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**Jury Simulation: The Construction of
Victims in the Courtroom**

Cheryl A. Terrance

**A thesis submitted to the Faculty of Graduate Studies and Research in partial
fulfillment of the requirements for the degree of Doctor of Philosophy**

Department of Psychology

Carleton University

Ottawa, Ontario

July 17, 2000

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Acceptance of the thesis:

“Jury Simulation: The Construction of Victims in the Courtroom”

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Abstract

A series of jury simulation studies examined the impact of the clinicalization of victims' experiences in constructing victim status. In Experiment I, mock jurors (N = 184) viewed a simulated trial involving allegations of childhood sexual abuse premised on memories that were only recently recovered. As evidence of psychological impairment may be used by jurors in their evaluation of the legitimacy of the allegations, the complainant's symptomatology was varied to reflect either mild symptoms of psychological damage, symptoms of post-traumatic stress disorder (PTSD) but without the diagnosis, or symptoms of PTSD that were diagnosed as such. While the PTSD diagnosis was not persuasive in enhancing the credibility of the complainant's allegations, jurors were nonetheless swayed by stereotypical notions of victimhood.

Clinical testimony supporting the veracity of recovered memories may have endorsed a standard upon which characteristics associated with the typical victim were evaluated. However, within the context of recovered memories, experimentally-based expert testimony that tends to be critical of recovered memories may also be introduced. Experiment II examined the impact of this form of testimony in terms of its potential to undermine the stereotypical victim that may emerge within a clinically-oriented framework. Mock jurors (N = 335) were exposed to either one of the two frameworks or to both conflicting frameworks. The clarity of the memory recalled could also be a contributing factor in the amount of credence that jurors place in the recovered memory, although this may be affected by the framework offered by the respective experts. The memory relayed by the complainant was varied to reflect either a vivid recall or one that was vague in nature. Expert testimony failed to influence jury or individual juror

verdicts. Characteristics of the memory itself were influential in corroborating the complainant's claims with jurors being most persuaded by the vividly recalled memory. The clinical framework upon which recovered memories are based, appears to promote the pursuit for the authentic victim that may arise from a-priori stereotypical notions of victimhood.

Within the context of battered women who kill, expert testimony that endorses a clinicalized explanation may undermine the reasonableness of her response. Experiment III examined the effect of various forms of expert testimony in a trial involving a battered woman who pled not-guilty by reason of self-defense in the shooting death of her husband. Mock jurors ($N = 433$) were exposed to expert testimony that framed the woman's experiences within the battered woman syndrome (BWS), within the BWS specifying it as a subcategory of PTSD, within a social framework, or a no-expert control condition. In light of criticism levied against the BWS classification in terms of its potential to support a stereotypical victim, the characterization of the defendant was manipulated. Half of the jurors viewed testimony that portrayed the defendant as experiencing either a low or high degree of social isolation. The expert testimony frameworks were equally ineffective relative to the no-expert control condition in supporting the defendant's claim of self-defense. While the different expert testimony frameworks did not differentially support the claims of the woman as a function of how isolated she was, jurors were most likely to rate the defendant not-guilty when she experienced a high degree of social isolation. The implications of this research for evaluations of legitimate victim status within the courtroom are discussed.

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TABLE OF CONTENTS

	Page
Abstract.....	iii
Acknowledgements.....	v
Table of Contents.....	vii
List of Tables	x
List of Appendices	xi
 Introduction	 1
The Construction of Victimhood	4
Victims of Post-Traumatic Stress Disorder	7
 Overview of Research Program	 9
 Recovered Memories in the Courtroom	 15
 EXPERIMENT I	
Recovered Memories and the Determination of Truth	20
The Impact of Abuse.....	21
Purpose.....	24
Method.....	25
Participants.....	25
Materials	25
Questionnaires	30
Procedure	31
Results.....	33
Manipulation Check.....	33
Credibility	35
Private Beliefs.....	36
Individual Juror Verdicts	38
Jury Verdicts	38
Beliefs about Repressed Memories.....	39
Discussion.....	42
 EXPERIMENT II	
Battle of the Experts	45

Purpose.....	54
Method.....	55
Participants.....	55
Materials	56
Questionnaires	59
Procedure	61
Results.....	62
Manipulation Check.....	62
Quality of Complainant's Memories	63
Credibility Ratings.....	64
Private Beliefs.....	67
Individual Juror Verdicts	68
Jury Verdicts	70
Discussion.....	73
 EXPERIMENT III	
Battered Women Who Kill	78
Expert Testimony and Its Relevance to Self-Defense	79
Battered Woman Syndrome.....	83
Social Agency Testimony	93
Purpose.....	96
Method.....	99
Participants.....	99
Materials	99
Questionnaires	104
Procedure	106
Results.....	109
Manipulation Check.....	109
Credibility Ratings.....	116
Private Beliefs.....	119
Individual Juror Verdicts	122
Jury Verdicts	122
Perceptions of the Defendant.....	123
Familiarity with Expert Testimony Frameworks.....	125
Skepticism.....	126
Discussion.....	126

GENERAL DISCUSSION	135
REFERENCES.....	148

LIST OF TABLES

	Page
 EXPERIMENT I	
Table 1: Means $\pm$ S. D. for Manipulation Checks	34
Table 2: Means $\pm$ S. D. for Credibility Ratings	37
Table 3: Frequency Count for Jury Verdicts.....	40
Table 4: Means $\pm$ S. D. for Beliefs about Repressed Memories.....	41
 EXPERIMENT II	
Table 5: Means $\pm$ S. D. for Credibility Ratings	65
Table 6: Means $\pm$ S. D. for Credibility Ratings of Experts.....	66
Table 7: Means $\pm$ S. D. for Memory Clarity x Private Beliefs	69
Table 8: Means $\pm$ S. D. for Expert Framework x Juror Verdicts.....	71
Table 9: Frequency Count for Jury Verdicts.....	72
 EXPERIMENT III	
Table 10: Means $\pm$ S. D. for Manipulation Checks (Expert Testimony Condition)....	110
Table 11: Means $\pm$ S. D. for Manipulation Checks (BWS vs. BWS/PTSD).....	114
Table 12: Means $\pm$ S. D. for Manipulation Checks (Social Isolation).....	115
Table 13: Means $\pm$ S. D. for Credibility Ratings	118
Table 14: Means $\pm$ S. D. for Expert Testimony x Private Beliefs	120
Table 15: Frequency Count for Jury Verdicts.....	124

LIST OF APPENDICES

	Page
Appendix A: Measures for Experiment I.....	169
Appendix B: Transcripts for Experiment I	183
Appendix C: Measures for Experiment II.....	238
Appendix D: Transcripts for Experiment II.....	245
Appendix E: Measures for Experiment III.....	286
Appendix F: Transcripts for Experiment III	300

Jury Simulation: The Construction of Victims in the Courtroom

Only within the past couple of decades has the issue of violence directed toward women and children been identified as a serious social problem (Blume, 1989; Dobash & Dobash, 1992; Walker, 1994). Previously, the fact that women and children were abused, physically, emotionally and/or sexually was often denied or ignored. This denial and minimization was, and in fact remains, especially prominent with respect to violence that takes place within the confines of the home (MacLeod, 1987; Martin, 1983; Ptacek, 1999).

Largely due to a vocal feminist movement, the plight of women and children who have been victimized by male perpetrators has been removed from the private and personal spheres to an increasingly public sphere. Alongside this growing recognition, women's reactions to male violence increasingly came to represent the subject of scientific investigation and research (Stefan, 1994). Such research primarily served to bring women's reactions to male violence to the attention of the "psy" professions and mental health establishment.

In recent years, by far the most popular diagnosis applied to female victims of violence has been post-traumatic stress disorder (PTSD) (Herman, 1992; van der Kolk, 1987). Though providing a framework by which the reactions of women to male violence may be conceptualized, the PTSD discourse has implications beyond that of merely providing a rubric under which a collection of symptoms may be framed. For instance, the mere inclusion of the PTSD diagnosis within the Diagnostic Statistical

Manual of Mental Disorders - IV (DSM-IV; American Psychiatric Association, 1994) highlights the mental disorder status of the diagnosis. By explaining women's experiences of violence in psychiatric terms, reactions to violence are pathologized. As Stefan (1994) notes, the PTSD framework labels women's "rational attempts to struggle and survive and adapt to a violent world as symptoms of a disorder from which they should recover" (p. 1274). Conceptualized as a mental disorder as opposed to representing adaptive strategies, women's reactions came to be diagnosed and transformed into symptoms that could be treated and subsequently cured (Caplan, 1992; Stefan, 1994). In this way, the representation of women's symptoms within the PTSD nomenclature serves to confirm the reaction to the violence as going beyond a normal (and thereby non-pathological) response.

A related implication of such a discourse is the perpetuation of an ideology that purports that real victims may be identified on the basis of their ability to meet a set of diagnostic criteria which would construct them as adequately traumatized. Conversely, women who fail to meet the official PTSD criteria outlined within the DSM-IV have not been sufficiently traumatized to warrant such a diagnosis and therefore, by default, fail to meet the standards of what a real victim should be. In other words, the psychiatric naming of these reactions represents more than a mere description of how some women may respond to violence. Rather, it becomes prescriptive in terms of defining a standard by which a victim may be identified. In this way the official medicalized recognition of a woman's reactions risks delegitimizing victim status if the victim is not sufficiently "pathological" in her response (Stefan, 1994). If this construction of legitimate victim

status is in fact defined by the PTSD framework, this psychiatric naming also has very real implications that go beyond the clinical context. In particular, victims of violence may often find themselves seeking justice in relation to the impact of abuse within a legal context. The courtroom centers around the differentiation between victim and offender/perpetrator. While some may question the validity and reliability of the PTSD construct, the analysis in the present research will only address the implications of this psychiatric naming with respect to the courtroom and its contribution to the construction of victims.

In their determination of guilt or innocence, jurors are required as the fact-finders to evaluate the evidence on hand. Ideally, verdicts are reached solely on the basis of facts (Boyll, 1991). All too often however, a multitude of evidentiary and extralegal factors influence jury decision-making. Indeed, past research has demonstrated that verdicts vary as a function of such factors as the strength and type of evidence, judicial instructions and complainant demeanor and age (Myers, 1979; Spanos, Dubreuil, Coburn & Auger, 1991; Wiener, Habert, Shkodman & Staebler, 1991). Irrespective of these factors, what remains essential to the fact-finding process is the identification of a deserving or legitimate victim. Without the official pronouncement of a victim, benefits presumably derived from being identified as a victim, including vindication and the recognition that harm has been inflicted are jeopardized. To this end, this program of research has as its focus an examination of the elements implicated in the construction of victimhood. More specifically, the role of psychiatric diagnoses in validating the experiences of victimized women, and how expert testimony may establish frameworks

from which the legitimacy of victims experiences may be discerned are explored in terms of their implications for jury decision-making.

The Construction of Victimhood

While the women's movement made it possible to name the types of violence against women and children by creating terms such as battering, sexual harassment and acquaintance rape, the survivors' movement is said to have empowered victims to speak of their experiences (Hansen & Harway, 1993). According to Bass and Thornton (1991), the main strategy adopted by the survivors' movement has been the encouragement of victims' disclosures of trauma. In this way, the silence that victims previously faced because of fear of retaliation or shame was, to some extent, lifted. Speaking out about their victimization not only provided a forum by which the violent acts committed against women and children could come to public awareness, but so too could the consequences that resulted from their victimization be recognized (Alcoff & Gray, 1993).

The reactions to male violence are undeniably varied. A number of variables, including the severity of the violence, the relationship of the perpetrator to the victim, and the duration of the abuse have been associated with the degree to which abuse impacts upon a victim's life (Kendall-Tackett, Williams & Finkelhor, 1993). While some consequences may be relatively short-term, other victims have suffered for years and even decades after their assault has occurred. Further, the impact that trauma may have on the lives of victims varies from severe consequences (e.g. death, suicide) to relatively less severe consequences (e.g. migraines).

In an effort to deal with the consequences of the violence that has been inflicted upon them, female victims of violence have gained entry into an increasingly survivor empowered therapeutic environment. The goal of much of these feminist-oriented therapies has been to empower women (Kitzinger & Perkins, 1993). According to Hawxhurst and Rodekohr (cited in Kramarae & Treichler, 1985, p. 137), empowerment means, “acting as agents or advocates in the process of redefining, experiencing and realizing one’s own power.” With this empowerment a survivor, one who has presumably overcome her painful history, may emerge (Ratican, 1992). In this respect, the construction of a survivor label serves to abandon a victimization paradigm rooted in helplessness. The term “survivor” comes to advocate an identity that is “more respectful of women’s ability to cope and survive” (p.6, Anderson & Gold, 1994).

Though providing a safe forum in which the impact of the violence that has been inflicted upon them may be disclosed, the participation of victims within the psychiatric domain (feminist-oriented or not) perpetuates what some have referred to as the clinicalization or medicalization of women’s reactions to male violence (Caplan, 1992; Chesler, 1972; Kendall, 1991; Riessman, 1983; Stefan, 1994). Under the “clinical gaze” (Foucault, 1973), responses become defined and treated as medical problems (Riessman, 1983). The implications of this clinicalization are twofold.

First, the behaviors and/or emotional reactions are diagnosed as other than normal. Thus, while it is hardly surprising that the experience of violence results in a variety of sometimes severe reactions, the psychiatric naming of these reactions lends itself to a discourse rooted within pathologization. Indeed, as Caplan (1992) notes, prior

to being officially diagnosed as symptoms of a syndrome, reactions to male violence, far from being construed as pathological, were considered reasonable given the woman's experiences. The identification of these reactions within a psy discourse thereby transforms normal reactions into disorders so as to be amenable to therapeutic intervention.

The second implication of the psychiatric naming of women's reactions is the presumption that victims can be identified to the extent that their reactions are consistent with the psychiatric diagnosis. Notions of who the typical victim is become ascribed as the common features of reactions against male violence become categorized and subsequently "clinicalized." The emphasis thereby becomes one of correctly diagnosing the symptoms and applying the appropriate label. The victimization experienced is traumatic only insofar as a woman's reactions fit the official diagnosis. However, these so-called "real" victims risk representing only those who are brought to the attention of the mental health community, are diagnosed with a disorder, and are subsequently treated. The definition of victim becomes restricted to those who fit the label. Consequently, the harm inflicted upon women who are not so labeled risks being discounted.

Despite these difficulties, there is little regard within the mental health establishment for the implications surrounding the reliance on labels to name these reactions (Downs, 1996). Indeed, as Downs (1996) notes, far from being concerned, advocates of victimization syndromes maintain that "the syndrome that follows upon prolonged, repeated trauma needs its own name" (Herman, 1992, p.53-54). In so doing,

the silence and shame often accompanying such trauma may be challenged. To this end, a multitude of victimization syndromes, including the child abuse accommodation syndrome (CAAS), rape trauma syndrome (RTS), battered woman syndrome (BWS), Vietnam war veteran syndrome (VS), hostage syndrome, have been coined and included under the rubric of post-traumatic stress disorder.

Victims of Post-Traumatic Stress Disorder

Following the conceptualization of post-traumatic stress disorder (PTSD) within the Diagnostic and Statistical Manual-III (DSM-III) and subsequent revisions (DSM-III-R, DSM-IV), this category has been relied upon within the psy disciplines as a framework by which the symptoms following traumatic events, particularly violent and/or repeated physical and sexual assault may be understood (Briere & Runtz, 1988; Davidson & Foa, 1993; Dutton, 1992; Goodman, Koss & Russo, 1993; Kilpatrick, Veronen & Best, 1985). Classified as an anxiety disorder, PTSD is described as the development of specific 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” (DSM-IV, 1994, p. 424). Persistent re-experiencing of the traumatic event, persistent avoidance of stimuli that are associated with the trauma, symptoms of increased arousal and numbing of general responsiveness are among the established criteria for a clinical diagnosis of PTSD (DSM-IV, 1994).

The tendency for therapists to interpret psychological difficulties within a PTSD framework has a number of implications especially as it relates to the construction of a

victim. As Friedson (1970) notes, the application of diagnostic categories transforms both the meaning and interpretation of an experience. For instance, when an incoherent and combative individual is diagnosed as “paranoid schizophrenic,” the label serves to provide some explanation and understanding for the chaotic behavior (Franklin, 1987). The framing of a set of reactions within the PTSD framework thereby enables society to regard as sensible any behaviors that would otherwise be characterized as unacceptable. Likewise, the interpretation of an abuse victim’s reactions to their traumatic experience within a PTSD framework may help a victim understand her symptoms as typical responses to a traumatic experience (Waites, 1993). In this way, a victim may be reassured that she is not alone in her reactions. The use of psychological language therefore represents a way of naming experiences and describing a reality (Kitzinger & Perkins, 1993).

According to Stone (1993), no diagnosis has had a more pervasive impact within the legal system than PTSD. Despite its admissibility within the legal setting, the probative value of the diagnosis remains questionable. Indeed, any number of traumas may be associated with the symptoms documented within the diagnostic category of PTSD. Likewise, not all individuals exposed to trauma experience the symptoms listed under the PTSD diagnosis. Nonetheless, the fact that symptomatology and diagnostic criteria have been inextricably linked to victims’ abuse, means that the application of the PTSD diagnosis within the courtroom has contributed to the construction of legitimate victimhood. For instance, Raifman (1983) notes that the PTSD diagnosis has provided a sense of credibility to a variety of victims who come before the courts either as

defendant's or complainant's. By way of illustration, Raifman (1983) points to Vietnam Veterans who have been found not guilty in a number of criminal cases due to their diagnosis of PTSD. Moreover, there are numerous individuals who have successfully brought civil cases forward based on their PTSD reactions which were supposedly linked to any number of traumas including sexual harassment, on-the-job humiliation, and involvement in car accidents (Goodman-Delahunty & Foote, 1995; Stone, 1993).

Clearly, the introduction of the PTSD diagnosis has the potential to transform the individual who bears the label. In legal cases, where the construction of an individual as a real and deserving victim becomes pivotal, the introduction of PTSD may become increasingly important. Indeed, under the guise of medical objectivity, the degree of suffering is legitimized within a PTSD discourse that establishes psychological damage. At the same time, a standard of victimhood becomes ascribed allowing for the identification of real victims.

OVERVIEW OF RESEARCH PROGRAM

For women facing the criminal justice system, their construction as legitimate victims is relevant in a number of cases. For instance, in cases involving allegations of rape or sexual harassment, to the extent that women conform to cultural expectations of victimhood they are accorded status as "convincing victims" and their claims afforded legitimacy (Lamb, 1999b). However, in cases involving allegations premised on recovered memories of abuse that were "repressed" or otherwise unavailable from conscious memory and cases in which battered women kill their abusive spouses, the status of victim has implications beyond that of merely establishing that harm has been

inflicted. While these situations are seemingly disparate, what becomes pivotal to each woman's success in both scenarios is her ability not only to convey that she is a legitimate victim in order to convince jurors of the abuse, but also that she is a victim who has been so inflicted so as to convince jurors that her own unusual behavior (i.e., repression, use of lethal force) is justified. In this regard, women in both situations may rely on psychiatric expertise and diagnosis as a means by which their victim status may be constructed. That is, to the extent that a woman is sufficiently victimized (as determined by the clinical diagnosis of such), an air of credibility may be lent to her claims of sexual abuse that she is only now disclosing or her justification for the use of lethal force.

The impact of this clinicalization of victimization, whereby traumatic reactions become officially diagnosed and subsequently syndromized has yet to be assessed in terms of its influence on the manner in which jurors evaluate evidence. Its increasing use in court cases suggests that the reliance on a psy discourse as a means by which reactions to violence are framed, may serve to validate in the minds of the jury the reaction as going beyond what is considered normal, and thereby corroborate claims of victimization. In this way, the medicalization of women's reactions toward male violence represents a means by which legitimate victims are identified. In light of the legal implications involved, it is important to ascertain the potential that this medicalized framework has in terms of constructing and defining legitimate victims with legitimate accusations or defenses. In this regard, the present program of research involved a series

of studies that were aimed at discerning the constructs that may be employed by jurors in their determination of legitimate victim status.

Because recovered memories often lack corroborating evidence, elements that may be considered by jurors need to be delineated in terms of their implications for determining legitimate accusations. While no memory of a traumatic event such as sexual abuse may be expressed by a client, incest-resolution therapists have argued that the existence of childhood sexual abuse is often substantiated through the display of various presenting symptoms such as low self-esteem, depression and sexual dysfunction (Blume, 1989; Courtois, 1988; Fredrickson, 1992). When provided with expert testimony supporting the veracity of recovered memories, the manifestation of symptomatology then serves to justify a framework whereby the possibility of a history of childhood sexual abuse may be explored.

Given the traumatic nature of childhood sexual abuse, and its presumed impact on memory as presented by an expert, jurors may be persuaded by the presentation of symptoms on the part of the complainant. In line with this, the designation of a legitimate victim may be determined by the extent to which the victim's functioning as an adult is impaired. To investigate this issue, the first study examined the extent to which symptoms may be used as diagnostic sequelae proving childhood sexual abuse has occurred. Using a jury simulation paradigm, participants watched a criminal trial involving allegations of childhood sexual abuse that were premised on recovered memories that resurfaced during therapy. With no objective evidence of abuse, the influence of the increasing severity of symptoms displayed by the complainant on jurors'

decision-making was examined. Moreover, as symptoms of abuse have increasingly been framed within a PTSD diagnosis, the impact of this psychiatric labeling was explored in terms of its potential to legitimize claims of abuse (Terrance & Ramikisoonsingh, 1998).

The introduction of expert testimony represents a mechanism through which the psychiatric understanding of a victim's response may be conveyed to the jury. Within the context of recovered memories, expert testimony can account for the delay in the accusation of abuse. By describing the impact of trauma on memory, an expert can lend support to the veracity of recovered memories. Given the lack of a definitive way by which the veracity of a memory may be established, expert testimony may provide a basis from which the legitimacy of the accusations are assessed. Consequently, clinically-based testimony may be effective to the extent to which the victim's version of events are consistent with the stereotype that emerges within this framework. Under the clinical perspective, repression experts suggest that victims can have a "playback" memory when accessed. Therefore the real victim may be perceived as one who has a detailed recollection of the events. Indeed, research gleaned from eyewitness studies support the contention that individuals often rely on factors (such as recall of peripheral details) that are not diagnostic of witness accuracy (Penrod, Fulero & Cutler, 1995) in their evaluation of "truth."

Given the debate within the scientific community surrounding recovered memories, expert testimony also may be introduced that undermines the prototypical victim that arises within this clinical-based discourse. Contrary to the clinical stereotype, experimental research supports the contention that vivid and detailed memory recall is

not typical of how memory works. Rather, as details tend to fade over time, memory for events long past are more likely to be vague (Lindsay & Read, 1994). The implications of this critical framework in terms of undermining the stereotype of a supposed typical victim was examined in a second jury simulation study involving allegations of sexual abuse premised on recovered memories (Terrance & Davis, 1997). In order to assess whether participants would be more swayed by a victim who is consistent with a standard derived from a clinical stereotype, the clarity by which her memory of abuse was relayed was varied to reflect either a vivid and detailed recall, or one that was vague and hazy in nature.

Another instance in which stereotypes regarding victim-status may play a role in juror decision making is in cases involving battered women who kill. Within this context, the pathologization of a woman's response to male violence may be particularly pivotal. Interestingly, as there has been an increasing tendency to move beyond excuse-driven defenses such as insanity, to offer instead justification-based pleas such as self-defense in cases involving battered women, it is critical that the woman be perceived as reasonable and justified in her claim. Framing a battered woman's actions within a psy discourse risks detracting from the applicability of a self-defense plea. Accordingly, the final study examined jurors' reactions to a case involving a battered woman charged with the second degree murder of her abusive spouse.

Similar to recovered memory cases, in cases involving battered women who kill their abusive partners, an expert is introduced in order to situate the woman's responses within an often explicitly clinical discourse (specifically the battered woman syndrome)

that is tied into social stereotypes of what an abused woman must look like. This framing of a woman's experiences may serve to pathologize her reactions to the violence that has been inflicted upon her. Furthermore, implicit within this form of expert testimony is the provision of a standard against which a battered woman's version of events may be compared. Consequently, her experiences as a battered woman may be dismissed when they are not in line with the stereotype conveyed. Indeed, the reliance on the BWS framework has been subject to staunch criticism by feminists because of its potential to pathologize and stereotype battered women. Ironically, the categorization of BWS as a PTSD within the courtroom may merely bolster the portrayal of battered women as pathologized, and thus negate their claims of self-defense. This representation of battered women's experiences is likely to be least consistent with a defense that promotes the reasonableness of a woman's use of lethal force. Similarly, by advancing a PTSD framework, this testimony may further endorse a stereotypical version of battered women. Consequently, women whose experiences are not consistent with the standard promoted by the stereotype, risk having their experiences invalidated.

It has been argued that framing the experiences of battered women within a social framework, whereby her actions are understood in light of the social realities which face her, a woman's use of lethal force may be considered rational and justified. As well, by focusing less on the psychological profile of battered woman, social framework testimony may not support a pathologized characterization of battered women. Likewise, the tendency to direct attention from the battered woman's characteristics may encourage a less stereotypical portrayal of battered women. In turn, this may allow for

consideration of the experiences of female victims of domestic abuse who fail to conform to a stereotypical version of battered women.

These studies represent an attempt to understand the impact of a psy discourse as it is currently applied to women within the courtroom. The psychiatric naming of women's responses to male violence has implications rarely considered when such terms are applied. Indeed, therapists and clinicians (feminist and non-feminist alike) have applied diagnostic categories in an attempt to understand and conceptualize various pathologies. The tendency to frame women's responses within a discourse rooted within pathologization risks undermining the normality of these reactions given the context from which they have arisen. This may be particularly problematic when more normalized versions for understanding women's reactions are available, and may be more realistic. Moreover, this discourse risks perpetuating a framework upon which victimhood may be assessed. In other words, a standard risks emerging that defines what real victims must look like. By identifying how the meaning of victimhood is constructed within the courtroom, this research has implications for exploring alternatives by which women's experiences of male violence may be framed.

Recovered Memories in the Courtroom

There is little doubt that the sexual abuse of children constitutes a serious and heinous crime. Criminal and civil actions directed toward perpetrators thus represent a legitimate legal response. More recently, adult survivors of childhood sexual abuse have come forward within the legal forum to accuse their alleged perpetrators years and even decades after the abuse ended. While a variety of reasons may have precluded earlier

pursuit of legal action, including shame and fear of retaliation, by far the most controversial involves accusations premised on so-called recovered memories. Such is the case when adult survivors are allegedly completely unaware of any prior history of childhood sexual abuse and only recently recover such memories.

In Canada, irrespective of the amount of time that has elapsed, there exist no legal restrictions with respect to the pursuit of criminal actions against sexual abuse perpetrators (Slovenko, 1993). However, in the United States, if an adult survivor makes the decision to file a civil or criminal charge against the abuser, a major obstacle arises - the statute of limitations (Ernsdorff & Loftus, 1993). According to the U.S. Supreme Court, criminal statutes of limitations “normally begin to run when the crime is complete” (Ernsdorff & Loftus, 1993, p. 148). The statute of limitations, in recognition of the fact that trial evidence becomes increasingly difficult to obtain, was traditionally enacted if more than a certain number of years elapsed since the criminal offense allegedly took place. In this way, the statute of limitations is said to “protect the integrity of legal proceedings as well as defendants by ensuring that legal actions cannot be brought for events which occurred long in the past” (Bulkley & Horwitz, 1994, p.68).

Some courts within the United States have allowed for the tolling of criminal statutes of limitations in specific circumstances (e.g., Nicolette v. Carey, 1990; Johnson v. Johnson, 1988; Phillips v. Johnson, 1992; Petersen v. Bruen, 1990, as cited in Bulkley & Horwitz, 1994). Typically the statute is tolled in cases where the harm suffered by the victim does not become apparent or manifest itself until years after the sexually abusive acts took place (Bulkley & Horwitz, 1994). The premise upon which many U.S. courts

tend to operate is that it is possible, due to the circumstances of abuse which may result in the repression or otherwise burial of the memory, that adult victims of childhood sexual abuse may not discover the injury or the cause of any injuries within the statutory time period. The cause of any physical or psychological problems therefore remains illusive until the memory is recovered.

Ironically however, within the U.S. court system, a woman's failure to disclose sexual abuse due to shame, fear and other such societal pressure, often precludes her later pursuit of court action if she fails to bring her claim forth prior to the statute of limitations being enacted (i.e., E. W. v. D. C. H., 1988; Basille v. Covenant House, 1991, as cited in Bulkley & Horowitz, 1994). Only when framed within the psychiatric discourse embedded within repression or otherwise clinical-based mechanisms, is a woman afforded the opportunity to seek justice.

Given the period of time that may have elapsed between the crime and the allegation of sexual abuse based on recovered memories, there is often a notable absence of corroborating physical evidence or witness statements (Loftus & Rosenwald, 1995). As a result, jurors, as triers of fact are left to surmise the authenticity of an allegation based on little more than an examination and evaluation of the legitimacy of the stories relayed by the accuser and alleged perpetrator and a determination of the validity of these stories (Bulkley & Horwitz 1994; Ernsdorff & Loftus, 1993; Wakefield & Underwager, 1992). The basis for jury decisions in such cases is difficult to ascertain in light of the small number of cases that have been investigated and the numerous factors that might ultimately influence these decisions. Preliminary research in the field has undertaken

exploratory investigations of real and simulated juror reactions and final decisions in various types of recovered memory cases.

Of the civil cases that have gone to trial, a few have ended in verdicts for the defense (Bannon, 1994; Loftus, 1993). More frequently however, juries have made high awards to the adult victims of childhood incest. For instance, one of the largest amount of damages awarded by a jury in a recovered memory case was \$5.15 million to an Ohio woman who accused her uncle of incest. Other examples of jury awards include a California jury in March, 1993, which awarded \$500,000 in damages to Rebekah Howland as compensation for her father's ten years of alleged sex crimes (Bannon, 1994, Loftus, 1993).

The first criminal conviction based on a recovered memory occurred in 1990 when a jury convicted George Franklin of raping and murdering his daughter's eight-year-old friend 20 years earlier. The jury believed Franklin's daughter, whose memory of witnessing the murder had been allegedly repressed for more than 20 years. Interestingly, the evidence relied upon in Franklin's conviction, supposedly available only to an eyewitness (namely his daughter), was actually public information made available at the time the murder took place (Loftus & Ketcham, 1994). Accordingly, Franklin's conviction was later overturned. At the same time however, there exist numerous successful convictions of defendants based largely on the recovered memories of their accusers (Spiegel & Schefflin, 1994).

As judicial decisions and juror deliberations are inaccessible to researchers, the elements contributing to the criminal convictions of defendants remain elusive.

Therefore, juror simulations have provided the basis for the exploration of juror reactions to recovered memory cases. For example, in a series of juror simulation studies, mock jurors learned about a legal case that arose out of allegations of sexual assault (Loftus, Weingardt, & Hoffman, 1993). In one study, the victim accused her father of raping her on several occasions when she was approximately 10 years-old. She alleged having repressed the memories of her abuse for ten years, and filed charges against her father a year after the memory was recovered through therapy. The defense denied the allegations, and claimed that the client was influenced by a therapist who only suspected that abuse had occurred and continued therapy involving highly suggestive techniques. In a related study, participants were exposed to an identical scenario with the exception that the memory of abuse was never repressed. Rather, participants were informed that the defendant had never told anyone until age 20, when she went into therapy and told her therapist. While participants tended to be slightly more skeptical in the repressed memory case, the majority of participants believed that the claims in both scenarios were true and accurate.

In a similarly conducted study, Golding, Sego, Sanchez and Hasemann (1995) investigated how mock jurors would rate the believability of a claim of childhood sexual abuse that was based on repressed memories. Irrespective of the type of trial (civil vs. criminal), participants who read the transcripts in the repressed memory scenarios believed to some extent in the alleged victim's claims of abuse. Likewise, mock jurors in Clark and Nightingale's (1997) study failed to distinguish between the repressed and non-repressed testimony of a witness who either claimed to have recovered a memory of

abuse that occurred 10 years previously or reported that she kept the event a secret for the same length of time.

Evidence gleaned from both real-life cases and jury simulation studies suggests that individuals are not altogether dismissing the plausibility of these allegations thereby reflecting a belief in psychiatric based accounts concerning the impact of trauma. In light of the tendency of the court to rely on clinical-based accounts to explain a woman's delay in reporting her victimization, this endorsement of recovered memories may have ramifications in terms of promoting a construction of victimhood that advances a characterization of a convincing victim. Given the continued pursuit of recovered memory cases within the courtroom, it may be necessary for the victim to construct her experiences in such a way that they are congruent with notions of an authentic victim. The identification of elements that support the confidence placed in psychiatric explanations concerning recovered memories would provide meaningful insight into the evidence jurors may use to substantiate allegations of abuse.

RECOVERED MEMORIES AND THE DETERMINATION OF TRUTH

In light of the tendency for jurors to accept the plausibility of recovered memories, and given the frequent lack of corroborating evidence, elements that contribute to the construction of an authentic victim need to be delineated. Despite the possibility that a woman's delay in reporting allegations of abuse need not be explained in light of a clinical-based discourse, courts have, by admitting such claims within the courtroom, implicitly endorsed the viability of recovered memories. As a discourse rooted within a psychiatric explanation has been used to substantiate the possibility that

memories for traumatic events may be removed from conscious awareness only to resurface intact years and even decades later, evidence that lends support to this representation may be particularly salient for jurors in their decision making process.

More specific guidance as to what variables may be implicated in this construction, may be gleaned from incest resolution therapists who oftentimes, irrespective of the availability of a memory or physical evidence, maintain that memories recovered by their clients represent accurate representations of previous incidents of abuse (Bass & Davis, 1988; Courtois, 1988; Herman, Russell & Trocki, 1986). One of the prominent factors implicated in a therapist's belief as to the occurrence of childhood sexual abuse involves the presenting symptomatology of their client. In their fact-finding process, jurors may as well come to view symptoms as necessarily arising from histories of abuse.

The Impact of Abuse

The view that certain symptoms are diagnostic of sexual abuse is firmly held by many therapists. Thus, even when no memory of the abuse is evident, a range of psychological symptoms, including low self-esteem, and depression may, according to some therapists, be diagnostic of sexual abuse (Blume, 1989; Courtois, 1991; Fredrickson, 1992). The impression created is such that symptoms have "a causal relationship with childhood sexual abuse" (Ofshe & Watters, 1994, p.70).

Studies indicate that sexual abuse commonly causes a number of serious short-term emotional problems as well as long-term effects in adulthood. According to one author, sexual abuse is associated not only with persistent psychological distress, but

represents a risk factor for serious mental health problems in adults (Berliner, 1991).

The most commonly noted symptomatology includes low self-esteem, sexual adjustment problems, alcohol and drug dependence, anxiety and depression (Poole, Lindsay, Memon & Bull, 1995).

The diagnostic entity of post-traumatic stress disorder represents a framework for integrating the seemingly disparate symptoms displayed by some victims of abuse (Goodman, Koss & Russo, 1993; McCann & Pearlman, 1990). Increasingly, clinicians have relied on the PTSD framework by which the traumatic reactions of victims of abuse may be conceptualized (Goodwin, 1985; Herman, 1992; van der Kolk, 1987). Indeed, it has been posited by some that PTSD is universal, or nearly universal in sexually victimized children and adults (Herman, 1992; Lindberg & Distad, 1985).

By virtue of its inclusion within the DSM-IV, the PTSD construct, represented as a psychiatric diagnostic entity, may arguably encourage the identification of legitimate victims. Essentially, such a diagnosis serves to document evidence of symptoms that go beyond a normal range. For example, previous research supports the contention that public perceptions of mental illness are influenced by diagnostic labels (Arkur & Eker, 1994; Nieradzik & Cochrane, 1985). For instance, Arkur and Ekers (1994), found that research participants showed significantly more recognition of mental illness when accompanied by a psychiatric label. Such a finding suggests that psychiatric labels may serve to validate the existence of mental illness.

In the absence of corroborating evidence, the introduction of a PTSD framework may represent a central feature of the jury decision-making process. The victim that may

emerge from this framework is one who has been sufficiently victimized so as to necessitate a diagnosis. Just as the diagnosis of PTSD has been successfully used to mitigate a defendant's culpability, so too may the presentation of this diagnosis serve to bolster and lend credibility to the claims of an abusive history (Stone, 1993; Monahan & Walker, 1990). Faced with an officially defined set of symptoms, jurors are left to surmise the event that gave rise to such a pathology.

As Downs (1996) notes, the increasing tendency to rely on psychiatric discourse with respect to defining reactions can as well encourage stereotypes of the right kind of victim. By virtue of representing the impact of trauma within the clinical discourse of recovered memories, a standard of victimhood may be established. Thus, to the extent that a woman displays an increasing fit with a characterization of a victim who has been sufficiently traumatized so as to have repressed memories of abuse, her claims may be accorded legitimacy. This standard then may preclude claims of victimization by women who are not likewise traumatized.

Clearly, corroboration of adult claims of childhood sexual abuse is difficult to establish. However, the goal within incest-resolution therapies is not necessarily one of determining the authenticity of the claims (Courtois, 1991). Rather, the issue may be one of appreciating how the client construes her reality as opposed to establishing the historical truth of the events (Bonanno, 1990; Ganaway, 1989). Within the courtroom, the determination of valid allegations is paramount to the fact-finding process. The manifestation of symptoms represents a potential indication of a stressor that is presumably to blame.

Purpose

Given the frequent lack of corroborating evidence in recovered memory cases, the characterization of the complainant as a legitimate victim is likely to be particularly salient to jurors. Accordingly, to the extent that the accuser becomes constructed as a real victim the accusations against the alleged perpetrator are likely to be bolstered. The purpose of Experiment I was to examine the contribution of the PTSD framework in terms of defining a legitimate victim of childhood sexual assault in the context of an allegation based on a recovered memory.

Consistent with the tendency to diagnose women's reactions within a psychiatric framework, in the present study, the accuser's reactions were framed within the post-traumatic stress disorder discourse. Displaying the classical symptoms of the diagnosis (e.g. depression, anxiety, recurrent nightmares, difficulty concentrating, intrusive memories of the event), the alleged victim was diagnosed by her therapist as suffering from PTSD. The inclusion of a diagnostic label was expected to bolster, in the minds of the jury, the authenticity of the allegation and thus increase the number of guilty verdicts being rendered.

As the PTSD label itself may contribute to the construction of legitimate victim status, a condition was included whereby no label was attached to the alleged victim. Her symptoms however were identical in all respects to the PTSD diagnosis condition. As it may be the case that the presentation of symptoms in and of themselves are relied upon by jurors in their assessment of fact, a condition conveying relatively mild symptoms (e.g. depression, anxiety) was included. In this scenario therefore, the

woman's reactions did not fit with arguably stereotypical notions of how an individual responds to trauma.

Method

Participants

A total of 184 participants (90 males and 94 females) were drawn from first year psychology students at Carleton University. They volunteered to participate in exchange for course credit as jurors in a simulated criminal trial that "may involve allegations of childhood sexual abuse and/or physical abuse" (Appendix A). Participants ranged in age from 18 to 53 years ($M = 21.82$). Juries ($N = 30$) consisted of 5-8 members. Each jury was composed of both men and women.

Materials

Videotapes. Juries viewed one of three variations of a videotape of a mock trial in which a father was charged with the sexual abuse of his daughter when she was under 14 years of age¹. Each of the videotapes was approximately 90 minutes in duration. Actors appearing in the videotapes were volunteers selected from acquaintances of the researcher. The script (see Appendix B) was drawn from legal cases and case studies involving recovered memories of sexual abuse as well as previous jury simulation studies (Bass & Davis, 1988; Gabora, 1990; R. v. E. F. H., 1994; R. v. Norman, 1993; T. K. S. v. E. B. S., 1992). From this literature, elements of the abuse itself, the portrayal of the perpetrator as the father, and the characteristics of the testimony of the expert concerning

¹ This study was conducted within the context of a larger study that was interested in abuse type (specifically ritual vs. non-ritual abuse). Only the elements relevant to the present study will be discussed.

the impact of trauma on memory and therapist were derived. The trial proceedings paralleled those of an actual trial and included, (a) opening statements from the judge, prosecutor and defense, (b) presentation of the witnesses for the prosecution and defense (including the cross-examination of each witness), (c) closing statements by the defense and prosecution, and (d) the judge's charge.

The witnesses for the prosecution included, (a) a friend of the complainant who testified that Jill (the complainant) had been having emotional difficulties that seemed to subside since she was in therapy, (b) the complainant's therapist, (c) Jill (the complainant) and, (d) a clinical expert who testified concerning the validity of repressed memories for traumatic events. The witnesses for the defense were, (a) the defendant (Mr. Harris, father) and, (b) Mrs. Harris (mother).

Only the content and presentation of the testimony for the therapist, defendant and closing arguments of both lawyers differed between conditions to reflect symptomatology manipulations (mild symptoms vs. PTSD symptoms no diagnosis vs. PTSD diagnosis). Testimony from all other witnesses remained constant across conditions.

The basic case facts were as follows: The trial involved a 25-year old woman who alleged that her father, Mr. Harris, sexually assaulted her when she was under 14 years of age. She claimed to have had repressed the memories, which resurfaced 12 years later after having participated in therapy sessions with Ms. Barr. The prosecuting attorney argued that the trauma due to sexual assaults perpetrated against her by her own father, caused the complainant to repress her memories for the events. The defense

attorney countered that the complainant's recovered memories of sexual abuse came only under the guidance and suggestions of her therapist.

A friend of the complainant's, Brenda, testified that the complainant had only mentioned the alleged abuse at the hands of her father since she entered therapy, and that Jill seemed to be better since undergoing therapy.

Jill's therapist, Ms. Barr, described the difficulties that prompted Jill to see her, and how, after attending workshops dealing with repressed memories, she believed that Jill was similar to many of her other clients in that she also was repressing memories of sexual abuse. She stated that she told the complainant not to force or try to dig for any memories. Rather, she suggested that she look at pictures of her childhood from the ages of 10 to 12 as an aid in triggering her memories. Having reported flashbacks, the therapist suggested that Jill participate in group therapy. According to the therapist, the complainant recalled more memories over the course of therapy.

The complainant testified about the alleged incidents of abuse, and the problems that she had experienced, presumably as a result of being sexually abused. As well, the complainant identified her father as the alleged perpetrator of the abuse. Under cross-examination, the complainant testified that she had no memory of the abuse for over 10 years until she went into therapy, and that there were other events during her childhood that she still could not remember. She stated that while there was no physical evidence that she was abused, she believed her recovered memories were authentic.

A clinical psychologist was used as an expert witness for the prosecution. The expert was supportive of the concept of repression and the veracity of memories

recovered, and stated that the human mind is akin to a videotape recorder. More specifically, he argued that almost everything that we experience is stored away in the brain. The problem, according to the expert, is that we are not always able to retrieve the information that we have stored in memory. That is, sometimes we are unable to remember because the information is so frightening - beyond our normal realm of experience. Accepting that the human mind has a natural tendency to try to avoid traumatic thoughts and memories, the expert stated that one of the most effective ways people cope with trauma is to repress such thoughts and to avoid conscious awareness of the trauma ever having taken place. He further stated that clinical evidence indicates that repression of sexual abuse in order to cope with trauma is quite common.

According to the clinical expert, therapy becomes important as a means by which an individual can deal with the reality of their situation. This is the case he alleged because repressed memories lie at the heart of many cases of depression and anxiety disorders seen in the large majority of people who were abused as children. Only by bringing these memories to light can other problems that the individual may be having be dealt with. Once that memory is triggered, all that is involved at that point, according to the expert, is playback. Thus, he stated that while flashbacks may be fragmented, once the memory has surfaced, it may be vivid and detailed. Finally, the expert testified that there is no basis to suggest that an individual could be led to falsely believe in the existence of such a traumatic event as sexual abuse.

Upon cross-examination, the expert acknowledged that not all sexually abused women repress memories of abuse. He testified that it was not unusual for a therapist to

not question the truthfulness of a memory as that was not his/her role. Rather, he stated that a therapist's role is to provide a supportive environment in which a person may feel safe to disclose painful events. Finally, the clinical expert acknowledged that there was no empirical evidence to support the existence of a mechanism by which traumatic memories can be completely wiped out of conscious awareness.

The complainant's mother denied having any knowledge of the alleged sexual incidents that took place between her husband and her daughter. The defendant, the father, as well testified, denying that he had ever sexually abused his daughter.

Symptomatology: (Mild symptoms, PTSD symptoms no diagnosis, PTSD diagnosis). The testimony of Jill and her therapist, and the closing arguments of both lawyers were altered where necessary to reflect this manipulation. In a third of the trial scenarios, the complainant, Jill Harris, was not suffering from a set of symptoms characteristic of a psychological disorder. On the basis of representing generic symptoms that may lead a woman to seek guidance from a therapist, the complainant's testimony, and that of her therapist, suggested that Jill was suffering from depression, anxiety, and sexual intimacy problems with her husband. In the remaining scenarios, Jill was presented as suffering from a set of symptoms that are characteristic of PTSD. These symptoms included depression, anxiety, intrusive thoughts and recurrent nightmares, insomnia, difficulties in concentration, outbursts of anger and avoidance of emotional and sexual intimacy leading to difficulty in establishing and maintaining good interpersonal relationships including marital problems (Rowan & Foy, 1993; Stefan, 1994). In half of these scenarios, the complainant was explicitly diagnosed by her

therapist as having PTSD, while in the other half, she was not explicitly diagnosed with this disorder.

Questionnaires

Manipulation Check. Prior to deliberations, participants were asked to indicate on a 7-point scale, the degree to which they completely disagreed (0) or completely agreed (6) with a number of statements. Some of the statements related to the manipulations in the present study (e.g., “How severe do you believe Jill’s symptoms to be?”), while others had been included to ensure that factors such as Jill’s sincerity were constant across conditions (e.g., “Based upon Jill’s testimony, how convinced do you believe Jill herself was concerning the guilty of her father?”). Other statements were included as filler items (Appendix A).

Credibility Checklist. To examine whether the credibility of the key principals in the trial differed as a function of experimental condition, participants were asked to indicate on a 5-point scale whether they found the complainant, therapist, defendant and expert witness to be credible (5) or not credible (1) (Appendix A).

Private Belief in Guilt Rating Scale. At various points throughout the videotaped trial, participants were asked to rate, on an 11-point scale whether they believed the defendant was not-guilty (-5), or guilty (+5). Participants were informed that their ratings were to reflect their own personal decision, and need not reflect the law (Appendix A).

Individual Juror Verdicts. During deliberations, participants were asked to indicate whether the defendant was guilty or not-guilty of the charge brought against him. One tally was taken at the beginning of deliberations which was considered to be the pre-

deliberation verdict. If the jury was not unanimous in its decision at that time, as many tallies of the jury as necessary were taken until such time. The final tally taken was considered to be the post-deliberation verdict (Appendix A).

Beliefs about Repressed Memories. Participants were asked to indicate on a 7-point scale the degree to which they completely disagreed (0) or completely agreed (6) with a number of statements. These statements assessed participants' knowledge and beliefs concerning the independent variables used in the present study and the issue of repressed memories. Examples of such questions included, "Based upon your own personal opinion, to what degree do you believe that repressed memories of childhood sexual abuse, once retrieved, represent accurate reflections of past events?" and "To what extent do you believe that PTSD can be a consequence of childhood sexual abuse" (Appendix A).

Procedure

Information concerning the study was posted to recruit potential participants. This recruiting announcement informed participants that they would be playing the role of a juror in a simulated criminal court case that may involve allegations of childhood sexual and/or physical abuse. Participants were further informed that they would be participating as a jury member in deliberations, and that these deliberations would be videotaped for purposes of the study. Due to ethical considerations, participants were notified that the study may be disturbing for some, and that discretion is advised. Participants were assigned to one of 30 juries, and juries were randomly assigned to one

of three conditions, 1) mild symptoms, 2) PTSD symptoms no diagnosis, or 3) PTSD diagnosis.

Upon arrival, students were reminded of the nature and content of the study in addition to the information provided by the recruiting announcement. Due to the emotional and explicit content of the trial and deliberations, participants 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 A).

During the trial proceedings, the videotapes were stopped at four intervals, 1) following opening statements, 2) following witnesses for the prosecution, including the complainant, 3) following witnesses for the defense, including the defendant, 4) following closing arguments. During these intervals, jurors indicated their private belief concerning the defendant's guilt. At the completion of the trial proceedings, jurors completed the credibility checklist and the manipulation checks. Jurors were reminded that the deliberations would be videotaped and were asked to complete an informed consent form to this effect (Appendix A).

