

5-1982

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Recommended Citation

Andrea D. Lyon & Helen Morrison M.D., Self-Defense and Battered Spouse Syndrome: A Legal and Psychological Perspective, *Crim. Def.*, May-June 1982, at 8.

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SELF-DEFENSE AND BATTERED SPOUSE SYNDROME: A LEGAL AND PSYCHOLOGICAL PERSPECTIVE

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Over half the married couples in America attempt to resolve conflicts with physical abuse.¹ This article will explore the attitudes of courts toward self-defense in the battered spouse syndrome. Further, this article will also define the terms marital violence, domestic violence, and spouse abuse from a psychological perspective.

STATISTICS

The incidence of domestic violence is statistically significant. For example, out of 33,724 police charges processed in selected courts in Edinburgh and Glasgow 11%, or 3,020 cases, involved physical violence.² Although most of the violence involved unrelated males, the second most frequent occurrence of violence was directed at wives. Ninety-four percent of the domestic violence cases involved female victims and male perpetrators. If the female was the perpetrator, 2.6% of the attacks were directed toward the male. In this study, attacks on wives represented over 75% of all violence in a family setting.³ Other reports indicate attacks on wives averaged 52%.⁴ However, because of frequent underreporting, these figures may not be accurate. Underreporting wife abuse results from feelings of shame, fear of retaliation, negative experiences with past reporting and perceived lack of viable alternatives. Only 2 of every 98 assaults are reported.

The average age of the marital victim is 30.5 years.⁵ Fifty-nine percent of women entering shelters were abused by the end of their first year of marriage. Within five years of the marriage, over 92% were abused.⁶

Levinger's study showed that out of 1500 divorce complaints, 90% involved women who complained their husbands abused them.⁷ Obrien's study reveals that physical abuse is one of the most commonly mentioned reasons for divorce. Furthermore, in divorce cases, wives complain of abuse 11 times more frequently than do husbands.⁸

Gerson reports that in 35% of 1,970 alcohol-related acts of violence, the offender alone was drinking. In 29% the victim was drinking, and in 36% both were

There is a paucity of case law on the subject, probably because self-defense has historically been of the "High Noon" variety; that is, between men.

drinking. When marital violence was considered, in 44% the offender alone was drinking, in 13% only the victim was drinking, and in 44% both were drinking. Other studies note the association between alcohol, violence and incompatibility or indebtedness. Alcohol problems accompanying violence showed a statistical probability to the high at .74.⁹ Without alcohol problems, probability of violence is a low .31.¹⁰

CASE LAW

Only recently have courts considered it justifiable for a woman to fight back against her batterer. There is a paucity of case law on the subject, probably because self-defense has historically been of the "High Noon" variety; that is, between men. However,

the United States Supreme Court put its imprimatur on the concept of the prosecution's responsibility to prove beyond a reasonable doubt that a defendant did not act in self-defense or in the heat of passion in *Mullney v. Wilbur*¹¹ and *Hankerson v. North Carolina*.¹²

Almost no one disagrees with the idea that a person has the right to use deadly force when his or her life is in danger. The problem in battered spouse cases is that the victim of the battering has a different conception of threat than the standard "he pulled his gun first." In order to defend a person who reacted with deadly force to the batterer, counsel must educate the trier of fact to the syndrome and, through testimony and instruction of the jury, make it clear that the subjective perception of the accused is considered.

Quite recently, the Georgia Supreme Court changed its former position that no expert could testify that an accused suffered from a "battered woman syndrome." Now such opinion evidence is admissible to assist jurors in answering questions "beyond the ken of the average layman."¹³ In reversing a conviction for voluntary manslaughter, the court found the defendant's history of previous beatings, in the context of the beating that night, showed she suffered from battered woman syndrome. Therefore, the testimony of the clinical psychologist, who had been the clinical supervisor of Atlanta's battered women's shelter, should have been allowed:

We hold that the correct rule is as follows: 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. This holding is in accord with the modern view as exemplified by Rules 702, 704 of the Federal Rules of Evidence.

