 6 months I called Mom just to talk for a while. I was lonely and hadn't found a job yet so I just wanted to hear a friendly voice. At the end of the month when the phone bill came Peter saw that I had called her. He was upset and felt that I had gone behind his back. He reminded me about my mother's feelings about our marriage and my decision to leave and that calling her because I was feeling alone was just adding fuel to the fire. After that I gradually started to lose contact with my Mom. I found out later that once in a while when she would call Peter would tell her that I didn't want to speak with her and he would intercept any letters that she sent me.

Def: So you had no contact with your mother after this time?

J: I did try to write my Mom one time about how unhappy, and bored I was without a job, but, before I got a chance to mail it Peter found it. He brought it over to me, picked up a lighter and burned it in front of me saying that my Mom was the

problem to begin with and that if she would just let me live my life that I would do just fine. He thought that the purpose of my writing the letter was to tell Mom what a poor excuse of a husband he was since I wasn't happy with him. That was the first time he hit me.

Def: You mean he wasn't aggressive or violent with you before this?

J: Oh, he'd push me around a bit, and once he threw an ashtray at me, but no, that was the first time he really let me have it. I was in bed for two days before I could even get up and make myself a cup of coffee.

Def: How did he treat you after the incident?

J: Actually the next day he told me he was sorry that he had lost his temper and that it would never happen again. I actually felt kind of guilty because I knew that there were bad feelings between he and my Mom and that I had gone ahead and done something that I knew he wouldn't like. Everything was o.k. for about a month or so but then he started making remarks about my seeing someone behind his back... you know an affair.

Def: And were you?

J: No. Even if I had wanted to I couldn't have... I mean... he always knew where I was. He would do things like time me when I went to get groceries and stuff. When I went for job interviews he wanted me to call him when I got there and when I was leaving. I finally stopped looking for work. Anyway, if I took longer than he thought I should have he would just stand in the doorway or wherever and trip me as I went by, sometimes he'd hit me in the stomach. I had no freedom. At first, I would tell myself that he was only doing this because he loved me so much, his being jealous and all, but, after a while, I started to think he was crazy. If I even went to the bathroom with the door closed he'd come and open it saying that we had nothing to hide from one another and that I shouldn't be embarrassed.

Def: It sounds like your husband was a jealous and possessive man Mrs. Richards. How often would you say he hit you in the year prior to the night he died?

J: Do you mean hit me hard?

Def: Yes, hard enough to cause a bruise.

J: Well, it was progressive I guess. He didn't just start beating on me all of a sudden, it just gradually got worse over a couple of years. In the past year though... I don't know... after the time I ended up in the hospital it was probably once or twice a month.

Def: Mrs. Richards, did you ever try to leave your husband?

J: Yes, once after I had a miscarriage.

Def: Would you tell us about that please?

J: About 6 months after the episode over the letter to my Mom I found out I was pregnant. Peter really wanted to have kids so I thought this would make him really happy. After I told him he didn't seem too interested and he pretty much ignored me. Later that night he went out with some of his friends and came back about 2 or so. He woke me out of my sleep and started slapping and punching me. He said that I was nothing but a useless whore, and that the baby probably didn't even belong to him. I tried to protect my face and stomach. I tried to push him away from me at one point and hit him across the jaw but that only made him angrier. When he pushed me down onto the floor he kicked me in the stomach then fell on top of me clawing off my nightshirt. Then he forced himself on me sexually. When he was done he stormed out of the house and didn't come back until the next morning. A few hours after he left I started getting really bad cramps and noticed that my panties were spotted with some blood. I guess that's when I miscarried.

Def: Did you see a doctor?

J: No. I didn't want to make things worse with Peter. When I told him I thought I had lost the baby he accused me of aborting it myself since it probably wasn't his anyway and that if I'd had it everyone would have known that it wasn't his. He muttered something about wishing that I was the one that had died and that everything would be so much easier that way... less grief for him. I was really upset and very angry about everything so I decided that the best thing for everybody would be to leave as soon as I was able. Peter had never allowed me access to his bank accounts so I wasn't able to take out any money to leave. I figured the next time Peter gave me grocery money I would use it to get on a bus and head for home. I loved my husband very much and thought that I could have brought so much to his life, but, I just couldn't seem to make it work.

Def: Did you finally leave him?

J: Peter found the bag I had packed and hidden in the back of a storage closet in our spare room and knew right away that I was planning on leaving. He just exploded and lost it completely. That's when he actually got out the gun that he takes with him for hunting trips.

Def: Mrs. Richards where was your husband's rifle usually kept?

J: Peter usually kept it in a locked cabinet downstairs in the basement. This first time that it was out was because he was preparing for a trip and had brought it out to clean it.

Def: Please continue Mrs. Richards.

J: Peter told me to take a good look at the rifle and told me that if I ever tried to leave again that he would track me down and shoot me so full of holes that I wouldn't be recognizable. I was terrified and what frightened me most was that I believed that he would actually do it. I sat on the floor of the bathroom crying so hard that I threw up. After a few hours Peter seemed to calm down and he never mentioned the incident to me again. Of course I never... not for one minute ever forgot what had happened. I still loved the man that I had married...but... I was so afraid of him by that point that the abuse was all I could think of. I was only concerned about my safety now. I needed to stop him from hurting me, but, I wasn't sure how.

Def: Did you truly believe that Peter would kill you if you left him?

J: Yes, I did. I knew what he was capable of and even though he hadn't shot at me or anything he was so out of control that I knew what he'd do.

Def: How were things between the two of you after you tried to leave?

J: Well, I figured that if I did everything that Peter wanted me to do that there would no reason for him to lose control so that's what I focused on to keep myself safe. I found out about 4 months later that I was pregnant again.

Def: Was there anybody you could talk to?

J: I had tried to make friends with some of the neighbours around us, but, Peter really didn't like me to get close to anybody. I think that's probably why he wasn't really supportive of me finding a job... he never said that... but it was pretty obvious.

Def: We heard from Officer McCarthy about the evening you called the police and from Dr. Tast about how you subsequently ended up in the hospital. Would you please describe to the court what happened that evening prior to your calling the police?

J: Peter had been out with a friend from work. I guess he arrived home about 8 o'clock or so.

Def: Had your husband been drinking?

J: Yes, he had. Actually most of the abuse happened after Peter had been drinking.

Def: Please continue.

J: When he first got home he was very quiet, but, I could tell that he'd had a bad day at work. I asked him if he wanted dinner and he told me that yes he was hungry. After dinner, he went into another room to watch some t.v. I guess I had left out some laundry that I'd been folding and had forgotten to put away. I heard him yell into the kitchen so I went to find him. When I walked into the t.v. room he grabbed me and threw me down on the sofa where the clothes were. He screamed at me that I must have wasted the day doing other useless crap and didn't leave enough time for the necessary house chores. When I went to explain he told me to shut my mouth, and that there was absolutely no excuse for this. Rather than pushing the subject I tried to get up so that I could put the clothes away. That's when he hit me in the face, then in the stomach and once in the side. I ran from the room and locked myself in the bedroom where I called the police. He didn't know that I'd made the call until the officers arrived at the door. Before they arrived he screamed at me through the door. I heard him punching the wall and the door for a couple of minutes while he swore at me. Then I guess he just turned away and walked back into the t.v. room. The doorbell rang a few minutes later and it was Peter who answered it. It was the police.

Def: So the police talked to you and explained that they were required to arrest your husband and press charges?

J: Yes.

Def: Officer McCarthy told the court that you didn't want to press charges against your husband Judy. Why is that?

J: I was afraid of making Peter even more upset and angry with me. When I called the police it was sort of an automatic reaction. Once I realized what Peter might do I was terrified.

Def: But, regardless of your concerns for your safety in the event that charges were laid the officers arrested your husband?

J: Yes.

Def: So what happened after the officers left the house?

J: Well, of course I didn't hear from Peter for a couple days. The police contacted me to notify me that he was being released. That same day he showed up at the

house and just walked in like he had never left. He walked into the kitchen and sat down in a chair across the table from me. I was so scared that I couldn't move. I knew that he wasn't supposed to come back and I wanted to call the police, but, I knew what would happen if I made a move toward the phone. He didn't say anything for a while, he just sat there and stared at me. All of a sudden he started calling me names and went on about how ungrateful I had been for all of the things he had provided me with, and if I really wanted to know what bad was he'd show me... and he did. You already know about the broken arm and ribs, and the stitches to my face. I was too afraid to call the police at that point. Even if I had called them, they couldn't have done anything when he returned again anyway. He would find me wherever I went. If I tried to leave he said he would track me down, no matter where I went, no matter how long it took, and then he'd kill me. I was hurt pretty bad, but, he made me swear not to tell anyone before he took me to the hospital... and I did.

Pro: So, you didn't tell the doctor what had really happened to you because you were afraid of what your husband would do to you? That's why you told the doctor that you had tripped and fallen down the stairs?

J: Yes, besides Peter demanded to stay in the room with me the whole time. He was always standing right there. Also I was pregnant at the time and was more concerned that my baby was alright. The doctor seemed concerned about my injuries and very quietly he handed me a couple of numbers where he could be reached if I wanted to talk to him about anything. I think that he probably knew what was going on but couldn't say with Peter in the room. Even if Peter hadn't been there though I was too frightened and ashamed to tell anyone the truth. I guess Peter had noticed the doctor handing me the paper because as soon as we got outside he grabbed it from me saying that if I ever called the doctor back that he would beat me to teach me a lesson. Then he ripped up the piece of paper and threw it away.

Def: Was that the last time you saw Dr. Tast?

J: No, I saw him a second time, on the morning that I was arrested.

Def: Were there other incidents of abuse between the time you were taken to the hospital and the night that your husband died?

J: Yes, many other times.

Def: So, this was not the last incident before the night of his death?

J: No sir, it was not.

Def: Judy, would you please tell us what happened on the night your husband died.

J: He had threatened to kill me so many different times and I really thought that this time was it. There was just something a little bit different than the other times. He was just so wild and crazy.... the look in his eyes terrified me. It was about 5 months after the baby was born. Peter came home from work on Friday night and immediately started in on me. I knew that he had been drinking... I could smell the liquor on him. The baby had been sick that day so I hadn't had time to make dinner yet. That's all it took to set him off. He hit me right below my ribs and it knocked the wind out of me causing me to fall onto the floor. Then he grabbed my arm and yanked me to my feet and started to scream names at me. He called me a slut, trash, pathetic, stuff like that. At that point the baby started to cry and he told me to make him stop crying or else... so I went over to the baby and took him back into his room. By the time I got back to the kitchen and told Peter that I'd start dinner he told me that I was a poor excuse for a mother and wife, what with a sick baby and no dinner for my husband. He told me not to bother about dinner since I was a shitty cook anyway and said that he'd go out and get something to eat. I knew he was probably going back to the bar, but, I was just glad to have him out of the house. I was worried that he'd still be angry once he got home, but, thought that maybe he'd have a chance to cool off. I checked on the baby and went to bed around 10 o'clock.

Def: So what happened next?

J: I don't know what time it was, I guess around midnight or so, when I heard him come in. I was in bed and pretended to be asleep. The next thing I know, he smashes his fist into the back of my head. He grabbed me by the hair and dragged me from the bed slapping me the whole time. He punched me in my lower back and when I fell he yanked me back to my feet. I kept asking him to stop... I tried calming him down... but it didn't make any difference. At one point he unzipped his pants and forced himself into my mouth. He had me by the hair... I was crying again and I kept gagging so he screamed something at me about not even being able to do that properly. He threw me on the floor and kicked me in the head.

I stayed on the floor of the bedroom all night I guess. I could hardly move when I awoke and I was having trouble catching my breath. I heard the baby crying so I went to him. Peter wasn't anywhere in the house and I wasn't sure where he had gone. I gave the baby something to eat and tried to get myself cleaned up a little bit. When it was time to put the baby down for a nap I went back to bed to see if I could get some rest. I lay there thinking that I had to find a way out, a way that I could be sure that he wouldn't hurt my son. I thought about the police again, but, remembered that they could only keep him away temporarily. I needed more than just one night away from him.

Def: Tell us what happened next Judy.

J: Peter came home about 5 o'clock and acted as if I wasn't there which was fine with me. He started to drink a couple of beers and at about 9 o'clock he told me that

he was going to clean his gun for a trip he was going on that weekend. I had finished giving the baby a bath and got him settled down for the night. As he was cleaning the gun he continued to drink a few more beers and I could see that he was getting pretty drunk. The more he drank the more he started to wave the gun around in front of me. At one point he turned to me and told me that he'd like to take another try at last night and with that he sat back in the chair. As he unzipped his pants I told him that I didn't feel like it... that I wasn't in the mood. He pointed the gun at me and told me that he didn't care what I was in the mood for. He forced me into the bedroom and told me to lie face down on the bed so that he could take me from behind. When he climbed on top of me I could feel the end of the rifle at the back of my head. After he was done he said that he really had no other use for me anymore and wondered why he had kept me around this long. That's when he asked me how it felt to know that I wouldn't live to see the next morning. He then said that he was planning on dragging this out all night if he could. He told me he was going to the kitchen and took the gun with him. When he came back he still had the gun in his hand. That's when he lay down on the bed and passed out from all the beer he'd had. The gun lay next to him. I'm not exactly sure what happened next, but, I do remember thinking to myself that this was my only chance... it was my last chance.

I must have stood there for a few minutes. It was kind of like being in a movie, everything started to move slowly. I remember watching myself pick up the gun and taking the safety catch off. My mind was going over all of the years of abuse, remembering what he had done to me, and of all the years of violence that lay ahead for both me and my son if I didn't get out. To be honest I'm not really sure what else I was thinking of at that point. He was sleeping on his side and I remember walking around to the side of the bed behind him staring at him. As I stood there all of these memories came flooding back to me. I could feel his fists as they slammed into my stomach, and back, and legs, and face. It was like I was being beaten all over again. I must have raised the gun and placed it up against the back of his head. I remember squeezing the trigger once and it threw me back a little... I kept thinking to myself that if I didn't do this properly he would roll over grab the gun and shoot me in the face... then I guess I squeezed the trigger twice more to be sure. My hands were shaking so bad that I dropped the gun. Afraid that Peter would pick it up I grabbed it and just stood there.