Before deliberation, a foreperson was randomly selected and informed of his/her duties (Appendix A). Tally sheets were used to record individual juror verdicts of guilty, not-guilty. A maximum time limit of 90 minutes was given to the jury for deliberation. At the end of this time, if the jury had not reached a unanimous verdict, the jury was declared hung. Following deliberations, participants were asked to respond to a number of questions relating to their beliefs concerning repressed memories.

The debriefing session included a discussion of the purpose of the study, clarification of legal issues, and responding to questions raised by the students. The debriefing package also included a list of contact numbers which consisted of services for general matters (e.g., legal aid), and services specifically for victims of abuse (Appendix A).

Results²

Manipulation Check

To assess whether the symptoms relayed by the defendant varied across conditions, and that these symptoms were differentially supportive of claims of abuse, separate ANOVAs were conducted for each dependent variable across levels of symptomatology. Table 1 presents all relevant means.

In response to the question, “How severe do you believe Jill’s symptoms to be?” results attained significance, $F(2, 169) = 10.31, p < .001, \eta^2 = .11$. As anticipated, planned orthogonal comparisons indicated that jurors in the mild symptom condition believed the victim’s symptoms to be less severe than did those in the symptoms without diagnosis and the PTSD diagnosis conditions combined, $t(169) = -3.92, p < .01$. Surprisingly however, jurors rated the complainant’s symptoms as more severe within the symptoms without diagnosis condition than in the PTSD diagnosis condition, $t(169) =$

² As gender has been consistently demonstrated as influencing both opinions and the credibility assigned to the complainant (e.g., Golding et al., 1995; Schutte, 1994; Tetford & Schuller, 1996), the role of gender was examined in the present study across all dependent variables. Women tended not only to be less skeptical of the recovered memory claims, but were more likely to believe in the authenticity of the allegations. Gender failed however to differ according to symptomatology condition. Accordingly, analyses involving gender were excluded as this was not the primary concern of this study.

Table 1

Means and Standard Deviations for the Manipulation Check Analyses as a Function of Symptomatology

	Symptomatology					
	Mild Symptoms		Symptoms No Diagnosis		PTSD Diagnosis	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Severity	3.63	1.33	4.62	.86	4.10	1.17
Evidence	3.64	1.64	4.30	1.44	3.73	1.56
Realism	4.14	1.49	4.35	1.22	4.03	1.35
Complainant	4.91	1.22	4.86	1.22	4.76	1.30
Therapist	4.16	1.65	4.40	1.42	3.95	1.40

Note. Potential range of response = 0 (completely disagreed) to 6 (completely agreed)
 Severity = degree of severity of complainant's symptoms
 Evidence = degree to which symptoms show evidence of childhood sexual abuse
 Realism = degree of realism (in terms of memories recalled) of complainant's testimony
 Complainant = degree of the convincing nature of the complainant's testimony
 Therapist = degree of the convincing nature of the therapist's testimony

-2.46, $p < .05$.

Similarly, in response to the question, “To what extent do you believe that Jill’s symptoms show evidence of her being sexually abused as a child?” the effect of symptomatology attained significance, $F(2, 174) = 3.09$, $p < .05$, $\eta^2 = .03$. Planned orthogonal comparisons indicated that juror ratings in the mild symptom condition failed to differ from ratings rendered in both the symptoms without diagnosis and the PTSD diagnosis conditions combined, $t(174) = -1.51$, ns. Interestingly however, jurors within the symptom without diagnosis condition were more likely to perceive Jill’s symptoms as showing evidence of sexual abuse than jurors within the PTSD diagnosis condition, $t(174) = -2.01$, $p < .05$.

To ensure that the realism of the memories recalled and that the complainant and therapist were equally convincing across conditions, separate one-way analyses of variance (ANOVAs) were conducted across levels of symptomatology (mild symptoms, symptoms no diagnosis, PTSD diagnosis). Consistent with expectations, the realism of Jill’s memories, $F < 1$, and the persuasiveness of both the complainant, $F < 1$, and the therapist, $F(2, 169) = 1.27$, ns, $\eta^2 = .01$, failed to differ across symptomatology conditions.

Credibility

Jurors’ credibility ratings across levels of symptomatology (mild symptoms, symptoms no diagnosis, PTSD diagnosis) were analyzed using a mixed ANOVA with target rating (complainant, therapist, defendant and expert) as the within subject variable.

Results indicated a main effect for target rating, $F(3,457) = 42.96, p < .001, \eta^2 = .19$. Multiple comparisons within target rating were analyzed using six consecutive pairwise comparisons ($\alpha = .008$). On the whole, the defendant was viewed as less credible than the complainant ($t(183) = 4.90, p < .01$), therapist ($t(183) = -7.44, p < .01$) and expert ($t(183) = 9.38, p < .001$). Interestingly, the complainant was rated as less credible than both the therapist ($t(183) = -3.91, p < .001$) and expert ($t(183) = -5.61, p < .001$). The therapist and expert were rated as equally and highly credible, $t(183) = 2.55, ns$, (see Table 2 for relevant means).

Private Beliefs

While juries had to reach unanimous decisions, jurors may have been less certain in the verdict in terms of their own opinions. Jurors' private belief ratings of the defendant's guilt were analyzed using a 4 x 3 mixed ANOVA with interval (four private belief ratings) as the within subject variable and symptomatology (mild symptoms, symptoms no diagnosis, PTSD diagnosis) as the between subject variable.³

Results indicated a main effect for interval, $F(2, 402) = 6.64, p < .01, \eta^2 = .04$. Multiple comparisons within interval were conducted using three consecutive pairwise comparisons (Bonferroni $\alpha = .016$). Results indicated that jurors' perceptions of the defendant's guilt increased subsequent to presentation of the prosecuting witnesses (interval 2: $M = .91, SD = 2.37$) compared to their perceptions following opening statements (interval 1: $M = .30, SD = 1.65$), $t(183) = -3.75, p < .001$. Interestingly, jurors'

³ Degrees of freedom for the critical F value were adjusted throughout using the Huynh-Feldt estimate for all within subject tests to compensate for violations to sphericity

Table 2

Means and Standard Deviations for Credibility Ratings as a Function of Symptomatology

Rating	Symptomatology			Total
	Mild Symptoms	Symptoms No Diagnosis	PTSD Diagnosis	
Defendant				
<u>M</u>	2.95	2.80	2.95	2.90
<u>SD</u>	1.11	1.09	1.09	1.09
<u>N</u>				184
Complainant				
<u>M</u>	3.53	3.52	3.40	3.48
<u>SD</u>	1.05	1.11	1.10	1.10
<u>N</u>				184
Therapist				
<u>M</u>	3.79	4.08	3.55	3.81
<u>SD</u>	1.10	.90	1.11	1.06
<u>N</u>				184
Expert				
<u>M</u>	3.93	4.22	3.89	4.02
<u>SD</u>	1.14	.88	1.15	1.06
<u>N</u>				184

Note. Potential range of response = 1 (not credible) to 5 (very credible)

perceptions following presentation of the prosecuting witnesses (interval 2) failed to significantly change following presentation of the defense witnesses (interval 3: $\underline{M} = .90$, $\underline{SD} = 2.79$), $t(183) = .07$, ns. Finally, jurors' perceptions of guilt remained consistent from interval 3 to interval 4 (following closing arguments: $\underline{M} = 1.09$, $\underline{SD} = 3.47$), $t(183) = -1.25$, ns.

Individual Juror Verdicts

Individual juror verdicts were analyzed in a 2 x 3 mixed nested ANOVA with interval (pre- post-deliberation opinion rating) as the within subject variable and symptomatology (mild symptoms, symptoms no diagnosis, PTSD diagnosis) as the between subject variable. A guilty vote was coded as 1 and a not-guilty vote was coded as 0. Therefore, higher scores on this measure indicated verdicts that held the defendant as increasingly responsible for his actions. Juries were nested within symptomatology conditions.

Results indicated a main effect for interval, $F(1, 154) = 22.54$, $p < .001$, $\eta^2 = .13$. Jurors were more likely to vote not-guilty following deliberations (pre: $\underline{M} = .57$, $\underline{SD} = .50$; post: $\underline{M} = .42$, $\underline{SD} = .49$).

The main effect for symptomatology and the interaction failed to attain significance.

Jury Verdicts

Final jury verdicts of guilty (scored 1) and not-guilty (scored 0) across levels of symptomatology (mild symptoms, symptoms no diagnosis, PTSD diagnosis) were

examined using a chi-square analysis.⁴ Results indicated that guilty verdicts failed to differ across level of symptomatology $\chi^2(2) = .30$, ns (see Table 3). Surprisingly, despite the lack of objective corroborating evidence, the verdicts were primarily in favor of the complainant.

Beliefs about Repressed Memories

A one-way nested (juries were nested symptomatology conditions) ANOVA was conducted on the extent to which jurors believed that Jill's memories of childhood sexual abuse were true across levels of symptomatology (mild symptoms, symptoms no diagnosis, PTSD diagnosis). Table 4 presents all relevant means. Results failed to differ according to symptomatology, $F < 1$. Jurors rated the validity of the complainant's memories consistently high across all conditions.

A one-way nested MANOVA was conducted on the two items concerning jurors' personal opinions regarding their belief in repressed memories, and their belief that these memories, once retrieved, represent accurate reflections of past events across levels of symptomatology. Results failed to attain significance, Pillais = .08, $F < 1$. Jurors' beliefs in repressed memories remained consistently high across conditions, as did their beliefs concerning the accuracy of recovered memories.

A one-way nested ANOVA was conducted on jurors' belief that PTSD can be a consequence of childhood sexual abuse across levels of symptomatology. These beliefs

⁴ For each of the three studies, in order to meet the criteria for χ^2 (Tabachnick & Fidell, 1996), it was necessary to collapse hung and guilty categories given the low frequency of hung verdicts. Collapsing the two categories is as well justified on the basis that hung verdicts allow the prosecutor to retry the case.

Table 3

Frequency of Guilty and Not Guilty Verdicts as a Function of Symptomatology

Verdict	Symptomatology		
	Mild Symptoms	Symptoms No Diagnosis	PTSD Diagnosis
Not-Guilty	4	3	3
Guilty	6	7	7

Table 4

Means and Standard Deviations for Beliefs about Repressed Memories

	Symptomatology					
	Mild Symptoms		Symptoms No Diagnosis		PTSD Diagnosis	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Validity	3.98	1.83	4.36	1.25	4.05	1.67
Belief	4.48	1.58	4.78	1.23	4.37	1.52
Accurate	3.72	1.31	3.98	1.12	3.65	1.29
Consequence	3.97	1.40	4.14	1.45	4.36	1.34
Aware	3.57	1.74	3.61	1.74	3.58	1.67

Note. Potential range of response = 0 (completely disagree) to 6 (completely agree)
 Validity = degree of believability of complainant's symptoms
 Belief = belief in the notion of repressed memories
 Accurate = degree of belief in accuracy of resurfaced memories
 Consequence = belief that PTSD can be a consequence of childhood sexual abuse
 Aware = degree of awareness of PTSD

failed to vary across levels of symptomatology, $F < 1$. Again, jurors across all conditions rated the likelihood of PTSD as a consequence of childhood sexual abuse as consistently high.

Finally, to ensure that the degree to which jurors were aware of PTSD did not vary systematically across levels of symptomatology a one-way nested ANOVA was conducted. Results failed to attain significance for symptomatology $F < 1$. Jurors claimed to be equally aware of PTSD across all levels of symptomatology.

Discussion

The purpose of this jury simulation study was to evaluate the impact of the credibility assigned to the victim's allegations by framing her symptoms within a PTSD diagnostic framework in a case involving allegations of childhood sexual abuse for which the memories were only recently recovered. More specifically, this study sought to examine the extent to which symptoms, presumably resulting from abuse, corroborated a victim's allegations in light of the lack of objective evidence.

While there is little doubt that the victimization of children may result in difficulties in living which continue to be evident well into adulthood, evidence of psychological difficulties is not necessarily common to all victims of such abuse (Briere & Elliott, 1992). Indeed, the majority of sexual abuse victims do not show evidence of severe symptomatology (Finkelhor, 1990). In short, there is simply no empirical support for the contention that particular symptoms or a constellation of symptoms present in adulthood are singularly indicative of childhood sexual abuse (Cole & Putnam, 1992; Nash, Hulsey, Sexton, Harralson, & Lambert, 1993). Consequently, a reliance upon

symptomatology in determining the legitimacy of an allegation may represent an erroneous judgement.

Nonetheless, the severity of the complainant's symptomatology was differentially perceived by mock jurors. Consistent with expectations, when the complainant was portrayed as least pathologically affected (i.e., displayed only mild symptoms), jurors viewed such a reaction as less severe than when she was portrayed as experiencing a range of disparate symptoms. In situating this range of symptoms within a PTSD discourse, it was anticipated that the psychological trauma experienced by the complainant would be validated. Surprisingly however, when conveyed in this manner, not only were her symptoms perceived as less severe, but as less indicative of the occurrence of childhood sexual abuse than when her symptoms were not so framed.

In a similar vein, it was anticipated that a PTSD diagnosis would be persuasive in terms of assigning credibility to the complainant's allegations. While it was expected that the medicalization of these responses would confirm the extent of trauma as going beyond normal and thus lend support to claims of victimization, results failed to support this. This finding is consistent with some feminist critiques regarding the medicalization of women's reactions to male violence (Caplan, 1992; Kitzinger & Perkins, 1993; Stefan, 1994). The concern that women's reactions may be pathologized by their inclusion within a psy discourse and thereby detract from the legitimacy of her claims is justified in light of these findings.

Interestingly, the manifestation of symptomatology failed to influence either jury and individual juror opinions concerning the guilt of the defendant. Irrespective of

condition, juries overwhelmingly rendered guilty verdicts. The endorsement of the complainant's claims may in part reflect the emotional nature surrounding the issue of childhood sexual abuse. Notwithstanding the lack of objective corroborative evidence, juries may be hesitant to dismiss the claims of a woman alleging sexual abuse. At the same time, mock jurors in the present study evidenced a low degree of skepticism regarding recovered memories. Indeed, participants rated their belief in repressed memories, and their belief that these memories once retrieved represented accurate reflections of past events, quite high. Furthermore, despite cross-examination of the expert that highlighted the dubious nature of recovered memories, jurors' beliefs in the defendant's guilt were particularly swayed following presentation of the prosecution witnesses that included the clinically-based expert testimony supporting the authenticity of recovered memories.

In determining the credibility of the allegations, the issue confronting jurors appeared to be one of establishing the legitimacy of the victim as opposed to questioning the legitimacy of the psychiatric framework. In short, the testimony conveyed by the expert appears to have served as a framework from which the pathologization of the victim was assessed. Thus, while this testimony arguably served to provide a framework for understanding recovered memories, given the lack of consensus within the professional community concerning the reliability and validity of recovered memories, this framework for evaluating the victim's legitimacy may be easily undermined. Indeed, expert testimony explaining the experimental research concerning the nature of memory and the suggestibility of memory can provide jurors with the opportunity to methodically

assess the credibility of allegations premised on recovered memories and to move beyond the persuasiveness of the prototypical victim.

BATTLE OF THE EXPERTS

To assist a jury in their fact-finding process, many courts have admitted expert testimony. Such testimony is aimed at educating jurors enabling them to understand evidence or to determine facts in issue (Ernsdorff & Loftus, 1994). When accusations of childhood sexual abuse are admitted within the criminal forum, the ultimate determination of the credibility of the memory is up to the triers of fact. Consequently, in cases premised on recovered memories of abuse, the introduction of expert testimony has been advocated in order to address a number of issues to which the jury may be uninformed. For instance, at a general level, such testimony speaks to the scientific literature of repressed memories and the veracity of memories recalled. However, as the existence of repression and the authenticity of recovered memories have been subject to a great deal of scientific debate, disagreement amongst experts exists (Ernsdorff & Loftus, 1993).⁵

In actual trials, it is likely that both the prosecution and defense counsel would submit their own experts. The frameworks from which each of these experts would interpret the plausibility of recovered memories would differ markedly in terms of the

⁵ Although some research investigations have begun to address the issue of "dissociated" rather than "repressed" memories, most current literature continues to address the latter. For purposes of this study, the mechanism through which individuals are alleged to relegate material to the subconscious will be examined in terms of repression. Irrespective of the mechanism implicated, it is noteworthy that lines of dispute are similarly drawn between experimentalists and clinicians regarding the veracity of recovered memories (Pendergrast, 1995).

models of memory they would present, and the basis of evidence from which each would be supported. In this regard a “battle of the experts” would ensue.

Expert witnesses for the prosecution would detail the process of memory repression, and a model of memory on which repression is dependent. The basis of such evidence would be predominately gleaned from clinical experience. For instance, irrespective of the lack of a continued recall of childhood sexual abuse, such an expert would likely relate any presenting symptomatology of the victim as supportive of a history of abuse. As well, this testimony would be supportive of any therapeutic techniques that were utilized to help recover the alleged repressed memories. With the ultimate goal of lending credibility to the complainant’s claims, the content of expert testimony would speak to the trauma associated with childhood sexual abuse, the mechanisms by which a person may cope with the abuse (i.e., repression), and the probable level of detail accompanying the memories recalled as validating the memory. In so doing, this testimony may establish a stereotypical portrayal of the characteristics against which the real victim may be compared.

In contrast, it is likely that defense counsel would submit the testimony of an expert witness to rebut clinical views that are not scientifically established. Grounded within experimentally-based evidence, the purpose of the defense’s witness would not be to portray the complainant as dishonest, but, rather to discredit the credibility of her alleged memories and to present her as a victim of misguided therapy. As current research has indicated, the defense witness would also address the inability of 60 years of research to support the construct of repression, the unreliability of symptom indices as

corroborating evidence that abuse took place, that various applied therapeutic techniques have the potential for suggestion when utilized with clients with questionable histories, and that memory is a reconstructive process. Such an expert witness would additionally want to testify concerning the experimental research that suggests that the emotional intensity surrounding a recalled event, and the detail involved in the alleged memory are unreliable criteria for determining the veracity of an individual's allegations. This testimony may therefore serve to undermine the unrealistic stereotype of victimhood promoted within the clinically-derived framework.

Fallibility of memory. For the most part, clinical experts describe a model of memory consistent with their theoretical approach. In order to accept repressed memories as accurate reflections of events occurring many years in the past it is necessary to affirm a model of memory that asserts that memory accurately records all events as they occur. Once encoded, memories can then be replayed upon demand exactly as they were experienced. If traumatic memories are relegated to a repressed state it is expected that upon removing the trauma associated with the experience, the memory will be experienced in its original form (Bass & Davis, 1988; Maltz, 1990). A study of more than 850 practicing clinicians indicated that approximately one third of the respondents agreed with this model of memory, and of these, 12% agreed strongly (Yapko, 1994). Likewise, approximately 10% of Yapko's sample endorsed the idea that memory is not significantly influenced by suggestion.

Other than recounting clinical anecdotes and methodologically flawed research alleging the commonality of repressed memories, clinical experts have failed to provide

support for their assertions. As such, the arguments of these clinicians rest almost exclusively on attempts to discredit the applicability of the work of memory researchers. On the other hand, memory researchers have presented persuasive experimental evidence supporting the fallibility of human memory, memory distortion, illusory memories, and characteristics which influence suggestibility within research and therapeutic environments. To this end, memories recalled are viewed as reconstructions or even constructions which may have no basis in reality.

Although many clinicians have argued that repressed memories are valid and accurate reflections of past events, research has presented evidence that our memories can become distorted as a result of beliefs, expectations, and post-event information. In fact, a substantial body of research supports that memory recall involves a process of reconstruction (Bower, 1993; Loftus, 1979). Over the course of time, new experiences and memory traces alter an individual's interpretation of past events (Ernsdorff & Loftus, 1993). Inherent to the reconstruction of memory is therefore the possibility of inaccuracies and distortions. As such, what we call memories may not be veridical memories at all.

For the most part, research into the reconstructive nature of memory has been conducted within the area of eyewitness studies. In the typical experiment, participants view an event, receive a misleading suggestion (e.g., they are asked whether they saw a stop sign, when in fact it was a yield sign), and are then asked to take a memory test of the event. In a series of such studies, Loftus (1979) reported that participants not only came to incorporate the misleading suggestion into their memories and thus came to

falsely recall events, but that they were highly confident in the accuracy of their erroneous memories.

When presented with such empirical evidence, the response of the clinical community has been to criticize the external validity of the findings. For example, it has been argued by clinicians that such studies merely involve memory distortions in detail (Olio, 1994). The generation of complex scenarios that never occurred would be highly unlikely. However, empirical research has demonstrated otherwise. For instance, using a complex false feedback procedure, Spanos, Burgess, Burgess, Samuels and Blois (1999) demonstrated that vivid false memories about oneself could be created by providing individuals with suggestions regarding past events, and motivating them, with the aid of hypnotic or non-hypnotic age regression techniques, to recall the event. In a similar vein, Terrance, Matheson, Allard and Schnarr (in press) demonstrated that individuals provided with the mere expectation that they could recall a specific event that purportedly occurred the day after birth were more likely to recall the event than controls who held no such expectations.

Another argument against the external validity of experimentally-derived findings concerns the mundaneness of the events typically examined in the laboratory context. Thus, while critics may concede that memory may be suggestible for unemotional events, the implantation of whole memories for traumatic events such as sexual abuse is maintained to be highly unlikely (Kristiansen, 1994). While ethical reasons preclude the possibility of directly assessing this assertion, research has supported the proposition that entire memories for relatively traumatic memories may be implanted and regarded by an

individual to represent actual events. For instance, Loftus and Pickrell (1995) led a number of individuals to believe that they had experienced a specific childhood event of being lost in a shopping center at the age of five. With the assistance of a trusted family confederate, participants not only came to recall the suggested event, but provided detailed recollections, described individuals who had assisted in finding their parents and conversations with them, and recalled vivid emotions at the time of the incident. Although this study only included a sample of five participants it clearly demonstrates the possibility of implanting complex and relatively emotional false memories.

Despite these research investigations, critics continue to assert that the experiences implanted in these cases are simply not comparable to the traumatic experiences of having been the victim of abuse and that it is unwarranted on the basis of such findings to assert that abuse traumas can be falsely implanted into the memories of unsuspecting individuals (Kristiansen, 1994). Again however, evidence from other empirical investigations and case studies provide convincing support for the plausibility of implanting traumatic memories of abuse. For example, practitioners are noting the increase in allegations of abuse involving incidents of satanic ritual abuse that have been recovered during therapy, or even outside of the therapeutic environment (Wakefield & Underwager, 1992). These cases involve bizarre incidents of mutilation, torture, sacrifices of animals and humans, cannibalism, baby breeding for the purposes of sacrifice, and cult sexual abuse (Bottoms, Shaver & Goodman, 1991). Despite the accusations, necessary corroboration has not been sufficient to warrant serious consideration. Indeed, police and other investigations have been unable to find

independent corroboration of the existence of such satanic ritual abuse (Hicks, 1991; Lanning, 1989). Other highly improbable events including allegations of UFO abductions, artificial insemination of abductees, and encounters with extraterrestrial life have further endorsed the suggestibility of memory (Spanos, Burgess & Burgess, 1994). Notwithstanding an individual's confidence that these events have occurred, the lack of corroborating evidence and highly improbable nature of the events make them highly suspicious and more probable as evidence of the impressionability of human memory.

In sum, while memories for past events may sometimes be accurate (Spence, 1993), anecdotal and experimental evidence have documented the fallibility of memory. As opposed to representing accurate recollections of the past, memories can be constructive and expectancy driven in nature. In other words, gaps in memory may be reconstructed based on what an individual currently expects happened or believes must have happened (Bower, 1993; Loftus, 1993; Spanos, 1996).

In light of the frequent lack of corroborating evidence in recovered memory cases, an expert's framing of the victim's experiences and alleged memories may be pivotal in jury decision-making. As the results in Experiment I suggest, the cross-examination of clinical-based testimony was not sufficient to raise questions regarding the legitimacy of recovered memories. It may be the case that the pathologized response of repression endorsed within the psy discourse was consistent with jurors' notions of who constitutes a real victim. However, the reliance on this standard risks not only being undermined by experimental evidence, but may in fact be incorrect. Consequently,

victims whose experiences are not accounted for within a clinically-based framework risk having their experiences invalidated and hence, their allegations of abuse dismissed.

Recognizing the lack of consensus amongst clinically and experimentally-derived research findings, jurors are likely to be exposed to these competing interpretational frameworks. Clearly, these different expert framework's endorse differing representations of the authenticity of a victim's allegations. The impact of presenting conflicting expert frameworks has yet to be assessed in terms of its potential impact on juror decision-making. At the same time however, as clinical and experimentally-based expert testimony rely on different interpretational frameworks, such testimony may be differentially effective depending on the characteristics of the case. As is often the case, little corroborating evidence may exist in a case premised on recovered memories of abuse. As such, other elements of the case, such as the detail by which the memory is recalled, may be interpreted by the jury as more consistent with one expert's framework as opposed to the other's.

Memory Characteristics. Characteristics of the memory itself, and in particular, the clarity by which it is recalled may influence the degree of credence that jurors place in the validity of a recovered memory. Though there exists no objective way to distinguish genuine memories from pseudo-memories, the amount of detail that is supplied is often relied upon by clinicians and lay persons alike as a criterion against which to evaluate the veracity of a memory (Mulhern, 1991). Indeed, a detailed memory may be seen as most consistent with a clinical-based framework whereby memories are

viewed as laying virtually intact in the unconscious mind until recovered, at which time the memory may resurface in its entirety.

As the research has indicated however, detail is not a reliable indicator of veridical memories. Participants in many eyewitness studies report extremely detailed recollections of events that have only been suggested to them (Johnson & Suengas, 1989; Schooler, Gerhard & Loftus, 1986). Detailed recollections were similarly noted in Loftus and Pickrell's (1993) study of being lost despite the fact that the alleged event had never taken place. One participant not only described the surroundings in detail, but was able to recall what toys he was looking at when he became lost, could describe the clothing and appearance of the man who had allegedly assisted him, and the discussion surrounding his reunion with his mother after the incident. An additional study presents evidence of the vivid and intense images of a family member who had been murdered. Even though only one of the family members had witnessed the event, 17 other family members experienced these vivid images (Rynearson & McCreery, 1993).

On the basis of empirical research in this area, it is apparent that the detail by which a memory is recalled represents an unreliable indicator of a memory's validity. In fact, given the nature of memory recall and distortion, it makes greater logical sense that true memories are likely to be vague and unclear since detail surrounding the event tends to be lost over time (Lindsay & Read, 1994). Therefore, many victims memories of abuse may not in fact fit the stereotype created by the clinical perspective. Nonetheless, just as therapists may rely on the clarity of the memory recalled as an indicator of authenticity, so too may jurors consider such a factor as relevant. Indeed, juries could

well be impressed by testimony that contains concrete details (Ernsodff & Loftus, 1993). At the same time, experimental evidence may undermine this portrayal, thus bringing into question the legitimacy of the complainant's claims.

Purpose

Given the emotional and political nature surrounding the issue of recovered memories jurors are faced with an onerous task. Expert testimony may be used in such cases to assist jurors in their evaluation of the veracity of the complainant's case. In light of the findings in Experiment I, it appears that jurors endorse the position posited by clinically-derived testimony. In so doing, jurors implicitly accepted a pathologized representation from which the victim's claims could be assessed. Such testimony may serve not only to set up a framework from which the pathology of the victim may be determined, but in so doing posit a standard from which the characteristics of the real victim may be evaluated.

However, the introduction of experimentally-based testimony may serve to undermine the standard of victimhood constructed within the clinical framework. As it is likely that jurors would be exposed to these conflicting expert opinions which differ both in terms of the model of memory they present and the evidence upon which they base their conclusions, jurors in the present simulation study were exposed to one of three expert framework conditions, a) clinical, b) experimental, or c) clinical and experimental (e.g., conflicting).

Inasmuch as the memory relayed by the accuser is compatible with the framework proffered by the expert, jurors may be more willing to accept the authenticity of the

victim's memory. Accordingly, the clarity of the memory was varied within each expert condition. In one condition, the memory recalled was consistent with that which is advanced by proponents of repression. Thus, while the memory was initially vague in nature, the victim came to recall the events which allegedly occurred in vivid detail. On the other hand, consistent with experimental evidence, while the gist of the memory remained the same as in the vivid clarity of memory condition, the memory recalled by the victim in the vague memory condition remained sketchy and disjointed (Lindsay & Read, 1994). It was expected that while juror decisions would tend to be consistent with the expert framework presented, the amount of detail by which a recovered memory is recalled by a victim may influence the extent to which jurors adopt an expert's framework (Ernsdorff & Loftus, 1993).

Method

Participants

A total of 335 participants (146 males and 189 females) were drawn from first year psychology students at Carleton University. As was the case with Experiment I, students volunteered to participate in exchange for course credit as jurors in a simulation of a trial that "may involve allegations of childhood sexual and/or physical abuse" (see Appendix C). Participants ranged in age from 17 to 47 years ($M = 22.26$) Juries ($N=60$) consisted of 5-8 members, and consisted of both men and women.

Materials

Videotapes. Jurors viewed one of six variations of a videotape of a mock trial in which a father was charged with the sexual abuse of his daughter when she was under 14 years of age. Each of the videotapes was approximately 90 minutes in duration. The format of the videotapes was identical to that described in Experiment I (i.e., opening statements of the judge, prosecution and defense, presentation of the witnesses for the prosecution and defense, closing statements by the defense and prosecution and the judge's charge). Actors were recruited as described in Experiment I.

The basic facts of the case were identical to Experiment I. Testimony of the witnesses for the prosecution and defense were derived from the mild symptom condition in Experiment I. The complainant's description of the conditions under which the abuse took place was modified to be reflective of either a vague or detailed quality of memory. Expert testimony questioning (experimental) the notion of repressed memories was also included (see Appendix D).

Expert Framework: Clinical/Experimental.⁶ The testimony of the expert witness for the prosecution was identical to Experiment I.

An experimental psychologist was presented as an expert witness for the defense. This expert was skeptical of the concept of repression, stating that over 60 years of empirical research had yet to prove its existence (Holmes, 1990). While he conceded that sexual abuse was a traumatic event, he stated that there was no scientific basis to

⁶ Using written transcripts, a pilot study examining the strength of the expert testimony frameworks indicated that, on a scale of 0 (not at all) to 6 (very), both the clinical ($M = 4.50$, $SD = 1.71$) and experimental ($M = 4.80$, $SD = 1.14$) frameworks were equally convincing, $t(18) = .46$, ns).

support the notion that a memory of sexual abuse could be completely wiped out and then recovered virtually intact. Further to this, he stated that one would expect that a memory based on events that occurred years before would likely be vague and have gaps as research has demonstrated that memory is fallible, reconstructive and expectancy driven. In fact, the expert contended, research has demonstrated that memories for events that have never taken place can be suggested, and viewed by the recaller as real.

The expert went on to discuss the impact of therapy on memories, and suggested that because of the emotional bond that develops with a therapist, clients may come to reconstruct memories in order to make them consistent with what they perceive to be the wishes of the therapist or what they believe will win the therapist's approval and or sympathy. Moreover, the expert went on to testify that because therapy typically involves a number of sessions, the client is often encouraged to go over and over their memories. This repetition according to the expert, has the effect of strengthening in the mind of the client the reality of their memory whether real or not. Similarly, the expert contended that group therapy may also have a further impact on the reconstruction of false memories. The social dynamics of such groups seem likely to increase the likelihood of false memories of abuse, both because reports of memories are frequently modeled in such groups and because the groups may create social incentives for reporting memories of abuse and for identifying oneself as a survivor.

Upon cross-examination, the expert conceded that the evidence upon which he concluded that memory is fallible and reconstructive was based on laboratory studies. Further to this, he noted that he had no empirical evidence to directly support the

hypothesis that a memory as traumatic as sexual abuse could be implanted and believed in by an individual. Finally, the expert admitted that there was no way to prove that a woman's recovered memory of abuse was in fact false.

Memory Clarity: Vivid/Vague.⁷ The testimony of the complainant was identical to Experiment I with the exception of the amount of clarity and vividness with which she recalled the alleged incidents of abuse. At various points throughout her testimony, the defendant would relay her memories with varying detail. For instance, in the vivid condition she stated that,

I got a very clear image of my bedroom -it was late at night - I could see the moon from my bedroom window and my father came into my bedroom and came towards my bed...He pulled down my bedsheets... and started touching me...He was still standing above me and he put his penis in my mouth...He laid on top of me and I remember having difficulty breathing because there was so much weight. He was kissing me all over my face and then he forced me to open my legs and he stuck his penis inside me. I was crying because it hurt so much - I could feel pain piercing throughout my body. He then carried me into the bathroom and I was bleeding and he was wiping the blood away with this old green towel we

⁷ Using written transcripts, a pilot study indicated that on a scale of 0 (not at all) to 6 (very), the complainant's recall was rated as significantly more detailed in the vivid ($M = 4.90$, $SD = 1.83$) as opposed to the vague ($M = 2.30$, $SD = 1.25$) recall condition, $t(18) = -3.68$, $p < .01$. Furthermore, the two recall conditions failed to differ in terms of the perceptions of the complainant's confidence in the accuracy of her memory, (vivid: $M = 5.60$, $SD = .52$; vague: $M = 5.30$, $SD = .68$).

had. I remembered looking up away from my father and seeing the yellow flowers on the shower curtain and this picture of a woman in a field of flowers hanging over the toilet.

In contrast, in the vague condition she stated,

I wasn't able to see where I was - everything still seemed so vague - the images weren't too sharp but it was night time though because I also remember seeing darkness and so I must've been in bed. I remember I could feel my father touching me and putting something in my mouth - I think it was his penis. I could feel his weight on top of me and something in between my legs...I could feel pain piercing throughout my body. I could remember being lifted and carried somewhere. I still wasn't able to see where I was - I could just see this bright yellow color and could see blood on a towel.

Questionnaires

Manipulation Check. Prior to deliberations, participants were asked to indicate on a 7-point scale how detailed the complainant's memories concerning her alleged sexual abuse were on a scale ranging from (0) not at all vivid to (6) very vivid. As well, participants rated how convincing they found the testimony of the experts (clinical vs. experimental) to be on a 7-point scale ranging from (0) not at all to (6) very convincing. Other statements were included as filler items (Appendix C).

Quality of Complainant's Memories. Participants were asked to rate the degree to which they found the complainant's memories to be realistic and convincing on a scale ranging from 0 (not at all) to 6 (very realistic / convincing) (Appendix C).

Credibility Checklist. Similar to Experiment I, to examine whether the credibility of the key principals in the trial differed as a function of experimental condition, participants were asked to indicate on a 5-point scale whether they found the complainant, therapist, defendant and expert witness to be credible (5) or not credible (1) (Appendix C).

Private Belief in Guilt Rating Scale. As was the case in Experiment I, at various points throughout the videotaped trial, participants were asked to rate, on an 11-point scale whether they believed the defendant was not-guilty (-5), or guilty (+5). Again, participants were informed that their ratings were to reflect their own personal decision, and need not reflect the law (Appendix C).

Individual Juror Verdicts. As was the case in Experiment I, participants were asked to indicate whether the defendant was guilty or not-guilty of the charge brought against him during deliberations. One tally was taken at the beginning of deliberations which was considered to be the pre-deliberation verdict. If the jury was not unanimous in its decision at that time, as many tallies of the jury as necessary were taken until such time. The final tally taken was considered to be the post-deliberation verdict (Appendix C).

Procedure

Information concerning the study was posted to recruit potential participants. This recruiting announcement was identical to Experiment I. Participants were assigned to one of 60 juries, and juries were randomly assigned to one of six conditions stemming from a 3 x 2 design (expert framework x memory clarity), 1) clinical expert/vivid memory, 2) clinical expert/vague memory, 3) experimental expert/vivid memory, 4) experimental expert/vague memory, 5) conflicting experts/vivid memory, or, 5) conflicting experts/vague memory.

Similar to Experiment I, upon arrival, students were reminded of the nature and content of the study in addition to the information provided by the recruiting announcement. Due to the emotional and explicit content of the trial and deliberations, participants were likewise 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 that was identical to that used in Experiment I to this effect (Appendix C).

During the trial proceedings, the videotape was stopped at four intervals: 1) following opening statements, 2) following the testimony of the prosecution witnesses and complainant (including the expert where relevant), 3) following the testimony of the defense witnesses (including the expert where relevant) and, 4) following closing arguments. During these intervals, jurors indicated their private belief concerning the defendant's guilt. At the completion of the trial proceedings, jurors completed the credibility checklist and responded to questions concerning the quality of the

complainant's memories and a variety of questions that served as manipulation checks. Jurors were reminded that the deliberations would be videotaped and were asked to complete an informed consent form, identical to that used in Experiment I, to this effect (Appendix C).

As was the case in Experiment I, a foreperson was randomly selected before deliberation and informed of their duties (Appendix C). Tally sheets were again used to record individual juror verdicts of guilty, not-guilty. A maximum time limit of 90 minutes was given to the jury for deliberation. At the end of this time, if the jury had not reached a unanimous verdict, the jury was declared hung.

The debriefing session included a discussion of the purpose of the study, clarification of legal issues, and responding to questions raised by the students. The debriefing package also included a list of contact numbers which consisted of services for general matters (e.g., legal aid), and services specifically for victims of abuse (Appendix C).

Results⁸

Manipulation Checks

Persuasiveness of Expert. To assess how convincing the experts portrayed in each of the expert framework conditions were, t-tests were conducted. Results indicated

⁸ As gender has been consistently demonstrated as influencing both opinions and the credibility assigned to the complainant (e.g., Golding et al., 1995; Schutte, 1994; Tetford & Schuller, 1996), the role of gender was examined in the present study across all dependent variables. Women tended not only to be less skeptical of the recovered memory claims, but were more likely to believe in the authenticity of her allegations. However, gender failed to interact with either expert testimony or memory clarity condition. Accordingly, analyses involving gender were excluded as this was not the primary concern of this study.

that while participants rated the clinical expert alone ($M = 4.14$, $SD = 1.22$) as more convincing than the experimental expert alone ($M = 3.49$, $SD = 1.47$), $t(215) = 3.61$, $p < .01$, they were viewed as equally convincing in the conflicting expert condition, $t(109) = 1.35$, ns (clinical: $M = 3.85$, $SD = 1.15$; experimental: $M = 3.59$, $SD = 1.30$). Moreover, the testimony of the clinical expert was viewed as equally credible when presented alone or within the conflicting expert framework condition, $t(223) = 1.86$, ns. Similarly, ratings of how convincing the testimony of the experimental expert was alone, or when presented in the conflicting expert framework condition failed to differ, $t(220) = .54$, ns.

Memory Detail. An independent t-test conducted on participant ratings of the detail of the memory recalled by the defendant indicated that the memory recalled was rated as more detailed within the vivid ($M = 4.20$, $SD = 1.36$) as opposed to the vague memory clarity condition ($M = 3.39$, $SD = 1.37$), $t(333) = 5.46$, $p < .001$.

Quality of Complainant's Memories

In order to evaluate jurors' ratings of the reality of the complainant's memories as well as how convincing her testimony was, a 3 (expert framework) x 2 (memory clarity) multivariate analysis of variance (MANOVA) was conducted on the two items assessing this. A significant multivariate effect of memory clarity was obtained, Pillais = .03, $F(2, 328) = 4.35$, $p < .05$. Univariate F-tests indicated that the memory recalled within the vivid memory clarity condition was rated as significantly more real, $F(1, 329) = 8.70$, $p < .01$, $\eta^2 = .03$, ($M = 4.05$, $SD = 1.34$) and the testimony as more convincing $F(1, 329) =$

6.04, $p < .05$, $\eta^2 = .02$, ($M = 4.15$, $SD = 1.37$) than the vague memory clarity condition (reality: $M = 3.60$, $SD = 1.44$; convincing: $M = 3.78$, $SD = 1.34$).

Credibility Ratings

Jurors' credibility ratings were analyzed using a 3 x 3 x 2 mixed ANOVA with target rating (complainant, therapist and defendant) as the within subject variable and expert framework (clinical vs. experimental vs. conflicting) and clarity of memory (vivid vs. vague) as the between subject variables. Results indicated a main effect for target rating, $F(2, 586) = 25.90$, $p < .001$, $\eta^2 = .07$. Multiple comparisons within target rating were analyzed using three consecutive pairwise comparisons ($\alpha = .016$). On the whole, participants rated the complainant as the most credible in comparison to both the therapist ($t(334) = 3.20$, $p < .001$) and defendant ($t(334) = 6.54$, $p < .001$). Moreover, the therapist was rated as more credible than the defendant, $t(334) = -4.20$, $p < .001$. Table 5 presents relevant means.

Analysis of credibility ratings of the expert testimonies across each of the levels of expert testimony was not possible due to absent data in one of the cells for each expert. To examine whether expert testimony was differentially credible as a function of appearing alone or in conjunction with the conflicting expert framework, individual one-way analyses of variance (ANOVAs) were conducted across levels of relevant expert framework (clinical vs. clinical in conflicting; experimental vs. experimental in conflicting) and clarity of memory (vivid vs. vague). Table 6 displays all relevant means. Interestingly, with respect to the clinical expert, results indicated a main effect for expert,

Table 5

Means and Standard Deviations for Credibility Ratings

<u>Target Rating</u>	<u>M</u>	<u>SD</u>	<u>N</u>
Complainant	3.66	1.02	335
Therapist	3.47	1.07	335
Defendant	3.13	1.02	335

Note. Potential range of response = 1 (not credible) to 5 (very credible)

Table 6

Means and Standard Deviations for Credibility Ratings of Expert as a Function of Expert Framework

Rating	Expert Framework					
	Clinical		Experimental		Conflicting	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Clinical	4.10	.98	N/A		3.62	.93
Experimental	N/A		3.43	1.14	3.36	1.02

Note. Potential range of response = 1 (not credible) to 5 (very credible)

$F(1,219) = 13.53, p < .001, \eta^2 = .06$. Jurors rated the clinical expert as less credible when presented within the conflicting expert condition than when presented alone. No significant results were attained for the experimental expert.

To examine whether the different forms of expert testimony were perceived as differentially credible when appearing alone, a 2 (expert framework: clinical vs. experimental) x 2 (memory clarity) ANOVA was conducted. Results indicated a main effect for expert, $F(1,220) = 21.80, p < .001, \eta^2 = .10$, such that the clinical expert presented alone was perceived as more credible than when the experimental expert was presented alone.

Finally, to examine whether the credibility of the different forms of expert framework differed when appearing in conjunction with each other a 2 (target rating) x 2 (memory clarity) within subject ANOVA was conducted. Considering only the conflicting expert framework condition, target rating (clinical vs. experimental expert) represented the within subject variable and memory clarity (vivid vs. vague) the between subject variable. Again, a main effect for target rating was indicated, $F(1,107) = 4.70, p < .05, \eta^2 = .05$, such that the clinical expert was perceived as more credible than the experimental expert.

Private Beliefs

Private belief ratings of the defendant's guilt were analyzed using a 3 (expert framework: clinical vs. experimental vs. conflicting) x 2 (memory clarity: vivid vs. vague) x 4 (interval) mixed analysis of variance (ANOVA). Results indicated a significant main effect for memory clarity, $F(1,329) = 4.54, p < .05, \eta^2 = .02$, such that

jurors in the vivid memory condition were more likely to rate the defendant as guilty than jurors in the vague condition. A main effect for interval also emerged, $F(2, 693) = 14.46$, $p < .001$, $\eta^2 = .04$.

These main effects were qualified by significant 2-way interaction involving memory clarity x interval, $F(2, 693) = 3.25$, $p < .05$, $\eta^2 = .02$. Analysis of the simple effects of memory clarity at each interval indicated significant simple main effects at interval 2, $F(1, 329) = 5.68$, $p < .01$, and interval 4, $F(1, 329) = 4.79$, $p < .05$. Private belief ratings of guilt measured subsequent to the witnesses for the prosecution, (interval 2) were higher within the vivid clarity of memory condition compared to the vague condition. Similarly, ratings of guilt measured following closing statements (interval 4) were higher within the vivid clarity of memory condition compared to the vague condition. Means associated with this interaction are displayed in Table 7.

Individual Juror Verdicts

Individual juror verdicts were analyzed in a $2 \times 2 \times 3$ mixed nested ANOVA with interval (pre- post-deliberation opinion rating) as the within subject variable and memory clarity (vivid vs. vague) and expert framework (clinical vs. experimental vs. conflicting) as the between subject variable. A guilty vote was coded as 1 and a not-guilty vote was coded as 0. Therefore, higher scores on this measure indicated verdicts that held the defendant as increasingly responsible for his actions. Juries were nested within memory clarity and expert framework conditions.

Results indicated a significant effect for interval, $F(1, 272) = 74.85$, $p < .001$, $\eta^2 = .22$, such that jurors were less likely to rate the defendant as guilty at post-deliberation

Table 7

Means and Standard Deviations for the Interaction between Memory Clarity and Private Belief Rating

	Memory Clarity	
	Vivid	Vague
Private Belief 1 (after opening statements)		
<u>M</u>	.70	.68
<u>SD</u>	1.54	1.54
Private Belief 2 (after victim testimony/ expert testimony where relevant)		
<u>M</u>	1.66	1.07
<u>SD</u>	2.19	2.27
Private Belief 3 (after expert testimony where relevant)		
<u>M</u>	1.20	.65
<u>SD</u>	2.70	2.61
Private Belief 4 (after closing statements)		
<u>M</u>	.98	.19
<u>SD</u>	3.26	3.31
Total		
<u>M</u>	1.14	.65
<u>SD</u>	2.04	2.08
<u>n</u>	168	167

Note. Potential range of response = -5 (not guilty) to 5 (guilty)

($M = .22$, $SD = .42$) than at pre-deliberation ($M = .46$, $SD = .50$). A trend towards significance for the interaction involving expert framework and interval, $F(2, 54) = 3.10$, $p = .053$, $\eta^2 = .10$, was as well indicated. Simple main effect analyses of expert framework failed to attain significance at both pre-, $F < 1$, and post-deliberation, $F(2, 54) = 2.88$, ns. Simple main effect analyses of interval at each of the clinical, $F(1, 54) = 10.84$, $p < .01$, experimental, $F(1, 54) = 36.05$, $p < .001$, and conflicting, $F(1, 54) = 7.27$, $p < .01$, expert framework conditions attained significance. While pre-deliberation guilt ratings were significantly higher in each of the expert framework conditions compared to post-deliberation ratings, this effect was particularly heightened within the experimental expert condition. Means associated with this interaction are presented in Table 8.

Jury Verdicts

Final jury verdicts of guilty (scored 1) and not-guilty (scored 0) across levels of expert framework (clinical vs. experimental vs. conflicting) and memory clarity (vivid vs. vague) conditions were examined using a chi-square analysis. Results indicated that guilty verdicts failed to differ across levels of memory clarity, $\chi^2(1) = 1.15$, ns, expert framework conditions, $\chi^2(2) = 3.59$, ns, and their interaction $\chi^2(5) = 4.88$, ns. Irrespective of condition, juries were just as likely to render guilty verdicts as not-guilty (Table 9).

Table 8

Means and Standard Deviations for the Interaction between Expert Framework Condition and Interval (Pre/Post Individual Juror Verdicts)

	Interval			
	Pre		Post	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Clinical	.52	.50	.30	.46
Experimental	.42	.50	.07	.26
Conflicting	.47	.50	.30	.46

Note. Potential range of response = 0 (not guilty) to 1 (guilty)

Table 9

Frequency of Guilty and Not-Guilty Verdicts as a Function of Memory Clarity and Expert Framework Condition.

Memory Clarity	Expert Framework		
	Clinical	Experimental	Conflicting
Vivid			
Not-Guilty	5	7	5
Guilty	5	3	5
Vague			
Not-Guilty	6	9	6
Guilty	4	1	4

Discussion

This study sought to investigate the extent to which clinically-based testimony promotes a stereotypical representation of victimhood, and the degree to which experimentally-derived expert testimony may undermine this portrayal. At the jury level, expert testimony failed to influence verdicts. As juries were just as likely to render guilty verdicts as not-guilty verdicts, it appears that there was disagreement with respect to the veracity of recovered memories. However, the moderate increase in not-guilty verdicts in comparison to Experiment I may be due to the mild symptoms relayed in the present study. The use of mild symptoms was deemed appropriate in order to avoid a ceiling effect. On the other hand, it is noteworthy that juries were still not prepared to dismiss the validity of the victim's allegations.