The trial court in this case applied this rule but found that the jurors could draw their own conclusions as to whether the defendant acted in fear of life. We disagree and find that 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. Hence we find that the expert's opinion in this case was improperly excluded from the jury's consideration.¹⁴

In *State v. Wanrow*¹⁵ the Washington State Supreme Court reversed and remanded Ms. Wanrow's second-degree murder and first-degree assault convictions on two grounds. First, that a tape-recorded conversation was erroneously admitted, and, second, that the jury had not been adequately instructed concerning self-defense. (Ms. Wanrow shot the deceased after his sexual assault on her friend's child earlier that evening after his forced entry and attempted assault on

that child and then her). The court found the self-defense instruction erroneous on two grounds. First, it did not tell the jury to consider all the facts and circumstances surrounding the shooting and, second, that

(t)he second paragraph of instruction No. 10 contains an equally erroneous and prejudicial statement of the law. That portion of the instruction reads: "However when there is no reasonable ground for the person attacked to believe that *his* person is in imminent danger of death or great bodily harm, and it appears to him that only an ordinary battery is all that is intended, and all that *he* has reasonable grounds to fear from *his* assailant, *he* has a right to stand *his* ground and repel such threatened assault with naked hands by the use of a deadly weapon in a deadly manner, unless *he* believes and *has reasonable grounds* to believe, that *he* is in imminent danger of death or great bodily harm."

In 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. Instruction No. 12 does indicate that the "relative size and strength of the persons involved" may be considered; however it does not make clear that the defendant's actions are to be judged against her own subjective impressions and not those which a detached jury might determine to be objectively reasonable. (our emphasis)¹⁶

Thus a state court recognized the importance of adequately instructing a jury to consider the context in which the incident occurred including consideration of the gender-based differences between men and women.

The Supreme Court of New Jersey considered these issues in the context of a much more "typical" battered spouse situation in *State v. Guido*.¹⁷ In reversing her second-degree murder conviction and remanding a voluntary manslaughter charge for a new trial, the Court discussed her husband's abusive treatment, holding that "(i)t seems to us that a course of ill treatment which can induce homicidal response in a person of ordinary firmness and which the accused reasonably believes is likely to continue, should permit a finding of provocation."¹⁸ The Court also held that the accused's state of mind was relevant to such a charge and should be aired before the trier of fact upon retrial. Part of their reasoning was:

With respect to physical abuse, the jury could find that although there were only a few incidents of actual injury, there was the constant threat of it from a man who had to have his way and who would not let go a woman who had had her fill.¹⁹

Some 13 years later, the Supreme Court of New Jersey had occasion to consider a similar question in

*State v. Lamb.*²⁰ The Court affirmed the Appellate Division's grant of a new trial. The defendant in this case was separated from her husband. Her husband was living with a girlfriend, and she was living in what had been their apartment. She was 18 years old at the time of the stabbing. Their marriage had been unstable and punctuated with violence. The night of the stabbing, she was living in what had been their apartment with a female cousin. That evening her husband accosted her, the cousin, and a male friend in a local bar saying he wished to talk to defendant. She refused to talk to him and the three later returned to the apartment. After receiving a threatening phone call, she heard footsteps and her husband burst open the door. He chased her into the bedroom and, while he was assaulting her, she stabbed him.

In upholding the remand for a new trial the court held it was error not to instruct the jury that the

He had once shot her three times, which resulted in an attempted murder conviction...The Appellate Court expressed surprise that this did not end their relationship.

defendant had no duty to retreat in her own home, because her husband no longer could be considered to live in the apartment. They also held the trial court's charge to the jury regarding provocation to be erroneous:

Since there was evidence of prior repeated physical mistreatment of defendant by decedent, including threats to her life, we agree that the jury should have been instructed that, in determining the question of provocation, it was to consider not only decedent's conduct and threats that night, but also his prior mistreatment of defendant, applying the standard set forth in *State v. Guido* (citations omitted).²¹

In another battered woman case, the Appellate Court of Illinois reversed Dathel Shipp's conviction for voluntary manslaughter²² holding that the unsupported insinuation by the prosecutor that defendant had shot decedent's brother was reversible and also the evidence failed to establish beyond a reasonable doubt that defendant could not have reasonably believed that her action in shooting decedent five times was not necessary to prevent her death or great bodily harm.

The evidence at Shipp's trial showed that she had been abused throughout her relationship with her husband. He had once shot her three times, which resulted in an attempted murder conviction. Decedent also had been previously convicted of killing his first wife. The Appellate Court expressed surprise that this did not end their relationship (in fact defendant visited him regularly while he served his sentence for attempting to murder her). The Court's surprise exemplifies the general lack of understanding of the psychology involved in a battered spouse

situation.

