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BEYOND THE JUROR'S KEN: BATTERED WOMEN

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The recent interest in understanding the psychology of the battered woman and her family has brought about a new interplay between psychology and the law. This interaction usually occurs when battered women are involved in civil litigation such as separation, divorce, child custody, and personal injury cases; when the violence comes to the attention of the criminal justice system, such as in assault and homicide cases; and when lawyers and psychologists advocate together for community action and legislation. Although, historically, violent families have been brought to the attention of the mental health and judicial systems, it has been only within the past decade, since this new alliance between attorneys and psychologists has arisen, that the courts have begun to understand the nature of battering relationships. Previously, courts relied on popular myths to explain the behavior and motivations of battered women.¹

Such myths included the belief that battered women are masochistic, that they stay with their mates because they like beatings, that the violence fulfills a deep-seated need within each partner, or that they are free to leave such relationships if that is what they

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1. L. WALKER, *THE BATTERED WOMAN* 18-31 (1979).

really want.²

The accumulation of knowledge of battering relationships has been so rapid that psychologists are often called upon in legal proceedings involving battered women to offer expert opinions and to educate the courts. Nowhere has this need been more critical than in the defense of battered women who kill.³ An explanation of the psychology of the battered woman is necessary to understand why she believes that she is in imminent danger and needs to strike back in self defense.

I. SELF DEFENSE

It is not a new phenomenon for a battered woman to kill her mate. Anastasia Jones provides an historical documentation of women who have killed their mates.⁴ She found that, until the middle of the 20th century, most women who killed their batterers were not prosecuted. The few who were prosecuted were usually acquitted if they denied the charges and "looked like a lady" at the trial. Jones goes on to make the point that increased demands for women's liberation are usually followed by an increase in the attention paid to female criminality. "Society is afraid of both the feminist and the murderer, for each of them, in her own way, tests society's established boundaries."⁵ Prior to the increase in the availability of handguns, statistics demonstrate that women were less likely than men to commit murder in America.⁶ According to statistics compiled by the Federal Bureau of Investigation, in 1979,

2. *Id.*

3. *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979). In this case the appellate court ruled the trial judge erred in excluding the expert testimony. In reaching this decision the justices considered the fact that "the government implied to the jury that the logical reaction of a woman who was truly frightened by her husband (let alone brutalized by him) would have been to call the police from time to time or to leave him." *Id.* at 633-34. Further, the defense expected the expert testimony to:

(1) inform the jury that there is an indentifiable class of persons who can be characterized as "battered women,"

(2) explain why the mentality and behavior of such women are at variance with the ordinary lay perception of how someone would be likely to react to a spouse who is a batterer, and thus

(3) provide a basis from which the jury could understand why Mrs. Ibn-Tamas perceived herself in imminent danger at the time of the shooting.

Id. at 634.

4. A. JONES, *WOMEN WHO KILL* (1980).

5. *Id.* at 13.

6. E. Pleck, *Is Family Violence Increasing? An Historical Perspective*, (paper presented at the National Conference for Family Violence Researchers, in New Hampshire, July 1981).

4.8% of all murders were committed by women who killed their mates in self defense.⁷

Recent interviews with inmates in the women's prison in Colorado revealed that many more women inmates had been battered than had been previously known, even when the battering had a direct impact on their crimes. Offenses such as forgery, burglary, assault and sale and use of drugs were committed by these women, usually under duress, as a way to meet their batterers' demands and avoid another beating. All of the battered women who were interviewed in the research study understood that the violence in their homes could escalate to homicide and suicide. Their fears of the high risk of such incidents were documented in this study.⁸

Occasionally, a battered woman will kill in self defense. Our work with battered women demonstrates that the violence in the home tends to escalate in frequency and intensity over time.⁹ It is difficult to escape the batterer even after separation and divorce. Within the past four years, more women who are fighting back and seriously injuring or killing their batterers have pursued the self defense plea.¹⁰