The contrasting forms of expert testimony did appear to be differentially perceived by individual jurors. Overall, the clinical expert was perceived as more credible and convincing than the experimental expert. The reasons for this are unclear. As the clinical expert had experience working with victims of abuse, jurors may have simply been more impressed by such credentials. MacLean (1993) for instance postulates that the prosecutor's cross-examination of Loftus in the trial of the People v. Franklin was successful in part because she was obligated to admit that she had no clinical practice and had not worked with real, as compared to simulated trauma situations. It may also be the case that the clinical-based testimony was most consistent with jurors' preconceived notions concerning the impact of abuse on women's lives.

Notwithstanding these possibilities, the experimental expert did exert some influence. When presented with both conflicting forms of testimony, the addition of the experimental expert was influential in terms of undermining the credibility assigned to the clinical expert. Furthermore, while an overall trend towards not-guilty was evident at post-deliberation, this was particularly evident when only the experimental expert was heard. As this study did not examine the deliberation process, the relative contribution of the information conveyed by the two experts to the deliberation process remains equivocal.

Surprisingly, the expert frameworks did not lend differential support to the victim's version of events as a function of the clarity by which she recalled the alleged abuse. The experimental expert's testimony did not undermine the victim's testimony when her recall of the events was vivid and detailed, nor did it affect support for her allegations when they were consistent with expectations endorsed by the experimental evidence. Likewise, the clinical expert, whose testimony concerning memory recall was consistent with stereotypical notions of the clarity of what real victims would recall, was equally ineffective at undermining or strengthening the case for the victim as a function of the clarity of the memory recalled.

It may be the case that the expert testimony frameworks were not viewed as explicitly endorsing a stereotypical victim from which the quality of the memory recalled by the complainant could be assessed. In other words, in light of the lack of explicit links being made between the information presented by the experts and the case on hand, jurors may have experienced difficulty in drawing parallels from the expert testimony to

the nature of the victim's recall of events. The task facing jurors may have been one of deciding the implications of the expert testimony for the specific complainant in the case at hand (Brekke & Borgida, 1988). Consequently, specific reference to the plausibility of the complainant's claims may have been more persuasive. It is recognized however that such testimony may be deemed inadmissible as it may invade the province of the jury. Nevertheless such research is warranted in order to delineate the elements of expert testimony that may influence a jury.

Likewise, in view of the polarized debate concerning the legitimacy of recovered memories, jurors may have deemed the expert testimony inapplicable, and thus focused on their own conceptualizations of victimhood. As Lindsay and Read (1994) note, laypeople may endorse the view that memory is akin to a video-recorder. In fact, results from this study support the persuasiveness of the characteristics of the memory itself. Irrespective of the expert testifying, jurors rated the defendant's testimony as more convincing and her memories as more real within the vivid memory recall condition. Likewise, jurors were more likely to believe that the defendant was guilty when the memory recalled was detailed and vivid as opposed to being vague in nature. Jurors' perceptions of guilt were particularly heightened in the vivid condition following testimony by the witnesses for the prosecution, suggesting that the vividness of the testimony itself had a pivotal effect on jurors' perceptions. This effect on jurors remained even after the empirically-based expert made it clear that, in reality, memory for events long past may be accurate in gist while the specific details may not be clear, as

ratings of guilt remained higher in the vivid as opposed to the vague clarity of memory conditions throughout the remainder of the trial.

The vague memory condition appeared to be more easily undermined; jurors' opinions of guilt within this condition evidenced a significant decrease following the closing arguments that more concisely reiterated the prosecution and defense's cases. As the allegations relayed within the vague memory condition were doubted throughout the trial, the closing arguments may have served to remind jurors as to the lack of objective corroborating evidence. In light of the unconvincing nature of this vague version of events, demands for corroboration may have been heightened. Ironically, in light of research demonstrating that individuals can conjure vivid and complex memories for events that never took place (Loftus & Pickrell, 1995; Terrance, et. al, in press), a vividly recalled memory should not have been sufficient to lead to the conviction of the defendant. Clearly, the reliance on the quality of the memory recalled as corroborative of the occurrence of the alleged event represents an erroneous judgment (Loftus & Pickrell, 1995; Reisberg, Heuer, McLean, O'Shaugnessy, 1988; Spanos et al., 1999; Terrance, et. al, in press). Examination of the differential demand for corroboration according to factors such as memory clarity or other elements that may implicitly support a believable victim is warranted.

It may also be that the vivid testimony conjured a more emotional reaction in the jurors. If the memories were less upsetting to the jurors, they may have been less vulnerable to giving the defendant the benefit of the doubt, which may in turn have implications for the verdict itself. Thus, despite being vulnerable to error, pressure may

exist for detailed memories to be relayed in the courtroom. Indeed, a real victim that does not adjust the presentation of her memory to fit with popular conceptions may risk being viewed with skepticism by jurors.

The persuasiveness of the experimental evidence in terms of its potential to undermine such an appealing victim, while at the same time bolstering the recall of the victim that was more in line with experimental conceptualizations of memory, may have been circumvented by virtue of being presented as an expert for the defense. Thus, while conveying a more normalized presentation of the vague recall of memory for events long past, experimental evidence in cases involving recovered memories of abuse is primarily aimed at questioning the concept of repression, and hence undermining the extraordinary claims of the victim. In order to investigate the ability of experimental evidence to support a victim's version of events, this study would have benefited from the inclusion of a non-repressed memory condition that had nonetheless been delayed in coming forward. Such testimony could instead discuss other factors, for example, shame and fear of reprisal, that may have influenced a victim's decision not to come forth earlier.

However, there are other instances in which the normalization of women's reactions to violence may be necessary in order to legitimize the response of a victim. For example, in cases involving battered women who kill, claims of self-defense are premised on the reasonableness of the defendant's actions. Testimony derived from a psychiatric discourse may be detrimental in lending support to such a claim. On the other hand, testimony that directs jurors to focus on societal elements implicated in a

woman's decision not to leave an abusive relationship may divert attention from her presumed pathology thereby highlighting the reasonableness of her use of lethal force.

BATTERED WOMEN WHO KILL

Violence directed against women by intimate partners has been identified in the last two decades as a serious social problem (MacLeod, 1987). Until recently, wife battering was considered to be a private and personal problem existing between spouses within the confines of the home. Consequently, the extent of such violence was not known, nor was it of major concern. Due largely to a vocal feminist movement however, the fact that women have endured physical, psychological and sexual violence from their intimate partners has increasingly come to public awareness (Gillespie, 1989; Walker, 1984).

At some point in their abusive relationship, some women seek resort to the use of deadly force. Investigations of these women suggest that they had been subjected to more frequent attacks and had sustained more severe injuries than battered women who did not kill their partners (Browne, 1987; Ewing, 1987). The motive of these women is therefore purported to be self-defense.

Self-defense is premised on the principle that one who was unlawfully attacked by another should be able to take reasonable steps to defend him/herself. The defense used in these cases is one of justification of the woman's actions as opposed to an insanity or mental impairment defense, which would excuse her behavior on the basis of some form of mental illness (Crocker, 1985). Exoneration of female domestic offenders through the use of the self-defense plea has met with limited success. Difficulties that

have arisen in the successful application of the self-defense plea in these cases are twofold: first, the laws of self-defense are claimed to be discriminatory as the doctrine has historically been formulated in terms of male experience, and second, jurors are maintained to hold a number of myths and misconceptions regarding battered women (Castel, 1990; Dodge & Greene, 1991; Rosen, 1986; Schneider, 1980).

In light of these obstacles, the introduction of expert witness testimony is typically sought. The purpose behind admitting expert testimony is to educate jury members, enabling them to understand and evaluate the facts so that they may form their own opinions as to how the issues should be decided. In cases involving battered women charged with the murder of their partner, expert witness testimony is proffered in an attempt to provide a framework by which the battered women's experiences and actions may be understood. In this way, expert testimony serves to define the legitimacy of a women's experience and victim status and thereby justifies the self-defense plea.

Expert Testimony and its Relevance to Self-Defense

According to 1999 data, women perpetrate fewer than 20% of the homicides in Canada (Correctional Services Canada, 2000). Of those cases involving the death of a male partner, the majority of these women had reportedly been previously beaten by them thereby suggesting that these women killed in self-defense (Elizabeth Fry Society, 1996).

Self-defense is premised on the principle that one who was unlawfully attacked by another should be able to take reasonable steps to defend him/herself (Crocker, 1985). The law of self-defense was meant to apply equally to all persons regardless of gender,

and on the surface, it does not seem to discriminate (Gillespie, 1989). Nevertheless, difficulties have arisen in the application of the self-defense plea to cases involving battered women who have killed their batterers. Such difficulties center on the fact that the self-defense doctrine has historically been formulated in terms of male experience. The paradigmatic scenario for which the doctrine of self-defense was designed was that of two men involved in either an unwarranted assault or fist-fight brawl. The underlying assumptions of self-defense as it developed were that such an altercation was a one-time violent quarrel between two men who were strangers and were of more or less equal size and strength (Gillespie, 1989).

Feminist thinkers contend that the present day doctrine of self-defense, as it has been currently translated by the courts, has changed little from the time it was developed. The doctrine of self-defense is maintained as continuing to be reflective of a male-centered perspective, and as such, incapable of acknowledging and considering the experiences and perspectives of battered women. Consequently, as will be discussed, many problems arise in attempting to apply traditional self-defense standards to battered women who kill.

A plea of self-defense must meet three conditions to be entered. First, evidence surrounding the case must support the plea of self-defense as reasonable. Second, the individual must have held a reasonable apprehension of death or injury, and thirdly, that the defendant used reasonable force in self-defense (S.34, Criminal Code of Canada, 2000). Meeting such criteria however, has proven to be a challenge for battered women.

The concept of imminent danger is based on face-to-face violent confrontations involving male adversaries or attacks by strangers (Gillespie, 1989). As such, feminists contend that the self-defense doctrine does not take into account the cumulative effects of repeated violence, nor the prediction of violence in the future (Browne, 1987). However, research to date reveals that women who have been repeatedly battered by their partners have become sensitized to the signals of impending violence (Walker, 1984). Consequently, because battered women become responsive to stages of violence from their batterer, it has been suggested that they may reasonably interpret certain conduct to be indicative of an attack. Further to this, women who have killed their batterers have often done so during a lull in the violence, at a calmer, safer period (Browne, 1987; Ewing, 1987; Walker, 1984). As “imminent” has often been defined by the courts to mean “immediate,” a battered woman’s use of force has often been viewed as unjustified because she was not in immediate danger when she killed. While the Canadian Criminal Code no longer stipulates that the danger or injury be imminent, it is likely that a reasonable apprehension of danger would continue to be interpreted in light of the degree to which it is imminent (Watt & Fuerst, 1999).

Likewise, the criteria of reasonable force does not take into account the disparity in physical size and strength of the woman and batterer. Battered women often have to rely on a lethal weapon for protection against an abuser who often has the advantage in physical size and strength (Walker, 1984). The inherent bias of the reasonable force requirement has been acknowledged in some courts. For instance, the judge noted in the case of the State v. Wanrow that the instructions of reasonable force “...leaves the jury

with the impression that the objective standard to be applied is that applicable to an altercation between two men. The impression created - that a 5'4" woman with a cast on one leg and using a crutch must, under the law, somehow repel a 6'2" intoxicated man without employing weapons...violates the respondent's right to equal protection under the law" (Jones, 1980, p. 286). Nevertheless, it should be noted that not all judges find it necessary to draw attention to this biased feature of reasonable force. As such, it has often been left to the common-sense of the jury to draw such conclusions.

If admitted, the testimony of the expert seeks to establish the context in which a battered woman reacted. Since a large number of battered women kill outside the acute battering incidents, Ewing (1987) noted that expert witness testimony could be especially helpful in such situations. Accordingly, in situations where a jury would not see any threat or danger, an expert witness can help educate how a battering relationship generates different perspectives of danger, imminence, and necessary force. Thus, under such a set of circumstances, expert testimony would help establish how and why the battered woman fits into the traditional self-defense doctrine. It also attempts to dispel any misconceptions that jurors may harbor about battered women and replaces them with a framework that takes account of the battered woman's unique situation and perspective. As Schuller and Hastings (1996) note, "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" (p. 170).

Despite the tendency to admit expert testimony in trials involving battered woman who kill, the content of the testimony has been the subject matter of much debate within

academic circles. For the most part, in attempting to establish how a battered woman meets the criteria for self-defense, expert witnesses have often introduced battered woman syndrome (BWS) testimony.

The syndrome, while not a defense in and of itself, is typically offered in a self-defense trial to aid the jury in understanding that given the defendant's past experience, her perception of danger, and her subsequent action were indeed reasonable (Comack, 1993). As such, the syndrome evidence does not represent a challenge to the self-defense doctrine, but rather "attempts to frame the woman's actions within the existing laws of self-defense" (Schuller, 1994, p. 115). As a legal strategy, the benefits of introducing BWS testimony remain equivocal. Indeed, the battered woman syndrome has been criticized on numerous methodological grounds bringing its scientific status into question. Moreover, though providing a framework by which an expert may educate a jury, the implications of this testimony on juror's perceptions of the defendant has been fiercely debated.

Battered Woman Syndrome

Walker (1979) has formulated a theoretical model called the battered woman syndrome (BWS) which postulates a cyclical and escalating cycle of wife abuse, to explain why women remain in abusive situations and why they sometimes resort to violence to end abusive relationships. The BWS, as described by Walker, puts forth two major theoretical components - learned helplessness and the cycle theory of violence.

Walker's (1979) theoretical concept of "learned helplessness" was drawn from the work of Maier and Seligman (1976). Maier and Seligman (1976), observed that

animals, after being subjected to intermittent and unavoidable schedules of shock, no longer attempted to escape from their cages even when a route to do so was provided. The apparent similarities between Seligman and Maier's learned helplessness hypothesis and the behavior of battered women led Walker (1979) to adapt the theory in order to explain the apparent passivity of women in abusive situations. Walker postulated that the unpredictability of repeated beatings leave women with the feeling that they have no control over what will happen to them. Supporters of the learned helplessness construct claim it provides "...a psychological rationale for why the battered woman becomes a victim and how the process of victimization further entraps her, resulting in psychological paralysis to leave the relationship (Walker, 1978, p.525). Repeated batterings, like the unpredictable electrical shocks experienced by laboratory animals, diminish the woman's motivation to respond. Battered women eventually learn that they are helpless to prevent future violent attacks and become passive (Walker, 1984, 1990). According to Walker, the battered woman, having generalized her helplessness, does not believe that anything she does will alter any outcome. This belief makes the battered woman particularly vulnerable to symptoms of depression and anxiety.

The second component comprising the BWS, as postulated by Walker, is the cycle theory of violence. This proposition is a tension reduction hypothesis that maintains that incidents of wife abuse occur in a patterned, repetitive manner. This three-step cycle is composed of the following three stages: 1) tension building, 2) acute battering incident, and, 3) kindness and contrite behavior (Walker, 1979).

The first phase is characterized by minor physical and verbal abuse perpetrated by the abuser resulting in tension build up. The second phase, the acute battering incident, results from the growing and unresolved tension build up from the first phase. Phase two is characterized by verbal and physical aggression that can leave the woman physically injured. This phase is ended when the batterer stops, bringing with its termination a sharp psychological reduction in tension (Walker, 1984). The final phase helps explain why many women remain in such a violent situation. The behavior of the batterer in this stage is characterized by apologies, showing kindness and remorse, and promises that he will never be violent again. Walker's (1984) results suggest that as long as violence is absent in phase 3, this phase can be reinforcing for the woman. As the cycle is repeated, the level of violence and psychological abuse escalates. Over time, phase three may be either curtailed or completely omitted. Such a cycle of violence establishes an intermittent reinforcement schedule that is crucial to the battering relationship (Walker, 1984).

While often presented as a formally defined clinical syndrome, BWS is actually not a clinical diagnosis in and of itself. Rather, 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 (DSM-IV, 1994). The application of PTSD to battered women is therefore relatively recent.

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). As with the impact of childhood sexual abuse, the widespread application of the PTSD diagnosis is associated with a number of advantages. For instance, the category is said to provide for a parsimonious framework by which the psychological sequelae of battering may be described. The disparate symptoms experienced by battered women may be integrated and thereby differentiated from other psychological difficulties (Dutton & Goodman, 1994; Goodman, Koss & Russo, 1993; McCann & Pearlman, 1990). Consequently, the diagnostic category may in turn be relied upon in order to determine appropriate treatment. Indeed, Walker (1992) asserts that it is helpful to use the PTSD criteria chart when presenting the BWS to a judge or jury. She contends that as most battered women meet the diagnostic criteria, such evidence would aid jurors in their understanding of the psychology of battered women.

Within the courtroom, Walker (1992) argues that the PTSD category with reference to BWS, provides a context by which a woman's violent response to physical abuse may be understood. In other words, 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 experienced 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 time frame and severity of the ensuing abusive incident. Together, this explanation is expected to assist in establishing the reasonableness of reacting to a non-confrontational incident with lethal actions.

Empirical questioning of BWS. Despite its admission within the legal setting, the application of BWS to battered women has been the subject of much criticism. Indeed, the very empirical basis upon which the BWS was drawn, has been called into question. Walker's research design has been criticized as containing a number of methodological and interpretive flaws which bring her conclusions into question. Indeed, close analysis of Walker's research provides little empirical support for her proposed cycle theory of violence and the learned helplessness construct.

For instance, in testing the cycle theory of violence, Walker relied only upon conclusions drawn from a series of interviews with battered women. While such a method may be valid, the use of leading questions by the interviewers renders the participants' responses suspect. Indeed, it has been suggested that responses may have been the result of hypothesis guessing on the part of participants (Faigman, 1986). Further criticism has been directed toward the interpretation of participants' responses. For instance, Walker derives her evidence of tension building and loving contrition phases from interviewers' interpretations of responses, rather than directly from the responses themselves (Faigman, 1986). Interviewers, basing their judgment on the open-ended description and a series of closed-ended questions regarding the batterers behavior before and after an abusive incident, would themselves note whether there was evidence of tension-building and/or loving contrition (Faigman, 1986; Walker, 1984). Such an arrangement therefore makes the research particularly susceptible to experimenter bias (Faigman, 1986). The empirical foundation supporting a cycle of violence is tenuous at best.

Walker's adaptation of the learned helplessness concept has also been criticized as "suffering from both theoretical inconsistency and the use of inadequate research methodology" (Faigman, 1986, p. 640). For instance, Faigman (1986) notes that learned helplessness is antithetical to the notion that a woman would use lethal force. Moreover, the measures relied upon by Walker as indicative of learned helplessness (anxiety, disgust and hostility) have been criticized as lacking theoretical support (Faigman, 1986).

Despite the tendency to admit syndrome evidence on the basis of its scientific status, there remains much criticism regarding the reliability and validity of the battered woman syndrome which calls its admissibility within the courtroom into question. Nonetheless, courts generally tend to support that the syndrome has gained a "substantial enough scientific acceptance to warrant admissibility" (People v. Torres, as cited in Brodsky, 1987). Moreover, the legal recognition of this syndrome testimony within the courtroom has in fact been advocated by some feminists as a way of alleviating the existing gender bias in the law on self-defense (Walker, 1992). Such testimony however has implications that go beyond merely describing a woman's response to male violence.

The battered woman as pathology vs. sociology. The battered woman syndrome has been criticized as promoting not only a standard which battered women must meet, but portraying battered women as pathologized. Studies have suggested that there may in fact be support for this assertion. Indeed, two studies (Finkel, Meister & Lightfoot, 1991; Schuller & Hastings, 1996) indicated that there was evidence to support the contention that expert testimony was associated with increased perceptions of diminished capacity on the part of the woman. As such, rather than providing a framework by which the

woman's actions may be perceived as a reasonable response, jurors may interpret the woman's actions within the context of her "psychological (dys)functioning" (Stubbs, 1992).

The reliance on a psy discourse risks resulting in the clinicalization of battered women's reactions. This interpretation of women's reactions in turn serves to remove their experience from a social and political context into the realm of the individual (Anderson & Gold, 1994; Kitzinger & Perkins, 1993; Stefan, 1994). In line with this point of view is the vehement criticism directed toward past efforts to diagnose battered women. For instance, attempts to include a diagnostic category of masochistic personality disorder and self-defeating personality disorder within the DSM were criticized largely on the basis of blaming the victim, either directly or indirectly, for her own abuse (Kass, Spitzer, Williams & Widiger, 1989). Outcry from the professional community was therefore sufficient to prevent the inclusion of these diagnoses. Ironically, as Hansen notes (1993), the PTSD diagnosis, which in the same manner as the diagnostic categories of masochistic personality disorder and self-defeating personality disorder diagnoses victims on the basis of preexisting psychological characteristics, continues to be lauded by a number of feminist therapists (e.g., Dutton & Goodman, 1994; Walker, 1994). Indeed, it has been asserted that the PTSD label likely continues to perpetuate the notion that a woman's response to battering can be classified as pathological and hence, categorization based on DSM-IV is viewed as appropriate (Harway, 1993).

The official recognition and portrayal by experts of the battered woman syndrome as a sub-category of post-traumatic stress disorder (PTSD) risks further enhancing the portrayal of the woman as disturbed, disordered and mentally ill (Mahoney, 1991; Martinson, MacCrimmon, Grant, & Boyle, 1991). In Experiment I, rather than serving to substantiate the psychological damage inflicted upon the complainant, the PTSD discourse did not bolster the allegations of childhood sexual abuse. It may be the case that the PTSD nomenclature pathologized the woman's reactions thereby detracting from the legitimacy of the complainant's claims. Similarly, while the battered woman syndrome has been implicated in the tendency for jurors to perceive the woman as less reasonable in her decision to use lethal force, the admission of PTSD, by virtue of its inclusion within the DSM, may further bolster the construction of a disordered and pathologized defendant. As BWS testimony is increasingly being presented in conjunction with PTSD evidence, the relative contribution of each to the portrayal of the defendant remains equivocal.

The stereotypical battered woman. Concern has also been directed toward the potential for BWS testimony to create a typical battered woman stereotype which would merely replace jurors' misconceptions regarding battered women (Jenkins & Davidson, 1990). As a result, the battered woman syndrome characterization has the potential to create a rigid classification which may serve to exclude battered women whose circumstances deviate from the battered woman syndrome standard (Schneider, 1986). As noted by Crocker (1985), the "fundamental problem with the battered woman stereotype is that it allows for the continued consideration of the reasonableness of the

defendants' claim "based on who she is, not what she did" (p. 149). The battered woman syndrome may be treated by jurors as a basis by which all battered women must conform as opposed to evidence that clarifies the defendant's behavior and perceptions (Crocker, 1985). Therefore, what risks becoming of issue is the degree to which the defendant fits the syndrome.

The good battered woman victim, consistent with the battered woman syndrome is poor, passive, and has no history of violent or confrontational behavior (Walker, 1993). If the accused does not meet the parameters as set out in the BWS categorization she risks not benefiting from the narrowly constructed victim promoted by the battered woman syndrome. Consequently she may be 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 typical battered woman (Schneider, 1986). It may be the case therefore that very little latitude exists within the stereotypical version of the battered woman, and thus, the diversity of individual experiences of battered women may fail to be accounted for. In other words, only the experiences of a few so inflicted women will benefit as legitimate victims.

If in fact the battered woman syndrome encourages a rigid victim stereotype, it is likely to be inconsistent with the realities faced by battered women. For instance, research findings have contradicted the suggestion that the behaviors of battered women are indeed passive (Bowker, 1993; Gondolf & Fisher, 1988; MacLeod, 1987). For example, Gondolf and Fisher (1988) noted that the abused women in Walker's sample were actively seeking outside help as the violence escalated and hence were not, as

Walker suggested, passive. In fact, the findings of several studies support the fact that battered women have been in contact with a variety of social services agencies to get assistance (Gelles & Straus, 1988; Hoff, 1990; Pagelow, 1984).

In a recent study, Schuller and Hastings (1996) examined whether in fact the portrayal of the woman's behavior toward the batterer, specifically her degree of passivity, would influence the decision process. While the woman's prior response to her husband's abuse had little impact on the decision process of the mock jurors, there was an indication that the degree of fit between the woman's history of behavior and the nature of the information conveyed in the expert testimony may in fact play a role in juror decision making. More specifically, male jurors rated the battered woman syndrome testimony as more applicable to the passive as opposed to the active response history condition. This finding is consistent with the feminist contention that a passive portrayal of the battered woman is relayed within the battered woman syndrome characterization (Browne, 1987; Schneider, 1986; Stubbs, 1992). Furthermore, the battered woman syndrome testimony was perceived as more persuasive in the passive response condition, than was an alternative form of expert testimony that focused less on psychological factors and more on the social realities facing women.

The degree to which a battered woman defendant must be consistent with the battered woman syndrome characterization has yet to be fully examined. This issue may have serious legal implications in that the testimony of the expert may detract from the defendant's defense the more non-prototypical she is (Schuller & Hastings, 1996). It may be that the BWS framework goes beyond merely describing appropriate behavior for

battered women in response to their batterer's abuse. Rather, it may be prescriptive in terms of defining the particular roles that women must adopt, or have adopted to be justifiably susceptible to this response. Moreover, it is likely that these roles are consistent with the traditional stereotypes of women. Indeed, the fact that a battered woman was employed outside of the home was characterized by the court as tending to refute battered woman syndrome evidence (U.S. v. Anaya, 1983, cited in Crocker, 1985). Again, this stereotype is inconsistent with the situation faced by many battered women (Crocker, 1985; MacLeod, 1980)

With increasing numbers of women in the workforce, battered women are increasingly included as part of the paid workforce. This being the case, it is also likely that they have access to work cohorts, if not family and friends. This characterization stands in stark contrast to the helpless and pathologized battered woman prescribed within the BWS/PTSD discourse, but nonetheless represents a more accurate portrayal of the context within which many battered women live. Consequently, such a woman may be held more accountable for not only her failure to leave the relationship, but her decision that lethal force was necessary than a woman whose situation more closely resembles the battered woman stereotype. In order to address this issue, this study will vary the degree to which the woman is perceived as an being isolated from social support systems.

Social Agency Testimony

In light of the potential problems associated with the use of BWS/PTSD evidence, various proposals for redefining its content have been advanced. Concern surrounding

the psychological, individualized focus of the current form of testimony has led some feminist and legal commentators to propose that expert testimony shift its focus. In particular, it has been suggested that the content of expert testimony should focus more on the social reality of the woman's situation (e.g. lack of effective community alternatives, inadequacy of police response, information pertaining to risks of leaving home) as opposed to her psychological reactions (Mahoney, 1991; Martinson, MacCrimmon, Grant & Boyle, 1991; Stefan, 1994).

Expert testimony need not explain the responses of battered women within a psychological discourse in order to help jurors make sense of their use of lethal force. A battered woman's reactions, including her failure to leave an abusive relationship and use of lethal force need not be diagnosed and explained as symptoms of a syndrome, but rather can be viewed in light of the overall social context (Stefan, 1994; Schuller & Hastings, 1996). A battered woman's failure to leave an abusive relationship is considered within a social agency framework as a rational option given the numerous obstacles that battered women face. A battered woman's responses are described as normal, and as such, the pathologized passive and helpless characterization is negated. Symptoms are transformed into survival strategies. This reconstruction is purportedly supported by social agency testimony.

Social agency testimony highlights the inadequacies that exist within the formal help sources. For instance, while a mandatory arrest policy exists in Canada, a wide degree of discretion often results in failure to arrest the abuser (Crosbie, 1995). Moreover, even if charges are laid, battered women may be exposed to two separate

threats: the threat of retaliatory violence in the likely event that the abuser returns, and the threat of contempt proceedings if she refuses to testify at trial (Sheehy, 1987).

A lack of alternatives where a woman may be safe is also influential in keeping battered women in their relationships. In comparison to the large number of battered women who require such services, shelters remain scarce. Consequently, waiting list and time limits must often be enforced. Battered women may also lack the financial support necessary to establish independence from their abusers (Archer, 1989; Bowker, 1993; Dutton, 1993). Some of these women do not work either by choice or by force, and may 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. Even women who work outside the home face the domination and control of their husbands. Indeed, even with a job, a woman is often far from being financially independent. In addition, escaping an abusive partner often requires flight, which may involve leaving an established lifestyle including a job and a regular paycheck. Unfortunately, even if a woman does escape the abusive situation and maintains her job, it is not uncommon for the abuser to sabotage the victim's employment with his disruptive behavior (Hoff, 1990).

Women who have successfully left an abusive relationship may still face retaliation from their abusers. Indeed, the commonality of incidents of abuse that occur following separation has led to the creation of the term "separation assault" (Mahoney, 1991). 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; Sherman, Smith, Schmidt & Rogan, 1992; Sheehy, Stubbs & Tolmie, 1992).

Social agency testimony addresses the obstacles and lack of alternatives available to women in abusive relationships. This form of testimony can therefore substantiate the defendant's claim that she believed she had no other alternative but to kill her abusive spouse without having to excuse her behavior as the actions of a woman suffering from a syndrome. Social agency testimony locates the explanation for battered women's reactions within the political and social structure. In so doing, the blame is diverted from the individual. In this way, women may no longer be assessed according to their degree of fit with a standard of victimhood. As Stefan (1994) notes, such testimony has the advantage of "being about men's behavior not women's pathology" (p. 1335). Social agency testimony may therefore be more consistent with the justification theory of self-defense than syndrome-based testimony. As such, this testimony may have ramifications for not only how the defendant is perceived but her claim of self-defense as well.

Purpose

The present jury simulation study represents an attempt to evaluate the role of expert testimony on juror decision-making in terms of its impact on jurors' perceptions of the defendant. Though conceptualizing women's experiences within the PTSD framework has been regarded as useful to jurors in their evaluation of the defendant's actions, no study has assessed the potential that such a diagnostic category may have in

terms of its construction of a pathologized and disordered individual when presented by an expert. Accordingly, the extent to which this characterization is conveyed when presented by an expert was investigated in the present study. As well, the current study addressed the degree to which a syndromized characterization is consistent with a self-defense plea which rests on a determination of the reasonableness of the defendant's actions.

In order to disentangle the information conveyed in the BWS/PTSD testimony, BWS evidence was presented alone and in conjunction with the PTSD framework. While it is likely the case that both the conditions presenting battered woman syndrome evidence (with and without a PTSD diagnosis) portrays the woman in a pathologized fashion, the inclusion of the PTSD diagnosis was expected to bolster this portrayal to such an extent that a self-defense plea would be considered completely irrelevant and inapplicable to the case on hand. Finally, these forms of testimony were contrasted to the social agency framework. The ability for social agency testimony to convey a reasonable and justified woman was assessed. It was expected that the self-defense plea in this latter condition would be considered more appropriate to the defendant's case and thus result in more lenient verdicts. Finally, in order to assess the impact of expert testimony in itself, a no-expert condition was as well included.

In response to criticism levied against battered woman syndrome classification in terms of its tendency to create a stereotypical victim, the characterization of the defendant was manipulated. More specifically, the degree of social isolation experienced by the woman in terms of her access to the work force, finances and social support from

family and friends was addressed. To this end, half of the juries were exposed to a defendant who was portrayed as experiencing a high degree of isolation. In this condition, the woman was portrayed as being highly isolated from a social support network, in that she had no job, and hence no independent source of income, few friends, and had been cut off from family. Just as the vivid memory recalled by the victim in Experiment II was likely consistent with stereotypical notions of what real victims would recall, so too was it expected that the stereotypical portrayal of the battered woman as socially isolated would be consistent with jurors' perceptions of who the typical battered woman is. Accordingly, to the degree that such a characterization is consistent with the BWS/PTSD framework, it was anticipated that the woman's actions would be excused, and would be perceived in light of a diminished capacity perspective.

Alternatively, remaining juries were exposed to a defendant who was perceived as experiencing a low degree of isolation. This woman was portrayed as having greater access to a social support network in that she was employed, received paychecks, and had access to family and friends. This portrayal of the battered woman was expected to be inconsistent with the stereotype promoted by the BWS/PTSD framework. Accordingly, the defendant would be perceived as failing to fit within the victim stereotype parameters advanced by the expert testimony, and jurors therefore would fail to evaluate her actions from her perspective. As such, fewer not-guilty verdicts would be rendered. When presented in conjunction with the social agency perspective which frames the woman's experiences and actions within a social context, the woman would likely not be held to

the same battered woman victim stereotype, and thus her actions would be viewed as more reasonable given the social realities faced by battered women.

Method

Participants

A total of 433 participants (192 males and 241 females) were drawn from among first year psychology students at Carleton University. They volunteered to participate in exchange for course credit as jurors in a simulated criminal trial that “may involve allegations of physical and/or sexual abuse of women” (Appendix E). Participants ranged in ages 18 to 51 ($M = 21.21$). Juries ($N = 80$) consisted of 4 to 8 jurors with at least one member of the opposite sex represented in each jury.

Materials

Videotapes. Eight videotapes simulating a trial of a woman who was accused of the second degree murder of her husband were presented. Each videotape was approximately 90 minutes in length with the exception of the control conditions which were approximately 75 minutes.

Actors were recruited as described in Experiment I. Trial transcripts (Appendix F) were drawn from 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 (Davis, 1997; Dobash & Dobash, 1979; Ewing, 1987; Gillespie, 1989; Kasian, 1991; Mosteller, 1989; Ontario Police College, 1996; R v. Lavallee, 1990; Schuller & Hastings, 1996; Walker, 1984).

The trial proceedings again paralleled those of an actual trial and included, a) presentation of the opening statements of the judge, prosecution and defense, b) presentation of the witnesses for the prosecution and defense, c) closing statements by the defense and prosecution and, d) the judge's charge. The three witnesses for the prosecution included, (a) a dispute officer who had responded to a previous domestic dispute call at the defendant's residence, (b) the arresting officer and, (c) the coroner who performed the autopsy. The three witnesses for the defense were, (a) a medical doctor who had treated the defendant's injuries prior to the homicide and had examined the defendant immediately following the homicide, (b) a neighbour and, (c) the defendant battered woman, and (d) expert testimony where relevant

Only the content and presentation of the testimony for the expert witness, neighbour and defendant differed between the conditions. Each of the videotapes reflected the appropriate characterization of the defendant by the expert witness (BWS, BWS/PTSD vs. social agency vs. control/no expert) and the defendant's degree of social isolation (high vs. low). Testimony from all other witnesses remained consistent across conditions.

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 a period of about 3 years. Prior to the shooting, the defendant's husband had been drinking, and an argument between the defendant and her husband ensued. The defendant was physically and sexually abused at this point, 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, 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. According to the prosecution, the argument that took place between the defendant and her husband further attested to the fact that the act committed by the defendant was the result of rage and revenge for the abuse that she had suffered. As such, the shooting could not have occurred as the result of a reasonable apprehension of death or injury since the deceased lay sleeping when he was shot. Rather, the prosecution maintained that the defendant should have made use of alternatives available to her.

Expert Testimony (BWS vs. BWS/PTSD vs. Social Agency).⁹ Material for the BWS testimony presented by the expert was based on previously conducted research, actual case studies, as well as material presented by legal scholars (Dutton & Goodman, 1994; Faigman, 1986; Kasian, 1991; Kinports, 1988; Talbot, 1988; Walker, 1979, 1983; 1993). Specific reference to the PTSD classification and criteria was drawn largely from

⁹ Using the identical measures as the manipulation check from the main study, a pilot study using written transcripts, indicated that the three forms of expert testimony were differentially perceived in terms of their content (i.e., sociological based vs. psychological based) on each of the 7 items ($p < .01 - .001$; $\eta^2 = .20 - .34$). Moreover, on the 4 items assessing the BWS and BWS/PTSD testimonies, the experts were differentially perceived in terms of presenting a clinical diagnosis ($p < .05 - .001$; $\eta^2 = .18 - .30$).

the DSM-IV (Dutton and Goodman, 1994; DSM-IV, 1994; Schuller & Hastings, 1996). Content for the social agency framework was similarly drawn from prior research investigations and was based on the recommendations of a number of scholarly works (Davis, 1997; Bowker, 1993; Buzzawa & Buzzawa in Gelles & Loseke, 1993; Castel, 1990; Crocker, 1985; Dutton, 1993; Hoff, 1990; Mahoney, 1991; Martinson et al., 1991; Rittenmeyer, 1981; Schuller & Hastings, 1996; Schneider, 1986; Sheehy, 1987; Rosen, 1986; Pagelow, 1992; Sherman et al., 1992). All forms of expert testimony addressed common misperceptions of battered women: the fear and anxiety that the women experience on a daily basis even in the absence of direct confrontation, 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.

BWS testimony described the battering experience in terms of the three-stage cycle of violence and learned helplessness as set forth by Walker (1979). The PTSD testimony framed the battering experience in terms of the clinical syndrome outlined within the DSM-IV. Social agency framework 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 alternative for battered women and addressed other social factors such as the lack of deterring effects of mandatory arrest. In all conditions the expert testified that a battered woman's response to the battering experiences were normal responses to the violence that has been inflicted upon them.

Information for relevant cross-examinations was gleaned from a perusal of scholarly and legal research and commentaries, as well as from actual legal cases and information presented in previous jury simulation research (Crosbie, 1995; Davis, 1997; Dobash & Dobash, 1979; Ewing, 1987; Faigman, 1986; Gillespie, 1989; Kasian, 1991; R v. Lavallee, 1990; Schuller & Hastings, 1996; Walker, 1984).¹⁰ Cross-examination of the expert witnesses involved discounting the major constructs put forth by the expert (i.e. learned helplessness, cycle theory of violence, role of police).

Degree of Social Isolation (High vs. Low).¹¹ Degree of social isolation was varied according to the extent to which the defendant had access to a social support network. Accordingly, within the low degree of social isolation condition, the defendant was employed (and hence receives a pay cheque), had been away on business trips, had access to a business car, took care of the family expenses, was a member of her condominium's group, had a number of acquaintances, shared a relatively close friendship with her neighbour, and was described as having a very close relationship with her mother. Conversely, in the high degree of social isolation condition, the defendant did not work outside of the home and was alienated from family and friends.

Cross-examination of the witnesses conveying information pertaining to the defendant's degree of social isolation involved highlighting the defendant's failure to pursue alternatives (i.e. call police, remove herself from the relationship).

¹⁰ The extent to which the cross-examination discredited the different expert testimonies was assessed in the pilot study. Results indicated that there were no significant differences across expert conditions, suggesting that the strength of cross-examinations were comparable.

Questionnaires

Manipulation check. Prior to deliberations, participants were asked to indicate on a 7-point scale, the degree to which they completely disagreed (0) or completely agreed (6) with a number of statements that reflected specific experimental manipulations. Of the 16 items, one item reflected how convincing the different forms of expert testimony were. Seven items were used to test the differential subject matter addressed by each of the expert's (BWS vs. BWS/PTSD vs. social agency). For instance, statements asked participants to rate the extent to which the expert suggested battered women suffer from a psychological disorder, or the degree to which the testimony addressed social issues. Statements assessing the effectiveness of the BWS and BWS/PTSD were examined using 4 items that were aimed at discerning the extent to which participants perceived the syndrome as representing a legitimate diagnosis (i.e., supported by clinical research). Finally, 4 items assessing the differential social isolation experienced by the defendant were included. For instance, statements asked participants to rate the degree to which they perceived the defendant as isolated from family and friends. A manipulation check questionnaire specific to the control conditions was administered. Consequently, statements relevant to the expert witness manipulation were excluded (Appendix E).

Credibility checklist. Similar to Experiments I and II, participants were asked to indicate on a 5-point scale the degree to which they found the following witnesses credible (5) or not credible (1): a) neighbour, b) defendant, c) expert, and d) arresting

¹¹ Using the identical measures as the manipulation check from the main study, a pilot study indicated that on the 4 items relating to the social isolation of the defendant, she was differentially perceived in terms of her closeness to family and friends ($p < .01 - .001$; $\eta^2 = .25 - .55$).

officer. Only the credibility of the defendant and expert witness were of interest to this study. The other two witnesses represented filler items (Appendix E).

Private belief in guilt scale. As in Experiment I and II, respondents were asked to indicate on an 11-point scale the degree to which they believed the defendant was not-guilty (-5) or guilty (+5), at various points throughout the videotaped trial. Participants were informed that their ratings were to reflect their own personal decision, and need not reflect the law (Appendix E).

Individual juror verdicts. As in Experiment I and II, jurors were asked to indicate on tally sheets their belief in the guilt or innocence of the accused. Each tally sheet provided three verdict options: guilty of second degree murder, guilty of manslaughter, or not-guilty by reason of self-defense. One tally was taken at the beginning of deliberations which was considered to be the pre-deliberation verdict. Jurors were asked to complete as many tally sheets as necessary until an unanimous verdict was reached. The final tally taken was considered to be the post-deliberation verdict (Appendix E).

Perceptions of defendant. Four items assessing perceptions of the defendant were constructed in order to examine whether the different forms of expert testimony were associated with perceiving her as psychologically unstable. A score of (-3) indicated that the respondent strongly disagreed and a score of (+3) indicated strong agreement. Specifically, these items included, (a) "The defendant is violent, and may kill again, or seriously harm someone in the future," (b) "The longer the defendant stayed in the relationship, the more mentally unstable, weak and out of control she became," (c) "The

defendant was aware as to the availability of resources that could help her” and (d) “The defendant was trapped because of her husband’s domination and control (Appendix E).

Familiarity with issues. At the end of the study, jurors were asked to respond to a 7-point scale assessing their familiarity with the information relayed within the expert testimony frameworks. Specifically, jurors were asked to rate the degree to which they were very familiar (3) or not at all familiar (-3) with, (a) the “battered woman syndrome (BWS)”, (b) “post-traumatic stress disorder (PTSD)” or (c) the sub-categorization of the battered woman syndrome as a post-traumatic stress disorder (Appendix E).

Skepticism. At the end of the study, jurors were asked to respond to a 7-point scale that asked them to rate how skeptical they were regarding psychological diagnoses, ranging from (3) very skeptical to (-3) not at all skeptical (Appendix E).

Procedure

Information concerning the study was posted to recruit potential participants (Appendix E). This recruiting announcement informed participants that they would be playing the role of a juror in a simulated criminal court case that may involve allegations of physical and/or sexual abuse of women. Participants were further informed that they would be participating as a jury member in deliberations, and that these deliberations would be videotaped for purposes of the study. Due to ethical considerations, participants were notified that the study may be disturbing for some, and that discretion is advised. Participants were randomly assigned to one of 80 juries, and juries were randomly assigned to one of eight conditions stemming from a 4 (expert witness) x 2 (social isolation) factorial design, 1) BWS/ high isolation, 2) BWS/ low isolation, 3)

BWS/PTSD/ high isolation, 4) BWS/PTSD / low isolation, 5) social agency/ high isolation, 6) social agency/ low isolation, 7) no expert control/ high isolation, 8) no expert control/ low isolation.

Upon arrival, students were reminded of the nature and content of the study in addition to the information provided by the recruiting announcement. Due to the emotional and explicit content of the trial and deliberations, participants 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 E).

The experimenter remained in the room during the trial proceedings and stopped the tape at three intervals: 1) at the end of the opening statements of judge, prosecutor and defense; 2) after the testimony of the prosecution and defense witnesses (including expert testimony where relevant), and 3) following the closing arguments of the defense and prosecuting attorneys, and the judge's charge. During these intervals, jurors were asked to complete the private belief in guilt rating scale, based upon the testimony they had heard. At the completion of the trial proceedings, jurors were asked to complete the credibility checklist and a series of questions concerning statements made regarding specific experimental manipulations. Jurors were reminded that the deliberations would be videotaped and were asked to sign a second informed consent form, identical to that used in Experiments I and II, to this effect (Appendix E).

As was the case in Experiments I and II, a foreperson was randomly selected before deliberation and informed of their duties (Appendix E). During deliberations,

jurors were asked to register their belief in the guilt or innocence of the accused on the tally sheets. Each tally sheet provided three verdict options that had been described in the judge's charge: 1) guilty of second degree murder (intent to cause death or bodily harm that she knew was likely to cause death), 2) guilty of manslaughter (either lacked the intent or possessed the requisite intent but was provoked by something sufficient to deprive the ordinary person of self-control and reacted before there was time for the passion to cool) and, 3) not-guilty by reason of self-defense (reasonable apprehension of death or bodily harm and believed on reasonable grounds that she could not otherwise protect herself). A maximum time limit of 90 minutes was given to the jury for deliberation. At the end of this time, if the jury had not reached an unanimous verdict, the jury was declared hung.

Following deliberations, jurors were asked to complete the questionnaire concerning their personal perceptions of the defendant and her actions. The debriefing session included a discussion of the purpose of the experiment, clarification of legal issues, and addressed questions raised by the students. As was the case in the previous Experiments, the debriefing package included a list of contact numbers, which consisted of services for general matters (e.g. legal aid), and services specifically for victims of abuse (Appendix E).

Results¹²

Manipulation Checks

In order to ensure that the experimental manipulations for expert testimony (BWS vs. BWS/PTSD vs. social agency) and social isolation (high vs. low) were valid and had the desired effect, analyses of items measuring these effects were conducted. Table 10 displays all relevant means.

Persuasiveness of Expert. A one-way analysis of variance (ANOVA) conducted across expert witness conditions (BWS vs. BWS/PTSD vs. social agency), indicated that the experts were equally and highly convincing, $F(2, 323) = 3.13$, ns, $\eta^2 = .01$.

Expert Witness Testimony. A one-way multivariate analysis of variance (MANOVA) was conducted on the 7 items concerning expert testimony. Results indicated a significant multivariate effect, Pillais = .30; $F(14, 628) = 7.96$, $p < .001$. Follow-up univariate F-tests indicated a significant effect for each of the seven items.

Expert witness conditions differed on the degree to which the expert suggested that battered women suffer from a psychological disorder as a result of being battered, $F(2, 319) = 13.28$, $p < .001$, $\eta^2 = .08$. Follow-up planned orthogonal comparisons indicated, as anticipated, that within the BWS/PTSD condition, the expert witness was perceived as presenting battered women as suffering from a psychological disorder in

¹² As gender has been consistently demonstrated as influencing both opinions and the credibility assigned to battered women defendants (e.g., Kasian, Spanos, Terrance & Peebles, 1993; Schuller & Hastings, 1996; Terrance, Matheson & Spanos, 2000), the role of gender was examined in the present study across all dependent variables. Women tended to view the defendant as more credible and were less likely to rate her as guilty than men. However, gender failed to interact with either expert testimony or social isolation conditions. Accordingly, analyses involving gender were excluded as this was not the primary concern of this study.

Table 10

Means and Standard Deviations for the Manipulation Check Analyses as a Function of Expert Testimony Condition

	Expert Testimony					
	BWS		BWS/PTSD		Social Agency	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Convincing	4.06	1.36	4.37	1.18	4.45	1.23
Disorder	4.84	1.16	5.25	1.44	3.73	1.56
Social Factors	3.91	1.32	3.83	1.58	4.76	1.09
Sociological	3.75	1.16	3.46	1.17	4.21	1.05
Distress	4.16	1.65	4.40	1.42	3.95	1.40
Legal System	3.51	1.06	3.60	1.19	3.90	.99
Shelters	3.58	1.25	3.59	1.21	4.10	.94
Financial	2.79	1.35	2.50	1.36	3.41	1.11

Note. Potential range of response = 0 (completely disagreed) to 6 (completely agreed)

Convincing = degree to which expert testimony was convincing

Disorder = degree to which a psychological disorder of battered women was suggested by expert

Social Factors = degree to which expert suggested battered women trapped due to social factors

Sociological = degree to which the expert's testimony was sociological (i.e., addressed social issues) in nature

Distress = degree to which expert addressed psychological distress of battered women

Legal System = degree to which the legal system (i.e., courts, police) were addressed by expert

Shelters = degree to which the availability of shelters was addressed by expert

Financial = degree to which the financial situation of battered women was addressed by expert

comparison to the BWS expert, $t(323) = -2.71, p < .01$. Not surprisingly, expert conditions involving testimony concerning BWS testimony were perceived as presenting a psychological disorder of battered women, $t(323) = 4.51, p < .001$, compared to the social agency expert testimony.

Jurors were as well more likely to differentially perceive the expert as suggesting that battered women are trapped in abusive relationships due to social factors, $F(2, 319) = 17.38, p < .001, \eta^2 = .10$. Follow-up planned orthogonal comparisons indicated that while this perception failed to differ between the BWS and BWS/PTSD condition, $t(323) = .46, ns$, as anticipated this perception was highest within the social agency framework than in the BWS and BWS/PTSD expert conditions combined, $t(323) = -5.78, p < .001$.

