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Does expert evidence pertaining to battered woman syndrome influence juror verdicts?

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**Does expert evidence pertaining to Battered Woman Syndrome influence juror
verdicts?**

by

Clare E. Shannon, BA (Hons).

**A Thesis Submitted in Partial Fulfilment of the
Requirements for the Award of
Master of Psychology (Forensic).**

**At the Faculty of Community Services, Education and Social Sciences,
Edith Cowan University, Joondalup.**

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Abstract

This research investigated whether expert evidence pertaining to Battered Woman Syndrome (BWS) influences juror verdicts. The legal requirements of self defence (imminence, proportionality and an attempt to retreat from the situation) are generally not met in cases where battered women kill their partner: The killings do not immediately follow the attack, the force used is not proportionate to the attack, and there is often no previous attempt to retreat from the situation. BWS expert psychological evidence has been admitted by Australian Courts to provide jurors with an alternative perspective for determining whether a woman's actions were reasonable in the given context. It is unclear whether the admission of such "myth-dispelling" evidence is necessary. A written summary of a trial transcript was given to 160 participants (80 male and 80 female), each of whom contributed to one of sixteen conditions in a 2x4x2 design. The critical manipulations were as follows: the presence / absence of a defence / prosecution expert; whether or not the defendant had previously left the relationship; and sex of participant. The findings provide some suggestion that expert evidence about BWS does not significantly impact on verdict, although its effect may differ for males and females.

Declaration

I certify that this thesis does not, to the best of my knowledge and belief:

- (i) incorporate without acknowledgement any material previously submitted for a degree or diploma in any institution of higher education;**
- (ii) contain any material previously published or written by another person except where due reference is made in the text; or**
- (iii) contain any defamatory material.**

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Chapter 1 - Introduction

This research investigated the impact and utility of expert evidence pertaining to Battered Woman Syndrome (BWS). In recent years within the Australian legal system, evidence about BWS has been introduced in cases where female victims of domestic violence kill their abusive partner, and subsequently seek to rely on defences of duress, provocation and self defence. Such evidence has significant implications for each of these defences, and this thesis addressed some of the relevant issues pertaining to the use of BWS within a self-defence defence. It is argued that Australian courts and legislatures may need to reconsider the construction of the self-defence defence to incorporate subjective notions of “reasonableness” and thus avoid the need for extrinsic evidence such as BWS.

1.1 Expert Syndrome evidence in Australia

Syndrome evidence (eg. Rape Trauma, Abused Child, Repressed Memory, Premenstrual, and Battered Woman Syndrome (BWS)) began to emerge in Australian Courts in the 1990s (Freckelton & Selby, 1993-). The evidence, generally given by psychologists or psychiatrists, attempts to isolate a particular sub-group of the population and categorise their behaviour differently from the rest of the population based on the psychological nature of the relationship existing between the defendant and the victim. The evidence is introduced to provide juries with an alternative perspective upon which to base their final decision. Freckelton (1995) suggests that such syndromes

“psychopathologise conduct which is the product of stress”, and that “the inferences sought to be drawn may be ideologically alluring but in the case of the syndromes are likely to be scientifically dubious” (at 30).

There is so much weight placed on such evidence, and it is so widely used in Australia that it is now viewed as a specialisation in its own right (Freckelton & Selby, 1996). However, Australian courts are beginning to question the appropriateness of such myth-dispelling evidence. In two recent cases (*J* (1994) 75 A Crim R 522 and *F* (1995) 83 A Crim R 502), the Appeal Courts questioned the appropriateness, utility and role of counter-intuitive evidence.

In *F*, a Paediatrician was called to give evidence that a child was suffering from Accommodation Syndrome (a psychological theory which purports to explain delay and inconsistencies of complaint by abused children). The expert gave evidence of her medical findings on examining the complainant as well as answering questions about the literature relating to the Syndrome. The Court of Appeal ruled that her evidence was inadmissible for the following reasons: (i) the expert was a Paediatrician, and therefore not an expert in the field of psychology and psychiatry (which is where the concept of the syndrome originated); (ii) the “syndrome” was not associated with scientifically rigorous analysis and had a non-diagnostic nature; and (iii) such syndrome evidence would only be admissible when it was specifically related to the complainant and not presented in general terms.

In the case of *J*, it was held that expert opinion relating to BWS was inadmissible “because it fell outside the principles governing the admissibility

of expert opinion evidence” (at 522). This decision was based on the individual expert in the case lacking sufficient expertise and failing to adequately explain the basis and concepts surrounding BWS, rather than an outright rejection of BWS evidence per se.

It is submitted in this paper that BWS has been admitted as evidence in Australian courts without adequate scrutiny of its scientific status as a psychological phenomenon.

1.2 Battered Woman Syndrome

Battered woman syndrome is a concept developed by Walker (1979, 1984, 1989, 1995) to describe the nature and extent of the cycle of violence suffered by battered women. According to Walker, there are three distinct phases of violence associated with a “battering cycle”: (1) tension building, which includes verbal and minor physical abuse with the woman attempting to avoid more severe abuse by placating the batterer; (2) the acute battering incident, where the tension of phase one culminates in a severe beating; and (3) loving contrition, where the batterer is remorseful and apologetic in assuring the woman that the battering incident will not be repeated (Walker (1979, 1989, 1995).

A battered woman is defined as one who has been through this battering cycle at least twice (Walker, 1984). The time span of each phase may vary between relationships, but as the cycle is repeated the level of violence escalates. However, at the end of each cycle, the woman is again convinced that the battering will cease so she remains with the batterer (Walker, 1979,

1989). Although Walker advocated that this cycle of violence occurs in all battered woman cases, she is careful to concede that each individual case has its own set of characteristics, and that “there is no model for domestic violence” (Walker 1995, 33).

Although Walker originally premised BWS as being exclusively applicable to *battered women*, in more recent times it has been used in cases where victims of child abuse have killed their abusers (Walker, 1995). Thus the key criteria of BWS, helplessness, is not confined to women in abusive relationships, and may be extended to other categories of abusive relationships which embrace wider issues (for example, care of the elderly or very young, relationships between parents and children, homosexual relationships). Although the syndrome by necessity focusses on the particular helpless relationship, this pattern of responding is not suggested by Walker to exclusively be the domain of battered women.

Walker (1989) argued that women who are repeatedly exposed to the painful stimuli of battering (over which they have no control) respond with the “classic” learned helplessness symptoms described by Seligman (1975). Seligman argued that dogs given aversive shocks “learned” that responding was futile and therefore stopped. The dogs were subject to maltreatment and given a simple means of escape from their physical confines. However the dogs did not escape - Seligman inferred that they were conditioned by the infliction of punishment and lost their capacity to avoid this punishment. This theory was also extrapolated to, and tested with, human participants. However, as discussed below, no parallel can validly be drawn between the situation of

actual physical entrapment with which the dogs were faced, and that of a battered woman.

According to Walker, on the basis of this theory of learned helplessness, battered women become passive, unmotivated to put up a fight, and come to believe that nothing they do will stop the violence occurring. The women are unable to make rational decisions for themselves, they become passive and dependent, and typically can't reach the decision to leave the relationship.

There are other aspects of battered women which Walker (1989) identifies as further maintaining factors in such abusive relationships. These include lack of financial resources to enable the woman to leave, obstacles put up by family and friends (many of whom may not believe the woman and even if they do, will not support her), and having nowhere to go (besides the small number of shelters which are only temporary). Furthermore, many batterers threaten their wives with harm to their children or themselves if they do attempt to leave the relationship - such a threat to the woman's safety is often greater if she actually leaves the relationship.

1.3 Prevalence of domestic violence in Australia

The Australian Bureau of Statistics (ABS) conducted a survey of 6300 women in 1996 in an attempt to measure the prevalence of physical and sexual violence experienced by women. Violence was defined as "any incident involving the occurrence, attempt or threat of either physical or sexual assault"

(ABS, 1996, p.3). This definition was based on actions which would be considered criminal offences.

Tarrant (1990) suggests that the prevalence, seriousness and duration of domestic violence is impossible to accurately ascertain, and that official figures are only under-estimates - conventional wisdom suggests this is probably true. Although these data were based on the *self-report* of women, and the definition of "violence" utilised was very broad, the reported prevalence in the ABS records is the only official record of domestic violence available, and serves as the only available guide to the actual prevalence in the community. Overall, the data suggest that the prevalence of violence against women in Australia is quite high.

The survey found that 23% of women who have ever been married or in a defacto relationship experienced violence by a partner at some time during the relationship. Furthermore, half of the women who experienced violence by a partner reported that more than one incident had occurred. Thus it seems from these figures that approximately one quarter of the population of women in Australia who have been in a relationship experience violence by their partner at some stage in the relationship. However, the frequency with which the violence occurred is not detailed in the statistics.

According to the ABS statistics, three percent of women with a current partner experienced violence by their partner in the previous 12 month period. Eight percent of these women reported at least one incident of violence at some time during the current relationship.

Twelve percent of women who experienced violence by a current male partner said they currently lived in fear as a result of that violence, while 60% of women who had experienced violence in previous relationships reported living in fear while in that relationship.

Half of the women (51%) who experienced violence by a previous partner finally ended their relationship due to the violence they experienced or threats against their children. Furthermore, 48% of women who experienced violence by a previous partner separated from their previous partner and returned before finally separating.

1.4 The law of self defence in Australia and Western Australia

Self defence is a total defence to murder - a successful plea provides justification and acquittal of the accused. Provocation on the other hand is a qualified defence, providing only an excuse and reduced culpability. It has been argued that both provocation and self defence fail to recognise the power dynamics involved in domestic violence by distorting the women's experience of domestic violence (Tarrant, 1990).

Bradfield (1998) examined fifty four Australian cases between 1979 and 1997 in which a woman was charged with murdering her violent partner. This revealed a preference for the women to use the provocation defence, and infrequent success when self defence was used. Bradfield argued that this greater reliance on provocation means more women who kill abusive partners may be convicted of manslaughter rather than being acquitted through self defence.

The leading Australian common law authority on self defence is that of *R v Zecevic* ((1986) 25 ACrimR 14), a High Court decision which ruled that the defence must prove the following to justify a defence of self-defence:

- i) the accused acted in self defence;
- ii) the accused believed the force used in the particular situation was reasonable; and
- iii) that an ordinary person would believe the force used in the particular situation was reasonable.

The decision of *Zecevic* means that a jury must consider the reasonableness of the belief of the accused - the jury must be satisfied both objectively and subjectively of the reasonableness of this belief. Thus whether the *accused* believed the force used in the particular situation was reasonable (the subjective test), is an additional requirement to whether an *ordinary* person would believe the force used in the particular situation was reasonable (the objective test). Expert evidence pertaining to BWS has been introduced to address both the objective and subjective aspects of "reasonableness".

The jurisdiction of Western Australia is a code jurisdiction which has similar laws relating to self defence. Sections 248 and 249 are the main self defence provisions in the *Criminal Code Act 1913* (WA), and require that an *unlawful assault* be the trigger for the violence used. Self defence can be pleaded when the force results in death, provided that the force was not intended or likely to cause death or Grievous Bodily Harm (GBH) (*Prow* (1989) 42 A Crim R 343 and *Ellem* (1994) A Crim R 370). Furthermore, the force must be reasonably necessary to repel the attack, and the accused must

have reasonably believed that death / GBH would result from the attack on them, and reasonably believed that there was no other way to avoid the injuries than the force they used (*Marwey* (1977) 18 ALR 77; and *Muratovic* [1967] QdR 15). The test of reasonableness is an objective test (*Lawrie* [1986] 2 QdR 502).

Traditional requirements of self defence (imminent harm, obligation to retreat, and proportional response) are no longer requirements per se, but the absence of them will most likely impair a defendant's claim of self defence (Hubble, 1997). Feminist writers argue that although requirements of imminence, retreat and proportionality have been removed from legal doctrine, they are still used (Brown, 1998; Eastel, 1992a; Sheehy, Stubbs & Tolmie 1992; Stubbs, 1992; Tarrant, 1990). Self defence is thus said to be framed in terms of equally-weighted strangers facing immediate violence (as in the typical bar room brawl), and it is argued that the current law is not adequate to account for the cumulative, debilitating and belittling effects of domestic violence against women in the home (Brown, 1998).

Many cases where women have killed their abusive husbands often appear not to meet the three aspects of self defence mentioned above (imminence, proportionality and retreat): The killings generally do not immediately follow the attack, the force used is not proportionate to the attack, and there is often no previous attempt to retreat from the situation (as noted by Sheehy, Stubbs & Tolmie, 1992; Stubbs, 1991; Stubbs and Tolmie, 1994; Tarrant, 1990).

It has been argued that a model of self defence focusing on imminence is inappropriate for women killing in response to regular abuse, as the killing often occurs independently of a specific threatening incident (Tarrant, 1990). However, others have suggested that BWS should in fact be used to broaden the concept of “reasonableness” in self defence cases (Eastel, 1992b).

In cases where the accused’s conduct occurs well after or indeed before an anticipated attack, it is hard to argue that the fear of death or belief in the necessity of actions were reasonable (Hubble, 1997; Tarrant, 1990). Self defence thus has difficulty in dealing with situations where there is no actual imminent confrontation or threat of future harm (Stubbs & Tolmie, 1994). Furthermore many women who kill their abusive partner have often not left the relationship in the past. Such women would not satisfy the “retreat” aspect of self defence.

A battered woman’s response is seen as *unreasonable* from an objective standard, as jurors cannot imagine what it is to be the “reasonable” person in *that particular* situation (Sheehy, Stubbs & Tolmie, 1992; Stubbs, 1991; Tarrant, 1990). Thus the reasonableness requirement is a major hurdle in bringing the action of many women who kill their partner within the rubric of self defence. In viewing the history of abuse from the battered woman’s perspective (through evidence of BWS), notions of reasonableness can be ascertained and it is then possible to see her actions as constituting reasonable self-preservation. Thus BWS provides courts with the means for broadening the interpretation of what is reasonable with respect to self defence.