Self defense may be defined as the justifiable commission of a criminal act by using the least amount of force necessary to prevent imminent bodily harm or death.¹¹ Such imminent bodily harm need only be *reasonably* perceived by the victim.¹² This perception may later turn out to have been erroneous. The defendant's perception of how much force is needed to prevent further attack must also be reasonable.¹³ The key to women's self defense,

7. L. Walker, Battered Woman Syndrome Study Final Report to N.I.M.H. (1981) (report prepared under N.I.M.H. Grant # R.O.I.M.H. 30147, available from National Institute for Mental Health or the author.) [hereinafter cited as Report].

8. *Id.* at 76-77. See also A. Browne, Lethal Incidents in Battering Relationships Between Adult Intimates, paper presented at the Feminist Analysis Seminar, Union for Experimenting Colleges and Universities, Colorado, March 1981) for a discussion on how battered women perceive these incidents.

9. Report, *supra* note 7, at 80; see also L. WALKER, *supra* note 1.

10. L. Walker, When Battered Women Kill: Psychologists as Expert Witnesses (Symposium presented with A. Browne, R. Thyfault, and L. Rosewater at American Psychological Association Annual Convention in Los Angeles, August, 1981). See also E. Schneider, S. Jordan, and C. Arguedas, Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault (pamphlet published by the Center for Constitutional Rights, 853 Broadway, New York, New York 10003, 1981). (Hereinafter cited as Schneider)

11. See W. LaFAVE & A. SCOTT, HANDBOOK ON CRIMINAL LAW § 53 (1972).

12. *Id.*

13. *Id.*

then, lies in the definition of what perceptions are reasonable for a female victim of violence.

The new standard of women's self defense was set with the Joan Little case in North Carolina.¹⁴ She was acquitted, after two trials, of killing the warden in the jail where she was serving time for an unrelated crime. She claimed self defense for stabbing him with the ice-pick that he was using to coerce her into committing a sexual act with him. Thus, use of deadly force became permissible against a person threatening to commit a sexual assault.

State v. Garcia,¹⁵ known as the Inez Garcia case, further developed the standard of self defense for battered women. Inez Garcia was physically and sexually assaulted by two male acquaintances. Before they fled, they threatened that they would return to rape her again. Garcia went home, got a shotgun, and went out looking for her assailants. Several hours later she shot and killed one of her attackers. At trial, Garcia pled the insanity defense, but was found guilty. She was later awarded a new trial and was acquitted on the grounds of self defense.¹⁶

Garcia establishes an important precedent: a woman may defend herself even when not in danger of immediate physical harm. It was reasonable for Inez Garcia to believe she was still in imminent danger of further bodily harm or death several hours after she was attacked. This extension of time has been important in battered women self defense cases. Many battered women kill just before the violence escalates to more dangerous levels. The cycle theory of violence indicates a predictable pattern of abuse, and demonstrates the reasonableness of a woman's perception that she is in imminent danger.¹⁷

A more recent decision, *State v. Wanrow*¹⁸ ruled on the standards of self defense for a woman as compared to a man. Yvonne Wanrow, a Native American woman, shot and killed a man she believed to be a child molester as he entered the house in which she was present. Wanrow contended that she feared the intruder was about to molest her child. The intruder was unarmed, although ac-

14. *State v. Little*, 74 Cr. No. 4176 (Sup. Ct. Beaufort N.C. 1975).

15. *State v. Garcia*, Cr. No. 4259 (Sup. Ct. Monterrey Calif. 1977).

16. *Id.* see Schneider *supra* note 10.

17. For a complete discussion of the cycle theory of violence see L. WALKER, *supra* note 1.

18. 88 Wash. 2d. 221, 559 P.2d 548 (1977).

accompanied by a male friend.

