

1993

Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome

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UNDERSTANDING WOMEN'S RESPONSES TO DOMESTIC VIOLENCE: A REDEFINITION OF BATTERED WOMAN SYNDROME

Mary Ann Dutton*

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I. INTRODUCTION

Where domestic violence is at issue in either a criminal or civil context, it is often essential to understand the ways in which women respond to violence and abuse inflicted by an intimate partner. Scientific knowledge concerning domestic violence—and the responses of battered women to that violence—has been applied in various legal contexts: criminal prosecution of a woman charged with a crime in which domestic violence may have played a role;¹ criminal prosecution of a domestic violence perpetrator;² executive clemency hearings for a battered woman who has been convicted of a crime;³ claims of personal injury by a battered woman against her alleged abuser;⁴ and marital dissolution and child custody proceedings.⁵ In these legal contexts, the battered woman's response to violence and abuse has sometimes been referred to as "battered woman syndrome,"⁶ yet the definition and use of that term has not been altogether clear. This lack of clarity has resulted in part from the continuing development of new knowledge in the scientific community.

From the perspective of the expert witness who offers testimony based on scientific knowledge,⁷ this Article is intended to offer a

1. See generally ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* (1989); CYNTHIA K. GILLESPIE, *JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW* (1989); Julie Blackman, *Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill*, 9 *WOMEN'S RTS. L. REP.* 227 (1986); Betty Levinson, *Using Expert Testimony in the Grand Jury to Avoid a Homicide Indictment for a Battered Woman: Practical Considerations for Defense Counsel*, 9 *WOMEN'S RTS. L. REP.* 239 (1986); Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 *U. PA. L. REV.* 379 (1991).

2. See Joan M. Schroeder, *Using Battered Woman Syndrome Evidence in the Prosecution of a Batterer*, 76 *IOWA L. REV.* 553, 553 (1991) ("[W]hen a batterer is prosecuted, the state needs expert testimony to educate the jury about battered women in order to enable the jury to determine the facts in issue.").

3. See State of Florida, Office of the Governor, Exec. Order No. 92-80 (1991) ("Battered Woman Syndrome is a significant factor for consideration of clemency . . ."). As part of its procedure for considering clemency petitions, Florida has established three special panels (consisting of psychologists, judges, and lawyers with knowledge of and experience in dealing with battered woman syndrome) to determine whether the applicant for clemency experienced domestic violence and what role it may have played in the crime and/or conviction. *Id.*

4. See generally Rhonda L. Kohler, *The Battered Woman and Tort Law: A New Approach to Fighting Domestic Violence*, 25 *LOY. L.A. L. REV.* 1025 (1992).

5. See generally Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 *VAND. L. REV.* 1041 (1991).

6. See generally LENORE E. WALKER, *TERRIFYING LOVE* 7, 48-49 (1989) (describing battered woman syndrome as combining elements of post-traumatic stress disorder and such theories as learned helplessness and fear for life).

7. This Article does not intend to imply that the basis of expert testimony concerning

redefinition of battered woman syndrome; to provide a conceptual framework for examining, in the context of the legal system, the diversity of women's responses to violence;⁸ and to provide a review of the current related social science literature. Each of the four parts following this Introduction begins by discussing one of the components of the conceptual framework, posed as questions to be considered in an expert witness evaluation of a battered woman.⁹ The information gathered in each of these key areas must then be interpreted within the framework of current scientific knowledge and the expert witness' experience concerning these issues.¹⁰ The scientific literature concerning battered women's experiences is both informed by and applied to the phenomenological experience of battered women. Thus, each of the following four sections concludes with a review of the relevant scientific literature.¹¹

A. *Rationale for Redefining "Battered Woman Syndrome"*

Development of the "battered woman syndrome" construct has been an important contribution to forensic psychology. For example, in the area of criminal law, expert witness testimony has aided in furthering the understanding of how battered women may reasonably perceive themselves to be in imminent danger in situations when this

battered women derives only from scientific knowledge. Expert testimony may be based upon "other specialized knowledge," such as experience gained by working with battered women as an advocate, as a social services provider, or as a mental health clinician. *See* FED. R. EVID. 702. This Article focuses on expert testimony that has as its basis scientific knowledge and experience gained by working with battered women in a professional context.

8. This conceptual framework consists of four elements: (1) the history of violence suffered by the battered woman, (2) the battered woman's strategies for responding to the violence, (3) the battered woman's psychological reactions to the violence, and (4) the contextual factors that influence both the battered woman's psychological reactions to the violence and her strategies for responding to that violence. *See infra* part I.B.

9. Generally, the victims of the most severe forms of domestic violence are women involved in intimate heterosexual relationships. *See* WOMEN'S ACTION COALITION, WAC STATS: THE FACTS ABOUT WOMEN 55-58 (1993). As such, this Article will refer to the battering victim as being female. When a man in an intimate heterosexual or gay relationship—or a woman in a lesbian relationship—is the victim of domestic violence, these comments should be considered to apply generally (although there may be additional considerations concerning such relationships, and how others may respond to violence in these relationships, that would affect the specific applicability of these comments).

10. *See, e.g.,* *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993) (discussing the standards for admitting expert scientific evidence).

11. The author does not claim that the review of scientific literature is exhaustive, as such an undertaking is beyond the scope of this Article.

may not otherwise be apparent to the outside observer.¹² Generally, the introduction of information concerning battered women's experiences has contributed to a more informed understanding of the relevance of domestic violence to numerous legal issues.¹³

Nevertheless, battered woman syndrome requires redefinition for two major reasons: (1) testimony concerning the experiences of battered women refers to more than their psychological reactions to violence, and (2) battered women's diverse psychological realities are not limited to one particular "profile."

1. Testimony Concerning the Experiences of Battered Women Refers to More Than Their Psychological Reactions to Domestic Violence

Typically, the testimony offered in forensic cases is not limited to the psychological reactions or sequelae of domestic violence victims, and this has led to confusion about what is encompassed by the term "battered woman syndrome."¹⁴ Expert witness testimony may also be offered to explain the nature of domestic violence in general,¹⁵ to explain what may appear to be puzzling behavior on the part of the victim,¹⁶ or to explain a background or behavior that may be interpreted to suggest that the victim is not the "typical" battered woman¹⁷ or that she herself is the abuser.¹⁸

12. See generally Schroeder, *supra* note 2.

13. See generally *id.*

14. Expert testimony concerning the experiences of battered women generally describes both the psychological effects of domestic violence and the dynamics of abusive relationships, and it is not uncommon to see the term "battered woman syndrome" used to refer to both. See, e.g., *Developments in the Law: Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1578-79 (1993). This lack of clarity may make it more difficult to answer the question, Does the victim of domestic violence suffer from battered woman syndrome?

15. Expert testimony may include explanations of physical, sexual, and psychological abuse, or of patterns of violent behavior such as "separation assault" or the "cycle of violence." See LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 95-104 (1984) (discussing the "cycle of violence"); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 6-7 (1991) (discussing "separation assault").

16. For example, the factfinder may not immediately comprehend why a victim of domestic violence may have chosen to remain in or return to an abusive relationship, why she may have left her children alone with the abuser, why she may have asked that criminal charges against the abuser be dropped, or why she never told anyone about the abuse. See Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195, 201 (1986).

17. The victim may not be thought of as the "typical" battered woman if she has a history of prostitution, for example, or if she has been observed to behave angrily, is known to abuse her children, is trained in the use of a weapon, or is physically larger than her abusive partner.

18. The victim may herself be thought to have engaged in abusive behavior where she

These and other elements of the battered woman's experiences may be more or less relevant depending upon the legal context in which testimony is required.¹⁹ That is, the battered woman's psychological reaction to violence may be less relevant than other factors, such as her prior responses to violence,²⁰ the outcome of those responses,²¹ and the context within which those responses were made.²²

Referring to this entire range of issues as "battered woman syndrome" has led to confusion in both the legal literature²³ and, in my experience, in attorneys' efforts to effectively present and challenge such testimony. Referring simply to testimony concerning battered women's experiences, rather than to "battered woman syndrome," more accurately captures the range of information typically covered in expert testimony. An organization of the range of information concerning battered women's experiences is developed in this Article according to the conceptual framework mentioned above.²⁴

2. The Psychological Realities of Battered Women Are Not Limited to One Particular "Profile"

The psychological realities of battered women do not fit a singular profile—in fact, they vary considerably from each other. Moreover, the conceptualization of the experiences of battered women continues to change over time,²⁵ and the body of scientific literature concerning the range of psychological reactions to trauma in general,

has fought back in an attempt to protect herself against the violence and abuse.

19. The relevance of testimony regarding the victim's experiences may depend, for example, on whether she is the defendant in a criminal prosecution, is the plaintiff in a civil tort action against her abuser, or is involved in a dispute over child custody.

20. For example, the victim may have made prior efforts to protect herself, or to avoid the violence altogether.

21. The police may have been unresponsive, for example, or mental health professionals may have labelled the violence as a problem for which the battered woman was equally responsible.

22. This context may include the battered woman's lack of economic resources, the perpetrator's abuse of a battered woman's child, or a battered woman's involvement with a religious community that encouraged her to stay with her abuser.

23. See *Developments in the Law: Legal Responses to Domestic Violence*, *supra* note 14, at 1579.

24. See *supra* note 8 and accompanying text.

25. As the United States Supreme Court recently noted in a decision concerning the admissibility of expert testimony, such scientific concepts are "subject to further testing and refinement." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786, 2795 (1993) (noting that science "represents a process for proposing and refining theoretical explanations" rather than a static body of propositions that are immutably "true").

and to domestic violence in particular, continues to grow at a rapid rate.²⁶ Thus, battered woman syndrome requires a redefinition that encompasses the full spectrum of cognitive, emotional, behavioral, and physiological reactions to violence.²⁷ Such a comprehensive perspective more accurately reflects the diverse realities of battered women's experiences.