However there is a danger in expanding the reasonableness requirements of self defence to incorporate BWS. Although it is a positive thing to provide such women with a means of utilising self-defence, expansion of the legal requirements to meet a small proportion of the population would be unwise. Any reform to the law of self defence should be over-arching and encompass all potential defendants. As Hubble (1997) warns:

Self defence is becoming somewhat overburdened by expectations that are unlikely to bear fruit. While it is vital that battered women's claims to self-defence are given proper recognition and equal treatment by the law, it is also important to recognise the doctrinal limitations which are inherent in that defence, and the difficulties that may result from any attempt to exceed those limitations ... we must not be hostile to the reality that battered women kill for a variety of reasons, not all of which can be readily analysed under the rubric of self-defence" (p. 116)

1.5 Expert evidence pertaining to BWS

BWS is not a defence in itself, but expert evidence pertaining to it is used to assist Courts in the defences of self-defence, provocation and duress in criminal cases where a woman has allegedly killed her abusive partner. Such evidence is used to bolster the case of either the defence or the prosecution (although in Australia the evidence appears to have only been used by the defence to date) by providing jurors with information to assist their understanding of the situation in which the battered woman finds herself.

The justification for the use of such evidence is to provide jurors with an alternative framework within which to objectively assess the reasonableness of the woman's actions. The assumption is that jurors would not be able to objectively assess such a situation without the expert psychological evidence. The effect of such evidence in cases where battered wives kill their husbands is unclear, and that is the focus of this research.

The number of Australian cases in which expert evidence pertaining to Battered Woman Syndrome has been admitted is steadily growing. The following is a brief survey of the relevant cases to date.

BWS was first recognised and admitted as expert evidence in *Runjanjic and Kortinnen* (1991) 53 ACrimR 362. This case involved two women who were both involved with one man in a violent, sexual relationship. The accused women were convicted of false imprisonment and causing grievous bodily harm to a third party. They appealed on the basis of duress, by claiming their will was overborne due to the threat of violence by their partner and that he forced them to detain the third party (another woman). The High Court of Australia allowed the appeal against conviction on the basis that BWS evidence should have been allowed on the issue of whether the accuseds' will was overborne, and whether "women of reasonable firmness" in the same position would have succumbed to the pressure to commit these offences. King CJ held that there was a sufficient body of knowledge to qualify BWS as expert opinion, and that the evidence was outside the ordinary experience of jurors and should be allowed as such. With respect, it seems that the expert evidence was introduced by the Chief Justice without adequate scientific

scrutiny of the syndrome itself. Once accepted as expert evidence by the High Court in this case, BWS has subsequently been used in other Australian courts.

One of the same accused, *Kontinnen* (unreported) SA Sup Crt Mar 1992 no. BC9200466, later killed the abusive man and pleaded self defence. However, the killing occurred while the victim was asleep, so did not meet the immediacy aspect of self defence. Expert evidence was introduced to show that the defendant was suffering from BWS, could not leave the relationship and believed her life was in imminent danger.

In *Hickey* (unreported) NSW Sup Court April 1992, the defendant killed her partner when he threw her off the bed and head-butted her. The killing occurred during an assault, so was easily identifiable as self defence. The expert evidence was used as part of the self-defence defence to explain why the defendant had no other choice but to kill her abuser, and that the accused believed the stabbing was necessary for her self-defence.

In *Woolsey* (unreported) NSW Sup Court Aug 1993 no 70035, the defendant was assaulted by her partner, went to the kitchen, got a knife and stabbed him to death. The trial Judge held that the defendant suffered from BWS and allowed the defendant to plead to manslaughter rather than murder. BWS was used "not in the context of the law relating to self defence, but rather in the context ... of a powerful mitigating circumstance" (per Newman J).

In *Chhay* (1994) 72 A Crim R 1, the Appeal court ruled that the trial judge should have instructed the jury that a history of battering could produce a loss of self control necessary to find a defendant guilty of manslaughter.

In *Raby* (unreported) Vic Sup Court Oct 1994, the defendant was charged with murder. Expert evidence was introduced to show that she suffered from BWS. She was found Not Guilty of murder but Guilty of manslaughter on the grounds of provocation - the jury apparently could not see her act of stabbing the victim while he was drunk (and hours after he last assaulted her) as constituting self defence.

The defendant in *Osland* (unreported) Vic Crt of Crim App Aug 1997 no 279 was convicted of murdering her violent husband, although her son did the physical act of killing. An appeal against this conviction to the Victorian Court of Criminal Appeal was not allowed. However, the defendant in this matter was granted special leave to appeal to the High Court in February 1998 on the grounds that evidence pertaining to BWS should have been admitted as part of the defences of provocation or self-defence. This appeal was unsuccessful.

So it can be seen that the cases in which BWS has been introduced in Australian courts vary in the circumstances of the accused and her abusive relationship. However, in none of the cases has there been a comprehensive analysis of the scientific validity, or overall utility of such evidence.

1.6 A legal and psychological critique of Battered Woman Syndrome

The utility of BWS evidence has received much attention in the legal and psychological literature. Many authors have expounded the dangers inherent in rigid classification and medicalisation within the legal context, and the possibility of it reinforcing pre-existing biases of jurors (DeWitt,

Richardson & Warner, 1997; Eastel, 1992b; Freckelton, 1992, 1994, 1995, 1997; Freckelton & Selby, 1996; Sheehy et al, 1992; Stubbs, 1992).

It has been argued that the battered woman's situation is medicalised through the imposition of a syndrome, and a framework of characteristics to which she must conform (Brown, 1998; Freckelton 1992, 1994; Schneider, 1986). It has been suggested that this may in fact preclude many women who do not fit the symptomatology of the syndrome from relying on the defence (Rogers, 1996; Sheehy et al, 1992; Stubbs, 1992; Tarrant, 1990). Furthermore, some women in fact may choose not to rely on BWS, as they do not want to be represented as a victim (Schneider, 1992).

Freckelton (1992) has argued that the danger arises when the medical term "syndrome" is adopted and the therapeutic tool is used for purposes for which it is not suited; he suggests that evidence pertaining to common reactions exhibited in certain situations is acceptable, but admitting the evidence as a syndrome should not be permitted. He argues that the expert testimony should be introduced to educate jurors about a battered woman's situation rather than providing a diagnosis as such (Freckelton, 1994).

The scientific validity of Walker's research has been questioned in the legal and psychological literature. DeWitt et al (1997) argue that expert evidence which is not well-founded in science should not be admitted, as it has the possibility of (incorrectly) reinforcing pre-existing biases of jurors.

Faigman (1986) presents a methodological critique of Walker's cycle of violence and concludes that the data does not support the conclusions drawn. Faigman notes that there was no control group of non-battered women

to which to compare the battered woman group. Furthermore, the data which formed the basis of BWS was derived from self-reports of volunteers, which is a notoriously unreliable method of collecting data. Leader-Elliott (1993) raises similar arguments and also questions the scientific basis for Walker's conclusions.

Some feminist writers criticise the syndrome's emphasis on the psychological state of the offender rather than the actual circumstances of domestic violence in which she lived (Beri, 1997; Rogers, 1996; Stubbs & Tolmie, 1994), as well as the voice of the expert being preferred over that of the women herself (Brown, 1998; Sheehy et al, 1992). However these arguments seems to beg the question: Feminist writers seem to be advocating for the women to be viewed from a *different* perspective, which is exactly what BWS provides. Furthermore, a trial situation necessitates an examination of *all* the circumstances of the case, which includes the physical situation as well as the mental state of the defendant. Indeed, the law of self defence requires consideration of both the objective and subjective elements.

Another criticism raised of BWS is the applicability of the learned helplessness paradigm to battered women (Faigman, 1996). It is submitted here that Walker has inappropriately extrapolated Seligman's paradigm. It is not possible to draw a parallel between the dogs and battered women: the dogs in Seligman's research were physically trapped in their cages, and had no opportunity to escape. Battered women are not usually prevented from leaving their home (although some are), and so are not physically trapped, although

they may be psychologically trapped. It is circular reasoning to say that the dogs were also psychologically trapped, as this cannot be disproved.

Furthermore, there is a logical inconsistency in applying the learned helplessness paradigm to women who subsequently kill their partner (Brown, 1998; Schuller & Vidmar 1992; Sheehy et al, 1992; Stubbs & Tolmie, 1994). It seems counter-intuitive for a so-labeled “helpless” person to take the very proactive action of taking a life. As Leader-Elliott (1993) argues, “The concept of learned helplessness ... has the paradoxical effect of transforming an assertive act of self defence into a manifestation of weakness and incapacity” (411).

The Supreme Court Judge who delivered the landmark Canadian decision of *Lavallee v R* (1990, 55 CCC (3d) 97), which endorsed the use of BWS in self-defence cases, referred to the pervasiveness of myths and stereotypes which are likely to affect juries sitting on BWS cases. Madam Justice Wilson said: “The definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical “reasonable man””. (*Lavallee* at 114). This case and subsequent legal changes in Canada and America have been hailed by feminists as a victory for women facing such charges (Martinson, MacCrimmon, Grants & Boyle, 1991).

However, it is still unclear as to how (or if) these biases actually operate - whether in a positive or negative manner for battered women who kill. Furthermore, the effect of BWS (which purportedly dispels myths) has not been investigated in depth.

Some authors have argued that biased generalisations and unsubstantiated misconceptions held by the lay public about wife abuse are potential *obstacles* to a woman's claim of self defence in BWS cases (Beri, 1997; Freckelton, 1994; Schneider, 1986; Schopp, Sturgis & Sullivan, 1994; Sheehy et al, 1992; Stubbs, 1992; Stubbs & Tolmie, 1994; Tarrant, 1990), while others claim the bias is more favourable to the accused woman and that from a feminist perspective, *should* be so favourable (Eastel 1992a, 1998; Gillespie, 1989).

Another argument raised in the feminist literature is that although the courts may recognise and acknowledge the horrible situation of women in violent relationships, they continue to deny that the woman had *reasonable* grounds for her belief that killing was necessary. Stubbs and Tolmie (1994) argue that the use of BWS in Australian courts is troublesome as it has "been used to reinforce and lend medical and professional credibility to, the very stereotypes about women's passivity, masochism and responsibility for domestic violence that it was developed in order to challenge". Similar arguments are presented by Brown (1998); Martinson et al (1991); Rogers (1996); and Sheehy et al (1992). Martinson et al (1991) argue that a woman's belief is more likely to be viewed as reasonable if historical, social and gender constraints are recognised.

Sheehy et al (1992) argue that prevailing community myths and stereotypes about a woman's failure to leave the relationship, her enjoyment of the violence, her passivity and the "private" nature of domestic violence serve

to undermine notions of reasonableness. Schneider (1986) argues that BWS merely transforms the “old stereotypes into a new form” (215).

However other authors argue that the perceived bias is more favourable to the accused woman (eg. Eastel, 1992a, Gillespie, 1989). For example, O’ Donovan (1993) argued that there is an intuition held by the public that a long-term experience of being a victim of violence may justify a woman killing her batterer.

Stubbs (1992) argues against the use of BWS on the basis that it entrenches inequities that women face in the law:

It does not tackle fundamental problems of the legal system but rather re-defines and remakes women’s lives and experiences in a manner which fits them into the prevailing narrow masculine legal strictures. The battered woman syndrome is a construction which meets the law’s needs not women’s needs (at 270).

Eastel (1992b) argues that by simply setting up a framework of symptoms which women must meet, BWS presents no challenge to ongoing male violence. However, this argument lacks substance: a criminal court hearing a defence to a criminal charge is not the appropriate forum for “challenging” male violence - the expert is there to provide jurors with a greater understanding of the subjective aspects of the woman’s situation, not to advocate on behalf of her and other women in similar situations.

BWS constructs a different standard of behaviour against which a reasonable battered woman is to be judged. It is argued here that this provides Australian Courts with a means for inappropriately broadening the

interpretation of what is “reasonable” with respect to self-defence.

Furthermore, the admissibility of this type of evidence appears to have been done without any scrutiny of the scientific status of this syndrome (Faigman, 1986; Freckelton, 1992; Hubble, 1997; Leader-Elliott, 1993; Schneider 1986).

McMahon (1999) presents a compelling critique of the scientific validity and legal utility of BWS. A comprehensive review of psychological and legal literature and relevant Australian case law leads her to the conclusion that there is “some doubt as to whether expert evidence on battered woman syndrome is really necessary to disabuse members of a jury of myths and stereotypes concerning domestic violence” (p. 43). It is submitted here that there may indeed be no utility of BWS in cases where a woman kills her abusive partner.

1.7 Experimental investigation of expert evidence pertaining to BWS

The nature and influence of juror attitudes and preconceptions about domestic violence and battered women is problematical. Research in this area tends to lack scientific validity which casts some doubt on the results proffered. There is a substantial body of American and Canadian literature investigating the use of expert evidence in BWS cases. These studies have primarily focussed on the effects of expert evidence pertaining to BWS on juror verdicts. These studies have come to somewhat different conclusions about the utility of BWS. Furthermore, there does not appear to have been any systematic investigation of such issues in Australia.

The general method of exploring such issues is to present mock jurors with a transcript of a trial and require them to give a verdict as well as answering questions about influences on that verdict. The following is a brief survey of the relevant research.

In examining the nature of expert evidence, Schuller (1992) explored the impact of expert evidence on jury decision making processes by comparing three “levels” of expert evidence. Three groups of university undergraduates acted as participants. The control group received a transcript with no expert evidence, another group received a transcript with general research findings about BWS, and the third group received a transcript with evidence about BWS specific to the particular case under consideration. The aim of this research was to examine the effect of expert evidence on verdict. A moderate shift in verdicts from murder to manslaughter was reported in both expert conditions compared to the control condition. The author concluded that the presence of expert evidence led to more favourable interpretations of the battered woman’s claim to self defence. However, there was no counter expert to challenge the BWS evidence in this research and the sample was comprised of a limited student population.

A similar study by Schuller and Hastings (1996) sought to compare the effect of two forms of expert evidence on verdict, as well as examining the defendant’s prior response to the violence perpetrated against them. More Not Guilty verdicts were rendered by participants who received expert evidence about BWS or expert evidence about the “social agency” of the battered woman (in this condition, BWS was not labelled / named as such, but the

situation and difficulties which battered women may face were explained to the jury) than those participants who had not received any expert evidence. This study also varied the woman's response history (as either "active" or "passive"), but this reportedly had no effect on verdict.

An American study investigating factors which may predict verdicts in cases where battered women kill their partner, manipulated the following variables: the level of force used by the husband, the judicial instructions, and the presence / absence of expert evidence (Follingstad, Polek, Hause, Deaton, Bulger, & Conway, 1989). College students were used as participants. It was found that the first two factors influenced the verdict to a greater extent than the inclusion of expert evidence. However, eighty percent of respondents who received expert testimony considered that evidence to be influential in their verdict. It was concluded that situational factors of the abuse and personal characteristics of the battered woman were more indicative of verdict than any attitudes / biases of the mock jurors. Although the authors claimed some effect of expert testimony in the self defence scenarios, this result should be treated with caution as the facts of the case were a "typical" self defence scenario: the man coming at the woman with a weapon and the woman defending herself with lethal force. However, it is interesting to note that even with the imminence requirement being present, expert evidence still had very little effect on verdict. Thus the results are not particularly informative about "typical" battered woman cases where the retaliation is not an immediate response to an imminent threat.