After looking down at him for a few minutes as he lay there I went to check on my son to make sure that he was alright. As I got closer to his room I could hear him sobbing. I went to him and lifted him out of his crib and held him for awhile until he calmed down. It's strange, you know, I kept looking behind me as if I expected Peter to sneak up on me and grab me. When my son settled down I placed him back in his crib and picked up the gun where I had left it. Even though I must have known that Peter was dead for some strange reason I still felt very much afraid of him... almost as if I expected him to come after me to punish me for what I had done. I looked into the bedroom once more to assure myself that he wasn't coming after me and then I went into the livingroom. I sat there for what seemed like hours just staring at the gun lying across my lap. Afterwards I must have called the police.

They told me later that when I'd called I had told them that my husband was dead and that I had shot him. The next thing I remember the police were arriving at the door. I guess by that time I was in shock because I don't really remember all that much once the police arrived.

Def: Thank you Judy, no further questions.

Cross-Examination of Judy Richards

Pro: Mrs. Richards, you stated that you killed your husband because you believed that you had no choice but to do so. We have heard your testimony that Peter physically abused you on numerous occasions and how on one of those occasions you had phoned the police. Did Officer McCarthy tell you that it was your responsibility to notify the police if your husband breached the conditions of his release?

J: Yes.

Pro: Yet, you didn't call the police when your husband broke the law and returned to your home to continue beating you, nor did you contact them the night that you believed that your husband was going to kill you.

J: No. I knew that arresting Peter wasn't going to stop him. I had already tried that.

Pro: Mrs. Richards, Officer McCarthy also said that she had given you the number for a women's shelter and suggested that you call them if you needed assistance. Why didn't you make use of the help when it was offered?

J: I already told you what happened when I tried to leave Peter the first time and when he returned home after being arrested. I was afraid to try to leave again or to try to get help. Besides if I had managed to get out with my son he would have come after us and forced us home. If that happened he would have surely killed both myself and my son. You weren't there when my husband beat and raped me... you don't know what he was capable of.

Pro: Do you remember the night that you were admitted to the hospital in Dr. Tast's care.

J: Yes, I do.

Pro: And do you remember Dr. Tast offering his numbers to you in the event that you should decide to talk to someone about your situation?

J: Yes.

Pro: But, again when help was offered you chose not to accept it.

J: I was too afraid to tell anyone what was going on. And besides, there was nothing he could have done for me.

Pro: Mrs. Richards, you said that your husband had beaten you on a number of separate occasions. Is that right?

J: Yes.

Pro: You didn't like to be hit did you?

J: No... of course not.

Pro: Did you think your husband was justified in hitting you?

J: No... there was a time when I felt that maybe I was partly responsible for setting him off, but, deep down I knew that no matter what I thought I had done I didn't deserve to be treated that way.

Pro: So if he continued to hit you Mrs. Richards you must have gotten pretty angry didn't you?

J: Sometimes, but, more than anything else I was scared.

Pro: Did you hate your husband because of the things he did to you?

J: No... it's not so much that I hated Peter. What I hated was what he was doing to me and I wanted it to stop. I was never really able to get mad at him directly because he would only have hit me more if I had showed any anger towards him. So I never really did anything about it.

Pro: Oh, but you did do something about it Mrs. Richards. When you finally got angry enough you shot your husband three times as he lay sleeping in your bed. I'd say you did something about it. You hated your husband so much that you knowingly and deliberately planned the shooting.

J: I killed my husband because I was afraid for myself and my son's life. I killed my husband because there was no other way to stop him from hurting me. I killed my husband because he was going to kill me when he awoke from his drunken stupor.

Pro: So what you are saying is that anger played no part in the shooting of your husband.

J: Sure, I was angry at my husband, but, I did not shoot him out of anger. It was absolute fear... and the fact that I knew that it was my only alternative to save myself that made me pick up that gun. I reacted almost automatically. I just grabbed the gun without really thinking about what it was that I was going to do. I had no choice but to do something that would make him stop.

Pro: Mrs. Richards you described how you picked up the gun from where it was lying on the bed. You released the safety latch on the gun. You approached your sleeping husband from behind. You aimed the gun up against the back of your husband's head. You then pulled the trigger once... twice... and then a third time. Yet, for some reason, you claim that you had to do this to protect yourself. Was your husband attacking you when you pulled the trigger.

J: No.

Pro: Then why was it that you felt forced to kill him?

J: He was going to kill me when he woke up. Before he passed out he threatened to kill me before morning.

Pro: Can you see into the future Mrs. Richards? Could you state with absolute certainty, 100% certainty, that your husband was going to kill you?...After all, he never carried through with his previous threats.

J: I just knew he was going to do it. I had no doubt this time.

Pro: Mrs. Richards lets talk about something else. Did you fire the first bullet that the coroner stated killed your husband?

J: Yes.

Pro: Did you fire the second bullet?

J: Yes.

Pro: Did you fire the third bullet?

J: Yes sir... I did.

Pro: So Mrs. Richards you fired not once, not twice, but three times at the body of your husband as he lay sleeping in your bed. Why is it that you felt you needed to fire three times? Isn't it the case that you wanted payback because you hated Peter for what he had done and that's why you fired three times?

J: That's not it at all...I was so afraid... I wasn't sure that one bullet would have killed him. Even after the second shot I thought that he was going to jump up anytime, grab the rifle and shoot me dead. I fired three times to make sure he didn't hurt me or my son.

Pro: No further questions your honor.

Testimony of Dr. Johnson- Expert Witness (BWS/General)

Def: Dr. Johnson, you have been called as an expert witness on battered women syndrome on behalf of the defendant Judy Richards who has been charged with the second degree murder of her husband. Could you please state your credentials for the court.

Dr: I received my license to practice clinical psychology from the University of New Hampshire where I completed extensive investigations of issues pertaining to family violence. For the past three years I have acted as head of the Family Violence Unit at the Ottawa General Hospital, and I am a consultant for Interval House, a shelter for battered women here in Ottawa.

Def: Could you describe for the court what is meant by the term “battered women syndrome”?

Dr: The term battered women syndrome is commonly used to describe the psychological reality of the abuse situation of women who have suffered emotional, psychological, and/or physical harm at the hands of a spouse or intimate partner. This abuse is sustained over a prolonged period of time. What happens is that there exists a recurrent cycle of violence that is perpetrated by the abuser which results in the woman being essentially trapped within the relationship. Research has indicated that the first stage of this cycle involves a gradual building of tension, often characterized by minor arguments, bickering, name calling and possibly minor abusive incidents. This is followed by an “acute battering stage” in which the tension erupts and often severe physical damage is sustained by the woman. In a final stage referred to as the “loving contrition” stage, the batterer typically apologizes for the abuse, might act lovingly toward the victim, and often attempts to reassure his victim that it will never occur again.

Def: What effect does this have on these women?

Dr: A situation is created as the result of intermittent reinforcement. What this means is that the batterer’s cycle of positive and negative behaviours serves to keep the woman in the relationship by convincing her that if she tried harder, or if she was a better person that her husband or boyfriend would stop the violent behaviour. Essentially the batterer attempts to convince the woman that control over the abusive episodes lies in her hands.

Def: What is the end result of such a cycle?

Dr: Initially, the woman often denies the severity of the attack and accepts her partner’s apology for the attack as genuine. What is critical to the perpetuation of violence is that the abuse repeats itself over and over again with less time between

the battering incidents, and fewer and fewer attempts are made by the abuser to make amends for his behaviour. Very often, the battering incidents become more severe over time and the woman is less likely to feel that she can effectively cope with her abuser and the abuse itself. In addition, if there are children in the house, violence between the adults often has a profoundly disturbing effect.

Def: Now Dr. I've heard talk about something called learned helplessness. Could you please talk a little bit about that?

Dr: Certainly. What happens in many of these abuse cases is that over time, in response to the escalating cycle of abuse, these women begin to understand that regardless of what they do the abuse continues. As I stated earlier many women believe that if they were better wives or girlfriends the men would not behave abusively. After attempting to stop the abuse however, they begin to realize that no matter what they do, no matter what they may say, they are powerless to do so. This results in what is known as learned helplessness. As the name suggests, there exists a sense of helplessness, an awareness that they are unable to control the violence. This is something that is learned after extended exposure to an abusive environment.

Def: On the basis of your professional experience how would you characterize women who have experienced extreme situations of abuse Dr.?

Dr: Generally speaking these women are described as feeling terrorized, and extremely vulnerable. They believe themselves to be worthless, and are helpless to escape from their abusers. They are very often extremely isolated both physically and emotionally from the support of others in their lives, they may have been coaxed to sever ties with family and friends, and often have little outside of the abusive relationship to escape to, or escape for. These women experience absolute terror when they think about leaving for fear of personal retaliation by the abuser, retaliation against others in their lives such as their children, family members, or friends who may still be able to assist them. Quite frankly, the women are justified in fearing that the abuser will seek them out since in a large proportion of these cases, the women are found and forced back into the relationship where they suffer even more extreme abuse as a result of their attempts to leave. In addition to these reactions I am frequently confronted with women who display symptoms of extreme anxiety, depression, very low self-esteem, and who are overcome by guilt and a sense of responsibility for what has been happening to them. They feel that wife, a better mother, a better lover, they wouldn't have been treated as they were. Although some realize deep down that they are in no way to blame for the abuse, some do not. What is important to remember is that battered women syndrome is a very typical and clinically recognized reaction to a battering situation.

Def: Is battered women syndrome a formal diagnosis Dr.?

Dr: Actually, battered women syndrome is not a discrete diagnosis in and of itself. The syndrome is however recognized by the American Psychiatric Association as one of the traumatic stressors which acts as a precursor to Post Traumatic Stress Disorder, otherwise known as PTSD.

Def: Could you please describe for the court the diagnostic criteria for PTSD.

Dr: Certainly. The essential feature of PTSD is the development of symptoms following exposure to an extreme traumatic stressor such as direct personal experience of an event involving actual or threatened death or serious injury. The array of symptoms and the typical reactions displayed by women who have experienced physical violence and abuse are recognized to be the product of extreme stressors. In addition to this the individual's response to the event involves intense fear and the sense of helplessness to escape the traumatic situation. The characteristic symptoms of the disorder include the persistent re-experiencing of the traumatic event, and attempted avoidance of stimuli associated with the trauma. Oftentimes there is a general numbing of emotions and responsiveness as well as persistent symptoms of increased arousal such as sleeping disturbances, difficulty concentrating, exaggerated startle responses and so on.

Def: Could you please explain to the court what might lead a battered woman to kill her abuser?

Dr: So many different factors play a role in these situations. The physical differences in size and power between a man and a woman is one of the reasons why women so often choose a lethal means of self-defense, such as a gun. They are quite simply at a physical disadvantage when they are confronted. This is also why many battered women engage in self-defense measures while their partner is not engaging in direct confrontation. They are quite simply at a physical disadvantage when they are confronted. In addition, women who have been subjected to years of violent behaviour from their partner often come to see the abuser as omnipotent and invincible, much like cases of political prisoners. They come to view their very existence as being in the hands of their abuser. After all, their partner has managed to have total control over their lives often for a number of years, or in some instances even decades. In this case, the woman's mental state is often one of confusion and her ability to think clearly is distorted. She sees herself as completely helpless to escape the abuse and therefore resorts to lethal action. Other factors leading to such actions might include a mother's need to protect a child from harm, the previous existence of weapons in the home, threats of retaliation from the batterer should the woman attempt to escape, threat of deadly violence by the batterer.

Def: Dr. Johnson, are cases of battered women who kill typical of these abusive relationships?

Dr: No they're not. The women who resort to killing their abusers are in situations of particularly extreme abuse and violence. We are not talking about women who have experienced a single episode of shoving or name calling. They have experienced years of continued psychological, emotional, and physical degradation. Research has indicated that as compared to battered women who do not kill, women who do resort to murder are significantly more likely to have an abuser who becomes intoxicated on a daily basis, engages in recreational drug use, and has made previous threats on her life. Physical attacks are more frequent, the women have sustained more numerous and more severe injuries, and are more often raped and forced into other sexual acts by their abusive partners. As you can see what we have here are the extreme cases of domestic violence. All of these factors play a role in the final outcome of the abusive relationship.

Def: As I am sure you are aware Dr., legal cases involving a plea of self-defense require that we establish that the defendant reasonably believed themselves to be in danger at the time of the murder. What can you tell us that would help us to understand the psychological perspective of a battered woman in the final moments with her abuser?

Dr: As I mentioned earlier battered women syndrome consists of a number of criteria for the purposes of diagnosis. The first is the persistent display of symptoms of increased arousal. Because of this arousal battered women are consistently anxious, they may have difficulty concentrating and may have exaggerated startle responses even in the absence of immediate threat or danger. The second criteria is that the traumatic events be persistently re-experienced emotionally or psychologically. A battered woman might experience intrusive recollections of the events by means of images, thoughts or perceptions, they may have distressing dreams of the battering incidents, they may even feel as though the abuse were recurring by means of flashbacks, hallucinations, dissociative episodes and so on. Battered women often exhibit intense psychological distress when exposed to cues that remind them of the trauma and may demonstrate physiological reactivity to these cues. One example of such a cue would be what others might consider an otherwise innocuous argument between the woman and her husband, or threats of violence or even death. For a battered woman, any of these instances would be sufficient to induce significant arousal and extreme fear.

Def: So what exactly does this mean for the battered woman who kills?

Dr: What this means is that even though a battered woman may not be directly involved in a physical confrontation with the abuser, because of the persistent arousal that she experiences and the re-experiencing of prior traumatic abuse incidents by means of thoughts, dreams, or flashbacks she will react to the situation as if the abuse was immediately imminent. For battered women who have experienced years of abuse the violence that is threatened is interpreted as a matter of imminence. In light

of the woman's history of subjection to recurrent and escalating violence, threats of future violence and death are viewed by the battered woman as both reasonable and realistic. As a result these concerns are justifiably experienced as both impending and imminent. The fear of violence in an abusive relationship is always imminent.

Def: Dr. Would you please address briefly some additional problems that battered women must face.