There was evidence of many other physical assaults on defendant, including a threat with a knife just 10 days before she shot decedent. On the night Shipp shot decedent, he broke in on her and another man (who nobly hid under the bed) and approached her with his hand in his pocket. Defendant had purchased a gun after she had been shot by decedent and she drew it, backing up into the corner. She told decedent to stop, but he came on anyway. She started to fire and when he kept coming, she kept shooting.

In reversing her conviction outright, the court reasoned:

In the instant case, defendant had been shot, beaten, assaulted and threatened by the decedent, and was aware of the fact that decedent had killed his first wife. The decedent was physically far larger and more powerful than the defendant, and continued to advance upon her even after she began firing at him. Her terror was both reasonable and complete, and only a matter of seconds elapsed between the firing of the first and last round. When the initial use of deadly force was justified, a claim of self-defense will not necessarily be negated by the fact that several shots were fired after the attack was over, since the party assaulted is not supposed to have perfect judgment.²³

This case illustrates the necessity of educating a jury to the pathology of a battering relationship. If the instructions in this case had charged the jury that they should consider the subjective state of mind of the defendant in the context of expert testimony on the syndrome, appellate review would have probably been unnecessary.

THE PSYCHOLOGICAL VIEW

This section attempts an in-depth exploration of the terms "marital violence," "domestic violence" and "spouse abuse." These terms apply not only to situations where partners are legally married, but also to all "couple" situations. An exploration of the use of violence, the terminology defining violence, and clarification of many myths surrounding domestic violence will focus on the complex and little understood motivations of both partners for maintaining the relationship. This section will present current viewpoints regarding factors thought to contribute to the continuation and, in some cases, the tragic termination of the violent relationship.

Although the research literature is replete with multiple concepts concerning violence among partners, there is little consistent data. One possible explanation for scattered hypotheses is the theoretical orientation of the research. Psychiatry has often limited itself to a model of pathology determined by the internal state of the individual. Sociology has limited itself to external factors related to socializations. Sys-

tems theorists have attempted to study all variables and to define the interrelationships of these variables. However, in the area of domestic violence, there are as yet no clear interrelated variables which can predict the occurrence of violence.

DEFINITIONS

A. Violence/Societal

Violence is the intentional use by one person of physical force on another person. Instrumental violence is the use of pain, injury or physical restraint as a coercive threat or punishment to induce another to carry out an act. Expressive violence is designed to cause pain and injury itself.

B. Violence/Individual

Volcanic violence erupts when an individual is frustrated and under stress. It is uncontrollable. It is the violence that is responsible for severe injuries.²⁴ This is violence that contributes to those marital homicides which entail "over-kill." Instrumental violence is normative and goal-oriented. It ceases when the goal has been reached.

Protective reactive violence is primarily used by women. This is a kind of preemptory self-defense. Research has shown that an individual who does not hit back may be provocative, and, further, an individual who does not hit back may be more likely to be victims of repeated aggression. Thus these research findings should put to rest the myth that hitting back may be dangerous.

DOMESTIC VIOLENCE

Violence is most often related to a long-term relationship. It is not related to early adjustment problems and it does not decrease over time. Interpersonal violence is a consistent factor found in intimate relationships and homicide. However, there are no consistent economic, educational or class predictors in familial homicides. Over 90% are preceded by one major disturbance involving injury and/or law enforcement involvement. Murder in the family constitutes 25% of all murder offenses. Fifty percent of those offenses are spouse killing spouse. The wife is the victim in 52% of the cases, the husband in 48% of the cases.²⁵

The most excessive degree of domestic violence is that used by husbands who kill their wives.²⁶ Wives usually stab their husbands. Husbands often beat their wives. Wives most often use a kitchen instrument.²⁷ Many authors have interpreted this to mean that most slayings are in the heat of passion. Provocation by the victim-husband is usually instrumental in provoking his own death. The state of passion provoked by the victim-husband ranges from desperation to extreme terror or rage, which makes homicidal reactions understandable.