The court of appeals granted her a new trial, in part, because the trial judge erroneously instructed the jury that a reasonable person "has no right to repel a threatened assault with naked hands, by the use of a deadly weapon, in a deadly manner"¹⁹ The court recognized that "[i]n our society women suffer from a conspicuous lack of access to training in and the means of developing those skills necessary to effectively repel a male assailant without resorting to the use of deadly weapons."²⁰ Boys typically learn to use their fists and other parts of their bodies as weapons, while girls do not. Thus, the eye-for-an-eye equal force tradition has been reinterpreted, at least in the Washington, to suggest that a battered woman's ability to defend herself against a man is so inadequate that the law will allow her to use a weapon.

These recent victories must be viewed in the historical context of the general inequities in the way the criminal justice system has treated men and women to kill. Such inequality works against battered women. It has been suggested that the traditional American attitude which encourages a man to defend his person, family, or property does not extend to a woman, who is expected to have a husband, father, or son to defend her.²¹ It is possible to trace the change in the standard from the duty to retreat from attack as this country was being settled to the privilege to stand one's own ground.²² This privilege, however, was never considered to apply to women. Despite the legal right in most states to stand one's own ground on one's own property,²³ women appear to be expected to have a good reason for *not* leaving their homes or withdrawing from their marriages if they are under the threat of or actually experiencing assault. In those cases where the woman kills her batterer, the burden of proof usually falls on the woman to show why she could not leave or why leaving did not terminate the violence. This is so even though legally she needs only to demonstrate that she was legitimately standing her ground in her own home.²⁴ In

19. *Id.* at ___, 559 P.2d at 558-59.

20. *Id.* at ___, 559 P.2d at 559.

21. This was the theme of *Violence in the West*, a conference held at Eastern Oregon State College in LaGrande, Oregon in November, 1979.

22. See W. LAFAYE & A. SCOTT, *HANDBOOK ON CRIMINAL LAW* § 53 at 395-96 (1972).

23. *Id.* at 396.

24. At Walker & Associates, we have participated in evaluation, trial preparation and testimony in 32 such cases. It is our impression from these cases and from discussion with other psychologists and attorneys that these assertions hold true.

cases where the jury has been given an instruction which delineates the woman's right to stand her ground, rather than the duty to retreat, acquittals on the grounds of self defense are more likely to be obtained.²⁵

When battered women plead self defense, it is within the scope of the psychologist's expertise to give an opinion on the defendant's state of mind at the time the act was committed. Such an opinion must be based on research on battered women so as not to invade the factfinding province of the jury. The cycle theory of violence demonstrates that battering often follows a pattern that worsens over time. It proposes that there are three phases of spousal assault which repeat themselves in a predictable pattern. The first phase is the period of tension building. During this period, small abusive episodes occur which are controlled by techniques used by both the man and the woman so they do not usually erupt into major violence. The tension continues to build however, until phase II or the acute battering incident is reached. Most injuries occur during phase II when the violence is out of control. The acute battering incident is followed by a period of calm, kind, loving contrite behavior characteristic of phase III. Thus it is a reasonable perception for a battered woman experiencing this cycle to expect that the tension-building behavior in phase I will escalate to the more dangerous violence of the next phase.

It is reasonable for a battered woman to plan her escape during the escalating period of tension in phase I, rather than during phase III, the period following the violence, when she is apt to receive the most positive reinforcement from her spouse for remaining in the situation.

It is also reasonable for a battered woman to concentrate on survival, rather than thinking about escaping during the second phase, or the acute battering incident itself. "Learned helplessness" and other psychological theories explain why she is not free to retreat from the situation.²⁶ Research has disproved many of the myths surrounding battered women.²⁷ That the behavior of the battered woman is beyond the ken of the average juror was de-

25. *Id.*

26. In fact, research indicates it is reasonable for any person, battered or not, to expect a violent act to be repeated if there has been no intervention between the victim and the assailant and circumstances are unchanged. *VIOLENT BEHAVIOR: SOCIAL LEARNING APPROACHES TO PREDICTION, MANAGEMENT AND TREATMENT* Ch. 1,2 (R. Stuart ed. 1981).