Greenwald, Tomkins, Kenning and Zavodny (1990) examined the subjectiveness of juror's decisions by varying the judicial instructions while holding all facts of the case constant. Thus, mock jurors (university undergraduates) received either no self-defence instructions, "physical self defence" instructions, "psychological self-defence" instructions or a mixture of physical and psychological instructions. It was hypothesised that the participants in the two conditions involving "psychological" instructions would be more likely to acquit the defendant than those in the other two conditions. Jurors read a vignette which contained a description of the woman's situation, expert evidence and judge's instructions. There is no indication in the methodology that this vignette took the form of a trial transcript, so the generalisability of these results is questionable. The proportion of Not Guilty verdicts for each condition was as follows: 10% (control), 20% (physical), 44% (psychological), 46% (physical and psychological). It was argued that these results supported the proposal of Ewing (1987) that there is a subjective psychological aspect employed by jurors in deciding BWS self defence cases.

Finkel, Meister and Lightfoot (1991) purported to compare the objective and subjective perspective of "reasonableness" from the juror's viewpoint, by comparing three different types of self defence cases (a battered wife who kills her partner, a subway shooting and a rape victim who kills her attacker). This study used a group of university undergraduates and a non-student adult population. Variables were based on self-defence requirements: the seriousness of the harm, proportionality of force, retreat, imminence and

presence of expert evidence. A greater willingness to render Not Guilty verdicts was found for BWS cases compared to the other two. There were no gender differences and no differences found between the student and non-student groups. However these results should be treated with great caution, as it is not possible to draw any meaningful conclusions about the effect of BWS on verdicts when comparing three very different fact situations.

1.7.1 Gender differences in BWS research

Differences have been found between males and females with respect to community attitudes about domestic violence. A study by Reddy, Knowles, Mulvany, McMahon & Freckelton (1997) found differences between males and females concerning the degree of harm attributed to a woman in a domestic violence situation. Female participants felt that the woman faced a greater degree of harm than the male participants. Such preconceptions may influence juror verdicts in cases where a battered woman kills her partner. It could be hypothesised that expert evidence about BWS may have a greater impact and effect on verdict for women than men, as they may be better able to imagine themselves in the same position as the defendant.

An Australian study by Struik (1996), which compared verdicts of male and female jurors, found that female jurors were more likely to give a Not Guilty (self defence) verdict for the defendant whereas male jurors were more likely to give a Guilty (murder) or Guilty (manslaughter) verdict.

Two of the studies discussed above (in section 1.7) found the following differences in verdict between male and female participants:

- Schuller and Hastings (1996) found that males rendered more Guilty verdicts compared to females (65% compared to 48% respectively). Female respondents also perceived the woman to be in a more desperate and helpless situation than males.
- Schuller (1992) suggested that the results of her study, showing that females were more lenient in their verdicts than males, may have been partly due to the females' "greater understanding and knowledge of the battered woman's situation" (at 616).

1.7.2 Gender differences in other research

Research has been conducted investigating gender differences in verdicts in child sexual assault, rape and recovered memory cases. The findings of this body of research are equivocal. Some studies found gender differences such that male participants were more likely to find the [male] defendants Not Guilty than female participants (eg. Crowley, O'Callaghan & Ball, 1994; Bull Kovera, Levy, Borgida & Penrod, 1994; Gabora, Spanos & Joab, 1993; Clark & Nightingale, 1997; Fischer, 1991; McNamara, Vattano & Viney, 1993). However other studies in these areas found no gender differences in verdicts between male and female participants (eg. Hahn and Clayton, 1996; Nelligan, 1988; Riedel, 1993).

It is not possible to draw direct analogies between these studies and the present research, as these studies were investigating different offences to that under consideration in this research, and in each case the defendant was a male, whereas this research looked at a female defendant. However, the

inconsistency of these findings is illustrative of the difficulty in understanding, or indeed explaining the mechanisms of, or reasons for, such gender differences.

1.7.3 Shortcomings of past research

All of these studies used an undergraduate student population as their sample - such a sample is not representative of the population, and may produce unrepresentative results.

Furthermore, none of these studies examined what the outcome would be if the prosecution led with its expert evidence which disputed the BWS explanation - it is quite possible in the Australian legal system for the prosecution to call a "counter" expert in anticipation of the defence calling one. This may influence the effect of the defence expert's evidence on juror verdicts.

1.8 Purpose of the study

There does not appear to have been any Australian research which examines the effect of BWS evidence in self defence cases. The present study provides some insight by investigating the effect, if any, of expert evidence in cases where a battered woman has killed her partner. In using a general sample from the population (not simply student participants), it provides a more realistic picture of the likely effect of expert evidence pertaining to BWS. Furthermore, in introducing expert evidence from both the defence AND the prosecution, any effects of the prosecution evidence disputing the BWS

explanation can be explored. As noted by Vidmar and Schuller (1989), there is a possibility that when mock jurors are faced with conflicting opinions about BWS, they may return to their own set of values and beliefs about such situations. Indeed, Brekke and Borgida (1988) found that mock jurors in a rape trial presented with expert evidence from the prosecution countering the defence evidence on Rape Trauma Syndrome, gave similar responses to the control group, with no expert evidence.

Despite claims in the literature that battered women often do not meet the "retreat" aspect of self defence (eg. Sheehy, Stubbs & Tolmie, 1992; Stubbs, 1991; Stubbs and Tolmie, 1994; Tarrant, 1990), there does not appear to have been any investigation into the effect of this aspect on verdict. Thus, the retreat element of self defence will be varied - whether the defendant had left the relationship on previous occasions or not. This variable is included to ascertain whether a specific aspect of the woman's situation will influence verdict, and whether it will interact with the type of expert evidence proffered. This will allow for a more specific investigation of exactly which aspects of BWS do influence jurors in their decisions.

This research thus explores the mechanisms and effect of expert evidence pertaining to BWS when it is presented for either the defence or prosecution or both. The research also investigated whether public perceptions differ for a woman who has actually left the relationship on previous occasions, compared to one who has had the opportunity to leave, but has not in fact left.

Chapter 2 - Method

2.1 Design

The design of this research was a 2 x 4 x 2 factorial between participants design, in which the independent variables were sex of respondent; presence / absence of expert witness for prosecution and defence; and whether the defendant had “retreated” ie left her husband on previous occasions. There were thus eight experimental conditions. The dependent variables were verdict; type and length of sentence; and influences on verdict.

2.2 Participants

Participants were recruited by the researcher and individuals known to her. Each of these people distributed a number of booklets containing the research material to an equal number of males and females who were as different (with respect to age and occupation) from each other as possible. This was done in an effort to achieve a sample representative of the general population, and to avoid confining the results to a sample of university students.

The sample comprised 160 participants, with ten male and ten female participants in each of the eight conditions, thus making a total of 16 separate conditions. Participants ranged in age from 18 to 70 with a mean of 39 years of age. Thirty nine percent were under 30, 23% were between 30 and 45, and 38% over 45 years of age. From an education perspective, the sample was

skewed, with approximately 65% having a university education, and all participants having reached at least secondary-level schooling. This differs from the overall Australian population, of which only 40.4% have attained a post-school qualification, and 36.3% have not completed secondary school (ABS, Australian Social Trends, 1998). There were a variety of occupations represented in the sample, including trades (9 %), homemakers (12 %), students (14 %), professionals (19 %), associated professional (26%), and administrative staff (12 %).

2.3 Materials

Each participant was given a booklet containing an explanation of the project and instructions for completion of the task (Appendix A); a consent form to be signed and returned (Appendix B); a transcript of a trial (see Appendix C); and a questionnaire about the trial (see Appendix D)¹.

2.3.1 Transcript

The transcript was a shortened version of a mock trial of a fictional woman, Rosemary Forrester, who was facing a charge of murdering her husband. The content of the case was based on cases cited in the literature, but was not a reproduction of any one particular case. Evidence was presented by the defendant that she had been physically, emotionally and sexually abused by her husband for twelve years, and that she stabbed him five times after a 12 hour abusive incident.

All transcripts in the eight conditions were the same with respect to most of the facts of the case. The length of the transcript ranged from 11 to 16 A4 pages (single-spaced), depending on the experimental condition. Each transcript contained the following: (i) opening statements by the prosecution and defence lawyers, in which they outlined their case to the jury; (ii) evidence from a forensic pathologist, detailing the fatal injuries and other internal injuries of the victim (and cross examination); (iii) evidence from the police officer who attended the scene, and conducted the Record of Interview with the defendant; (iv) evidence from the defendant about her relationship with the victim (and cross-examination); (v) evidence from a medical records officer regarding the defendant's past admissions to hospital; (vi) closing statements from both lawyers in which they summarised the main arguments of their case; and (vii) the judges instructions to the jury, including an explanation of the elements of murder and manslaughter, a summary of the expert's evidence, and the legal requirements for a verdict of not guilty by reason of self defence.

2.3.1.1 Expert

The critical manipulation in this study was the presence or absence of expert evidence on Battered Woman Syndrome for both the prosecution and the defence. Thus there were four levels of expert evidence - none, defence only, prosecution only and both (where both a defence and a prosecution expert gave evidence).

¹ the Both experts, Retreat condition has been included in the Appendix, and the reader can envisage the Defence only and prosecution only conditions on the basis of this sample

The defence forensic psychologist gave evidence describing the characteristics of Battered Woman Syndrome and that in his opinion, the defendant exhibited these characteristics, in that she did not have the capacity to make decisions, she was very passive and dependent, had low self esteem and feelings of shame about her situation. This expert opinion was based on interviews which the psychologist had with the defendant following the incident

The prosecution expert gave evidence that Battered Woman Syndrome had been proposed, and briefly described the common characteristics which have been purported to signify the syndrome. However, this psychologist told the court there was no empirical support for the proposed syndrome, and it was nothing more than a collection of characteristics of a group of clients seen by one psychologist. This evidence was included as it is feasible for the prosecution to pre-empt the evidence which the defence may call.

Thus the evidence presented in the Defence condition was specifically related to the defendant, and was based on sessions between the psychologist and the defendant, whereas the prosecution expert evidence was in very general terms.

2.3.1.2 Retreat

The other variable, retreat, was such that in half of the transcripts (the *Retreat* condition), the defendant had left her husband on three previous occasions and stayed away for approximately 6 months each time, but eventually returned, believing her husband's promises that he would not abuse her again. In the other half (the *No Retreat* condition), the defendant, in exactly

the same circumstances, had never left the relationship, and when challenged by the prosecution lawyer about this, she stated she could not leave as she had no resources to survive, and her husband had threatened to find and kill her if she ever left him.

Battered Woman Syndrome was also used by the defence psychologist to provide jurors with a framework within which to explore the issue of why the defendant had or had not left the relationship on previous occasions. In the retreat condition, the forensic psychologist for the defence told the court that to leave and return was typical of the battered woman “psyche”, and consistent with such women’s belief that their husband’s promises not to hurt them again are true - this is the proposed loving contrition phase of the cycle of violence.

In the no retreat condition, the defence psychologist told the jury that the defendant did not have the ability to make decisions for herself, and that learned helplessness had caused her to feel trapped in the relationship. Thus the syndrome is able to provide reasons for behaviour in two very different situations. The prosecution expert did not refer to the retreat aspect of the case.

2.3.2 Questionnaire

The questionnaires in the booklets contained the following questions:

- demographic details (sex, age, education, occupation, marital status);
- any prior jury experience;
- verdict for the case (choice of *Guilty of murder* / *Guilty of manslaughter* / *Not Guilty*);

- the type of sentence they would impose (choice of *none (let the defendant go free)* / *Good Behaviour Bond (released on entering a bond to be of good behaviour for a set amount of time)* / *Community based work* / *Suspended prison sentence (not served unless conditions outlined by the Court are breached)* / *Prison sentence (to be served immediately)* / *Don't know*);
- the length of sentence they would impose (interval scale ranging from 1 to 20 + years) - this was included to determine the degree of punitiveness of those participants who rendered a Guilty verdict and said a prison sentence was the most appropriate punishment for the defendant;
- questions about the influence of specific aspects of the trial (such as the extent to which BWS applied to the defendant, the degree to which the defendant contributed to the abuse); and
- a section for general comments.

2.4 Procedure

Participants were instructed to read the transcript and complete the questionnaire. They were asked not to re-read any aspects of the trial and to complete the task in one sitting. The booklet was then put into a sealed envelope and returned to the distributor, who then returned the completed questionnaires to the researcher.

Chapter 3 - Results and Discussion

3.1 Verdict

Participants had a choice of three categories of verdict: Guilty of murder, Guilty of manslaughter, or Not Guilty. The frequency of responses for each of these is shown in Table 1 as a function of gender of participant. This response pattern is statistically significant: $X^2 = 12.44$ ($df = 2$), $p < .01$.

Table 1. Frequency distribution of verdict

Gender	Not Guilty	Guilty (Manslaughter)	Guilty (Murder)	Total
Male	43	30	7	80
Female	64	13	3	80
Total	107	43	10	160

Only 6% of participants (10 out of 160) found the defendant Guilty of murder. Comparisons on the basis of such a small proportion would be meaningless, so it is necessary to collapse the three categories into two. It is more logical to combine the Guilty (manslaughter) and Guilty (murder) categories together, as all participants rendering these verdicts are attributing the requisite blame and intent to the accused. This can be distinguished from a Not guilty verdict where the participant is clearly attributing no liability on the defendant for the alleged crime.

When the categories are collapsed in this way, it can be seen from Table 1 that approximately two thirds of participants (67%, 107 out of 160)

found the defendant in this scenario Not Guilty of murder ($X^2 = 10.03$ (d/f 1), $p < .01$). It is thus apparent that the participants reading this scenario generally did not construe the defendant's actions as an offence.

The reasons for the high acquittal rate are unclear, and could be attributed to many variables. A greater understanding of this result is revealed by the discussion below of the effects of gender, retreat and presence of expert evidence. The qualitative data (based on questions which participants were asked about influences on their verdict) were somewhat inconsistent with the quantitative findings; the reported influences were generally not reflected in the verdicts rendered.