The degree to which the expert's testimony was perceived as sociological (i.e., addressed social issues) in nature was differentially perceived according to expert testimony conditions, $F(2, 319) = 12.82, p < .001, \eta^2 = .07$. Planned orthogonal comparisons indicated that while this perception did not vary between the BWS and BWS/PTSD conditions, $t(321) = 1.86, ns$, jurors were more likely to endorse this perception within the social agency condition than in the BWS and BWS/PTSD conditions combined, $t(321) = -4.63, p < .001$.

The degree of psychological distress experienced by battered women differed according to expert testimony condition, $F(2, 319) = 12.18, p < .001, \eta^2 = .07$. Planned orthogonal comparisons indicated that as anticipated, jurors within the BWS/PTSD condition were more likely to rate this issue as being addressed than jurors within the BWS expert condition, $t(321) = -3.23, p < .001$. Furthermore, this distress was perceived

as being addressed within both the BWS and BWS/PTSD combined as opposed to the social agency expert condition, $t(321) = 3.64, p < .001$.

The degree to which the legal system (police and laws) were addressed, differed across expert testimony conditions, $F(2,319) = 3.79, p < .05, \eta^2 = .02$. Follow-up planned orthogonal comparisons indicated that while the BWS and BWS/PTSD conditions failed to differ in this regard, $t(322) = -.73, ns$, this issue was significantly more likely to be perceived as being addressed within the social agency expert condition than the BWS and BWS/PTSD expert conditions combined, $t(322) = -2.66, p < .01$.

The degree to which the availability of shelters for battered women was addressed varied across expert conditions, $F(2,319) = 4.40, p < .05, \eta^2 = .03$. Not surprisingly, while the BWS and BWS/PTSD conditions failed to differ, $t(327) = -.07, ns$, follow-up planned orthogonal comparisons indicated that this issue was more likely to be perceived as being addressed within the social agency expert condition than the BWS and BWS/PTSD expert conditions combined, $t(327) = -3.13, p < .01$.

Finally, the degree to which the expert addressed the financial situation of battered women was differentially perceived according to expert testimony condition, $F(2,319) = 15.56, p < .001, \eta^2 = .02$. Follow-up planned orthogonal comparisons indicated that while the BWS and BWS/PTSD conditions failed to differ in this regard, $t(327) = 1.65, ns$, this issue was more likely to be perceived as being addressed within the social agency condition as opposed to the BWS and BWS/PTSD expert conditions combined, $t(327) = -5.24, p < .001$.

Expert Testimony: BWS vs. BWS/PTSD. A one-way MANOVA was conducted on the 4 items uniquely relevant to the BWS and BWS/PTSD conditions. The analysis conducted on expert witness testimony indicated a significant multivariate effect, Pillais = .17; $F(4, 173) = 8.53$, $p < .001$. Follow-up univariate F-tests indicated a significant effect for each of the four items. See Table 11 for relevant means.

Based on the expert's testimony within the BWS/PTSD expert condition, jurors were more likely to perceive the BWS/PTSD as being supported by clinical research, $F(1, 176) = 25.49$, $p < .001$, $\eta^2 = .13$, as being supported by the 'psy' (psychologists, psychiatrists) community, $F(1, 176) = 4.04$, $p < .05$, $\eta^2 = .02$, and as representing a legitimate diagnosis, $F(1, 176) = 5.97$, $p < .05$, $\eta^2 = .03$, than jurors within the BWS condition. Similarly, jurors within the BWS/PTSD condition were more likely to perceive that a clinical diagnosis of a psychological disorder was presented, $F(1, 176) = 17.16$, $p < .001$, $\eta^2 = .09$.

Social Isolation of Defendant. A one-way MANOVA was conducted on the 4 items relevant to social isolation (high vs. low). Results indicated a significant multivariate effect, Pillais = .64; $F(4, 325) = 13.37$, $p < .001$. Follow-up univariate F-tests indicated a significant effect for each of the four items. See table 12 for relevant means.

Jurors within the high degree of social isolation condition, were more likely to perceive the defendant as being isolated from family, $F(1, 328) = 19.77$, $p < .001$, $\eta^2 = .37$, as having fewer financial resources, $F(1, 328) = 15.18$, $p < .001$, $\eta^2 = .12$, as being isolated from friends, $F(1, 328) = 17.82$, $p < .001$, $\eta^2 = .35$, and as not having a close relationship with her neighbour, $F(1, 328) = 38.45$, $p < .001$, $\eta^2 = .54$.

Table 11

Means and Standard Deviations for the Manipulation Check Analyses as a Function of BWS and BWS/PTSD Expert Testimony Condition

	Expert Testimony			
	BWS		BWS/PTSD	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Clinical	3.01	1.43	4.04	1.24
Psy Support	4.01	1.34	4.38	1.15
Legitimate	3.76	1.47	4.28	1.27
Diagnosis	3.53	1.43	4.40	1.21

Note. Potential range of response = 0 (completely disagreed) to 6 (completely agreed)
 Clinical = degree to which BWS was supported by clinical research
 Psy Support = degree to which BWS was supported by the 'psy' (psychologists, psychiatrists) community
 Legitimate = degree to which BWS was perceived as a legitimate diagnosis
 Diagnosis = degree to which a clinical diagnosis of a psychological disorder was presented

Table 12

Means and Standard Deviations for the Manipulation Check Analyses as a Function of Social Isolation

	Isolation			
	High		Low	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Family	5.27	1.08	3.11	1.63
Financial	1.45	4.32	4.12	1.29
Isolated	5.40	.95	3.41	1.59
Neighbour	.88	.85	3.04	1.11

Note. Potential range of response = 0 (completely disagreed) to 6 (completely agreed)
 Family = degree to which defendant was isolated from family
 Financial = degree to which defendant had financial resources
 Isolated = degree of isolation from friends
 Neighbour = degree of closeness to neighbour

Credibility

As the credibility of the expert was not relevant to the control condition, individual ANOVAs were conducted separately on the credibility of the defendant and expert. A 4 x 2 ANOVA conducted on the credibility ratings for the defendant across levels of expert condition (BWS vs. BWS/PTSD vs. social agency vs. control), and social isolation (high vs. low) indicated a main effect for expert, $F(3,425) = 4.04$, $p < .01$, $\eta^2 = .03$. Follow-up planned orthogonal comparisons across levels of expert testimony, indicated that jurors within the BWS condition rated the defendant as less credible ($M = 3.82$, $SD = .97$) than jurors in the PTSD condition ($M = 4.03$, $SD = .79$), $t(425) = -2.02$, $p < .05$. Moreover, jurors rated the defendant as equally credible across the BWS testimonies combined and the social agency condition ($M = 3.97$, $SD = .79$), $t(425) = -.47$, ns. Three pairwise comparisons of the expert conditions against the control ($\alpha = .016$) indicated that the defendant was perceived as more credible within both the PTSD, $t(425) = 3.05$, $p < .01$, and social agency conditions, $t(425) = 2.68$, $p < .01$, in comparison to the control condition ($M = 3.64$, $SD = .98$). The defendant's credibility failed to differ between BWS and control conditions, $t(425) = 1.06$, ns.

This main effect was qualified by an interaction involving social isolation, $F(3,425) = 5.19$, $p < .01$, $\eta^2 = .04$. Simple main effect analyses of social isolation at each level of expert testimony, indicated significance for only the BWS condition, $F(1,428) = 15.44$, $p < .001$. When provided with expert testimony concerning the BWS, jurors were more likely to rate the defendant as credible only when she experienced a high as opposed to a low degree of social isolation.

Simple main effect analyses of expert testimony at each level of social isolation, revealed significance at both the low, $F(3,426) = 4.49, p < .01$, and high, $F(3,426) = 4.61, p < .01$, levels of social isolation. When the defendant experienced a low degree of social isolation, the series of follow-up planned orthogonal comparisons indicated that she was rated as more credible within the BWS/PTSD condition than the BWS condition, $t(202) = -3.17, p < .01$. Ratings between the BWS testimonies and the social agency condition failed to differ, $t(202) = -1.16, ns$. Three pairwise comparisons ($\alpha = .016$) indicated that defendant ratings also failed to differ between each of the BWS, $t(202) = -1.58, ns$, PTSD, $t(202) = 1.57, ns$, social agency, $t(202) = .97, ns$, and control condition. When the defendant was portrayed as experiencing a high degree of social isolation, the series of follow-up planned orthogonal comparisons indicated that ratings of credibility failed to differ between the BWS and BWS/PTSD condition, $t(223) = .89, ns$. Likewise, ratings failed to differ between the BWS testimony conditions combined and the social agency condition, $t(223) = .37, ns$. Three pairwise comparisons ($\alpha = .016$) indicated that the defendant was rated more credible within each of the BWS, $t(223) = 3.84, p < .01$, BWS/PTSD, $t(223) = 2.91, p < .01$, and social agency conditions, $t(223) = 3.04, p < .01$ than in the control condition. The means associated with this interaction are presented in Table 13.

A 3 x 2 ANOVA was conducted on the credibility ratings assigned to the expert across levels of expert testimony (BWS vs. BWS/PTSD vs. social agency) and social isolation (low vs. high). Neither the main effects of isolation, $F < 1$, expert condition, $F < 1$, nor their interaction, $F(2,320) = 1.21, ns$, attained significance.

Table 13

Means and Standard Deviations for the Credibility Ratings of Defendant and Expert as a Function of Social Isolation and Expert Testimony Condition

Rating	Social Isolation			
	Low		High	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Defendant				
BWS	3.43	1.08	4.13	.75
BWS/PTSD	4.06	.91	4.00	.66
Social Agency	3.93	.92	4.02	.81
Control	3.75	1.00	3.55	.96
Expert				
BWS	4.06	.93	3.98	.93
BWS/PTSD	4.26	.86	4.05	.91
Social Agency	4.10	.87	4.25	.80

Note. Potential range of response = 1 (not credible) to 5 (very credible)

Private Beliefs

Private belief ratings of the defendant's guilt were analyzed using a 4 (expert: BWS vs. BWS/PTSD vs. social agency vs. control) x 2 (social isolation: low vs. high) x 3 (interval) mixed ANOVA. Results indicated a main effect for expert testimony, $F(3,424) = 4.59, p < .01, \eta^2 = .03$. Planned orthogonal follow-up comparisons indicated that jurors within the BWS expert condition were more likely to rate the defendant guilty than jurors in the BWS/PTSD expert condition, $F(1,424) = 13.72, p < .001$. Guilt ratings failed to differ between the BWS conditions combined and the social agency condition, $F < 1$. Finally, pairwise comparisons ($\alpha = .016$) indicated that in comparison to the control condition, guilt ratings did not differ between each of the BWS, $t(424) = 1.66, ns$, PTSD, $t(424) = -1.99, ns$, and social agency expert testimony conditions, $t = .04, ns$. A significant main effect for social isolation was also indicated, $F(1, 424) = 9.57, p < .01, \eta^2 = .02$. Consistent with expectations, jurors rated the defendant as more guilty when she experienced a low degree ($M = -.52, SD = 2.96$) as opposed to a high degree ($M = -1.35, SD = 2.72$) of social isolation.

A main effect for interval also emerged, $F(2, 742) = 34.42, p < .001, \eta^2 = .08$. This main effect was qualified by significant 2-way interaction involving expert condition, $F(5, 742) = 2.11, p < .05, \eta^2 = .02$. Table 14 presents the means associated with this interaction. Analysis of the simple effects of expert condition at each interval indicated simple main effects at interval 1, $F(1, 424) = 3.27, p < .01$, interval 2, $F(1, 424) = 4.27, p < .01$, and interval 3, $F(1, 424) = 4.57, p < .01$. Follow-up planned orthogonal comparisons revealed that at each interval (interval 1: following opening statements,

Table 14

Means and Standard Deviations for the Interaction between Expert and Private BeliefRating

Interval	Expert Testimony			
	BWS	BWS/PTSD	SA	Control
Private Belief 1 (after opening statements)				
<u>M</u>	-.04	-.99	-.56	-.11
<u>SD</u>	2.73	2.72	2.55	2.68
Private Belief 2 (after all witnesses/ expert testimony where relevant)				
<u>M</u>	-.49	-1.92	-1.16	-1.29
<u>SD</u>	3.55	2.98	2.87	3.20
Private Belief 3 (after closing arguments)				
<u>M</u>	-.53	-2.15	-.98	-1.32
<u>SD</u>	3.77	3.28	3.47	3.62
Total				
<u>M</u>	-.36	-1.69	-.90	-.96
<u>SD</u>	3.06	2.75	2.69	2.84
<u>N</u>	108	106	117	102

Note. Potential range of response = -5 (not guilty) to 5 (guilty)

$t(424) = 2.76, p < .01$; interval 2: following witnesses, including expert where applicable, $t(424) = 3.51, p < .001$; and interval 3: following closing arguments, $t(424) = 3.62, p < .001$), jurors in the BWS condition were more likely to rate the defendant guilty than jurors in the BWS/PTSD condition. This difference was particularly heightened at interval 2 and interval 3. Moreover, at each of the intervals, ratings of guilt failed to differ between the BWS conditions combined and the social agency condition. Three consecutive pairwise comparisons at each of the intervals ($\alpha = .016$) revealed that only at interval 1 (following opening statements), were jurors within the control condition more likely to rate the defendant guilty than jurors in the PTSD condition, $t(425) = -2.44, p < .01$. All other comparisons within interval 1 failed to yield significance.

Analysis of simple main effects of interval at expert condition, revealed significance for the BWS/PTSD, $F(2,743) = 14.71, p < .001$, social agency, $F(2,743) = 4.21, p < .05$, and control conditions, $F(2,743) = 18.15, p < .001$. Belief in the defendant's guilt decreased from interval 1 (following opening statements) to interval 2 (following witnesses, expert testimony where applicable) for each of the BWS/PTSD, $t(105) = 4.77, p < .001$, social agency, $t(116) = 3.08, p < .01$, and control conditions, $t(101) = 5.24, p < .001$. Moreover, ratings of guilt remained consistent from interval 2 to interval 3 (following closing arguments) for each of the BWS/PTSD, $t(105) = 1.52, ns$, social agency, $t(116) = -.96, ns$, and control conditions, $t(101) = .15, ns$. Ratings of guilt failed to differ within the BWS expert condition, $F(2,743) = 2.91, ns$.

Juror Verdicts

Individual juror verdicts were analyzed in a 2 x 4 x 2 mixed nested ANOVA with interval (pre- post-deliberation opinion rating) as the within subject variable and expert testimony (BWS vs. BWS/PTSD vs. social agency vs. control) and social isolation (high vs. low) as the between subject variables. Juror verdicts were coded as (0) for not-guilty by reason of self-defense, (1) for manslaughter and (2) for second degree murder. Higher scores on this measure indicated verdicts that held the defendant as increasingly responsible for her actions. Juries were nested within symptomatology conditions.

Results indicated a main effect for interval, $F(1,352) = 5.05$, $p < .05$, such that jurors were more likely to render guilty verdicts at post-deliberation ($M = .85$, $SD = .56$) than at pre-deliberation ($M = .78$, $SD = .72$).

Jury Verdicts¹³

To assess the effects of expert testimony and degree of isolation on jury verdicts, a Chi square analysis was conducted. Defendant characterization and explicitness of testimony were entered as the independent variables with the frequency of final verdict options as the outcome variable. Final verdicts of guilty (scored 1), and not-guilty (scored 0) represented the outcome variable.

Results indicated that guilty verdicts failed to differ across levels of expert condition, $\chi^2(3) = .91$, ns, isolation, $\chi^2(1) = .82$, ns, and their interaction $\chi^2(7) = 4.51$, ns.

¹³ Given the low frequency of murder verdicts rendered within each of the BWS ($n = 0$), BWS/PTSD ($n = 0$), social agency ($n = 2$) and control ($n = 2$) conditions, murder and manslaughter were collapsed to form a single guilty category.

Irrespective of condition, juries rendered overwhelmingly guilty verdicts. The frequency of verdict outcome appears by level of isolation and expert condition in Table 15.

Perceptions of the Defendant.

A 4 x 2 (expert testimony x social isolation) nested MANOVA was conducted on the four questions pertaining to jurors' perceptions of the defendant. A multivariate main effect for expert testimony, Pillais = .37, $F(12, 213) = 2.52$, $p < .01$ was indicated. Follow-up univariate F-tests indicated a significant effect on only two of the four items.

Specifically, "the longer the defendant stayed in the battering relationship, the more mentally unstable, weak and out of control she became," $F(3, 72) = 6.09$, $p < .01$, $\eta^2 = .05$, and "the defendant was trapped because of her husband's domination and control,"

$F(3, 72) = 5.04$, $p < .01$, $\eta^2 = .17$. Planned orthogonal comparisons indicated that jurors were more likely to rate the defendant as mentally unstable and weak within the

BWS/PTSD condition ($M = 2.11$, $SD = 1.08$) than the BWS condition ($M = 1.78$, $SD = 1.22$), $t(72) = -2.00$, $p < .05$. Interestingly, ratings of the defendant's mental instability

failed to differ across the BWS expert testimony conditions combined and the social agency condition ($M = 1.83$, $SD = 1.07$), $t(72) = -2.11$, ns. Pairwise comparisons ($\alpha =$

.016) revealed that this perception was more likely to be endorsed within both the

BWS/PTSD $t(72) = 3.99$, $p < .001$, and social agency $t(72) = 2.57$, $p < .01$, conditions than within the control condition ($M = 1.44$, $SD = 1.35$). Interestingly, jurors did not

differentially rate the defendant as mentally unstable and weak within the BWS condition compared to the control condition, $t(72) = 2.25$, ns.

Planned orthogonal comparisons indicated that jurors' recognition of the

Table 15

Frequency of Guilty and Not-Guilty Verdicts as a Function of Isolation and Expert Testimony Condition

Expert Condition	Isolation		Total
	Low	High	
BWS			
Not-Guilty	2	2	4
Guilty	8	8	16
BWS/PTSD			
Not-Guilty	1	4	5
Guilty	9	6	15
Social Agency			
Not-Guilty	2	1	3
Guilty	8	9	17
Control			
Not-Guilty	2	1	3
Guilty	8	9	17

domination and control of the husband was higher in the BWS/PTSD condition ($M = 2.12$, $SD = 1.13$) than in the BWS condition ($M = 1.57$, $SD = 1.52$), $t(72) = -2.33$, $p < .05$. Ratings failed to differ between the BWS testimony conditions combined and the social agency ($M = 2.14$, $SD = 1.05$), condition, $t(72) = -1.69$, ns. Pairwise comparisons ($\alpha = .016$) indicated that while this recognition failed to differ between the BWS and control condition, $t(72) = .67$, ns, jurors did recognize the domination and control of the husband within both the PTSD, $t(72) = 3.51$, $p < .001$, and social agency conditions, $t(72) = 3.97$, $p < .001$ in comparison to the control condition ($M = 1.48$, $SD = 1.67$).

Finally, the main effect for isolation also attained multivariate significance, Pillais' = .13, $F(4, 69) = 2.68$, $p < .05$. Follow-up univariate F-tests indicated a significant effect on two out of the four items. Specifically in response to the question, "the defendant is violent and may kill or seriously harm someone," $F(1, 72) = 4.29$, $p < .05$, $\eta^2 = .06$, jurors rated the likelihood of this threat as significantly higher within the high ($M = -2.15$, $SD = 1.49$) as opposed to the low isolation condition ($M = -2.39$, $SD = 1.16$). Not surprisingly, in response to the question "the defendant was aware as to the availability of resources that would help her," $F(1, 72) = 4.68$, $p < .05$, $\eta^2 = .06$, jurors rated this awareness as higher when the defendant experienced a low ($M = 1.66$, $SD = 1.50$) as opposed to a high degree of social isolation ($M = 1.37$, $SD = 1.64$).

Familiarity with Expert Testimony Frameworks

In order to assess whether jurors' familiarity with the issues varied systematically across treatment conditions, a 4 x 2 (expert condition x social isolation) nested MANOVA was conducted on jurors' responses to the questions pertaining to their

familiarity with the BWS, PTSD, and the sub-categorization of BWS as a PTSD. Neither the main effects, nor their interaction attained significance. Jurors were equally and moderately familiar with the constructs of the BWS ($M = .78$, $SD = 1.75$), PTSD ($M = .71$, $SD = 1.70$), and the sub-categorization of BWS as a PTSD ($M = -.15$, $SD = 1.57$).

Skepticism

A 4 x 2 (expert condition x social isolation) nested ANOVA was conducted on the extent to which jurors were skeptical of psychological diagnoses. Neither the main effects, nor their interaction attained significance. Jurors were equally and moderately skeptical across conditions ($M = -.71$, $SD = 1.72$).

Discussion

The purpose of this study was to evaluate various forms of expert testimony in terms of their impact on jurors' perceptions of a battered woman charged with the second degree murder of her abusive spouse. It was anticipated that while expert testimony typically submits the BWS in order to frame the experiences of battered women, such testimony would evoke a pathological characterization of the battered woman. Moreover, while proponents advocate the conceptualization of the BWS under the PTSD diagnosis, such a representation was expected to further compound the pathologized portrayal of battered women. In response to criticisms levied against the syndromized accounts of battered women, social agency testimony that situates battered women's experiences within a political and social structure was expected to undermine the clinical discourse advocated within the BWS frameworks. Finally, this study was also interested in the role of expert testimony in terms of its potential to support the self-defense claims

of the defendant. As the self-defense claims of a battered woman ultimately rest on her successful portrayal as a victim that has responded rationally to her situation, the implications of various forms of expert testimony in constructing this narrative were examined. Overall, results indicated that while these forms of expert testimony influenced jurors' perceptions of the defendant, they did not have implications for jury nor juror verdicts.

Consistent with expectations, the PTSD diagnosis bolstered the depiction of the defendant as psychologically disordered in comparison to the BWS evidence. This was not surprising in light of jurors' perceptions regarding the content of the PTSD diagnosis. Relative to the BWS testimony, the addition of PTSD evidence increased awareness of the extent to which psychological distress was experienced by battered women and the possibility of a psychological disorder. Moreover, in situating the BWS under the clinical PTSD discourse, an air of credibility was also assigned to the diagnosis, in that jurors perceived the BWS/PTSD formulation to represent a more valid diagnosis than the BWS alone. Recognized as a legitimate diagnosis, the psy emphasis of the PTSD nomenclature may have bolstered the clinicalized portrayal of the defendant. Consequently, in line with concerns expressed by critics, the mental disorder of the woman was highlighted (Stefan, 1994).

A related implication of the clinicalization of the battered woman's experiences was the validation of victim status. In fact, the legitimization of the woman's experiences within the PTSD category bestowed a degree of credibility to the defendant beyond that afforded within the BWS classification. To the extent that the defendant was

perceived as a good battered woman, sufficiently traumatized so as to evidence psychological impairment, jurors may have been more willing to concede that harm was inflicted. Indeed, the domination and control of the husband was most recognized when the defendant's responses were framed within the PTSD discourse. Moreover, the framing of the battered woman's experiences within the PTSD discourse was the most effective in terms of influencing jurors' opinions concerning the defendant's guilt. Throughout the trial, jurors were more likely to rate the defendant not-guilty when presented with PTSD testimony as opposed to the BWS evidence alone. Indeed, when presented with only the BWS testimony, jurors' ratings of the defendant's guilt remained consistently high throughout the trial. While not contributing to the pathologized portrayal of the defendant, it appears that the introduction of BWS evidence was detrimental to the defendant. Therefore, the recent conceptualization of the BWS as a precursor to PTSD may very well prove to be advantageous within this legal context.

Despite concerns regarding the pathologized stereotype evoked by both the BWS and BWS/PTSD frameworks, the social agency testimony failed to undermine this characterization. In spite of being differentially perceived by jurors in terms of its content matter, jurors' perceptions regarding the mental instability of the defendant were still apparent. Even in light of evidence that spoke explicitly to social issues, jurors continued to endorse beliefs concerning a battered woman's psychological pathology. As beliefs concerning the mental instability of the defendant were evident, albeit to a lesser degree, within the no-expert control condition, jurors may already endorse preconceived beliefs concerning a battered woman's psychological pathology that were bolstered by

the introduction of expert testimony. Unfortunately, as jurors' perceptions were not measured prior to the trial, more definitive conclusions cannot be reached. Moreover, as these beliefs were not strengthened within the BWS condition relative to the no-expert condition, future research delineating the information conveyed and how it is interpreted within each of the various forms of expert testimony is warranted.

Interestingly, while beliefs in the defendant's guilt were higher within the no-expert control condition than when the PTSD discourse was relayed following opening statements, guilt ratings similarly decreased throughout the trial relative to both the PTSD and social agency expert conditions; ratings of the defendant's guilt failed to decrease when BWS testimony was introduced. In other words, the introduction of expert testimony failed to significantly reduce perceptions of the defendant's guilt. The ineffectiveness of the various expert testimony frameworks was also reflected in the verdicts rendered at both the individual and jury level.

At the jury level, irrespective of the expert framework introduced, jury verdicts were overwhelmingly guilty. While expert testimony is introduced in order to educate a jury in terms of the reasonableness of the woman's actions, given the circumstances surrounding the shooting (i.e., husband asleep) in the present study, mock juries may have found it difficult to appreciate the danger perceived by the defendant. Indeed, in the literature, it is clear that women have a greater chance of acquittal when self-defense action takes place while an attack by their abuser was underway (Follingstad et al., 1989; Gillespie, 1989; Ewing, 1987). Moreover, the relative lack of success of the self-defense in the present study is comparable with real-life cases and previous research (Ewing,

1987; Jones, 1980; Kasian, Spanos, Terrance & Peebles, 1993). The low frequency of guilty verdicts for second degree murder suggests that juries were more inclined to render the diminished plea of manslaughter even in the absence of expert testimony. This pattern of results was also evident in the verdicts rendered by individual jurors. Therefore, while jurors appear to have been willing to acknowledge the defendant's circumstances as a battered woman, they were nevertheless hesitant to regard her actions as self-defense.

In light of the pathologized characterization of battered women advocated within the PTSD framework in particular, it is not surprising that this form of expert testimony did not validate the defendant's claims of self-defense. As Kasian et al. (1993) concluded, "expert testimony is likely to be useful... under circumstances where the sanity of the defendant is called into question (p. 309). Therefore, this form of expert testimony may more readily lend itself to an insanity plea than self-defense. While this possibility was not examined in the present study, evidence gleaned from Schuller and Hastings (1996) supports this contention. In their study, mock jurors exposed to expert testimony conveying the battered woman syndrome as a sub-categorization of PTSD indicated that an insanity plea would have been more successful. Future research examining the consistency of the BWS/PTSD with diminished capacity pleas is warranted.

Previous research that has examined battered woman syndrome evidence on mock juror decision-making has been largely inconclusive. Follingstad et al., (1989) for instance reported that the presence of expert evidence concerning the BWS did not exert

an influence on verdicts. Likewise, in a study conducted by Finkel, Meister, and Lightfoot (1991), the presence of the expert testimony did not alter verdicts. Research conducted by Schuller (1992) however found such testimony to influence individual juror verdicts in a favorable way. Though there was no increase in the number of self-defense verdicts, Schuller (1992) reported a slight shift in verdicts away from murder toward manslaughter. While a similar trend was not evident in the present study, BWS evidence likewise failed to support the defendant's claim of self-defense.

Given the air of credibility afforded to BWS testimony by virtue of its representation within the PTSD framework, a skepticism towards "victimization syndrome excuses" (Downs, 1996) may have been endorsed by mock jurors. Consequently, jurors may have disregarded the testimony altogether in their assessment of the defendant's claims. At the same time however, as participants indicated only a moderate degree of skepticism towards psychological diagnoses, additional research on this issue is warranted. Future research would benefit by attempting to delineate so-called "syndrome" excuses (i.e., battered woman syndrome, rape trauma syndrome, child abuse accommodation syndrome) from the supposed legitimate diagnoses represented within the DSM-IV. As an aura of scientific objectivity may be accorded to the latter forms of diagnoses, jurors may be more apt to consider such knowledge in their decision-making process.

Regardless of representing a normalization of battered women's experiences, the social agency testimony was no more effective than the BWS-based testimonies in lending support to the defendant's claim of self-defense. Although contrary to

expectations, this finding is consistent with that of Schuller and Hastings. (1996) who found no difference between social agency framework and the BWS. While the present study incorporated more distinct content areas between the PTSD and social agency testimonies than did Schuller and Hastings (1996), this form of testimony was no more persuasive than when expert testimony was absent altogether. The relative ineffectiveness of social agency testimony may reflect a hesitancy on the part of jurors to divert blame from the individual defendant onto societal factors. This tentativeness may only be exasperated by a legal system that calls for individual responsibility.

The lack of influence of the various forms of expert testimony on verdicts may in part reflect a methodological issue in terms of its timing in the videotaped presentation. Within the present study, expert testimony was presented following the testimony of all of the prosecution and defense witnesses. Arguably, expert testimony provides a framework whereby jurors may interpret the battered woman's perceptions and actions (Monahan & Walker, 1986). In a recent study, Schuller and Cripps (1998) found that battered women syndrome evidence presented early in the trial, prior to the defendant's testimony, enabled jurors to more easily interpret other testimony in light of the information provided by the expert. Moreover, jurors in the present study may have benefited from expert testimony that made explicit links to the case on hand. In cases involving women as victim of rape (Brekke & Borgida, 1988) and battered women who kill (Schuller, 1992), expert testimony had its greatest impact on jurors' perceptions and judgements when expert testimony explicitly connected general psychological research findings to the case on hand. This more explicit form of testimony may be particularly

critical within the social agency framework. By situating a battered woman's responses within a larger societal context, the implications for the specific battered woman defendant may otherwise appear elusive to jurors.

The present study was also interested in how the characterization of the woman would influence the legitimacy of her claim of self-defense. On the whole, the social isolation experienced by the defendant impacted on jurors' perceptions of the woman's claims. Consistent with expectations, jurors were more likely to rate the defendant not-guilty when she experienced a high degree of social isolation. As mock jurors viewed the battered woman who experienced a low degree of social isolation as more aware of resources, it may be the case that they held her more responsible for her actions. On the other hand, jurors were more likely to perceive the battered woman who experienced a high degree of social isolation as violent and more likely to kill again. Thus, while jurors may have been favorably persuaded by the circumstances surrounding the highly socially isolated defendant, it appears that implicit within this characterization is the portrayal of a psychologically disordered battered woman. However, it is not clear whether jurors were persuaded by the highly isolated battered woman because her situation paralleled stereotypical notions concerning legitimate battered woman status, or because they simply perceived her as being less able to remove herself from her situation.

Supporting the stereotypical explanation was the finding that when provided with the BWS testimony, jurors rated the defendant as more credible when she experienced a high as opposed to a low degree of social isolation. This suggests that the BWS does at some level, promote a stereotype against which battered women may be assessed.

Moreover, when the defendant was portrayed as experiencing a low degree of social isolation, the addition of the PTSD framework was necessary to bolster the defendant's credibility. Such a finding has implications for women who fail to fit within jurors preconceived notions of a typical battered woman. More specifically, the reactions of non-typical battered women may be accorded credibility only when explained within a discourse rooted within pathology.

Future research examining the elements involved in a battered woman stereotype is warranted. Given the stringent requirements of the self-defense doctrine, a more systematic evaluation of the impact of the defendant's circumstances was not feasible in the present study. In fact, even the characterization of the defendant as highly socially isolated was not sufficient to reconcile the discrepancy between the circumstances under which the defendant resorted to lethal force (i.e., while her partner was asleep) and the criteria for self-defense. However, to the extent that a woman does not conform to a battered woman stereotype, social cognitive research would suggest that the presentation of such inconsistent information may be subjected to more fine-grained attention (Wilder, 1986). Consequently, under conditions that more closely parallel traditional notions of self-defense, the characterization of the defendant may become particularly persuasive. In this regard, when the characteristics of the defendant differ markedly from preconceived notions regarding battered woman status, her actions may be judged more harshly than a woman whose situation more closely parallels the stereotype. Therefore, the conditions under which stereotypes regarding battered woman status support or refute claims of self-defense warrants closer examination.

GENERAL DISCUSSION

Together, these studies sought to examine how the meaning of victimhood is constructed within the courtroom. Within the context of the courtroom, the victim category represents a salient construct for jurors as they must evaluate the legitimacy of their claims. In their determination of who represents an authentic victim, psychiatric discourse has provided a framework from which the experiences of victims may be evaluated. The goal of the present research was to explore the implications of a psy discourse in ascribing characteristics associated with the authentic victim.

More specifically, this research was conducted to explore the construction of victimhood in cases involving allegations of sexual abuse premised on recovered memories, and cases involving battered women who use lethal force. In cases involving sexual abuse allegations based on recovered memories, a jury must make a determination of the validity of the retrieved memory in their determination of guilt. Likewise, in cases in which battered women resort to lethal force, a jury must make a determination of the reasonableness of the defendant's use of force in determining whether the act was in self-defense. Common to both of these scenarios therefore is the determination of the extent to which these women were in fact victims.

The Pathology of Victimhood

It has been suggested that the PTSD diagnosis merely serves to describe the psychological sequelae resulting from a wide range of traumatic experiences (Kemp, Rawlings & Green, 1991). As such, PTSD nomenclature represents clinical symptomatology as a normal reaction to abnormal events, and thereby depathologizes the

victim's response (Goodman, Koss & Russo, 1993). Alternatively, it has been argued that an implication of this psy discourse is that such a framework pathologizes women's experiences. By medicalizing women's responses to male violence, specifically through the use of the PTSD diagnosis, the pathology of women's reactions may be established. Interestingly, while evidence supporting this pathologization was evident in the present research, such a construction did not necessarily support victimhood status.

Results derived from Experiment I suggest that the PTSD classification may indeed support a pathological representation of a woman's reactions. Rather than bolstering the legitimacy of the victim's allegations of sexual abuse, the PTSD diagnosis was not perceived as indicative of harm having been inflicted. Evidently, the PTSD discourse may have served to delegitimize the claims of the recovered memory victim by pathologizing her reactions. Consistent with this, the results in Experiment III suggest that the introduction of PTSD terminology does in fact promote a victim who was perceived as psychologically impaired.

In contrast to Experiment I, the pathologization of the battered woman victim in Experiment III, worked in her favor. When the battered woman's experiences were framed within a PTSD discourse, jurors were more likely to rate her as not-guilty. Nevertheless, jurors did perceive the defendant as mentally unstable and weak. It may be the case that the use of lethal force by a woman represents a significant discrepancy in terms of how women should behave. A pathologized portrayal was thus necessary in order for jurors to decrease the apparent discrepancy between a woman who was both a victim and defendant. However, the framing of the woman's experiences within the

PTSD discourse was not sufficient to result in not-guilty by reason of self-defense verdicts. While this discourse may have enabled jurors to make sense of the woman's actions, the reasonableness of her use of lethal force was not appreciated. Consequently, this has implications for the viability of a self-defense claim.

While advocates suggest that the sub-categorization of BWS as a PTSD represents the characteristic response of reasonable women who have been brutalized, the results from Experiment III suggest otherwise. Rather, this clinical-based testimony, supporting evidence of a mental disorder, is more consistent with diminished capacity pleas. Simply stated, the mental impairment of a battered woman is incompatible with a justification premised on reasonableness. As such, the reasonableness of the defendant's actions is negated, and likewise her claim of self-defense dismissed.

The seemingly disparate conclusions derived from Experiments I and III concerning the benefit derived from pathologizing the victim's responses, may in part reflect the different contexts within which the PTSD nomenclature was examined. For instance, as the battered woman had objective corroboration verifying her status as a battered woman, the PTSD classification may have been perceived as incidental in this regard. Rather, this diagnosis, supportive of a psychologically disordered victim, may have been used solely to make sense of her use of lethal force. In other words, the PTSD classification aided jurors in making sense of socially undesirable behavior that is inconsistent with society's norms for traditional female behavior (Follingstad, Brondino, & Kleinfelter, 1996).

In Experiment I however, jurors were faced with the task of having to verify victim status. Therefore, the results from Experiment I would suggest that outside of a context demanding explanation for seemingly insensible behavior, the diagnostic entity of PTSD would undermine legitimate victim status. Thus, even within the context of wife abuse, the clinicalization of the woman's responses may not, on its own, be sufficient to prove authentic victim status. Without objective corroboration (i.e., medical documentation), PTSD nomenclature may, similar to Experiment I, serve to delegitimize her claims. As the PTSD discourse has been relied upon in a number of cases (e.g., rape, sexual harassment) to substantiate claims of victimization, research is warranted in evaluating its impact in the determination of a legitimate victim.

Taken together, the results from Experiments I and III support the contention that PTSD nomenclature may undermine victim status by promoting a framework that is ultimately rooted within pathology. Given the potential of the PTSD framework to pathologize and negate a view of women as reasonable, the benefits presumably derived from such a classification may ultimately work against victims seeking justice.

The Standard of Victimhood

Related to concerns that a psychiatric discourse pathologizes women's experiences, is the concern that such a framework promotes a standard whereby legitimate victim status may be established. Consequently, by virtue of deviating from this standard, the validity of women's experiences risk being jeopardized. In Experiment I, results indicate that jurors were applying a standard whereupon the legitimacy of the allegations could be evaluated. Indeed, mock jurors were swayed by the presentation of

severe symptoms on the part of the victim. Despite representing questionable criteria upon which the legitimacy of allegations should be assessed, the appearance of symptoms tended to corroborate the victim's allegations of abuse. However, contrary to expectations, the PTSD discourse was not prescriptive in terms of establishing this standard. This suggests that the jurors drew upon their own pre-conceptions as to how real victims may be identified.

In light of the lack of verifiable evidence proving the allegation, jurors were left to match the degree of fit between the alleged victim and their possibly a priori stereotypical notions concerning who constitutes a real victim. The robustness of this stereotype was such that the allegations brought forth by victims in Experiments I and II who failed to correspond to notions of victimhood (i.e., low symptomatology, vague memory) were compromised. Moreover, even in light of the conflicting empirical evidence provided by the experimental expert psychologist, the status of the convincing victim (i.e., vivid memory) that fit with popular conceptions of a victim, was not undermined.

A woman's failure to come forward with allegations of abuse may not be due to such clinicalized mechanisms as repression. A woman's failure to disclose may be due to other factors such as shame, fear of reprisal, and lack of support (Stefan, 1994). Given this, it would seem that these reasons could be introduced within a framework that highlights societal elements implicated in a woman's decision not to disclose (Stefan, 1994). In this way, individual characteristics by which a victim may be discerned may be circumvented, allowing the opportunity for legitimate victims to come forth who do not

fit the invalidated model of repression. Unfortunately, based on the results of these studies, the extent to which their experiences would be legitimized remains equivocal.

Despite representing a more normalized representation of battered women, the victim in Experiment III who was not socially isolated failed to have her experiences legitimized within a framework that was not rooted within pathology. At the same time, given the inadequacy of social agency testimony in Experiment III to justify the woman's use of lethal force, it appears that standards of victimhood do not solely arise within a psychiatric context. In other words, embedded within the meaning of victim is membership within a social category that presumes a set of standards from which legitimate victims may be discerned. Future research examining the content of the victim stereotype across a number of different contexts would provide meaningful insight into elements that jurors may use in their determination of authentic victim status.

A possible avenue for future research is the examination of the role of gender-based stereotypes in the construction of victim status. Such stereotypes may be influential in terms of identifying who the normal victim is (Howard, 1984). Within the present research, all of the victims were female. Indeed, the context of victimization involving sexual and domestic abuse may aptly be referred to as representing a gendered context wherein the victims are predominately female. Consequently, claims by men within similar contexts may be largely discounted. Moreover, gender-based stereotypes may also prescribe normal victim response. For instance, with respect to incidents of domestic assault, the stereotypic response of women, is one of passivity. While the victim portrayed in Experiment III resorted to lethal force, her history of response was

one of passivity. A woman who had previously been more aggressive, for instance fighting back throughout the relationship, may have been judged more critically. Even the use of psychiatric nomenclature in describing the reactions of victims may themselves be differentially perceived as a function of gender-based stereotypes. Numerous writers have criticized the gender-bias evident within the DSM (c.f., Caplan, 1991, 1992; Lerman, 1996). A gender-based framework may determine the applicability of a psy discourse in jurors' evaluations of victim status.

In delineating characteristics ascribed to the normal victim, jurors' responses to victim-inconsistent stereotypes may be understood. In so doing, circumstances surrounding the victimization that may make characteristics of the victim more (or less salient) may be identified. Ultimately, the goal of such research would be the identification of procedural factors (i.e., judicial instructions) or forms of expert testimony that may undermine stereotypical versions of victimhood.

Limitations

A number of limitations, specific to the present research, and more generally with respect to jury simulation paradigms should be noted. Results indicated evidence of ceiling effects. Within the context of Experiment I, juries overwhelmingly rendered verdicts of guilty. Experiment II attempted to rectify this effect by utilizing the most ambiguous circumstances surrounding the allegations of abuse. In Experiment III, jurors overwhelmingly rendered guilty verdicts. In light of the discrepancies between the circumstances under which the battered woman resorted to lethal force and the self-defense doctrine, such results are not surprising. Moreover, the political nature of the

issues being studied may encourage the endorsement of strong beliefs. Consequently, these effects render an examination of the influence of expert testimony and the prototypicality of the victim difficult. Fortunately, by assessing individual jurors' responses throughout the trial, some insight was provided in terms of the impact of the manipulated variables.

An in-depth analysis of the deliberation process would have provided for a more thorough investigation of aspects surrounding the trial that jurors relied upon in their decision-making process. For example, elements of the testimony presented by the defendant or expert that were particularly salient to the triers of fact may be delineated. Identification of jurors' attitudes towards the victimization of others may have also proven valuable in this regard as well. As various attitudinal variables such as just world beliefs (Lerner, 1980) and attitudes towards women (Spence & Helmreich, 1973) have been demonstrated as being related to individual's perceptions towards female victims, an evaluation of these variables would have provided insight into how jurors evaluate the claims of the victims. Such an examination would be worthwhile in terms of better understanding jury dynamics. By varying the composition of the jury on the basis of attitudes, information concerning jury dynamics that may be influential in final verdict outcome may be identified.

Generalizations from the present study may be limited by the sample and research method used. Not unlike similarly conducted studies (e.g., Follingstad, et al., 1997; Kasian et al., 1993; Schuller, 1992), the present study relied on university undergraduate students. Thus, as Tomkins, Kenning, Greenwald and Johnson (1993) note, while the

results may not be considerably modified, a more representative cross section of the population with demographic characteristics consistent with that of actual jurors may contribute to the generalizability of the findings. At the same time however, previous studies have suggested that participants drawn from university samples or from actual jury pools render similar decisions (e.g., MacCoun & Kerr, 1988; Roberts & Golding, 1991).

Within Canada, as jurors are prevented from revealing the basis for their judgments, jury simulation paradigms provide the only permissible method of obtaining such information. Jury simulations do however have the disadvantage of not representing actual court trials. The present research attempted to improve upon some of the limitations of previous jury simulation studies while at the same time maintaining experimental control. Unlike most jury simulation studies, jurors in these studies viewed an entire videotaped mock trial as opposed to reading a written transcript. As well, this research was not limited to individual verdict decisions. Rather, a deliberation process was incorporated which provided jurors an opportunity to interact with their peers. Indeed, each of the studies evidenced a change in individual juror verdicts across the deliberation process. By forcing jurors to render unanimous decisions, jury verdicts may reflect processes (i.e., conformity pressures) which, while potentially influencing final juror verdicts (Spanos et al., 1991) are not apparent at the individual juror level. Consequently, future research in this area would benefit by incorporating this critical process, as it is clearly pertinent to courtroom situations. Nonetheless, the present

research remains a simulation, and thus generalizations to real court trials may be limited.

For instance, as a simulation, the length of the trial was significantly condensed in comparison to actual court cases. Consequently, the comprehensiveness of the information presented to jurors is significantly restricted within jury simulation paradigms. Moreover, in actual court trials, deliberations may take a considerable length of time in comparison to the 90 minutes that jurors were permitted to deliberate in the present studies. By presenting limited aspects of an actual court trial, the accumulated effect of the manipulations may have been attenuated. It will be recalled however that experimental manipulations involving expert testimony did not influence jurors. While characteristics of the victim did impact juror perceptions, the impact of such variables may be less persuasive real court cases. Nonetheless, the identification of such a bias may ultimately prove important in that extralegal factors may enter into the jury decision-making process (Bray & Kerr, 1982).

Jurors participating in these studies knew their decisions carried no real consequence and therefore may not have taken the trial seriously. In order to bolster the gravity of the simulation, deliberations were videotaped. Nonetheless, as the verdicts rendered had no real impact on an individual's life, jurors may not have considered the evidence as seriously and thus put less effort into the task. This may have increased the likelihood of jurors relying on salient information such as victim characteristics. However, within the context of a real courtroom trial, jurors may also be prone to relying on stereotypes concerning victim status. As "cognitive misers" (Fiske & Taylor, 1991),

people are limited in their cognitive capacities and therefore adopt strategies by which complex problems may be simplified. The complexity of a real court case may evoke the application of judgmental heuristics in order to lighten the cognitive load and may result in attention being directed toward salient characteristics (Raitz, Greene, Goodman & Loftus, 1990).

Clearly, elements of the cases represented in the present research differ from actual court cases in a number of ways. For instance, the quality of the testimony, though based on actual court trials, did not include a number of procedural elements typically introduced within the courtroom (i.e., objections being raised). As well, the cross-examination of witnesses in actual trials may be particularly rigorous. The impact of the strength of a cross-examination on juror decision-making remains equivocal. Kovera, Levy, Borgida & Penrod (1994), reported that mock juror responses did not differ as a function of the strength of the cross-examination of an expert witness. Kassin, Williams, and Saunders, (1990) found that while various cross-examination strategies undermined the credibility of the expert, the victim was not likewise affected.

Finally, it is important to note that the impact of the characteristics of the victim will depend on the attributes of the particular court case (i.e., rape) and the availability of objective corroboration (i.e., physical evidence). On the other hand, research gleaned from jury simulation paradigms have important implications in terms of identifying non-evidentiary factors that may be utilized by jurors in their fact-finding process. While other more realistic research methods (i.e., field studies, archival analysis) may have yielded similar results, the experimental control gained through the use of a jury

simulation paradigm, allowed for more definitive conclusions. Unfortunately, as Bray & Kerr (1982) note, investigators conducting jury simulation research cannot simultaneously maximize experimental control and external validity. Ultimately therefore, as Runkel and McGrath (1972) note, “the trick is not to search for the ‘right’ strategy, but to pick the strategy that is best for your purposes and circumstances and then use all the strengths of that strategy and do whatever can be done to limit or offset its inherent weaknesses” (p. 117).

Conclusion

In light of the limitations of the present research, the results nonetheless provide insight into the construction of victim status within the courtroom. As Lamb (1999a) points out, a victim is “not only made a victim by her victimization but also made a victim by our culture’s understanding of what the word means” (p.3). Clearly, within the courtroom, what this understanding entails has implications for how female victims of violence are perceived. Indeed, victims that contradict accepted notions of victimhood risk having their claims delegitimized.

The psy discourse used to explain women’s experiences serves to situate a framework that promotes the pursuit for the authentic victim. The language of recovered memories effectively denies the existence of normalized responses of victims. To what extent a non-clinical discourse represents a viable alternative that may circumvent the quest for the ideal victim remains unclear. Indeed, ideal versions of victims may be so entrenched within our culture that representations of the convincing victim, bolstered no doubt by a psy discourse, serve to legitimize only the experiences of a limited range of

women (Lamb, 1999b). Clearly however, there does exist a notion as to who constitutes a real victim. Prior to identifying strategies by which these stereotypes of victimhood may be undermined, elements that construct this stereotype must first be delineated. In this way, the diverse experiences of victims may come to be acknowledged without their outright dismissal on the grounds of failing to conform to stereotypes that have little basis in reality.

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Appendix A: Measures for Experiment I

Measures	Page
Recruitment Announcement	170
Manipulation Check.....	171
Credibility Checklist.....	173
Private Belief Rating Scale.....	174
Tally Sheet	175
Beliefs about Repressed Memories.....	176
Informed Consent Form.....	177
Informed Consent (Deliberations)	178
Duties of the Foreperson.....	179
Debriefing Information.....	180
Contact Sheet	182

Announcement for Recruitment

Participation in this study requires that you play the role of a juror in a simulated criminal case. Students will be asked to watch a videotape of a simulated trial, and then deliberate as a group to a verdict. Jury deliberations will be videotaped and all videotapes will remain confidential. The subject matter of this trial may involve allegations of sexual abuse and/or physical abuse. If you are still interested despite this, please leave your student number below. The experiment will take between 2- 3 hours, thereby giving students a maximum of 3 course credits for participation. I will call you to set up an appointment at a time that is convenient to you.