27. Walker, *Battered Women and Learned Helplessness*, 2 *VICTIMOLOGY* 525 (1977-78).

cided in the *Ibn-Tamas v. United States*.²⁸ This decision held the trial judge's exclusion of expert testimony to be reversible error. In many jurisdictions however, it is still difficult to get expert testimony admitted.

II. ADMISSIBILITY OF EXPERT WITNESS TESTIMONY

One test used to determine the admissibility of expert testimony was set forth by the D.C. Circuit Court of Appeals in *Dyas v. United States*.²⁹ The court stated:

- (1) [T]he subject matter "must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average laymen . . . ;
- (2) [T]he witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that (her) opinion or inference will probably aid the trier in (her) search for truth . . . ; and
- (3) [E]xpert testimony is inadmissible if "the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert."³⁰

The *Dyas* decision clearly expanded the criteria for deciding the admissibility of expert testimony. One of the first cases where a battered woman claimed self defense relying on the *Dyas* decision was *Ibn-Tamas v. United States*.³¹ Although Beverly Ibn-Tamas was convicted of the second degree murder of her husband, the appellate court held that the trial judge had erred in ruling that the expert's testimony would have invaded the province of the jury.³² Thus, the holding adopted the first part of the *Dyas* test: whether the subject matter was "beyond the ken of the average layman."³³ The case was remanded to resolve whether the expert's testimony met the other two criteria: sufficient expertise, and recognition of sufficient knowledge in the field.

The Georgia Supreme Court overturned a conviction for voluntary manslaughter and a fifteen-year sentence given to a battered woman who had claimed self defense in *Smith v. State*.³⁴ The

28. 407 A.2d 626, 633 (D.C. 1979).

29. 376 A.2d 827, (D.C. 1977) cert. denied 434 U.S. 973 (1977).

30. *Id.* at 832 (emphasis supplied).

31. 407 A.2d 626 (D.C. 1979).

32. *Id.* at 639.

33. *Id.* at 633.

34. 247 Ga. 612, 277 S.E. 2d 678 (1981).

Georgia Supreme Court held that, expert opinion testimony on issues to be decided by the jury, even the ultimate issue, is admissible where the conclusion of the expert is one which jurors would not ordinarily be able to draw for themselves; i.e., the conclusion is beyond the ken of the average layman. The expert's testimony, explaining why a person suffering from battered woman's syndrome would not leave her mate, would not inform police or friends, and would fear increased aggression against herself, would be such conclusions that jurors could not ordinarily draw for themselves.³⁵

In other cases, convictions have been upheld. In one recent case, *State v. Thomas*,³⁶ the Ohio Supreme Court upheld the exclusion of expert psychological testimony based in part on the grounds that the expert testimony would invade the province of the jury and would stereotype the defendant, causing the jury to be prejudiced.³⁷ These cases demonstrate that the question of admissibility is still being decided on a case by case basis, even though the battered woman self defense plea is gradually becoming an established, acceptable defense.

III. LEARNED HELPLESSNESS AND THE CYCLE THEORY OF VIOLENCE

Based on our research we have developed two psychological theories to explain the battered women syndrome. The first, learned helplessness, describes a psychological condition first tested by Seligman and his associates in laboratory experiments, in which dogs were taught that their behavior did not make a difference in whether or not they received electric shocks.³⁸ The dogs' perceptions that there was no contingent relationship between their responses and the outcomes caused distortions in the behavior. In later experiments, such noncontingency in response/outcome behavior was found to cause similar distortions in human subjects' perceptions, and was responsible for measurable changes in the subjects' motivation, thinking, and behavior.³⁹

We found that battered women suffer from the same distortions in perception. A battered woman often believes that the bat-

35. *Id.* at ___, 277 S.E. 2d at 683.