Dr: One of the reasons that I came here to testify today is that many people hold misconceptions of battered women, both of those who kill and those who do not. First of all, battered women exist in all socioeconomic classes. This is not a problem that is restricted to the poverty stricken, or uneducated. Believe it or not, domestic violence is as common among the middle and upper classes as it is among the lower. More importantly however, people must understand that battered women do not remain within the relationships with their abusers because they enjoy the abuse or because they are not truly suffering. Many people believe for instance that battered women simply inflate the seriousness of the situation, that it's really not that bad. In many, if not most cases, however it really is that bad, and for many it is much worse. With regard to those women who do not leave it is necessary to understand that they cannot because the fear of the abuser impedes any attempt to do so, and precludes any other alternatives that society deems appropriate. Finally, and perhaps most critically, no woman deserves to be abused regardless of what she does. Refusing sex, taking a stand for ones rights, or burning dinner is absolutely no excuse for violence in any relationship. These women absolutely do not deserve to be abused, raped, tortured, or brutalized. Nothing, absolutely nothing warrants treatment like that!

-Insert Testimony of Dr. Johnson-Expert Witness (BWS/Case-Specific)-

Dr: Thank you Dr. Nothing further.

Insert -Testimony of Dr. Johnson-Expert Witness (BWS/Case-Specific)

Def: Dr. You examined the defendant Mrs. Richards shortly after she was charged with the murder of her husband. Is that correct?

Dr: Yes it is.

Def: In your professional opinion Dr. what was the mental state of Mrs. Richards at the time you examined her?

Dr: Well, she appeared to be of average intelligence, coherent and capable of logical thought. She manifested some symptoms of depression, anxiety, and displayed relatively minimal affect. It was clearly evident to me that she continued to be very much in a state of shock as a result of the events which had transpired. She was however, extremely concerned about the welfare of her son.

Def: On the basis of your professional experience Dr., is Mrs. Richards suffering from the battered women syndrome?

Dr: I have interviewed Mrs. Richards at great length and have studied both her medical history and police reports filed both prior to and following the time of her husband's death. I have no hesitation in stating confidently that she is and was indeed suffering from battered women syndrome.

Def: Given her condition at the time of her husband's death, would you give the court your assessment on the plausibility of her plea?

Dr: After reviewing the patterns of violence between this couple, I believe that Mrs. Richards believed that her husband was going to kill her, and that she had sufficient evidence that he would likely carry out his threat. In addition, given the nature of his violent behaviour, and the severity of his attacks I contend that Mrs. Richards legitimately did what she believed necessary to protect herself from her abusive husband.

Dr: Thank you Dr., nothing further.

Testimony of Dr. Johnson- Expert Witness (BWS/Case-Explicit)

Def: Dr. Johnson, you have been called as an expert witness on battered women syndrome on behalf of the defendant Judy Richards who has been charged with the second degree murder of her husband. Could you please state your credentials for the court.

Dr: I received my license to practice clinical psychology from the University of New Hampshire where I completed extensive investigations of issues pertaining to family violence. For the past three years I have acted as head of the Family Violence Unit at the Ottawa General Hospital, and I am a consultant for Interval House, a shelter for battered women here in Ottawa.

Def: Could you describe for the court what is meant by the term “battered women syndrome”?

Dr: The term battered women syndrome is commonly used to describe the psychological reality of the abuse situation of women who have suffered emotional, psychological and/or physical harm at the hand of a spouse or intimate partner. This abuse typically occurs over a prolonged period of time. What happens is that there exists a recurrent cycle of violence that is perpetrated by the partner which results in the woman being essentially trapped within the relationship. Research has indicated that the first stage of this cycle involves a gradual building of tension, often characterized by minor arguments, bickering, name calling and possibly minor abusive incidents. This is followed by an acute battering stage in which the tension erupts and often severe physical damage is sustained by the woman. In a final stage referred to as the loving contrition stage, the batterer typically apologizes for the abuse, might act lovingly toward the victim, and often attempts to reassure his victim that it will never occur again. As Judy described in her testimony her relationship with her husband demonstrated this very cycle. Tension in the form of bickering or avoidance of the other was frequently followed by an outburst of anger on Peter Richards part, an abusive incident would result which was then followed by a period of calm.

Def: What effect does this have on these women?

Dr: A situation is created as the result of intermittent reinforcement. What this means is that Peter's cycle of positive and negative behaviours served to keep Judy in the relationship by convincing her that if she tried harder, or if she was a better person that he would stop the violent behaviour. He was essentially attempting to convince her, even if only momentarily, that the control over his abusive behaviour was in Judy's hands.

Def: What is the end result of such a cycle?

Dr: Initially, the woman often denies the severity of the attack and accepts her partner's apology as genuine. What is critical to the perpetuation of violence is that the abuse repeats itself over and over again with less time between the battering incidents, and fewer and fewer attempts are made by the abuser to make amends for his behaviour. Upon speaking with Judy it became evident that over time this cycle became accelerated with more constant tension that was experienced, more frequent episodes of violence were evident and Peter spent much less time attempting to convince Judy that it would never happen again. This is very common in these relationships. Very often, the battering incidents become more severe over time. Judy described the injuries of the abuse incidents as coping with insults and verbal abuse which then led to more physical injuries such as bruises, cuts, and swollen eyes. Over time Judy was subjected to much more severe injuries such as a miscarriage, broken bones and teeth, and internal bleeding. The woman is less likely to feel that she can effectively cope with her abuser and the abuse itself. In addition, if there are children in the house, as was the case for Judy violence between the adults often has a profoundly disturbing effect on the children. Judy's son may be very young, but, had the situation continued for much longer the effects on him in terms of his emotional and physical health could have been devastating.

Def: Now Dr. I've heard talk about something called learned helplessness. Could you please talk a little bit about that?

Dr: Certainly. What happens in these cases is that over time, in response to the escalating cycle of abuse, the women begin to understand that regardless of what they do the abuse continues. As I stated earlier many women believe that if they were better wives or girlfriends that the men would not behave abusively. After attempting to control the abuse they begin to realize that no matter what they do, no matter they may say, they are powerless to do so. This results in what is known as learned helplessness. As the name suggests, there exists a sense of utter helplessness, an awareness that they are unable to control the violence. This is something that is learned after extended exposure to an abusive environment. In Judy's case we heard her testify that no matter what she attempted to do to please her husband the violence continued regardless. During my interviews with Judy she discussed her sense of being unable to control the abuse and the fear that accompanied it. She felt that even her attempts to be the perfect wife and mother were of little help to her in her relationship with her husband. After a while she became aware that the harder she tried the more the abuse continued. Eventually she gave in when she realized that the violence was completely beyond her control.

Def: On the basis of your professional experience how would you characterize women who have experienced extreme situations of abuse Dr.?

Dr: Generally speaking women like Judy can be described as feeling terrorized, and extremely vulnerable. They believe themselves to be worthless, and helpless to escape from their abusers. They are often extremely isolated both physically and emotionally from the support of others in their lives, they may have been coaxed to sever ties with family and friends, and often have little outside of the abusive relationship to escape to, or escape for. Judy's situation is a prime example of this. She had lost contact with her family and friends, she had no job and therefore lost a number of social networks. These women experience absolute terror when they think about leaving for fear of personal retaliation by the abuser, retaliation against others in their lives such as their children, assisting family members, or close friends. Judy already told us that Peter had threatened her if she tried to leave him after her first attempt, and had stated that he would kill her the next time. Although Peter had never directly threatened violence against his son, Judy was aware that this was a possibility and was in fear for her son almost more than herself. Quite frankly, the women are justified in fearing that the abuser will seek them out since in a large proportion of these cases, the women are found and forced back into the relationship where they suffer even more extreme abuse as a result of their attempts to leave. In addition to these typical reactions I am frequently confronted with women who display symptoms of extreme anxiety, depression, and very low self-esteem. Many are overcome by guilt and a sense of responsibility for what has been happening to them. Although some realize deep down that they are not responsible for the abuse, some do not. In fact, I believe that Judy is and was perhaps at the time aware that she was not ultimately to blame. Deep down she knows that, but, this is very difficult for these women to fully comprehend. What is important to remember is that battered women syndrome is a very typical and clinically recognized reaction to a battering situation.

Def: Is battered women syndrome a formal diagnosis Dr.?

Dr: Actually, battered women syndrome is not a discrete diagnosis in and of itself. The syndrome is however recognized by the American Psychiatric Association as one of the traumatic stressors which acts as a precursor to Post Traumatic Stress Disorder, otherwise known as PTSD.

Def: Could you please describe for the court the diagnostic criteria for PTSD.

Dr: The essential feature of PTSD is the development of symptoms following exposure to an extreme traumatic stressor such as direct experience of an event involving actual or threatened death or serious injury. The array of symptoms and the typical reactions displayed by women who have experienced physical violence and abuse are recognized to be the product of such extreme stressors. In addition to this the individual's response to the traumatic situation involves intense fear, and the sense of helplessness to which I referred earlier. The characteristic symptoms of the disorder include the persistent re-experiencing of the traumatic event, and attempted

avoidance of stimuli associated with the trauma. Oftentimes there is a general numbing of emotions and responsiveness as well as persistent symptoms of increased arousal such as sleeping disturbances, difficulty concentrating, exaggerated startle responses and so on.

Def: Dr. Johnson could you please inform the court of the symptoms that Judy Richards displayed at the time of your evaluation?

Dr: Quite obviously, Judy was confronted with an event that involved both threatened serious injury and death and she responded to this event with great fear and a sense of helplessness. Judy's presenting symptoms included distressing recollections of the event in the form of thoughts, and images and she has also suffered from very distressing dreams of being subjected to torture and extreme violence. In addition to the dreams Judy experiences intense psychological distress, crying spells, heart palpitations, and breathing irregularities when she is confronted with any type of stimulus which remind her of the abusive environment.

Def: Are there other symptoms that Judy Richards has demonstrated?

Dr: Judy has indicated that she has felt estranged and detached from others for some time now and has demonstrated a restricted range of affect in general except in the presence of her son. Judy has also indicated that leading up to the death of her husband that she was having chronic sleep disturbances. Particularly apparent was her inability to fall or remain asleep. She was extremely irritable and would sometimes become easily upset with her son if he was at all irritable. Judy further indicated that she was having difficulty concentrating on everyday tasks. Her mind seemed to be consumed with the violence that was she was being subjected to and was consistently in a state of extreme arousal in anticipation of ensuing abuse. These symptoms were particularly evident prior to the death of her husband and Judy continues to exhibit many of these characteristics.

Def: Could you please explain to the court what might lead a battered woman to kill her abuser?

Dr: So many individual factors play a role in these situations. The physical differences in size and power between a man and a woman is one of the reasons why women so often choose a lethal means of self-defense such as a gun. Women are simply at a physical disadvantage when they are confronted. I understand from Judy that her husband Peter was a large and well built man in his late twenties. He was approximately 6 feet tall and weighed 225 pounds. The defendant is approximately 5 foot 6 and 130 pounds. This is also why many battered women engage in self-defense measures while their partner is not engaging in direct confrontation. As Judy did, a large minority of battered women take these measures while the man is asleep or unsuspecting otherwise the men have the advantage. In addition, women who have

been subjected to years of violent behaviour from their partner often come to see the abuser as omnipotent and invincible, much like cases of political prisoners. Judy came to view her very existence as being in the hands of her husband. After all, he managed to have total control over her life for at least 3 years. In these cases, the woman's mental state is often one of confusion and her ability to think clearly is distorted. She sees herself as completely helpless to escape the abuse and therefore resorts to lethal action. Other factors leading to this action might include a mother's need to protect a child from harm, the previous existence of weapons in the home, threats of retaliation from the batterer should the woman attempt to escape, threat of deadly violence by the batterer. All of these factors played a tremendous role in Judy's situation.

Def: Dr. Johnson, is Judy's situation typical of abusive relationships?

Dr: Women like Judy who resort to killing their abusers are in situations of particularly extreme abuse and violence. We are not talking about women who have experienced a single episode of shoving or name calling. They have experienced years of continued psychological, emotional, and physical degradation. In this particular case we heard evidence of extreme abuse over a period of more than 3 years. Research has indicated that as compared to battered women who do not kill, women who resort to murder are significantly more likely to have an abuser who becomes intoxicated on a daily basis, engages in recreational drug use, and has made previous threats on their life. Physical attacks are more frequent, the women have sustained more numerous and more severe injuries, and are more often raped and forced into other sexual acts by their abusive partners than those who do not kill. Alcohol was certainly a factor in the abuse that this defendant suffered. Peter Richards became intoxicated prior to most of the abuse incidents, he had made previous threats on Judy's life, he not only battered her, but, also sexually abused her and her injuries were described by Dr. Tast in his testimony as very serious, if not life threatening. As you can see what we have here are the extreme cases of domestic violence. All of these factors play a role in the final outcome of the abusive relationship.

Def: As I am sure you are aware Dr., legal cases involving a plea of self-defense require that we establish that the defendant reasonably believed themselves to be in danger at the time of the murder. What can you tell us that would help us to understand the psychological perspective of a battered woman in the final moments with her abuser?

Dr: As I mentioned earlier battered women syndrome consists of a number of criteria for the purposes of diagnosis. The first is the persistent display of symptoms of increased arousal. Because of this arousal battered women may consistently be anxious, have difficulty concentrating and may have exaggerated startle responses

even in the absence of immediate threat or danger. The second criteria is that the traumatic events are persistently re-experienced emotionally or psychologically. A battered woman might experience intrusive recollections by means of images, thoughts or perceptions, they may have distressing dreams of the battering incidents, they may even feel as though the abuse were recurring by means of flashbacks, hallucinations, dissociative episodes and so on. Battered women often exhibit intense psychological distress when exposed to cues that remind them of the trauma and may display physiological reactivity to these cues. One example of such a cue would be what others might consider an otherwise innocuous argument between the woman and her husband, or threats of violence or even death. For a battered woman, any of these instances would be sufficient to induce significant arousal and extreme fear. As I stated earlier, an increase in overall arousal and the persistent re-experiencing of the abuse were noted in Judy Richards medical reports and were evident upon my examination of her.

Def: So what exactly does this mean for the battered woman who kills?

Dr: What this means is that even though a battered woman may not be directly involved in a physical confrontation with the abuser, because of the persistent arousal that she experiences and the re-experiencing of prior traumatic abuse incidents she will react to the situation as if the abuse was immediately imminent. For women like Judy who have experienced years of abuse the violence that is threatened is interpreted as a matter of imminence. In light of Judy's history of subjection to recurrent and escalating violence, threats of future violence and death were viewed by her as both reasonable and realistic. As a result her concerns were justifiably experienced as both impending and imminent. The fear of violence in an abusive relationship such as that experienced by the defendant is always imminent.