3.1.1 Certainty about verdict

Participants rated the degree of certainty with which they reached their verdict on a scale of 1 - 7 (where 1 = not at all certain and 7 = completely certain). It is interesting to note that those who rendered a verdict of Not Guilty were far more certain about that decision than those who rendered a verdict of Guilty (murder or manslaughter): 53% of those rendering a Not Guilty verdict gave a rating of "completely certain" (a certainty rating of 7) with respect to their decision, while only 28% of the Guilty group gave that rating ($X^2 = 14.71$, $p < .001$).

Table 2. Frequency distribution of certainty ratings about verdict

Verdict / Certainty rating	Not Guilty	Guilty (Manslaughter)	Guilty (Murder)
Rating = 1-5			
Male	16	15	1
Female	2	6	1
Rating = 6			
Male	12	8	1
Female	20	4	2
Rating = 7			
Male	15	7	5
Female	42	3	0
Total	107	43	10

Furthermore, females on the whole were more certain than males: 56% of females gave a rating of “completely certain” (a certainty rating of 7) while only 34% of males gave such a rating ($X^2 = 17.93, p < .001$). It is also interesting to note that within the Not Guilty group, females were more certain of their decision than were males ($X^2 = 22.4, p < .001$), but there were no gender differences with respect to certainty in the Guilty (murder / manslaughter) group.

3.1.2 Type of sentence imposed and punitiveness

Only 33% of participants (53 out of 160) rendered a Guilty (manslaughter or murder) verdict. The seriousness which these participants

attached to the defendant's actions is indicated by the type of sentence they felt appropriate - 46 participants responded to this question, as shown in Table 3 as a function of gender.

Table 3. Type of sentence as a function of sex of respondent and verdict rendered

Verdict	Guilty (Murder)		Guilty (Manslaughter)		
Type of sentence	Male	Female	Male	Female	Total
none	0	0	1	1	2
good behaviour bond	0	0	3	2	5
community based work	1	0	3	0	4
prison sentence (suspended)	2	2	15	4	23
prison sentence (to be served immediately)	4	1	3	4	12
Total	7	3	25	11	46

Of these 46 participants, 76% (35 out of 46) felt that some form of imprisonment was the most appropriate sentence to be imposed, indicating the seriousness with which the offence was judged. However, only 34% of those participants (12 out of 35) indicated that a prison sentence should be served immediately; while the remaining 66% (33 out of 35) felt that a suspended

prison sentence was appropriate. The relatively high proportion of suspended prison sentences may be a reflection of the need to punish with a reservation that this was a one-off situation which would not recur.

It is also interesting to note that there were no gender differences in the type of sentence imposed: 75% (24 out of 32) of males who rendered a Guilty (manslaughter or murder) verdict indicated that a prison sentence was appropriate, while 79% (11 out of 14) of females imposed such a sentence. ($X^2 = 0.015$, $p > .05$).

A closer examination of Table 3 reveals findings contrary to what may be expected. The prison sentences were not imposed only by those participants who found the defendant guilty of murder: Only one of the five females who would have sent the defendant to prison actually found her guilty of murder; however, a far greater proportion of men who found the defendant guilty of manslaughter would have ordered a suspended prison sentence (15 out of 25) than one to be served immediately (3 out of 25).

Only sixteen of the 38 participants who imposed a prison sentence (suspended or immediate) indicated the length of sentence they felt to be appropriate: the length imposed ranged from 1 to 21 years, with a mean of 7 years and a median of 5 years. This is a relatively lenient prison sentence for murder, and suggests that those who indicated the appropriate length of sentence were not very punitive; this too may be reflective of the need for punishment / general deterrence while recognising that it was probably a one-off situation unlikely to recur.

3.2 Gender differences

As can be seen in Table 1, there were sex differences in the overall number of Not Guilty verdicts rendered. Females overall rendered more Not Guilty verdicts than males (64 versus 43): $X^2 = 10.03$, $p < .01$.

The finding of a higher acquittal rate for women than men is consistent with those of Schuller (1992); Schuller and Hastings (1996); and Struik (1996). It would seem that in this sample, males and females came to view a case in which a battered woman has killed her partner from different perspectives. This supports the findings of Reddy et al (1997) concerning differential attributions between men and women about domestic violence.

The mechanisms of these differences are unclear, particularly in light of the equivocal findings in the psychological literature regarding gender differences in verdicts in child sexual assault, rape and recovered memory cases. However, they may be analogous with those studies which found that male participants were more likely to find a male defendant Not Guilty in such cases than female participants (eg. Crowley, O'Callaghan & Ball, 1994; Bull Kovera, Levy, Borgida & Penrod, 1994; Gabora, Spanos & Joab, 1993; Clark & Nightingale, 1997; Fischer, 1991; McNamara, Vattano & Viney, 1993).

3.3 Expert differences

The next question to consider is whether there were overall differences across the four levels of expert evidence. Table 4 shows that there were no statistically significant differences in the number of Not Guilty verdicts

rendered across the four expert conditions ($X^2 = 4.37, p > .05$), although there is a trend of more Not Guilty verdicts when there was only a defence expert ($X^2 = 2.99, p > .05$). These findings are contrary to those of Schuller (1992) and Schuller and Hastings (1996) which found a lesser number of Guilty verdicts for those participants receiving expert evidence than those not receiving such evidence.

Table 4. Verdicts rendered by Expert

Expert	Verdict		
	Not Guilty	Guilty	Total
None	25	15	40
Defence only	32	8	40
Prosecution only	26	14	40
Both experts	24	16	40
Total	107	53	160

3.3.1 Degree of reliance on expert

The qualitative data about the degree of reliance placed on the expert evidence by participants in this study serves to further explain the quantitative finding. Overall, 70% of participants gave a rating of 1-4 on the 7-point scale (where 1 = did not rely at all and 7 = relied completely) with respect to their

reliance on the expert evidence. Thus participants in general did not place much reliance on the expert evidence.

There were no gender differences with respect to reliance on the expert evidence, however those males who gave a Not Guilty verdict relied more on the expert than did those who gave a Guilty verdict ($X^2 = 13.75, p < .001$). It may be that the males who gave a Guilty verdict relied more on their pre-existing beliefs about the situation, and were not swayed by the expert evidence.

There was a significant difference in the degree of reliance placed on the expert between the defence only and prosecution only conditions - those in the defence only condition relied more on the expert than did those in the prosecution condition ($X^2 = 12.58, p < .001$). This may be because the defence expert in the scenario had actually seen the defendant and was presenting evidence favourable to her plight, whereas the prosecution expert merely canvassed and refuted the validity of BWS in general terms.

3.3.2 Influence of "Battered Woman Syndrome"

There were no gender difference or differences based on the expert condition with respect to participants' belief that BWS is a psychological condition - the majority of participants (58%, 93 out of 160) gave a rating of 5-7 (ie thought it was a psychological condition).

There were similar findings with respect to participants' belief that BWS applied to the defendant - the majority of participants (61%, 98 out of

160) believed it did apply to her (ie. gave a rating of 5 - 7), and there were no gender / expert condition differences.

So in general terms, participants seemed to adhere to the existence of BWS and its applicability to the defendant, but the expert evidence presenting this information was generally not an influential factor in reaching their verdict.

3.3.3 Concurrence of present findings with literature on BWS

The absence of any overall effect of expert evidence pertaining to BWS on juror verdicts is an important finding with significant implications. Despite much theoretical discussion about the utility and appropriateness of BWS evidence, the results of this study suggest that there may not actually be any utility of the evidence, an argument also proposed by McMahon (1999).

Contrary to arguments that BWS is needed to dispel negative preconceptions about battered women (eg. Beri, 1997; Gillespie, 1989; Schneider, 1986; Schopp et al, 1994; Sheehy et al, 1992; Tarrant, 1990), the results of this study suggest that any preconceptions that may have been held by jurors were so strong that they were not altered by the introduction of expert evidence pertaining to BWS. Alternatively, it may be that the high acquittal rate is indicative of *positive* biases acting in the woman's favour (as suggested by O'Donovan, 1993).

Furthermore, the fears that BWS would reinforce gendered stereotypes of passivity and helplessness (Brown, 1998; Stubbs & Tolmie, 1994), and that BWS is needed to enable jurors to see the woman's behaviour as reasonable

(Sheehy et al, 1992), were not borne out by these results. It is not possible to ascertain if jurors did view the woman in a stereotypical manner, but what is important is that the introduction of any expert did not alter these views.

One possible explanation for finding no effect of expert evidence is that participants came to this task with their own strongly held views and opinions about domestic violence and battered women, and were not receptive to new / contrary information provided in the form of expert evidence.

Another possible explanation is that the comprehensive coverage of the facts contained in the transcript scenarios may have lessened the impact of the expert evidence. The participants may have felt they did not need to rely on it, and that they were better able to assess this evidence in light of the facts which they already knew - the expert evidence may not have added anything further to their picture.

The absence of any difference between the no expert and counter expert conditions may be explained by Schuller and Hasting's (1989) hypothesis that when faced with conflicting opinions about BWS, jurors may return to their own set of beliefs about the situation.

3.4 Retreat differences

The third aspect to consider is whether there were differences in verdicts rendered for the Retreat variable. As can be seen in Table 5, there were no overall differences in the number of Not Guilty verdicts in the Retreat condition compared to the No Retreat condition (54 versus 53) - $X^2 = 0.028$, $p > .05$. So whether the woman had previously left the deceased and returned to

him, or always remained with him, had no effect on the overall number of Not Guilty judgments.

Table 5. Verdicts rendered by Retreat

Retreat	Verdict		Total
	Not Guilty	Guilty	
Retreat	54	26	80
No Retreat	53	27	80
Total	107	53	160

This is a curious finding, as differences would be expected between these contrasting situations: It would be expected that if jurors were strictly applying the law of self defence, there would be differentiation in verdicts between a situation where a woman has left the relationship on previous occasions, and one where she had not.

Martinson (1991) suggested that evidence about women's historical and social constraints should be introduced through BWS for consideration by the jury, as this would influence verdict. However the findings of this study suggest that such factors may have no bearing on verdict.

The qualitative data regarding the retreat aspect for males is curious in light of no differences being found in the quantitative data: Males in the Retreat condition felt the defendant could have left the relationship permanently, whereas males in the No Retreat condition did not think that the

defendant could leave the relationship. This difference was statistically significant ($X^2 = 7.47$, $p < .01$). This does not support the quantitative finding that whether the woman had left the relationship on previous occasions made no difference to verdict. However, in light of this reported influence on verdict, it seems that whether the defendant had left the relationship was at least a factor in the decision of male participants, if only a minor consideration.

3.5 Interaction of Gender, Retreat and Expert

When the three independent variables of gender, retreat and expert are considered together, it can be seen in Table 6 that there are no statistically significant overall differences ($X^2 = 6.46$, $d/f = 9$, $p > .05$). Furthermore, taking males and females separately does not reveal any differences within either of the sex groupings ($X^2 = 5.89$ and $X^2 = 0.54$ respectively, $d/f = 3$, $p > .05$).

However, it is interesting to note that 7 of the 10 males who gave a verdict of Guilty (Murder) were not exposed to any expert evidence (ie were in the no expert condition). It may be that the mere introduction of expert evidence for men reduced their tendency to find the defendant guilty of murder, and these men opted for the "middle ground" of a Guilty Manslaughter verdict.

Table 6. Number of Not Guilty verdicts by expert, gender and retreat

Gender / Retreat	Expert			
	None	Defence only	Prosecution only	Both
Male				
Retreat	3	9	5	7
No Retreat	7	4	6	2
Female				
Retreat	7	9	8	6
No retreat	8	10	7	9

3.6 Experimental Limitations

These findings must be limited to the facts of this particular case and the details of the offence and the sample. As noted in Chapter Two (above), this sample did not match population demographics, particularly in relation to education, and the ability to generalise from these results may thus be somewhat limited. Furthermore, the nature of the task was not akin to a real-life jury trial: witnesses were not able to be assessed *in vivo*; and *one* participant was making a decision about a *hypothetical* case on their own, whereas an actual jury of twelve people considering a real murder case may involve different dynamics. Another aspect to be noted is the motivation required of the participants in this study - reading the transcript was a lengthy process requiring a high degree of concentration and motivation. Although this may be seen as a limitation, the actual trial situation would require far longer

periods of concentration and greater motivation on the part of a juror to make the correct decision on the basis of all the evidence.

However, the detailed evidence provided in the transcripts are more akin to the real-life courtroom situation than many other studies in this area which simply provide jurors with a short paragraph describing a scene and asking for a decision.

The manipulation may not have been strong enough to affect the participants' formulated viewpoints: the sample may have been too small to detect any differences; and it must be remembered that the data in this study is categorical. Both of these factors reduce the power of the experiment - it is not possible to conclusively say whether there was actually no clear effect of expert evidence or whether the effect is simply not strong enough in the community to be detected through experimental manipulation. More research utilising larger samples is needed in this important area to further explore the influence of syndrome evidence on juror verdicts.

Chapter 4 - Conclusion

This research dispels many of the myths surrounding the utility and impact of battered woman syndrome. The conclusion which can be drawn from the present results is that expert evidence pertaining to BWS did not influence juror verdicts, and that women in this sample were more likely to acquit the accused woman than men, irrespective of the level of expert evidence or the particular circumstances of the case.

The practical implications of this finding are significant. As discussed above, the admissibility of BWS in Australian courts appears to have been done without adequate scientific scrutiny of its validity. The current findings have ramifications for the further use of expert evidence pertaining to BWS. If it does not have any actual effect on verdict, it would seem to be counterproductive for the courts to continue endorsing its admissibility.

The expansion of the notion of reasonableness with respect to self defence should be considered in light of these results. Although it is desirable for the notion of reasonableness to be broadened, BWS is not the appropriate vehicle by which to achieve this. Indeed, the feminist argument that BWS provides a legitimate means for broadening juror's interpretation of what is reasonable has not been borne out by the current results - there was no effect found for the expert evidence.

It is submitted here that the courts need to recognise the limitations of self defence *in general*, not merely with respect to battered women who kill their partners. The notion of reasonableness should be a broad concept which

does not require extrinsic evidence to enable jurors to comprehend the situation. The law of self defence should be reformulated to incorporate dynamics of ongoing emotional relationships when considering the reasonableness of a defendant's actions. Imminent harm should be expanded to include past and future threatened harm, and the law should also account for the lesser strength of some parties and recognise that such people often cannot leave the relationship.