36. 66 Ohio St. 2d 568, 423 N.E.2d 137 (1981).

37. *Id.* at ___, 423 N.E.2d at 140.

38. M.SELIGMAN, *HELPLESSNESS: ON DEPRESSION, DEVELOPMENT AND DEATH* (1975).

39. *Id.* at 57.

terer is omnipotent, that no one can help her, and thus she limits the number of responses she feels are possible or safe to make. Our data suggest a vulnerability pattern that may be established in childhood which makes a woman more likely to develop coping responses, rather than escape responses, in order to survive the relationship.⁴⁰ Childhood events which contribute to this learned helplessness include physical abuse, sexual molestation, health problems, traditional parental traditional attitudes toward woman's role in society, and critical childhood events. Interestingly, 65% of the women in the study were victims of child abuse and 48% reported being sexually molested, usually by an adult male in their family.⁴¹

The second theory, the cycle of violence was first described by Lenore Walker.⁴² This striking cycle has been verified by other researchers.⁴³ Walker found that violence does not constantly occur in most battering relationships, nor does it occur randomly. Rather, there are three predictable phases: a phase of tension building, leading up to the second phase which is the acute battering incident, followed by a third phase, which is a period of loving contrition or at least a cessation of the violent behavior.

The third phase provides positive reinforcement for women to remain in the relationship. This periodic reinforcement provides a powerful incentive to remain in a battering relationship: the woman hopes that the undesirable behavior of phases I and II will not recur and that the phase III behavior will continue. Unfortunately, according to our results, the tension building period actually becomes more pronounced, and the periods of loving contrition shorten and become less reinforcing over time. Many of the battered women we interviewed terminated the relationship when the ratio between abusive and loving behavior changed in this manner.⁴⁴

Often, however, the batterer will not permit the woman to

40. Report, *supra* note 7; A. Browne, Comparison of Victim's Reactions Across Traumas (paper presented at the Rocky Mountain Psychological Association Annual Meeting, Tucson, Ariz. April 1980).

41. Report, *supra* note 7, at 64-6; R. Thyfault, Sexual Abuse In the Battering Relationship (paper presented at the Rocky Mountain Psychological Association Annual Meeting, Tucson Ariz. April 1980).

42. L. WALKER, *supra* note 1.

43. Report, *supra* note 7, at 113-16.

44. *Id.*

leave him. In many cases he threatens homicide or suicide, and becomes even more violent and dangerous. Even divorced women report that batterers follow them when they leave, harrass them and continue to beat them.⁴⁵ Thus, many battered women may be correct to perceive that escape is impossible.

IV. PATTERNS IN BATTERING RELATIONSHIPS

In our research we have identified several types of interactions that frequently occur in abusive relationships. An informal survey of our homicide cases also seems to indicate these patterns. Some of the patterns include: extreme jealousy and possessiveness on the part of the batterer, social isolation of the couple, threats made by batterer, and the physical or sexual abuse of the children and/or spouse by the batterer.⁴⁶

Along with common social patterns, batterers frequently share common individual traits. These include battering in his childhood home, frequent intoxication by drugs or alcohol, and a history of violence toward others. Almost all of the men who batter as adults had, as children, witnessed or experienced abuse in their homes. They have learned a pattern of behaving violently toward people they love, a pattern which they use as adults. Although more than half of the men became intoxicated frequently, only one-fifth were reported as being under the influence of alcohol during battering incidents. In our homicide cases, however, over three-fourths of the men were frequently intoxicated.