Originally, battered woman syndrome was defined as the psychological sequelae to domestic violence.²⁸ The definition emphasized "learned helplessness,"²⁹ a theory originally developed to explain why some animals fail to protect themselves in certain situations.³⁰ The theory was reformulated in terms of human depression,³¹ and was eventually applied to victimization.³² By incorporating the theory of learned helplessness, expert testimony concerning battered women can better explain why some battered women do not perceive that they have certain options available to protect themselves, and may thus help to explain why they do not exercise those options.³³

26. See, e.g., Dudley D. Blake et al., *Twenty Years of Trauma: Psychological Abstracts 1970 Through 1989*, 5 J. TRAUMATIC STRESS 477, 480 (1992) (finding 1596 citations in the trauma literature between 1970-89, with the overall number of citations increasing over time).

27. See generally JULIE BLACKMAN, *INTIMATE VIOLENCE: A STUDY OF INJUSTICE* (1989); MARY ANN DUTTON, *EMPOWERING AND HEALING THE BATTERED WOMAN: A MODEL FOR ASSESSMENT AND INTERVENTION* (1992); Mary A. Douglas, *The Battered Woman Syndrome*, in *DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE* 39 (Daniel J. Sonkin ed., 1987); Judith L. Herman, *Sequelae of Prolonged and Repeated Trauma: Evidence for a Complex Post-Traumatic Syndrome (DESNOS) in POST-TRAUMATIC STRESS DISORDER: DSM-IV AND BEYOND* 213 (Jonathan R. Davidson & Edna B. Foa eds., 1993); Evan Stark & Anne Flitcraft, *Personal Power and Institutional Victimization: Treating the Dual Trauma of Woman Battering*, in *POST-TRAUMATIC THERAPY AND VICTIMS OF VIOLENCE* 115 (Frank M. Ochberg ed., 1988).

28. See generally WALKER, *supra* note 15.

29. See, e.g., LENORE E. WALKER, *THE BATTERED WOMAN* 49-50 (1979).

30. See MARTIN E. SELIGMAN, *HELPLESSNESS: ON DEPRESSION, DEVELOPMENT, AND DEATH* (1975).

31. In explaining the affective and behavioral components of depression, the reformulated theory of learned helplessness relies heavily on the victim's perceived inability to control negative events. See generally Lyn Y. Abramson et al., *Learned Helplessness in Humans: Critique and Reformulation*, 87 J. ABNORMAL PSYCH. 49 (1978).

32. See Christopher Peterson & Martin E. Seligman, *Learned Helplessness and Victimization*, 2 J. SOC. ISSUES 103 (1983); see also WALKER, *supra* note 29, at 51-52.

33. In laboratory studies of learned helplessness in animals, the "helplessness"—the failure to use available options that would enable them to avoid pain stimuli—persists even after the introduction of real, readily accessible options for avoiding the pain stimuli. SELIGMAN, *supra* note 30, at 22-23. For many battered women, there are no real, readily accessible options that would enable them to avoid the violence and abuse, and thus their perception of "helplessness"—the perception that they have few, if any, options—has been "learned" in a context where that perception was, and continues to be, accurate. Other

Early stages of expert testimony concerning battered women's experiences focused heavily on the cognitive perceptions that followed directly from their actual experiences with domestic violence. More recently, the term "battered woman syndrome" has been used to refer to a particular subset of psychological reactions to violence: Post-Traumatic Stress Disorder ("PTSD").³⁴ A battered woman's psychological reactions to domestic violence may meet most or all of the diagnostic criteria for PTSD: she may have flashbacks or other intrusive imagery or memories that may be experienced as highly distressful; she may experience anger, an inability to concentrate, and sleep disturbances; she may engage in conscious and unconscious efforts to avoid anything that may remind her of the prior violence,³⁵ and these efforts may include dissociation from her affective experience or emotional feelings related to the abuse.³⁶

However, several problems arise in the legal context when battered woman syndrome is defined exclusively as PTSD. First, PTSD may or may not be the aspect of the battered woman's psychological reactions to violence that is most relevant to the immediate legal context.³⁷ Second, defining battered woman syndrome as PTSD

cognitions or beliefs have also been recognized as psychological sequelae to intimate violence and are discussed at greater length below. *See infra passim*; see, e.g., BLACKMAN, *supra* note 27; Douglas, *supra* note 27, at 39-43; see also CHRISTOPHER PETERSON ET AL., LEARNED HELPLESSNESS: A THEORY FOR THE AGE OF PERSONAL CONTROL 239 (1993) (suggesting that the "passivity observed among victims of domestic violence is a middling example of learned helplessness. . . . Taken together, these results do not constitute the best support for concluding that these women show learned helplessness").

34. See generally WALKER, *supra* note 15, at 124-25; Lenore E. Walker, *Battered Woman Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321, 327 (1992). For a discussion of the diagnostic criteria for PTSD, see DIAGNOSTIC AND STATISTICAL MANUAL-III-REVISED 247 (Am. Psychiatric Ass'n ed., 1987).

35. A battered woman's desire to minimize contact with persons or situations that remind her of the past victimization may cause her to avoid contact with a psychotherapist, for example, or to avoid contact with a prosecutor's office when her abuser has been charged with a domestic violence crime.

36. This dissociation may cause a battered woman to appear calm when talking about the details of her abusive experience. This apparent "calm" is achieved only after the expenditure of tremendous amounts of psychic energy required to keep the distress below the level of conscious awareness. See generally DISSOCIATIVE DISORDERS: A CLINICAL REVIEW (David Spiegel et al. eds., 1987).

37. See *supra* notes 19-22 and accompanying text. Depending upon the legal context, a battered woman's psychological reactions to violence other than those described by PTSD may be more, or at least equally, relevant. Such reactions may include a perception of few options for responding to violence, a keenly developed ability to perceive cues for calculating the likelihood of an abuser's impending violence, and a "shame reaction" to having been abused. After conducting an evaluation to identify the psychological reactions experienced by

frames the issue before the finder of fact as solely a "clinical" phenomena. Even though the traumatic stressor that leads to PTSD is one which is "usually experienced with intense fear, terror, and helplessness" by "almost anyone,"³⁸ and thus the psychological reaction to trauma is somewhat normalized, this may not always be clearly understood. PTSD is still recognized as a clinical diagnosis within the Diagnostic and Statistical Manual III-Revised (the "DSM-III-R") of the American Psychiatric Association.³⁹ Although some battered women's reactions to violence include PTSD (as well as other clinical reactions not defined by PTSD), not all do.

Second, even when PTSD is part of the psychological aftermath of violence, its relevance to the key legal issues may be minimal. The cognitive, affective, behavioral, and physiological changes which result when one is exposed to trauma include reactions which are defined both as "clinical" phenomena, as well as those which are not. Unless it is the most relevant link to the legal question at hand, focusing the attention of the finder of fact primarily toward a clinical "syndrome" may be unnecessarily confusing, and even misleading.⁴⁰ When a battered woman's reactions to violence are framed within a "clinical" context, the unintended result may be that the expert witness constructs for the finder of fact an image of pathology, clinical disorder, or diminished capacity when this construct may not only be inaccurate, but may be the opposite of what is intended.

Third, a diagnosis of PTSD requires the battered woman to meet a specific set of criteria in each of three symptom categories.⁴¹ This is usually accomplished through standardized clinical assessment pro-

a particular battered woman, the next step is to determine whether there is, in fact, a relevant link to the identified legal issues, and if so, to articulate that link. That link may be more obvious for some reactions (e.g., finely tuned ability to perceive danger) than for others (e.g., shame reaction).

38. DIAGNOSTIC AND STATISTICAL MANUAL-III-REVISED, *supra* note 34, at 247.

39. DIAGNOSTIC AND STATISTICAL MANUAL-III-REVISED, *supra* note 34.

40. See Schneider, *supra* note 16 (for a discussion of PTSD as applied to self-defense); see also Bjerke v. Bacon, No. CG-93-1041, 1993 WL 377089, at *2 (Minn. Ct. App. Sept. 28, 1993) ("[T]here was conflicting testimony of alleged domestic abuse. According to the opinions of Diane Knapp and of Dr. Gilbertson, appellant did not show classic signs of battered woman syndrome." The court concluded that no domestic violence had occurred.).

41. These symptom "clusters" include re-experiencing the traumatic experience (through flashbacks or nightmares), intrusive symptoms, and avoidance symptoms. DIAGNOSTIC AND STATISTICAL MANUAL-III-REVISED, *supra* note 34, at 250. Avoidance involves both conscious and unconscious efforts to avoid reminders of the traumatic experience, and may result in feelings of numbness, dissociation, amnesia, or behavioral avoidance and arousal symptoms (such as sweating or palpitations, anger, difficulty concentrating, or sleeping). See *id.*

cedures, typically consisting of structured interview and questionnaire methods.⁴² When a battered woman fails to meet these criteria, a diagnosis of PTSD is not warranted, and thus, a diagnosis of battered woman syndrome defined as PTSD cannot be supported. Nevertheless, when a battered woman meets partial, but not full, criteria for PTSD, those criteria that she does meet (e.g., amnesia regarding some parts of the abusive experience) may still be relevant to the legal contexts described earlier in this Article.⁴³ However, where the battered woman fails to meet full criteria for PTSD (and thus battered woman syndrome defined as PTSD), the expert would have to testify that a case of PTSD is not substantiated, even when the partial criteria met by the battered woman are directly relevant to key legal issues. Even when an expert witness is permitted to testify about partial criteria, testimony that the battered woman did not meet full criteria for battered woman syndrome may create a misleading impression for the factfinder.

Finally, PTSD, as currently defined in the DSM-III-R, describes only a subset of the possible range of reactions that result from exposure to traumatic experiences, and that range includes those reactions that are not defined as "clinical" phenomena as well as those that are so defined.⁴⁴ Moreover, where the violence and abuse has been chronic and continual, the victim's psychological reactions may be even more complex than those described by PTSD as it is currently defined.⁴⁵

Many psychological reactions to trauma are not included in the DSM-III-R diagnostic criteria for PTSD (or in those proposed for the DSM-IV), including those which have been described as associated features of PTSD (e.g., somatic complaints, substance abuse). Other post-traumatic reactions excluded from current and proposed diagnostic criteria for PTSD are the complex psychological sequelae provisionally referred to as Disorders of Extreme Stress Not Otherwise Specified ("DESNOS"),⁴⁶ that may result from "subjection to totali-

42. See Charles G. Watson, *Psychometric Posttraumatic Stress Disorder Measurement Techniques: A Review*, 2 J. CONSULTING & CLINICAL PSYCHOL. 460 (1990).