Manipulation Check

1. How realistic (in terms of memories recalled) did you find Jill's testimony?

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

2. Based upon Jill's testimony, how convinced do you believe Jill herself was concerning the guilt of her father?

0	1	2	3	4	5	6
Not at Convinced			Slightly			Very Convinced

3. How severe did you believe Jill's symptoms to be?

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

4. To what extent do you believe that Jill's symptoms show evidence of her being sexually abused as a child?

0	1	2	3	4	5	6
Not at All			Slightly			To a Great Extent

5. How convincing did you find the testimony of Jill's therapist to be?

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

6. How unusual did you find the description provided by Jill concerning the events surrounding her alleged childhood sexual abuse?

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

7. How bizarre did you find Jill's testimony concerning the events surrounding her alleged childhood sexual abuse?

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

Credibility Checklist

How credible (in terms of their testimony) were each of the trial participants on a scale of 1 to 5?

	Not Credible			Very Credible	
Jill Harris (Complainant)	1	2	3	4	5
Dr. Morgan (Expert Witness)	1	2	3	4	5
Mr. Harris (Defendant)	1	2	3	4	5
Ms. Barr (Therapist)	1	2	3	4	5

Private Belief Rating Scale

With this questionnaire, you are being asked to circle the one number that best describes your private belief that Mr. Harris should or should not be convicted for sexually assaulting his daughter. 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 one number that best describes your private belief about whether Mr. Harris should or should not be convicted of sexual assault.

-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
Certain Mr. Harris						Certain Mr. Harris				
Should NOT be						SHOULD BE				
Convicted						Convicted				

Tally Sheet

Juror Number: _____

Tally Number: _____

On the basis of the evidence, my vote is that

Mr. Harris is **GUILTY** _____

Mr. Harris is **NOT GUILTY** _____

Beliefs about Repressed Memories

1. To what extent do you believe that Jill's memories of childhood sexual abuse are true?

0	1	2	3	4	5	6
Not at all True			Slightly			Completely True

2. Based upon your own personal opinion, to what degree do you believe in the notion of repressed memories of childhood sexual abuse (memories of traumatic events that the person is unaware of, i.e.: they get 'erased' from consciousness).

0	1	2	3	4	5	6
Not at All			Slightly			Strongly Believe

3. Based upon your own personal opinion, to what degree do you believe that repressed memories of childhood sexual abuse, once retrieved, represent accurate reflections of past events?

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

4. To what degree are you aware of Post-traumatic stress disorder (PTSD)?

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

5. Based upon your own personal opinion, to what degree do you believe that post-traumatic stress disorder (PTSD) can be a consequence of childhood sexual abuse.

0	1	2	3	4	5	6
Not at All			Slightly			Strongly Believe

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 such that you have the opportunity to determine whether you wish to participate in the study.

You are about to see a videotape of a simulated trial wherein the defendant has been accused of sexual abuse of his daughter when she was under 14 years of age. Some people may find the issue of assault, along with the aspects of the trial, to be offensive and you are under no obligation to continue with this study. You may withdraw at any time without losing credit. As part of the procedure you will be required to fill out a series of questionnaires pertaining to the guilt or innocence of the defendant. After viewing the videotape, as part of the jury, you will be required to spend up to a maximum of 90 minutes in deliberation. Deliberations will be videotaped, however all tapes will remain confidential. The purpose of this study is to examine how juries reach decisions in such trials. It is hoped that your participation will give us 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 experiment I may do so without having to give an explanation and with no penalty whatsoever.

Furthermore, I am also aware that the data gathered in this study is 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 and for whatever reason. I consent to participate in today's jury simulation experiment.

Participant's Signature

Date

Investigator's Signature

Informed Consent (Deliberations)

Your task as a jury will be to reach an unanimous decision concerning the guilt or innocence of the defendant. You will attempt to reach a decision during deliberations in which you and the other members of the jury discuss the case. The experimenter will not be present during the 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 demanded. 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 (without penalty) or at any subsequent time during or following deliberations.

Furthermore, I am also aware that the deliberation videotapes will be kept 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

Date

Investigator

Duties of the Foreperson

(Foreperson should read this 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 this vote by indicating on my ballot if I think that the defendant is guilty or not guilty.

Afterwards, the deliberations will begin and will continue until we reach a 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 the innocence of the defendant. We can take as many tallies as we need in order to reach an unanimous decision.

Debriefing Information

We would like to thank you for participating in this study. Your participation will help us understand more about how jurors make decisions in trials involving recovered memories of childhood sexual abuse and will offer a new contribution to this field. This study and others like it assist those individuals who are involved in similar litigation.

We would like to emphasize that sexual abuse of children is a serious and violent crime, punishable by many years in prison. Sexually abused children suffer severe psychological trauma as well as the more obvious physical effects of the assault. Unfortunately, many people still believe a number of falsehoods or myths about the sexual abuse of children. It is important to recognize that the majority of persons who offend against children are known by the child. Moreover, child sexual abuse is not limited to any social, economic or ethnic class. Under no circumstances should a child be blamed for being sexually assaulted. We would like to stress that children are not responsible for being sexually assaulted, rather they are the victims of a brutal crime.

Another misconception many people have is that if a child does not immediately report being sexually assaulted or hesitates to report an assault, that they were not sexually assaulted at all. This belief is false. There are many reasons that make it difficult for children to report being sexually abused (e.g., reactions of others, psychological trauma experienced from the assault, fear of being disbelieved).

Controversy exists however with regard to the reality of repressed memories for childhood sexual abuse. Definitively, the existence or non-existence of repression as a mechanism by which an individual may come to be unaware of childhood sexual abuse remains unproven.

The purpose of the study in which you have just participated is to investigate different factors which may influence the decisions that jurors make in trials involving repressed memories of childhood sexual abuse. In this study, the symptoms of a mental disorder affecting the complainant and the type of sexual abuse allegedly experienced by the complainant were manipulated. We wanted to determine if changes in these independent variables affected the dependent variable, jury verdicts. Past research using the jury simulation paradigm has shown that jury verdicts vary as a function of the amount of evidence presented at trial and the composition of certain judicial instructions and expert testimony. Research also indicates that extralegal variables (e.g., demeanor of the complainant and defendant, juror gender, age of the complainant, etc.) influence jury decisions.

There are a couple of discrepancies between the procedure used in this study and the procedure used in actual criminal trials. In this study ALL mock jurors who agreed to take part in the study sat on the jury. However, in actual trials, potential jurors would be questioned by the Defense and Crown attorneys before the trial proceedings. This process is called the jury selection procedure and all individuals who arrive for jury duty are not selected to sit on the jury. Another difference between the procedure used in this study and actual criminal trials is the artificial time limit placed on the deliberations. In actual trials, the length of the deliberations are not limited. However, literature indicates that the majority of juries that try cases involving charges of sexual assault reach a verdict within 90 minutes.

We appreciate your taking the time to answer the questions and want to stress that our intent is to understand your beliefs; consequently, all your answers are valuable. Also, please note that the trial presented to you on videotape is a completely simulated trial; that is, it is totally fictional scenario. Furthermore, all of the characters were actors and actresses who volunteered their time and efforts to this project.

Carleton University is devoted to creating an environment free of harassment, discrimination, and violence. Questions concerning any of these forms of abuse, and Carleton University's response to them, should be directed to the Sexual Harassment Officers on campus (520-6674). Studies such as this are conducted so that a better understanding of violence against women, children and sexual assault may be achieved.

We understand that the scenarios may be upsetting and anxiety provoking for some people and we stress that you contact myself or one of the agencies listed below if you have any concerns regarding this study or the issues referred to in this study. This list of contacts includes agencies within both the university and the community that are available for men and women.

Due to the nature of this research, we ask you not to discuss the subject matter with potential participants until testing is complete. If you wish to discuss any additional aspects of the research we are available for appointments. You may contact Cheryl Terrance in room A304 Loeb or by phoning 788-2699 ext. 2683.

Contact Sheet

Police Phone Numbers

Emergency	911
Ottawa	230-6211
O.P.P.	828-9171

24 Hour Distress Lines

Distress Center	238-3311
Rape Crisis Line	562-2333
Sexual Assault Center	234-2266

Ottawa Law Information Line

Referral to appropriate services	236-3893
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Support Services

Family Service Center	725-3601
The Sexual Assault Support Center	234-2266
Children's Aid Society	747-1918
Services for Abused Women	745-4818

Counseling Services

Carleton University Health Services	520-6674
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Appendix B: Transcripts (Experiment I)

	Page
Opening Statements	
Judge	184
Prosecution.....	186
Defense	187
Witnesses for the Prosecution	
Friend	189
*Therapist	193
*Complainant.....	202
Expert Witness	213
Witnesses for the Defense	
Mother.....	219
Father (Defendant).....	222
Closing Statements	
*Defense	227
*Prosecution.....	231
Judge	235

* Testimony specific to the PTSD symptoms no diagnosis condition appears in **bold**.
 Testimony specific to the PTSD diagnosis condition appears in ***bold italics***.

Judge's Opening Statements (All Conditions)

Members of the jury, it is your responsibility to decide upon the guilt or innocence of Mr. John R. Harris. Mr. Harris is charged in an indictment that he sexually assaulted his daughter, Jill A. Harris 12 years ago when she was under 14 years of age.

Sexual assault is outlined in Section 271.1 of the Canadian Criminal Code. Everyone who commits sexual assault is guilty of an indictable offense and is liable to imprisonment for a maximum of ten years. Sexual assault is defined by the court as unwanted, nonconsensual sexual activity that includes any incident of sexual contact ranging from fondling to intercourse.

Where an accused is charged under Section 271.1 it is not a defense that the complainant consented to the activity that forms the subject matter of the charge when the complainant is under the age of fourteen years. Nor is it a defense that the complainant consented to the activity when the accused is in a position of trust or authority. Under Section 265 of the criminal Code no consent is obtained where the complainant subjects or does not resist by reason of the exercise of authority.

Furthermore, where an accused is charged under Section 271.1, no corroboration is required for a conviction and it is possible for the accused to be found guilty in the absence of corroboration.

In our legal system, the defendant is presumed to be innocent unless he is proven guilty in a court of law. Therefore, it is your responsibility to pay careful attention to all the evidence that is presented by both the Crown and the Defense before you make a judgment or formulate an opinion. Do not make your decision hastily. You will hear the testimony of a number of witnesses and it is very important that you keep an open mind

and listen carefully to everything that is said. After all the evidence has been presented, you will be asked to deliberate to an unanimous verdict concerning the guilt or innocence of Mr. Harris.

Prosecution Opening Statement (All Conditions)

Members of the jury, the case before you is really quite straightforward. The Crown will show that, on repeated occasions over a two year period, John R. Harris sexually assaulted his daughter, Jill A. Harris when she was 10 years old. Members of the jury, the Crown will show that the evidence against Mr. Harris is very strong. Jill Harris, the victim in this case will take the stand. Under oath, she will describe how Mr. Harris, her father, on a number of occasions, would touch and fondle her genitals. You will hear how he would ask her to touch and fondle him as well. On different occasions Mr. Harris even forced Jill to perform oral sex on him. You will also hear how, in her own home Mr. Harris forced Jill to have sex with him.

As a consequence of almost two years of such abhorrent behavior, you will hear how, in order to protect herself from the emotional and physical trauma she had endured, Jill Harris repressed these despicable acts for a period of approximately 10 years. Having been denied entry into Jill's consciousness, these repressed memories lay at the heart of the psychological problems Jill had been suffering which in turn led her to the supportive guidance of her therapist. Only then, secure in a safe environment, could Jill bring herself to recall incidents of sexual abuse that her father had inflicted upon her.

Members of the jury, you will also hear expert testimony that will corroborate Jill's testimony. He will testify as to how repression is a common consequence of traumatic experiences. And how, in order to get on with her life, it was essential that Jill deal with, and acknowledge the trauma that was inflicted upon her when she was a young girl.

In summary, the Crown will present evidence to prove beyond a reasonable doubt that Mr. John Harris committed sexual assault against his own daughter, Jill Harris. Members of the jury, I ask you to listen carefully to all of the evidence presented and then I ask you to find John Harris guilty of sexual assault.

Defense Opening Statement (All Conditions)

Members of the jury, sexual assault is a horrible and serious crime. Those persons that sexually assault children should be punished by law. However, my client, Mr. John Harris, did not sexually abuse his daughter, Jill. Instead, this horrible allegation, though firmly believed by Jill is a misguided and falsely held belief. In an attempt to seek an answer for any psychological problems she may have been suffering, Jill, though perhaps unwittingly, conjured up images and memories that were false. There is no doubt that the acts that you will hear Jill describe as being perpetrated against her by her own father are despicable acts. Nevertheless, these events never took place.

Members of the jury, Mr. Harris is a well educated, upstanding member of the community, He has a good job. Before this misunderstanding he had never been involved in any legal wrongdoing. In short, John Harris is not the sort of man who sexually assaults children.

Mr. Harris will take the stand in his own defense. It is important that you listen very carefully to everything that he tells you. Under oath he will tell you that he never asked his daughter, Jill, to perform any sexual acts upon him. Nor did he engage in any sexual acts with her. Members of the jury, Jill Harris' whole story is completely false. Mr. Harris will testify that he has never had any type of sexual relations with his daughter.

Why would a woman falsely accuse her father of sexual assault? The answer to that question will become clear as you listen to the evidence surrounding Jill's recovery of her memories. Jill started going to see a therapist seeking answers as to why she was feeling the way she did. Only under the guidance of her therapist did Jill come to recall memories for tragic events of abuse. Unfortunately, Jill's memories which started as fragmented and confusing images during her early sessions in therapy, came to take on

the quality of a real memory only under the guidance of her therapist. Though honestly believed by Jill, evidence will demonstrate that these memories are indeed false.

Members of the jury, I told you earlier that sexual assault is a horrible crime. But this trial is not about sexual assault because Mr. Harris did not sexually abuse his daughter at any time during her life. As you will see, none of the witnesses called by the Crown, can confirm the allegation. Members of the jury, this trial is about a confused and troubled woman who has falsely accused her own innocent father of sexual assault. For this reason I ask you to find Mr. Harris not guilty. Thank you.

Examination of Witness for Prosecution
(Brenda Harper/Friend) (All Conditions)

Pro: Please state your name for the court and the nature of your relationship with Jill Harris.

B: My name is Brenda Harper and I'm a friend of Jill's.

Pro: And how long have you known Jill?

B: Since we were 5 years old...so I guess around 17 years.

Pro: So it's fair to say that you had a close relationship with Jill?

B: Yes.

Pro: And what about with her family - were you close with them?

B: Yes very close. We often did things together and I'd eat and sleep over at their house a lot.

Pro: How would you describe Jill's relationship with her family when she was growing up?

B: It was close - they seemed happy.

Pro: Did Jill have many friends when you were young?

B: Yes - we hung out with a group of kids around our neighborhood a lot - but later Jill stopped coming out to play as often as she used to.

Pro: And how would you describe Jill's relationship with her family when her mother suffered a stroke?

B: Well, because her mother was partially paralyzed for almost a year, Jill had to take on a lot more responsibility at the time. Cleaning the house, doing the dishes, helping cook supper... things like that.

Pro: What was Jill like before going to therapy Brenda?

B: She was having a lot of problems that were bothering her and interfering with her work and her relationship with her husband - she even stopped calling me as often as she used to.

Pro: And how would you describe Jill's emotional state at the present time?

B: She's doing a lot better - since she's been in therapy she doesn't seem so troubled anymore.

Pro: No further questions your honor.

Cross-Examination of Brenda

Def.: Brenda, you stated that there was a point that Jill started keeping pretty well to herself when she was younger. Was she always that way?

B: Well, like I said - Jill and I played around a lot with a group of kids and then she stopped coming out so often.

Def.: Is it not the case that Jill stopped coming out so often after her mother had a stroke as she had to stay in to help around the house?

B: Yes, I guess so

Def: How often in the past few years have you seen Jill?

B: Oh I don't know - as often as we can ...every few months or so.

Def: Would it be fair to say then Brenda that most of your communication with Jill has been in telephone conversations?

B: Yes, we don't live too close together anymore.

Def: And when did you last see Jill?

B: Almost 6 months ago I guess.

Def: And yet you claim that all of a sudden Jill is not, in your words, troubled anymore?

B: I said she seems to be doing a lot better yes...

Def: Based on what evidence Brenda?

B: We talked on the phone together a couple of months ago or so...

Def: Brenda, has Jill at any point ever confided in you that she was being sexually abused?

B: Yes, she told me she had been getting back memories of being abused by her father as a child.

Def: Was she in therapy at this time?

B: Yes.

Def: Did she ever confide in you that she was being abused when you two were children?

B: No.

Def: No further questions.

Examination of Therapist - Mild Symptoms

(**Bold**: PTSD Symptoms No Diagnosis & PTSD Diagnosis)

(***Bold Italics***: PTSD Symptoms Diagnosis)

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

T: My name is Phyllis Barr, and I am a mental health therapist at an in-patient unit at St. Michael's General Hospital.

Pr: Can you please tell us your educational background and how long you have worked as a therapist.

T: I have a bachelor of arts degree in psychology and a Master of Social work. I've worked as a therapist for about 15 years now.

Pro: Have you any direct experience in dealing with cases of sexual abuse?

T: Yes I do. A number of my clients have sexual abuse histories. As well, I also oversee a group for adult survivors of childhood sexual abuse.

Pro: And have you any experience in dealing with individuals who have repressed memories of sexual abuse?

T: Yes. A number of my clients who have been sexually abused as children had repressed their memories and have been unaware for a period of time - some for years and even decades that they had been abused.

Pro: And you have been working with a client named Jill Harris?

T: Yes, that is correct.

Pro: And how many individual sessions did you have with Jill?

T: I saw Jill in one to one sessions for one year - twice a week at first, and then less over time. When group sessions started, which would take place once every two weeks I would see Jill individually less than once a week.

Pro: Can you please describe the events surrounding Jill's first session?

T: Jill was referred to me by a co-worker of hers who was a former client of mine. Jill's predominant problems were depression, anxiety and sexual intimacy problems with her husband. **As well, she was complaining of having difficulty sleeping because of nightmares and was also having difficulty concentrating on everyday tasks.**

Pro: Can you please describe to the court what took place during the first few sessions you had with Jill?

T: At the beginning we had talked about her present situation and the current problems that were troubling her. We discussed her family life and her work.

Pro: Did you discuss Jill's relationship with her parents?

T: Yes, eventually we did.

Pro: And what was Jill's attitude towards her family Ms. Barr?

T: Well, every time we discussed her family, Jill seemed to get anxious - particularly at the mention of her father. In fact, when talking about her parents, Jill would open up more when discussing her mother than her father.

Pro: And did you ask Jill why she would become so upset?

T: Yes, but she couldn't give me an answer. I think she was unaware why she felt so upset herself.

Pro: Did you find it necessary to pursue her feelings about her family?

T: Yes of course. I found her reactions to be odd in light of the fact that she could not explain why she felt the way she did. I thought that it was likely that there were issues surrounding her family that needed to be addressed in order to help her overcome the problems she was currently experiencing. So I suggested that her childhood be followed up and looked at more closely.

Pro: When you discussed Jill's childhood what was her reaction at that point?

T: Well, in general she remembered happy times with her family. Jill however had a lot of difficulty remembering from the ages of 10 to 12 despite the fact that her memory was more clear for previous years. She told me about her mother having suffered a stroke when she was 10 and she remembered having to help out around the house but other than that she didn't remember much else.

Pro: Did you have an opinion as to why she couldn't remember any events in that age period?

T: Well, I have gone to workshops with regard to repressed memories involving sexual abuse. When I put together Jill's current problems of depression, anxiety, sexual intimacy difficulties, **nightmares, lack of ability to concentrate** along with the

substantial memory gap it was consistent with other survivors who had repressed memories of sexual abuse.

Pro: Did you address this issue with Jill?

T: No. I did not want to unduly influence her - while I knew that if repressed memories of abuse were involved that they had to be addressed, I also knew that they had to be recovered in her own time.

Pro: So when you realized that Jill may have repressed memories what did you do at that point?

T: Because Jill would appear anxious every time she tried to think back to that time period, I talked with Jill about how memory works. That is, I told her not to force or try to dig for any memories. I also suggested that she look at pictures of her childhood from the ages of 10 to 12 as an aid in triggering her memories.

Pro: Could looking at those pictures unduly influence Jill?

T: Oh no - it's an accepted and widely used method.

Pro: What was the nature of Jill's memory recall?

T: It was fragmented initially. Jill was having a series of flashbacks of a sexual nature involving a shadowy figure.

Pro: And when did Jill first begin having these flashbacks?

T: Oh, about 3 months into therapy.

Pro: Have you ever come across flashbacks before in your practice.

T: Oh yes, flashbacks are common when repressed memories begin to surface in the conscious mind. Frequently, the figure of the abuser is shadowed because of the trauma associated with the identification of the abuser - particularly if the abuser was someone who was trusted and loved - such as a father.

Pro: When did Jill identify her father as first having sexually abusing her?

T: She told me during the course of one of our sessions in about the 4th month that I had been seeing her, that she had had another flashback that occurred the night before and had seen the image of her father fondling her.

Pro: And how did Jill relay this information to you?

T: Well, she was muted at first in terms of not showing a lot of affect which is very common for incest survivors who are disclosing for the first time. As our therapy sessions continued however, Jill, in relaying the fragments of memory that she had been having would appear to be very frightened and emotional - almost as if she were re-experiencing the elements of the actual abuse.

Pro: Why did you suggest to Jill that she participate in the group that you oversaw for adult survivors of sexual abuse?

T: Because she was recalling incidents of sexual abuse it was important for her to feel that she was in a safe environment where her memories could be explored and supported by people who had experienced the same things that she had.

Pro: What else takes place during these group sessions?

T: We discuss ways of coping with the reality of the abuse and how the abuse has affected their lives.

Pro: What is your role as a group leader Ms. Barr?

T: Well, it's sort of misleading to even refer to me as a group leader, I don't really lead the discussion at all. My role is really just that of being supportive.

Pro: Do you probe for memories during these sessions?

T: No. I do not make suggestions as to what might have happened because I don't want to tell people what they know or lived through - I only want to help them get back the power to control their lives.

Pro: Did you at any point suggest or encourage your client to seek legal action against her father?

T: No I did not.

Pro: From your experience as a counselor, it is not unusual for sexual abuse in childhood to have an impact on functioning in adult life?

T: No, it is not.

Pro: Do you find Ms. Harris's functioning as an adult to be affected by the sexual abuse she allegedly incurred as a child at the hands of her father?

T: Yes, I do

Pro: Ms. Barr, could you please describe some of the problems that Ms. Harris is currently having that, in your opinion, could be attributed, at least in part, to the alleged sexual abuse she suffered at the hands of her father?

T: Jill has been feeling depressed and anxious for some time and has been having difficulties in relating sexually with her husband. The repression of her memories are in all likelihood what brought about her symptoms. **(Jill has been feeling depressed and anxious for sometime and has been having difficulties in relating sexually with her husband. As well, Jill is currently suffering from recurrent nightmares about the abuse that have become so bad, she is having difficulty falling asleep because she is afraid of having the nightmares. She also has had great difficulty in establishing and maintaining good interpersonal relationships of any kind, including sexual relationships. The marital problems that she has been experiencing are a result of her difficulties with interpersonal relationships. She tends to try to avoid emotional and sexual intimacy because of the great betrayal of trust that she experienced at the hands of her father. Jill is simply afraid that she will be hurt again like she was hurt by her father if she becomes too close to anyone, even her husband. The repression of her memories are in all likelihood is what brought about her symptoms.)**

P: Are there any other difficulties being experienced by Ms. Harris that you know about?

T: Yes, there most certainly are. Jill has great difficulty in concentrating on everyday tasks because of the intrusive memories that she now has about the abuse. No matter how hard she tries, she simply cannot forget the horrible acts that were perpetrated on her. The difficulties in concentration brought on by these intrusive memories also results in outbursts of anger in Jill. She often has temper tantrums at the slightest provocation which further hampers her ability to establish and maintain normal interpersonal relationships. *These symptoms are characteristic of what is referred to within the clinical literature as post-traumatic stress disorder. In fact, the repression of her memories of the abuse, in itself is a symptom of PTSD.*

Pro: How long have the problems that you have just mentioned been experienced by Ms. Harris?

T: It seems that many of these problems have been present in Jill in varying degrees prior to her coming to see me - so while she didn't act on these problems before a couple of years ago, it is likely the case that these problems have been present since the abuse ended. The intrusive memories have only been a problems since the recovery of her memories of the abuse began over the last year. **Jill says that she has been prone to temper tantrums for several years but this problem seems to have been exacerbated by the intrusive memories of the abuse in the last year.** As well, while some of Jill's symptoms, including the recurrent nightmares and intrusive memories of abuse, have

been present for several months while the rest of her symptoms have existed for close to ten years.

Pro: For the record Ms. Barr, what is the minimum amount of time that these symptoms have to be present before a diagnosis of post-traumatic stress disorder can be made?

T: Symptoms such as the ones' that Jill is presenting must continue to be present for more than one month before a diagnosis of PTSD can be made.

T: So, in your professional opinion Ms. Barr, what diagnosis would you make concerning Jill Harris?

T: I would diagnose Jill as having post-traumatic stress disorder.

Pro: In your professional opinion, do you consider Ms. Harris to be telling the truth concerning her alleged sexual abuse at the hands of her father?

T: Yes I do.

Pro: Thank you very much Ms. Barr. No further questions.

Pro: No further questions.

Cross-Examination of Therapist (Mild Symptoms)

(Bold: PTSD Symptoms No Diagnosis & PTSD Diagnosis)

Def: Ms. Barr, what percentage of your clients have histories of abuse?

T: Oh, I don't know, about 70 percent.

Def: And what percentage of those clients *had repressed their memories of abuse*?

T: I guess 40 to 50 percent. But it's important to keep in mind that repression of memories of sexual abuse is very common.

Def: Of these women who have repressed memories of sexual abuse, have any of them been able to provide objective evidence verifying their claims of sexual abuse?

T: Not necessarily, but it is difficult, if not impossible to verify many claims of child sexual abuse - particularly when the events occurred years before.

Def: Is it correct to state that Jill had absolutely no memory involving sexual abuse prior to her therapy?

T: Yes, however her life was showing the symptoms - the anxiety, depression, sexual intimacy problems, **nightmares, difficulty in concentrating**, and having gaps in memory.

Def: So every individual displaying these symptoms were likely abused as children?

T: No.

Def.: And do all individuals who were sexually abused as children display these symptoms?

T: No, not necessarily, sexual abuse affects people differently.

Def: And yet you were convinced that Jill must have been abused as a child?

T: In my own opinion, and based on my experience, I thought that may have been a possibility - unfortunately child sexual abuse is a lot more widespread than most people want to admit to - but I did not at any time suggest that to Jill

Def: Do you not think Ms. Barr that perhaps you may have, though unwillingly, led Jill to believe that she was abused?

T: No, certainly not.

Def: You stated that you had met individually with Jill for a one year period - how many of these sessions involved discussions surrounding her flashbacks?

T: I don't know.....

Def: Half of them perhaps?

T: Yes I guess so, but it was important for Jill to explore her flashbacks in order to recover her memories

Def: Did you at any point question the reliability of Jill's memories?

T: No of course not...it's very important for the therapeutic process that as a therapist I have the trust and confidence of my clients - that they can feel safe when disclosing their painful memories.

Def: Did you have any reason to suspect the credibility of Jill's memories?

T: No, she was obviously very upset when she would relay her memories. Nobody would lie or fantasize about something so painful.

Def: You stated earlier that you oversee a group for adult survivors of incest, correct Ms. Barr?

T: Yes

Def: During the group sessions, were individuals sharing their experiences of abuse?

T: Yes - it's part of the healing process to realize that you are not alone.

Def: Could it not be the case Ms. Barr that Jill was incorporating other people's memories into her own?

T: No. Her memories were different from the other people in the group. And again, being sexually abused is not something that someone would make up.

Def: Ms. Barr, with regard to the individuals in your group therapy sessions, have any of their memories become more clear?

T: Well, sometimes yes.

Def: Could it not be the case that these individuals are just piecing together their memories based upon bits that they have picked up from others in the group?

T: No - people who have been abused often do not want to remember the details - its too painful to deal with. When people do remember more details it's based on their own memories of what happened - bits and pieces of their abuse begin to fall into place and for once they are in a safe environment that they can share their pain.

D. Ms. Barr, you testified that Jill suffers from depression, anxiety and sexual intimacy problems with her husband **and is tormented by recurrent nightmares and intrusive thoughts about this alleged sexual abuse**, is this correct?

T. Yes, that's true.

D. Did she suffer from these problems before she became a client of yours?

T. Well for the most part yes....

D. Let's get this straight. Jill was suffering from depression, anxiety and sexual intimacy problems before she started seeing you and now, since her therapy began, she is also (having) **suffering from recurrent nightmares and intrusive** memories about sexual abuse that allegedly occurred many years ago but that she has suddenly only recently remembered. It seems to me that Jill has only become worse since she began seeing you Ms. Barr.

T. That's not true at all. Jill is on the road to recovery because she now remembers what happened to her during her childhood. **The nightmares** and memories that are bothering her now aren't a result of therapy but rather of the sexual abuse that she suffered. Jill now understands the feelings that she has had for these many years because she took part in therapy.

Def: You said that you didn't encourage Jill to pursue legal action against her father - correct Ms. Barr.

T: Yes.

Def: But you are however supporting Jill's decision to pursue legal action?

T: Yes - confronting an abuser in court can be very beneficial for the healing process - for once it puts the blame where it belongs.

Def: No further questions your honor.

Jill's Testimony - Mild Symptoms

(Bold: PTSD Symptom No Diagnosis & PTSD Diagnosis)
(Bold Italics: PTSD Diagnosis)

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

J: My name is Jill Harris and I'm 22 years old.

Pro: And at what age were you when your father first began to have sexual relations with you?

J: I was 10 years old when it started.

Pro: And how long did your father continue having sexual relations with you?

J: Until I was about 12 years old - so almost two years.

Pro: Can you please describe the incidents that led you to recall what your father did to you.

J: Well, I was 20 years old and I was feeling depressed and anxious. I wasn't doing well at work - and it was even hard to get out of bed some mornings. I was also feeling awkward with my husband, you know...sexually - I was just starting to feel really uncomfortable with him. **I had always been self-conscious about my sexuality, but after a year or so of being married, it was becoming increasingly difficult to be intimate with my husband.** It seemed like things were getting worse for me. **I couldn't concentrate and I'd wake up sweating in the middle of the night from nightmares.** When I discussed how I was feeling with my co-worker she suggested that I go see a therapist.

Pro: And so you did?

J: Yes, I knew something was wrong with me, but I couldn't put my finger on it. For a number of months I just wasn't able to keep up with my responsibilities.

Pro: Please describe your first few sessions with Ms. Barr your therapist.

J: Well, we just talked in general terms - you know - about my depression, anxiety, **nightmares, problems concentrating,** and the problems with my husband.

Pro: And how would you feel afterwards?

J: I was happy that I had someone to share my feelings with...Ms. Barr was very nice and supportive - she made me feel comfortable...safe..

Pro: And when did you have your first recollection about what your father had done to you?

Jill: Well, I guess it was around the third or fourth month that I had met with Ms. Barr. Up until that session we had just been discussing my situation - my work, my husband, and how my problems were affecting me. Ms. Barr started asking me about my childhood. We discussed my friends that I had and my school...and then she asked me about my family.

Pro: And how did you feel when she asked you about your family Jill?

J: Well, up until that time I was feeling o.k. As I was an only child, my parents and I, from what I could remember, had a pretty good relationship. So I started talking about my mother and our close relationship...but when Ms. Barr asked me about my father, it was weird - all of a sudden I felt uncomfortable...anxious. I don't know why, but these feelings just overwhelmed me.

Pro: And what happened at that point?

J: I told Ms. Barr that I was feeling sick and that I had to go. It was that night though that I had a horrible nightmare.

Pro: And it was at that point that you remembered what had happened to you?

J: Not really. But when I woke up, I couldn't remember my nightmare, but I had this strong feeling that something bad had happened to me- I couldn't shake it.

Pro: Did you discuss these feelings with your therapist?

J: Yes - she recommended that we look at my childhood in more detail than we had previously. So I started telling her things that I could remember when I was younger but I had difficulty in remembering things.

Pro: Was there any time period in particular that you were having difficulty remembering?

J: Yes, from when I was about 10 to 12 years old...Even though I could remember some things when I was younger than 10 and when I was older than 12, it seemed like that time period was most difficult to recall...there were bits and pieces, but there were big gaps in what I could remember. Like I could remember my mother being sick - she had suffered a stroke when I was 10...I remembered her being in a wheelchair for a while - I couldn't

remember how long, and I could remember having to help out around the house - cleaning, helping cook, things like that. But other than that I couldn't recall much else.

Pro: I presume that you discussed this memory gap with your therapist?

J: Yes, she told me about how memory works, and we discussed the notion of memory retrieval. She told me not to force or dig for any memories, and suggested that I may find it helpful to look at family pictures taken when I was 10. She thought perhaps seeing pictures of myself and my family at that age might help to jog my memory.

Pro: So you did that?

J: Yes.

Pro: And did it help you recall anything?

J: No, when I was looking through the pictures I noticed that I wasn't smiling a lot - I looked pretty sad - but it didn't help jog my memory - I still seemed to have gaps in what I could recall. That night though, after having looked at all these pictures I woke up twice after having violent and disturbing nightmares.

Pro: The next time you saw your therapist, did you discuss these nightmares?

J: No, I mean I didn't see their relevance - I wasn't even in them...they were just bizarre...all I could remember from them was that there was a dark room.

Pro: And so what did you discuss with your therapist?

J: Well, we started going over the memories that I could remember when I was 10, and that's the first time it happened...

Pro: What happened Jill?

J: Well, all of a sudden I had this flash appear in front of me. The closest way I can describe it is that it was much like viewing slides in a slide show, when the slides go by too fast, but slow enough to give you some of the images. I could see myself when I was 10 sitting on the bathroom floor in our house and having someone, I didn't know who, wiping blood from between my legs with a towel. I was confused, I was aware that it was something that had happened to me - I even had a recollection of pain.

Pro: When did you come to recognize who this person was?

J: It was about a month later...I was in the bathroom cleaning and I had knocked over this old bottle of Old Spice Cologne that my husband had received years ago - that smell

seemed familiar somehow - the images I had started to become more clear - less fragmented. It was almost like a film running through my mind.

Pro: And what did you see?

J: I had this flash in my mind and saw the same thing as before - me on the bathroom floor - only this time I saw the face of the person wiping the blood from me and could smell him - it was that cologne. Enough of the feelings came sneaking in that I knew it couldn't be a fantasy.

Pro: And who was that person Jill?

J: My father.

Pro: What else did you recall about that incident?

J: At that point, after having seen my father's face, I couldn't recall anything else. All of a sudden my mind just went black.

Pro: How did you feel at that point?

J: I've never felt so frightened in my life...I began shaking and crying uncontrollably - I felt like I was drained emotionally.

Pro: Were you able to recall the rest of that incident with your therapist?

J: No. Even though I felt safe with Ms. Barr, and she had encouraged me to share my feelings, I could only fill in bits and pieces. I told my therapist about what I had seen, and told her how confused I was because everything was still so vague - I just didn't know what was happening to me. She told me that it was likely flashbacks of memories and told me to relax, close my eyes and to focus on the images that I had previously seen. I began getting images that were more clear. I could remember seeing yellow flowers on the shower curtain that hung in the bathroom & I could see this picture that hung over the toilet...but that was about it. It wasn't until later that I recalled the entire incident.

Pro: Could you please describe to the court when you first recalled the entire incident and the events that had taken place.

J: Yes, it was right before I went to bed that night after meeting with Ms. Barr. I saw the image again of me on the bathroom floor and my father wiping blood from me...only this time I could remember what had happened prior to me being on the floor. I got a very clear image of my bedroom - it was late at night - I could see the moon from my bedroom window and my father came into my bedroom and came towards my bed. He leaned over me and kissed me. He pulled down my bed sheets and put his hand up my pajama

top and started rubbing me. I remember him whispering in my ear telling me to be quiet because my mom was asleep. He then took off my pajama bottoms, stood up and took off his work pants. He was still standing above me and he put his penis in my mouth. I remember gagging so he took it out and laid down beside me. He laid on top of me and I remember having difficulty breathing because there was so much weight. He was kissing me all over my face and then he forced me to open my legs and he stuck his penis inside me. I was crying because it hurt so much - I could feel pain piercing throughout my body. He then carried me into the bathroom and I was bleeding and he was wiping the blood away with this old green towel we had. I remembered looking up away from my father and seeing the yellow flowers on the shower curtain and this picture of a woman in a field of flowers hanging over the toilet.

Pro: When you discussed this memory with your therapist what happened?

J: She suggested that I join a group that she was running for incest survivors and thought that I would find it helpful so I started to attend.

Pro: And what took place during these meetings?

J: Well, the first few times I went I didn't participate much...I didn't feel comfortable at that point telling other people about these memories I was having. Mostly I just listened. People were discussing what had happened to them and some even had experienced what I was going through - the flashbacks, memories flooding back that were never there before. This made me feel a lot better about myself - I didn't feel like I was losing my mind anymore. We also discussed how the abuse had affected our lives and ways of coping with the abuse that had happened to us.

Pro: And were you able to recall anything else that your father had done to you?

J: I was still getting flashes or images of things.

Pro: Such as?

J: Well, its sort of hard to say - it would be like a quick flash you know,..um, there was one where I could see myself in my bed crying and my father was looking down at me. Or I would see my father rubbing and touching me.

Pro: And when would you have these flashbacks?

J: Anyplace really, before I went to bed, in the shower, in group...they were uncontrollable.

Pro: And were you only getting these flashbacks since you joined group therapy?

J: Oh no - I had been getting some of them before I joined.

Pro:: Was your recollection of the events that happened to you becoming more clear?

J: Well sort of- flashes that I would have would become more clear and vivid - I was beginning to get some memories back. I would get these clear images where I would be performing oral sex on him or he was doing it to me. I remember gagging at times and having this horrible taste in my mouth. I remembered that all this was going on mostly at night when my mom was asleep. Some images were still vague while others were crystal clear - My therapist assured me that what I was going through was normal.

Pro: So these memories you were having represented more than one occasion?

J: Yes -some of them I could remember happening when I was 10 - and others when I was older -around 12 years old.

Pro: And were there any other memories you had of your father sexually molesting you?

J: Yes, there was one in particular that was really vivid. For days I had been having images of myself in a dark room. Then I would see my father on top of me. I could only remember bits and pieces but I knew something bad had happened - I just couldn't remember all of it.

Pro: When were you able to recall everything?

J: Well, group had just started one evening - and all of a sudden everything started flooding back - I could still see myself in this dark room and saw my father standing over top of me - only this time I could completely remember what happened - the images were so clear.

Pro: Please describe that event for the court Jill.

J: Well, it was night time and I was in bed sleeping when my father came in. He came over to me and kissed me and I pretended to be asleep hoping he would go away. I remember feeling scared. He picked me up and carried me into the basement. I remember the basement was cold, damp and dark. There was this horrible musty odor and there were boards covering the windows. I was wanting go back upstairs and I started walking away from him but he pushed me down to the ground and started to try to take off my nightgown. He was having problems getting it off - finally he just lifted it up over my head. I remember laying there on the cold basement floor. He stuck his penis in my mouth and when I shook my head he put his hands around my throat. He then raped me...I felt the same pain that I had before. When he was done, he got off of me like nothing happened and told me to get dressed...he went back upstairs. When I was

dressing I was crying and trying to clean myself up and then I went back to my bedroom and just laid there in bed feeling scared and confused.

Pro: And where was your mother at this time?

J: She was asleep - she was taking a lot of medication because of her stroke and it would knock her out all night. Since she was upstairs she wasn't able to come down on her own because she was in a wheelchair.

Pro: Jill, how do you feel towards your father now?

J: Well, at first I hated him for what he had done to me. It may sound weird but I still do love him...now that I've begun my healing I just want him to be able to acknowledge what he's done to me.

Pro: Jill, I would like you to give the jury some idea as to how what your father did to you continues to affect your life to this day.

J: Well, like I said, I've been feeling depressed and anxious and I've been having problems being intimate with my husband and I just feel so uncomfortable. **I also have a lot of difficulty concentrating on everyday tasks. It seems that even when I'm doing something as simple as taking a bath I scrub and scrub and I just can't stop thinking about him doing those things to me and making me feel dirty. I can't make it through one night without having nightmares about my father touching me. I am constantly having nightmares about him getting into my apartment and coming into my bedroom to hurt me again. I wake up soaked with perspiration after these nightmares and usually can't fall asleep for the rest of the night afterwards. There are many night when I don't sleep at all now because I'm afraid of having one of these nightmares. I know now that I suffer from post-traumatic stress disorder, and I can only hope one day that I'll be healed and able to move on.**

Pro: Your father has caused you a lot of pain, hasn't he?

J: Yes he has. His actions haunt me all the time... I just can't get close to anyone because I'm afraid to be hurt again. After my father betrayed my trust, it is hard to trust anyone.

Pro: And again Jill, you are certain that what you are recalling are indeed real memories?

J: Yes - everything is so clear and vivid.

Pro: And Jill, are you certain the person that you allege perpetrated these acts against you was your father?

J: Yes.

Cross-Examination of Jill Harris
(Bold Italics: PTSD Diagnosis)

Def: Jill, 12 years ago is quite a long time ago isn't it?

J: Yes, I guess so.

Def: But still, you have had pretty clear memories of what your father did to you?

J: Well, it was hard at first to get back those memories - they were so horrible. But once the memories for that time were triggered they just started to flow back into my mind.

Def: You were 10 years old 12 years ago correct Jill?

J: Yes.

Def: Do you recall what grade you were in at school?

J: Um, grade 5 I guess.

Def: Do you remember who your teacher was?

J: No, not really...

Def: Jill, when your mother suffered a stroke that must have been a pretty traumatic experience for a young girl of 10 years of age- having to see her mother in a wheelchair, being responsible for more chores around the house?

J: Yes, it was.

Def: Do you recall where you were when you first heard that your mother had a stroke?

J: No...not really - in school likely.

Def: Now Jill, you stated that your father sexually abused you for about two years is that correct?

J: Yes.

Def: You also stated that he had intercourse with you is that correct?

J: Yes.

Def: In fact you stated you also had flashbacks where you would see your father fondling you.

J: Yes.

Def: And where was your mother at these times?

J: She was in bed sleeping or out of the house.

Def: So, despite these memories of your father sexually abusing you in the house your mother was never aware of this occurring?

J: No, I guess not...

Def: You say that you can remember your father touching and rubbing you, is that correct Jill?

J: Yes.

Def: Could it not be the case Jill that your father was just rubbing your back?

J: No, I can tell the difference between a back rub and fondling.

Def: You also claimed that your father wiped blood from your genital area after having intercourse with you .

J: Yes.

Def: And so there must have been blood stains on the towel?

J: Yes - the towel was spotted with blood.

Def: What happened to this blood stained towel Jill?

J: I don't know - I guess my father got rid of it.

Def: Getting back to the incident that occurred in the basement of your house. Despite having been allegedly raped, isn't it the case that there is no physical evidence supporting your claim?

J: Well, no, I guess not, but that doesn't mean that it didn't happen.

Def: Now Jill, you claim that for a period of 10 long years you had absolutely no idea what your father had done to you.

J: Yes.

Def: Isn't it the case Jill that it wasn't until after you started your therapy sessions that you started recalling these memories?

J: Yes - well I mean I had been depressed and anxious for awhile - and then my problems with my husband...I wasn't sure at that time why I was feeling the way I was - I just knew that something must've happened to me.

Def: How do you know that these memories are in fact correct Jill?

J: I felt like something bad had happened to me. When I recalled my first memories they were so emotional for me - later they became so vivid and clear - I know what I remember. I wouldn't make something so terrible up. Every time I would remember something I felt drained and upset.

Def: Daydreams and imaginations can seem just as real and vivid Jill -how do you know that these images that you've been seeing aren't just a figment of your imagination.

J: Well, I just am sure that they are a real memory - why would I want to imagine my father doing this to me.

Def: Could it also not be the case Jill, assuming for a moment that these images weren't part of your imagination but in fact you had been abused, that this shadowy figure you described in your first flashback was not your father at all but someone else?

J: No.

Def: But Jill, you only began to put a face to this figure after your therapist started discussing your family with you and asking you to focus and discuss the images that you were seeing, is that not correct?

J: Yes, but it was necessary that I start to fill in the blanks so I could get on with my life. The last person that I would want to remember molesting me would be my own father.

Def: And is it also not the case Jill that details of your flashbacks were surfacing when you were in the company of your therapist or in group therapy?

J: Yes.

Def: So perhaps the details of your memories, for instance seeing your father's face, performing oral sex on him, was not a real memory at all, but rather was a memory not

only motivated but created by listening to other women describe their incestuous backgrounds?

J: No, I really don't think so - their stories were different from mine - some weren't even molested by their fathers, but by uncles or brothers.

Def: You've described how this alleged abuse has impacted your life - you have all of these symptoms *of post-traumatic stress disorder* that led you to go to your therapist in the first place. Isn't it the case that the severity of these problems you've been having have only increased since you've begun therapy?

J: Well, I've been having these difficulties for years....I just never knew what caused them.....

Def: Is it not true though that these difficulties have been exasperated since you began dealing with your alleged abuse?

J: Well, since I've been dealing with these issues some of my difficulties have become a bit worse....but....

Def: Isn't that interesting? No further questions your honor.

Expert Witness (All Conditions)

Pro: Could you please state your name and occupation for the court please?

Dr.: Yes, my name is Dr. Phillip Morgan, I have a Ph.D. in clinical psychology and currently I have my own clinical practice where I exclusively deal with clients who have experienced trauma in their lives.

Pro: Dr. Morgan, can you please define for the court what is meant by trauma?

Dr.: Yes, psychological trauma, as defined by the American Psychiatric Association is an experience beyond the range of usual human experience that would be markedly distressing to almost anyone, and is usually experienced with intense fear, terror and helplessness.

Pro: And would sexual activity with an adult be considered a traumatic experience for a child?

Dr.: Most definitely, particularly when that adult is someone that they love and trust.

Pro: Dr. Morgan, what are the effects of severe trauma on memory?

Dr.: The human mind is something like a videotape recorder. Almost everything that we experience is stored away in the brain. The problem is that we are not always able to retrieve the information that we have stored in memory. Sometimes we are unable to remember because the information is so frightening - beyond our normal realm of experience. The human mind has a natural tendency to try and avoid traumatic thoughts and memories. One of the most effective ways people cope with trauma is to repress such thoughts and to avoid conscious awareness of the trauma ever having taken place. In other words, memories which become repressed can become completely inaccessible to conscious awareness.

Pro: And Dr., are there any other variables associated with childhood sexual abuse that may increase the likelihood of such memories being repressed?

Dr.: Yes, there are a number of variables associated with the repression of memories for sexual abuse. For instance the age of the victim at the time the event occurred. Generally, the younger the victim, the more likely that the individual may not be able to recall the abuse later on. Another variable is the relationship between the victim and offender. The closer the relationship, the greater the likelihood of repression. Moreover, case studies show that traumatic events in which there was pressure towards secrecy are more likely to induce memory impairment.

Pro: So for example Doctor, would a girl of say 10 years old who was abused by her father more likely repress memories than a 10 year old who was abused by a teacher?

Dr.: In general yes.

Pro: And doctor, would a 10 year old girl abused by her father be more likely to repress the memories than a 15 year old girl who was as well abused by her father?

Dr.: In general yes. Of course there are other factors to consider such as the nature of the abuse itself, but everything else being equal, I would have to say that it is more likely that the 10 year old would repress her memories.

Pro: Why would an individual have difficulty in remembering or recalling an experience of childhood sexual abuse?

Dr.: When a person makes a conscious effort to recall a traumatic event she is likely to have great difficulty and get only a partial and sketchy picture of what happened. When a person consciously tries to remember a traumatic situation the frightening memories may begin to come back, but these memories create so much anxiety that the person is unable to maintain their train of thought. The anxiety disrupts their attention processes and causes their mind to refocus on the present as an automatic way of avoiding any more of the traumatic memories.

Pro: Dr., how common are recovered memories of traumatic events such as sexual abuse?