Records of arrests and convictions also appeared with frequency. More than two-thirds of the batterers in our research study were reported as having been arrested and nearly half of those were convicted of the charge. A review of our homicide cases indicates that, although not all the batterers had criminal records, most did have a history of generalized violence toward other family members, friends, and strangers. Our research study indicated that the women show fewer consistent behavioral patterns, other than those involved in attempting to survive the violence in their relationship. Although battered women do seem to demonstrate some

45. A. Browne, *supra* note 10.

46. A. Browne and R. Thyfault, *When Battered Women Kill: Interviewing Techniques* (August 1981) (paper presented at symposium, *When Battered Women Kill: Psychologists as Expert Witnesses*, American Psychological Association Annual Convention in Los Angeles, Calif.).

behaviors and emotions similar to those shown by victims of other types of trauma in injury,⁴⁷ these are in reaction to the abuse they are experiencing.

Most of the couples in both our research sample and the homicide cases were socially isolated. The women reported restriction of their activities by the batterer and limited contact with relatives and friends. This isolation was maintained by the batterer out of his jealousy and as a shield against others finding out about the abuse; it was maintained by the woman out of humiliation and fear.⁴⁸

Another important factor in battering relationships is the sexual abuse of the women. Over half of the women in our research study and over three-quarters of the women in our homicide cases reported that they had been raped by their batterer. Commonly mentioned forms of sexual abuse included forcible rape where the woman was held or tied down, rape in conjunction with smothering, forced anal intercourse, and attempts to force the woman to have sex with others or with animals.⁴⁹

Sexual and physical abuse of the children was also commonly reported, with over half of our research subjects reporting that the batterer had abused their children. Over three-fourths of the women in our homicide evaluations reported such abuse of their children, and it appeared to be a critical factor in the tension which accumulated before some lethal incidents. Discovery that the man had been sexually abusing an adolescent daughter was the precipitating event in several of the homicide cases.⁵⁰

A final factor in the pattern of abuse in many relationships is threats made by the batterer to do harm to the woman, others, or himself. Almost every woman in our homicide cases reported that the batterer had threatened her with harm, especially if she made any attempts to leave him. In addition to threats against them, over half of the women in our research sample reported that the batterer had threatened to kill someone else or had threatened to commit suicide. Almost all of the women in both our research sample and our homicide cases thought that the batterer could or would kill them, and many felt that they could not escape this

47. A. Browne, *supra* note 40.

48. Report *supra* note 7, at 73-74.

49. *Id.* at 70-73.

50. See, e.g., *State v. Harwood* (Santa Clara Cty. Ct. 1981).

danger by leaving him.

In the homicide cases the women often felt trapped in a deadly situation. Most of the batterers had warned the women that they would never let them leave alive, or that the batterers would find and punish them if they did escape. Many of these women had tried to leave and were badly beaten for it. Some actually had gotten away but their husbands traced and followed them, even to another state. The primary fear of these women—that the batterer would find them and retaliate with even more violence—was often justified. Some of the women who ultimately attempted to kill their batterers had been separated or divorced for up to two years before the final incident, and yet still experienced life-threatening harrassment and abuse.

One of the most dangerous times for both partners is at the point, or threat, of separation. The threat of abandonment that the man perceives when the woman leaves is often so devastating to him that he would rather kill her than let her walk away.⁵¹ The woman also becomes desperate at this point. We found that usually the women who turned on their mate during an attempt to escape never intended to kill them, only to prevent them from blocking their escape or from hurting them again. Most of these women did not have a history of violent behavior, and, for most, it was the first time they had fought back against their batterer. Nearly all called the police and an ambulance at once, and did not realize they had critically wounded him until they were informed later that he was dead. This is consistent with the findings of others that women who kill are seven times more likely to be motivated by self defense than are men.⁵²

V. DIMINISHED CAPACITY

The question of whether to use a temporary insanity or diminished capacity defense, rather than a self defense plea, is one which we have to address during the evaluations we perform. Many battered women appear to be emotionally unstable at the time of the lethal incident. There usually is selective memory loss associated with the trauma that supports the presence of a disassociative reaction. Some women do not remember obtaining the weapon (usually a gun in our cases), loading, aiming, or firing it. Others remem-