The broader implications of expanding the notion of reasonableness must be considered and treated with caution: it is not desirable for the law to succumb to the complete individualisation of a crime or an offence, but a compromise can and should be reached which allows greater flexibility in the law of self defence.

References

- Australian Bureau of Statistics. (1986). Women's Safety Australia 1996. Canberra: Author.
- Beri, S. (1997). Justice for women who kill: A new wave? Australian Feminist Law Journal, 8, 113-124.
- Bradfield, R. (1998). Is near enough good enough? Why isn't self-defence appropriate for the battered woman? Psychiatry, Psychology and Law, 5, 71-85.
- Brekke, N., & Borgida, E. (1988). Expert psychological testimony in rape trial: A social-cognitive analysis. Journal of Personality and Social Psychology, 55, 372-386.
- Brown, H. (1998). "Reforming self-defence: Achieving justice for women who kill" in Release Heather Osland Campaign. (Melbourne, 1998).
- Bull Kovera, M., Levy, R.J., Borgida, E. & Penrod, S.D. (1994). Expert Testimony in Child Sexual Abuse Cases: Effects of Expert Evidence Type and Cross Examination. Law and Human Behavior, 18(6), 653-674.
- Clark, H.L. and Nunez Nightingale, N. (1997), When Jurors Consider Recovered Memory cases: Effects of Victim and Juror Gender. Journal of Offender Rehabilitation, 25(3/4), 87-104.
- Crowley, M.J., O'Callaghan, M.G. & Ball P.J. (1994). The Juridical Impact of Psychological Expert Testimony in a Simulated Child Sexual Abuse Trial. Law and Human Behavior, 18(1), 89-105.
- DeWitt, J.S., Richardson, J.T. and Warner, L.G. (1997). Novel scientific evidence and controversial cases: A social psychological examination. Law and Psychology Review, 21, 1-27.
- Eastel, P. (1992a). Battered Woman Syndrome. What is 'reasonable'? Alternative Law Journal, 17 (5), 220-223.
- Eastel, P. (1992b). BWS misunderstood? Current Issues in Criminal Justice, 356-359.
- Eastel, P. (1998). Women who kill a violent partner. In Release Heather Osland Campaign. (Melbourne).

- Faigman, D. (1986). The battered woman syndrome and self defence: A legal and empirical dissent. Virginia Law Review, 72, 619-647.
- Finkel, N.J., Meister, K.H. & Lightfoot, D.M. (1991). The self-defence defence and community sentiment. Law and Human Behavior, 15, 585-602.
- Fischer, G. (1991). Cognitive predictors of Not-Guilty verdicts in a simulated acquaintance rape trial. Psychological Reports, 68, 1199-1206.
- Follingstad, D.R., Polek, D.S., Hause, E.S., Deaton, L.H., Bulger, M.W. & Conway, Z.D. (1989). Factors predicting verdicts in cases where battered women kill their husbands. Law and Human Behavior, 13, 253-269.
- Freckelton, I. (1992). Syndrome Evidence. 13th Annual Congress of the Australian and New Zealand Association of Psychiatry, Psychology and Law, 151-167.
- Freckelton, I. (1994). When Plight makes right - The Forensic Abuse Syndrome. Criminal Law Journal, 18, 29-49.
- Freckelton, I. (1995). The Challenge of Junk Psychiatry, Psychology and Science. In H. Selby (ed) Tomorrow's Law. Sydney: The Federation Press.
- Freckelton, I. (1996). Cross-examination. Australian Lawyer, 31 (7), 20-23
- Freckelton, I. (1997). Judicial pedagogy and expert evidence on victim's responses to trauma. Psychiatry, Psychology and Law, 4 (1), 79-86.
- Freckelton, I. and Selby, H. (eds) (1993-). Expert Evidence. Sydney: Law Book Co.
- Freckelton, I. And Selby, H. (1996). Experts and their Evidence (Feature Forward). Australian Lawyer, 31 (7), 19.
- Gabora, N.J, Spanos, N.P, & Joab, A. (1993). The Effects of Complainant Age and Expert Psychological Testimony in a Simulated Child Sexual Abuse Trial. Law and Human Behavior, 17(1), 103-119.
- Gillespie, C.K. (1989). Justifiable Homicide. Battered Women, Self defence, and the Law. (Colombus: Ohio State Uni Press)

- Greenwald, J.P., Tomkins, A. J., Kenning, M., and Zavodny, B. A. (1990). Psychological Self-defense jury instructions: Influence on verdicts for battered women defendants. Behavioural Sciences and the Law, 8, 171-180.
- Hahn, P.W. and Clayton, S.D. (1996). The Effects of Attorney Presentation Style, Attorney Gender, and Juror Gender on Juror Decisions. Law and Human Behavior, 20(5), 533-554.
- Hubble, G. (1997). Feminism and the Battered Woman: The limits of self-defence in the context of domestic violence. Current Issues in Criminal Justice, 9 (2), 113-124.
- Leader-Elliott, I. (1993). Battered but not beaten: Women who kill in self defence. Sydney Law Review, 15, 403-460.
- Martinson, D., MacCrimmon, M., Grants, I., Boyle, C. (1991). A forum on *Levallee v R*: Women and Self-defence. U.B.C. Law Review, 23-68.
- McMahon, M. (1999). Battered Women and Bad Science: The Limited Utility of Battered Woman Syndrome. Psychiatry, Psychology and Law, 6(1), 23-49.
- McNamara, K., Vattano, F. & Viney, W. (1993). Verdict, sentencing, and certainty as a function of sex of juror and amount of evidence in a simulated rape trial. Psychological Reports, 72, 575-583.
- Nelligan, P.J. (1988). The effects of the gender of jurors on sexual assault verdicts. Sociology and Social Research, 72(4), 249-251.
- O'Donovan, K. (1993). Law's Knowledge: The Judge, the expert, the battered woman and her syndrome. Journal of Law and Society, 20(4), 427-437.
- Reddy, P., Knowles, A., Mulvany, J., McMahon, M., & Freckelton, I. (1997). Attributions about domestic violence: A study of community attitudes. Psychology, Psychiatry and Law, 4(2), 125-146.
- Riedel, R.G. (1993). Effects of pretrial publicity on male and female jurors and judges in a mock rape trial. Psychological Reports, 73, 819-832.
- Rogers, N. (1996). To Save her life: Gender, justice and battered women who kill. In: K Greenwood (ed). The thing she loves: Why women kill. Sydney: Allen & Unwin.

- Schneider, E.M. (1986). Describing and changing: women's self-defence work and the problem of expert testimony on battering. Women's Rights Law Reporter, 9, 195-222.
- Schneider, E. (1992). Particularity and generality: Challenges of feminist theory and practice in work on woman-abuse. 67 New York University Law Review, 520.
- Schopp, R.F., Sturgis, B.J. & Sullivan, M. (1994). BWS, expert testimony and the distinction between justification and excuse. University of Illinois Law Review, 45-113.
- Schuller, R. A. (1992). The impact of Battered Woman Syndrome evidence on jury decision processes. Law and Human Behavior, 16, 597-620.
- Schuller, R. A. and Hastings, P. A. (1996). Trials of battered women who kill: The impact of alternative forms of expert evidence. Law and Human Behavior, 20(2), 167-187.
- Schuller, R.A. and Vidmar, N. (1992). Battered Woman Syndrome Evidence in the Courtroom. A review of the Literature. Law and Human Behavior, 16, 273-291.
- Seligman, M. E. P. (1975). Helplessness: On Depression, Development and Death. San Francisco: W.H. Freeman.
- Sheehy, E.A., Stubbs, J. & Tolmie, J. (1992). Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations. Criminal Law Journal, 16, 369-394.
- Struik, M. (1996). Juror Attitudes to Male and Female Spousal Homicide Under Provocation. Unpublished Master's Thesis, Monash University, Victoria, Australia.
- Stubbs, J. (1992). The (un)reasonable battered woman? A response to Eastel. Current Issues in Criminal Justice, 3, 3598.
- Stubbs, J. and Tolmie, J. (1994). Battered woman syndrome in Australia: A challenge to gender bias in the law? In J Stubbs (ed) Women, male violence and the law. (Sydney: Institute of Criminology Monograph Series No 6, 1994).
- Tarrant, S. (1990). Something is pushing them to the side of their own lives: A feminist critique of law and laws. Western Australian Law Review, 20, 573-606.

Walker, L.E. (1979). The Battered Woman. New York: Harper & Row.

Walker, L. E. (1984). The battered woman syndrome. New York: Springer.

Walker, L. E. (1989). Terrifying Love. Why Battered Women Kill and how Society responds. New York: Harper & Row.

Walker, L.E. (1995). Understanding Battered Woman Syndrome. Trial, 30-37.

Table of cases

Ellem (1994) A Crim R 370
F (1995) 83 A Crim R 502
Hickey (unreported) Supreme Court, NSW, 14 Apr 1992
J (1994) 75 A Crim R 522
Kontinnen (unreported) Supreme Court, SA, 30 March 1992
R v Lavallee (1990) 55 CCC (3d) 97
Lawrie [1986] 2 QdR 502
Marvey (1977) 18 ALR 77
Muratovic [1967] QdR 15
Muy Ky Chhay (1994) 72 A Crim R 1
Osland (unreported) Supreme Court, Victoria, 1 August 1997
Prow (1989) 42 A Crim R 343
Zecevic v DPP (1987) 162 CLR 645
R v Raby (unreported) Supreme Court, Victoria, 22 November 1994
Runjanjic and Kontinnen 1991 53 A Crim R 362
R v Woolsey (unreported) Supreme Court, NSW, August 1993

Table of Statutes

Criminal Code Act 1913 (WA)

Appendix

Appendix A. Explanatory letter for participants

Juror verdicts in cases where a woman kills her partner: Explanation of Research Project

Dear Participant,

Thankyou for agreeing to participate in this research. This study is being conducted as part of my Master of Psychology (Forensic) degree at Edith Cowan University. The research aims to investigate factors that influence a juror in cases where a female defendant has killed her spouse.

Before you begin, I would ask that you carefully read the following information. If you fully understand it and then agree to participate, please sign the consent form which follows this letter prior to beginning the task. This is a requirement which my university ethics committee insists on for all research conducted, and it simply ensures that you agree to participate in the research of your own free will. When the questionnaire is returned to me, this form will be removed from it and kept separately to ensure your confidentiality. The only person besides me who will see the form and your responses is my supervisor, Professor Don Thomson.

The time required to complete the task varies from individual to individual, but on average it should take approximately 50 minutes. It must be completed while you are alone and in one sitting, so please ensure you are able to complete the task uninterrupted. Please do not discuss it with anyone until you have completed the task.

There are instructions for you to follow throughout the booklet. You will have to read a summary of a murder trial in which a woman was charged with killing her spouse. Once you have read this, please put it to one side and do not refer to it again. You then return a verdict on the defendant, answer some questions about the case and provide some details about yourself.

Some people may find parts of this material disturbing. If you think you may be upset by reading such a case please feel free to decline to participate. Your participation is entirely voluntary, and if you do agree to participate you are free to withdraw at any stage or to decline to complete any part of the material.

All information that you provide will remain confidential and no individual will be identifiable from the reported data. You will not be asked for your name on the questionnaire but some personal details on age, gender, education and employment or area of study will be required so that meaningful conclusions can be drawn from the research.

When reading through the booklet, please read each page in the order it is presented - please DO NOT skip over any pages or jump ahead in your reading of the information. It is presented in the following order to ensure consistency between respondents. Once you have completed the booklet, please return only the questionnaire and consent form to your distributor in the enclosed envelope. The material will then be returned to me in the envelope.

Should you have any concerns or unresolved questions regarding this project, or if you are interested in the results, please feel free to contact me or my University supervisor, Professor Don Thomson, at the above address. If you would prefer to include any questions and a return address in the space provided at the end of your booklet, I will be happy to answer such questions for you.

Thankyou for your participation.

Yours sincerely,

Clare Shannon.

Appendix B. Consent form for participants

Juror verdicts in cases where a woman kills her partner

Consent form, Masters in Psychology (Forensic)

I, (Name)

agree to take part in the research being conducted by Clare Shannon as part requirement for a Master's thesis at Edith Cowan University. I have read the explanatory statement which explains this project in sufficient detail and I fully understand all that is required of me. I understand that this research is being conducted in accordance with guidelines set down by the Edith Cowan University *Ethics Committee for the conduct of ethical research involving human participants*. I also understand that I am free to withdraw from the study at any time and that all information I supply will be treated as strictly confidential.

Signed

Date

THANK YOU FOR YOUR PARTICIPATION.

Appendix C. Sample transcript: Both experts, Retreat condition

The Queen v Forrester

All names and identifying features in this transcript have been changed to ensure privacy.

Presiding Judge: Her Honour Samantha Wade.

Prosecution lawyer: Mr Jones

Defence lawyer: Mrs Smith

Introduction

Rosemary Forrester was charged with the murder of her husband Gerald and pleaded not guilty to the charge. The following is a transcript of her Trial. Please read this in one sitting - reading and answering the questions will take approximately one hour. Please read this through without returning to previous pages once they have been read. While reading, try to imagine that you are a juror who has to decide the verdict in this case. Once you have read the summary, you will be asked to give a verdict and answer some questions.

Prosecution lawyer's opening address

MR JONES: Ladies and gentlemen of the jury, it is my intention to prove to you, beyond any reasonable doubt, that Rosemary Forrester murdered her husband. It will be shown that she stabbed to death her husband of fifteen years while in the middle of an argument and physical fight. You will hear evidence from a Pathologist that Mrs Forrester inflicted five stab wounds to her husband's chest and abdomen which led to his death. Senior Constable Franck of the Police Service will give evidence that Mrs Forrester admitted to her that she had killed her husband and that she knew that her actions at the time were wrong. Evidence will be led from a forensic psychologist that although there may be psychological explanations offered for why Mrs Forrester acted in this way, such explanations have not been adequately substantiated by scientific evidence. We will ask you to conclude from this that Mrs Forrester acted in a rational manner when she took the life of her husband. The issue of provocation or self defence may be raised by the defence, but we will show that Rosemary Forrester intentionally murdered her husband. The totality of the evidence will demonstrate to you beyond reasonable doubt that the crime of murder has been committed.

HER HONOUR: Mr Jones would you call your first witness.

MR JONES: Yes Your Honour, I call Dr William Thomas.