43. See *supra* notes 19-22 and accompanying text.

44. DIAGNOSTIC AND STATISTICAL MANUAL-III-REVISED, *supra* note 34, at 247-51.

45. See Herman, *supra* note 27, at 214.

46. See *id.* These psychological sequelae include alterations in affect regulation, consciousness, self-perception, perceptions of perpetrator, relations with others, and systems of meaning. *Id.*

tarian control over a prolonged period (months to years)."⁴⁷

Thus, a battered woman who demonstrates identifiable psychological reactions to the violence and abuse she has experienced may nevertheless fail to meet full criteria for PTSD, for one or more of the following reasons: (1) her reactions are not considered "clinical" phenomena, and thus do not appear within diagnostic nomenclature; (2) her reactions are either more circumscribed than the full spectrum PTSD diagnosis, or are not characteristic of PTSD per se; and/or (3) her reactions are indicative of an even more complex clinical picture than that suggested by PTSD.

This Article proposes a redefinition of battered woman syndrome in three ways. First, descriptive references should be made to "expert testimony concerning battered women's experiences," rather than to "battered woman syndrome" per se.⁴⁸ Second, the scope of the testimony concerning battered women's experiences should be framed within the overall social context that is essential for explaining battered women's responses to violence.⁴⁹ Third, evaluation and testimony concerning battered women's psychological reactions to violence should incorporate the diverse range of traumatic reactions described in the scientific literature, and should not be limited to an examination of learned helplessness, PTSD, or any other single reaction or "profile."

B. Overview of this Article

When a woman's experience of domestic violence is relevant to the issues in a particular legal action, an analysis of that experience

47. JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 121 (1993).

48. See, e.g., Julie Blackman, *At the Frontier: In Pursuit of Justice for Women* 42 (Aug. 22, 1993) (unpublished paper presented at the 101st American Psychological Association Convention as part of the Master Lecture on Legal Issues Affecting Women, on file with the author) (referring to such testimony as the "psychology of battered women"). The term "battered woman syndrome" was based, in part, on the notion of a prototypic "profile." Since the scientific literature and experience with battered women no longer support such a description, reference to a single label is no longer adequate. See generally H.R. Con. Res. 89, 102d Cong., 2d Sess. (1992) (enacted).

49. See Julie Blackman, *Emerging Images of Severely Battered Women and the Criminal Justice System*, 8 *BEHAVIORAL SCI. & LAW* 121, 129 (1990) (discussing race and social class as a context for understanding battered women's responses to violence). The conceptual framework identified earlier can be used to define the minimum components of expert testimony. See *supra* note 8 and accompanying text. Other areas of testimony that may be relevant in some legal situations in which battered women are involved and which are directly related to domestic violence include the psychology of domestic violence perpetrators and the effects of domestic violence on children.

by the expert witness should be informed by four key components supported by the facts in the case:

(1) The cumulative history of violence and abuse experienced by the victim in the relationship at issue, including, where relevant, the nature and extent of violence or abuse in a specific episode;⁵⁰

(2) The psychological reactions of the battered woman to the batterer's violence;

(3) The strategies used (or not used) by the battered woman in response to prior violence and abuse, and the consequences of (or the expectations that arise from) those strategies; and

(4) The contextual factors that influenced both the battered woman's strategies for responding to prior violence, and her psychological reactions to that violence.

The expert witness must inquire into these four areas in order to address, within the overall social context, the various legal issues to be considered by the factfinder, be it a jury or a judge. Generally, the manner in which the psychological inquiry is framed contributes significantly to the clarity with which the experiences of a battered woman may be understood, and to a determination of the relevance those experiences may have to the specific legal issues.

It is through an assessment and evaluation process⁵¹ that an expert witness comes to understand a particular battered woman's response to the specific pattern of violence and abuse to which she has been exposed. Further, an individualized assessment allows the expert to consider specific contextual factors in the battered woman's life, factors that may help to provide an explanation of her particular response to violence. An expert witness can then assist the factfinder in making sense of the information obtained about a particular battered woman and her situation by placing that information within the parameters of what is known about battered women generally, based on both the scientific literature and the expert witness' professional experience working with battered women.

Occasionally, an expert witness may be called upon to testify generally about some aspect of domestic violence or the victim's response to it without testifying specifically about a particular battered woman. For example, in the prosecution of a batterer where the vic-

50. A specific episode is more relevant in some legal contexts (e.g., homicide) than others (e.g., child custody).

51. The assessment typically involves an evaluation of the defendant and a review of relevant evidentiary documents and materials. DUTTON, *supra* note 27, at 31-36.

tim is not available or is not cooperating with the prosecutor, the expert witness may be called upon to explain why a battered woman may appear uninterested in or even strongly opposed to having her batterer convicted. Further, the expert witness may be asked to explain whether apparently puzzling behavior on the part of the victim (e.g., her failure to tell an emergency room physician about the cause of her injuries) refutes the allegation that violence occurred. Providing testimony in these examples requires weighing the difficult issues involved with going forward against a battering victim's wishes.

II. THE BATTERED WOMAN'S EXPERIENCE OF DOMESTIC VIOLENCE

A. *The Question: What Is The Nature and Extent of the Domestic Violence Experienced By the Battered Woman?*

In order to argue that domestic violence plays a role in understanding key legal issues in a specific legal action, it is obviously necessary to address the assertion that domestic violence has, in fact occurred. Thus, the first key question is, "What is the nature and extent of the domestic violence experienced by the battered woman?"⁵² Raising this question suggests two areas of scientific inquiry: (1) determining what threshold of behavior meets the criteria for defining behavior as violent or abusive, and (2) determining the prevalence of violence and abuse.

B. *Review of the Literature*

1. Definitional Issues

Differences in the nature, pattern, and severity of violence and abuse are found across relationships.⁵³ These differences are accompanied by variations in the strategies battered women use to respond to the violence,⁵⁴ and the psychological effects that result.⁵⁵

52. This question refers to acts of violence and abuse inflicted on the battered woman by her partner, both prior to and during the situation in which the battered woman is charged. Similarities or differences between the situation at issue and prior occurrences of violence (separate from the fact of their occurrence) are often relevant for understanding the battered woman's response to the situation at issue. Prior acts of violence and abuse toward the victim by other perpetrators are addressed as a contextual influence in part IV of this Article.

53. See Diane R. Follingstad et al., *Identification of Patterns of Wife Abuse*, 6 J. INTERPERSONAL VIOLENCE 187 (1991); Douglas K. Snyder & Lisa A. Fruchtman, *Differential Patterns of Wife Abuse: A Data-Based Typology*, 49 J. CONSULTING & CLINICAL PSYCHOL. 878 (1981).

54. For a discussion of the strategies battered women use in response to violence, see

a. Nature of the Violence and Abuse

In the social science literature, various terms have been used to describe violence and abuse within an intimate relationship (including spouse abuse, domestic violence, marital assault, woman abuse, and battering), although there is little substantive difference among them in the types of phenomena described.⁵⁶ Throughout this Article and in the scientific field generally, these terms are used interchangeably to refer to the broad range of behaviors considered to be violent and abusive within an intimate relationship.⁵⁷ These terms include, but are not limited to, phenomena referred to in statutory definitions of domestic assault, battery, sexual assault, and stalking.⁵⁸ However, not all acts within intimate relationships considered to be abusive from a social science perspective rise, in and of themselves, to the level of criminal behavior. This part discusses violence and abuse from a social science perspective, regardless of whether that violence and abuse also meets the criteria for criminal behavior.

Distinguishing types of violence and abuse is useful for developing a complete understanding of the dynamic of power and control within an abusive relationship.⁵⁹ Dimensions of abusive behavior that occur within intimate relationships can be categorized as physical, sexual, and psychological. An actual occurrence of violence or abuse often includes two or all three of these dimensions.

The Abusive Behavior Observation Checklist (the "ABOC")⁶⁰

part IV of this Article.

55. For a discussion of the psychological effects of domestic violence, see part III of this Article.

56. See Anne L. Ganley, *Integrating Feminist and Social Learning Analyses of Aggression: Creating Multiple Models for Intervention with Men who Battered*, in *TREATING MEN WHO BATTER: THEORY, PRACTICE, AND PROGRAMS* 196, 200 (P. Lynn Caesar & L. Kevin Hamberger eds., 1989).

57. See *id.* at 200-03.

58. *Id.*

59. An important perspective for understanding violence and abuse is based on power and control over others because it recognizes the function of the violent or abusive behavior beyond the typographical description of it. An example of this perspective, taken from the context of lesbian relationships, defines battering as a "pattern of violent and coercive behaviors whereby a lesbian seeks to control the thoughts, beliefs, or conduct of her intimate partner or to punish the intimate for resisting the perpetrator's control over her." Barbara Hart, *Lesbian Battering: An Examination*, in *NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING* 173, 173 (Kerry Lobel ed., 1986).

60. See DUTTON, *supra* note 27, at 156. The ABOC is designed to be used in an interviewer-administered questionnaire format. The ABOC incorporates items from the "Power and Control Wheel," an instrument designed to assess psychological abuse. See, e.g., ELLEN L. PENCE & MICHAEL PAYMAR, *POWER AND CONTROL: TACTICS OF MEN WHO BATTER: AN*

includes a listing of specific types of physical, sexual, and psychological abuse found in violent relationships. The ABOC and similar instruments have been used in both research and applied settings as methods of systematic assessment of violence and abuse within intimate relationships.⁶¹

Legal definitions of sexual assault typically involve elements of lack of consent, force or threat of force, and sexual penetration,⁶² although definitions across the scientific literature recognize a wider range of behavior as sexual abuse.⁶³ Any attempt to gain an understanding of a woman's behavior in response to sexual violence and abuse warrants inclusion of this wider range of unwanted sexually-related behaviors.⁶⁴ Regardless of whether a specific act of sexual abuse fails to meet established criteria for the statutory definition of a sexual crime,⁶⁵ the psychological impact of that act of abuse on the victim may be significant.⁶⁶

No single typology of psychological abuse has been consistently used in the social science literature,⁶⁷ although one commonly used

EDUCATIONAL CURRICULUM (1986). The ABOC also incorporates items from the "Conflict Tactics Scale," an instrument designed to assess physical violence. See Murray A. Straus, *Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scale*, 41 J. MARRIAGE & FAM. 75 (1979); see also Jan E. Stets & Murray A. Straus, *Gender Differences in Reporting Marital Violence and Its Medical and Psychological Consequences*, in PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES 151 (Murray A. Straus & Richard J. Gelles eds., 1990). But see Russell P. Dobash, et al., *The Myth of Sexual Symmetry in Marital Violence*, 39 SOC. PROBS. 71 (1992) (criticizing the Conflict Tactics Scale).