Def: Dr. Would you please address briefly some additional problems that battered women must face.

Dr: One of the reasons that I came here to testify today is that many people hold misconceptions of battered women, both of those who kill and those who do not. First of all, battered women exist in all socioeconomic classes. This is not a problem that is restricted to the poverty stricken, or uneducated. Believe it or not, domestic violence is as common among the middle and upper classes as it is among the lower. So even though Peter Richards held a good job, and the family was not struggling financially does not by any means suggest that Judy's situation is the exception to the rule. More importantly however, people must understand that Judy and others like her do not remain within relationships with their abusers because they enjoy the abuse or because they are not truly suffering. Many might believe for instance that Judy is simply inflating the seriousness of the situation, that it really wasn't that bad. In many and certainly in Judy's case it really was that bad, and for others it may even be worse. For those like Judy who do not leave it is necessary to understand that they

cannot because the fear of the abuser impedes any attempt to do so, and precludes any other alternatives that society deems appropriate. Finally, and most critical is that a woman does not deserve to be abused regardless of what she does. Refusing sex, taking a stand for one's rights, or burning dinner is absolutely no excuse for violence in any relationship. Judy did not deserve to be abused, raped, tortured, or brutalized. Absolutely nothing warrants treatment like that!

Def: Dr. You stated that you examined the defendant Mrs. Richards shortly after she was charged with the murder of her husband. Is that correct?

Dr: Yes it is.

Def: In your opinion Dr. what was the mental state of Mrs. Richards at the time you examined her?

Dr: Well, in addition to the symptoms that I described earlier Mrs. Richards appeared to be of average intelligence, coherent and capable of logical thought. She manifested some symptoms of depression, anxiety, and minimal affect. It was clearly evident to me that she continued to be very much in a state of shock. She was however, extremely concerned about the welfare of her son.

Def: On the basis of your professional experience Dr., is Mrs. Richards suffering from battered women syndrome?

Dr: I have interviewed Mrs. Richards at great length and have studied both her medical history and police reports filed both prior to and following the time of her husband's death. I have no hesitation in stating confidently that she is and was indeed suffering from battered women syndrome.

Def: Given her condition at the time of her husband's death, would you give the court your assessment of the plausibility of her plea?

Dr: After reviewing the patterns of violence between this couple, I believe that Mrs. Richards believed that her husband was going to kill her, and that she had sufficient evidence that he would likely carry out his threat. In addition, given the nature of his violent behaviour, and the severity of his attacks I contend that Mrs. Richards legitimately did what she thought necessary to protect herself from her abusive husband.

Dr: Thank you Dr. Nothing further.

Cross-Examination of Dr. Johnson- Expert Witness (BWS/General)

Pro: Dr. Johnson, you have stated that your practice and training has been limited almost exclusively to battered women or victims of family violence. Is that true?

Dr: Yes.

Pro: Would you say Dr. Johnson that you feel a great deal of sympathy for victims of family violence, particularly the women and children who have suffered at the hands of a male batterer?

Dr: Yes. That's fair to say.

Pro: Is it fair to say then that regardless of the particulars of a situation when a woman kills her abusive husband, you personally believe that she should be automatically relieved of criminal responsibility?

Dr: No, I wouldn't say that. I try to be open-minded and I believe that each case should be assessed on an individual basis.

Pro: Well, that's interesting considering that you have grouped all battered women together under the guise of what you refer to as battered women syndrome. Now, I'm curious Dr., if a woman who has been slapped in the face on one single occasion demonstrates the symptoms that you describe as composing battered women syndrome would this particular woman be diagnosed as suffering from battered woman syndrome?

Dr: If the event triggered significant fear and a sense of helplessness and if she displayed the required symptoms of the syndrome then yes she could be diagnosed as such.

Pro: Now, what if this woman killed her husband after this single episode? Would you personally testify as to the legitimacy and presence of the syndrome on behalf of this defendant?

Dr: As I said before, I believe that cases should be addressed on a case by case basis. If I felt that sufficient evidence existed to support the diagnosis then I might be inclined to testify as to the research findings on the syndrome.

Pro: Dr. Johnson, you stated that since 1992 you have been a consultant at Interval House, a shelter for battered women. Is that correct?

Dr: Yes.

Pro: Since you began working there have any of the battered women who have used their services been severely beaten by and cruelly treated by their partners?

Dr: Yes. Some of them have suffered extremely severe abuse.

Pro: Were any of these women beaten so severely that they sustained broken bones, facial lacerations, internal bleeding, or other serious injuries?

Dr: Yes, some of them were certainly beaten that badly.

Pro: Did the husbands of any of these women ever threaten to kill them?

Dr: Yes. It is not uncommon for battering husbands to threaten their wives with death.

Pro: Dr., you have testified that on a weekly basis you worked with women who were repeatedly and severely beaten by their husbands, suffered multiple serious injuries, and were threatened with death. Of these women, Dr., how many killed their abuser?

Dr: None.

Pro: In other words, despite being diagnosed by you as suffering from the battered women syndrome, all of these women managed to leave their situation without killing their partners?

Dr: Yes, but the potential for violence was certainly there in many of these cases. These women were extremely fortunate to have escaped from their situations. Their situations were such that the opportunity for escape was for whatever reason available to them. It is the women who are unable to make use of the services provided by shelters like Interval House who find themselves in circumstances requiring more extreme measures.

Pro: So what exactly distinguishes between women who do and those who do not kill their abusers then Dr?

Dr: Typically it is the extent and severity of the abuse that distinguishes between them. These women often exhibit significantly greater degrees of fear of their husbands as a consequence of the particularly violent and extreme abuse that they suffer.

Pro: You stated earlier that battered women syndrome is not yet recognized as a diagnosis in its own right. Is that because the syndrome has not yet received adequate

consensus from researchers and clinicians in the field? Is it perhaps that it doesn't exist at all?

Dr: No, that's not it. The particular experiences of battered women are different to those of say war veterans, hostages, etc., but the responses people have to these experiences have been shown to be extremely similar. Since Post-Traumatic Stress Disorder has already categorized these symptoms and experiences there has been no immediate need to create a distinct classification. The development of distinct criteria for the diagnosis of battered women syndrome is, however, currently being considered.

Pro: Could you please explain Dr, why it is that many of these women do not use the protective services of the police, emergency hotlines, or shelters for the abused even when they are offered directly to them?

Dr: Basically this results from the fear and belief that the services will not provide the protection that these women deem necessary. They fear retaliation from the abuser once they are found, and they believe that it is only a matter of time before this happens.

-Insert-Cross-Examination of Dr. Johnson- Expert Witness (BWS/Case-Specific)- or

-Insert-Cross-Examination of Dr. Johnson- Expert Witness (BWS/Case-Ecplicit)-

Pro: That's interesting considering that many of these women never make use of these services at all, or at least not long enough to make this determination.

Pro: You stated Dr. Johnson that battered women syndrome consists of a sense of helplessness, a helplessness that you claim is the result of the battering experience. How is it that a helpless woman is suddenly able to conquer this sense of helplessness to commit a violent and aggressive action against the very abuser that is so greatly feared?

Dr: You see...it's not a complete sense of helplessness that the women experience. They experience a sense of being unable to control the beatings, but, sometimes in certain instances they are able to react to a presenting opportunity. So the helplessness of which I speak is not absolute or completely overwhelming. You also have to keep in mind the intense anxiety and arousal of which I spoke earlier. This is a strong factor in overcoming this sense of helplessness. It plays a significant role in compelling the women to react automatically.

Pro: Didn't you explain earlier that abused women experience this intense arousal fairly consistently throughout their abusive relationship, and not only in the moments preceding an aggressive action?

Dr: Yes, that's true, but,....

Pro: No further questions for this witness your honour.

-Insert- Cross-Examination of Dr. Johnson- Expert Witness (BWS/Case-Specific)

Pro: That's interesting considering that many of these women never make use of these services at all, or at least not long enough to make this determination.

You stated Dr. Johnson that battered women syndrome consists of a sense of helplessness, a helplessness that you claim is the result of the battering experience. How is it that this helpless woman, as you have portrayed Judy Richards, was suddenly able to conquer this sense of helplessness to the extent that she was able to commit a violent, and aggressive action against the very man that was so greatly feared by her?

Dr: You see...it's not a complete sense of helplessness that Judy experienced. Women like Judy experience a sense of being unable to control the beatings, but, sometimes in certain instances they are able to react to a presenting opportunity. So the helplessness of which I speak is not absolute or completely overwhelming. You also have to keep in mind the intense anxiety and arousal of which I spoke earlier. This is a strong factor in overcoming this sense of helplessness. It plays a significant role in compelling the women to react automatically.

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-Insert- Cross-Examination of Dr. Johnson- Expert Witness (BWS/Case-Explicit)

Pro: That's interesting considering that many of these women never make use of these services at all, or at least not long enough to make this determination.

Now, if Mrs. Richards was as fearful of her husband as you allege, and if she truly believed that the police would be unable to provide adequate protection why then did she choose to involve the police that evening back in 1995?

Dr: It is my understanding that Mrs. Richards was at that time perhaps naive or unaware of what her husband was truly capable of, and she wasn't aware of the current laws. I think that Mrs. Richards contacted the police rather automatically as a means to bring even temporary relief to her situation. When she realized that she might be placing herself in even greater danger by doing so she became intimidated and even more fearful of her husband with regard to the potential ramifications of her actions.

Pro: You stated Dr. Johnson that battered woman syndrome consists of a sense of overwhelming helplessness, a helplessness that you claim is the result of the battering experience. How is it that this totally helpless woman, as you have portrayed Judy Richards, was suddenly able to conquer this sense of helplessness to the extent that she was able to commit a violent, and aggressive action against the very man that was so greatly feared by her?

Dr: You see...it's not a complete sense of helplessness that Judy had experienced. Women like Judy experience a sense of being unable to control the beatings, but, sometimes in certain instances they are able to react to an opportunity. So the helplessness of which I speak is not absolute or completely overwhelming. You also have to keep in mind the overwhelming anxiety and arousal of which I spoke earlier. This is a strong factor in overcoming this sense of helplessness. It plays a significant role in compelling the women to react automatically.

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Dr: Yes, that's true, but,....

Pro: No further questions for this witness your honour.

Testimony of Dr. Johnson- Expert Witness (Social Agency/General)

Def: Dr. Johnson, you have been called as an expert witness on battered women and their experiences on behalf of Mrs. Judy Richards who has been charged with the second degree murder of her husband. Could you please state your credentials for the court.

Dr: I received my license to practice psychology from the University of New Hampshire where I completed extensive investigations of issues pertaining to family violence. For the past three years I have acted as head of the Family Violence Unit at the Ottawa General Hospital, and I am also a consultant for Interval House, a shelter for battered women here in Ottawa.

Def: Could you please describe to the court the severity of the issue of wife assault?

Dr: In terms of the prevalence of domestic assault it is estimated that 1 in every 4 women are physically assaulted by their husbands or boyfriends during their lifetime. Statistics Canada recently released a report which indicated that in 1992 alone more than 14% of women homicide victims were killed by their male partners, while less than 3% of men were killed by female partners.

Def: Battered women have traditionally been viewed as passive individuals who are helpless in creating alternatives to their abusive situations. Do you agree with this characterization Dr.?

Dr: No absolutely not. My professional work and the current literature on battered women suggest otherwise. Many professionals now realize that battered women are not nearly as passive as they have been previously portrayed. It is much more accurate to describe these women as active agents who are attempting to make their environments safer. I have personally seen how long it takes these women to free themselves from abuse. This is a direct reflection of the inflexibility of their abusers' proneness to domination as well as the lack of support from traditional social institutions rather than evidence of the women's passivity or helplessness. The social institutions to which I refer include police and judicial practitioners, women's shelters, and other such programs. The existence of battered women in our society is the result of existing political and social factors, not personality traits inherent to the women.

Def: Would you please explain to the court what is meant by the term battered woman?

Dr: The term battered woman is commonly used to describe the reality and perspective of women who have suffered severe emotional, psychological and/or

physical harm at the hands of a spouse or intimate partner. This abuse typically occurs over a prolonged period of time.

Def: Can you please describe the existence of violence within these abusive relationships?

Dr: Very often the violence begins gradually such that it is hardly evident. For instance, the cycle might be instigated by the abuser gaining more and more control over the woman's freedom. There is implicit criticism which at a later time becomes more and more explicit. These incidents of criticism, name calling and so on, then escalate to more physical forms of aggression such as shoving, pushing, or slapping. In turn these incidents become more aggressive and more violent. This is referred to as the "cycle of violence" and is characterized by very subtle and relatively unobtrusive behaviours which become increasingly violent and abusive. Very often you hear someone say that they can't imagine why anyone would marry someone who beats them. What they don't understand is that the cycle takes time to develop. Violence in a recently established relationship is quite uncommon. It is much more gradual than that.

Def: What effect does this have on the woman?

Dr: This often has an extremely negative effect on these women. They become increasingly fearful of the violent episodes and they learn to predict very accurately the severity and the timeframe of the ensuing violent episode. Both the overt actions and the more subtle mannerisms of the batterer provide a clear warning to the women that an episode is likely.

Def: You stated earlier that battered women are not nearly as passive as they have been previously portrayed. What exactly do you mean by that Dr.?

Dr: The women in these relationships learn that the pattern of abuse is occurring more frequently and with increasing severity. Very early on in the cycle many women attempt to take action against their abuser in any number of different ways. Research has indicated that most abused women engage in personal strategies as a means to end or reduce the battering. These strategies include attempting to talk the men out of abusing them, exacting promises that the abuse won't happen again, physically avoiding the men or avoiding certain topics of conversation that are potentially upsetting or explosive, running away or hiding from the batterer and defending themselves by covering their head or body during attacks. More actively, most battered women threaten or actually call the police, lawyers, shelters and although it is a less commonly used strategy some women even fight back physically to help defend themselves in times of an attack. Unfortunately however, these personal strategies are sometimes ineffective in reducing the violence that is experienced. In fact, engaging in these strategies can sometimes evoke even greater

anger and abuse from the batterer because the woman is essentially threatening the abuser's control.

Def.: Would you please explain what factors are influential in keeping battered women in these relationships?