Dr Thomas, forensic pathologist

MR JONES: *Is your full name William Edward Thomas?* Yes.
What are your qualifications? I have a medical degree from the University of Wastown, I completed the pathology training program at the Soutwas hospital, I am a member of the Fellowship of the Royal College of Pathologists, and have been working as a forensic pathologist for thirty years. *And you are a forensic pathologist with the Western Australian Forensic Laboratories?* Yes.

How long have you been in that position? I have held that position for fifteen years.

Did you perform an autopsy on Gerald Smith on the 8th November 1996? Yes.

What was the time of death? Mr Forrester died at 12.17 am on the 7th November 1996.

Could you describe the fatal injuries which you found? There were five main injuries, stab wounds, to the body - three on the front of the chest and two on the front of the abdomen.

And what was the cause of death in your opinion? The stab wound which caused death was one to the chest area which penetrated ten centimetres through the heart and aorta. An injury such as this would cause a rapid death.

MR JONES: That completes my examination of the witness, Your Honour.

HER HONOUR: Would you like to cross-examine this witness Mrs Smith?

MRS SMITH: Yes Your Honour. *Dr Thomas, did you find any internal damage on Mr Forrester's autopsy?* Yes, Mr Forrester was found to have extensive liver damage which was probably caused by excessive alcohol consumption.

Did you conduct tests on samples of blood taken from the body? Yes, the blood alcohol level present in Mr Forrester when he was killed was 0.15.

I have no further questions for this witness Your Honour.

HER HONOUR: You are excused Dr Thomas. Would you call your next witness Mr Jones.

MR JONES: I call Senior Constable Franck.

Senior Constable Franck

MR JONES: *Would you please state your full name and rank* Sarah Louise Franck, I am a senior constable of police stationed at Warrenvale. *On the 7th November 1996 at 12.30 am did you receive a phone-call at the police station?* Yes I received a call from a woman, whom I now know to be Rosemary Forrester. She told me that she had just killed her husband. *Did you subsequently attend at the address given by this woman?* Yes, I attended at 25 Sorrow Way, Warrenvale at 12.43 a.m. with my partner, Senior Constable Simmons.

Would you please tell the Court what happened when you arrived at this address My partner and I entered the house through the back door and walked into the kitchen. There we found cutlery and crockery strewn all over the kitchen, and Mrs Forrester was huddled next to the body of her deceased husband weeping quietly.

What did you say to Mrs Forrester? I asked her what her name was, and she replied "Rosemary Forrester". I asked her if she was the woman who had rung the Warrenvale police station and reported a killing, and she replied "Yes". I then asked her what had happened. She said "I killed him We had a fight and I stabbed him". I asked her where the knife was and she pointed to a spot on the floor just next to the body. I asked her if that was the knife she used to kill her husband and she replied "Yes".

And what happened after that? Mrs Forrester was read her rights and taken to the police station where a Record of Interview was conducted. The interview commenced at 2.15 am and lasted half an hour. The interview had to be stopped on three occasions because Mrs Forrester became distressed and requested a break.

MR JONES: I would now like to play the tape of the Record of Interview to the Court Your Honour.

HER HONOUR: Yes, certainly Mr Jones.

Record of Interview:

S/C FRANCK: This is a tape-recorded interview between Senior Constable Franck, and Rosemary Forrester. The date is 8 November 1996, and the time is 2.15 am.

What is your full name? Rosemary Forrester.

The first thing I must do is read you your rights You have the right to legal representation. You do not have to say anything, but anything you do say can be used as evidence in a Court of Law. Do you understand these rights?

Yes.

Do you wish to exercise any of these rights? No.

What is your date of birth? 9th November 1960.

Where do you live? 25 Sorrow Way, Warrenvale.

Did you live there with your husband Gerald Forrester? Yes.

Can you please tell me what happened yesterday, the 7th November 1996? Gerald had been drinking all afternoon, following a bad gambling loss this morning. Soon after he came home, he started yelling at me, abusing me, calling me awful names, and blaming me for his losses this morning. He told me that if I didn't prepare a perfect meal for dinner, then he would kill me

..... I was so scared, but went to the kitchen to start preparing dinner. He came in after a few minutes and started hitting me over the head with his fists. While he was doing this he was calling me an ugly mole and a stupid slut He kept calling me these names while we were eating dinner *And what happened after dinner?* After dinner he locked me in a cupboard. I don't know how long I was in there He opened the door at one stage, and urinated on me. He said that I deserved this because I hadn't put dessert forks on the table when I set it for dinner..... I must have been in the cupboard for hours, but I don't know exactly how long When he took me out of there, he kept yelling at me and calling me a whore - I was crying and begging him to stop it, but he wouldn't, and anything I said just seemed to make him angrier..... He pushed me around the house, and into the bathroom, where he tied my wrists to the bath taps, and forced me to have sex with him - I didn't want to do this, and it was very painful He just kept laughing the whole time, and called me a fat ugly mole When he had finished he ordered me to get into the shower I had my shower and then went into the bedroom to put some clothes on I don't know where he was at the time. I tried to get out the window of our bedroom Just as I got the fly-screen off though, he came in I was so frightened and kept begging him not to hurt me But he didn't listen

And what happened then? He dragged me by the hair into the kitchen and told me to start making him some dessert he stayed in the kitchen the whole time, tormenting me with nasty names After a while he started waving a knife at me, and kept doing this the whole time I was making dessert this probably lasted about half an hour or more He was waving the knife in my face, saying that my dessert had better be perfect or I'd be dead He went to go to the toilet, and I grabbed another knife from the drawer and held it under the bench so that he couldn't see it When he came back into the kitchen, he came up behind me and put his knife under my throat He said something about taking me to the bathroom and giving me what I deserved I just thrust my knife up and behind me it must have got him, because he staggered backwards I went after him and just kept stabbing him until he stopped moving I don't know why I did it - I was just so scared that he would kill me I didn't mean to kill him.

And what did you do next? I don't know how long I was on the floor for, but after some time I rang the police and told them what had happened the next thing I remember is that the police arrived and I was brought here to the station for this interview.

Why did you kill your husband? I didn't mean to kill him I just wanted to stop him hurting me Because I was scared that if I didn't stop him somehow, then he would kill me.

Had your husband behaved in a similar way towards you on previous occasions? Yes, Gerald had been abusing me for the last twelve years.

Are you aware that what you did was wrong? Yes.

S/C FRANCK: *Interview concluded at 2.43 a.m.*

MR JONES: That concludes Senior Constable Franck's evidence in chief Your Honour.

HER HONOUR: Thank you Mr Jones. Mrs Smith, do you have any questions for this witness?

MRS SMITH: No thank-you Your Honour.

HER HONOUR: Very well, you are excused Senior Constable Franck. Would you call your next witness Mr Jones.

MR JONES: I call Rebecca Hathaway.

Ms Hathaway, forensic psychologist

MR JONES: *Would you please state your full name and qualifications to the Court* Rebecca Sally Hathaway. I have a Masters degree in forensic psychology from the University of Soundler, and I have been working as a forensic psychologist for twelve years.

Do you specialise in any particular client group?..... Yes, I have structured my practice so that I specialise in dealing with women who have been involved in abusive relationships.

Are you aware of the psychological condition called "Battered Woman syndrome"?..... Yes.

Are you able to tell the Court about this syndrome? Battered Woman Syndrome has been proposed by an American psychologist, Dr Lenore Walker. Dr Walker claims that the syndrome describes the symptoms and common characteristics of many women who are subjected to abuse from their husband / partner. Dr Walker proposes that a woman with Battered Woman Syndrome is subjected to three stages of violence. Stage one (Tension building), where there is minor physical abuse; stage two (the acute battering incident), which is a climax of stage one and results in a severe battering; and stage three (loving contrition), where the batterer is remorseful and sorry and promises that the abuse will never happen again. Dr Walker proposes that each time the cycle is repeated, the violence becomes more severe. The definition of a battered woman is one who has been through the cycle of violence at least twice.

Is there another aspect to the syndrome? Yes, Dr Walker also proposes that women who have this syndrome suffer from something known as learned helplessness, whereby they become unable to make decisions for themselves, they lose all confidence in their ability to cope with every day life, and they are unable to leave the abusive relationship In effect they have learnt to be helpless as a result of the physical and psychological abuse they have received from their partner.

In your opinion, do the characteristics proposed by Dr Walker constitute a syndrome? No.

Why do you say this? Dr Walker is wrong to claim that a common set of characteristics seen in a number of clients constitutes a psychological syndrome which can predict and explain certain behaviours on the part of all women abused by their partner.

Do you accept this as a valid scientific phenomenon?..... No. Dr Walker's methodology was not experimentally sound She simply interviewed a number of women who had been abused, and, based on this qualitative data, proposed a syndrome without having it subjected to scientific scrutiny. To my

knowledge there has been no research addressing the proposed theory which could justify it being called a "syndrome"..... There are dangers inherent in rigidly classifying any person's reaction to a given situation, which is what Dr Walker's Battered Woman Syndrome runs the risk of doing.

Could you please state to the Court why you think Dr Walker's explanations for Battered Woman Syndrome are untenable? I have three reasons.

Firstly, there has not been any research, to my knowledge, which has tested the claims she makes. Until this has been done, it should not, and cannot be accepted that all battered women behave this way one cannot conclude that all women who have been abused will exhibit these characteristics.

Secondly, even if Dr Walker's observations could be replicated, it would still have to be established that all women subjected to the abuse cycle who have killed their husbands also exhibit the characteristics of Battered Woman Syndrome. Thirdly, it would need to be established why it is that many women who exhibit the characteristics of Battered Woman Syndrome, being the cycle of violence, the learned helplessness and perceived inability to escape, and the perception that the only way to escape from the situation is to kill their partner, do NOT in fact kill their husbands.

Have you heard of any psychological explanations being advanced for particular behavioural of battered women? Yes. I have heard Battered Woman Syndrome being offered as an explanation for women killing their partners. But I have a problem with this.

Do you see a connection between a woman who suffers from Battered Woman Syndrome killing her husband? No. I see a large inconsistency in someone who suffers from learned helplessness turning around and becoming a cold blooded killer.

MR JONES: I have no further questions your Honour.

HER HONOUR: Mrs Smith do you wish to cross-examine this witness?

MRS SMITH: Thank you Your Honour..... *Ms Hathaway, in your experience, do many of the women who have been abused by their partners exhibit common characteristics?* Yes.

In your opinion as a scientist, what constitutes a syndrome? A syndrome is regarded as being identifiable when a collection of symptoms occurs together so often that they provide a recognisable clinical entity.

Does not Dr Walker's Battered Woman Syndrome meet these criteria of a syndrome? She has described common characteristics in a sample of battered women. But that does not mean that this small sample can be used to explain the behaviour of the whole population of battered women, as Dr Walker claims.

MRS SMITH: I have no further questions Your Honour.

HER HONOUR: Thankyou Ms Hathaway, you are excused. Mr Jones, would you call your next witness please.

MR JONES: That is the end of the case for the Prosecution Your Honour.

HER HONOUR. Mrs Smith, are you going to present evidence on behalf of your client?

MRS SMITH: Yes Your Honour, if I may first open the case for the defence?

HER HONOUR: Yes, go ahead Mrs Smith.

Defence lawyer's opening address

MRS SMITH: Members of the jury, it is the responsibility of the Crown to prove beyond reasonable doubt that my client, Rosemary Forrester is guilty of murder. The defence is not obliged to present any evidence to dispute this. As stated by the learned Prosecutor, there is no argument that my client killed her husband. What is in dispute is the circumstances in which she killed him. The defence will present evidence to show you that Rosemary Forrester killed her husband in self defence, in defence of her life - she feared for her life after many years of abuse and intimidation from her husband. You will hear evidence from Rosemary Forrester about the abuse she endured throughout the fifteen years of her marriage to Gerald Forrester. You will hear from a forensic psychologist that Rosemary Forrester was suffering from "Battered Woman Syndrome", an established psychological condition. Women suffering from this have been shown to have certain characteristics which lead to behaviour that may not otherwise be understood by the ordinary person. We will show that Rosemary Forrester was in fear of her life for many years, and was acting in self defence of her life when she took that of her husband. She should be acquitted of murder.

Mrs Forrester, defendant.

MRS SMITH: *Could you please tell the court your full name* Rosemary Forrester.

And you were married to the victim, Gerald Forrester? yes.

Could you tell the Court about your marriage I married Gerald in 1982, when I was twenty five and he was twenty eight. The first two years of our marriage were the happiest years of my life Gerald was a wonderful, loving husband who was very romantic and thoughtful towards me. We were both working at the time and had big plans to buy a house and have children.

Did things change after the first two years of marriage? Yes, after the first two years of our marriage, Gerald began to verbally abuse me. He would call me an ugly mole, and accuse me of being a slut. From then on his behaviour became increasingly abusive and frightening. I was surprised when it first happened, but believed that it was just a phase that Gerald was going through, and that everything would soon be back to normal . . . I didn't know how wrong that belief was.

Could you describe some of this verbal abuse which you suffered in the first few years of your marriage to Gerald He often told me that I had grown very ugly and that I should not leave the house because people would find me too unpleasant to look at . . . He sometimes held a knife to my throat and forced me to look in a mirror and repeat statements like, "I am a worthless animal who deserves to be treated like a beast". He often called me stupid and would cuff me over the head. Occasionally he would hit me more seriously, and this would leave me with bruises. This went on for the rest of our marriage, and the physical violence became much worse as the years went by.

And can you tell the Court what happened after the first five years of your marriage? Well, it was at about this time that I was retrenched from my job. I wanted to look for another job, but Gerald told me that he didn't want me

to work.. He said that I was too stupid and that no-one would want to employ me. He said that if I did get a job he would come and tell my boss that I was a prostitute who didn't deserve "honest" work . . . So I didn't look for another job, and haven't had a job since then It was at about this time that I decided it would be better if I didn't have children, because I was afraid of what Gerald might do to them.

Could you please tell us about the physical violence which you suffered at the hands of your husband The physical violence became worse over time and was never predictable or continuous. There were periods without physical violence, but when it happened it became more severe with each episode. Gerald would go into a rage over very minor things, like having a crooked knife on the table or a small crease in his shirt. He expected me to be a slave to his every whim. I lived my life "walking on eggshells", not knowing when or how Gerald would be violent. His violence was worse when he drank, and he was drinking more than ever towards the end.

Could you please give the Court some specific examples of your husband's behaviour towards you? He often made me sit inside a small dark cupboard for hours. He said once that the reason for this was that I didn't have enough spare jars of marmalade in the cupboard. He sometimes forced me to come into the bathroom and sit on the floor while he had a bath. He would ask me questions and, if he didn't like my answers, he would splash me with water.