61. See generally DUTTON, *supra* note 27, at 35-36 (discussing an overall approach to assessment of violence and abuse that includes systematic assessment through the use of questionnaires, an open-ended interview format, and a structured or scenario interview format); Mary Ann Dutton, *Assessment and Treatment of Post-Traumatic Stress Disorder Among Battered Women*, in TREATING PTSD 69 (David W. Foy ed., 1992) (same).

62. See DIANA E. RUSSELL, RAPE IN MARRIAGE 42-43 (1982); Carole-Rae Reed et al., *Victim Assessment: The Dimensions of Rape Interview Schedule (DORIS)*, in RAPE AND SEXUAL ASSAULT III: A RESEARCH HANDBOOK 13, 15 (Ann W. Burgess ed., 1991).

63. See, e.g., DAVID FINKELHOR & KERSTI YLLO, LICENSE TO RAPE: SEXUAL ABUSE AGAINST WIVES (1983).

64. Examples of such non-consensual sexual acts include fondling, forced nudity, being forced to watch others engage in sexual behavior, being filmed or observed by others during sexual activity, and forced sexual contact with an animal.

65. See, e.g., RUSSELL, *supra* note 62, at 17-18, 190. For example, in some states the criteria for determining when an act constitutes rape are more stringent when the act occurs within a marital relationship. See, e.g., IDAHO CODE §§ 18-6101, -6107 (Supp. 1993).

66. For example, when the abusive partner of one woman I evaluated would ejaculate on her back (after having masturbated himself on her body against her will), the experience would trigger for her traumatic memories of a similar experience of childhood sexual abuse by an older male relative.

67. See generally Richard M. Tolman, *The Development of a Measure of Psychological*

typology is included in the "Power and Control Wheel,"⁶⁸ which includes eight categories of psychological abuse: coercion and threats;⁶⁹ intimidation;⁷⁰ emotional abuse;⁷¹ isolation;⁷² minimization, denial, and blaming;⁷³ use of the children to control the victim;⁷⁴ use of "male privilege";⁷⁵ and economic/resource abuse.⁷⁶ Stalking may incorporate several of these categories of psychological abuse.

Another approach to defining psychological abuse has been to use Amnesty International's definition of "psychological torture," which includes the following categories of psychological abuse: isolation of the victim;⁷⁷ induced debility producing exhaustion, weakness, or fatigue;⁷⁸ monopolization of perception;⁷⁹ threats to harm;⁸⁰ degradation;⁸¹ forced alcohol or drug use;⁸² induced altered

Maltreatment of Women by Their Male Partners, 4 VIOLENCE & VICTIMS 159, 159-60 (1989).

68. See PENCE & PAYMOR, *supra* note 60.

69. The abuser may threaten to injure or kill the victim or others in her family (especially children); to injure her in some other way (e.g., burning her house down, stealing her car or other property); or use threats as a means of coercing her to engage in illegal activities.

70. The abuser may intimidate the victim by displaying weapons, by smashing objects or destroying property, or by using looks or gestures in a manner that instills fear.

71. The abuser may emotionally abuse the victim by calling her insulting names, or by preventing her from engaging in routine personal hygiene activities.

72. The abuser may isolate the victim by imposing restrictions on her use of the telephone or television, or on her access to mail, friends, and family; by demanding that she account for her whereabouts at all times; or by restricting her contact with others to those times when the abuser is present and can monitor the interaction.

73. The abuser may deny engaging in the abusive activity, or he may blame the victim for "causing" the violence or abuse.

74. The abuser might threaten to kidnap or abuse the children, use child custody or visitation as an opportunity to harass the woman without regard for the children's welfare, or relay threatening messages through the children.

75. The abuser may exercise his "male privilege" by unilaterally making major household decisions (such as moving, purchasing, or taking out bank loans).

76. The abuser may engage in economic or resource abuse by controlling access to or limiting the availability of economic resources (e.g., by requiring the victim to "beg" for money, by stealing money from her, by destroying her credit rating, or by restricting her access to transportation, to use of the home, or to the family business).

77. See *supra* note 72 for examples of isolation.

78. Methods of induced debility may involve deprivation of sleep or food, or forced hard labor.

79. Perception may be monopolized through isolation, controlled access to information, or the provision of misinformation.

80. See *supra* note 69 for examples of common threats.

81. See *supra* note 71 for examples of emotional abuse.

82. For example, an abuser may force or coerce the victim to engage in substance abuse, thereby keeping her intoxicated and thus less able to resist the perpetrator. This sub-

states of consciousness;⁸³ and occasional random and variable indulgences that keep alive false hopes that the torture will stop.⁸⁴

"Psychological battering" has been distinguished from "emotional abuse" where, in the latter, no credible threat of violence exists⁸⁵ in that moment, or has ever existed. Thus, behavior which may not be considered threatening by the recipient in one relationship may be considered a clear sign of danger in another relationship, due to the context of prior violence and abuse in which the behavior occurs.

Obviously, many actual scenarios involving abusive acts include elements of all three forms of abuse, physical, sexual, and psychological. For example, one battered woman, after having been beaten by her husband, was raped at knifepoint by him while he called her sexually explicit derogatory names, wrongly accused her of engaging in sexual behavior with numerous others, and threatened to kill her.⁸⁶

The different elements that may comprise an abusive incident are relevant to the criminal prosecution of the perpetrator, in that they dictate which criminal charges may be brought. These elements are also useful in understanding the victim's response, in that her psychological response to an incident—as well as her efforts to escape or protect herself—may vary depending on the different forms of violence and abuse she experiences.⁸⁷

stance abuse may involve the forced use of drugs that are intended to frighten the victim, (e.g., drugs which create paralysis), distort her ability to perceive, or make her more amenable to suggestion or brainwashing.

83. The victim's state of consciousness may be altered, for example, through the intentional use of hypnotic induction procedures, or through sensory or sleep deprivation.

84. The abuser may "indulge" the victim by behaving affectionately, giving gifts or bestowing small favors, or apologizing to her for the abusive behavior.

85. See, e.g., Ganley, *supra* note 56, at 202.

86. The battered woman may associate the batterer's use of derogatory names or accusations with previous acts of extreme violence and abuse. Thus, the batterer's subsequent use of the same derogatory names or accusations, especially when this pattern occurs repeatedly, may cause the battered woman to experience fear to a much greater degree than the average person might understand.

87. See generally Mary Ann Dutton et al., *Traumatic Responses Among Battered Women Who Kill*, 7 J. TRAUMATIC STRESS (forthcoming 1994) (comparing the severity of violence and abuse experienced by battered women who were charged with killing an abusive partner with the severity of violence and abuse experienced by a separate group of battered women who sought help through a mental health program); Dean G. Kilpatrick et al., *Victims and Crime Factors Associated with the Development of Crime-Related Post-Traumatic Stress Disorder*, 20 BEHAV. THERAPY 199, 211 (1989).

b. Pattern of the Violence and Abuse

The pattern of violence and abuse is as important to understand as are the specific acts. One pattern referred to in the scientific literature is the "cycle of violence,"⁸⁸ which consists of a tension-building phase, followed by acute battering of the victim, and finally by a contrite phase where the batterer's use of promises and gifts⁸⁹ increases the battered woman's hope that violence has occurred for the last time. Not all violence follows this pattern, however. The violence may appear to come "out of the blue," with no tension-building phase, or there may be no contrition phase following the violence, only the transient absence of violence and abuse.

Abusive behavior does not occur as a series of discrete events. Although a set of discrete abusive incidents can typically be identified within an abusive relationship, an understanding of the dynamic of power and control within an intimate relationship goes beyond these discrete incidents. To negate the impact of the time period between discrete episodes of serious violence—a time period during which the woman may never know when the next incident will occur, and may continue to live with ongoing psychological abuse—is to fail to recognize what some battered women experience as a continuing "state of siege."⁹⁰ Psychologically abusive behavior and less severe forms of physical violence can occur without leading to an acute and serious episode of physical or sexual violence, even when more serious violence occurs at other times. The "state of siege" can begin with the first identifiable act of violence or abuse in the relationship, and may merely be punctuated by the discrete acts of violence or abuse that follow.

Thus, the pattern of violence and abuse can be viewed as a single and continuing entity, one whose character may change over time, but that nevertheless forever changes the nature of the relationship. The battered woman's fear, vigilance, or perception that she has

88. See WALKER, *supra* note 29, at 55.

89. Some batterers are genuinely remorseful and experience guilt and negative self-image as a result of their violent behavior, whereas others may use promises and gifts in a more overt act of manipulation. Either scenario may influence a battered woman to reenter a relationship despite having previously decided to leave it. One example I encountered was a battered woman, hospitalized with multiple broken bones, lacerations, and bruises, who decided to return to her abusive partner when he promised to stop the abuse and to renew their marriage vows.

90. Telephone Interview with Sue Osthoff, Director, National Clearinghouse for the Defense of Battered Women (Jan. 2, 1991).

few options may persist, even when long periods of time elapse between physically or sexually violent episodes, and even when the abusive partner appears to be peaceful and calm.⁹¹

c. Severity of the Violence and Abuse

In addition to determining the nature and pattern of violence and abuse, it is necessary to understand the level of severity at which the violence and abuse occurs. A determination of severity is not adequately captured by behavioral topography alone. Although definitions of severity based on topography have incorporated the notion of "risk of injury,"⁹² they have not accounted for the actual level of physical injury,⁹³ psychological damage,⁹⁴ or the battered woman's own perception of the severity of the abuse.⁹⁵ An adequate consideration of this severity rests on a multidimensional approach that includes a topographical description of discrete incidents of violence or abuse, a

91. For some battered women, it is only after they no longer live within the constant "state of siege" that they recognize the extent to which they had been doing so. For others, this recognition occurs only after they are in prison, serving time for killing their violent partners.