In a Kansas study, 90% of the victims had been involved in one previous disturbance call; 50% had more than five previous disturbance calls. Variables thought to predict later homicidal violence include a history of previous disturbances, the presence of a gun or alcohol, or the presence of known threats.²⁸ In general, men are more likely to commit murder than women. When women are killed they are killed by

Forty-one percent of all female victims are killed by their husbands. Only 10% of male victims are killed by their wives. Wives are the most frequent victims of murder.

intimates. The closer the attachment between a man and a woman, the greater the risk of violent attack to the woman. Forty-one percent of all female victims are killed by their husbands. Only 10% of male victims are killed by their wives. Wives are the most frequent victims of murder. Husbands who are victims of homicide are more likely to have attacked their wives prior to their deaths.²⁹

THEORETICAL POSITIONS

The traditional psychodynamic viewpoint sees aggression as an individual act. This theory predicts that individuals who are violent in their marriages are those who have marginal psychosexual maturity and psychological adjustment. The frustration-aggression hypotheses of the experimental psychologist assumes that there is an inborn connection between frustration and aggression. Thus, this theory proposes that frustration in the individual is increased by situational and individual variables.

Social learning theory, in turn, postulates that violence is a socialized learned behavior. It is reinforced by direct or vicarious means. It is begun or "cued" by appropriate situational stimuli. Violent marriages, according to this theory, would be characteristic of individuals who came from violent families.

The often misdefined concept of masochism has been thought to explain psychological motives for the continuation of violence. Masochism may be defined as suffering bound up with erotic pleasure. It is therefore desired. Masochism easily transforms into sadism. This transformation occurs in three stages. The first is where sadistic impulses are directed against another. The second is when the original person is replaced by the self as the object. The third state occurs when another person takes over the role of the sadistic subject. This is the passive aim in masochism. Beating fantasies are interpreted as conscious representations of repressed wishes to be loved by the father. Subjects who are involved in masochistic situations are thought to evaluate these risky options not in terms of absolute outcomes but in terms of psychological gains and losses. Incentives for masochism include identity versus identity loss, social approval versus disapproval, support versus deprivation, and love versus loss of

attachment. Interpersonal reactions produce violence prone relationships. When violence is related to the pre-existing character structure of the individual, the violence occurs early in the relationship, usually perpetuated by the man. Marital conflicts most often result from the failure of communication. Violent reactions can also be triggered by defects in power, intimacy and boundaries. Overt power struggles and violence are used as the solution to any conflict.

SOCIOLOGICAL

Sociologically, violence has been defined as a normative subculture response by many authors. Altercations and arrests have traditionally been associated with police but a study of 1200 adults by Start and McEvoy reports that slapping one's spouse on appropriate occasions is approved behavior.³⁰ The approval of this behavior increases with education and income. The low reported incidence of abuse in high income groups results from the fact that police become involved only in lower socioeconomic and minority families. Goode (1971) noted that violence between intimates allows exploration of force underlying our social institutions and relationships.³¹ He postulates that learning the use of force and instrumental violence occurs as a result of early family experiences. Girls, he postulates, learn the necessity of female deference and the resulting limits of female power. Boys learn that physical force frightens the female. Telling a child to be non-violent does not supersede the threats and acts of violence used when the child does not behave. The family in turn relies on the use of force for its function in society. The use of force in the social systems permits people to manipulate and bargain interpersonally. It also defines the social economic system variables of economic power, prestige and respect. These characteristics are acquired, most often by force. Society then defines and approves and accepts the behavior. A failure of adaption, the failure to acquire social lessons, occurs alongside other social inadequacies.

The incidence of domestic violence is not adequately explained by differences in cultural norms, structural variables, or individual psychological variables. Violence is a final event in a sequence of events which precede violent encounters. These events facilitate or inhibit violent encounters. A relationship between two people has its identity established in stable role and status expectations. The identity of the person remains stable. When a previously stable identity is threatened a person reacts, most often with violence. The threatened individual will react according to his perception of the intention of the other person. Violence may also be used to organize the attention and behavior of the other person to meet the expectations of the other person in the relationship. A perception of threat will lead to the person's protecting his social identity. Avoidance is the most common reaction. Spouses, of course, find avoidance impossible.

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Acceptance is a possible reaction, but this requires that the individual consent to being valued in a negative manner. If acceptance is not a viable alternative, retaliation usually results. This tactic forces the other to react to and deal with a threat. If the threat crisis is not reduced, physical retaliation results.³²

From a systems theory viewpoint, violence in a family is defined as the product of the system, not of the individual. Violence increases when positive processes occur. Negative processes are those which stabilize or diminish the occurrence of violence. The use of this theory provides a model with which to study the components of a violent relationship.