Did your husband ever threaten to kill you? Yes, often.

Could you give us an example of this? One day I had been out shopping, which is the only reason that Gerald ever let me leave the house without him. I was unpacking the bags in the kitchen when Gerald came in. He just stood there watching me unpack everything. Then he asked where the caviar was. We never ate caviar, so I was surprised that he asked, and said that to him. He got this look in his eye, came over and grabbed me around the neck. He said "If you ever question my authority again, I'll kill you you stupid woman".

How did this make you feel? This made me terrified. I really believed that Gerald was capable of carrying out his threats one day.

Is it fair to say that you often felt in fear of your life? Yes, I was frightened of what he would do to me every single day I was often too scared to go to sleep before he had I would lie in bed listening to every movement he made, and wouldn't let myself sleep until I heard him snoring.

Did you ever tell anyone about the abuse? No.

Why didn't you tell anyone about the abuse? I felt very isolated and often ashamed of myself. I couldn't tell anyone because I was too embarrassed to admit to it. I used to brush off enquires about bruises and scratches by saying that I had fallen or scratched myself.

Did you ever have to go to hospital as a result of abuse inflicted by your husband? Yes, three times.

And did you stay in hospital until you were fully recovered on any of these occasions? No. The first two times I was admitted to hospital, Gerald forced me to leave the hospital after two days, which was before the doctors had discharged me. The other time, which happened one week before this business, I'd been so severely kicked in the stomach that I had to be admitted

to hospital. Gerald took me to the hospital and left me there, saying that if I didn't return within three hours he would drag me home and give me a "good belting". I was so frightened of what he might do if I didn't obey him, so I returned home as soon as the doctors had treated my injuries.

Did your husband ever force you to do things which you didn't want to do?

..... Yes, Gerald often forced me to engage in sexual acts which I didn't want to do. His favourite was to hold me by the hair and force me to perform oral sex by pulling my head backwards and forwards on his penis. He would sometimes tie my wrists to the bed head and have sex with me despite me begging him not to.

Did you ever leave your husband for an extended period of time, with the intention of never returning to him?

Yes, I left him three times. The first time was after five years of marriage. I stayed away three months but had to go back because I didn't have a job or any money or support I was completely dependent on Gerald for money The next two times I left I stayed away for six months each time. But Gerald eventually found out where I was living, and would come and beg me to return. He kept promising he would never hurt me again I had no money, and eventually returned to him, on the condition that he would stop drinking and abusing me. I believed his promises, and that he would change this time . . . that "promise" lasted all of about three days on both occasions . . . I didn't have the emotional or financial resources to leave him again.

Were there times when he was not violent towards you?

Yes. Usually after a really bad incident Gerald would sometimes bring flowers home for me, and would tell me how sorry he was and how much he loved me. He would promise that he would never do it again.

Did you believe your husband when he said these things?

Yes. Each time it happened, I believed him when he said it would be the last. And then things would be fine for a few days or a few weeks, sometimes even a few months. But then he would "snap" again, and the violence would start all over.

Could you please tell the Court again what happened on the 7th November 1996.....

Gerald had been at the horses all day, drinking himself stupid. When he came home, he started yelling at me, and told me it was my fault he lost at traces. He threatened to kill me if I didn't make him a perfect dinner. He came into the kitchen after a while, and started hitting me over the head, and calling me awful names. When we had had dinner he locked me in the cupboard. I don't know for how long.

Did he do anything to you while you were in the cupboard?

Yes, he opened the door at one time and urinated on me. He told me that was because I didn't put forks for dessert on the table

What happened when he eventually let you out of the cupboard?

He was yelling at me, calling me a slut, mole, whore ... I was crying and begging him to stop, but he kept going. Whatever I would say to him seemed to make him much more angry. He started pushing me all over the place, and finally got me into the bathroom ...

What happened in the bathroom?

he tied my wrists to the bathtaps, and had sex with me. It hurt a lot, and kept begging him to stop - I didn't want him to

do this, but he kept going, and laughing the whole time, still calling me names. After that he told me to clean up in the shower

What did you do after your shower? I went to the bedroom to put some clothes on I tried to open the window, to get out of the house and away from him, because I was really scared of what he might do to me. But he came in as I was taking the flyscreen off ... I was so frightened of what he was going to do next ... I was begging him not to hurt me, but he wasn't listening to me.

What did he do to you? He took me by the hair and dragged me into the kitchen. He was still yelling at me, and told me I had to make some dessert for him While I was doing this, he was calling me names.

Did he do anything else to you while you were in the kitchen? Yes. He started waving a knife at me, and he was saying that if the dessert wasn't perfect, then he'd kill me ... At one stage he went to go to the toilet, and I grabbed a knife from the drawer ... He came back into the kitchen and stood behind me. He put the knife under my throat and said something about taking me into the bedroom and giving me what I deserved ... I then thrust the knife up and behind me I guess it got him, because he staggered backwards and there was blood coming from his stomach area I went after him and kept stabbing him .. When he stopped moving I collapsed on the floor.

And what did you do next? I don't know how long after this, but I rang the police and told them what I'd done. I remember the police arriving and being taken to the police station for the interview.

Could you tell the Court why you killed your husband? I don't know why I did it ... I was scared that if I didn't kill him, then he would kill me, as he had said that night and so many times before.

MRS SMITH: I have no more questions for Mrs Forrester Your Honour.

HER HONOUR: Thankyou Mrs Smith. Mr Jones, do you wish to cross examine?

MR JONES: Yes Your Honour *Mrs Forrester*

You said you left your husband because he abused you? Yes, that's right.

And you returned to him? Yes, but

Mrs Forrester, I suggest that you voluntarily discharged yourself from hospital on the three occasions because you wanted to return to your husband and make up with him as soon as possible No, I returned home because I was afraid for my safety if I didn't return.

I suggest that on the occasion one week before the killing, you discharged yourself from the hospital because you wanted to get rid of your husband

No That is not true. I discharged myself from hospital because my husband had threatened to drag me out of there and give me a "good belting" if I didn't return home within three hours.

You didn't really suffer all of the abuse that you have told the court about today did you Mrs Forrester? That's not true. I suffered all of it, and more.

I suggest that the reason you killed your husband was because you didn't have the ability to leave him, and couldn't think of any other way to get rid of him That's not true I killed him because I was afraid for my own life.

MR JONES: I have no further questions Your Honour.

HER HONOUR: Thankyou Mrs Forrester, could you return to the dock please.

Mrs Smith do you have any more witnesses?

MRS SMITH: Yes Your Honour, I call Thomas Rogers.

Mr Rogers, Medical Records officer.

MRS SMITH: *Would you please state your full name and occupation*

Thomas Stanley Rogers. I am the Medical Records Officer at Winrath Hospital.

Do you have the hospital records which were subpoenaed to Court concerning Mrs Rosemary Forrester? I do.

Do those records indicate that Mrs Forrester was admitted to Winrath Hospital on three separate occasions? Yes they do. Mrs Forrester was admitted to hospital on the 18th July 1986, the 25th September 1990 and the 31st October 1996.

And do those records provide information about her discharge from hospital? Yes, in all three cases, it says that the patient discharged herself from hospital against the advice of her treating physician.

MRS SMITH: Thankyou Mr Rogers. I have no further questions Your Honour.

HER HONOUR: Mr Jones?

MR JONES: *Thankyou Your Honour. Mr Rogers, do those records have any indication as to the reasons for Rosemary Forrester discharging herself on these three occasions before her doctor advised her to?* No, they simply say that she left before the doctor advised it.

So you are not able to tell the court if it was Mrs Forrester or someone else who decided that she should leave the hospital? That is correct - I am unable to say why she left the hospital.

MR JONES: Yes, thankyou Mr Rogers. No further questions your Honour.

HER HONOUR: You are excused mr Rogers. Mrs Smith, would you call your next witness please.

MRS SMITH: I call Katrina Roberts.

Ms Roberts, Forensic Psychologist

MRS SMITH: *Would you please state your full name and qualifications to the Court* Katrina Simone Roberts. I have a Masters degree in Forensic Psychology from the University of Millath, and I have been working as a psychologist for twelve years.

Do you specialise in any particular client group?..... Yes, I see mainly women who have been involved in abusive relationships with a husband or partner.

Are you aware of the psychological condition called "Battered Woman syndrome"?..... Yes.

Are you able to tell the Court about this syndrome? "Battered Woman Syndrome" was proposed by an American psychologist, Dr. Lenore Walker in 1979. A battered woman is defined as one who is repeatedly subjected to forceful physical or psychological behaviour by another person.

Is there any theoretical basis for this syndrome? Yes, Dr. Walker has used research to come up with two theories to explain the Battered Woman Syndrome. The first, learned helplessness, describes a psychological condition first tested by Seligman and his colleagues in which dogs were taught that their behaviour did not make a difference to whether or not they received electric shocks. Dr. Walker has found that battered women suffer from the same distortions in perception. A battered woman often believes that no-one can help her. The second theory, the cycle of violence, has been verified by other researchers. There are three phases to this cycle. Firstly, 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 behaviour. To meet the criteria for BWS, a woman must have been involved in the cycle of violence described by Dr. Walker at least twice.

In your opinion, does the Battered Woman Syndrome have scientific validity? Yes. It is accepted in the psychological community as constituting a syndrome Research conducted by colleagues of Dr. Walker (trained psychologists) of situations of domestic violence have revealed typical patterns of behaviour on the part of the female victim.

What are some results of the research which has been conducted? It has been shown that women who have suffered habitual domestic violence are typically affected psychologically. Repeated acts of violence, alternating very often with phases of kindness and loving behaviour, commonly leave the battered woman in the psychological condition of learned helplessness, which I described above The battered woman can't predict or control the occurrence of acute outbreaks of violence and often clings to the hope that the kind and loving phases will become the norm. This is often reinforced by financial dependence, children and feelings of guilt. The battered woman rarely seeks outside help because of fears of further violence . . . It is not uncommon for such women to experience feelings for their mate which the women describe as love. There is often an all pervasive feeling that it is impossible to escape the dominance and violence of their partner. There is a sense of constant fear with a perceived inability to escape the situation.

Did you see Rosemary Forrester following the incident in question? Yes, I saw her on eight occasions.

Did you come to any conclusion about her psychological state? Yes, in my opinion Rosemary Forrester was suffering from "Battered Woman Syndrome".

What made you come to this conclusion? Mrs Forrester exhibited several symptoms consistent with those cited in the literature: She told me that she felt trapped in the relationship and that she was unable to leave permanently for fear of retaliation from her husband if he found her.

Can you say anything about the fact that Mrs Forrester suffered from Battered Woman Syndrome, and the fact that she killed her husband? In my opinion, Mrs Forrester exhibited symptoms consistent with Battered Woman Syndrome - she was terrified of her husband, and in constant fear of her life. I believe that she killed her husband because she felt that her life was in danger

if she did not. In essence, she was acting to defend herself against behaviour which she thought he husband was capable of, based on his history of abusive behaviour towards her.

Is there any explanation for Mrs Forrester returning to her husband on the three occasions that she had left him in the past?..... The fact that Mrs Forrester had returned to her husband after leaving him on three separate occasions is consistent with a typical "battered woman psyche". Battered women truly believe that their husband will not harm them again - this is in fact the final phase of the cycle of battering (where the woman believes that her husband will not abuse her again) which is repeated over and over. Mrs Forrester truly believed that her husband would not hurt her again.

MRS SMITH: Thankyou Ms Roberts. I have no further questions Your Honour.

HER HONOUR: Mrs Smith, would you like to cross examine the witness.

MR JONES: Yes Your Honour. *Ms Roberts, is the "Battered Woman Syndrome" a recognised psychiatric condition?* Battered woman syndrome is not a recognised condition listed in the psychiatric classification system (DSM-IV), but it is referred to in many psychiatric texts.

I suggest to you that the "Battered Woman Syndrome" is not so recognised because it has not been subjected to any rigorous scientific scrutiny..... I disagree with that. As I said earlier, Dr Walker and her colleagues have conducted research which has led me to be satisfied of the scientific status of the syndrome.

Have any other psychologists conducted research testing Dr Walker's theory? I am not sure.

How could you possibly make a diagnosis of "Battered Woman Syndrome" having only seen Mrs Forrester after the killing, and then only on eight occasions over a short period of time? Eight sessions enables a psychologist to gain a strong idea of someone's personality and behaviour. The behaviour exhibited, and symptoms described by Mrs Forrester, were consistent with my experience and the psychological literature pertaining to "Battered Woman Syndrome".

Exactly what experience do you have Ms Roberts? As is said earlier, I have centred my practice around women who have been abused by their partners, and I have seen a large number of them.

Could you tell the Court how many battered women you have seen in your twelve years of practice as a forensic psychologist? It's hard to say exactly, but I would say I have seen somewhere between 100 and 200 battered women.

How do you know that any of these women have the Battered Woman Syndrome? Based on the research of Dr Walker and her colleagues.

That doesn't really help the present situation though does it Ms Roberts, given that each case should be considered individually? It is true that I consider each case individually.

You said in your evidence that Mrs Forrester was suffering from learned helplessness? Yes.

How can a woman who is so helpless that she can't make decisions for herself turn around in a matter of minutes and become a cold-blooded killer?

This has been explained in Dr Walker's research.

MR JONES: I have no further questions Your Honour.

HER HONOUR: Yes. Mrs Smith, would you call your next witness please?

MRS SMITH: No Your Honour, that ends the Defence case.

HER HONOUR: Very well. Mr Jones, would you like to present your closing statement to the jury?

Closing statement, Prosecution lawyer

MR JONES: Thankyou Your Honour. Ladies and gentlemen of the jury, you have heard from the pathologist that Mr Forrester died from stab wounds to the chest and abdomen area. You have heard that the defendant admitted to police that she killed her husband. The issue which you must decide is whether Mrs Forrester was acting in defence of her life, or whether she was unjustified in killing her husband. You have heard Mrs Forrester claim that she was battered by her husband for the past fifteen years.

The psychologist called for the defence, Ms Roberts, has told you that Mrs Forrester's situation was a "text book case" of Battered Woman Syndrome, and that this is the reason she felt in fear of her life. However, in light of the evidence presented by Ms Hathaway, that Battered Woman Syndrome is by no means a scientifically rigorous syndrome, you should ask yourselves two things: Firstly, is there sufficient weight attached to battered woman syndrome as a psychological condition, and secondly whether an expert is able to conclusively say that Mrs Forrester was in fact suffering from this condition, and because she was in fear of her life, killed her husband. The alternative, which the prosecution has argued is the case, is that Mrs Forrester was unjustified in killing her husband and is thus guilty of murder.