92. See Murray A. Straus, *Injury and Frequency of Assault and the "Representation Sample Fallacy" in Measuring Wife Beating and Child Abuse*, in *PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES*, *supra* note 60, at 82.

93. Behavior that might ordinarily be considered to pose a low risk of injury, such as pushing the victim during an argument, may easily result in serious actual injury if the push is into the path of an oncoming car or down a flight of stairs, or if the push occurs during pregnancy.

94. For example, the battered woman may experience no actual physical injury when a loaded gun is held to her head and the trigger is not pulled, or when the trigger is pulled but there is not a bullet in the chamber, but the resulting psychological damage can be enormous.

95. The battered woman's perception of severity takes into account numerous pieces of information, including the actual violent and/or abusive behavior, the context in which it occurred, her perception of the batterer's intent, and her ability to defend herself effectively against injury or to perceive other options for escape or rescue. While subjective in nature, the battered woman's perception of severity takes into account all information that was relevant to her at the time, and provides an important measure of the perceived level of severity of violence to which she responded. During a violent episode, a slight shift in a batterer's behavior (e.g., a look in the eye, the use of abusive language during sex which may have begun as consensual, a period of "intense calm"), in the context in which abuse occurs (e.g., in a car driven to a remote location, out of the earshot of others, following days or weeks of "strange" behavior), or in the battered woman's response to violence (e.g., fighting back, calling police) may signal a shift in the battered woman's perception of danger (and in the actual danger to her) on this occasion as compared to prior occasions. It is important to note that the battered woman may underestimate the actual level of severity as a result of psychological effects such as minimization, denial, dissociation, or amnesia.

description of the pattern of violence and abuse over time, the battered woman's perception of the severity of violence and abuse, and the actual physical and psychological injury that results.⁹⁶

When the pattern of violence and abuse is repeated over a period of considerable time, it is often difficult to isolate the specific psychological effects (e.g., the victim's depression, anxiety, or somatic complaints) of a single abusive incident. However, some distinguishable psychological effects (e.g., the victim's fear that she will be killed by her abuser, or that he will kill or kidnap her children; her flashbacks or nightmares relating to a specific abusive incident; her physiological reaction in the presence of certain events or stimuli that may represent a specific abusive experience) can be associated with a specific violent act which occurred at a given point in time.

2. The Prevalence of Violence and Abuse

Women are more likely to be assaulted,⁹⁷ killed,⁹⁸ or raped⁹⁹ by a current or former male partner than by anyone else. Some form of physical aggression occurs in one-fourth¹⁰⁰ to one-third¹⁰¹ of all marital couples—and the rate for engaged,¹⁰² cohabitating, and dating couples¹⁰³ is comparable. Some studies have indicated that wom-

96. The victim's perception of danger (and the actual danger to her) may be greater than might otherwise be indicated by either the actual physical injury (e.g., no injury when a loaded gun is held to the head, but not fired) or the topographic description of behavior (e.g., shove which occurs near a flight of stairs or while holding an infant).

97. See PATRICK A. LANGAN & CHRISTOPHER A. INNES, U.S. DEP'T OF JUSTICE, PREVENTING DOMESTIC VIOLENCE AGAINST WOMEN 1 (1986); Angela Browne, *Violence Against Women: Relevance for Medical Practitioners*, 267 JAMA 3184, 3185 (1992).

98. See Angela Browne & Kirk R. Williams, *Exploring the Effect of Resource Availability and the Likelihood of Female-Perpetrated Homicides*, 23 LAW & SOC'Y REV. 75, 78 (1989).

99. See RUSSELL, *supra* note 62, at 64.

100. See Murray A. Straus & Richard J. Gelles, *How Violent Are American Families? Estimates from the National Family Violence Resurvey and Other Studies*, in PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES, *supra* note 60, at 110; Jan E. Stets & Murray A. Straus, *The Marriage License as a Hitting License: A Comparison of Assaults in Dating, Cohabiting and Married Couples*, in PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES, *supra* note 60, at 234.

101. See Irene H. Frieze & Angela Browne, *Violence in Marriage*, in FAMILY VIOLENCE: CRIME AND JUSTICE—A REVIEW OF RESEARCH 163 (Lloyd Ohlin & Michael Tonry eds., 1989).

102. See generally K. Daniel O'Leary, *Physical Aggression Between Spouses: A Social Learning Perspective*, in HANDBOOK OF FAMILY VIOLENCE 31, 47-48 (Vincent B. van Hasselt et al. eds., 1988) (citing data demonstrating that the amount of physical aggression between couples remained stable both before and after marriage).

103. See, e.g., David B. Sugarman & Gerald T. Hotaling, *Dating Violence: Prevalance*,

en report using violence against men about equally as often as men report using violence against women, but these data do not differentiate initiated violence from self-defense, nor potential reporting bias.¹⁰⁴ Men, compared to women, use severe acts of violence more often, engage in more violent behaviors within a single incident, and injure their partners more seriously.¹⁰⁵

Violence between partners in lesbian and gay male couples also has been recognized to occur at higher rates.¹⁰⁶ This phenomena provides evidence that while a gender analysis of power is necessary, it is not sufficient to understand the dynamics of violence and abuse in all intimate relationships.

When women are physically and sexually abused by their partners, their children are also at risk. The risk to the children ranges from the risk of psychological injury as the result of witnessing the violence between adults,¹⁰⁷ to the risk of accidental physical injury as the result of being present during the violence between adults or as the result of intervening with the batterer in an attempt to stop the violence.¹⁰⁸ The children may even become the target of direct and intentional abuse.¹⁰⁹ One of the strongest factors that place a male at

Context, and Risk Markers, in VIOLENCE IN DATING RELATIONSHIPS 3, 6-7 (Maureen A. Pirog-Good & Jan E. Stets eds., 1989).

104. See, e.g., Daniel G. Saunders, *Wife Abuse, Husband Abuse, or Mutual Combat? A Feminist Perspective on the Empirical Findings*, in *FEMINIST PERSPECTIVES ON WIFE ABUSE* 90, 101 (Kersti Yllo & Michele Bograd eds., 1986) (noting that reporting biases may exist because most surveys of domestic violence do not ask questions about motive, and do not seek reports or answers from both partners).

105. See Browne & Williams, *supra* note 98, at 86 (stating that men kill their female partners at rates higher than women kill their male partners); see also Lisa D. Brush, *Violent Acts and Injurious Outcomes in Married Couples: Methodological Issues in the National Survey of Families and Households*, 4 *GENDER & SOC'Y* 56 (1990) (discussing differences between genders in the use of violence generally); Saunders, *supra* note 104, at 95 (same).

106. See, e.g., DAVID ISLAND & PATRICK LETELLIER, *MEN WHO BEAT THE MEN WHO LOVE THEM: BATTERED GAY MEN AND DOMESTIC VIOLENCE* 14 (1991) (concluding that while actual reporting of gay male domestic violence is low, gay male domestic violence may occur at a higher rate than heterosexual domestic violence); CLAIRE M. RENZETTI, *THE VIOLENT BETRAYAL* 17 (1992) (finding that violence in lesbian relationships occurs with roughly the same frequency as violence in heterosexual relationships).

107. See PETER G. JAFFEE ET AL., *CHILDREN OF BATTERED WOMEN* (1990); Liane V. Davis & Bonnie E. Carlson, *Observation of Spouse Abuse: What Happens to the Children?*, 2 *J. INTERPERSONAL VIOLENCE* 278 (1987).

108. See JAFFEE ET AL., *supra* note 107, at 27 (noting that children are sometimes hit, pushed, or dropped during a violent outburst).

109. See Donna L. Truesdell et al., *Incidence of Wife Abuse in Incestuous Families*, 31 *SOC. WORK* 138, 139 (1986) (noting a study of incestuous families where 73% of the mothers reported themselves to be physically abused, 23% at a life-threatening level of severity).

risk for becoming a perpetrator of domestic violence is having witnessed domestic violence in the family of origin; a similar pattern has been found for becoming a victim of domestic violence.¹¹⁰

Pregnancy is a high-risk time for violence against women. Within a general sample of pregnant women, 17% reported the occurrence of physical and/or sexual abuse during their pregnancy, with 10% indicating that they had been abused on more than two occasions during their pregnancy.¹¹¹ Violence during pregnancy was also found to function as an obstacle to receiving adequate prenatal care,¹¹² further increasing the risk of negative physical consequences to the battered woman and her unborn child.

Another high-risk time for escalation of violence and abuse is at the point when a woman decides to separate, or actually separates, from her abusive partner.¹¹³ The evidence suggests that when women are killed by an intimate, they are more likely to be living away from their partner at the time.¹¹⁴

Despite its widespread occurrence, most domestic violence is largely unrecognized or unresponded to by professionals, including family therapists,¹¹⁵ psychotherapists,¹¹⁶ physicians,¹¹⁷ and law enforcement officials.¹¹⁸ In one study, when family therapists were given a written description of an actual case involving domestic violence,¹¹⁹ 40% of them failed to address the issue of violence at

110. See, e.g., Gerald T. Hotaling & David B. Sugarman, *An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge*, 1 VIOLENCE & VICTIMS 101 (1986).

111. See Judith McFarlane et al., *Assessing for Abuse During Pregnancy: Severity and Frequency of Injuries and Associated Entry Into Prenatal Care*, 267 JAMA 3176, 3177 (1992).

112. *Id.*

113. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5-6 (1991).

114. See, e.g., BROWNE, *supra* note 1.

115. See Judith M. Avis, *Where Are All the Family Therapists? Abuse and Violence Within Families and Family Therapy's Response*, 18 J. MARITAL & FAM. THERAPY 225 (1992); Michele Harway & Marsali Hansen, *Therapist Perceptions of Family Violence, in BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE*, 42, 52 (Marsali Hansen & Michele Harway eds., 1993).