There are several schools of thought concerning the controversy of learned versus the innate nature of aggression. For example, a "learned" model, early response reinforcement, and subsequent passive behavior are due to motivational deficits. A primary example of this theory is the paradigm of "learned helplessness." No matter what response the research subject gave they could not control the electric shock they received. The researcher's conclusions defined the factor of prime importance, which is learning the unpredictability and noncontingent nature of the aversive stimulus.³³ In learning theory, responses which are not reinforced become extinct. In this model of learned helplessness, human motivation is sapped, the ability to perceive success is undermined, and anxiety is increased when subjects experience the helplessness. The actual nature of the ability to control is not as important as the belief or expectation. The abused partners do not believe they can escape. The intense dependency bonds reinforce this cycle of learned helplessness. Energy is drained and violence occurs after the three phases of tension building, explosion, and loving respite. This last phase completes the victimization, because this phase provides reinforcement for remaining in the violent relationship.

THE FEMALE PARTNER

There are two interaction types. One type is a reciprocal, escalating, violent interaction, with the potential for either spouse becoming a victim. Violence is precipitated, often for excitement. The loser often presses charges. The victims remain cavalier. The opposite, the second category, is the chronic syndrome, which has no precipitating action. These victims do not confront. They remain passive, protect themselves, or escape. The victims attempt to avoid escalation, they do not reciprocate unless they are desperate. These victims fear they will be killed and their fears are reinforced by verbal and physical threats. In these cases the woman is powerless. The brutality has existed quite early in the relationship. The difficulty in the attitudes toward these victims is that they are thought to have provoked the attack. This attitude reinforces her feelings of guilt and blame, and reinforces her in her role of victim.⁴³

Joblin characterizes the wives as submissive and passive.⁴⁴ These are characteristics which may be

provocative and which are compounded by a lack of knowledge about their legal alternatives. Powerlessness and submissiveness may provoke violence. Women are sometimes stereotyped as basically sadomasochistic instigators who cause the violence themselves.⁴⁵ Traits of victims vary but they all suffered from low self-concepts. Most were socially isolated.

Their children observe aggressive behavior. They learn to solve problems by using aggression, more so than children who do not observe family violence. The victims are intensely attached to their children. Assaultants often used their attachment to threaten and instill fear by not providing financial support or by threatening to gain custody of the children by proving the victim was an unfit mother. Victims appear worn out, helpless and isolated, full of anger and fear. They see themselves as trapped. Emotional reactions include helplessness, fear, embarrassment, anger, guilt, insanity, assertiveness and high self-concepts.

Her belief that she is at fault leads to her belief that she does not deserve help.

Physical abuse plays a central causative role in paralyzing anxiety and symptom formation. Life long violence is characteristic of these women who often left home at the early age of 16 to escape from violent fathers. They marry morbidly jealous men who isolate them. Violence often erupts when the husband does not immediately get his way.⁴⁶

Pathologic jealousy, alcohol intoxication, poor impulse control and low frustration tolerance constitute a lethal mix in battered women. Counterviolence becomes an act of desperation; the victim sees no other option. Violence toward the abuser is of course related to a direct threat toward her life. But her own violence comes as a surprise to the battered woman because she is unaware of the extent of her rage.

Over 50% of the women in one study had prior psychiatric problems.⁴⁷ A uniform psychologic response is paralyzing terror, agitation and anxiety bordering on panic and a chronic apprehension of imminent doom. The constant threat of danger results in increased activity, agitation, pacing, screaming and crying, and violent nightmares. Somatic complaints were connected with previous sites of battering. Passivity characterizes the victim's daily life. The women were drained, numb and rarely experienced their anger directly.⁴⁸

A common assumption is that any reasonable person who has been beaten would avoid being victimized or avoid the attacker. This decision is not related to the severity or the extent of the assault. The decision to seek legal assistance is the result of a change in the wife's behavior. Another factor is that the more severe the violence is, the more likely the woman will seek assistance. Women hit weekly or daily are more likely to call the police.⁴⁹ Neither parental violence

nor abuse as a child have any bearing on the decision to leave or seek outside intervention. Intervention is dependent, unfortunately, on the fact that the more resources the person has the greater chance she will ask for help. Her children's ages also contribute to the decision to seek help. An older child, facing the possibility of being hurt, is frequently found in families who called for help. The best predictor of who seeks help is the severity of violence in the family. This is also the best predictor of a separation or divorce.

Assailants most often do not view their behavior as a problem.