You should consider why Mrs Forrester returned to her husband on the three occasions that she left him. I suggest that you should be very sceptical that Mrs Forrester was in fear of her life, given her evidence that she was able to leave the relationship on three separate occasions and that she also decided to return to her husband each time. I ask you to consider why she did not leave on this occasion rather than killing her husband.

There is little evidence apart from the word of Rosemary Forrester that any of these things actually happened to her. I put it to you that Mrs Forrester killed her husband in retaliation for the abuse she claims to have suffered. She did not kill him because she was in fear of her life as the defence would have you believe. When you weigh up all the facts you must find that Rosemary Forrester is guilty of murdering her husband.

Defence lawyer

Ladies and gentlemen, you have heard from the defendant herself that she was subjected to horrendous abuse for most of her fifteen year marriage to Gerald Forrester. The details of this abuse and intimidation are beyond the imagination of the average person. Mrs Forrester was the victim of a man who covered up his own feelings of inadequacy by intimidating and abusing his

wife. He controlled her every action, humiliated her and psychologically tortured her. Despite this, Rosemary Forrester still cared for her husband and believed his promises that he would not hurt her again. Ms Roberts, the psychologist, gave evidence that Rosemary Forrester suffered from Battered Woman syndrome, an established psychological phenomenon which describes common characteristics of battered women. She said that Mrs Forrester's behaviour on the night in question was understandable, given the constant abuse and threats, and the fear she held for her life.

The reason Mrs Forrester returned to her husband after leaving on three occasions was that she fully believed her husband when he said he had changed, and believed his promises that he would not be violent toward her again.

Rosemary Forrester killed her husband in self defence of her own life. This woman has lived in fear for her life and safety for the last fifteen years. She has been degraded, attacked, sexually abused, humiliated, and intimidated by her husband. She returned home early from the hospital after a serious injury because she was afraid of the consequences if she did not. Rosemary Forrester has suffered unbelievable abuse and degradation, and lived in constant fear of her life. You must find her not guilty of murder and acquit her on the basis of the self defence that she used to avoid death or serious injury at the hands of her husband.

Judge's instructions

Ladies and gentlemen of the jury, you will shortly be asked to retire to consider your verdict in this trial. The charge against Mrs Forrester is that she murdered her husband Gerald Forrester. A person who is charged with a criminal offence is said to be presumed innocent unless and until the Crown proves the allegations against her, as it is required to do. You can only return a guilty verdict if you are satisfied on the evidence before you that the guilt of the accused woman has been established beyond reasonable doubt.

To do this, the Crown must prove firstly that the act of murder was committed, and secondly that the accused acted without lawful justification. One form of lawful justification available to the accused upon the evidence in this case is self-defence, and you have heard from the defence lawyer that Mrs Forrester claims she acted in self defence when she killed her husband. I will instruct you about self defence shortly, but firstly I must tell you the elements of murder and manslaughter which must be satisfied for you to deliver a verdict of guilty of either murder or manslaughter. The third option open to you is a verdict of Not Guilty, which I will instruct you about shortly.

To deliver a verdict of guilty to murder, each of the following elements must be satisfied, by the Crown, beyond reasonable doubt: i) that the accused was of sound mind, ii) that the accused was the cause of death of the deceased, iii) that the act was a conscious, voluntary one and iv) that the act was performed with the intention of either killing the deceased or of causing really serious injury to him. There is no dispute as to the first two elements of murder. The dispute arises over whether Mrs Forrester intended to cause the death of, or serious injury to, her husband. You have heard the prosecution

argument that this is in fact the case. However, the defence argument is that Mrs Forrester acted in self-defence of her own life. You must weigh up the evidence and decide if the killing was intentional or done in self defence.

To deliver a verdict of not guilty of murder but guilty of manslaughter, each of the following elements must be established, by the Crown, beyond reasonable doubt: i) that the act was a conscious, voluntary and deliberate one, ii) that the act was unlawful, that is, the accused was not acting in self defence, and iii) that a reasonable person in the position of the accused would have realised that the act would expose the deceased to an appreciable risk of death or serious bodily harm.

If you are unsure about any of the elements outlined above, then you will need to consider whether the accused had a lawful justification in acting as you find she did. The lawful justification of self defence exists when the acts of the accused were done as the result of her believing upon reasonable grounds that they were necessary in order to defend herself from the actual or threatened violence of another. If you find that this was the case here, then your verdict would be one of Not Guilty. It is both good law and good sense that a person who is attacked may defend herself. However it is neither good law nor sensible that a person should be permitted, under the pretence of defending herself, to attack another or to retaliate for a past attack.

It is therefore necessary to consider the accused's actions and the surrounding circumstances in order to determine whether she acted in self-defence or in pursuit of some other purpose. The following considerations may bear upon this question:

1. Was the action against which the accused says she was defending herself the kind of action which calls for self-defence or was it something a sensible person would ignore?
2. Was it an action the consequences of which could easily be avoided by the accused retreating from the situation created? Although she is not obliged to retreat, and indeed, to do so may in some cases be a dangerous thing to attempt, the failure to take obvious evasive action might well indicate an intention to use the occasion for aggression or retaliation rather than for self-defence. You have heard from Mrs Forrester that she returned to her husband after leaving him on three occasions. She told you she did this because she believed each time that he had changed and would no longer abuse her, and because she was financially dependent on her husband. It is a matter for you to decide if she held a reasonable belief that she was in danger of serious injury or loss of life, and was unable to retreat from the situation.
3. Did the accused use unnecessary force? Although a person who is attacked is not required to weigh to a nicety the extent of force required to resist the attack, the use of force plainly disproportionate to the attack may also indicate a use of the occasion for aggression or retaliation rather than for self-defence. If a jury came to the view that an accused person did only what she believed or honestly thought was necessary in the circumstances, then that would be a very powerful indicator that her conduct was not entirely out of proportion to the necessities of the situation. Nevertheless, the accused has no onus cast on her

in respect of this or indeed of any other means. She is not obliged to demonstrate that her conduct was reasonable in the circumstances.

Where the violent activity has resulted in death, as is the case here, you should have further regard to the intention of the accused: If you are satisfied beyond reasonable doubt that the accused intended to kill or to cause grievous bodily harm by her acts then you should consider whether such an intention is nevertheless consistent with her acting in self defence. A person is entitled to kill or cause grievous bodily harm in defending herself. However, a person who kills with the intention of killing or of doing serious bodily harm can hardly believe on reasonable grounds that it is necessary to do so in order to defend herself unless she perceives a threat which calls for that response. It is for you to consider in such a case whether the accused believed, and if so, whether she had reasonable grounds for such a belief, that it was necessary to kill or do serious bodily injury in order to defend herself.

4. Were you not satisfied that the accused intended to kill or cause bodily harm you should consider the reasonableness of her belief as to the need to act as she intended to act.

All these are illustrations of questions you should examine in order to determine the ultimate question: "Has the Crown proved that the accused was acting unlawfully because she did not believe on reasonable grounds that what she did was necessary to defend herself?" It is for you, the jury, to examine all the circumstances as you find them to have been, and to consider both the actual belief of the accused and the reasonableness of her forming such a belief. An irrational fear or a belief formed without reasonable ground for it does not justify violent activity by the accused.

It is for you to decide how much weight to place on all the evidence given, but I will make a comment on the expert evidence proffered in this case. Conflicting evidence was presented by two forensic psychologists. Ms Hathaway, called for the prosecution, told you that there is a psychological condition, "Battered Woman Syndrome", proposed in the psychological literature. She gave evidence that in her opinion there is no scientific basis for this syndrome. In contrast, Ms Roberts, called for the defence, told you that the psychological condition known as "Battered Woman Syndrome" has been scientifically tested. She told that Mrs Forrester was suffering from "Battered Woman Syndrome", and that her actions in killing her husband were consistent with this. It is a matter for you to decide whether Mrs Forrester was suffering from "Battered Woman Syndrome". If you find that she was, and conclude on this basis that her actions can be seen as reasonable, you must decide if she was therefore acting in self defence, according to the criteria I have outlined. You must remember that the Battered Woman Syndrome is not a defence itself. It is part of the history and the cumulated set of circumstances which the defence has put into the whole case, ultimately to argue that the Crown has not proved its case beyond reasonable doubt. You are free to accept or reject any part of this expert evidence. You are the triers of fact who must decide the ultimate issue, which is whether Rosemary Forrester is guilty of murder. You need to assess whether the opinion of an expert can assist you in making that decision.

The Crown, in order to secure the verdict for which it contends, would be required to establish beyond reasonable doubt that Mrs Forrester's conduct was not reasonable in the circumstances. You will understand, therefore, that before the possibility of self defence can be regarded as being excluded, the Crown would be required to establish one of two things: Firstly, that there was no occasion for self defence. That means, that there was no attack at all and that there was no apprehension by the accused that any such attack was to be made on her. Secondly, the Crown would need to establish that what the accused woman did was entirely out of proportion to the danger confronting her.

If the Crown has established either of these proposition beyond reasonable doubt and the other elements of murder are also made out, then your proper verdict would be guilty of murder. If you find that Mrs Forrester held the unreasonable belief that the force she used against her husband was reasonable, then your verdict would be not Guilty of murder, but Guilty of Manslaughter. However, if you came to the view that the Crown had failed to exclude these possibilities, or if you find that Mrs Forrester was acting in self defence, then your verdict would be Not Guilty.

Appendix D. Sample questionnaire: Both experts, Retreat condition

Now that you have read the transcript of this mock trial, please take a few moments to complete the following questions. Answer all questions in the order in which they appear. Please don't turn any pages until you have completed each page. Do not return to pages once they are completed. Please do not return to the transcript while answering the questions - I want your responses based on what you can remember. Please remember to answer as if you are an actual juror in this Trial. Once you have completed the questionnaire, please return only it and the consent form to your distributor in the envelope provided.

Verdict In your view, is Rosemary Forrester:

☐ Guilty of murder or ☐ Guilty of manslaughter or ☐ Not Guilty ?

(Tick one box only)

How certain are you about this decision?

Please indicate by circling the appropriate number on the seven point scale below:

not at all certain 1 2 3 4 5 6 7 completely certain

What had the biggest influence on your verdict?

If you ticked "guilty" what type of sentence would you impose:

Please tick one of the boxes:

- None - let defendant go free ☐
- Good Behaviour Bond (released on entering a bond to be of good behaviour for a set amount of time) ☐
- Community based work ☐
- Suspended prison sentence (not served unless conditions outlined by the Court are breached) ☐
- Prison sentence (to be served immediately) ☐
- Don't know ☐

If you ticked "guilty" and "prison sentence", what length of sentence would you impose Please circle the number of years on the scale below:

no. yrs	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
20																			
	20+																		

Please answer the following questions about yourself:

Sex: male female **Age:** _____
 ☐ ☐

Highest Education level achieved. Please tick the box which best describes the level of education you have completed. Also indicate the number of years you have attended for your most recent schooling.

	completed	years of schooling
Primary School	<input type="checkbox"/>	_____
Secondary School	<input type="checkbox"/>	_____
TAFE	<input type="checkbox"/>	_____
Tertiary under graduate	<input type="checkbox"/>	_____
Tertiary Post graduate	<input type="checkbox"/>	_____

Marital status. Please indicate which one of the following categories best describes you:

Single	<input type="checkbox"/>
In relationship, not living with partner	<input type="checkbox"/>
Defacto	<input type="checkbox"/>
Defacto but separated	<input type="checkbox"/>
Married	<input type="checkbox"/>
Married but separated	<input type="checkbox"/>
Married but divorced	<input type="checkbox"/>
Widow / widower	<input type="checkbox"/>

Current occupation:

Briefly describe:

If unemployed / retired, please indicate the most recent job you held:

Jury experience: Have you sat on a jury before? yes no

☐ ☐

If yes, what charges were you delivering a verdict on?

In this next section of the questionnaire you will be asked questions about various aspects of the case. Please read each item carefully and circle the number on the seven point scale which best reflects your opinion. Please be sure to look at both ends of the scale before circling your response, as they are not the same for each item.

How believable do you think Mrs Forrester's account of the abuse she suffered was?

not at all	1	2	3	4	5	6	7	totally
believable								believable

To what extent do you think Mrs Forrester's life was in danger throughout her marriage to Gerald Forrester?

not at all	1	2	3	4	5	6	7	extremely
in danger								in danger

Did Mrs Forrester contribute to the abuse?

not at all	1	2	3	4	5	6	7	totally
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Do you think that Mrs Forrester believed that the force she used against her husband was necessary to prevent serious injury or death to herself?

not at all	1	2	3	4	5	6	7	extremely
likely								likely

How much did you rely on the Psychologist's evidence presented in the Defence case about "Battered Woman Syndrome" in reaching your verdict?

not at all	1	2	3	4	5	6	7	relied completely
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How much did you rely on the Psychologist's evidence presented in the Prosecution case about "Battered Woman Syndrome" in reaching your verdict?

not at all	1	2	3	4	5	6	7	relied completely
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How much, if at all, do you believe the "Battered Woman Syndrome" to be a psychological condition?

do not believe at all	1	2	3	4	5	6	7	completely believe
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If you answered (1) to this question, skip the following question.

To what extent do you think the "Battered Woman Syndrome" applies to Mrs Forrester?

not at all	1	2	3	4	5	6	7	applies completely
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How severely, if at all, do you think Mrs Forrester was beaten by her husband on the evening in question?

not at all beaten	1	2	3	4	5	6	7	very severely beaten
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To what extent do you think Mrs Forrester thought her life was in danger on the evening of the crime in question?

not at all in danger	1	2	3	4	5	6	7	extremely in danger
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To what extent do you think Mrs Forrester could have permanently stayed away from her husband on the three occasions that she left him?

could not stay 1 2 3 4 5 6 7 could
easily stay away
away at all

To what extent do you think Mrs Forrester's life was in danger on the evening of the crime in question?

not at all 1 2 3 4 5 6 7 extremely
in danger in danger

If you have any further comments or queries, please feel free to write them below. If there is any matter which you would like clarified, please include your address with your comments, and I will reply to you as soon as possible.

Please return this questionnaire and the consent form to your distributor. It is not necessary to return the transcript / Explanation of Research Project.