116. See Robin Sesan, *Sex Bias and Sex-Role Stereotyping in Psychotherapy With Women: Survey Results*, 25 PSYCHOTHERAPY 107 (1988).

117. See Demie Kurz & Evan Stark, *Not-So-Benign Neglect: The Medical Response to Battering*, in FEMINIST PERSPECTIVES ON WIFE ABUSE, *supra* note 104, at 249, 251; Carole Warshaw, *Limitations of the Medical Model in the Care of Battered Women*, 3 GENDER & SOC'Y 506 (1989).

118. See LAWRENCE W. SHERMAN, POLICING DOMESTIC VIOLENCE 25-27 (1992).

119. Harway & Hansen, *supra* note 115, at 53. The written description included the

all.¹²⁰ In a similar study involving predominantly male psychotherapists, only 19% of the respondents expressed concern about providing protection for the woman.¹²¹

Identification of domestic violence victims is equally problematic in the medical community.¹²² In one study, primary care physicians reported specific deterrents to exploring domestic violence with their patients.¹²³ These deterrents included: time constraints (71%); fear of offending the patient (55%); feelings of inadequacy in identifying appropriate interventions (50%); frustration that in spite of their advice, the outcome was in the hands of the patient (42%); and a close identification with the patient that precluded the physician from considering the possibility of domestic violence (39%).¹²⁴ A study of domestic violence victims seeking treatment in hospital emergency rooms initially found that only 5.6% were identified as domestic violence victims by medical personnel,¹²⁵ after the introduction of a specialized protocol, that rate rose to 30%.¹²⁶

Furthermore, most domestic violence does not come to the attention of law enforcement officials.¹²⁷ Only an estimated 10% of domestic violence incidents result in calls to the police.¹²⁸ When police are called in domestic violence cases, it may signal the potential for serious harm. For example, in 85% of a sample of spousal homicide cases, the police had intervened on at least one occasion in the preceding two years and, for 54% of the cases, the police had intervened

following: "[H]e has repeatedly been physically violent with her and the kids and on the day prior, he grabbed her and threw her on the floor in a violent manner and then struck her." *Id.*

120. *Id.* at 44.

121. *Id.* at 45-47. The study sample for psychotherapists was 71% male; 99% were psychologists by training.

122. See Council on Ethical and Judicial Affairs, Am. Med. Ass'n, *Physicians and Domestic Violence: Ethical Considerations*, 267 JAMA 3190 (1992).

123. Nancy K. Sugg & Thomas Inui, *Primary Care Physicians' Response to Domestic Violence: Opening Pandora's Box*, 267 JAMA 3157 (1992).

124. See *id.* at 3157-58. "Close identification" results when physicians view their patients as being much like themselves—physicians who come from white, middle-class backgrounds, with no experience of domestic violence, may thus assume that patients with similar backgrounds would likewise not be at risk of encountering domestic violence. See *id.* at 3158.

125. Susan V. McLeer & Rebecca Anwar, *A Study of Battered Women Presenting in an Emergency Department*, 79 J. PUB. HEALTH 65, 66 (1989).

126. *Id.*

127. See SHERMAN, *supra* note 118, at 6.

128. WOMEN'S ACTION COALITION, *supra* note 9, at 55 (citing ANGELA BROWNE & LAURA BROWN, AMERICAN PSYCHOLOGICAL ASS'N, *VIOLENCE AT HOME; PARTNER VIOLENCE* (1991)).

on five or more occasions.¹²⁹

The basis in reality of battered women's fear of death at the hands of their intimate partners is supported by the available evidence. In one study, domestic homicide was found to be the number one cause of death for African-American women between 15-34 years of age.¹³⁰ Women generally are killed by intimates more often than by anyone else.¹³¹

Contrary to widespread opinion, the occurrence of domestic violence does not differ by race. When socioeconomic class is accounted for, studies have found no overall differences in the rate of occurrence of physical violence between African-American and European-American families.¹³²

3. Levels of Agreement Between the Batterer's and the Victim's Reports of Violence and Abuse

Research has shown generally low levels of agreement between the batterer's and the victim's accounts of the batterer's violent behavior within a given relationship.¹³³ Violent husbands tend to per-

129. See Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261, 263 (1984) (citing a 1976 Police Foundation study of domestic violence in Detroit and Kansas City).

130. See, e.g., Jacquelyn C. Campbell, "If I Can't Have You, No One Can": Power and Control in Homicide of Female Partners, in *FEMICIDE: THE POLITICS OF WOMAN KILLING* 99 (Jill Radford & Diana E. Russell eds., 1986).

131. See Browne & Williams, *supra* note 98, at 78; Campbell, *supra* note 130, at 101. An analysis of domestic homicides in Dayton, Ohio, from 1975 to 1979, revealed that of the 116 homicides involving women, 37% were men killed by women, while 56% were women killed by men. *Id.* at 107. Of those women killed by men, 80% were killed by men the women knew well (e.g., a current or estranged boyfriend or husband, a former casual sex partner, a male family member, or a friend). *Id.*; see also Ann Goetting, *Patterns of Marital Homicide: A Comparison of Husband and Wives*, in *BLACK FAMILY VIOLENCE* 147, 158 (Robert L. Hampton ed., 1991) (describing a study of 84 men and women arrested in 1982 and 1983 for killing their spouses in Detroit) ("For the homicidal husband, the act is nearly always offensive; for the wife it is usually defensive . . . [M]arital homicide, regardless of who inflicts the fatal blow, typically is a reflection of wife abuse.").

132. See Lettie L. Lockhart, *A Reexamination of the Effects of Race and Social Class on the Incidence of Marital Violence: A Search for Reliable Differences*, 49 J. MARRIAGE & FAM. 603 (1987); Lettie L. Lockhart, *Spousal Violence: A Cross-Racial Perspective*, in *BLACK FAMILY VIOLENCE*, *supra* note 131, at 85, 85-86.

133. See Ileana Arias & Steven R. Beach, *Validity of Self-Reports of Marital Violence*, 2 J. FAM. VIOLENCE 139 (1987); James Browning & Donald Dutton, *Assessment of Wife Assault with the Conflict Tactics Scale: Using Couple Data to Quantify the Differential Reporting Effect*, 48 J. MARRIAGE & FAM. 375 (1986); Maximiliane E. Szinovacz, *Using Couple Data as a Methodological Tool: The Case of Marital Violence*, 45 J. MARRIAGE & FAM. 633 (1983). Further, research comparing couples' reports of behavior other than violence tends to indicate that the levels of agreement are quite low there as well. See, e.g., Neil S. Jacob-

ceive the relationship as mutually violent, whereas wives tend to view the husbands as being more violent than themselves.¹³⁴ Some research has suggested a correlation between the violent male partner's report of his own violent behavior and the level of his need for social approval, whereas the same relationship has not been found for the victim's report of batterer's violence.¹³⁵

Violent men and battered women disagree not only about the occurrence of violent behavior, but also about the level of resultant injury.¹³⁶ Although both husbands and wives tend to agree that injury is greater to the wife than to the husband, husbands tend to rate the injuries as less severe than the wives do.¹³⁷ An explanation of these differences has been hypothesized to relate to: (1) perceptual differences inherent in the roles of "victim" and "perpetrator," where different stimulus cues are more salient for each and where gender is confounded with the role,¹³⁸ (2) differences in the need for social approval,¹³⁹ and/or (3) intentional misrepresentation.¹⁴⁰ Thus, in a lawsuit in which evidence from both the batterer and victim is available regarding the occurrence of prior violence and abuse, disagreement between the partners is not uncommon.

III. THE BATTERED WOMAN'S PSYCHOLOGICAL REACTIONS TO DOMESTIC VIOLENCE

A. *The Question: What Are the Battered Woman's Psychological Reactions to Domestic Violence?*

When inquiry about domestic violence is relevant to a legal case, information concerning the battered woman's psychological reactions to the violence (in addition to the other elements described in this Article) may help to explain specific legal issues. In the forensic context, this inquiry has come to be known as the "battered woman syndrome"¹⁴¹ question, although the adequacy of that term is ques-

son & Danny Moore, *Spouses as Observers of the Events in Their Relationship*, 49 J. CONSULTING & CLINICAL PSYCH. 269 (1981).

134. Browning & Dutton, *supra* note 133, at 377.

135. See Arias & Beach, *supra* note 133, at 147.

136. See Ava Colantuono Land, *Accuracy of Observed Violence in an Experimental Paradigm* (1991) (unpublished Ph.D. dissertation, Nova University).

137. *Id.*

138. See *id.*

139. See Arias & Beach, *supra* note 133, at 140.

140. See Land, *supra* note 136.

141. See Walker, *supra* note 34.

tioned throughout this Article.

Typically, expert testimony concerning the battered woman's psychological reactions to violence has been used to address a number of different issues, including the reasonableness of the victim's perception of danger (where the victim is a criminal defendant claiming to have acted in self-defense);¹⁴² the psychological damage resulting from the domestic violence (where the victim is a plaintiff seeking damages in a civil tort action); the basis for sole child custody or restriction of visitation rights; and the battered woman's reasons for engaging in seemingly puzzling behaviors.¹⁴³

It is, of course, necessary to establish that the particular aspects of a battered woman's experience of violence (and its aftermath) toward which the testimony is addressed are directly relevant to the specific legal issues at hand.¹⁴⁴ If this link is not made explicit to the factfinder, the relevance of the expert witness testimony may not be clearly understood, or may be missed altogether.¹⁴⁵

The nature and extent of violence and abuse experienced by battered women differ widely, as do women's reactions to the violence and abuse. Thus, a number of different psychological sequelae to battering may be relevant to a legal case involving a battering victim.¹⁴⁶

Further, the psychological impact of violence and abuse on women's lives (and on the lives of trauma victims generally) goes beyond those reactions generally considered to be symptom-focused, such as depression, anxiety, or nightmares. Psychological reactions to

142. Within a criminal context, the testimony is used to bolster a standard defense (such as compulsion or self-defense), not to provide a separate defense per se. See *Dunn v. Roberts*, 768 F. Supp. 1442, 1448-49 (D. Kan. 1991) (discussing compulsion); Maguigan, *supra* note 2, at 427 (discussing self-defense); see generally GILLESPIE, *supra* note 2, at 159-60.