The use of unescapable traumatic shock has produced the status equivalent of the learned abuse victim. The victim has no power to seek help or to escape. Her belief that she is at fault leads to her belief that she does not deserve help. These beliefs in turn reinforce low self-esteem. The perpetrator then is able to rationalize the need to control the "crazy" behavior of the partner. The victim may be able to function in a job but her emotional dependency results in feeling unworthy, unlovable, incompetent, passive and hopeless.³⁴

THE MALE PARTNER

Assailants most often do not view their behavior as a problem. Bierer cites a case example which gives a motivation for beating a wife by a man who was furious as she was the only female who had ever "pinned" him to a commitment.³⁵ Gayford pictures these men as having low frustration tolerances.³⁶ These men lose control, they punch and kick their wives. Their wives in turn feel dependent and helpless.

One can divide these men into four groups. One group uses violence and they have no guilt about it. They may, however, have very strong feelings of anger, fright or shame if they see their behavior exposed to others. Generally, this man is irritable, explosive, immature and impulsive. He is an action-oriented individual. He has poorly controlled aggression. He is emotionally insulated and often unable to articulate his feelings. His reaction to stress, no matter how minor, is violence. He displaces his anger at the frustrations of life to his available spouse. This displacement may partially explain his lack of recognition of the suffering of his victim. He has little anxiety about expressing his violence. The use of alcohol frequently precedes the violence. His wife is terrorized by the uncertainty of the violent events. She may be subdued and clinging. She is often described as "brainwashed."³⁷

Anxiety and guilt accompanies the recognition of the use of violence in the second group of men. These men often state they "blacked out." They may also deny their use of violence. They have dependent personalities. Their personalities are, however, mixed with compliant and aggressive traits. He is unpredict-

able. His wife is often self-effacing and clinging. She resists attempts of others to change or intervene in the situation.³⁸

The over-organized, controlled, hostile person with an arrogant-vindictive character structure characterizes the third male group. He becomes violent early in the marriage. He is preoccupied by power struggles. His use of violence is an expressive vindictiveness toward his partner. He uses both sadistic and cruel behavior. He uses criticism, silence and other forms of emotional torture to destroy the confidence of his partner. One author calls this "gaslighting," which is the presentation of a phenomenon then rejecting his partner's observation of the phenomenon by denying the existence of the phenomenon.³⁹ He appears, to authority, to be quite ingratiating. In his family he is arrogant and contemptuous. His wife is characterized by her attempts to please him. With the "gaslighting" behavior of her partner, she cannot get validation of her feelings. Her response is to believe she is wrong.⁴⁰

The fourth group of men are participant victims whose failure to communicate lead to explosive interactions. The violence makes both partners feel worse. Violence is usually a last resort. It threatens the psychological defenses of the partners. The aggression in these dependent people is reminiscent of impulsive, immature persons.⁴¹

In general, males are more "heavily socialized" to use aggression (O'Brien, 1971 & Levinger, 1966).⁴² They are more likely to be taught to be aggressive and dominant. These men are generally more sensitive to affronts to their authority. In turn, they attempt to preserve their authority and dominance through the use of force. They use violence to reaffirm male authority, which they feel has been denied.

The view that the woman is the precipitating factor in continued battering is matched by the expectation that she is the person responsible for decreasing that violence. If the violence continues, she is defined as masochistic. Understanding that she is not able to control the violence belies the belief that the battered woman deserves to be beaten.

Factors influencing wives' decisions to remain with an abusing husband include less intense severity and lower frequency of violence, childhood experience of violence and lack of power and resources.⁵⁰ These factors also influence the husbands' decisions to remain with an abusing wife. Women may remain because they feel children will be worse off if they leave. She often lacks economic resources to provide adequately for the children; she is isolated, dependent, trapped, depressed, overwhelmed by anxiety, guilt and shame. Some assume that the "victim" is prone to victimization. She *won't* get out is the myth. The truth is that she *cannot* get out. She does not have control of her life. This latter view is not invalidated by the fact that intervention to stop the cycle of chronic battering is one-sided. Some people also assume the woman can control her environment.

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Most literature assumes that the depressed, dependent woman with poor self-esteem is a natural victim. Steinmetz has investigated the issue of social isolation as the primary motivation for transition from woman to battered victim.⁵¹ Social isolation is followed by the induction of fear, excitement and anger. A previously independent woman evolves into a woman who has become extremely dependent on a brutal husband.⁵²

Fear produces hypersuggestibility and increased receptivity. These emotions are the constant companions of the battered wife. The woman who has no control over her environment has no control over the occurrence of assaults. The inability to predict which, if any, event will precipitate the abuse immobilizes the abused person. Verbal threats and abuse are added to the basic fear for survival.