Dr: Actually, there exist numerous factors which keep women trapped within these relationships. A few of these elements include the fear of retaliation and more severe abuse if they attempt to leave, are caught in the act or found later. Escalated violence is a very justified concern. In fact, recent reports have indicated that more than 70% of reported incidents of battering occur after the woman has left the relationship. It is not uncommon to hear of women who have managed to escape, but, who continue to experience threats and assaults even years later. Something that may come as a shock is that approximately 48% of women who are murdered by their spouses are not living with that spouse at the time of death. Additional considerations include concerns for the welfare of their children. Many batterers threaten to sue for custody of the children should they attempt to leave the relationship while others threaten to punish the children. In this case the decision to remain may appear safer if the children are not currently being abused. Fear of retaliation against parents, other close relatives or friends is also common. Moreover, we must also understand that these women are often viewed as bearing responsibility for their situation. Society continues to place blame on many victims of crimes and battered women are no exception. These women are typically aware that they will have to confront public sin and social stigma, they may experience a sense of shame for what has happened to them and may additionally feel a sense of failure about the path that their lives have taken. In many cases these women have either chosen or have been forced to give up their jobs and may suffer from a lack of job skills that would be necessary to support themselves and their children should they decide to leave. Additionally we must keep in mind that critical to the decisions of a battered woman is the fear of losing their social and personal identities if they were to leave the marital relationship. Often they have been persuaded to withdraw from their family and friends which in turn leads to the lack of social support necessary to remove themselves from their violent surroundings. This abusive existence is often the extent of these women's social existence. In other words violence has played a fundamental role in formulating who they are as an individual. Thus victims essentially maintain their social identities through the violence that they endure. When they consider leaving they are confronted with the knowledge that they will be giving up their only known existence and for what? Ending the violence often means losing all that is familiar to them and that thought is terrifying... sometimes even more terrifying than the relationship in which they remain. All of these factors are critical for women who remain within these horrifying situations.

Def: You stated earlier Dr., that the existence of women in battering situations is the result of political and social forces. Could you please explain that statement?

Dr: The existence of battered women in our society is fostered by the social and political climate. Although we have made great strides in countering inequality it continues to permeate our existence. For centuries society has fostered acceptance of male dominance and control over women. Men who batter their wives have not yet been adequately shown that this is not acceptable. Although less so than before, many women continue to be economically dependent on their husbands. More and more we are seeing women seeking independence of this situation, but, it continues to exist nonetheless. The social reality of this situation is further fostered by an attitude either of acceptance or denial. Many individuals today continue to believe that men should exert a certain degree of control over women, while others simply refuse to admit that the domination and control of women continues to exist. Battered women are an extreme, yet, prime example of this mindset.

Def: Are there other social factors which aid in keeping these women in these relationships Dr.?

Dr: Absolutely. Some of the most critical determinants of these situations include the inadequacy of police and judicial response and the general lack of social alternatives for battered women. Now when I speak about the inadequacy of police and judicial response I refer not to the individuals who serve as officers of the law, but, rather to the policies on which they act. Current laws require that officers carry out an arrest of abuse perpetrators when they are called to a domestic dispute and the situation warrants an arrest regardless of the wishes of the victim. The problem with mandatory arrest in these situations is that the rights of the victim to determine whether or not to press charges are violated. Even if the victim is concerned about retaliation for having turned in the batterer officers must arrest the accused regardless. After the batterer is arrested and once he serves his jail time, he is released with conditions. The most common condition is that the batterer have no contact with the victim. Now very often these arrests simply fuel the rage and anger that the batterer has for the victim. Once the abuser is released there is no additional protection provided to the victim to ensure that he will not return to harm her further. A verbal warning of the legal consequences of breaching his release is of little concern to a man who seeks revenge against the woman who turned him in. It is not surprising that the return of many of these batterers to the home go unreported by the victims. Often these women are simply too afraid to contact the police because of threats of more extreme violence or death should she do so. When the victim realizes that she may be placing herself in more danger by involving the authorities she may choose to remain silent as a defense measure against future escalation of violence. After even one call for assistance battered women typically stop calling because in many cases adequate protection is simply unrealistic. These women learn all too quickly that police intervention is only a temporary aid, and in fact can lead to an even more violent situation in the wake of any assistance that they are able to provide.

Def: What about shelters for abused women? Why don't more women use these services?

Dr: First of all, the woman must determine when it is safe to make an attempt to leave and very often it is simply never safe. Secondly, shelters are only a temporary solution to the violent environment. One of the problems with shelters is that they are few and far between. In the Ottawa-Carleton region there exists only 5 shelters for the protection of women and children so the opportunity for shelter is limited. At Interval House where I work there is often a waiting period even for crisis situations. If a woman is able to gain access to a shelter the maximum stay is typically less than 6 weeks. After this time the battered woman must find a place to live for herself and her children, obtain a job... which is hard to do when you have no job skills..., and seek legal counsel if necessary. As I stated before, shelters are wonderful places for retreat and safety, but, they are only temporary solutions. I must also add that in these times of economic cutbacks, social services are often the first to be cut in terms of funding. As a result many of the shelters which existed at one time have been forced to close down. Many battered women resort to returning to the violent environment for these very reasons. We must be prepared to provide better alternatives for these women if we expect them to remove themselves from their abuse situations.

Def: Now, Dr. Johnson, are cases of battered women who kill typical of abusive relationships?

Dr: No they're not. The women who resort to killing their abusers are in situations of particularly extreme abuse and violence. We are not talking about women who have experienced a single episode of shoving or name-calling. They have experienced years of continuous psychological, emotional, and physical degradation. As compared to battered women who do not kill, women who resort to killing in self-defense are significantly more likely to have an abuser who becomes intoxicated on a daily basis, engages in recreational drug use, and has made previous threats on her life. Physical attacks are more frequent, the women have sustained more numerous and more severe injuries, and are more often raped and forced into other sexual acts by their abusive partners. As you can see, what we have here are the extreme cases of domestic violence and all of these factors play a role in the final outcome of the abusive relationship.

Def: Could you please explain to the court what might lead a battered woman to kill her husband?

Dr: A battered woman who has killed her husband represents the very extreme of situations. Some women have the resources to leave the abusive relationship, but, many do not. When these women kill it is the result of many factors working

together to produce a horrifying sense of fear in the woman. The physical differences in size and power between a man and a woman is one of the reasons that women often choose a lethal means of self-defense, such as a gun. They are quite simply at a physical disadvantage when they are confronted. This is also why battered women engage in self-defense measures while their partner is not engaging in direct confrontation. So that's one factor. Research has also shown that these women have exhausted attempts at removing themselves from their situation and use an aggressive method of removing themselves only as a final resort. These women have been abused for so long and so viciously that the death of their batterer is their only hope for escape. After existing within the cycle the women become very accurate at predicting the onset of a violent episode as well as the degree of violence that is likely to be used. Another factor is that these men have typically made threats to kill their wives just prior to their death and the women take action to defend themselves. They don't act out of spite or hatred, but, rather out of desperate fear and lack of alternatives. For them it comes down to a decision between "him" or "me" and the act is one of self-preservation. The act is very rational and justified in light of their experiences. These women do not choose to kill... there is no choice involved... they are forced to take lethal action.

Def: As I am sure you are aware Dr., legal cases involving a plea of self-defense require that we establish that the defendant reasonably believed themselves to be in danger at the time of the murder. What can you tell us that would help us to understand the perspective of a battered woman in the final moments with the abuser?

Dr: Battered women live in a state of constant fear, and are constantly seeking relief from the abuse. For women who have experienced successive years of abuse, the violence that is threatened is a matter of imminence. After seeking ways in which to remove themselves from the situation without resorting to violence, they must sometimes resort to lethal actions as a means of self-defense. Women who kill their abusers have most often experienced a violent episode immediately prior to the murder and have been threatened with death at that time. In the midst of intense fear and the knowledge that non-aggressive means of defense are unavailable they resort to the only option left to them... this is to kill their abuser before they themselves are killed. In light of the woman's history of subjection to recurrent and escalating violence, threats of future violence and probable death are viewed by the battered woman as both reasonable and realistic. As a result these concerns are justifiably experienced as both impending and imminent. The fear of violence in an abusive relationship is always imminent.

Def: Dr. Would you please address briefly some additional problems that battered women must face.

Dr: One of the reasons that I came here to testify today is that many people hold inaccurate beliefs about battered women, both of those who kill and those who do not. First of all, battered women exist in all socioeconomic classes. This is not a problem that is restricted to the poverty stricken, the uneducated, or to the mentally ill. Believe it or not, domestic violence is as common among the middle and upper classes as it is among the lower. More importantly however, people must understand that battered women do not remain within relationships with their abusers because they enjoy the abuse or because they are not truly suffering. Many people believe for instance that battered women simply overdramatize or inflate the seriousness of their situation, and that it's really not as bad as they make it out to be. In many, if not most cases however, it really is that bad, and for many it is much worse. Those who do not leave, cannot because the fear of the abuser impedes any attempt to do so, and precludes any other alternatives that society deems appropriate. Finally, and perhaps most critically is no woman deserves to be abused regardless of what she does. Refusing sex, standing up for ones rights, or burning dinner is absolutely no excuse for violence in any relationship. These women absolutely do not deserve to be abused, raped, tortured, or brutalized. Nothing, absolutely nothing warrants treatment like that!

-Insert Testimony of Dr. Johnson- Expert Witness (Social Agency/Case-Specific)

Def: Thank you Dr. No further questions.

Insert-Testimony of Dr. Johnson- Expert Witness (Social Agency/Case-Specific)

Def: Dr., you examined my client Mrs. Richards shortly after she was charged with the murder of her husband. Is that correct?

Dr: Yes it is.

Def: In your professional opinion Dr., what was the mental state of Mrs. Richards at the time you examined her?

Dr: Well, she appeared to be of average intelligence, coherent and capable of logical thought. She manifested some symptoms of depression, anxiety, and displayed relatively minimal affect. It was clearly evident to me that Judy continued to be very much in a state of shock as a result of the events which had transpired. She was, however, extremely concerned about the welfare of her son.

Def: On the basis of your professional experience Dr. Johnson, is Judy Richards a battered woman, and was she forced to suffer abuse at the hands of her husband as the result of a lack of social alternatives to the abusive situation?

Dr: I have interviewed Mrs. Richards at great length and have studied both her medical history and police reports filed both prior to and following the death of her husband. I have no hesitation in stating confidently that she was indeed a battered woman. Judy's inability to escape the abusive relationship was the result of the general inadequacy of various social institutions, economic considerations, in addition to the influence of the numerous other factors that I mentioned earlier.

Def: Given her condition at the time of her husband's death, would you give the court your assessment on the plausibility of her plea?

Dr: After reviewing the patterns of violence between this couple, I believe that Mrs. Richards believed that her husband was going to kill her, and that she had sufficient evidence that he would likely carry out his threat. In addition, given the nature of his violent behaviour and the severity of his attacks, I contend that Mrs. Richards legitimately did what she believed necessary to protect herself from her abusive husband.

Def: Thank you Dr. No further questions.

Testimony of Dr. Johnson- Expert Witness (Social Agency/Case-Explicit)

Def: Dr. Johnson, you have been called as an expert witness on battered women and their experiences on behalf of Mrs. Judy Richards who has been charged with the second degree murder of her husband. Could you please state your credentials for the court.

Dr: I received my license to practice psychology from the University of New Hampshire where I completed extensive investigations of issues pertaining to family violence. For the past three years I have acted as head of the Family Violence Unit at the Ottawa General Hospital, and I am also a consultant for Interval House, a shelter for battered women here in Ottawa.

Def: Could you please describe to the court the severity of the issue of wife assault?

Dr: In terms of the prevalence of domestic assault it is estimated that 1 in every 4 women are physically assaulted by their husbands or boyfriends during their lifetime. Statistics Canada recently released a report which indicated that in 1992 alone more than 14% of women homicide victims were killed by their male partners while less than 3% of men were killed by female partners.

Def: Battered women have traditionally been viewed as passive individuals who are helpless in creating alternatives to their abusive situations. Do you agree with this characterization Dr.?

Dr: No absolutely not. My professional work and the current literature on battered women suggest otherwise. Many professionals now realize that battered women are not nearly as passive as they have been previously portrayed. It is much more accurate to describe these women as active agents who are attempting to make their environments safer. I have personally seen how long it takes these women to free themselves from abuse. This is a direct reflection of their abusers' proneness to domination as well as the lack of support from traditional social institutions rather than evidence of the women's passivity or helplessness. The social institutions to which I refer include police and judicial practitioners, women's shelters, and other such programs. The existence of battered women in our society is the result of existing political and social factors, not personality traits inherent to the women.

Def: Would you please explain to the court what is meant by the term battered woman?

Dr: The term battered woman is used to describe women who have suffered severe emotional, psychological and/or physical harm at the hands of a spouse or intimate partner. This abuse typically occurs over a prolonged period of time. Very often the violence begins gradually such that it is hardly evident. For instance, the cycle might

be instigated by the batterer cautiously gaining more and more control over the woman's freedom. There is implicit criticism which may at a later time become more and more explicit. These incidents of criticism, and name calling then escalate to more physical forms of aggression such as shoving, pushing or slapping incidents. In turn, these incidents become more aggressive and more violent. This is referred to as the cycle of violence in which less overt actions become increasingly violent and abusive. Very often you hear someone say that they can't imagine why anyone would marry someone who beats them. What they don't understand is that the cycle takes time to develop. Violence in a recently established relationship is quite uncommon. It is much more gradual than that. In Judy's case, the cycle was particularly evident. At the beginning of her relationship with her husband there was really no evidence of aggression, violence, or control. Very gradually he became increasingly possessive and controlling. At first Judy independently agreed to move away from her family and friends. As time progressed Peter instigated a discontinuation of ties with those who were closest to her and who could otherwise provide the social support that she would desperately need later. He became possessive and jealous, facts that were confirmed by Judy's own testimony. Peter was unsupportive of his wife seeking employment perhaps out of a concern that she might establish both financial and emotional independence from him. All of these incidents remained relatively implicit and non-confrontational for the first year or so. Over time, however, Peter's psychological manipulation became increasingly overt, to the point that it became physical. You have heard yourselves that the physical abuse began as more minor incidents including shoving, slapping, tripping etc. The resulting injuries were bruises, minor cuts and abrasions. Once this cycle was established the abuse incidents escalated to much more violent abuse and often included severe beatings and rape. Her injuries became much more serious and the violence was occurring more and more frequently. What needs to be understood is that Judy didn't marry someone that she knew was abusive. This problem of her husband's became apparent only after she was deeply involved with, and financially dependent on him.