Dr.: Clinical evidence indicates that it is not uncommon for traumatic experiences to be repressed. Indeed, repression of sexual abuse in order to cope is quite common. Some studies based on clinical populations have shown that at least half of all incest survivors do not remember that the abuse occurred.

Pro: Dr., suppose an individual who was abused as a child gives only a sketchy and fragmentary description of the abuser or the events. Does this mean that the victim is making up the story?

Dr.: No certainly not. One would expect a traumatized individual, particularly during the initial stages of accessing a memory, to provide a very incomplete and fragmented description. When a patient, addressing issues from her past begins to access memories that have previously been closed off, these memories often come back in bits and pieces - known as flashbacks. The flashbacks serve as a way for the repressed memory to come back into conscious memory. The flashbacks can be very confusing and frightening to the individual and are uncontrollable. At this stage, therapy can be very helpful in understanding what the process of flashback is all about. Flashbacks are often the beginning of memory retrieval and revival. If the individual is in a supportive

environment, the flashback will develop into actual memory events.. Once that memory is triggered, all that is essentially involved is playback – so the memory can be quite vivid and detailed.

Pro: Dr., why is therapy so important in the recall of these traumatic sexual abuse memories?

Dr. For certain segments of memory that involve a frightening or traumatic event, special intervention such as therapy is needed. While uncovering memories is only one step in the process of healing from trauma, it is important that these memories come to surface for the individual to function normally. Therapy becomes important as a means by which an individual can deal with the reality of their situation. Indeed, these repressed memories, denied entry into consciousness lie at the heart of many cases of depression and anxiety disorders seen in the large majority of people who were abused as children. Only by bringing these memories to light can other problems that the individual may be having be dealt with.

Pro: And when these recovered memories of abuse are brought to light, how is the role of a therapist important?

Dr.: The role of a therapist at that point is crucial. The tremendous emotional intensity and pain experienced by their clients when recovering these memories requires a secure therapist-client relationship so that the individual can feel that they are in a safe environment. Revealing painful memories to a neutral detached therapist can be reminiscent of the earlier unresponsive family environment where the abuse first took place.

Pro: Could a therapist implant or create in a client the false belief of having been sexually abused?

Dr.: No, there is no clinical basis to suggest that anyone could be led to falsely believe in such a traumatic experience.

Pro: Why is Group therapy so important for survivors of abuse?

Dr.: Group therapy offers a number of benefits for incest survivors. All too often in our society sexual abuse is ignored. Group therapy can serve not only as a catalyst to explore painful memories of abuse which have been repressed, but it also provides a safe environment where disclosure of abuse can be encouraged rather than ignored and downplayed.

Pro: So Dr., it is your opinion that memories, can be repressed for as long a period as 10 years and can in fact be representations of actual events?

Dr.: Most definitely.

Pro: No further questions your honor.

Cross-Examination of Expert Witness

Def: Dr., do all women who were sexually abused as children repress their memories?

Dr.: No, not necessarily.

Def: Do all women who were sexually abused as children exhibit psychological problems?

Dr.: No.

Def: And are all women who exhibit psychological problems necessarily abused as children?

Dr. No.

Def: Is it typical that a therapist would not question the validity or accuracy of a memory?

Dr.: Yes, however the role of a therapist is not to question the truthfulness of a client but rather to provide their clients with a supportive environment by which a person may feel safe to disclose painful and traumatic events that they may have experienced.

Def: Are you aware Dr. of cases involving women who have claimed to repress memories of childhood sexual abuse and have later denied their claims?

Dr. I'm aware of a few such cases - but it may also be the case that they were pressured into recanting their claims.

Def: And Doctor, has the existence of this mechanism by which traumatic memories can be completely wiped out from the conscious mind called repression, been scientifically proven to exist?

Dr.: Well, no but.....

Def: Dr., are you aware of any way to definitively prove that a memory, particularly one for events long past, is in fact a real memory when there is no corroborating evidence?

Dr. No.

Def: So doctor, despite a woman's certainty that her recently recovered memories of sexual abuse are true, is it not the case that such a memory cannot be validated unless there is corroborating objective evidence.

Dr.: Yes, however it would be difficult if not impossible to obtain objective evidence for an event that occurred decades or even years before. As such we must rely on an individual's recall of the events.

Def: No further questions.

Mother - Witness for Defense (All Conditions)

Def: Mrs. Phillips, please tell the court how long you have been married to Mr. Phillips.

M: 25 years.

Def: And please describe the kind of man Mr. Phillips is as both a husband and father.

M: He's a kind and gentle man. All of the years that we've been married he has supported Jill and myself in every way possible.

Def: You've heard your daughter's allegations against your husband Mrs. Phillips - was there ever a time you had reason to suspect that there was any sexual abuse going on?

M: No - of course not.

Def: No further questions.

Cross-Examination of Mother (All Conditions)

Pro: Mrs. Phillips, remembering back to the time period in question, about what time would you usually go to bed?

M: Well, I usually go to bed after the 10:00 news - so about 11:00.

Pro: Your husband was working in a paper mill plant at the time - what time did he usually get home at.

M: Well, he often worked the night shift - so I guess he didn't get home until midnight - sometimes later.

Pro: Isn't it the case therefore Mrs. Phillips that you were likely asleep when your husband was abusing your daughter?

M: - Of course not - surely I would've woke up - I'm a very light sleeper.

Pro: When you suffered a stroke you were taking a lot of prescription medicine correct?

M: Yes.

Pro: And your medication would make you drowsy and even cause you to fall asleep?

M: Yes, but I can't imagine that I wouldn't wake up if something was going on.

Pro: But isn't it the case Ms. Harris that you were not able to go down a flight of stairs on your own because you were confined in a wheelchair?

M: Yes, but if I had reason to, I would have found a way.

Pro: And were you always in the presence of your daughter when your husband was around?

M: No, I wasn't.

Pro: Do you recall your husband ever being alone with your daughter in the basement?

M: Yes, but our laundry room was down there - he'd often help Jill out doing the wash.

Pro: How was your relationship with your husband during the time when you were suffering from the effects of your stroke?

M: Fine.

Pro: What about your sexual relations with your husband?

M: Well, I was partially paralyzed for almost a year, so I wasn't able to have intercourse if that's what you mean - but we were still intimate.

Pro: No further questions your honor.

Examination of Mr. Harris (All Conditions)

Def: Now that you have been sworn in Mr. Harris, could you please tell the court your full name and address.

W: My name is John R. Harris. I live at 32 Calter Street.

Def: What is your occupation Mr. Harris?

W: I'm in charge of quality control at the paper mill.

Def: How long have you been at your present job?

W: 20 years.

Def: Have you ever been fired from a job?

W: No.

Def: Have you ever been charged with or convicted of a sexual offense?

W: No, never.

Def: Have you ever been charged with or convicted of any type of crime, Mr. Harris?

W: No sir.

Def: How long have you been living at your present address?

W: 25 years.

Def: Mr. Harris, can you please describe your relationship with your daughter previous to the allegations she has made.

W: We've always been a pretty close knit family. As our only daughter, Jill, my wife and I spent a lot of time together - especially when Jill was younger. We all got along very well, had few arguments and were very happy.

Def: And how was your relationship in the past 5 years?

W: It was still strong. When Jill got married she and her husband would regularly come over and visit my wife and I. In the past 2 years however Jill's visits became less frequent - and finally she stopped coming around. She even started refusing our phone calls.

Def: And did she tell you why she didn't want to see you?

W: No, all of a sudden for no reason that my wife and I could see, Jill just came out and told my wife that she needed time away from us.

Def: And how did you and your wife feel about this Mr. Harris?

W: We were devastated - we love our daughter and want to be together again like we used to be.

Def: Mr. Harris, the day you received the news about your wife suffering a stroke must have been a pretty traumatic time in your life?

W: Yes, very much so.

Def: Do you remember where you were when you heard the news?

W: Yes, very clearly - I was at work.

Def: And what about your daughter, where was she?

W: She was at her grandparents. I remember that I had to go pick her up to go to the hospital.

Def: Mr. Harris, have you ever touched Jill in a sexual manner?

W: No, of course not.

Def: Have you ever made Jill touch you in a sexual manner?

W: No.

Def: Have you ever forced your daughter to have oral sex with you?

W: No.

Def: Have you ever asked your daughter to have oral sex with you?

W: No.

Def: Have you ever had sexual intercourse with your daughter?

W: No.

Def: In short Mr. Harris, have you ever, in any way sexually assaulted your daughter?

W: No I have not.

Def: Mr. Harris, do you recall the color of your shower curtain in your house?

W: Yes, it's yellow with flowers on it.

Def: And how is it Mr. Harris that you have such a clear description of that shower curtain?

W: Well, my wife and I bought it pretty soon after we married - it's been in the bathroom for almost as long as we've lived there.

Def: Can you please describe the basement in your house?

W: Yes - it's like most basements - a gloomy looking place I guess. It's pretty dark because we boarded up the basement window when we moved in.

Def: Would you describe it as being damp or cold?

W: Yes - I suppose so.

Def: Would Jill as a young girl ever go into the basement?

W: Oh certainly. She'd play down there sometimes and our laundry room was down there, so when she was helping out around the house she'd go into the basement a number of times to help do the laundry.

Def: Was there ever a time you were down there alone with Jill?

W: Yes - I'd help her with the laundry and I had a workshop down there.

Def: And what about during the evening - would you ever go down to the basement at night with Jill?

W: No - not that I could remember.

Def: Do you believe that Jill could lie about something as serious as this?

W: I would never have thought it, but, yes, obviously she can.

Def: Thank you. No further questions.

Cross-Examination of Mr. Harris (All Conditions)

Pro: Mr. Harris, you testified that you and your daughter were close. Is this correct?

W: Yes.

Pro: I imagine that you often spent time with her.

W: Yes

Pro: Was Mrs. Harris always present?

W: No of course not.

Pro: Did you ever rub or massage your daughter's back Mr. Harris?

W: On occasion. She used to be in gymnastics and come home with a sore back.

Pro: And how old would she have been when she was taking gymnastics?

W: Oh I don't know ... 9 10...

Pro: And did you ever remove her shirt to rub her back?

W: No.

Pro: And did you ever touch Jill's breasts when giving her back rubs?

W: Her breasts - of course not!

Pro: You stated Mr. Harris that you worked at a paper mill - did you frequently do shift work?

W: Yes.

Pro: So often times you would get home late - after your wife and daughter were asleep?

W: Yes.

Pro: Did you ever enter Jill's bedroom during these late hours?

W: Yes.

Pro: And did you ever approach Jill's bed when she was asleep?

W: Yes - but only to give her a good night kiss.

Pro: When your wife suffered a stroke, she was partially paralyzed for a period spanning almost an entire year is that correct Mr. Harris?

W: Yes.

Pro: And is it not correct to state Mr. Harris that she was unable to perform sexually?

W: Yes, I guess so.

Pro: And would you get frustrated over the lack of sexual intimacy?

W: Well, I guess maybe sometimes but we were very happily married.

Pro: How many levels does your house have Mr. Harris?

W: Three levels.

Pro: And the basement is on the bottom level, with the bedrooms at the top level?

W: Yes

Pro: So is it possible then that if something were happening in the basement, your wife would never know about it?

W: Yes, I suppose that is true, but nothing that Jill is saying ever happened.

Pro: No further questions your honor.

Defense Closing Statement – Mild Symptoms

(Bold: PTSD Symptom No Diagnosis & PTSD Diagnosis)
(Bold Italics: PTSD Diagnosis)

Members of the jury. In our system of justice a person is presumed to be innocent until he is proven guilty beyond a reasonable doubt. What this means is that Mr. Harris does not have to prove to you or to the court that he is innocent. Mr. Harris does not have to prove anything at all. Instead, it is up to the Crown to prove beyond a reasonable doubt that Mr. Harris is guilty. Members of the jury, this, the Crown has been unable to do. It has been unable to do it for a very simple and very basic reason. The reason is that Mr. Harris is not guilty of sexual assault. This horrible accusation is false. It is the product of therapy which led a depressed and anxiety ridden woman to misidentify the root of her problems as having been the result of sexual abuse perpetrated by her father 12 years ago.

Members of the jury, Jill is not to be blamed for constructing these memories out of spite or hatred. No, rather Jill came, in all honesty to believe in the reality of these false misguided memories. While it is only right that our hearts go out to Jill because of her suffering, it would be an even greater tragedy if we were to believe her memories and convict an innocent man on the basis of memories which have absolutely no basis in reality.

Members of the jury, when we look carefully at the prosecution's case, piece by piece it begins to collapse like a house of cards.

Jill started therapy in order to overcome some problems that she was having. Based upon nothing more than a feeling that something bad had happened to her, Jill's therapist probed Jill's childhood background. It is no coincidence members of the jury that more than half of Jill's therapists' clients who have a background of sexual abuse had so-called repressed memories. Jill's memories began to take shape only under the

guidance of a biased therapist. Having ideas of her own as to what was responsible for Jill's current problems and a memory gap which could have been the result of normal forgetfulness, Jill's therapist helped guide and create the memories which Jill holds to be real. These memories however are completely false. Only after having seen her therapist did Jill begin to have feelings that something bad had happened to her. Only under her therapist's guidance did Jill begin to have flashbacks. Only under her therapists guidance did Jill's flashbacks take on the quality of a real memory. Only under the guidance of her therapist did Jill come to identify a shadowy figure as her perpetrator. And members of the jury, only after having been subjected to the stories of other survivors of incest did Jill come to recall the alleged activities that took place in the basement of her home. **Even subsequent recurrent nightmares and intrusive thoughts, which Jill's therapist claims are symptoms of post-traumatic stress disorder, only occurred after therapy commenced and these so-called memories miraculously came flooding back.**

While therapy and group therapy are crucial aspects of an incest survivor's healing, the consequences for those not abused, are, as evidenced in Jill's case, hazardous

Faced with a therapist who believed Jill's depression and anxiety to be symptoms of sexual abuse, Jill filled in the gaps of her memory based upon what she was led to believe must have happened to her. Placed within the confines of a group meant for survivors of incest, where she heard the traumatic and painful stories of incest being told, Jill further came to embellish upon her memories. Cutting herself off from family, Jill had no one to question the authenticity of her memories. No - rather Jill's recovery of her so-called memories were not only encouraged but accepted uncritically - Jill's mind was free to imagine what it wanted to.

Members of the jury, we all know how bad our memory can be for an event that occurred 10 years ago. Now while details for an event, particularly one that repeatedly occurred and that is as traumatic such as sexual abuse may be forgotten, the fact that the

event ever took place almost always remains with the victim. Moreover, the existence of repression, the mechanism by which we are being told is responsible for Jill's unawareness of her alleged abuse has never even been proven to exist.

Members of the jury, does it make sense to convict an upstanding and honorable man of a serious crime on the basis of a memory that is not real? No, to do that obviously makes no sense at all.

What about the corroborating evidence in this case. Does that evidence prove that Jill was sexually assaulted? Let us look carefully at the evidence. Jill has absolutely no physical evidence corroborating her claims. Her mother testified that she had never had any reason to suspect that her husband was abusing Jill. And at no point during the alleged sexual activities did Jill tell anyone that this was happening - not even her best friend. And what of the psychological difficulties (*post-traumatic stress disorder*) that Jill was suffering? A number of individuals suffer from these same problems and have never been sexually abused at all. To focus on sexual abuse as the root of such problems can, as we have seen have devastating effects.

Members of the jury, Jill is the product of a loving family who still care and love her very much. Yes, it may be true that Jill had difficulty remembering certain aspects of her childhood, but to suggest that Jill's inability to recall details concerning her childhood was due to repression and not just normal forgetfulness is simply unfounded. It is also true that Jill took on many of the household responsibilities while her mother suffered the effects of a stroke, but to suggest that Jill was expected to fulfill other duties is ludicrous. No, rather Jill's acts of help around the house when her mother was sick was nothing more than the generous acts performed by a daughter who loved and respected her family and wanted to help in a time of need.

Members of the jury, to convict my client for a crime that he did not commit would be a horrible horrible miscarriage of justice. To convict him on the basis of one

person's memories for events that allegedly occurred more than 10 years ago would be truly obscene. And for these reasons, members of the jury, I ask you to find Mr. Harris not guilty of sexual.

Thank you for your attention and your patience.

Prosecution Closing Statement– Mild Symptoms**(Bold: PTSD Symptom No Diagnosis & PTSD Diagnosis)*****(Bold Italics: PTSD Diagnosis)***

Members of the jury, Jill Harris was the victim of a terrible crime. She was sexually assaulted on repeated occasions by her own father. My esteemed colleague has attempted to muddy up this case by trying his best to shift the blame from the real criminal Mr. Harris. The defense would have you believe that Jill would falsely accuse her own father of horrible sexual activities based on, memories that the defense contends are false. Members of the jury, the story concocted by the defense is simply, to say the least, absurd.

The defense would like you to believe that Ms. Barr, Jill's therapist, put the idea of sexual abuse into Jill's mind and then pressured Jill into concocting the whole horrible and sordid story. The defense further wants you to believe that Jill's therapist pressured Jill into believing in the reality of these memories. So now we have another villain to blame. Not only is Jill to blame but so is her therapist. How terrible, all of these people conspiring to accuse poor, innocent Mr. Harris of sexual abuse.

Was Jill not suffering from psychological problems to begin with?

As we have heard, these problems are consistently indicated in adult survivors of incest. Indeed, the expert pointed out that repressed memories, denied entry into consciousness lie at the heart of many cases of psychological disorders and are evidenced in the large majority of women who were abused as children. Did Jill not begin to recover memories in a way similar with what the expert described as consistent with other incest survivors.

Does any of this indicate that Jill was lying or making up stories when she accused her father of sexual abuse? No, of course it doesn't.

Members of the jury, for a moment place yourself in Jill's place. You are 22 years old, you are suffering from bouts of depression, anxiety you are having problems being sexually intimate with your husband - you know something is wrong with you but you don't know why. You seek the help of a therapist. You begin having frightening and confusing flashbacks. You see your father's face as the perpetrator committing unspeakable sexual acts on you. He's your father and you love him, and for all the world you don't want to hurt him unnecessarily. But what he did to you was terrible. What are you to do? Ignore the memories your having - try to put them out of your mind again - repress them for another 10 years and hope everything will continue like normal? Well, Jill could have done just that. However, although frightened and confused, Jill, felt safe enough with someone to explore the terrifying reality of what happened to her when she was only 10 years old.

Ms. Barr, Jill's therapist was confronted with a very frightened and confused woman. Having been a mental health therapist for over 15 years Ms. Barr was more than qualified to act as Jill's therapist. Having worked with incest survivors previously, Ms. Barr recognized Jill's symptoms - the memory gaps, flashbacks, the depression and anxiety, sexual intimacy problems, **the inability to experience the normal range of emotions, detachment from others, no hope for the future, violent temper tantrums, difficulty concentrating or completing tasks - all symptoms characteristic of post-traumatic stress disorder** - all symptoms evident in discussions surrounding Jill's father - and all symptoms consistent with other survivors she had worked with. Ms. Barr is adamant that she at no time suggested abuse by her father as a probable occurrence in Jill's childhood. No. You have heard in Ms. Barr's own words that she would never suggest to anyone what it was that they may have experienced or how they should be feeling. Ms. Barr was again a very qualified therapist. To suggest that she was over-zealous in her attempts to have Jill recover memories of abuse as the defense would

suggest is absurd. Ms. Barr has extensive experience in dealing with incest survivors and knows not to force or dig for memories when dealing with potential repressed memories of abuse.

Members of the jury, Ms. Barr didn't pressure Jill into making up obscene stories. Instead she simply provided a frightened and confused woman with the emotional support she needed to uncover memories that were so traumatic that they were repressed from Jill's conscious mind.

Members of the jury, the events that Jill did describe were revolting. She described how her father touched her genitals, how he forced her to put his penis into her mouth and how he forced his penis into her vagina. Members of the jury, does it really make sense to believe that a woman would make up all of these sexual details out of thin air? No of course it doesn't. Jill was able to provide these horrible descriptions for one reason and one reason only. The horrible events were actually forced on her by her father. These events are not the fantasies or false memories of a woman. Jill was able to describe the obscene events because her father forced her, when she was only 10 years old to experience each of them for a period covering two years.

Imagine how Jill, as a child of 10 must have felt while her father was perpetrating these disgusting acts upon her. In order to try to deal with the trauma of the situation Jill's mind pushes down those memories - pushing them out of her consciousness.

Members of the jury, you heard expert testimony which indicated that repression of events as traumatic as those experienced by Jill is common. According to the expert's testimony Jill was telling the truth about what was happening to her. The flashbacks, the fragmented nature of her recall, are all consistent with the recovery of repressed memories. Jill also exhibited the psychological reactions typical of someone who had been sexually abused. Once again the defense has attempted to cloud the issues. For instance, the defense points out that women who have not been sexually abused have also

experienced these difficulties. And this is in fact true. However, when taken together with her other symptoms of memory loss and flashbacks, we have a woman who, unbeknownst to her at the time, was behaving in a manner consistent with what we now know about recovered memories and sexual abuse. The defense also has pointed out that there is no evidence to support the existence of repression. Members of the jury, I want you to think about that for one moment. The acts that Jill has described as so horrible that her mind pushed them out of her consciousness. And what is so unbelievable about that?

We have heard how numerous women have dealt with traumatic sexual abuse memories in the same way. When the mind is exposed to a traumatic event it has a natural tendency to try and avoid these thoughts.

Members of the jury, the defense has tried to suggest that Jill's therapist implanted these horrific memories - but why would a therapist want to do that? Why would a therapist, aware of the emotional trauma involved in recovering these memories want to subject someone to this pain if their memories were not in fact real? The answer is obvious - Jill's memories were real. The pain Jill faced when recovering these memories was very real. Why would Jill make up something so horrific? The answer members of the jury is that she wouldn't lie about something so horrible. It is important to keep in mind that there is no proof that something as traumatic as sexual abuse could be implanted in someone's mind.

Members of the jury, Jill Harris told you the truth about what her father did to her. It is a horrible truth, but the truth nonetheless. For that reason I ask you to find Mr. John Harris guilty of sexual abuse.

Judge's Charge

Members of the jury. You have heard the evidence in this case and you must now deliberate to a unanimous verdict.

Mr. Harris is being charged with sexually assaulting his daughter Jill Harris. No consent to sexual assault occurs when a complainant submits by reason of the exercise of authority or when the complainant is under the age of 14 years. Because the alleged activity occurred when Jill was under the age of 14, the consent or non consent of Jill Harris is not an issue. The issue to be determined is whether the alleged conduct actually occurred.

At the time of the alleged incident, Jill Harris was living at home with her parents, Mr. John and Barbara Harris. On June 8th of this year 1995, Jill went to the police regarding the events that she recalled having occurred 12 years previous and charges were laid.

It is the contention of the Crown that Mr. Harris sexually assaulted his daughter, Jill Harris. You have heard Jill Harris testify under oath that her father, Mr. Harris, on a number of occasions fondled and touched her genitals. She further testified that her father repeatedly engaged in various sexual activities with her over a period of approximately 2 years. Jill also testified that her father had sexual intercourse with her on at least two separate occasions. You have also heard the testimony of other witnesses called by the Crown to corroborate Ms. Harris's testimony.

The Crown called witnesses to testify that recall of the incidents of abuse and the psychological symptoms were consistent with abuse having had occurred. You also heard an expert witness testify as to the validity of repressed memories for traumatic events.

You have heard the defense contend that Jill Harris was not sexually assaulted by Mr. Harris, but instead, her memories of the events that took place are false. You have

heard Mr. Harris testify under oath that he has never had sexual relations with his daughter. According to the defense, Jill Harris, a depressed anxiety-ridden woman sought the help of a therapist. Moreover, the defense maintains that Jill's reconstruction of her memory was false and guided by her participation in a group for survivors of incest and by a therapist who presumed the existence of sexual abuse

Members of the jury, in your deliberations it is important that you review very carefully all of the evidence that has been presented. You should think carefully about the testimony you have heard, and, where there was conflicting testimony you must make judgments about the credibility of the witnesses involved. It is up to you to evaluate the conflicting testimony and determine which is the truth.

If, after careful deliberation, you conclude that the evidence presented before you proves beyond a reasonable doubt that Mr. Harris had sexual relations with his daughter, Jill Harris, then you should find Mr. Harris guilty of sexual assault. On the other hand, if, after careful evaluation of the evidence, you believe that a reasonable doubt remains concerning Mr. Harris's guilt then you should acquit him of the charges against him

Now, a reasonable doubt concerning guilt is not merely the possibility of innocence. A reasonable doubt is a doubt that would cause a reasonable and prudent person in the graver, and more important affairs of life, to pause and to hesitate to act upon the truth of the matter charged.

Proof beyond a reasonable doubt is not proof beyond all possible or imaginary doubt. Instead, it is proof that precludes every reasonable hypothesis except the hypothesis that it tends to support. Proof beyond a reasonable doubt is proof to a moral certainty. Proof beyond a reasonable doubt is proof strong enough to convince reasonable people who have examined the evidence before them that the crime the defendant is charged with has been committed by the defendant. Proof beyond a

reasonable doubt is proof that convinces reasonable people that no other reasonable conclusion is possible.

Members Of the jury, you may now retire and begin your deliberations.

Appendix C: Measures for Experiment II)

Measure	Page
Recruitment Announcement	See Appendix A
* Manipulation Check (includes items for Quality of Complainant's Memories)	239
Credibility Checklist	241
Private Belief Rating Scale	See Appendix A
Tally Sheet	See Appendix A
Informed Consent Form	See Appendix A
Informed Consent (Deliberations)	See Appendix A
Duties of the Foreperson	See Appendix A
Debriefing	242
Contact Sheet	244

* Questions included for Clinical Expert appear in **bold**. Questions included for Experimental Expert appear in ***bold italics***.

Note: For Conflict Expert Condition, questions from both expert frameworks are included.

Manipulation Check**(Bold: Clinical expert framework)****(*Bold italics*: Experimental expert framework)****(Note: For conflicting expert framework condition, questions pertaining to both experts were included)**

1. How detailed did you find the defendant's (Mr. Harris') testimony?

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

2. How detailed did you find the therapist's testimony?

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

4. How detailed did you find Jill's memories concerning her alleged sexual abuse to be?

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

5. To what degree did you find the expert's testimony (expert for prosecution) testimony convincing with regard to the argument presented?

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

6. To what degree did you find the expert's testimony (expert for defense) testimony convincing with regard to the argument presented?

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

7. How convincing did you find Jill's testimony?

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

8. How realistic (in terms of the memories recalled) did you find Jill's testimony?

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

Credibility Checklist

(**Bold**: Clinical expert framework)
 (***Bold italics***: Experimental expert framework)
 (Note: For conflicting expert framework condition,
 questions pertaining to both experts were included)

How credible (in terms of their testimony) were each of the trial participants on a scale of 1 to 5?

	Not Credible				Very Credible
Jill Harris (Complainant)	1	2	3	4	5
Dr. Morgan (Expert for Prosecution)	1	2	3	4	5
<i>Dr. Smith</i> <i>(Expert for Defense)</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
Mr. Harris (Defendant)	1	2	3	4	5
Ms. Barr	1	2	3	4	5

Debriefing Information

We would like to thank you for participating in this study. Your participation will help us understand more about how jurors make decisions in trials involving recovered memories of childhood sexual abuse and will offer a new contribution to this field. This study and others like it assist those individuals who are involved in similar litigation.

We would like to emphasize that sexual abuse of children is a serious and violent crime, punishable by many years in prison. Sexually abused children suffer severe psychological trauma as well as the more obvious physical effects of the assault. Unfortunately, many people still believe a number of falsehoods or myths about the sexual abuse of children. It is important to recognize that the majority of persons who offend against children are known by the child. Moreover, child sexual abuse is not limited to any social, economic or ethnic class. Under no circumstances should a child be blamed for being sexually assaulted. We would like to stress that children are not responsible for being sexually assaulted, rather they are the victims of a brutal crime.

Another misconception many people have is that if a child does not immediately report being sexually assaulted or hesitates to report an assault, that they were not sexually assaulted at all. This belief is false. There are many reasons that make it difficult for children to report being sexually abused (e.g., reactions of others, psychological trauma experienced from the assault, fear of being disbelieved).

Controversy exists however with regard to the reality of repressed memories for childhood sexual abuse. Definitively, the existence or non-existence of repression as a mechanism by which an individual may come to be unaware of childhood sexual abuse remains unproven.

The purpose of the study in which you have just participated is to investigate different factors which may influence the decisions that jurors make in trials involving repressed memories of childhood sexual abuse. In this study the expert evidence and the quality of the memory of the complainant were manipulated. We wanted to determine if changes in these independent variables affected the dependent variable, jury verdicts. Past research using the jury simulation paradigm has shown that jury verdicts vary as a function of the amount of evidence presented at trial and the composition of certain judicial instructions and expert testimony. Research also indicates that extralegal variables (e.g., demeanor of the complainant and defendant, juror gender, age of the complainant, etc.) influence jury decisions.

There are a couple of discrepancies between the procedure used in this study and the procedure used in actual criminal trials. In this study ALL mock jurors who agreed to take part in the study sat on the jury. However, in actual trials, potential jurors would be questioned by the Defense and Crown attorneys before the trial proceedings. This process is called the jury selection procedure and all individuals who arrive for jury duty are not selected to sit on the jury. Another difference between the procedure used in this study and actual criminal trials is the artificial time limit placed on the deliberations. In actual trials, the length of the deliberations are not limited. However, literature indicates that the majority of juries that try cases involving charges of sexual assault reach a verdict within 90 minutes.

We appreciate your taking the time to answer the questions and want to stress that our intent is to understand your beliefs; consequently, all your answers are valuable. Also, please note that the trial presented to you on videotape is a completely simulated trial; that is, it is totally fictional scenario. Furthermore, all of the characters were actors and actresses who volunteered their time and efforts to this project.

Carleton University is devoted to creating an environment free of harassment, discrimination, and violence. Questions concerning any of these forms of abuse, and Carleton University's response to them, should be directed to the Sexual Harassment Officers on campus (788-2699 ext. 5622). Studies such as this are conducted so that a better understanding of violence against women, children and sexual assault may be achieved.

We understand that the scenarios may be upsetting and anxiety provoking for some people and we stress that you contact myself or one of the agencies listed below if you have any concerns regarding this study or the issues referred to in this study. This list of contacts includes agencies within both the university and the community that are available for men and women.

Due to the nature of this research, we ask you not to discuss the subject matter with potential participants until testing is complete. If you wish to discuss any additional aspects of the research we are available for appointments. You may contact Cheryl Terrance in room A304 Loeb or by phoning 788-2699 ext. 2683.

Contact Sheet

Police Phone Numbers

Emergency	911
Ottawa	230-6211
O.P.P.	828-9171

24 Hour Distress Lines

Distress Center	238-3311
Rape Crisis Line	562-2333
Sexual Assault Center	234-2266

Ottawa Law Information Line

Referral to appropriate services	236-3893
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Support Services

Family Service Center	725-3601
The Sexual Assault Support Center	234-2266
Children's Aid Society	747-1918
Services for Abused Women	745-4818

Counseling Services

Carleton University	
Health Services	520-6674

Appendix D: Transcripts (Experiment II)

	Page
Opening Statements	
Judge	See Appendix B
*Prosecution.....	246
**Defense	248
Witnesses for the Prosecution	
Friend	See Appendix B
Therapist	See Appendix B (Mild Condition)
**Complainant.....	250
Expert Witness	
Prosecution.....	See Appendix B
Witnesses for the Defense	
Mother	See Appendix B
**Father (Defendant).....	262
Expert Witness	
Defense	267
Closing Statements	
*Defense	272
*Prosecution.....	276
Judge	280

* Testimony specific to the Clinical Expert and Conflicting (clinical expert only) conditions appear in **bold**. Testimony specific to the Experimental Expert and Conflicting (experimental Expert only) appear in *bold italics*.

** Testimony specific to the Vivid memory recall condition appears in **bold**.

Prosecution Opening Statement

(Bold: Clinical Expert and Conflicting)

Members of the jury, the case before you is really quite straightforward. The Crown will show that, on repeated occasions over a two year period, John R. Harris sexually assaulted his daughter, Jill A. Harris when she was 10 years old. Members of the jury, the Crown will show that the evidence against Mr. Harris is very strong. Jill Harris, the victim in this case will take the stand. Under oath, she will describe how Mr. Harris, her father, on a number of occasions, would touch and fondle her genitals. You will hear how he would ask her to touch and fondle him as well. On different occasions Mr. Harris even forced Jill to perform oral sex on him. You will also hear how, in her own home Mr. Harris forced Jill to have sex with him.

As a consequence of almost two years of such abhorrent behavior, you will hear how, in order to protect herself from the emotional and physical trauma she had endured, Jill Harris repressed these despicable acts for a period of approximately 10 years. Having been denied entry into Jill's consciousness, these repressed memories lay at the heart of the psychological problems Jill had been suffering which in turn led her to the supportive guidance of her therapist. Only then, secure in a safe environment, could Jill bring herself to recall incidents of sexual abuse that her father had inflicted upon her.

Members of the jury, you will also hear expert testimony that will corroborate Jill's testimony. He will testify as to how repression is a common consequence of traumatic experiences. And how, in order to get on with her life, it was essential that Jill deal with, and acknowledge the trauma that was inflicted upon her when she was a young girl.

In summary, the Crown will present evidence to prove beyond a reasonable doubt that Mr. John Harris committed sexual assault against his own daughter, Jill Harris.

Members of the jury, I ask you to listen carefully to all of the evidence presented and then I ask you to find John Harris guilty of sexual assault.

Defense Opening Statement

(Bold italics: Experimental Expert and Conflicting)

Members of the jury, sexual assault is a horrible and serious crime. Those persons that sexually assault children should be punished by law. However, my client, Mr. John Harris, did not sexually abuse his daughter, Jill. Instead, this horrible allegation, though firmly believed by Jill is a misguided and falsely held belief. In an attempt to seek an answer for any psychological problems she may have been suffering, Jill, though perhaps unwittingly, conjured up images and memories that were false. There is no doubt that the acts that you will hear Jill describe as being perpetrated against her by her own father are despicable acts. Nevertheless, these events never took place.

Members of the jury, Mr. Harris is a well educated, upstanding member of the community, He has a good job. Before this misunderstanding he had never been involved in any legal wrongdoing. In short, John Harris is not the sort of man who sexually assaults children.

Mr. Harris will take the stand in his own defense. It is important that you listen very carefully to everything that he tells you. Under oath he will tell you that he never asked his daughter, Jill, to perform any sexual acts upon him. Nor did he engage in any sexual acts with her. Members of the jury, Jill Harris' whole story is completely false. Mr. Harris will testify that he has never had any type of sexual relations with his daughter.

Why would a woman falsely accuse her father of sexual assault? The answer to that question will become clear as you listen to the evidence surrounding Jill's recovery of her memories. Jill started going to see a therapist seeking answers as to why she was feeling the way she did. Only under the guidance of her therapist did Jill come to recall memories for tragic events of abuse. Unfortunately, Jill's memories which started as fragmented and confusing images during her early sessions in therapy, came to take on

the quality of a real memory only under the guidance of her therapist. Though honestly believed by Jill, evidence will demonstrate that these memories are indeed false.

Ladies, and gentlemen of the jury, you will also hear testimony by an expert who will testify regarding the implausibility of repressed memories. Moreover, this expert will testify not only to how memory is subject to distortion, but that it is also possible to create memories for events that never took place.

Members of the jury, I told you earlier that sexual assault is a horrible crime. But this trial is not about sexual assault because Mr. Harris did not sexually abuse his daughter at any time during her life. As you will see, none of the witnesses called by the Crown, can confirm the allegation. Members of the jury, this trial is about a confused and troubled woman who has falsely accused her own innocent father of sexual assault. For this reason I ask you to find Mr. Harris not guilty. Thank you.

Jill Testimony
(Bold: Vivid Memory Recall)

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

J: My name is Jill Harris and I'm 22 years old.

Pro: And at what age were you when you recall your father as first beginning to have sexual relations with you?

J: I was 10 years old when it started.

Pro: And how long had your father continued having sexual relations with you?

J: Until I was about 12 years old - so almost two years.

Pro: Can you please describe the incidents that led you to recall what your father did to you.

J: Well, I was 20 years old and I was feeling depressed and anxious. I wasn't doing well at work - and it was even hard to get out of bed some mornings. I was also feeling awkward with my husband, you know...sexually - I was just starting to feel really uncomfortable with him. It seemed like things were getting worse for me. When I discussed how I was feeling with my co-worker she suggested that I go see a therapist.

Pro: And so you did?

J: Yes, I knew something was wrong with me, but I couldn't put my finger on it. For the past few months I just wasn't able to keep up with my responsibilities.

Pro: Please describe your first few sessions with Ms. Barr your therapist.

J: Well, we just talked in general terms - you know - about my depression, anxiety and the problems with my husband.

Pro: And how would you feel afterwards?

J: I was happy that I had someone to share my feelings with...Ms. Barr was very nice and supportive - she made me feel comfortable...safe..

Pro: And when did you have your first recollection about what your father had done to you?

Jill: Well, I guess it was around the third or fourth month that I had met with Ms. Barr. Up until that session we had just been discussing my present situation - my work, my

husband, and how my problems were affecting me. Ms. Barr started asking me about my childhood. We discussed my friends that I had and my school...and then she asked me about my family.

Pro: And how did you feel when she asked you about your family Jill?

J: Well, up until that time I was feeling o.k. As I was an only child, my parents and I, from what I could remember had a pretty good relationship. So I started talking about my mother and our close relationship...but when Ms. Barr asked me about my father, it was weird - all of a sudden I felt uncomfortable...anxious. I don't know why, but these feelings just overwhelmed me.

Pro: And what happened at that point?

J: I told Ms. Barr that I was feeling sick and that I had to go. It was that night though that I had a horrible nightmare.

Pro: And it was at that point that you remembered what had happened to you?

J: Not really. But when I woke up, and even though I couldn't remember my nightmare, I had this strong feeling that something bad had happened to me- I couldn't shake it.

Pro: Did you discuss these feelings with your therapist?

J: Yes - she recommended that we look at my childhood in more detail than we had previously. So I started telling her things that I could remember when I was younger but I had difficulty in remembering things.

Pro: Was there any time period in particular that you were having difficulty remembering?

J: Yes, from when I was about 10 to 12 years old...Even though I could remember some things when I was younger than 10 and when I was older than 12, it seemed like that time period was most difficult to remember...there were bits and pieces, but there were big gaps in what I could recall. Like I remembered my mother being sick - she had suffered a stroke when I was 10...I remembered her being in a wheelchair for a while - I couldn't remember how long, and I could remember having to help out around the house - cleaning, helping cook things like that. But other than that I couldn't remember much else.

Pro: I presume that you discussed this memory gap with your therapist?

J: Yes, she told me about how memory works, and we discussed the notion of memory retrieval. She told me not to force or dig for any memories, and suggested that I may find

it helpful to look at family pictures taken when I was 10. She thought perhaps seeing pictures of myself and my family at that age might help to jog my memory.

Pro: So you did that?

J: Yes.

Pro: And did it help you recall anything?

J: No, when I was looking through the pictures I noticed that I wasn't smiling a lot - I looked pretty sad - but it didn't help jog my memory - I still seemed to have gaps. That night though, after having looked at all these pictures I woke up twice after having violent and disturbing nightmares.

Pro: The next time you saw your therapist, did you discuss these nightmares?

J: No, I mean I didn't see their relevance - I wasn't even in them...they were just bizarre...all I could remember from them was that I was in a dark room or something.

Pro: And so what did you discuss with your therapist?

J: Well, we started going over the memories that I could remember when I was 10, and that's the first time it happened...

Pro: What happened Jill?

J: Well, all of a sudden I had this flash appear in front of me. The closest way I can describe it is that it was much like viewing slides in a slide show, when the slides go by too fast, but slow enough to give you some of the image. I could see myself when I was 10 sitting on a floor somewhere - I think it was in my house and having someone, I didn't know who wiping blood from between my legs with a towel. I was confused, I was aware that it was something that had happened to me. I even had a recollection of pain.

Pro: When did you come to recognize who this person was?

J: It was about a month later...I was in the bathroom cleaning and I had knocked over this old bottle of Old Spice Cologne that my husband had received years ago..that smell seemed familiar somehow - the images that I had had started to become more clear - less fragmented. It was almost like a film running through my mind.

Pro: And what did you see?

J: I had this flash in mind and saw the same thing as before - me on a floor - only this time I saw the face of the person wiping the blood from me and could smell him - it was

that cologne. Enough of the feelings came sneaking in that I knew it couldn't be a fantasy.

Pro: And who was that person Jill?

J: My father.

Pro: What else did you recall about that incident?

J: At that point, after having seen my father's face, I couldn't recall anything else. All of a sudden my mind just went black.

Pro: How did you feel at that point?

J: I've never felt so frightened in my life...I began shaking and crying uncontrollably - I felt like I was drained emotionally.

Pro: Were you able to recall the rest of that incident with your therapist?

J: No. Even though I felt safe with Ms. Barr, and she had encouraged me to share my feelings, I could only fill in bits and pieces. I told my therapist about what I had seen, and told her how confused I was because everything was still so vague. I just didn't know what was happening to me. She told me that it was likely flashbacks of memories and told me to relax, close my eyes and to focus on the images that I had previously seen. I began getting images that were a bit more clear, but still they were pretty vague. I could remember seeing something yellow - but I still didn't know exactly where it was taking place except that it was in my house somewhere...but that was about it. It wasn't until later that I could recall more.

Pro: Could you please describe to the court when you first recalled the entire incident and the events that had taken place.

J: Yes, it was right before I went to bed that night after meeting with Ms. Barr..I could see the image again of me on a floor and my father wiping blood from my vagina, only this time I could remember more of what happened to me prior to being on the floor. I still wasn't able to see where I was - everything still seemed so vague - the images weren't too sharp but it was night time though because I also remember seeing darkness and so I must've been in bed. I remember I could feel my father touching me and putting something in my mouth - I think it was his penis. I could feel his weight on top of me and something in between my legs...I could feel pain piercing throughout my body. I could remember being lifted and carried somewhere. I still wasn't able to see where I was - I could just see this bright yellow color and could see blood on a towel.

J: Yes, it was right before I went to bed that night after meeting with Ms. Barr. I saw the image again of me on the bathroom floor and my father wiping blood from

me...only this time I could remember what had happened prior to me being on the floor. I got a very clear image of my bedroom -it was late at night - I could see the moon from my bedroom window and my father came into my bedroom and came towards my bed. He leaned over me and kissed me. He pulled down my bed sheets and put his hand up my pajama top and started rubbing me I remember him whispering in my ear telling me to be quiet because my mom was asleep. He then took off my pajama bottoms, stood up and took off his work pants. He was still standing above me and he put his penis in my mouth. I remember gagging so he took it out and laid down beside me. He laid on top of me and I remember having difficulty breathing because there was so much weight. He was kissing me all over my face and then he forced me to open my legs and he stuck his penis inside me. I was crying because it hurt so much - I could feel pain piercing throughout my body. He then carried me into the bathroom and I was bleeding and he was wiping the blood away with this old green towel we had. I remembered looking up away from my father and seeing the yellow flowers on the shower curtain and this picture of a woman in a field of flowers hanging over the toilet.

Pro: When you discussed this memory with your therapist what happened?

J: She suggested that I join a group that she was running for incest survivors and thought that I would find it helpful so I started to attend.

Pro: And what took place during these meetings?

J: Well, the first few times I went I didn't participate much...I didn't feel comfortable at that point telling other people about these memories I was having. Mostly I just listened. People were discussing what had happened to them and some even had experienced what I was going through - the flashbacks, memories flooding back that were never there before. This made me feel a lot better about myself - I didn't feel like I was losing my mind anymore. We also discussed how the abuse had affected our lives and ways of coping with the abuse that had happened to us.

Pro: And were you able to recall anything else that your father had done to you?

J: I was still getting flashes or images of things.

Pro: Such as?

J: Well, its sort of hard to say - it would be like a quick flash you know,...um, there was one where I would see myself in my bed crying and my father was looking down at me. Or I would see my father rubbing and touching me.

Pro: And when would you have these flashbacks?

J: Anyplace really, before I went to bed, in the shower, in group...they were uncontrollable.

Pro: And were you only getting these flashbacks since you joined group therapy?

J: Oh no - I had been getting some of them before I even joined the group.

Pro:: Was your recollection of the events that happened to you becoming more clear?

J: Well, sort of - flashes that I would have became (**more clear and vivid**) less fragmented - I was beginning to get some memories back. For instance, I would get these (**clear**) images where I would be performing oral sex on him or he was doing it to me. (**I remember gagging at times and having this horrible taste in my mouth. I remembered that all this was going on mostly at night when my mom was asleep.**) I still had trouble remembering where this was all happening and some images were still vague (**while others were crystal clear**) but my therapist assured me that what I was going through was normal.

Pro: So these memories you were having represented more than one occasion?

J: Yes -some of them I could remember happening when I was 10 - and others when I was older - around 12 years old.

Pro: And were there any other memories you had of your father sexually molesting you?

J: Yes, there was one in particular (**that was really vivid**). For days I had been having images of myself in a dark room. Then I would see my father on top of me. I could only remember bits and pieces but I knew something bad had happened - I just couldn't remember all of it.

Pro: When were you able to recall everything?

J: Well, group had just started one evening - and all of a sudden things started flooding back - I could still see myself in this dark room and could see my father standing over top of me - only this time things seemed (**a lot more clear**) a bit more clear - (**the images were so clear**) less hazy.

Pro: Please describe that event for the court Jill.

J: Well, I can remember that it was night time and I was in bed sleeping when my father came in. He picked me up and carried me somewhere in the house - I'm not sure what room it was in but I remember it was dark and cold and there was a musty smell in the room- I think I was in the basement in our house. It was just my father and I that were down there and the next thing I remember is being naked and laying there on the floor. My father stuck his penis in my mouth and I could feel pressure around my neck like he

had his hands there...I could feel pain between my legs like I had before...and then he was gone and that's all I could remember.

(J: Well, it was night time and I was in bed sleeping when my father came in. He came over to me and kissed me and I pretended to be asleep hoping he would go away. I remember feeling scared. He picked me up and carried me into the basement. I remember the basement was cold, damp and dark. There was this horrible musty odor and there were boards covering the windows. I was wanting go back upstairs and I started walking away from him but he pushed me down to the ground and started to try to take off my nightgown. He was having problems getting it off - finally he just lifted it up over my head. I remember laying there on the cold basement floor. He stuck his penis in my mouth and when I shook my head he put his hands around my throat. He then raped me...I felt the same pain that I had before. When he was done, he got off of me like nothing happened and told me to get dressed...he went back upstairs. When I was dressing I was crying and trying to clean myself up and then I went back to my bedroom and just laid there in bed feeling scared and confused.)

Pro: And where was your mother at this time?

J: Um, I'm not sure... upstairs in bed likely.

Pro: Jill, how do you feel towards your father now?

J: Well, at first I hated him for what he had done to me. It may sound weird but I still do love him...now that I've begun my healing I just want him to be able to acknowledge what he's done to me.

Pro: Jill, I would you to give the jury some idea as to how what your father did to you continues to affect your life to this day.

J: Well, like I said, I've been feeling depressed and anxious and I've been having problems being intimate with my husband and I just feel so uncomfortable. I can only hope one day that I'll be healed and able to move on.

Pro: Your father has caused you a lot of pain hasn't he?

J: Yes he has. His actions haunt me all the time....I just can't get close to anyone because I'm afraid to be hurt again. After my father betrayed my trust, it is hard to trust anyone.

Pro: And again Jill, you are certain that what you are recalling are indeed real memories?

J: Yes.

Pro: And Jill, are you certain the person that you allege perpetrated these acts against you was your father?

J: Yes.

Pro: Thank you Jill, No further questions your honor.

Cross-Examination of Jill Harris

Def: Jill, 12 years ago is quite a long time ago isn't it?

J: Yes, I guess so.

Def: But still, you have had pretty clear memories of what your father did to you?

J: Well, it was hard at first to get back those memories - they were so horrible. But once the memories for that time were triggered they just started to flow back into my mind.

Def: You were 10 years old 12 years ago correct Jill?

J: Yes.

Def: Do you recall what grade you were in at school?

J: Um, grade 5 I guess.

Def: Do you remember who your teacher was?

J: No, not really...

Def: Jill, when your mother suffered a stroke that must have been a pretty traumatic experience for a young girl of 10 years of age - having to see her mother in a wheelchair, being responsible for more chores around the house?