Combined with this internal isolation is the battered wife's external isolation. Refusal to have his woman work, have friends or entertain visitors reinforces the lack of any potential source of social support. If she involves another person, she is often faced with accusations of unfaithfulness by a jealous, possessive, battering husband. Her perception is that she is responsible and to blame for the beatings. Her husband's perception that she needs to be chastized for her infidelities rationalizes his action and perpetuates her guilt.

Battering may be a natural consequence of the woman's historically powerless position in society.

The family as a source of harmony is a pervasive myth. Our methods of child rearing inculcate the idea that the use of threat and force are acceptable means of dealing with stress.

The historic legal protection of the home has condoned violence.⁵³ Thus environmental forces impinge on the battered woman's freedom to leave an abusive husband. Application processes for emergency grants cannot be initiated until the client has moved out of the home. There are multiple delays in obtaining shelters, often for months. The woman may not be capable of explaining her situation clearly or forcefully to courts and officers.

Members of a family that internalize violence as an alternative form of behavior will apply force or threat of force in extra-familial situations including local politics and international relations. The family as a source of harmony is a pervasive myth. Our methods of child rearing inculcate the idea that the use of threat and force are acceptable means of dealing with stress. Sensitivity and knowledge of the family as a social system is needed to facilitate more realistic court decisions.

In summary, the attorney who represents a person who falls into the battered woman (or man) syndrome must educate the trier of fact concerning the syndrome and the state of mind of the person who suffers from the syndrome. Only then can the trier of

fact fairly and accurately assess a client's assertion of self-defense.

APPENDIX PROPOSED JURY INSTRUCTIONS

I.

You have heard evidence that the defendant suffers from battered woman (man) syndrome. In determining if this is true, you must consider the following factors:

- a. the nature and length of her (his) relationship with the deceased (complainant),
- b. the history of physical abuse between the couple including, but not limited to previous reports to the police, physicians, counselors, family or friends,
- c. the socio-economic status of the defendant—that is, was she (he) economically independent, did she (he) have small children to care for,
- (d. the psychological assessment of her (him) by the expert(s) who testified in this case).

If you find from all of your deliberations that evidence presented shows the defendant suffered from battered woman (man) syndrome, you must consider that fact in assessing her (his) state of mind at the time of the homicide (battery).

If you find from all of your deliberations that she (he) did not so suffer then you must not consider those contentions in assessing her (his) state of mind at the time of the homicide (battery).

A person is justified in the use of force when and to the extent that she (he) reasonably believes that such conduct is necessary to defend herself (himself-another) against the imminent use of unlawful force.

However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if she (he) reasonably believes that such force is necessary to prevent imminent death or great bodily harm to (herself-himself-another) or the commission of a forcible felony.

A person who suffers from battered woman (man) syndrome may reasonably believe such force is necessary at a threshold lower than that which a person who does not so suffer would consider reasonable.

III.

You have heard evidence that the victim (complainant) in this cause has committed certain violent acts against the defendant. If, after your consideration of the evidence, you believe this to be true, you must consider that fact in assessing whether defendant was in fear at the time of the homicide (battery).

FOOTNOTES

¹ Straus, M.A., Gelles, R.J., Steinmetz, S.K. *Behind Closed Doors: Violence in American Families* (New York: Doubleday 1979)

² Dobash, R.E., Dobash, R.P., *Wives: The Appropriate Victims of Marital Violence*, 2 VICTIMOLOGY 426, 442 (1977-78).

³ *Ibid.*

⁴ Straus, M. *Wife Beating: How Common and Why*, 2 VICTIMOLOGY 443, 458 (1977-78).

⁵ Byles, J.A., *Violence, Alcohol Problems and Other Problems in Disintegrating Families*, 39 JOURNAL OF STUDIES ON ALCOHOL 553, 559 (1978).

⁶ Levinger, G. *Sources of Marital Dissatisfaction Among Applicants for Divorce*, 35 AMERICAN JOURNAL OF ORTHOPSYCHIATRY 556, 598 (1966).

⁷ Levinger, G. *Sources of Marital Dissatisfaction Among Applicants for Divorce*, 26 AMERICAN JOURNAL OF ORTHOPSYCHIATRY 803, 807 (1966).