Def: What effect does this have on the woman?

Dr: This has an extremely negative effect on these women. They become increasingly fearful of the violent episodes and they learn to predict very accurately the severity and the timeframe of the ensuing violent episode. Both the overt actions and the more subtle mannerisms of the batterer provide a clear warning to the women that an episode is likely. In my interviews with Judy, she told me that she was not afraid of Peter at first. Once the cycle of abuse was established she became increasingly aware of what he was capable of. She knew that if he had been out drinking for instance, that a violent episode was inevitable. Most often Peter's abuse would begin with verbal criticisms and name calling. If these events were to occur she knew that physical violence was imminent. Over time the fear became much more constant as she became aware that the beatings were happening more and more frequently and that they were becoming increasingly severe.

Def: You stated earlier that battered women are not nearly as passive as they have been previously viewed. What exactly do you mean by that Dr.?

Dr: The women in these relationships learn that the pattern of abuse is occurring more frequently and with increasing severity. Very early on in the cycle many women attempt to take action against their abuser in any number of different ways. Research has indicated that most abused women engage in personal strategies as a means to end or reduce the battering. These strategies include attempting to talk the men out of abusing them, exacting promises that the abuse won't happen again, physically avoiding the men or avoiding certain topics of conversation that are potentially upsetting or explosive, running away or hiding from the batterer and defending themselves by covering their head or body during attacks. More actively, however, most battered women threaten or actually call the police, lawyers or shelters, and although it is a less commonly used strategy some women even fight back physically to help defend themselves in times of attack. Unfortunately however, these personal strategies are sometimes ineffective in reducing the violence that is experienced. In fact, engaging in these strategies can sometimes evoke greater anger and abuse from the batterer because the woman is essentially threatening the abuser's control. For Judy fighting back physically was out of the question. The first time she attempted to do so resulted in a particularly aggressive and brutal reaction from Peter. Judy's self-defense response served only to further enrage her husband. Judy learnt very quickly that this strategy was not going to protect her and in fact it placed her in more danger. When Judy realized this she resorted to avoiding certain topics of conversation that she knew would set Peter off. She would make attempts to please her husband by doing what she thought he would view as being a good wife. When these strategies failed her, Judy attempted to protect herself by covering her head or stomach to help reduce the trauma inflicted to her body. Judy also attempted to leave the situation only to be caught and subjected to an extremely violent beating, and she contacted the police during another particularly violent incident. As we have heard, however, none of the strategies employed by Judy helped to stop the violence.

Def.: Would you please explain what factors are influential in keeping battered women in these relationships?

Dr: Actually, there exist numerous factors which keep women trapped within these relationships. A few of these elements include the fear of retaliation and more severe abuse if they attempt to leave, are caught in the act or found later. Escalated violence is a very justified concern. In fact, recent reports have indicated that more than 70% of reported incidents of battering occur after the women have left the relationship. It is not uncommon to hear of women who have managed to escape, but, who continue to experience threats and assaults even years later. In partial support of these statistics is the fact that Judy Richards attempted to leave her abusive husband. She packed a bag and waited for a safe time to escape. Before this was able to occur,

Peter found the suitcase packed away in the back of a closet. After finding the bag Judy was subjected to a beating as a way to show her that she would never be able to escape and therefore should never try. He was essentially providing her with a forecast of what would happen if she ever attempted again. In attempting to leave Judy had threatened Peter's control over her and he retaliated by more severe violence and threats to kill her should she ever do so again. Something that may come as a shock is that 48% of women who are murdered by their spouses are not living with the spouse at the time of death, so Judy's concern for her life while within the relationship, as well as if she managed to escape are justified. Additional considerations include concerns for the welfare of the children. Many batterers threaten to sue for custody of the children should they attempt to leave the relationship while others threaten to punish the children. Fear of retaliation against parents, other close relatives or friends is also common. In this case it is not difficult to see that Judy was extremely frightened for her infant son's life and welfare. Although Peter had not been physically abusive with his son in the past Judy could not be sure that if she tried to leave with him, and Peter were to find them that he might try to punish her son as well. Judy was concerned that if she managed to escape that Peter might attempt to gain custody of their son and Judy was unwilling to take that chance. We also know that Peter resented Judy's mother for being unsupportive of the marriage from the beginning. If she were successful in freeing herself it would be reasonable to fear that Peter might blame his mother-in-law and seek revenge against her.

Def: Are there any other influences on the actions of the battered women?

Dr: Yes, absolutely. We must also understand that battered women are often viewed as bearing responsibility for their situation. Society continues to place blame on many victims of crimes and battered women are no exception. These women are typically aware that they will have to confront public sin and social stigma, and may experience a sense of shame for what has happened to them. We heard in Judy's own words how she indeed felt a sense of failure about the path that her life had taken. In many of these cases women have chosen or have been forced to give up their jobs and may suffer from a lack of job skills that would be necessary to support themselves and their children should they decide to leave. Peter remained completely unsupportive of Judy seeking employment. He restricted the time that she could spend away from their home, and the time spent at interviews for potential jobs. Judy therefore had no financial foundation upon which she could depend. Judy was refused access to Peter's accounts and when necessary Judy would be provided with enough money for the weekly groceries and other necessities, but, no more than was required. How could she possibly access enough money to leave without Peter becoming aware and punishing her? She was left with no choice but to remain where she was. Even if she had somehow managed to leave, she had no job skills to help her acquire a new position. She had only worked at a department store prior to getting married and she certainly couldn't support a child on the salary that those

skills would acquire her. Additionally we must keep in mind that critical to the decisions of a battered woman is the fear of losing their social and personal identities if they were to leave the marital relationship. Often they have been encouraged to withdraw from their family and friends which in turn leads to the lack of social support necessary to remove themselves from the violence. This abusive existence is often the extent of these women's social existence. The violence has played a fundamental role in determining who they are as an individual. Thus victims essentially maintain their social identities through the violence that they endure. When they consider leaving they are confronted with the knowledge that they will be giving up their only known existence and for what? Ending the violence often means losing all that is familiar to them and that thought is terrifying... sometimes even more terrifying than the relationship in which they remain. Judy's only known existence was the role of wife and mother. Prior to moving with Peter she had been living at home and had not achieved any sense of true independence. Her identity was completely enmeshed with her role as a family woman. With no friends or family to whom she could turn for support, Judy was trapped in the only existence that she knew. If she left then what would she have? Even in Judy's case the social identity of wife and mother, even if a battered one, was better than nothing. That is it was until her very life became threatened. All of these factors are critical for women who remain within these horrifying situations.

Def: You stated earlier Dr. that the existence of women in battering situations is the result of political and social forces. Could you please explain that statement?

Dr: The existence of battered women in our society is fostered by the social and political climate. Although we have made great strides in countering inequality it continues to permeate our existence. For centuries society has fostered acceptance of male dominance and control over women. Men who batter their wives have not yet been adequately shown that this is not acceptable. Although less so than before, it is not uncommon for women like Judy to continue to be economically dependent on their husbands. More and more we are seeing women seeking independence of this situation, but, it continues to exist nonetheless. The social reality of this situation is further fostered by an attitude either of acceptance or denial. Many individuals today continue to believe that men should exert a certain degree of control over women, while others simply refuse to admit that excessive domination and control over women continues to exist. Battered women are an extreme, yet, prime example of this mindset.

Def: Are there other social factors that aid in keeping these women in these relationships Dr.?

Dr: Absolutely. Some of the most critical determinants of these situations include the inadequacy of police and judicial response and the general lack of social alternatives for battered women. Now when I speak about the inadequacy of police

and judicial response I refer not to the individuals who serve as officers of the law, but, rather to the policies on which they act. Current laws require that officers make an arrest of batterers if they are called to a domestic dispute and the situation warrants an arrest regardless of the wishes of the victim. We saw this very situation in the defendants case. Judy was extremely frightened to press charges against her husband, but, the officers arrested him despite her concerns. The problem with mandatory arrest in such situations is that the rights of the victim to determine whether or not to press charges are violated. Even if the victim is concerned about retaliation for having turned the batterer in officers must arrest the accused regardless. After the batterer is arrested and once he serves his jail time, he is released with conditions. The most common condition is that the batterer have no contact with the victim. Now very often these arrests simply fuel the rage and anger that the batterer has for the victim. You heard Judy describe how Peter returned to the home to continue to beat her and to further threaten her safety. Once Peter was released there was no additional protection provided to Judy to ensure that he would not return to further harm her. A verbal warning of the legal consequences of breaching his release was of little concern to a man who sought revenge against the woman who turned him in. It is not surprising that the return of many of these batterers to the home go unreported by the victims. Judy was simply too afraid to contact the police because of Peter's threats of more serious violence or even death should she do so. When Judy realized that she might be placing herself in more danger by involving the authorities she chose to remain silent as a defense measure against future escalation of violence. After even one call for assistance battered women typically stop calling because in many cases adequate protection is simply unrealistic. The defendant in this case learned all too quickly that police intervention was only a temporary aid, and which could in fact could lead to an even more violent situation in the wake of any assistance that they were able to provide to her.

Def: What about shelters for abused women? Why don't more women use these services?

Dr: First of all, the woman must determine when it is safe to make an attempt to leave and very often it is simply not safe for her to make that attempt. Secondly, shelters are only a temporary solution to the violent environment. One of the problems with shelters is that they are few and far between. In the Ottawa-Carleton region there exists only 5 shelters for the protection of women and children. At Interval House where I work there is a waiting period even for crisis situations. If a woman is able to access a shelter the maximum stay is typically less than 6 weeks. After this time the battered woman must find a place to live for herself and her children, obtain a job... which is hard to do when you have no job skills..., and seek legal counsel if necessary. Finding a place to live and seeking legal representation requires money. Judy had no money on which she could depend, and obtaining a job to support herself with her lack of skills would have been extremely difficult if not impossible. As I stated before, shelters are wonderful places for temporary retreat

and safety, but, they are only short-term solutions. Women like Judy must be able to make it on their own very quickly. I must also add that in these times of economic cutbacks, social services are quite often the first to be cut in terms of funding. As a result many of the shelters that existed at one time have been forced to close down. Many battered women resort to remaining in, or returning to the violent environment for these very reasons. We must be prepared to provide better alternatives for these women if we expect them to remove themselves from their abuse situations and survive independently.

Def: Could you please explain to the court what might lead a battered woman to kill her husband?

Dr: A battered woman who has killed her husband represents the very extreme of situations. Some women have the resources to leave the abusive relationship, but, many do not. When these women kill it is the result of many factors working together to produce a horrifying sense of fear in the woman. The physical differences in size and power between a man and a woman is often one of the reasons that women choose a lethal means of self-defense, such as a gun. They are quite simply at a physical disadvantage when they are confronted. I understand from Judy that her husband Peter was a large and well built man in his late twenties. He was approximately 6 feet tall and weighed 225 pounds. The defendant is approximately 5 foot 6 and 130 pounds. This is also why battered women engage in self-defense measures while their partner is not engaging in direct confrontation. As Judy did, a large minority of battered women take these measures while the abuser is asleep or unsuspecting otherwise the man has the physical advantage. So that's one factor. Research has also shown that women in Judy's situation have typically exhausted attempts at removing themselves from their situation and use an aggressive method of escape only as a final resort. Judy was abused for so long and so viciously that the death of her husband was her only hope for escape, and to defend her own life. After existing within the cycle of violence, she became very accurate at predicting the onset of a violent episode as well as the degree of violence that Peter was likely to use. Another factor is that Peter and other batterers like him have typically made threats to kill their wives just prior to their death and the women take action to defend themselves. Judy was not acting out of spite or hatred, but, rather out of desperate fear and lack of alternatives. Very simply it came down to a decision between "Peter" or "herself" and the final act was one of self-preservation. These final acts are very rational and justified in light of their continual abuse experiences. Judy did not choose to kill... there was no choice involved... she was forced to take lethal action.

Def: Dr. Johnson, is Judy's situation typical of abusive relationships?

Dr: Judy and other women who resort to killing their abusers are in situations of particularly extreme abuse and violence. We are not talking about women who have

experienced a single episode of shoving or name-calling. They have experienced years of continued psychological, emotional and physical degradation. In this particular case we heard evidence of extreme abuse over a period of 3 years. As compared to battered women who do not kill, women who resort to killing in self-defense are significantly more likely to have an abuser who becomes intoxicated on a daily basis, engages in recreational drug use, and has made previous threats on her life. Physical attacks are more frequent, the women have sustained more numerous and more severe injuries, and are more often raped and forced into other sexual acts by their abusive partners. Alcohol was certainly a factor in the abuse that the defendant suffered. Peter Richards became intoxicated prior to most of the abuse incidents, he had made previous threats on Judy's life, he not only battered her, but, also sexually abused her and her injuries were described by Dr. Tast in his testimony as very serious if not life-threatening. As you can see, what we have here are the extreme cases of domestic violence. All of these factors play a role in the final outcome of the abusive relationship.

Def: As I am sure you are aware Dr., legal cases involving a plea of self-defense require that we establish that the defendant reasonably believed themselves to be in danger at the time of the murder. What can you tell us that would help us to understand the perspective of a battered woman in the final moments with the abuser?

Dr: Battered women live in a state of constant fear, and are constantly seeking relief from the abuse. For women who have experienced successive years of abuse, the violence that is threatened is a matter of imminence. After seeking ways in which to remove themselves from the situation without resorting to violence, they must sometimes resort to lethal actions as a means of self-defense. As demonstrated in Judy's situation women who kill their abuser commonly experience a violent episode immediately prior to the murder and have been threatened with death at that time. In the midst of intense fear and the knowledge that a non-aggressive means of defense was unavailable to her she resorted to the only option left to her... this was to kill Peter before she herself was killed. In light of battered women's histories of subjection to recurrent and escalating violence, threats of future violence and probable death are viewed by the battered woman as both reasonable and realistic. As a result these concerns are justifiably experienced as both impending and imminent. The fear of violence in an abusive relationship is always imminent.

Def: Dr. Would you please address briefly some additional problems that battered women must face.