J: Yes, it was.

Def: Do you recall where you were when you first heard that your mother had a stroke?

J: No...not really - in school likely.

Def: Now Jill, you stated that your father sexually abused you for about two years is that correct?

J: Yes.

Def: You also stated that he had intercourse with you is that correct?

J: Yes.

Def: In fact you stated you also had flashbacks where you would see your father fondling you.

J: Yes.

Def: And where was your mother at these times?

J: I don't know - I can't remember.

(J: She was in bed sleeping or out of the house.)

Def: So, despite these memories of your father sexually abusing you, your mother was never aware of this occurring?

J: No, I guess not...

Def: You say that you can remember your father touching and rubbing you, is that correct Jill?

J: Yes.

Def: Could it not be the case Jill that your father was just rubbing your back?

J: No, I can tell the difference between a back rub and fondling.

Def: You also claimed that your father wiped blood from your vagina after having intercourse with you .

J: Yes.

Def: So there must have been blood stains on the towel??

J: Yes - the towel was spotted with blood.

Def: What happened to this blood stained towel Jill?

J: I don't know - I guess my father got rid of it.

Def: Getting back to the incident that you believe occurred in the basement of your house...isn't it the case that you don't know how you came about being there?

J: Yes.

Def: Is it not also the case that despite being allegedly raped during this occasion that there is no physical evidence supporting your claim?

J: Well, no, but that doesn't mean that it didn't happen.

Def: Now Jill, you claim that for a period of 10 long years you had absolutely no idea what your father had done to you.

J: Yes.

Def: Isn't it the case Jill that it wasn't until after you started your therapy sessions that you started recalling these memories?

J: Yes - well I mean I had been depressed and anxious for awhile - and then my problems with my husband...I wasn't sure at that time why I was feeling the way I was - I just knew that something must've happened to me.

Def: How do you know that these memories are in fact correct Jill?

J: I felt like something bad had happened to me. When I recalled my first memories they were so emotional for me - I know what I remember. I wouldn't make something so terrible up. Every time I would remember something I felt drained and upset.

Def: Daydreams and imaginations can seem just as real Jill -how do you know that these images that you've been seeing aren't just a figment of your imagination.

J: Well, I just am sure that they are a real memory - why would I want to imagine my father doing this to me.

Def: Could it also not be the case Jill, assuming for a moment that these images weren't part of your imagination but in fact you had been abused, that this shadowy figure you described in your first flashback was not your father at all but someone else?

J: No.

Def: But Jill, you only began to put a face to this figure after your therapist started discussing your family with you and asking you to focus and discuss the images that you were seeing is that not correct?

J: Yes, but it was necessary that I start to fill in the blanks so I could get on with my life. The last person that I would want to remember molesting me would be my own father.

Def: And is it also not the case Jill that details of your flashbacks were surfacing when you were in the company of your therapist or in group therapy?

J: Yes.

Def: So perhaps the details of your memories, for instance seeing your father's face, performing oral sex on him was not a memory at all, but rather was a memory not only

motivated but created by listening to other women describe their incestuous backgrounds?

J: No, I really don't think so - their stories were different from mine - some weren't even molested by their fathers, but by uncles or brothers.

Def: You've described how this alleged abuse has impacted your life- you have all of these symptoms that led you to go to your therapist in the first place. Isn't it the case that the severity of these problems you've been having only increased since you've begun therapy?

Def: Well, I've been having these difficulties for years.....I just never knew what caused the.....

Def: Is it not true though that these difficulties have been exasperated since you began dealing with your alleged abuse?

J: Well, since I've been dealing with these issues some of my difficulties have become a bit worse.....but.....

Def: Isn't that interesting? No further questions your honor.

Examination of Mr. Harris

(Bold: Vivid Memory)

Def: Now that you have been sworn in Mr. Harris, could you please tell the court your full name and address.

W: My name is John R. Harris. I live at 32 Calter Street.

Def: What is your occupation Mr. Harris?

W: I'm in charge of quality control at the paper mill.

Def: How long have you been at your present job?

W: 20 years.

Def: Have you ever been fired from a job?

W: No.

Def: Have you ever been charged with or convicted of a sexual offense?

W: No, never.

Def: Have you ever been charged with or convicted of any type of crime, Mr. Harris?

W: No sir.

Def: How long have you been living at your present address?

W: 25 years.

Def: Mr. Harris, can you please describe your relationship with your daughter previous to the allegations she has made.

W: We've always been a pretty close knit family. As our only daughter, Jill, my wife and I spent a lot of time together - especially when Jill was younger. We all got along very well, had few arguments and were very happy.

Def: And how was your relationship in the past 5 years?

W: It was still strong. When Jill got married she and her husband would regularly come over and visit my wife and I. In the past 2 years however Jill's visits became less

frequent - and finally she stopped coming around. She even started refusing our phone calls.

Def: And did she tell you why she didn't want to see you?

W: No, all of a sudden for no reason that my wife and I could see, Jill just came out and told my wife that she needed time away from us.

Def: And how did you and your wife feel about this Mr. Harris?

W: We were devastated - we love our daughter and want to be together again like we used to be.

Def: Mr. Harris, the day you received the news about your wife suffering a stroke must have been a pretty traumatic time in your life?

W: Yes, very much so.

Def: Do you remember where you were when you heard the news?

W: Yes, very clearly - it's not something that you can easily forget - I was at work.

Def: And what about your daughter, where was she?

W: She was at her grandparents. I remember that I had to go pick her up to go to the hospital.

Def: Mr. Harris, have you ever touched Jill in a sexual manner?

W: No, of course not.

Def: Have you ever made Jill touch you in a sexual manner?

W: No.

Def: Have you ever forced your daughter to have oral sex with you?

W: No.

Def: Have you ever asked your daughter to have oral sex with you?

W: No.

Def: Have you ever had sexual intercourse with your daughter?

W: No.

Def: In short Mr. Harris, have you ever, in any way sexually assaulted your daughter?

W: No I have not.

Def: Mr. Harris, do you recall the color of your shower curtain in your house?

W: Yes, it's yellow with flowers on it.

Def: And how is it Mr. Harris that you have such a clear description of that shower curtain?

W: Well, my wife and I bought it pretty soon after we married - it's been in the bathroom for almost as long as we've lived there.

Def: Can you please describe the basement in your house?

W: Yes - it's like most basements - a gloomy looking place I guess. It's pretty dark because we boarded up the basement window when we moved in.

Def: Would you describe it as being damp or cold?

W: Yes - I suppose so.

Def: Would Jill as a young girl ever go into the basement?

W: Oh certainly. She'd play down there sometimes and our laundry room was down there, so when she was helping out around the house she'd go into the basement a number of times to help do the laundry.

Def: Was there ever a time you were down there alone with Jill?

W: Yes - I'd help her with the laundry and I had a workshop down there.

Def: And what about during the evening - would you ever go down to the basement at night with Jill?

W: No - not that I could remember.

Def: Do you believe that Jill could lie about something as serious as this?

W: I would never have thought it, but, yes, obviously she can.

Def: Thank you. No further questions.

Cross-Examination of Mr. Harris

Pro: Mr. Harris, you testified that you and your daughter were close. Is this correct?

W: Yes.

Pro: I imagine that you often spent time with her.

W: Yes

Pro: Was Mrs. Harris always present?

W: No of course not.

Pro: Did you ever rub or massage your daughter's back Mr. Harris?

W: On occasion. She used to be in gymnastics and come home with a sore back.

Pro: And how old would she have been when she was taking gymnastics?

W: Oh I don't know ... 9 10...

Pro: And did you ever remove her shirt to rub her back?

W: No.

Pro: And did you ever touch Jill's breasts when giving her back rubs?

W: Her breasts - of course not!

Pro: You stated Mr. Harris that you worked at a paper mill - did you frequently do shift work?

W: Yes.

Pro: So often times you would get home late - after your wife and daughter were asleep?

W: Yes.

Pro: Did you ever enter Jill's bedroom during these late hours?

W: Yes.

Pro: And did you ever approach Jill's bed when she was asleep?

W: Yes - but only to give her a good night kiss.

Pro: When your wife suffered a stroke, she was partially paralyzed for a period spanning almost an entire year is that correct Mr. Harris?

W: Yes.

Pro: And is it not correct to state Mr. Harris that she was unable to perform sexually?

W: Yes, I guess so.

Pro: And would you get frustrated over the lack of sexual intimacy?

W: Well, I guess maybe sometimes but we were very happily married.

Pro: How many levels does your house have Mr. Harris?

W: Three levels.

Pro: And the basement is on the bottom level, with the bedrooms at the top level?

W: Yes

Pro: So is it possible then that if something were happening in the basement, your wife would never know about it?

W: Yes, I suppose that is true, but nothing that Jill is saying ever happened.

Pro: No further questions your honor.

Examination of Defense Expert

(included only in Experimental and Conflicting Expert Frameworks)

Def: Could you please state your name and occupation for the court please?

Dr.: Yes, my name is Dr. Frank Smith, I hold a Ph.D. in psychology and am currently a professor at a University where I pursue my research interests in the area of trauma and memory.

Def: Dr. Smith, are repressed memories generally reliable?

Dr. There are a couple of issues that have to be addressed in order to answer the question. The first issue is that of repression. Despite sixty years of research there have been no controlled studies proving its existence. The only support repression has ever had is anecdotal and contributed to by psychoanalysts who presume the existence of the repression mechanism.

Def: What about studies indicating that there are women who have repressed memories for traumatic sexual abuse for years and even decades?

Dr.: Unfortunately those studies suffer from a number of methodological problems bringing their validity into serious question. For instance, the assumption is made in a number of those studies that when a woman claims to have periods where she was unaware of the fact that she was abused that repression rather than normal forgetting of the events is the mechanism responsible.

Def: Is it possible then to forget something so traumatic as sexual abuse?

Dr. There is no doubt that sexual abuse is a traumatic experience. However, a number of scientific studies have demonstrated that when events are accompanied by a great deal of emotion that they are likely to be remembered. While on the surface the memory may not be fully realized by an individual, there is at least some level of awareness of its existence. So while survivors of incest may be aware and always have been aware of their victimization, other reasons such as shame and hurt may lead them to deny the reality of their abuse even for decades. Moreover, because of the often repetitive nature of sexual abuse, it is not unusual for details to be forgotten. Nevertheless, the fact that the abuse happened isn't. The idea that a memory of sexual abuse could be completely wiped out and then recovered virtually intact has no scientific basis.

Def: You said there were a couple of issues pertaining to the reliability of repressed memories. What is the second issue Dr.?

Dr.: That issue would be one of how memory works. Memories do not, contrary to what many may believe, simply involve replaying an event exactly as it occurred in the past.

Rather, memory involves reconstructive elements. In other words, people frequently recall inaccurately and fill in gaps in memory by recalling what they expect happened or what they believed must have happened.

Def: Is it not true to state though that some memories, even for events long past can be accurate.

Dr.: Yes, that is true. However at the same time, memories often consist of accurately and inaccurately recalled information that is impossible to disentangle. So the issue really shouldn't be whether a memory is accurate or inaccurate - clearly it can be both. The issue rather is to examine the conditions under which a memory report may be inaccurate and then assess the extent to which such conditions are present in the context in which the memories were discussed. For instance, we know from research that memory suggestibility increases with the delay between the event and the attempt to remember the event. So when we're dealing with memories of events that occurred years and even decades before, people have a lot of gaps in their memory to be filled in. What's filled into these gaps are based upon an individuals expectations and beliefs.

Def: So what does this mean for memories regarding sexual abuse that were until recently, supposedly completely repressed?

Dr.: Well usually when people seek out a therapist they are looking for answers as to why they feel the way they do. If you come to believe that something traumatic did happen to you and was responsible for why you presently feel the way you do, your reconstruction of the past is going to come to reflect what you think happened. So gaps in memories may come to be filled in with details that are inaccurate - rather these memories represent reconstructions based upon an individuals present day beliefs and expectations.

Def: What impact can therapy have on these memories?

Dr.: There is reason to be skeptical of memories that surface in therapy after years of unawareness. For instance, therapists who work within an abuse framework often believe that a clients' symptoms are indicative of early sexual abuse. So, while pursuing this possibility with the client, the therapist may unintentionally create or implant false memories. Because of the emotional bond that develops with a therapist, clients may also come to reconstruct memories in order to make them consistent with what they perceive to be the wishes of the therapist or what they believe will win the therapists approval and or sympathy. Moreover, because therapy typically involves a number of sessions, the client is often encouraged to go over and over their memories. This repetition has the effect of strengthening in the mind of the client the reality of their memory whether real or not.

Def: Does group therapy have any impact on the reconstruction of false memory?

Dr.: While groups may be helpful for survivors of childhood sexual abuse, they can be extremely hazardous for those who weren't. The social dynamics of such groups seem likely to increase the likelihood of false memories of abuse, both because reports of memories are frequently modeled in such groups and because the groups may create social incentives for reporting memories of abuse and for identifying oneself as a survivor.

Def: Dr., is there any evidence to support the idea that memories for events that have never taken place can be created?

Dr.: Most definitely, In a recent experiment, adults were led to create detailed recollections of a childhood event that never took place. Subjects were led to believe that a particular event, specifically being lost in a shopping mall, had occurred to them when they were 5 years old. Over a period of times, subject were asked to try to remember the details of the event and write down any recollections they had. While descriptions were vague at first, subjects came to recall in great detail the suggested event. In fact, one subject was extremely resistant when told that the event never took place.

Pro: What about the creation of more traumatic events?

T: Obviously, ethics bar us from creating something as traumatic as sexual abuse memories, however we have evidence that people can construct vivid, complex emotionally laden false memories such as those involving U.F.O. experiences where people claim to not only have been abducted by aliens, but forced to carry alien babies, being implanted with electronic devices and other such bizarre claims. Despite these accounts that are rich in detail and conveyed with intense emotions, no corroborating evidence has been documented supporting such claims.

Def: Dr., suppose that an individual is confident about having experienced such an emotionally traumatic experience as childhood sexual abuse, can that be used as a criteria to validate the accuracy and authenticity of a memory?

Dr.: No, not at all. A number of research studies indicate that the accuracy of a memory is unrelated to the emotionality of the original experience, the vividness with which the experience is recalled or the degree of confidence placed in that recall.

Def: So Dr., if a person claims to have recovered a memory of sexual abuse are they therefore lying?

Dr.: Not necessarily. An adults belief in the authenticity of the memory may be honestly held despite the fact that the memory is indeed false.

Cross-Examination of Defense Expert

Pro: Dr. Smith, you spoke of a study in which you describe the details of an experiment which you say led to false memories of being lost in a shopping mall at the age of 5. Now, is it not correct to say that most, if not all individuals have experienced such a situation as a child?

Dr: Yes, I suppose that's true.

Pro: Now what's to say therefore that the memories that these subjects had were not in fact true and valid memories of being lost?

Dr: Well, I suppose your hypothesis has merit, but the situation that was invented for the purpose of the study was specific - it was that they were 5 and in a shopping mall. As well, based upon information from the parents of the subjects in the study, none of them had been lost in a shopping mall at the age of 5 years.

Pro: The evidence that you are using to back up your assertion that repression does not exist is largely based on similarly conducted laboratory studies - is that not correct Dr.?

Dr.: Yes.

Pro: Have you ever worked with individuals who were sexually abused as children?

Dr.: No.

Pro: So it's correct Dr. is it not, to state that you have no experience dealing directly with individuals who may have repressed memories of abuse.

Dr.: Not directly - but studies have shown...

Pro: A simple yes or no answer please Dr.

Dr.: No, I have not.

Pro: Would you concede doctor that childhood sexual abuse would be a traumatic event in a person's life?

Dr.: Yes of course it would be.

Pro: And yet, based upon the fact that you have absolutely no experience dealing directly with individuals who have repressed memories surrounding a traumatic event, you would attest wholeheartedly that memories surrounding childhood sexual abuse could not become repressed?

Dr.: Yes - the mechanism of repression has never been proven to exist.

Pro: Now doctor, when you spoke of the reconstruction of false memories, is it not correct to state that there is absolutely no support for the idea that you could lead someone to believe that they had been sexually abused when in fact they were not?

Dr.: Yes, that is correct.

Pro: Yet you believe that someone would want to make something up like being abused?

Dr.: No - the person may firmly believe that something had happened to them, nevertheless it may have no basis in reality.

Pro: Dr., are you aware of any way to definitively prove that a memory is in fact not a real memory at all?

Dr.: No I am not.

Pro: In other words Dr., is it correct to state then that there is no way to prove that a woman's recovered memory of abuse is in fact false?

Dr.: Yes.

Pro: No further questions your honor.

Defense Closing Statement

(Bold Italics: Experimental Expert and Conflicting)

Members of the jury. In our system of justice a person is presumed to be innocent until he is proven guilty beyond a reasonable doubt. What this means is that Mr. Harris does not have to prove to you or to the court that he is innocent. Mr. Harris does not have to prove anything at all. Instead, it is up to the Crown to prove beyond a reasonable doubt that Mr. Harris is guilty. Members of the jury, this, the Crown has been unable to do. It has been unable to do it for a very simple and very basic reason. The reason is that Mr. Harris is not guilty of sexual assault. This horrible accusation is false. It is the product of therapy which led a depressed and anxiety ridden woman to misidentify the root of her problems as having been the result of sexual abuse perpetrated by her father 10 years ago.

Members of the jury, Jill is not to be blamed for constructing these memories out of spite or hatred. No, rather Jill came, in all honesty to believe in the reality of these false misguided memories. While it is only right that our hearts go out to Jill because of her suffering, it would be an even greater tragedy if we were to believe her memories and convict an innocent man on the basis of memories which have absolutely no basis in reality.

Members of the jury, when we look carefully at the prosecution's case, piece by piece it begins to collapse like a house of cards.

Jill started therapy in order to overcome some problems that she was having. Based upon nothing more than a feeling that something bad had happened to her, Jill's therapist probed Jill's childhood background. It is no coincidence members of the jury that more than half of Jill's therapists' clients who have a background of sexual abuse had so-called repressed memories. Jill's memories began to take shape only under the guidance of a biased therapist. Having ideas of her own as to what was responsible for

Jill's current problems and a memory gap which could have been the result of normal forgetfulness, Jill's therapist helped guide and create the memories which Jill holds to be real. These memories however are completely false. Only after having seen her therapist did Jill begin to have feelings that something bad had happened to her. Only under her therapist's guidance did Jill begin to have flashbacks. Only under her therapists guidance did Jill's flashbacks take on the quality of a real memory. Only under the guidance of her therapist did Jill come to identify a shadowy figure as her perpetrator. And members of the jury, only after having been subjected to the stories of other survivors of incest did Jill come to recall the alleged activities that took place in the basement of her home.

While therapy and group therapy are crucial aspects of an incest survivor's healing, the consequences for those not abused, are, as evidenced in Jill's case, hazardous.

As we now know from the expert's testimony, memory, especially for events long past is particularly susceptible to distortion. Moreover, memory is reconstructive and based upon a person's current beliefs and expectations. The expert even pointed out that it is possible for memories of events that are complex and emotionally laden to not only be created in a person's mind, but also to be believed by that person as a real memory.

Faced with a therapist who believed Jill's depression and anxiety to be symptoms of sexual abuse, Jill filled in the gaps of her memory based upon what she was led to believe must have happened to her. Placed within the confines of a group meant for survivors of incest, where she heard the traumatic and painful stories of incest being told, Jill further came to embellish upon her memories. Cutting herself off from family, Jill had no one to question the authenticity of her memories. No - rather Jill's recovery of her so-called memories were not only encouraged but accepted uncritically - Jill's mind was free to imagine what it wanted to.

Members of the jury, we all know how bad our memory can be for an event that occurred 10 years ago. Now while details for an event, particularly one that repeatedly occurred and that is as traumatic such as sexual abuse may be forgotten, the fact that the event ever took place almost always remains with the victim. Moreover, the existence of repression, the mechanism by which we are being told is responsible for Jill's unawareness of her alleged abuse has never even been proven to exist.

Members of the jury, does it make sense to convict an upstanding and honorable man of a serious crime on the basis of a memory that is not real? No, to do that obviously makes no sense at all.

What about the corroborating evidence in this case. Does that evidence prove that Jill was sexually assaulted? Let us look carefully at the evidence. Jill has absolutely no physical evidence corroborating her claims. Her mother testified that she had never had any reason to suspect that her husband was abusing Jill. And at no point during the alleged sexual activities did Jill tell anyone that this was happening - not even her best friend. And what of the psychological difficulties that Jill was suffering? A number of individuals suffer from these same problems and have never been sexually abused at all. To focus on sexual abuse as the root of such problems can, as we have seen have devastating effects.

Members of the jury, Jill is the product of a loving family who still care and love her very much. Yes, it may be true that Jill had difficulty remembering certain aspects of her childhood, but to suggest that Jill's inability to recall details concerning her childhood was due to repression and not just normal forgetfulness is simply unfounded. It is also true that Jill took on many of the household responsibilities while her mother suffered the effects of a stroke, but to suggest that Jill was expected to fulfill other duties is ludicrous. No, rather Jill's acts of help around the house when her mother was sick was nothing

more than the generous acts performed by a daughter who loved and respected her family and wanted to help in a time of need.

Members of the jury, to convict my client for a crime that he did not commit would be a horrible horrible miscarriage of justice. To convict him on the basis of one person's memories for events that allegedly occurred 10 years ago would be truly obscene. And for these reasons, members of the jury, I ask you to find Mr. Harris not guilty of sexual.

Thank you for your attention and your patience.

Prosecution Closing Statement**(Bold: Clinical Expert and Conflicting)**

Members of the jury, Jill Harris was the victim of a terrible crime. She was sexually assaulted on repeated occasions by her own father. My esteemed colleague has attempted to muddy up this case by trying his best to shift the blame from the real criminal Mr. Harris. The defense would have you believe that Jill would falsely accuse her own father of horrible sexual activities based on, memories that the defense contends are false. Members of the jury, the story concocted by the defense is simply, to say the least, absurd.

The defense would like you to believe that Ms. Barr, Jill's therapist, put the idea of sexual abuse into Jill's mind and then pressured Jill into concocting the whole horrible and sordid story. The defense further wants you to believe that Jill's therapist pressured Jill into believing in the reality of these memories. So now we have another villain to blame. Not only is Jill to blame but so is her therapist. How terrible, all of these people conspiring to accuse poor, innocent Mr. Harris of sexual abuse.

Was Jill not suffering from psychological problems to begin with?

As we have heard, these problems are consistently indicated in adult survivors of incest. Indeed, the expert pointed out that repressed memories, denied entry into consciousness lie at the heart of many cases of psychological disorders and are evidenced in the large majority of women who were abused as children. Did Jill not begin to recover memories in a way similar with what the expert described as consistent with other incest survivors.

Does any of this indicate that Jill was lying or making up stories when she accused her father of sexual abuse? No, of course it doesn't.

Members of the jury, for a moment place yourself in Jill's place. You are 22 years old, you are suffering from bouts of depression, anxiety you are having problems being

sexually intimate with your husband - you know something is wrong with you but you don't know why. You seek the help of a therapist. You begin having frightening and confusing flashbacks. You see your father's face as the perpetrator committing unspeakable sexual acts on you. He's your father and you love him, and for all the world you don't want to hurt him unnecessarily. But what he did to you was terrible. What are you to do? Ignore the memories your having - try to put them out of your mind again - repress them for another 10 years and hope everything will continue like normal? Well, Jill could have done just that. However, although frightened and confused, Jill, felt safe enough with someone to explore the terrifying reality of what happened to her when she was only 10 years old.

Ms. Barr, Jill's therapist was confronted with a very frightened and confused woman. Having been a mental health therapist for over 15 years Ms. Barr was more than qualified to act as Jill's therapist. Having worked with incest survivors previously, Ms. Barr recognized Jill's symptoms - the memory gaps, flashbacks, the depression and anxiety, sexual intimacy problems - all symptoms evident in discussions surrounding Jill's father - and all symptoms consistent with other survivors she had worked with. Ms. Barr is adamant that she at no time suggested abuse by her father as a probable occurrence in Jill's childhood. No. You have heard in Ms. Barr's own words that she would never suggest to anyone what it was that they may have experienced or how they should be feeling. Ms. Barr was again a very qualified therapist. To suggest that she was over-zealous in her attempts to have Jill recover memories of abuse as the defense would suggest is absurd. Ms. Barr has extensive experience in dealing with incest survivors and knows not to force or dig for memories when dealing with potential repressed memories of abuse.

Members of the jury, Ms. Barr didn't pressure Jill into making up obscene stories. Instead she simply provided a frightened and confused woman with the emotional

support she needed to uncover memories that were so traumatic that they were repressed from Jill's conscious mind.

Members of the jury, the events that Jill did describe were revolting. She described how her father touched her genitals, how he forced her to put his penis into her mouth and how he forced his penis into her vagina. Members of the jury, does it really make sense to believe that a woman would make up all of these sexual details out of thin air? No of course it doesn't. Jill was able to provide these horrible descriptions for one reason and one reason only. The horrible events were actually forced on her by her father. These events are not the fantasies or false memories of a woman. Jill was able to describe the obscene events because her father forced her, when she was only 10 years old to experience each of them for a period covering two years.

Imagine how Jill, as a child of 10 must have felt while her father was perpetrating these disgusting acts upon her. In order to try to deal with the trauma of the situation Jill's mind pushes down those memories - pushing them out of her consciousness.

Members of the jury, you heard expert testimony which indicated that repression of events as traumatic as those experienced by Jill is common. According to the expert's testimony Jill was telling the truth about what was happening to her. The flashbacks, the fragmented nature of her recall, are all consistent with the recovery of repressed memories. Jill also exhibited the psychological reactions typical of someone who had been sexually abused. Once again the defense has attempted to cloud the issues. For instance, the defense points out that women who have not been sexually abused have also experienced these difficulties. And this is in fact true. However, when taken together with her other symptoms of memory loss and flashbacks, we have a woman who, unbeknownst to her at the time, was behaving in a manner consistent with what we now know about recovered memories and sexual abuse. The

defense also has pointed out that there is no evidence to support the existence of repression.

Members of the jury, I want you to think about that for one moment. The acts that Jill has described as so horrible that her mind pushed them out of her consciousness. And what is so unbelievable about that?

We have heard how numerous women have dealt with traumatic sexual abuse memories in the same way. When the mind is exposed to a traumatic event it has a natural tendency to try and avoid these thoughts.

Members of the jury, the defense has tried to suggest that Jill's therapist implanted these horrific memories - but why would a therapist want to do that? Why would a therapist, aware of the emotional trauma involved in recovering these memories want to subject someone to this pain if their memories were not in fact real? The answer is obvious - Jill's memories were real. The pain Jill faced when recovering these memories was very real. Why would Jill make up something so horrific? The answer members of the jury is that she wouldn't lie about something so horrible. It is important to keep in mind that there is no proof that something as traumatic as sexual abuse could be implanted in someone's mind.

Members of the jury, Jill Harris told you the truth about what her father did to her. It is a horrible truth, but the truth nonetheless. For that reason I ask you to find Mr. John Harris guilty of sexual abuse.

Members of the jury, thank you for your attention.

Judge's Charge**(Bold: Clinical Expert and Conflicting)****(Bold Italics: Experimental and Conflicting)**

Members of the jury. You have heard the evidence in this case and you must now deliberate to a unanimous verdict.

Mr. Harris is being charged with sexually assaulting his daughter Jill Harris. No consent to sexual assault occurs when a complainant submits by reason of the exercise of authority or when the complainant is under the age of 14 years. Because the alleged activity occurred when Jill was under the age of 14, the consent or non consent of Jill Harris is not an issue. The issue to be determined is whether the alleged conduct actually occurred.

At the time of the alleged incident, Jill Harris was living at home with her parents, Mr. John and Barbara Harris. On June 8th of this year 1995, Jill went to the police regarding the events that she recalled having occurred 12 years previous and charges were laid.

It is the contention of the Crown that Mr. Harris sexually assaulted his daughter, Jill Harris. You have heard Jill Harris testify under oath that her father, Mr. Harris, on a number of occasions fondled and touched her genitals. She further testified that her father repeatedly engaged in various sexual activities with her over a period of approximately 2 years. Jill also testified that her father had sexual intercourse with her on at least two separate occasions. You have also heard the testimony of other witnesses called by the Crown to corroborate Ms. Harris's testimony.

The Crown called witnesses to testify that recall of the incidents of abuse and the psychological symptoms were consistent with abuse having had occurred. **You also heard an expert witness testify as to the validity of repressed memories for traumatic events.**

You have heard the defense contend that Jill Harris was not sexually assaulted by Mr. Harris, but instead, her memories of the events that took place are false. You have heard Mr. Harris testify under oath that he has never had sexual relations with his daughter. According to the defense, Jill Harris, a depressed anxiety-ridden woman sought the help of a therapist. Moreover, the defense maintains that Jill's reconstruction of her memory was false and guided by her participation in a group for survivors of incest and by a therapist who presumed the existence of sexual abuse. *You also heard an expert witness testify as to the unproven existence of a mechanism referred to as repression.*

Members of the jury, in your deliberations it is important that you review very carefully all of the evidence that has been presented. You should think carefully about the testimony you have heard, and, where there was conflicting testimony you must make judgments about the credibility of the witnesses involved. It is up to you to evaluate the conflicting testimony and determine which is the truth.

If, after careful deliberation, you conclude that the evidence presented before you proves beyond a reasonable doubt that Mr. Harris had sexual relations with his daughter, Jill Harris, then you should find Mr. Harris guilty of sexual assault. On the other hand, if, after careful evaluation of the evidence, you believe that a reasonable doubt remains concerning Mr. Harris's guilt then you should acquit him of the charges against him.

Now, a reasonable doubt concerning guilt is not merely the possibility of innocence. A reasonable doubt is a doubt that would cause a reasonable and prudent person in the graver, and more important affairs of life, to pause and to hesitate to act upon the truth of the matter charged.

Proof beyond a reasonable doubt is not proof beyond all possible or imaginary doubt. Instead, it is proof that precludes every reasonable hypothesis except the hypothesis that it tends to support. Proof beyond a reasonable doubt is proof to a moral

certainty. Proof beyond a reasonable doubt is proof strong enough to convince reasonable people who have examined the evidence before them that the crime the defendant is charged with has been committed by the defendant. Proof beyond a reasonable doubt is proof that convinces reasonable people that no other reasonable conclusion is possible.

Members Of the jury, you may now retire and begin your deliberations.

Judge's Charge

(**Bold:** Clinical Expert and Conflicting)
(***Bold Italics:*** Experimental and Conflicting)

Members of the jury. You have heard the evidence in this case and you must now deliberate to an unanimous verdict.

Mr. Harris is being charged with sexually assaulting his daughter Jill Harris. No consent to sexual assault occurs when a complainant submits by reason of the exercise of authority or when the complainant is under the age of 14 years. Because the alleged activity occurred when Jill was under the age of 14, the consent or non consent of Jill Harris is not an issue. The issues to be determined is whether the alleged conduct actually occurred.

At the time of the alleged incident, Jill Harris was living at home with her parents, Mr. John and Barbara Harris. On June 8th of this year 1995, Jill went to the police regarding the events that she recalled having occurred 12 years previous and charges were laid.

It is the contention of the Crown that Mr. Harris sexually assaulted his daughter, Jill Harris. You have heard Jill Harris testify under oath that her father, Mr. Harris, on a number of occasions fondled and touched her genitals. She further testified that her father repeatedly engaged in various sexual activities with her over a period of approximately 2 years. Jill also testified that her father had sexual intercourse with her on at least two separate occasions. You have also heard the testimony of other witnesses called by the Crown to corroborate Ms. Harris's testimony.

You have heard the defense contend that Jill Harris was not sexually assaulted by Mr. Harris, but instead, her memories of the events that took place are false. You have heard Mr. Harris testify under oath that he has never had sexual relations with his daughter. According to the defense, Jill Harris, a depressed anxiety-ridden woman

sought the help of a therapist. Moreover, the defense maintains that Jill's reconstruction of her memory was false and guided by participation in a group for survivors of incest and by a therapist who presumed the existence of sexual abuse.. You also heard an expert witness testify as to the unproven existence of a mechanism referred to as repression.

Members of the jury, in your deliberations it is important that you review very carefully all of the evidence that has been presented. You should think carefully about the testimony you have heard, and, where there was conflicting testimony you must make judgments about the credibility of the witnesses involved. It is up to you to evaluate the conflicting testimony and determine which is the truth.

If, after careful deliberation, you conclude that the evidence presented before you proves beyond a reasonable doubt that Mr. Harris had sexual intercourse with his daughter, Jill Harris, then you should find Mr. Harris guilty of sexual assault. On the other hand, if, after careful evaluation of the evidence, you believe that a reasonable doubt remains concerning Mr. Harris's guilt then you should acquit him of the charges against him

Now, a reasonable doubt concerning guilt is not merely the possibility of innocence. A reasonable doubt is a doubt that would cause a reasonable and prudent person in the graver and more important affairs of life to pause and to hesitate to act upon the truth of the matter charged.

Proof beyond a reasonable doubt is not proof beyond all possible or imaginary doubt. Instead, it is proof that precluded every reasonable hypothesis except the hypothesis that it tends to support. Proof beyond a reasonable doubt is proof to a moral certainty. Proof beyond a reasonable doubt is proof strong enough to convince reasonable people who have examined the evidence before them that the crime the defendant is charged with has been committed by the defendant. Proof beyond a

reasonable doubt is proof that convinces reasonable people that no other reasonable conclusion is possible.

Members Of the jury, you may now retire and begin your deliberations.

Appendix E: Measures for Experiment III

Measures	Page
Recruitment Announcement	287
*Manipulation Check	288
Credibility Checklist	291
Private Belief Rating Scale	292
Tally Sheet	293
Perceptions of Defendant	294
Familiarity with Issues (includes questions for “Skepticism”)	295
Informed Consent Form	296
Informed Consent (Deliberations)	See Appendix A
Duties of the Foreperson	See Appendix A
Debriefing Information	297
Contact Sheet	299
* Questions included for BWS. BWS/PTSD & Social Agency Conditions appear in bold . Questions included for BWS & BWS/PTSD appear in bold italics .	

Announcement for Recruitment

Participation in this study requires that you play the role of a juror in a simulated criminal case. Students will be asked to watch a videotape of a simulated trial, and then deliberate as a group to a verdict. Jury deliberations will be videotaped and all videotapes will remain confidential. The subject matter of this trial may involve allegations of physical and/or sexual abuse of women. If you are still interested despite this, please leave your student number below. The experiment will take between 2- 3 hours, thereby giving students a maximum of 3 course credits for participation. I will call you to set up an appointment at a time that is convenient to you.

Manipulation Check**(Bold: BWS, BWS/PTSD & Social Agency Conditions)****(*Bold Italics:* BWS & BWS/PTSD)****1. How convincing did you find the expert's testimony with regard to the argument presented?**

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

2. To what degree did you perceive Judy as being isolated from family?

0	1	2	3	4	5	6
Not at			Slightly			Very
Isolated						Isolated

3. To what degree did you perceive Judy as having financial resources?

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

4. To what degree did the expert suggests that battered women suffer from a psychological disorder as a result of being battered?

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

5. To what degree did the expert suggests that battered women are trapped in abusive relationships due to social factors (i.e. failure of police, shelters, laws)?

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

6. 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			Slightly			Very
All Sociological						Sociological

7. To what degree did you perceive Judy as being isolated from friends?

0	1	2	3	4	5	6
Not at Isolated			Slightly			Very Isolated

8. To what degree was the psychological distress experienced by battered women addressed?

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

9. To what degree was a clinical diagnosis of a psychological disorder presented?

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

10. To what degree was the legal system (police and laws) addressed?

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

11. To what degree was the availability of shelters for battered women addressed?

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

12. To what degree was the financial situation of battered women addressed?

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

13. How close of a relationship did you perceive Judy as having with her neighbour?

0	1	2	3	4	5	6
Not at Close			Slightly			Very Close

14. Based on the expert's testimony, to what degree did you perceive the Battered Woman Syndrome (BWS) as being supported by clinical research?

0	1	2	3	4	5	6
<i>Not at</i>			<i>Slightly</i>			<i>Very</i>
<i>All</i>						<i>Much</i>

15. Based on the expert's testimony, to what degree did you perceive the Battered Woman Syndrome (BWS) as being supported by the 'psy' (psychologists, psychiatrists) community?

0	1	2	3	4	5	6
<i>Not at</i>			<i>Slightly</i>			<i>Very</i>
<i>All</i>						<i>Much</i>

16. Based on the expert's testimony, to what degree did you perceive the Battered Woman Syndrome (BWS) as a legitimate diagnosis?

0	1	2	3	4	5	6
<i>Not at</i>			<i>Slightly</i>			<i>Very</i>
<i>All</i>						<i>Much</i>

Credibility Checklist**(Bold: BWS, BWS/PTSD & Social Agency Conditions)**

How credible (in terms of their testimony) were each of the trial participants on a scale of 1 to 5?

	Not Credible			Very Credible	
Judy Richards (Defendant)	1	2	3	4	5
Dr. Johnson (Expert Witness)	1	2	3	4	5
Neighbor	1	2	3	4	5
Officer Burke	1	2	3	4	5

Private Belief Rating Scale

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 for killing her husband. 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 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						Certain Judy Richards				
Should NOT BE						SHOULD BE				
Convicted						Convicted				

Tally Sheet

Juror Number: _____

Tally Number: _____

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

Guilty of second degree murder _____

Guilty of manslaughter _____

Not-guilty by reason of self-defense _____

Perceptions of Defendant

Juror Number: _____

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

Strongly Disagree			Neither Agree Nor Disagree		Strongly Agree	
-3	-2	-1	0	+1	+2	+3

- _____ 1. The defendant was trapped because of her husband's domination and control.
- _____ 2. The defendant was aware as to the availability of resources (i.e., police, shelters) that would help her.
- _____ 3. The defendant is violent, and may kill again, or seriously harm someone in the future.
- _____ 4. The longer the defendant stayed in the battering relationship, the more mentally unstable, weak and out of control she became.

Familiarity with Issues

1. How familiar are you with the term “battered woman syndrome (BWS)”?

-3	-2	-1	0	+1	+2	+3
Not at			Slightly			Very
all familiar						Familiar

2. How familiar are you with the term “post-traumatic stress disorder (PTSD)”?

-3	-2	-1	0	+1	+2	+3
Not at			Slightly			Very
all familiar						Familiar

3. How familiar are you with the sub-categorization of the battered woman syndrome as a post-traumatic stress disorder?

-3	-2	-1	0	+1	+2	+3
Not at			Slightly			Very
all familiar						Familiar

4. How skeptical of psychological diagnoses are you?

-3	-2	-1	0	+1	+2	+3
Not at			Slightly			Very
all skeptical						Skeptical

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 such that you have the opportunity to determine whether you wish to participate in the study.

You are about to see a videotape of a simulated trial wherein the defendant, an allegedly abused woman has killed her husband.. Some people may find the issue of wife assault, along with the aspects of the trial, to be offensive and you are under no obligation to continue with this study. You may withdraw at any time without losing credit. As part of the procedure you will be required to fill out a series of questionnaires pertaining to the guilt or innocence of the defendant. After viewing the videotape, as part of the jury, you will be required to spend up to a maximum of 90 minutes in deliberation. Deliberations will be videotaped, however all tapes will remain confidential. The purpose of this study is to examine how juries reach decisions in such trials. It is hoped that your participation will give us 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 experiment I may do so without having to give an explanation and with no penalty whatsoever.

Furthermore, I am also aware that the data gathered in this study is 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 and for whatever reason. I consent to participate in today's jury simulation experiment.

Participant's Signature

Date

Investigator's Signature

Debriefing Information

We would like to thank you for participating in this study. Your participation will help us understand more about how jurors make decisions in trials involving battered women who have killed their abusive partner.

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 repercussion. 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 which influenced 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 decision making. The first factor pertained to the influence of expert witness testimony. More specifically, this study manipulated the characterization of the defendant by the expert witness in one of three ways: either suffering from battered woman syndrome, as suffering from the battered woman syndrome as it is currently conveyed within the Post-Traumatic Stress Disorder framework, or as a social agent who was trapped in the relationship as a result of the lack of social alternatives. A control condition, whereby no expert witness testified was as well included in order to ascertain the impact of expert testimony. The other variable of interest was the degree of isolation from social support networks that the defendant experienced. Accordingly, testimony was varied to reflect the defendant as being highly isolated (i.e., having no friends, isolated from family, no job) or having a low degree of isolation (i.e., had friends, was close to mother, worked outside the home). The videotapes of the trial were not true court trials, but rather simulated trials in which actors played the roles of the various individuals.

There are a couple of discrepancies between the procedure used in this study and the procedure used in actual criminal trials. In this study ALL mock jurors who agreed to take part in the study sat on the jury. However, in actual trials, potential jurors would be questioned by the Defense and Crown attorneys before the trial proceedings. This process is called the jury selection procedure and all individuals who arrive for jury duty are not selected to sit on the jury. Another difference between the procedure used in this study and actual criminal trials is the artificial time limit placed on the deliberations. In actual trials, the length of the deliberations are not limited. However, literature indicates that the majority of juries that try cases involving charges of sexual assault reach a verdict within 90 minutes.

Jury deliberations represent a crucial aspect of the jury decision making process. In order to gain a complete understanding of the impact of various aspects (i.e. characterization of the defendant, expert witness testimony), an account of what occurred at the jury level in arriving to a verdict is required. The deliberation process, whereby

individual jurors are required to interpret testimony at a collective level provides such an opportunity. An examination and analysis of the deliberations provides researchers with an opportunity to examine the aspects that were most influential in the determination of the final jury verdict.

We appreciate your taking the time to answer the questions and want to stress that our intent is to understand your beliefs; consequently, all your answers are valuable. Also, please note that the trial presented to you on videotape is a completely simulated trial; that is, it is totally fictional scenario. Furthermore, all of the characters were actors and actresses who volunteered their time and efforts to this project.

Carleton University is devoted to creating an environment free of harassment, discrimination, and violence. Questions concerning any of these forms of abuse, and Carleton University's response to them, should be directed to the Sexual Harassment Officers on campus (788-2699 ext. 5622). Studies such as this are conducted so that a better understanding of violence against women, children and sexual assault may be achieved.

We understand that the scenarios may be upsetting and anxiety provoking for some people and we stress that you contact myself or one of the agencies listed below if you have any concerns regarding this study or the issues referred to in this study. This list of contacts includes agencies within both the university and the community that are available for men and women.

Due to the nature of this research, we ask you not to discuss the subject matter with potential participants until testing is complete. If you wish to discuss any additional aspects of the research we are available for appointments. You may contact Cheryl Terrance in room A304 Loeb or by phoning 788-2699 ext. 2683.

Contact Sheet

Police Phone Numbers

Emergency	911
Ottawa	230-6211
O.P.P.	828-9171

24 Hour Distress Lines

Distress Center	238-3311
Rape Crisis Line	562-2333
Sexual Assault Center	234-2266

Ottawa Law Information Line

Referral to appropriate services	236-3893
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Support Services

Family Service Center	725-3601
The Sexual Assault Support Center	234-2266
Children's Aid Society	747-1918
Services for Abused Women	745-4818

Counseling Services

Carleton University Health Services	520-6674
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Appendix F: Transcripts (Experiment III)

	Page
Opening Statements	
Judge	301
Prosecution.....	302
Defense	304
Witnesses for the Prosecution	
Dispute Officer	305
Arresting Officer.....	310
Coroner	313
Witnesses for the Defense	
Medical Doctor	315
*Neighbor	318
*Defendant.....	322
Expert Witness Testimony	
**BWS/PTSD and BWS.....	336
Social Agency	345
Closing Statements	
Defense	353
Prosecution.....	355
Judge	356

* Testimony specific to the low social isolation condition appears in *italics*. Testimony specific to high social isolation condition appears in *bold*

** Expert witness testimony does not appear in control conditions. Testimony specific to the BWS/PTSD condition appears in **bold**. Testimony specific to the BWS appears in *italics*.

Judge's Opening Statements

Members of the jury, Mrs. Judy Richards is charged with the 2nd degree murder of her husband, Peter Richards. Under s. 229(a) of the Canadian Criminal Code, this code reads as follows - culpable homicide is murder when the person who causes the death of a human being means to cause his death. Furthermore, under s 231 (1) (2) of the C.C.C., murder is 1st degree murder or 2nd degree murder when it was planned and deliberate. The court recognizes 2nd degree murder is distinct from manslaughter in that in the case of 2nd degree murder, the act is not 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, s 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 necessary to defend themselves.

Your duty, members of the jury will be to listen to all the arguments presented by both the crown prosecutor and defense attorney. Before arriving at a decision regarding the validity of Mrs. Richards plea, you must remember Judy Richards is presumed innocent of the charge, and 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. You will hear how she was badly abused and mistreated by her husband, the deceased Peter Richards, for a period of 3 years. You will hear evidence presented by the defense as to how he inflicted not only physical damage upon her person, but also how he subjected her to incidents of mental torture and cruelty. You will hear how she tried to do everything in her power to stop him from hurting her and her baby, and how in the end, the defense will suggest that the only way she found 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 Mr. Richards was not an ideal husband and that the evidence surrounding the case suggests that at times Mr. Richards lost his temper with his wife. The Crown also concedes the possibility that Mr. Richards might have needed counseling to help him learn to control his temper and to communicate more effectively with his wife. But Mr. Richards is not on trial here. It is Mrs. Richards that is on trial for murder...second degree murder...planned and deliberate homicide. What you must remember throughout this trial, and what you ultimately must 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. We know this by Mrs. Richards own admission. So the question in this trial 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 states that she killed him in self-defense. But I'll ask you, jurors, to keep in mind throughout this trial the definition of self-defense. 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 such a threat.

I intend to prove to you that Mrs. Richards was not in not in danger of death or serious bodily harm at the time of her husband's death and I will do this by examining 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. There was no confrontation, no provocation and certainly no threat against the life of Mrs. Richards. Secondly, I intend to prove that even if Mrs. Richards believed she was in danger, she did not use reasonable force. Mrs. Richards pulled the trigger of a gun on her sleeping husband not just once, or even twice...but three separate times fired a long rifle, hollow point bullet into her husband's body. The prosecution maintains that this is, indeed, excessive force.

The self-defense plea offered by Mrs. Richards is not appropriate. Mrs. Richards, by her own admission had thought about ridding herself of her husband at least 12 hours prior to the act. It could hardly be said either, that Mrs. Richards was in 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 marital situations and Mrs.

Richards could have pursued these routes rather than blowing 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 to find Mrs. Judy Richards guilty of murder in the second degree.

Opening statement for defense

Members of the jury, my learned colleague, Mr. Lewis, has told you that Judy Richards was beaten and psychologically abused by her husband prior to his death. He has also told you Mr. Richards could have benefited from counseling to help him quell his nasty temper, and finally, he has also suggested that Judy Richards should have used the legal system or simply left her husband in order to avoid being beaten and abused by him.

In a normal situation, with normal individual's, even I might agree with what Mr. Lewis recommends. But, what the defense will show is that the activity in the Richards' household was not that of a normal family. Mr. Richards had more than a nasty temper as suggested by my colleague. Mr. Peter Richards controlled, dominated and physically abused his wife - she was subjected to what amounts to torture. 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 he was going to kill her and had shown her the weapon 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 behavior, Judy believed this was no idle threat, and she 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 the police had the power to stop her husband from doing whatever it was he wanted, even if that meant killing her. Judy did not feel the police would be able to protect her in the long run or, for that matter, take her present complaint seriously.

Why didn't she just leave? Judy could not leave her situation earlier because she had a baby, no money and nowhere safe to go. Besides, her husband had threatened to track her down and bring her back even if she did leave. Members of the jury, there are many documented cases of violent husbands tracking down wives who tried to leave them, and these same husbands eventually killing them.

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 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 latest attack. She was physically and emotionally exhausted. She was terrified for her life and the life of her son. Members of the jury, Judy knew that she had to ensure she would not suffer retribution from her husband...She knew that if he survived, she would ultimately die by his hands. Indeed, Judy's terror ran so deep she was not even sure she had killed him even after she fired 3 bullets.

The defense maintains that Judy Richards killed her husband in self-defense. She believed her life was in imminent danger, and she did what she thought was necessary to protect herself and her baby's life from her husband's rage and violence. For this reason, I ask you to find Judy Richards not guilty by reason of self-defense.

Dispute Officer: Officer Montgomery

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

Off: My name is Officer Montgomery 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 house.

Pro: What happened after you arrived?