⁸ Obrien, J.E. *Violence in Divorce Prone Families*, 33 JOURNAL OF MARRIAGE AND THE FAMILY 692, 698 (1971).

⁹ Gerson, L.W. *Alcohol Related Acts of Violence: Who Was Drinking And Where the Acts Have Occurred*, 39 JOURNAL OF STUDIES ON ALCOHOL 1294, 96 (1978).

¹⁰ *Ibid.*

¹¹ 421 U.S. 684 (1975).

¹² 432 U.S. 233 (1977).

¹³ Smith v. State 277 S.E.2d 679 (May 13, 1981).

¹⁴ *Id.* at p. 683. See also *Ibn-Tamas v. U.S.* 407 A.2d 626 (D.C. 1979) and *Morrison v. Bradley* 622 P.2d 81.

¹⁵ 559 P.2d 548 (1977).

¹⁶ *Id.* at pp. 239, 240.

¹⁷ 191 A.2d 45 (1963).

¹⁸ *Id.* at p. 56.

¹⁹ *Id.* at p. 48.

²⁰ 366 A.2d 981 (1976).

²¹ *Id.* at pp. 984-985.

²² *People v. Shipp*, 52 Ill.App.3d 470, 367 N.E.2d 966 (1977).

²³ *Id.* at p. 971.

²⁴ Straus, M.A. *Leveling Civility and Violence*, 36 JOURNAL OF MARRIAGE AND THE FAMILY 13, 29 (1973).

²⁵ Dvoskin, J. *Legal Alternatives for Battered Women Who Kill Their Abusers*, 6 BULLETIN OF AAPL 335, 354 (1978).

²⁶ Wolfgang, M.E. *Patterns In Criminal Homicide*. (New York: Wiley 1958).

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Start, R. and McEvoy, J., *Middle Class Violence*, PSYCHOLOGY TODAY, November 1970.

³¹ Goode, W.J., *Force and Violence in the Family*, 33 JOURNAL OF MARRIAGE AND THE FAMILY 624, 636 (1979).

³² Shainess, N. "Psychological Aspects of Wife Battering," in: Roy, M. (ed) *Battered Women: A Psychosociolog-*

ical Study of Domestic Violence. (New York: Van Nostrand Reinhold 1977).

33 Ibid.

34 Walker, L.E. *Battered Women and Learned Helplessness*, 2 VICTIMOLOGY 525, 534 (1977-78).

35 Bierer, J. *Lovemaking-An Act of Murder: The "Golem" Syndrome*, 22 INTERNATIONAL JOURNAL OF SOCIETY PSYCHIATRY 197, 199 (1976).

36 Gayford, J.J., *Wife Battering: A Preliminary Survey of 100 Cases*, 1 BRITISH MEDICAL JOURNAL 194, 197 (1975).

37 Symonds, M. *Psychodynamics of Violence Prone Marriages*, 30 AMERICAN JOURNAL OF PSYCHOANALYSIS 213, 222 (1978).

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 Op. cit.

43 Roy, M. *Battered Women: A Psychosociological Study of Domestic Violence* (New York: Van Nostrand Reinhold 1977).

44 Joblin, M., *Battered Wives: A Survey*, 47 SOCIAL SERVICE QUARTERLY 142, 149 (1974).

45 Carlson, B.E. *Battered Women and Their Assailants*, 22 SOCIAL WORK 455, 65 (1975).

46 Hilberman, E., Munson, I. *Sixty Battered Women*, 2 VICTIMOLOGY 460, 470 (1977-78).

47 Petro, J.A., Quann, P.L. and Graham, W.P. *Wife Abuse: The Diagnosis and Its Implications*, 270 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 240, 241 (1978).

48 Gelles, R.J. *The Violent Home: A Study of Physical Aggression Between Husbands and Wives* (Beverly Hills: Sage Publications 1974).

49 Parnas, R.I. *The Police Response To The Domestic Disturbance*, 914 WIS. L. REV. 914, 960 (1967).

50 Gelles, R.J. *Abused Wives: Why Do They Stay*, 38 JOURNAL OF MARRIAGE AND THE FAMILY 659, 668 (1976).

51 Steinmetz, S. *The Cycle of Violence: Assertive, Aggressive and Abusive Family Interaction* (New York: Praeger 1977).

52 Ibid.

53 Field, M.H., Field, H.F. *Marital Violence and the Criminal Process: Neither Justice or Peace*, 47 SOCIAL SERVICE REVIEW 221, 240 (1973).



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