143. See *supra* note 16.

144. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786, 2796 (1993); Maguigan, *supra* note 2, at 427, 429.

145. The relevance of the psychological effects of the violence on the battered woman may be particularly difficult for the juror to comprehend without a link to key legal elements being made explicit. The average juror may interpret testimony referred to as "battered woman syndrome" as suggesting that the battered woman was "suffering" from a clinical syndrome, and that her behavior reflects a condition where she didn't know what she was doing. Although this may be true for some battered women, in most cases, testimony concerning battered women's psychological reactions to violence is not intended to explain their behavior as a function of psychological disorder. See Schneider, *supra* note 16, at 201-02.

146. See BLACKMAN, *supra* note 27; Lenore E. Walker, *Legal Self-Defense for Battered Women*, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE*, *supra* note 115, at 200, 205.

violence also include the ways in which battered women have come to think about the violence, themselves, and others as a result of their experiences. Finally, psychological reactions to violence also influence ways in which battered women relate to others.

As discussed previously, not all responses to trauma generally, or to domestic violence specifically, rise to the threshold of "clinical" or "pathological" conditions.¹⁴⁷ A particular battered woman may exhibit both clinical and nonclinical reactions simultaneously. The distinction between battered women's "clinical" and "nonclinical" psychological reactions is more relevant to some kinds of legal action than it is to others. For example, the distinction is largely irrelevant to a battered woman's claims of self-defense, or to her argument for custody based on a history of domestic violence—understanding the battered woman's fear may be most relevant in these cases. Alternately, a claim of personal injury may rest, in part, on the psychological damages resulting from victimization that rise to the threshold of "clinical" phenomena. Thus, although exposure to domestic violence results in psychological symptomatology for some of its victims, that psychological symptomatology may or may not be relevant to the key legal issues at hand.

In sum, the inquiry conducted by the expert witness must include a consideration of the key question addressed here: What are the battered woman's psychological reactions to domestic violence? Developing a formulation in answer to this question requires the expert witness to rely on current scientific knowledge concerning the broad range of potential psychological sequelae to trauma that are recognized in the social science literature, to identify those psychological sequelae that are found to be relevant with regard to the particular battered woman in question,¹⁴⁸ and to provide a reasoned link be-

147. It has been noted that some trauma victims identify positive outcomes following the healing process (a process that may include psychotherapeutic intervention). See generally Ronnie Janoff-Bulman, *The Benefits of Illusions, the Threat of Disillusionment, and the Limitations of Inaccuracy*, 8 J. CLINICAL PSYCH. 158 (1989). Thus, if a legal proceeding does not take place until an extended period of time has passed following the occurrence of violence or abuse that left the battered woman severely traumatized, and if a supportive and healing environment has been available to her during that period of time, she may appear strong, competent, and positive. This image is contrary to what might be expected by others hearing her story of abuse.

148. Developing a formulation for a particular battered woman requires face-to-face contact with her. Although an expert witness can testify about battered women generally, or about a "hypothetical" battered woman whose situation matches that of the defendant, relevant aspects of a particular battered woman's situation may be missed without an adequate and

tween those findings and the relevant legal issues.

The social science literature concerning the psychological sequelae of trauma generally,¹⁴⁹ and of violence against women specifically,¹⁵⁰ is extensive. This scientific literature recognizes a broad spectrum of behaviors, cognitions or beliefs, affective or emotional responses, and physiological reactions as psychological sequelae to traumatic events or experiences. This range of psychological sequelae to trauma is categorized here as indicators of psychological distress or dysfunction,¹⁵¹ cognitive reactions,¹⁵² and relational disturbances.¹⁵³

B. Review of the Literature

1. Cognitive Reactions to Violence and Abuse

Exposure to trauma, including violence and abuse, can change the way in which people view themselves, others, and the world.¹⁵⁴ Specific beliefs, perceptions, and other cognitions identified in the scientific literature include reference to perceptions of safety or vulnerability;¹⁵⁵ expectations regarding future violence (e.g., the expect-

thorough assessment involving contact with her.

149. See Blake et al., *supra* note 26, at 480.

150. See Lisa A. Goodman et al., *Violence Against Women: Physical and Mental Health Effects—Part I: Research Findings*, 2 *APPLIED & PREVENTIVE PSYCHOL.* 79 (1993); MARY P. KOSS ET AL., *AM. PSYCHOL. ASS'N, NO SAFE HAVEN: VIOLENCE AGAINST WOMEN AT HOME, AT WORK, AND IN THE COMMUNITY* (forthcoming 1994); Mary P. Koss, *The Women's Mental Health Research Agenda: Violence Against Women* (1988) (unpublished manuscript, on file with the *Hofstra Law Review*).

151. Reactions to trauma may or may not include those typically considered to be psychological symptoms. For example, some indicators of psychological dysfunction (e.g., interference with work or academic performance) may be a direct reaction to victimization by violence, but may not be considered psychological symptoms. See DUTTON, *supra* note 27; see generally HERMAN, *supra* note 47; *POST-TRAUMATIC THERAPY AND VICTIMS OF VIOLENCE*, *supra* note 27; Charles R. Figley, *Foreword* to *INTERNATIONAL HANDBOOK OF TRAUMATIC STRESS SYNDROMES* (John P. Wilson & Beverley Raphael eds., 1993) (discussing the development of "traumatology," and giving some examples of reactions to trauma which are not typical psychological symptoms).

152. See BLACKMAN, *supra* note 27; DUTTON, *supra* note 27; J. LISA MCCANN & LAURIE A. PEARLMAN, *PSYCHOLOGICAL TRAUMA AND THE ADULT SURVIVOR: THEORY, THERAPY, AND TRANSFORMATION* 57-79 (1990); Janoff-Bulman, *supra* note 147, at 163-67.

153. See generally DUTTON, *supra* note 27.

154. See Edna B. Foa et al., *Processing of Threat-Related Information in Rape Victims*, 100 *J. ABNORMAL PSYCHOL.* 156, 160-61 (1991) (stating that traumatized individuals perceive threat-related information differently than nontraumatized individuals); see also MCCANN & PEARLMAN, *supra* note 152, at 38-45; Janoff-Bulman, *supra* note 147, at 159-60.

155. See, e.g., MCCANN & PEARLMAN, *supra* note 152, at 66-68; Mary Ann Dutton et al., *Battered Women's Cognitive Schemata*, 7 *J. TRAUMATIC STRESS* (forthcoming 1994);

tation that violence or abuse will recur, or the expectation that future violence could be more serious);¹⁵⁶ viewing oneself as negative or blameworthy (e.g., having low self-esteem, feeling responsible for the violence);¹⁵⁷ perceiving that the violence or abuse is uncontrollable;¹⁵⁸ perceiving a lack of alternatives available to oneself as compared to others;¹⁵⁹ developing an increased tolerance for violence or abuse;¹⁶⁰ changes in beliefs about others (e.g., trustworthiness, powerfulness);¹⁶¹ and perceptions of meaninglessness.¹⁶² It is important to note that, contrary to the assertion that these beliefs are necessarily distorted or pathologic, they may reflect accurate, or at least "reasonable" perceptions of reality based on the particular history of traumatic experience.

The battered woman's perception of viable options for stopping the violence and abuse by any means is not only shaped by her own prior experience with violence, but also influences her future actions in response to violence.¹⁶³ The perception or understanding of whether there are options available that would end the violence is based largely on what has actually been learned through experience. One example is a battered woman who called the police on numerous occasions. The officers responded in a supportive manner and the batterer was arrested during some of those incidents. However, on each occasion he was released from jail quickly, and returned to continue his barrage of violence against the woman, her mother, and her children. Based on a combination of factors, this woman

Janoff-Bulman, *supra* note 147, at 159-61.

156. See, e.g., Dutton et al., *supra* note 155.

157. See Janoff-Bulman, *supra* note 147, at 165; Christopher Peterson & Martin E. Seligman, *supra* note 32, at 104.

158. See, e.g., Edna B. Foa et al., *Uncontrollability and Unpredictability in Post-Traumatic Stress Disorder*, 112 *PSYCH. BULL.* 218 (1992).

159. See, e.g., BLACKMAN, *supra* note 27, at 153-58.

160. *Id.*

161. See, e.g., MCCANN & PEARLMAN, *supra* note 152, at 181-84; Janoff-Bulman, *supra* note 147, at 165.

162. See generally Janoff-Bulman, *supra* note 147; Jim Lantz, *Using Frankl's Concepts with PTSD Clients*, 5 *J. TRAUMATIC STRESS* 485 (1992).

163. This notion is strongly supported by numerous theories, including the reformulated learned helplessness theory, which incorporates the construct of controllability. See, e.g., William E. Anderson & Craig A. Deuser, *Science and the Reformulated Learned-Helplessness Model of Depression*, 2 *PSYCHOL. INQUIRY* 14 (1991). While many people may have expectations of what they would or would not do in a given situation, the demands of an actual traumatic experience might change their views dramatically, influencing their response to similar situations in the future. See generally Mark D. Litt, *Cognitive Mediators of Stressful Experience: Self-Efficacy and Perceived Control*, 12 *COGNITIVE THERAPY & RES.* 241 (1988).

"learned" that police are a viable option for stopping the violence in an immediate situation. She also "learned" that, despite the support and interest of the police, they were not particularly effective in stopping the violence in the long-run. Another woman "learned" during childhood that the police were not a viable option to stop the violence even in an immediate situation: she observed her mother call the police on many occasions when her father beat her mother, only to hear them say that since the situation was "a domestic," they could not intervene. This woman never called the police when she had been beaten.¹⁶⁴

Some women who have been involved in prior abusive relationships may have a perception that they lack viable alternatives, because the problem is as bad or worse elsewhere. This may be based on their own prior abusive intimate relationships, on witnessing violence in their families of origin, on recognizing violence in the homes of their friends and family members, or on knowing of violence committed by persons who would not be expected to act that way.¹⁶⁵ Further, the alternative of living without an intimate relationship may be unacceptable or impractical to the woman.