51. See E. TANEY, *THE MURDERERS* (1976).

52. See D. MARTIN, *BATTERED WIVES* (1976).

ber only sporadic details of the incident. Most have no memory of seeing the wound, and some keep firing because they do not believe that they have hit the man. Some women have told the police to be careful when they entered the house where the man was, as they feared he would "really be angry now," and might hurt them. In some cases, police or others arriving early at the scene have given the women suggestions as to what might have happened, confusing the story even more. The women do not always remember all they said or did for periods of as long as 24 hours after the incident. This includes not remembering giving statements to the police. In *State v. Harwood*,⁵³ during the trial, the defendant listened with total disbelief to a tape recorded statement she made shortly after the incident.

It is always critical to estimate how much psychological damage might be caused by trying to bring back memory through hypnosis or other techniques, while also evaluating the need for such data to plan the defense. Caution must be exercised in this area, as some memory usually comes back when the woman becomes more involved in the building of her defense.

In some cases it seems appropriate to use both the diminished capacity and the self defense plea, at least initially. Practically, however, acquittal on straight self defense is much more likely. Some cases may seem to fit the legal definition of temporary insanity and to have a component of an irresistible impulse at the moment of the fatal incident. In the case of Francine Hughes,⁵⁴ her behavior leading up to the fatality occurred because of the fear that she was in imminent danger of further bodily harm or death. Recent research on the Minnesota Multiphasic Personality Inventory (M.M.P.I.) patterns of battered women,⁵⁵ may help in differentiating the insanity group from the self defense group, if such a dichotomy actually exists.

VI. CONCLUSION

The essence of the self defense plea for a battered woman is proving that the woman used deadly force after reasonably per-

53. (Santa Clara Cty. Ct., 1981). The defendant was acquitted on self defense.

54. See F. McNULTY, *THE BURNING BED* (1980).

55. L. Rosewater, *When Battered Women Kill: M.M.P.I. Data* (August 1981) (paper presented at symposium *When Battered Women Kill: Psychologists as Expert Witnesses*, American Psychological Association Annual Convention in Los Angeles Calif.)

ceiving that she was in imminent danger of bodily injury or death. Expert testimony from a psychologist is necessary to refute the many myths that still surround battered women in the average juror's mind. By comparing a defendant with other battered women from our research project, we are able to determine within professional limits, whether the defendant was battered and thus could be expected to follow certain patterns common to other battered women. We conduct specialized interviews which then provide the data upon which the defense can be built.

Since May of 1977, we have evaluated 28 women who have killed, or have attempted to kill, their batterers. Of these cases, four are still awaiting trial. The charges were dropped on one case after the prosecutor received our report and on another, the charge was reduced to driving under the influence. One woman had already been convicted and was serving time at the time of our interview with her.

Seven other cases plea-bargained to lesser charges, with four receiving straight probation and the other three receiving reduced sentences of from one to eight years. The remaining 14 cases went to trial and expert testimony was admitted in 11 of them. Seven of these women were acquitted, and of those who were found guilty, one was sentenced to ten years probation, another received a one-year sentence, and a third was sentenced to serve six months in the county jail. In the fourth case, the judge limited the scope of the expert testimony to discussing battered women in general, and she was sentenced to fifteen years. Of the cases where the testimony was not allowed, one received a two-year sentence, another received fifteen years, and the third woman was sentenced to twenty-five years. All three of these cases are still awaiting appeal.

Throughout this process, adherence to psychological principles, including primary concern for the psychological well being of the defendant, and sometimes the defense attorney, is important. It is possible to be an advocate in the criminal justice system's adversary process while still providing the court with the expert opinion it needs to decide the ultimate question. The high success rate we have had in assisting juries to reach favorable verdicts, as compared to the verdicts in those cases which did not have expert testimony, is the most obvious support for the involvement of expert witnesses in these cases.