Dr: One of the reasons that I came here to testify today is that many people hold inaccurate beliefs about battered women, both of those who kill and of those who do not. First of all, battered women exist in all socioeconomic classes. This is not a problem that is restricted to the poverty stricken, the uneducated, or to the mentally

ill. Believe it or not, domestic violence is as common among the middle and upper classes as it is among the lower. So even though Peter Richards held a good job and the family was not struggling financially does not by any means suggest that Judy's situation is the exception to the rule. More importantly however, people must understand that women like Judy do not remain within the relationships with their abusers because they enjoy the abuse or because they are not truly suffering. Many might believe for instance that Judy is simply overdramatizing or inflating the seriousness of her situation, and that it really couldn't be as bad as she has made it out to be. In many and certainly in Judy's case it really was that bad, and for others it may even be much worse. For those like Judy who do not leave it is necessary to understand that they cannot because the fear of the abuser impedes any attempt to do so, and precludes any other alternatives that society deems appropriate. Finally, and perhaps most critically no woman deserves to be abused regardless of what she does. Refusing sex, taking a stand for one's rights, or burning dinner is absolutely no excuse for violence in any relationship. Judy did not deserve to be abused, raped, tortured, or brutalized. Nothing warrants treatment like that!

Def: Dr., you examined my client Mrs. Richards shortly after she was charged with the murder of her husband. Is that correct?

Dr: Yes it is.

Def: In your professional opinion Dr., what was the mental state of Mrs. Richards at the time you examined her?

Dr: Well, she appeared to be of average intelligence, coherent and capable of logical thought. She manifested some symptoms of depression, anxiety, and displayed relatively minimal affect. It was clearly evident to me that Judy continued to be very much in a state of shock. She was, however, extremely concerned about the welfare of her son.

Def: On the basis of your professional experience Dr. Johnson, is Judy Richards a battered woman, and was she forced to suffer abuse at the hands of her husband as the result of a lack of social alternatives to the abusive situation?

Dr: I have interviewed Mrs. Richards at great length and have studied both her medical history and police reports filed both prior to and following the death of her husband. I have no hesitation in stating confidently that she was indeed a battered woman. Judy's inability to escape the abusive relationship was the result of the general inadequacy of various social institutions, economic considerations, in addition to the influence of the numerous other factors that I mentioned earlier.

Def: Given her condition at the time of her husband's death, would you give the court your assessment on the plausibility of her plea?

Dr: After reviewing the patterns of violence between this couple, I believe that Mrs. Richards believed that her husband was going to kill her, and that she had sufficient evidence to suggest that he might indeed carry out his threat. In addition, given the nature of his violent behaviour, and the severity of his attacks, I contend that Mrs. Richards legitimately did what she believed necessary to protect herself from her abusive husband.

Def: Thank you Dr. No further questions.

Cross-Examination of Dr. Johnson- Expert Witness (Social Agency/General)

Pro: Dr. Johnson, you have stated that your practice and training has been limited almost exclusively to battered women or victims of family violence. Is that true?

Dr: Yes.

Pro: Would you say Dr. Johnson that you feel a great deal of sympathy for victims of family violence, particularly the women and children who have suffered at the hands of a male batterer?

Dr: Yes. That's fair to say.

Pro: Is it fair to say then that regardless of the particulars of the situation when a woman kills her abusive husband, you personally believe that she should be automatically relieved of criminal responsibility?

Dr: No, I wouldn't say that, I try to be open-minded, but, I think that each case should be assessed on an individual basis.

Pro: Well, that's interesting considering that you have grouped all battered women together under the guise of what you have referred to as being a "battered woman". Now I'm curious Dr., a woman who has been slapped in the face by her boyfriend on one single occasion and claims that she has suffered repercussions from being a battered woman, would you view this woman as a battered woman Dr.?

Dr: If the event triggered significant fear of the abuser, and the victim felt that there were no alternatives to remaining within that relationship where the abuse is likely to continue then yes she would be considered a battered woman. Most of the women to whom we refer as battered women, however, have experienced years of continual violent abuse.

Pro: Now, what if this woman killed her husband after this single episode? Would you testify that this woman was a battered woman?

Dr: That is an extremely unlikely situation. It usually takes much more than a single episode to create the sense of desperation that is required for such an act. And, as I said before I believe that cases should be assessed on a case by case basis. If I felt that sufficient evidence existed to support the claim then I might be inclined to testify as to the research findings on battered women.

Pro: Dr. Johnson you stated that you are a consultant at Interval House, a shelter for battered women. Is that correct?

Dr: Yes.

Pro: Since you began working there have any of the battered women at Interval House been severely beaten and cruelly treated by their partners?

Dr: Yes. Some of them have suffered extremely severe abuse.

Pro: Were any of these women beaten so severely that they sustained broken bones facial lacerations, internal bleeding, or other serious injuries?

Dr: Yes, some of them were certainly beaten that badly.

Pro: Did the husbands of any of these women ever threaten to kill them?

Dr: Yes. It is not uncommon for battering husbands to threaten their wives with death.

Pro: Dr., you have testified that on a weekly basis you have worked with women who were repeatedly and severely beaten by their husbands, have suffered multiple serious injuries, and were threatened with death. Of these women, Dr., how many killed their abuser?

Dr: None.

Pro: In other words, despite being a battered woman, all of these women managed to leave their situation without killing their partners?

Dr: Yes, but, the potential for violence was certainly there in many of these cases. These women were extremely fortunate to have escaped from their situations. Their situations were such that the opportunity for escape was for whatever reason available to them. It is the women who are unable to make use of the services provided by shelters like Interval House who find themselves in circumstances requiring more extreme measures.

Pro: So, what exactly distinguishes between women who do and those who do not kill their abusers then Dr.?

Dr: Typically it is the extent and severity of the abuse that distinguishes between them. These women often exhibit significantly greater degrees of fear of their husbands as a consequence of the particularly violent and extreme abuse that they suffer. Furthermore, some women have greater social support and have more accessible alternatives available to them.

Pro: Are you aware Dr. of cases of abuse where it is the woman who is physically abusive toward the man?

Dr: Yes, I am.

Pro: Now, in your testimony you referred to the socialization of violence and dominance against women in our society as well as economic dependence and lack of job skills as being among the reasons that women remain within these relationships. If that's the case then how do you account for cases of violence against men?

Dr: Well, first of all, the proportion of violence against men by women compared to that against women is very small. Secondly, very often the aggression that is directed toward the man is the result of provocation, or is a means of self-defense. Finally, I believe that I also made mention of the lack of police response and available alternatives for battered women. These same concerns hold true for abused men.

-Insert- Cross Examination of Dr. Johnson- Expert Witness (Social Agency/Case-Specific)- or

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Pro: I get the impression Dr. that you would have us believe that the police and legal system are unwilling to provide adequate assistance to women in crisis. Is it not actually the case Dr. Johnson that these officers go out of their way to provide assistance in times of need, but, that the women choose not to accept the help that is offered?

Dr: I would agree with your statement that many officers do go out of their way to assist, however, their ability to do so is greatly restricted by the law. Even though officers are expected to make arrests in battering situations they may actually be placing the victim in even greater danger. Once an arrest and charges are made there are no legal precautions taken to adequately guard against the abuse that will may be inflicted once the batterer has been released from custody. It is not a matter of the victim choosing not to accept the help that is offered, but, is instead the result of the victim becoming aware of the limitations of that assistance as a means to ensure her safety. Unless the victim is willing to risk her safety to notify the police of his return the officers have no means to monitor the batterers whereabouts. Again, my criticisms are directed at the laws on which officers act , and not at the officers themselves. Most officers do go out of their way to provide assistance to battered women, but, unfortunately there is only so much that the law permits them to do.

Pro: According to your testimony Dr., you seem to be implying that society has ultimately forced many battered women to take the law into their own hands, that we

have metaphorically placed the gun in the hands of the abused. Is that a fair analysis of your testimony Dr. Johnson?

Dr: Well, I wouldn't quite say that we have placed the weapon in their hands, but, yes because we fail to provide adequate safeguards against this violence we have to accept at least partial responsibility for what is happening in these situations. Until we can develop measures to protect these women, we must admit our role in the maintenance of the cycle.

Pro: Essentially in my own mind at least, there seems to be something inherently unstable about a woman who would lash out at another individual in an overtly aggressive and lethal manner.

Dr: No. What you fail to understand is that this is a normal and very rational reaction to a potentially deadly encounter. Gender expectations in our community are such that we don't expect women to react in anything but a passive manner. As you have yourself mistakenly inferred, women who fail to conform to these expectations are typecast as abnormal, dangerous, or mentally ill. These characterizations are erroneous and inaccurate. In extreme situations of terror and threat, the lethal use of force for protection is very reasonable, especially for women.

Pro: No further questions for this witness your honour.

-Insert- Cross-Examination of Dr. Johnson- Expert Witness (Social Agency/Case-Specific)-

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Dr: Well, I wouldn't quite say that we have placed the weapon in their hands, but, yes because we fail to provide adequate safeguards against this violence we have to accept at least partial responsibility for what has happened to Judy. Until we can develop measures to protect women like her, we must admit our role in the maintenance of the cycle.

Pro: Essentially in my own mind at least, there seems to be something inherently unstable about a woman who would lash out at another individual in an overtly aggressive and lethal manner. Mrs. Richards must have been absolutely enraged with vengeance against her husband Peter to cross the line between wanting to scape from him and carrying out a violent act by which to do so.

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Dr: I would agree with your statement that many officers do go out of their way to assist however, their ability to do so is greatly restricted by the law. Even though officers are expected to make arrests in battering situations they may actually be placing the victim in even greater danger as was the situation in the present case. Once the arrest and charges were made the police provided no further precautions to adequately guard against the abuse that was inflicted once Peter was released from custody. It was not a matter of Judy choosing not to accept the help that was offered, but, was instead a matter of Judy becoming aware of the limitations of that assistance as a means to ensure her safety. Unless Judy was willing to risk her safety to notify the police of his return the officers had no means to monitor Peter's whereabouts. Again, my criticisms are directed at the laws on which officers act, and not at the officers themselves. Most officers do go out of their way to provide assistance to battered women, but, unfortunately there is only so much that the law permits them to do.

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Pro: No further questions for this witness your honour.

Closing Statements for the Defense (BWS/General)

Members of the jury. Mrs. Richards has been placed on trial for murder even though she is the victim of a horrible crime. This crime has been documented over and over again by women all over North America, yet, is a crime that has only recently come under public scrutiny. The crime of which I speak is domestic assault, wife abuse, call it what you like. The home has always been considered a place of refuge, a haven of safety where family members can retreat against the often harsh realities of the outside world. But, we have a case here, a very tragic case, where the home was not a refuge, but, instead a place where insult and physical brutality were meted out on a daily basis. The Richards' home was dominated by a cruel and sick man, a man who treated his wife with torment and cruelty rather than love and respect. Peter Richards beat his wife Judy for not getting the groceries home quick enough, or for talking with neighbors, he beat her and hospitalized her with broken bones, he beat her so violently that he caused her to miscarry. Because of his constant and unrelenting cruelty Mrs. Richards is left with emotional and physical scars that may never heal.

When the strain of trying to maintain an existence of rationality and calm for herself and her young son, and when the continuation of her life and that of her son's were threatened she chose to protect herself by taking her abuser's life in an action of self-defense. Did Judy Richards have a reasonable belief that she was in imminent danger of death or serious bodily harm at the time of her husband's death? You bet

she did! Peter told her that he was going to kill her before the next morning and threatened her with the very weapon that he was going to use. Judy Richards told you herself that she believed she was going to die and on the basis of the increasing severity and frequency of her husband's attacks she reacted. So what was Judy Richards' motivation?..... self-preservation plain and simple!

Although Mr. Richards is not on trial here, you must take into account his culpability in this case. If Mr. Richards had been a kind and loving husband would Judy have been forced to defend herself and her son with a rifle? Of course not. All Judy wanted was to lead a life that held meaning for her, a life that was free from violence, torture, and misery. Peter Richards took that life away from her. He repeatedly threatened her life and horrifically waved the gun that he was going to use in front of her. He terrorized her. Judy Richards told you herself that she couldn't continue to live in this way. She stated that she was going to die and that it would be her husband that was going to do it.

Could Judy have gone to the police with her fears? She did go to the police. She did try to get help, and she ended up in the hospital with a broken arm, broken ribs, severe bruising, and facial lacerations that required stitches as the result of being beaten with a knife block and a chair. Now, even if the police could have prevented the attack on her that night, what about the next attempt, and the attempt after that? You heard testimony directly from an officer of the law that the police are only able to do so much in situations such as this. They couldn't provide the protection that Judy required. A couple of nights in a jail cell, and a criminal record seldom makes a

difference to the men who are determined to control the lives of their spouses or girlfriends by fear and threats, and outright violence. In fact, you heard that calling for assistance is very often more dangerous than not doing so. You heard from Judy's own testimony that there was

no indication that Mr. Richards' behaviour was improving. In fact, despite being arrested for battery the frequency and severity of Peter's attacks were increasing. The police could not have helped Judy unless she and her son were provided with around the clock supervision which of course the police could not have provided to them.

-Insert Closing Statements for the Defense (BWS/Case-Specific)- or

-Insert Closing Statements for the Defense (BWS/Case-Explicit)- or

-Insert Closing Statements for the Defense (Social Agency/General)- or

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You have heard from an expert witness that multiple other factors aid in keeping women in their abusive marital relationships where they are forced to suffer, and help to explain why they are sometimes forced to take lethal action against their abuser. You heard the expert describe the sense of being otherwise helpless to gain control over the abuse by any other means, the fear and terror of being brutalized or killed, and fear of retaliation against themselves or others who may attempt to provide assistance. You must also consider the particularly severe and brutal physical violence that is experienced, as well as the degrading sexual abuse. Keep in mind the physical differences in size and power between men and women and the

fact that many women are at a disadvantage when attempting to defend themselves against their aggressor. Consider the presence of weapons which commonly exist within the homes of abusers. Consider the women's overwhelming need to protect their children from harm, the constant threats of violence and death, and the continuous state of increased arousal, anxiety, and fear that they experience.

Also keep in mind Dr. Johnson's description of the escalating cycle of abuse, and the resulting state of helplessness. Consider her testimony regarding the commonly diagnosed Battered Women Syndrome and Post-Traumatic Stress Disorder.

As a juror it is your ultimate responsibility to consider each and every one of these factors when you assess the position of Judy Richards when she was faced with severe violence and threatened death.