Off: Well, it was Mr. Richards who answered the door and asked me what the matter was and why were there. When I told him we received a call from his wife asking for help he laughed and said that they had just been having a little argument but it was nothing serious and that everything was alright. I asked to speak to Mrs. Richards but her husband insisted 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 she had been crying and there appeared to be swelling under her right eye. Mr. Richards had his arm around her 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 a couple of times and 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 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 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 is not to return to the family home or consume alcohol, and would be 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 Montgomery, after your partner returned with Mrs. Richards to the house?

Off: Well, Mr. Richards seemed calm upon entering the house and he told his wife that he was sorry and asked her to forgive him. 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 care 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. 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, or us again if she felt the need. I told her not to hesitate to contact us if she ever required our services once her husband was released if he should attempt to contact her. Then we left.

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 or ask for assistance?

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. No further questions your Honor.

Cross Examination of Officer Montgomery

- 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 protections.
- 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, or if there is adequate evidence to process the charge.
- Def:** Are you aware officer 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 Officer Burke

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

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

Pro: Please tell the court Officer Burke what happened on the morning of June 25, 1990.

Off: Well, my partner and I, Officer Montgomery, received a call about 2:11 a.m. on the car radio 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 house 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 living room.

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 Montgomery to hold. At that point, Mrs. Richards muttered something to the effect of "he's in the back bedroom" so Officer Montgomery 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 at 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 demeanor 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 or appear agitated or give any indication to you that she was 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 she was going to do me any harm. She seemed almost dazed

Def: What do you mean by dazed?

Off: Well, she had kind of a far away look in her eyes and wasn't 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 record.

Cor: I am Dr. Learner of the Ottawa Coroner's Office.

Pro: Please describe for the jury Dr. Learner, the extent of Mr. Richard's wounds and the resulting consequences.

Cor: The deceased, Mr. Richards, died of blood loss as a result of sustaining 1 gunshot wound to the left temporal lobe and 2 bullets to the left chest cavity.

Pro: At what range were the bullets fired?

Cor: I would estimate that the bullets to the head were fired at extremely close range, maybe 10 cm., while the wounds to the chest cavity were fired from maybe 50 cm.

Pro: Which bullet finally killed him Dr. Learner?

Cor: Oh, the first shot fired would have been enough to kill him.

Pro: Thank you Dr. No further questions.

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, so I would estimate that he was fairly intoxicated at the time of his death.

Def: Was there any evidence 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. Learner, your report states that there were bruises on Mr. Richards right hand. Were these sustained recently?

Cor: Yes, I would say prior to 48 hours of 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: That's all for now Dr. Learner.

Testimony of Dr. Tast

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

Dr: I am Dr. Tast, and I am currently a physician in the emergency unit at the Ottawa General Hospital. I met the defendant after she was admitted to our unit on December 9, 1994.

Def: What was she admitted for?

Dr: She had two broken back molars, a broken left arm and her sixth rib was cracked. As well, she had severe facial lacerations that required 8 stitches. In addition, her blood pressure was weak due to blood loss.

Def: How had she sustained these injuries?

Dr: She said she had fallen down the stairs.

Def: Did you believe her?

Dr: I did not believe her.

Def: Why not?

Dr: The extent of the injuries would not be consistent with this explanation, particularly not the head injuries.

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

Dr: Yes. But she insisted that she had fallen down the stairs and said her husband would back her up. She refused to discuss it further. She appeared very upset and agitated. I gave her a prescription for a sedative although cautioned her on the use of the drug as she was about seven months pregnant at the time.

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

Dr: Yes, I thought it was highly probable.

Def: Are you not required doctor, by law, to report suspected cases of wife abuse to the police?

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, however, 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: Was that everything doctor?

Dr: Well, there wasn't a lot more we could do for her medically at the time because of the pregnancy. I asked her to return after she had the baby for a more complete physical and recommended to her that she see a dentist about her teeth. To my knowledge, however, she did not return at that time.

Def: Did you see Mrs. Richards again though?

Dr: Yes. I saw her on the early hours of Sunday morning, June 25, 1996.

Def: Why?

Dr: She was brought in by a police officer and they wanted her examined.

Def: What did you find?

Dr: The defendant seemed to be in a state of shock. Her affect was poor and she could not respond coherently to questions. At this point I made an appointment for her to see Dr. Johnson, a psychiatrist, who is part of the family violence unit at the hospital.

Def: What was her physical condition?

Dr: She had numerable contusions above her left ear, a severely swollen jaw, 2 cracked ribs and bruises on her left thigh. I also thought that she had suffered some internal damages. Subsequent x-rays showed that she had a severely bruised right kidney and had sustained some internal bleeding.

Def: Were these injuries recent?

Dr: Yes. Probably within 24 hours.

Def: Thank you doctor. No more questions your Honor.

Cross Examination of Dr. Tast

Pro: Dr. Tast, after your initial contact with Mrs. Richards, you said that you thought she lied about her injuries. Why would she do that?

Dr: There could be many reasons but often in cases like this the women don't say anything because they are afraid of their husbands.

Pro: Did you ask her husband about her injuries?

Dr: Yes I did.

Pro: ...and what did he say?

Dr: He said she fell down the stairs.

Pro: Was he upset...did he seem concerned at this time?

Dr: Oh yes. As a matter of fact, he insisted on being present during her whole examination. He never left her side, even when I performed an internal on her to check on the condition of the fetus. In cases such as this we always attempt to interview the woman without the husband present. Mr. Richards was very hesitant about leaving though.

Pro: Now assuming as you did doctor, 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 where I could be reached.

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

Dr: No she did not.

Pro: No further questions your Honor.

Neighbor

Def: How long have you lived next door to Judy and Peter?

N: Ever since they moved in two years ago.

Def: Please describe your relationship with Judy and Peter.

N: Well, we weren't too close. When they first moved in I'd invite them over for supper but they would always refuse so I just gave up and stopped asking them. After that I didn't talk to them too much. A couple of times when Peter had gone to work I went over to their house when I wasn't working and invited Judy over for coffee - I thought it would be nice for her to have some company.

Well, we were pretty close I guess. When they first moved in, Peter and Judy would often come over for barbecues. Judy was also on the committee board for our condominium, so she'd frequently come over and ask for my help in organizing social events and meetings. We also worked for the same company, so I also saw her at work.

Def: And did she ever go over?

N: Well, at first she would come over when her husband was at work. But then she just stopped.

Def: What reason would she give you?

N: Well, she wouldn't say too much - just that she had a lot of housework to do.

Def: So you really didn't get to see Judy too often?

N: No not really. As far as I could tell she stayed in the house during the day most of the time. She didn't seem to have any friends who would go over to visit her either.

Def: When was the last time you had spoken to Judy?

N: It was about two weeks before she had shot him. I had heard a lot of screaming one night from their house - it sounded like a pretty nasty argument. I didn't want to seem too nosy, but I figured maybe Judy would like someone to talk to. From what I could tell she didn't have any friends, and I knew her family lived quite a distance from her. I didn't see her for a couple of days after the fight, but, when I saw Judy heading out for groceries I approached her about what I had heard.

It was about two weeks before she had shot her husband. I had heard a lot of screaming one night from their house - it sounded like a pretty nasty argument. I didn't want to seem too nosy, but I figured maybe Judy would like someone to talk to. I knew her mother lived quite a distance from her so I thought she could use someone to talk to. Judy had called in sick a couple of days after the fight, so I didn't get a chance to see her at work. But when I saw Judy heading out for groceries I approached her about what I had heard.

Def: Could you please describe the conversation you had with her?

N: Well, she didn't say too much. Her eyes were all puffy - it had looked like she had been crying. One of her eyes was so puffy it was almost swollen shut. I asked her if everything was o.k. and I had told her that I heard her and her husband arguing a few nights back and reassured her that she could always talk to me. She said the fight was really nothing - just a lot of screaming back and forth. I saw her husband open their front door, and he yelled at Judy to come in - said he needed her to do something. I asked her quickly about her swollen eye - she claimed that she was just clumsy - she said she had slipped and hit the door frame.. Peter kept on at the front door telling her to come in - so Judy said she better get going and went on into the house. And that was the last time I really spoke to her. After that I never really asked her about Peter. I figured it was best that she tell me when she was ready to - I didn't want to push her. *Since we were close friends I figured she'd open up to me eventually.*

Def: No further questions your Honour.

Cross-examination - Neighbor

Pro: *Mrs. Miles, when you and were at work, did you hang out with her during breaks or at lunch?*

N: *Yes.*

Pro: *And what would you two do on these occasions?*

N: *Oh - we' go for a coffee, or go shopping over the lunch break.*

Pro: *So Judy had money on her to go out shopping?*

N: *Yes I guess so - she wouldn't buy too much though.*

Pro: *You describe that you were pretty close to Judy - would you describe her as a good friend?*

N: *Yes.*

Pro: *Would she confide in you about personal things?*

N: *Sometimes yes.*

Pro: *So you were what you would consider, pretty close friends?*

N: *Yes.*

Pro: *Did she ever complain to you about her marriage?*

N: *No - not really. She never talked too much about Peter.*

Pro: *So despite being close friends, she never told you about being hit?*

N: *No - she did not.*

Pro: *If Judy would have gone to you because she feared for her life would you have helped her out?*

N: *Of course I would have.*

Pro: *And finally Mrs. Miles, did you ever see Peter hit Judy?*

N: *No.*

Pro: No further questions your Honour.

Testimony of Mrs. Richards

Def: Mrs. Richards, please tell the court your age and how long you had known your husband.

J: I am 23 and had been married to Peter for 3 years.

Def: How did you meet your husband?

J: After I finished high school I took a full time job working at an accounting firm in Edmonton. Peter would come in and fix the computers and he'd stop by my office and make some comments all the time to me - kinda funny like. One day he asked me if I would go for lunch with him and I said sure. Well, after that we started dating although I couldn't see him that often because my mother was pretty strict and I was still living at home. I didn't have any brothers or sisters and after my dad died I think my mom relied on me a lot. *My mom and I ended up becoming very close to each other and had a strong relationship. We could talk about anything together and would often stay up late together and talk.* When I would bring up Peter's name though my mother would become pretty close-lipped and not say too much. I know Peter didn't like my mom much. He thought she controlled my life too much. Anyway, one night, about 6 months after we had been going steady, he asked me if I would marry him and move to Ottawa as he could get a transfer out there really easy. He said I wouldn't have to work and could just stay home and relax. It sounded pretty good to me. My mother was pretty upset about the whole thing (*but I promised that I would write and phone her often. I think she was just worried that we'd lose touch - but I assured her that wouldn't be the case.*) and I didn't hear from her for a long time. I found out later, much later, that she had been writing me but since we had moved a lot, I never got her letters. Peter refused to let me call her as he said she was a bitch and that all she did was shit all over him.

Def: So you had no contact with your family after you moved to Ottawa?

J: Actually, about 8 months after we were married, I did phone her when Peter was at work and we talked for awhile. I had been feeling rather lonely being in a new place and everything...I hadn't really met anybody and didn't have anybody to talk to. Anyway, when the phone bill came at the end of that month, that call was on it. Since Peter opened all the mail, he had the proof...there was no denying that I had gone behind his back and phoned her. That was the first time he beat me really bad.

Def: *Do you recall the first time Peter beat you up?*

J: *Actually, about 8 months after we were married Peter got upset over the phone bill. Usually I took care of all of the bills, so Peter never really paid them any attention. He figured that since I was the accountant I should be responsible for our household finances - it didn't bother me any - I did it at work so I figured I could do it at home too. So anyways, this phone bill arrived and for some reason Peter opened it up. He saw how much it was - since we had just recently moved away I guess I had been phoning my mother a lot to chat. Peter flipped out. It didn't seem to matter to him that it was my money that went toward the bills anyways. And that was the first time he beat me really bad.*

Def: So he hadn't been violent with you at all 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 that incident?

J: *Actually the next day he told me he was sorry that he had lost his temper and I felt kinda guilty because I knew that I wasn't supposed to talk to my mom so we just kinda forgot about it (because I knew that I shouldn't have spent so much money on a phone bill). Everything was o.k. for about a month or so and then he started accusing me of having an affair.*

Def: And were you?

J: *Oh 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 the groceries and stuff and If I took longer than he thought I should have he would just stand there and belt me in the stomach or something when I came in the door. When I went to work he would drop me off and pick me up. He would constantly call me at work - leaving messages to get back to him if I wasn't available. Sometimes I had to use the business car, and Peter would check out the odometer before I left to make sure I had only gone as far as I said I had. When I went away on business trips I often arrived at the hotel to find a bunch of messages from Peter to call him right away. I'd end up having to give him my itinerary - telling him what times I was going to be in meetings and with whom. At first, I thought this showed how much he loved me, his being jealous and all, but after a while I started to think he was crazy.) He would do things like time me when I went to get the groceries and stuff. He would even check the car odometer to make sure I had only gone as far as I said I had. If I took longer than he thought I should have he would just stand there and belt me in the stomach or something when I came in the door. He would never give me any freedom.*

At first, I thought this showed how much he loved me, his being jealous and all, but after a while, I started to think he was crazy.

Def: It sounds like your husband was quite a jealous 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: After that time I ended up in the hospital, it was probably once or twice a month.

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

J: Yes once after I had a miscarriage.

Def: Tell us about that please.

J: *Well, about 6 months after that time when he got so upset with me for the phone bill, I found out I was pregnant. Peter really wanted to have kids so I thought this would make him really happy. My company offered a great maternity package so I thought everything would work out great. They even offered day care services for when I would go back to work. After I told him that I was pregnant though he didn't seem too interested, he just kinda ignored me. Later that night, he went out with some of his friends and came back at about 2 or so. He woke me from my sleep and just started wailing on me. He said I was nothing but a whore and that the baby didn't belong to him. He kicked me in the stomach and there was no way I could stop it. He stormed out shortly after this and I felt awful. I started getting cramps and I guess at that point I must have miscarried.*

Well, about 6 months after that time when he got so upset with me for calling 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, he just kinda ignored me. Later that night, he went out with some of his friends and came back at about 2 or so. He woke me from my sleep and just started wailing on me. He said I was nothing but a whore and that the baby didn't belong to him. He kicked me in the stomach and there was no way I could stop it. He stormed out shortly after this and I felt awful. I started getting cramps and I guess at that point I must have miscarried.

Def: Did you see a doctor?

J: No. I didn't want Peter to get any angrier with me than he already was. When I told him I thought I lost the baby he told me I killed it. That was the first time he threatened to kill me for what I had done. I was pretty upset and after thinking

about it, I decided to leave him. I actually packed a little bag and hid it under the bed. I figured *(the next time I got paid)* **the next time he gave me grocery money** I would use it to get on a bus and head for home. I thought maybe if I gave Peter a little time alone to think about how he had been treating me he might change. I cared a lot about the guy and really thought he needed me, but I just didn't seem to be able to make him happy.

Def: Did you leave him?

J: He found the bag I had packed and knew right away that I was thinking of leaving him. He just exploded, and that's when he actually got the gun out. He told me he would track me down and shoot me so full of holes that I wouldn't be recognized. I just felt so scared. I remember I just sat there and cried and cried. I felt so helpless. Anyway. Peter calmed down and the whole issue was dropped. I was still pretty tense though and my nerves were shot. I just didn't know what to do. I still loved Peter, but I was so afraid of him too. My feelings about my own safety were starting to override any feelings I had for him. I just wanted him to stop hurting me and I didn't know how to get him to stop.

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

J: Without a doubt. If you could have seen him...

Def: How were things between you two after you had tried to leave him?

J: *Well, I thought if I could just try harder to be a better wife it would be o.k. I cut back on some of my duties on the committee board for on condominium, and tried to get out of going on so many business trips. I then found out about 3 months after that, that I was pregnant again.*

Well, I thought if I could just try harder to be a better wife it would be o.k. I did my best to keep a clean house and always have dinner ready for him when he came home. I then found out about 3 months after that, that I was pregnant again.

Def: Was there anybody you could talk to *your friends or your mother?*

J: *No not really. I couldn't have told my mother - it would have devastated her - I didn't want her to have to worry about me. I was too ashamed - I mean what would she say - my father and mother had a great relationship - what would she think about me?*

Def: *And what about friends from work, a close friend or neighbors that were on your committee board?*

J: *I was too embarrassed. How could I admit to these people that I was getting beat up. Besides, Peter would've just beat me up if he found out I told anyone.*

Def: *What about Karen - why not confide in her??*

J: *Well, Karen once asked me about a black eye I had. I ended up just giving her some lame excuse - saying I had slipped and fell or something. She couldn't have done anything to help me anyways. Peter had seen me talking to her and he had tied me to a chair all night and took punches at me. He was convinced that I had been bad mouthing him. No matter how much I denied it, he wouldn't believe me. He told me if he ever found out I told anybody that he hit me that he'd beat the shit out of me again.*

J: **No not really. Peter just didn't like me to talk or get friendly with anybody. I had tried to make friends with a neighbor, but Peter really didn't like me to get close to anybody. One time he tied me to a chair all night and took punches at me after he saw me talking to a neighbor. He was convinced that I had been bad mouthing him. No matter how much I denied it, he wouldn't believe me. He told me if he ever found out I told anybody that he hit me that he'd beat the shit out of me again.**

Def: We heard from Officer Montgomery about the evening you called the police and how you subsequently had ended up in the hospital. Would you please describe to the court what happened the evening the police were called?

J: Peter had been out drinking with a friend from work. I guess he arrived home about 8 o'clock or so. He was pretty quiet when he got home - I made him dinner and started back doing the laundry. I heard him yell into the kitchen so I went to see what he wanted. 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 (*saying that my job was interfering with my family and my duties at home.*) **and told me I must have wasted the day doing other useless crap and didn't leave enough time for the house chores.** When I went to explain he told me to shut my mouth. I tried to get up so that I could go and 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. I was terrified - I didn't want to get beat up anymore. I ended up calling the police so he would stop. 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 Montgomery told the court that you didn't want to press charges against your husband Judy. Why was 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, I didn't hear from Peter for a couple of days (*and I had stayed home from work*). The police contacted me to let me know 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 given all of the things he had provided me with. He said 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 - Peter would have just 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.

Def: 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 about whether my baby was alright. The doctor seemed concerned

about my injuries and very quietly she handed me a couple of numbers where he could be reached if I wanted to talk to her 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, 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 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 her 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, 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 times and I really thought that this time he meant 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.

Def: Judy, could you tell the court what happened on that weekend?

J: Well, Peter came home from work on Friday and started right in on me. (*The baby, who was about 5 months old, had been sick so I had stayed home from work, and I didn't have time to make a dinner and that was all the reason he needed*). **The baby, who was about 5 months old, had been sick and I didn't have time to make dinner and that was all the reason he needed.** He hit me in the chest with his fist, which knocked me to the floor and told me to forget the kid and get him his dinner. By the time I got some dinner for Peter, he had had a few beers. All the time I was getting dinner ready, he kept calling me names and telling me what a terrible mother I was to have let the kid get sick, and what a terrible wife I was because I didn't have his dinner ready for him after he worked so hard all day. After I put the dinner on the table he refused to eat it because I had taken so long. At that point he threw the plate against the wall and left the house, saying he'd go out to get something to eat. I knew he was probably going

to the bar, but I was just glad he was out of the house. I was a little worried that he would still be pissed off when he came home, so I hoped maybe if he had a good time he would be in a better mood. (*I had to call up Karen to tell her I couldn't make it to the neighborhood meeting. It was just as well - I wasn't up to seeing anyone.*) I cleaned up around the house, because I knew how much a messy house pissed him off, checked the baby and went to bed around 10.

Def: What happened next?

J: I don't know what time it was, I guess around midnight or so, when I heard him coming in. I was in bed and thought I would pretend to be asleep. It didn't do me any good though. He just hauled off and punched me in the back of the head and I started feeling dizzy. Then he dragged me from the bed by my leg and proceeded to punch me everywhere. Everytime I fell, he'd haul me up to my feet and hit me again. I kept telling him to stop and I tried to calm him down a bit, but it didn't do any good. At one point I fell down and he was kicking me in the head. I must have blacked out because the next thing I knew he was standing over me with the gun, pointing it at my head and telling me how he was going to blow my brains out. He was calling me every dirty name he could think of and had a really crazy look in his eyes. I was just paralyzed with fear. All I could really think of was what was going to happen to my baby if I was killed. Then he hit me with the butt end of the gun and I guess I lost consciousness again.

I stayed on the floor of the bedroom all night I guess. I felt really lousy when I got up and thought I might have broken some ribs or something because I was having difficulty breathing. The baby was crying so I tried to look after him. Peter wasn't in the house, and I didn't know where he had gone and I just didn't care. I gave the baby something to eat and tried to get myself cleaned up a bit but it hurt too much so I went back to bed. I sat there in bed thinking about all the times he'd hit me, and how I just couldn't take it any more. He hadn't hit the baby at least, but I didn't think that would last for long. (*I kept thinking about how I could get out but I couldn't very well go to the bank to cash my cheque - Peter would've found out.*) **I kept thinking about how I could get out but I didn't have any money or any way to get away.** Besides, I was so sick at the time and I could hardly get out of bed. I thought about calling the police, but I remembered what happened last time I did - he just ended up coming back. (*I didn't want to get any of my friends or my mother involved - I mean, I didn't see what they could have done. Besides, I didn't want Peter to go after them.*)

After thinking about that, I started thinking about killing myself - that's really what I felt like doing....but then I kept thinking of the baby and how I couldn't leave the baby to him. I knew what I really wanted was for him to be gone - out of my life forever - but even thinking that made me feel scared.

Def: Tell us what happened next Judy.

J: Well, Peter came back about 5 o'clock and was just ignoring me. He didn't mention anything about the night before and I was trying to avoid upsetting him, so I didn't say anything. He had started drinking beer and later, at about 9 o'clock, he told me he was going to clean his gun for a hunting trip that he was going on that weekend. I had finished giving the baby a bath and got him settled down for the night. As Peter was cleaning the gun, he kept drinking and I could see that he was getting pretty drunk. As he was cleaning the gun he kept looking at me. He'd look at me and say he had a big job to do with the gun and wanted to make sure it was working properly. I just knew he meant he was going to kill me with it and I felt panicked. He kept describing how powerful the gun was and how sometimes the only solution to some problems was to get rid of them permanently. Then he said "Yep, tomorrow's the day". Then he started telling me how lousy I looked, as if it were my fault, and then he got mad at me because he said I kept staring at him. I told him I wasn't feeling too good and he suggested that if I felt that bad, I should use the gun on myself. I just looked at him and he said he knew I didn't have the guts, that's why he'd have to take care of the problem himself.

I finally went to bed around 11 and was still feeling pretty lousy. He followed me in and wanted to have sex, but I said I was just too sore. I tried to tell him that but he wasn't listening so I just shut up and did my best to get it over with. He fell right asleep afterwards. I got up and went to the kitchen. Although I usually don't drink much, I thought I'd have a drink of scotch to soothe the pain in my chest. The gun was sitting on the table just like he'd left it there for me. I started thinking again about my situation and how he was going to kill me. Things got a bit hazy for me at this point but I remember thinking "I've just got to escape".

From this point on it was like I was watching a movie of myself doing things. I watched myself pick up the gun and take the safety catch off. I still didn't know at this point that I was going to kill him. I just kept looking at the gun and thinking about what a bastard he was. I poured another drink and was still holding the gun. I felt all confused, between the scotch and the pain. It was just like a dream where everything is moving in slow motion. Once again I was watching myself move towards the bedroom door and walk into the room. I walked to the bedroom door with the gun and stood there staring at him. After that I don't remember too much, things get really hazy. I guess I must have put the gun to his head and pulled the trigger, but I can't really remember what happened. It was like somebody else was doing this and I was just watching.

I don't really remember firing the other shots but I remember thinking that "if he catches me he's going to kill me" I know that sounds dumb, but I just kept thinking "I'm really going to get it for this".

Once the gun was empty, I guess, I went back into the kitchen. I really don't remember much at this point. I still had the gun and I remember I was shaking really bad when I went to pour another drink. I took it into the living-room and sat in the chair facing the hallway to our bedroom. Everything seemed so quiet, almost peaceful like. I kept thinking, any minute now he's going to burst

out of that bedroom and beat the shit out of me. I remember looking down at the gun and wondering what it was doing in my hands. Then I thought, maybe nothing really happened...It is all so hazy and my thoughts at that time were very confused. It was at this point, I guess, that I called the police.

Def: Thank you Judy. No further questions your Honor.

Cross-Examination of Mrs. Richards:

Pro: Mrs. Richards, you stated that you killed your husband and that you believed that you had no choice except to do so. We have heard according to your testimony, how he had physically abused you on a number of different occasions and how on one of these occasions you had phoned the police. Did Officer Montgomery 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 arresting him wasn't going to stop him. I had already tried that

Pro: Mrs. Richards, Officer Montgomery also said he had given you the number for a woman's shelter and suggested you call there if you needed assistance. Why didn't you do that?

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 force us home. If that happened he would have killed both myself and my son.

Pro: *Mrs. Richards, what about your own mother. You had stated that you had promised to keep in touch with your mother - is this the case?*

J: Yes

Pro: *So Peter had no problem with you talking to your mother or going to visit her?*

J: *Well - not really. He didn't like her to much though and always called her a nosy bitch.*

Pro: *But in fact he never attempted to isolate you from your mother.*

J: *No, I guess not.*

Pro: *You also described your relationship with your mother as a close one correct?*

J: Yes.

Pro: *How often did you talk to your mother Judy?*

J: *Oh - I don't know - once or twice a week.*

Pro: *But yet you never confided in her about your relationship with Peter?*

J: *Well no - I mean what would she say? I was too*

Pro: *So even though you felt your life was in danger you never once called your mother, a mother who you felt close to, for help?*

J: *No - but what could she have done anyways. I didn't want her to have to worry about me.*

Pro: *And you couldn't go and stay with your mother?*

J: *No - Peter would've known that I had gone there - I didn't want to put my mom at any risk of being hurt.*

Pro: *And your friends Mrs. Richards - surely if things were as bad as you claim you could have turned to them?*

J: *I was too scared - Peter said he'd kill me if I told anyone.*

Pro: *Mrs. Richards, what about the money you had access to and the company car, and these business trips - surely you could have arranged some way to get out of your situation?*

J: *I couldn't. What would I do with my child? Even if I could've gotten away for a while, I was too petrified of Peter. He said he'd hunt me down and kill me if I left him - I knew he would.*

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

J: *Yes.*

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

J: *No.*

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

J: No. I didn't do anything to deserve getting hit.

Pro: Well Mrs. Richards. If he kept hitting you when you didn't deserve it you must have gotten pretty mad didn't you?

J: I couldn't get mad because if I did he would have hit me even more.

Pro: But you must have gotten mad inside even if you didn't let it show..isn't that true Mrs. Richards?

J: Yes I got mad but I couldn't do anything about it - I felt so helpless.

Pro: But you did do something about it, didn't you. When you finally got mad enough you killed him isn't that right?

J: I killed him because I was afraid he was going to wake up and kill me.

Pro: But you must also have been mad enough at him to kill him weren't you?

J: I don't know. I was just really scared and confused at the time.

Pro: But you had been mad at him before?

J: Yes.

Pro: Mrs. Richards, you have told the court that you wanted your husband out of your life earlier that day, prior to actually committing the act. You also stated that you released the safety catch on the gun prior to going into the bedroom. Finally, you carried the gun into the bedroom and put the gun up to your sleeping husband's head. You then pulled the trigger 3 times. And yet 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 did you kill him?

J: I believed he was going to kill me when he woke up.

Pro: Was he stalking you or making threatening gestures to you?

J: No.

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

J: Well, I thought so...

Pro: So, Mrs. Richards, you fired not once, not twice but you fired 3 bullets at close range into the sleeping body of your husband. Is that true?

J: Yes.

Pro: No further questions your honor.

Expert Witness: Testimony of Dr.. Johnson

Def: Dr.. Johnson. you have been called as an expert witness on battered women and their experiences on behalf of Mrs. Judy Richards. 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 into 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 describe for the court what is meant by the battered woman syndrome?

Dr.: *The battered woman 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 syndrome can therefore help explain why a woman would stay with a man after being subjected to serious and often life threatening physical abuse.*

The battered woman syndrome is a recognized subcategory of Post-traumatic stress disorder - also known as PTSD. PTSD, a psychological disorder, appears in the DSM-IV - a diagnostic manual relied upon by psychiatrists and clinicians and refers to a set of characteristic symptoms which follow exposure to a psychological distressing event. While this psychological disorder has often been associated with wartime, it is now recognized as being present in a large proportion of women who have been abused. The battered woman 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 syndrome can therefore help explain why a woman would stay with a man after being subjected to serious and often life threatening physical abuse.

Def: How is that doctor?

Dr.: Well, there exists a recurrent cycle of violence perpetrated by the male that has the net result of effectively trapping a woman in the relationship. In the first stage of the cycle, the tension building phase, there is a gradual building of tension characterized by name calling and possibly minor abusive incidents. This is followed by the acute battering stage in which the tension erupts and often severe physical damage occurs to the woman. In the final stage, referred to as the loving contrition stage, the batterer often apologizes for the abuse and attempts to assure his victim that it will never occur again.

Def: What effect does this have on the woman?

Dr.: A situation has been created reminiscent of intermittent reinforcement schedules in learning theory. What this means is that the batterers' cycle of positive and negative behaviors serves to keep the woman in the relationship by convincing her, that if she tried a little bit harder, her boyfriend or husband would stop his violent behavior.

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 cycle of violence repeats itself over and over again with less time between incidents of battering and fewer and fewer attempts made by the batterer to apologize or make amends for the abusive incident. Furthermore, the battering incidents are likely to become more and more severe over time and the woman is less likely to be able to feel that she can effectively cope with her abuser or the abuse. In addition, if there are children in the house, violence between the adults often has a profoundly disturbing effect.

Def: Now doctor, I've heard talk about something called learned helplessness. Could you please tell the court what is meant by this term?

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 results in a psychological paralysis that inhibits her ability to leave. As well, a host of social and psychological factors such a battered woman's isolation, feelings of shame and guilt, and a lack of effective alternatives further entrap women in violent relationships.

Def: On the basis of your professional experience, how would you characterize these women who have experienced abuse?

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 may be extremely isolated both physically and emotionally from the support of others in their lives and they may have been

coaxed to sever ties with family and friends. Out of shame and helplessness these women feel that nothing they do - whether they ask for help or not - will stop the abuse. These women experience absolute terror when they think about leaving for fear of retaliation by the abuser. Fear of retaliation against parents, other close relatives or friends is also common. In addition to these reactions, **(and any PTSD symptoms that may be present)** 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. What is important to remember is that the battered woman syndrome is a very typical **(clinically recognized)** reaction to a battering situation.

Def: Is the battered women syndrome a formal diagnosis doctor?

Dr.: Actually, battered woman syndrome is not an official diagnosis in and of itself. *(However the syndrome has been extensively researched and refers to a pattern of responses and perceptions characteristic of battered women.)* **The syndrome is however recognized by the American Psychiatric Association as one of the traumatic stressors which acts as a precursor to PTSD.**

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

Dr: Certainly - as outlined in the Diagnostic Statistical Manual, 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 products 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 this psychological 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: Now Doctor Johnson, are cases of battered women who kill typical of these abusive relationships doctor?

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

Dr.: So many different factors play a role in these situations. The differences in size and power between a man and a woman is often the reason 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 measure 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 behavior from their partner often come to see the abuser as omnipotent and invincible, much like cases of political prisoners. They come to see their very existence as being in the hands of their abuser. In cases such as this, a woman's mental state is often confused 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, or the presence of weapons in the house.

Def: As I am sure you are aware doctor, 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 the abuser?

Dr.: *As I mentioned earlier the battered woman syndrome can explain how this process of victimization can lead not only to a psychological paralysis that prevents a battered woman from leaving, but also why a woman may believe lethal force is her only escape. The cyclical nature of the abuse has profound effects on the woman and helps explain why many women simply do not leave. As she can not control the violence, she sinks into a psychological paralysis. Because the beatings inflicted upon her are beyond her control, she becomes passive, submissive and helpless. This paralysis hinders her ability to leave. We also have to keep in mind the cycle of violence which helps explain her heightened sensitivity to her partner's violence. That is, the battered woman becomes sensitized to cues which alert her to an impending act of violence.*

As I mentioned earlier the battered woman syndrome, characterized as a sub-category of PTSD, can explain how this process of victimization can lead not only to a psychological paralysis that prevents a battered woman from leaving, but also why a woman may believe lethal force is her only escape. The cyclical nature of the abuse coupled with the symptomology of PTSD has profound effects on the woman and helps explain why many women simply do not leave. As she can not control the violence, she sinks into a psychological paralysis. Because the beatings inflicted upon her are beyond her control, she becomes passive, submissive and helpless. This paralysis hinders her ability to leave. We also have to keep in mind the cyclical nature of the violence as well as the persistent display of PTSD symptoms which involve an 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. As well, consistent with the PTSD diagnosis, the traumatic event is 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. We also have to keep in mind the cycle of violence which helps explain her heightened sensitivity to her partner's violence. That is, the battered woman becomes sensitized to cues which alert her to an impending act of violence.

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 she suffers from the battered woman syndrome, and more specifically because of the persistent arousal that she experiences 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, threats of future violence and death are viewed by the battered woman as both reasonable and realistic.*

What this means is that even though a battered woman may not be directly involved in a physical confrontation with the abuser, because she suffers from the symptoms of the battered woman syndrome, and more specifically because of the symptoms related to PTSD including the persistent arousal that she experiences, 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, threats of future violence and death are viewed by the battered woman as both reasonable and realistic.

Def: Doctor, would you please address briefly some additional problems that battered women must face.

Dr.: Well, people oftentimes hold inaccurate beliefs about battered women. First of all, battered women exist in all socioeconomic classes. People must also understand that battered women do not remain within relationships with their abusers because they enjoy the abuse or becomes they are not truly suffering. Many people believe for instance that battered women simply over dramatize or inflate the seriousness of their situation. The reality is however that many battered women actually downplay the seriousness of their abusive relationships. Finally, and perhaps most critically, is no woman deserves to be abused regardless of what she does.

Def: Doctor, you have had an opportunity to examine Mrs. Richards - on the basis of your professional experiences, is Judy Richards a battered woman, and did she exhibit characteristics consistent with a battered woman syndrome **as it is currently conveyed within the PTSD category of the DSM-IV?**

Dr.: Yes.

Def: Thank you Dr.. No further questions.

Cross Examination of Dr.. Johnson - Expert Witness

Pro: Dr. Johnson, you have stated that your practice and training has been almost exclusively with 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 empathy and 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 believe that she should be automatically relieved of criminal responsibility?

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

Pro: Dr. Johnson, you stated that you are a consultant at Interval House, a shelter for battered women - 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 suffered severe abuse.

Pro: Now doctor, were any of those women beaten so severely that they had bones broken or teeth knocked out?

Dr.: Yes, some were certainly beaten that bad.

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

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

Pro: Dr., you have just testified that on a daily basis you worked with women who, just like Judy Richards, were repeatedly and severely beaten by their husbands, suffered broken bones, were threatened with death by their husbands and who were severely emotionally traumatized. Now Dr., none of the severely beaten women you worked with at Interval House killed their husband did they?

Dr.: No.

Pro: In other words, despite being battered women, 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. Many of these women were extremely fortunate to have escaped from their situations. In addition, Mrs. Richards case was indeed extreme.

Pro: Now, I'm curious Dr., what of a woman who has been slapped in the face by her boyfriend on one single occasion - *(would she be diagnosed as suffering from the battered woman syndrome)* **would she be diagnosed as suffering from the battered woman syndrome, post-traumatic stress disorder?**

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

Pro: And doctor - does every battered woman (suffer from the battered woman syndrome) **suffer from PTSD - having hallucinations, dissociation, suicidal inclinations, intrusive thoughts and the like?**

Dr.: Not necessarily - the impact of the abuse may vary. However, despite displaying less severe reactions, these women are still considered battered women.

Pro: You stated earlier that battered women syndrome is not yet recognized as an official diagnosis. Isn't it the case that the battered woman syndrome has not yet received adequate consensus from researchers and clinicians in the field? In fact, perhaps this syndrome doesn't exist at all.

Dr.: No that's not it. While there is some disagreement, the differences of opinion exist largely at a practical level. The vast majority of experts in the field agree that abuse can have a negative psychological impact. The battered woman syndrome provides a framework by which a segment of our population, one which has previously misunderstood, may be defined. **As well, while the particular experiences of battered women are different to those of say war veterans, hostages, the responses people have to these experiences, as encompassed by the PTSD diagnosis have been shown to be extremely similar.**

Pro: You stated Doctor that the battered women syndrome consists of a sense of helplessness, **and that post-traumatic stress disorder consists of a number of symptoms including severe psychological distress.** *(a helplessness that you*

claim is the result of the battering experience). How is it that a helpless woman **and a severely psychologically distressed woman** is suddenly able to conquer this helplessness and (*passive state*) **distress** in order to commit a violent and aggressive action against the very abuser that she so greatly feared?

Dr.: The intense anxiety and arousal of which I spoke earlier represent a strong factor in overcoming this sense of helplessness..

Pro: And finally doctor, is it not the case that most battered women, (*even if they do suffer from the battered woman syndrome*) **even if they have been diagnosed as suffering from the battered woman syndrome post-traumatic stress disorder diagnosis** can, and in fact have managed to successfully leave a battering relationship without killing their husband?

Dr.: Yes.

Pro: No further questions your Honor.

Examination of Expert - Social Agency

Def: Dr. Johnson, you have been called as an expert witness on battered women and their experiences on behalf of Mrs. Judy Richards. 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 into 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 explain to the court what is meant by the term battered woman?

Dr: The term battered woman is commonly used to describe women who have suffered severe emotional, psychological and/or physical harm at the hands of a spouse or intimate partner.

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

Dr: Very often the violence begins gradually. Incidents of name calling, criticism and the like escalate to more physical forms of aggression such as shoving, pushing or slapping. In turn, these incidents become more aggressive and more violent. After the first episode of violence, women are startled and shocked, and usually define it as a unique event. At this point they do not usually seek to end the relationship. Rather, they believe, as anyone might, in the potential for reform and are still committed to the relationship.

Def: So the abuse gradually increases in severity - 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 time frame of the ensuing violent episode. Both the overt actions and the more subtle mannerisms of the batterer provide a clear warning to the woman that an episode is likely.

Def: Battered women have traditionally been viewed as passive individuals. Do you agree with this characterization doctor?

Dr: No, absolutely not. It is much more accurate to describe these women as active agents who are attempting to make their environments safer. Very early on in the relationship, many women engage in personal strategies as a means to end or

reduce the battering. These strategies include for instance, attempting to talk the men out of abusing them, exacting promises that the abuse won't happen again, or avoiding certain topics of conversation that are potentially upsetting or explosive. More actively, some battered women threaten or actually call the police, lawyers, or shelters and sometimes even physically fight back during an attack. When battered women seek help however, they often do so in a tentative and ambivalent manner filtered through shame, self-blame, a sense of failure and concerns about exposing the private problems of the family. Unfortunately however, these personal strategies are oftentimes 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 exists 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 are found later. In fact, escalated violence is a very justified concern. It is not uncommon to hear of women who have managed to escape, but, who continue to hear or experience threats and assaults even years later. Additional considerations include concerns for the welfare of their children. Many batterers threaten to punish the children should the woman attempt to leave the relationship. Fear of retaliation against parents, other close relatives or friends is also common. As well, 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. Even women who work outside the home still face the domination and control of their husbands. We have to keep in mind that even with a job, a woman is often far from being financially independent. In addition, escaping an abusive partner often requires flight, which may also involve leaving an established lifestyle including a job and a regular paycheck. Unfortunately, even if a woman does escape the abusive situation and maintains her job, it is not uncommon for the abuser to sabotage the victim's employment with his disruptive behavior.

Def: What about going to the police for help?

Dr: Some of the most critical determinants of a woman staying in the relationship include the inadequacy of police and judicial response and the general lack of social alternatives for battered women. For instance, given that evidence exists, current laws require that officers carry out an arrest of abuse perpetrators when they are called to a domestic dispute. The problem with mandatory arrest in these situations however, is that the rights of the victim to determine whether or not to

raped 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: So many different factors play a role in the situation. 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. 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. Other factors leading to such actions might include a mother's need to protect a child, or the presence of weapons in the house

Def: As I am sure you are aware doctor, 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. 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. The battered woman also becomes sensitized to cues which alert her to an impending act of violence. In light of the woman's history, threats of future violence and probable death are viewed by the battered woman as both reasonable and realistic.

Def: Doctor, would you please address briefly some additional problems that battered women must face.

Dr: Well, people oftentimes hold inaccurate beliefs about battered women. First of all, battered women exist in all socioeconomic classes. People must also 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 over dramatize or

inflate the seriousness of their situation. The reality is however that many battered women actually downplay the seriousness of their abusive relationships. Finally, and perhaps most critically, is no woman deserves to be abused regardless of what she does.

Def: Doctor, you have had an opportunity to examine Mrs. Richards - on the basis of your professional experiences, 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: Yes.

Def: Thank you Dr. No further questions.

Cross Examination of Dr. Johnson - Expert Witness - Social Agency

Pro: Dr. Johnson, you have stated that your practice and training has been almost exclusively with 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 empathy and 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 believe that she should be automatically relieved of criminal responsibility?

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

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

Dr: Yes

Pro: You also state Dr. that 50% of women in cohabiting relationships, potentially could suffer physical violence at some time. Is that true?

Dr: Yes.

Pro: You also state that because of the size difference between men and women that a woman must often resort to using a lethal weapon to repel her attacker. Is that true?

Dr: Yes.

Pro: Now doctor, were any of the battered women at Interval House severely beaten by and cruelly treated by their partners?

Dr: Yes, some of them suffered severe abuse.

Pro: Were any of those women beaten so severely that they had bones broken or teeth knocked out?

Dr: Yes, some were certainly beaten that bad.

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

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

Pro: Dr., you have just testified that on a daily basis you worked with women who, just like Judy Richards, were repeatedly and severely beaten by their husbands, suffered broken bones, were threatened with death by their husbands and who were severely emotionally traumatized. Now Dr., none of the severely beaten women you worked with at Interval House killed their husband did they?

Dr: No.

Pro: In other words, despite being battered women, 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. Many of these women were extremely fortunate to have escaped from their situations. In addition, Mrs. Richards case was indeed extreme.

Pro: Now, I'm curious Dr., what of a woman who has been slapped in the face by her boyfriend on one single occasion - is she a battered woman?

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: I got the impression doctor 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 Doctor, that these officers go out of their way to provide assistance in times of need, but it is the women who choose not to accept the help that is offered?

Dr.: Even though officers are expected to make arrests in battering situations they may actually be placing the victim in even greater danger.

Pro: But it is the case is it not doctor that women have the option to call the police to notify them if their partner continues to hit them - or in fact even if he doesn't hit them but just breaches a court order not to see her?

Dr.: Yes.

Pro: And - if they did call the police at that point the man would in fact be arrested - correct?

Dr.: Yes - but these women could very well be risking their lives.

Pro: To move on doctor, according to your testimony, you seem to be implying that society has ultimately forced many battered women to take the law into their own hands, that we as a society have placed the gun in the hands of the abused. Is that a fair analysis of your testimony?

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.

Pro: So in other words doctor - it is society's fault that a woman would kill her abusive partner even if he is asleep at the time?

Dr.: Again - I wouldn't quite say that - all I said was that society does play a role in a woman's inability to safely leave the relationship. (or: in the continued perpetuation of wife abuse)

Pro: And finally doctor, is it not the case that most battered women can, and in fact have managed to successfully leave a battering relationship without killing their husband?

Dr.: Yes.

Pro No further questions your Honour.

Closing Statements for the Defense

Members of the Jury, although Mrs. Richards is on trial for murder, she has really been the victim of a horrible crime. This crime has been documented over and over again, but has only recently come under public scrutiny. That crime, members of the jury, is wife abuse. The home has always been considered a sanctuary from the often cold and cruel outside world...A haven from the miseries we hear about daily on the local news and from our friends and neighbors. But we have a case here, a tragic case, where the home was not a refuge, but instead a place where insult and physical punishment was handed out on a daily basis. The Richards home was dominated by a cruel and sick man, a man who instead of treating his wife with love and respect, treated her with torment and cruelty. He beat her for not bringing home the groceries on time, he beat her and hospitalized her with broken bones and caused her to miscarry, and because of his constant cruelty Mrs. Richards is left with emotional scars that will not heal for a long time.

And so, when the strain of trying to maintain her sanity became too much, when the continuation of her life and the life of her baby's were in question, she protected herself by taking her tormentor's life. Did she have a reasonable belief that she was in danger of death or serious bodily harm at the time of her husband's death? He had told her that he was going to kill her the very next day and threatened her with the very weapon he was going to use. Judy Richards has stated that she believed she was going to die and based on the increasing severity of his attacks I submit to you that her belief was indeed, reasonable.

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 considerate man, would Judy have used a gun on him? Of course not. All she wanted was to lead a life that held some meaning for her. And Mr. Richards took the possibility of that life away from her. He had repeatedly threatened her life and had shown her the weapon he was going to use to kill her. He terrorized her. Judy Richards has stated that she believed she couldn't go on. She has stated that she was going to die and she believed that her husband would kill her.

Could she have gone to the police with her fears? She had gone to the police before and ended up in the hospital with a broken arm, broken ribs, severe bruises and facial lacerations that required stitches. And, even if the police could have prevented the attack on her life the next day, what about the next attempt and the next and the next? There were certainly no signs that Mr. Richards behavior was getting any better. Indeed, the viciousness and severity of his attacks were becoming worse. The police could not have helped Judy unless they were prepared to maintain an armed guard around her for the rest of her life. And I ask you, what kind of life would that be?

And so instead of being killed, she turned her husband's weapon on himself. Did she use excessive force? If you consider the viciousness of her husband's attacks and the extent of the injuries she had previously suffered as a result of his beatings, she had used the force necessary to stop him.

Members of the jury, I don't ask you to pity Mrs. Richards. No, instead, I ask you to give Mrs. Richards the justice that has been sadly lacking in her life. And in asking

you for justice, I ask you to find Judy Richards not guilty of murder in the second degree by reason of self-defense.

Closing Statement for the Prosecution

Members of the jury, this case is actually very simple. It is, as my learned 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, Judy grabbed the gun, pulled the trigger once, again, again and finally a third time into the body of her sleeping husband. By her own actions and her own admission, she killed her husband.

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. However, the law is very clear on 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, had to believe that she could not have otherwise prevented herself from this danger, and had to use reasonable force to prevent that 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.

My colleague has tried throughout this trial to shift the blame of Mr. Richards death on to Mr. Richards himself. Mrs. Richards has admitted herself that her husband apologized for his behavior and attempted to make it up to her by being a better husband. He failed in his sincere attempts, and an argument ensued, and members of the jury, for that reason Mrs. Richards blew him away with a semi-automatic rifle.

The evidence presented at this trial shows clearly that Mrs. Richards did not kill her husband in self-defense, but that she knew what she was doing and had alternatives to the ultimate course of action she took. I suggest to you, members of the jury, that if Mrs. Richards gets away with murder, then we might as well declare open season on husbands everywhere.

With the facts of the case in mind, and with, as my colleague suggested, justice as our mandate, I want you to uphold the law and find Mrs. Richard guilty of murder in the second degree.

Thank you

Judge's Closing Statements

Members of the Jury, you have heard all the arguments presented by both the prosecutor and the defense attorney and are now required to come to a decision regarding the tenability of Mrs. Richards' plea of self-defense. To reiterate: Mrs. Richards has been charged with second degree murder in the death of her husband, Mr. Douglas Richards.

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 his 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, 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 when 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 necessary to repel the attacker. Reasonable force is taken to mean, legally, "that 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 had 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.

All jury members are reminded that in order to find the accused guilty, they must be certain that guilty has been proven beyond a reasonable doubt. Now, reasonable doubt concerning guilty is not merely the possibility of innocence. A reasonable doubt is a doubt that would cause a reasonable and produce person in the graver and more important affairs of life to pause and to hesitate to act upon the truth of the matter charged.

Proof beyond a reasonable doubt is not proof beyond all possible or imaginary doubt. Instead, it is proof that precludes every reasonable hypothesis except the hypothesis that it tends to support. Proof beyond a reasonable doubt is proof to a moral certainty. Proof beyond a reasonable doubt is proof 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. Not everything said under oath in a court of law is necessarily the complete truth. You may now converse among yourselves and discuss the evidence. The court will reconvene when you have unanimously reached one of the following decisions: "Guilty of manslaughter," "Guilty of second degree murder" or "Not guilty for reasons of self-defense".