After three years of being forced to cope with these very issues, and rather than being killed by her husband, Judy reacted to her situation. During a lull between violent episodes, the one time that Judy could truly protect herself, she made a forced decision. That decision was to stop the fear, the violence, the brutality, the constant danger that overwhelmed she and her son. She used her husband's choice of weapon to defend her own life. Did she use excessive force? When you consider the viciousness of her husband's attacks and the extent of the injuries that she had sustained over their 3 year marriage, she used the force that was necessary to defend herself and her child.

Members of the jury. I ask you not to pity Mrs. Richards. Instead I ask you to place yourself in a brutally violent situation from which there is no escape despite your efforts. If someone stood before you with a gun to your head telling you that you won't see the light of the next day, what might you do? You have attempted to leave, you have attempted to get assistance from the police, but, to no avail. Would you do what was necessary to protect your own life and your child's? I ask you to give Mrs. Richards the justice that has been sadly lacking in her life for more than 3 years. In the name of justice, I ask you to find Judy Richards not-guilty of murder by reason of self-defense.

Insert -Closing Statements for the Defense (BWS/Case-Specific)

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Insert-Closing Statements for the Defense (BWS/Case-Explicit)

You have heard from an expert witness that multiple other factors served to keep Judy in her marital relationship where she was forced to suffer, and why she was ultimately forced to take lethal action against him. You heard the expert describe Judy's sense of being otherwise helpless to gain control over the abuse by any other means, the fear and terror of being brutalized or killed, and fear of retaliation against herself, or others who may attempt to provide assistance. You must also consider the particularly severe and brutal physical violence that was experienced, as well as the degrading sexual abuse. Keep in mind the physical differences in size and power between Judy and her husband Peter and the fact that Judy was at a disadvantage when attempting to defend herself against him. Consider the presence of the weapon which previously existed within Judy's home. Consider Judy's overwhelming need to protect her son from harm, the constant threats of violence and death, and the continuous state of increased arousal, anxiety and fear that they experience. Also keep in mind Dr. Johnson's description of the escalating cycle of abuse, and state of helplessness. Consider her testimony regarding the commonly diagnosed Battered Women Syndrome and Post-Traumatic Stress Disorder both of which were diagnosed in Judy's case.

-Insert- Closing Statements for the Defense (Social Agency/General)

You have heard from an expert witness that multiple other factors aid in keeping these women in their marital relationships where they are forced to suffer, and to explain why they are sometimes forced to take lethal action against their abuser. You heard the expert describe the exhaustive attempts made by abused women to apply personal strategies and alternatives such as attempting to talk the abuser out of abusing them, exacting promises that the abuse won't happen again, avoiding potentially explosive topics of conversation, running and hiding, shielding their head and body from trauma, attempting to fight back in self-defense, calling the police, lawyers, or shelters. You heard the expert discuss the fear and terror of being brutalized or killed, and the fear of retaliation against themselves or others who may attempt to provide assistance. You must consider the particularly severe and brutal physical violence that these women suffer, as well as the degrading sexual abuse. Keep in mind the physical differences in size and power between men and women and the fact that many women are at a disadvantage when attempting to defend themselves against their aggressor. Consider the presence of weapons which commonly exist within the homes of these abusers. Consider their overwhelming need to protect their children from harm, the constant threat of violence and death, and the continuous experience of fear and anxiety. As you formulate your opinion about these women keep in mind the many economic considerations, and lack of job skills which keep these women from being able to escape safely. Remember the

description of the loss of social identity that they will necessarily experience if they do somehow manage to leave. What then? You have heard about the socialization of male dominance, the lack of appropriate social alternatives such as shelters and programs for abused women, and the inadequacy of police and judicial response.

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do somehow manage to leave. What then? You have heard about the socialization of male dominance, the lack of appropriate social alternatives such as shelters and programs for abused women, and the inadequacy of police and judicial response.

As you consider these issues keep in mind Dr. Johnson's assertion that Judy Richards is indeed a battered woman who suffered abuse as the result of this lack of social alternatives.

Insert-Closing Statements for the Defense- (Social Agency/Case-Explicit)

You have heard from an expert witness that multiple other factors served to keep Judy in the marital relationship where she was forced to suffer, and to explain why she was ultimately forced to take lethal action against her husband. You heard the expert describe the exhaustive attempts made by Judy to apply personal strategies and alternatives such as attempting to talk Peter out of abusing her, exacting promises that the abuse wouldn't happen again, avoiding potentially explosive topics of conversation, running and hiding, shielding her head and body from trauma, making attempts to fight back in self-defense, and calling the police. You heard the expert discuss Judy's fear and terror of being brutalized and killed, and the fear of retaliation against herself or others who may have attempted to provide assistance. You must consider the particularly severe and brutal physical violence that Judy suffered, as well as the degrading sexual abuse. Keep in mind the physical differences in size and power between Judy and her husband and the fact that Judy was at a disadvantage when attempting to defend herself against him. Consider the presence of weapons which existed within the Richards' home. Consider Judy's overwhelming need to protect her son from harm, the constant threat of violence and death, and the continuous experience of fear and anxiety. As you formulate your opinion Judy keep in mind the many economic considerations and the lack of job skills which helped to keep Judy from escaping. Remember the description of the loss of social identity that Judy would necessarily experience if she had somehow managed to leave. What

then? You have heard about the socialization of male dominance, the lack of appropriate social alternatives such as shelters and programs for abused women, and the inadequacy of police and judicial response. As you consider these issues keep in mind Dr. Johnson's assertion that Judy Richard is a indeed a battered woman who suffered abuse as the result of this lack of social alternatives.

Closing Statements for the Prosecution

Members of the jury, this case is actually very simple. It is, as my colleague suggests very tragic, but still, it is very simple. Culpable homicide is murder when a person means to take the life of another human being. Mrs. Richards took her husband's life deliberately and consciously. Mrs. Richards did not react automatically in the face of direct physical confrontation. Instead she took the time and had the forethought to plan the shooting as her husband lay in his bed. As Peter Richards lay sleeping she knowingly picked up the gun and pulled the trigger once... then a second time... and then a third. First she shot her husband in the back of the head. This shot killed him. But then she aimed again and shot Peter in the back. And then she aimed again and shot him again in the back. By her own admission, Judy deliberately murdered her husband. You heard her tell you this in her own testimony.

Members of the jury, I want you to remember that revenge does not justify murder. The defense would have you believe that Mrs. Richards killed her husband in self-defense. The law, however, is very clear as to the conditions necessary for the self-defense plea to be tenable. The defendant had to believe that she was in danger of death or serious bodily harm at the time of the incident, to believe that she could not have otherwise prevented herself from this danger, and had to use reasonable force to prevent the assault from occurring. Mrs. Richards killed her husband in his sleep. Members of the jury, a sleeping man cannot put anyone's life in danger, nor is

shooting a sleeping man within the appropriate definition of reasonable force. On the night of the shooting Mrs. Richards had ample time to contact the police to prevent the threat that she believed Mr. Richards posed. She chose not to however. And what about acquiring assistance prior to that night. Mrs. Richards called the police once over the 3 years that she was allegedly being abused...once! When the police showed up at the house that night they arrested Peter Richards and removed him from the family home so that he could no longer pose a danger to Mrs. Richards. Before they left the officers left their names and badge numbers so that Judy Richards could call them directly if her husband breached any of the conditions of his release. The police would have been at the Richards home immediately upon receiving such a call. The officers also left the name and number of a battered women's shelter for Judy Richards to use. Did she ever make any of those calls? No.

Mrs. Richards was also offered assistance by Dr. Tast after he suspected that she was a battered woman. Judy Richards not only disregarded the offer for help, but, lied to the doctor with regard to the cause of her injuries. She chose to stay in her marital relationship with her husband. Judy knowingly and willingly remained with her husband. If the abuse was really as bad as Judy has described she would have found a way to get out! You heard about many women who have been severely abused and injured, but, somehow, some way, they managed to get out and make use of the very services that were offered to Mrs. Richards! You see Mrs. Richards was offered assistance on numerous occasions, but, she chose not to accept it. That was her decision. That was her choice. There were alternatives to killing Peter Richards.

My colleague has tried throughout this trial to shift the blame for Peter Richards' death onto the deceased himself as if he were responsible for his own death. Regardless of what actually transpired over the course of their 3 year marriage, Mrs. Richards had numerous opportunities to leave the marriage. No matter what Mr. Richards did during that time, or on that particular night, he did not deserve to be shot in the back and head three times with a semi-automatic rifle. Mrs. Richards was very angry and extremely upset the evening that she shot her husband. She was in complete control the night that she killed Peter Richards. She knew what she was doing and went ahead and did it. Judy Richards blamed her husband for taking her away from her family and friends and came to hate him for it. But more than that Judy Richards despised her husband for the way he made her feel unloved and unwanted. That is why she picked up that gun and that is why she murdered Peter Richards, not as the prosecution would have you believe as the result of fear and desperation.

The evidence presented at this trial clearly indicates that Mrs. Richards did not kill her husband in self-defense and that she knew exactly what she was doing. The abuse to which Mr. Richards subjected his wife is admittedly unacceptable, but, Mrs. Richards took the law into her own hands. Mrs. Richards had alternatives to the ultimate course of action that she took. Now, even if this had been a clear case of self-defense, the force that was used was indeed excessive. Mrs. Richards shot Peter 3 separate times. Even though he was clearly dead after the first shot she continued to pull that trigger. Officer McCarthy described the condition of that body, his head

was gaping open, and his body and the bed on which he lay was soaked with blood. I suggest to you, members of the jury, that if Mrs. Richards gets away with this murder, then we might as well step back and permit all abused individuals to pull triggers on their alleged abusers simply because they too have been made to feel unloved and disposable.

What we have in this case is the forethought and intent to kill, we have excessive force, and very clearly no immediate danger of death or serious bodily injury. With these facts in mind, and with justice as your mandate, I want you to uphold the law and find Mrs. Richards guilty of murder in the second degree.

Judge's Closing Statements

Members of the jury. You have heard the evidence in this case and have heard the arguments presented by both the prosecuting and defense attorneys. You are now required to come to a decision regarding the tenability of Mrs. Richards' plea of self-defense. To reiterate the charges Mrs. Richards has been charged with the second degree murder of her husband Mr. Peter Richards.

The counsel for the defense maintains that Mrs. Richards is not-guilty by reason of self-defense. They maintain that at the time of her husband's death Mrs. Richards had a reasonable belief that her life was in danger. They have also suggested that because of the constant threat of violence and abuse that Mrs. Richards was subjected to over the course of her 3 year marriage that she was unable to leave the marriage by means of police or other involvement and was ultimately kept imprisoned within the abusive relationship. They contend further, that Judy Richards had only herself to rely on and to protect herself and her son from Peter Richards. The only manner in which to ensure their safety was the manner in which she ultimately engaged.

The prosecution on the other hand maintains that Mrs. Richards is legally culpable in the death of her husband. They maintain that Mrs. Richards did not hold a reasonable belief that she was in danger of death or serious bodily injury since her husband lay sleeping at the time of the incident. In addition, the Crown presented evidence that Mrs. Richards fired three bullets at her husband which they submit was

using excessive force and consequently exceeded the legal plausibility of reasonable force.

As the presiding judge of this court, it is my duty to inform you that in determining your verdict, you, members of the jury will actually have three available options. First, you may find Mrs. Richards guilty as charged. In this case I will impose sentencing as dictated by law. On the other hand, should you deem that the situation warrants the decision you may find Mrs. Richards not-guilty by reason of self-defense. The court has considered the evidence presented before it and has made the determination that a third option may be warranted. That option is to find the defendant guilty of the lesser charge of manslaughter. Now, according to Section 232 (1) culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation. A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for her passion to cool. For the purpose of this section the questions of whether a wrongful act or insult amounted to sudden provocation and whether the accused was deprived of the power of self-control by the provocation that she alleges she received are questions of fact. No one shall be deemed to have given provocation to another by doing anything that he had a legal right to do in order to provide the accused with an excuse for causing death or bodily harm to any human being. Should

you find for the defendant in this circumstance I will again impose sentencing as dictated by law.

It is my duty to remind you that under Section 34 of the Criminal Code of Canada a self-defense plea can be entered if the defendant had a reasonable apprehension of death or serious bodily harm, that they could not have otherwise protected themselves from the attack, and that the amount of force used by the defendant was no more than necessary to repel the attacker. Reasonable force is formally defined as the “degree of force which is not excessive and is appropriate in protecting oneself”.

In other words, if you the jury find that a reasonable person would have held the belief that they were in a situation of death or serious bodily harm, that they could not have otherwise preserved themselves against this threat, and that they had used reasonable force, then you are to find the defendant not-guilty by reason of self-defense. If you find that the act was committed in the heat of passion as the result of sudden provocation then you may find the defendant guilty of manslaughter. On the other hand, if you find that a reasonable person would not have held the belief that they were in danger of death or serious bodily harm, or if you believe that the defendant used unreasonable force, then you are to find the defendant guilty of second degree murder.

The ultimate question in a self-defense case, and one which you the jury must determine based on the evidence presented, is whether the defendant’s belief of danger and her consequent action was indeed reasonable given the circumstances.

All jury members are reminded that in order to find the accused guilty, they must be certain that guilt has been proven beyond a reasonable doubt. Now, reasonable doubt concerning guilt is not merely the possibility of innocence. A reasonable doubt is a doubt that would cause a reasonable person in the graver and more important affairs of life to pause and to hesitate to act upon the truth of the matter. Proof beyond a reasonable doubt is proof to a moral certainty. It is strong enough to convince reasonable people who have examined the evidence before them that no other reasonable conclusion is possible.

If after hearing all of the evidence, you possess reasonable doubt, you must find the accused not-guilty. If, on the other hand, you as a juror believe that guilt has been established beyond a reasonable doubt, that is, you are satisfied to a moral certainty and are convinced, you must find the accused guilty as charged.

Members of the jury... it is important that you review carefully all of the evidence that has been presented. You should think carefully about the testimony that you have heard and you must make judgments as to the credibility of each witness. This is not a simple task and I ask that you consider each piece of evidence before you reach your final decision. I thank you for your time and your patience in this matter. You may now retire and begin your deliberations.

IMAGE EVALUATION TEST TARGET (QA-3)

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