For many reasons, some battered women "tolerate" abuse for a period of time, in the sense that they make excuses or generate "understandable" reasons for it, or in some way come to believe that there is a "good" reason to give the batterer another chance to stop the violence. This "tolerance" may be explained as a function of the "cognitive dissonance"¹⁶⁶ created by living in an abusive relationship from which the battered woman is unable to extricate herself: she may attempt to resolve that internal struggle or "dissonance" by focusing on reasons to remain. The "tolerance" may also derive from a battered woman's prior experience of even more severe violence elsewhere.

Battered women are often "helped" along in tolerating abuse by health and mental health professionals, law enforcement personnel, and legal professionals who suggest that battered women change themselves or live with their situation instead of attempting to develop safe ways to leave.¹⁶⁷ It has been suggested that women some-

164. These examples are, again, from my counselling sessions and other experiences with various battered women.

165. Examples include violence or abuse by a police officer, lawyer, judge, mental health professional, or member of the clergy.

166. See, e.g., BLACKMAN, *supra* note 27, at 30, 182.

167. See, e.g., Harway & Hansen, *supra* note 115.

times increase their tolerance over time as the violence increases in severity or frequency, but that the abuse may eventually reach a point where it becomes intolerable.¹⁶⁸ Regardless of the "reasons" a battered woman might previously have remained, or of her attempts to "live with" the violence, there often comes a point where she no longer chooses or is able to do so. It is at this point that a battered woman may react to a particular violent episode or threat as intolerable. This may occur even in cases where serious violence may have gone unchallenged in the past. Battered women's level of tolerance (or intolerance) may fluctuate at any given point in time and should be carefully evaluated in order to inform an understanding of the basis of her behavior. In sum, understanding these and other cognitions of a particular battered woman requires a careful analysis of the information and experience—especially regarding violence and abuse—available to her which may have shaped that learning.

2. Psychological Distress/Dysfunction

Numerous indicators of psychological distress and dysfunction have been identified as sequelae to physical and sexual violence. These include fear and terror;¹⁶⁹ depression and grief;¹⁷⁰ nightmares and flashbacks;¹⁷¹ avoidance and/or physiological reactivity to violence-related stimuli;¹⁷² anxiety;¹⁷³ anger and rage;¹⁷⁴ difficulty concentrating, or memory problems such as amnesia and dissociation;¹⁷⁵ hypervigilance;¹⁷⁶ feelings of shame;¹⁷⁷ lowered self-es-

168. See, e.g., BLACKMAN, *supra* note 27.

169. See, e.g., Patricia A. Resick et al., *Assessment of Fear Reactions in Sexual Assault Victims: A Factor Analytic Study of the Veronen-Kilpatrick Modified Fear Survey*, 8 BEHAV. ASSESSMENT 271, 271-72 (1986).

170. See WALKER, *supra* note 15 (discussing depression among battered women); WOMEN AND DEPRESSION: RISK FACTORS AND TREATMENT ISSUES (Ellen McGrath et al., eds., 1990) (same); Jacqueline C. Campbell, *A Test of Two Explanatory Models of Women's Responses to Battering*, 38 NURSING RES. 18 (1989) (discussing grief among battered women); Stark & Flitcraft, *supra* note 27, at 115 (discussing incidents of suicide among battered women); Susan F. Turner & Constance H. Shapiro, *Battered Women: Mourning the Death of a Relationship*, 31 SOC. WORK 372 (1983) (same).

171. See Beth M. Houskamp & David W. Foy, *The Assessment of Posttraumatic Stress Disorder in Battered Women*, 6 J. INTERPERSONAL VIOLENCE 367, 368 (1991).

172. *Id.*

173. See, e.g., Margaret L. Trimpey, *Self-Esteem and Anxiety: Key Issues in an Abused Women's Support Group*, 10 ISSUES MENTAL HEALTH NURSING 297 (1989).

174. It is important to distinguish the emotional feelings of anger and rage from any aggressive behavior that may or may not accompany those feelings.

175. See generally DISSOCIATIVE DISORDERS: A CLINICAL REVIEW, *supra* note 36; see also Loewenstein, *Psychogenic Amnesia and Psychogenic Fugue: A Comprehensive Review*, in

teem;¹⁷⁸ somatic complaints;¹⁷⁹ sexual dysfunction;¹⁸⁰ morbid hatred;¹⁸¹ addictive behaviors;¹⁸² and other forms of impaired functioning.¹⁸³ Nevertheless, these responses may occur in the immediacy of an acute violence episode or following its occurrence.¹⁸⁴ Few of these indicators of distress or dysfunction are specific only to trauma or victimization.¹⁸⁵

Some battering victims meet the full criteria for PTSD, including intrusion (e.g., nightmares, flashbacks), avoidance (e.g., avoiding reminders of violence, trying to remove memory of violence), and arousal (e.g., difficulty concentrating, increased anger, sleep disturbances) symptoms.¹⁸⁶ Some battering victims may also exhibit symp-

id. at 47 (defining "psychogenic amnesia" as "a reversible memory impairment in which groups of memories for personal experience that would ordinarily be available for recall to the conscious mind cannot be retrieved or retained in a verbal form").

176. "Hypervigilance" in a battered woman may mean that she is continually aware of her environment and surroundings in an effort to be in a state of "preparedness" for the next abusive or violent interaction. See Houskamp & Foy, *supra* note 171, at 368; Anita Kemp et al., *Post-Traumatic Stress Disorder (PTSD) in Battered Women: A Shelter Sample*, 4 J. TRAUMATIC STRESS 137 (1991).

177. See generally POST-TRAUMATIC THERAPY AND VICTIMS OF VIOLENCE, *supra* note 27.

178. See Trimpey, *supra* note 173.

179. See Mary P. Koss et al., *Relation of Criminal Victimization to Health Perceptions Among Women Medical Patients*, 58 J. CONSULTING & CLINICAL PSYCH. 147 (1990).

180. See Carol Apt & David F. Huelbert, *The Sexuality of Women in Physically Abusive Marriages: A Comparative Study*, 8 J. FAM. VIOLENCE 57 (1993).

181. See generally POST-TRAUMATIC THERAPY AND VICTIMS OF VIOLENCE, *supra* note 27.

182. See generally Evan Stark et al., *Wife Abuse in the Medical Setting: An Introduction for Health Personnel*, 7 DOMESTIC VIOLENCE 1 (1981).

183. For example, the psychological (and perhaps physical) effects of domestic violence on some battered women may lead to an inability to work in either paid or unpaid employment, or to difficulty in managing childcare adequately. It is important to note, however, that not all women who suffer from the psychological effects of battering are affected in such a way that their ability to provide adequate childcare is compromised.

184. See generally Robert C. Davis & Lucy N. Friedman, *The Emotional Aftermath of Crime and Violence*, in TRAUMA AND ITS WAKE 90 (Charles R. Figley ed., 1985) (discussing "traumatic" as compared to "post-traumatic" reaction). This distinction may be more relevant for traumatic events for which there is a discrete occurrence (e.g., rape by a stranger) rather than in the case of domestic violence where the distinct boundaries between abusive episodes are blurred by the ongoing psychological abuse and the reality that violence may erupt at any time.

185. Some exceptions are the intrusion, avoidance, and physiological arousal symptoms related directly to violence-specific stimuli (e.g., flashbacks about a specific violent episode, avoidance of sex due to prior experience of rape by an intimate partner, shaking and trembling when talking about a prior violent experience).

186. See Houskamp & Foy, *supra* note 171; Kemp et al., *supra* note 176; see also Dutton et al., *supra* note 155 (containing a study which demonstrates the link between indica-

toms characteristic of other disorders (e.g., depressive or anxiety disorders), since meeting the criteria for several disorders simultaneously is not uncommon among persons with PTSD.

Identification of current psychological reactions to trauma, or even a clinical diagnosis of PTSD, while consistent with a history of violence and abuse, does not prove that domestic violence actually occurred, that it occurred at the hands of the particular perpetrator in question, or that the psychological effects are, in fact, sequelae to domestic violence.¹⁸⁷ Ultimately, that determination rests with the factfinder, although the testimony of expert witnesses may assist the factfinder in reaching that determination. The testimony of expert witnesses can provide the factfinder with the formulation, based on the scientific literature, that best accounts for the phenomena experienced by the victim.

Recognizing post-traumatic reactions of psychological distress or dysfunction may be helpful in explaining a battered woman's actions while responding to a subsequent episode of violence. The situation at issue may trigger certain intrusive images,¹⁸⁸ affective responses such as fear or anger, or memories that may influence the course of the battered woman's behavior. For example, when a batterer begins to act out his threat to beat, rape, or kill the battered woman, she may experience rage and fear based on her (conscious or unconscious) memory of prior episodes when the batterer beat her severely, actually raped her, or attempted to kill her. Her actions in that immediate situation may be influenced by both the actual events occurring in the immediate situation and the triggered responses related to prior abusive experiences.

Understanding the nature of post-traumatic reactions may also help explain battered women's reactions to persons within the legal, social services, and health and mental health professions, especially when their posture is one of authority, dominance, and control. Even when an individual is acting within the norms of his or her profession, that individual may not recognize the powerful impact that even

tors of post-traumatic stress and negative cognitive schemata).

187. The PTSD symptoms may be related to other types of violence (e.g., rape during adolescence, childhood physical or sexual abuse, sexual harassment). See Dean G. Kilpatrick & Heidi S. Resnick, *Post-Traumatic Stress Disorder Associated with Exposure to Criminal Victimization in Clinical and Community Populations*, in *POST-TRAUMATIC STRESS DISORDER: DSM IV AND BEYOND* 113 (Jonathan R. Davidson & Edna B. Foa eds., 1993).

188. These images are often in the form of flashbacks, and may be visual, auditory, or kinesthetic images.

inadvertent gestures may have on someone experiencing post-traumatic effects resulting from violence and abuse at the hands of someone thought to be trustworthy.

3. Relationship Disturbances

Victimization by violence and abuse, especially by someone who is an intimate, can have an impact upon one's present and future relationships. When the victimization occurs during childhood, one may be especially vulnerable to re-victimization.¹⁸⁹ Vulnerability to re-victimization appears to result from exposure to long-term victimization by violence and abuse.¹⁹⁰ A battered woman with a history of childhood abuse may be even more vulnerable to the efforts of others to control and abuse her, and thus less able to protect herself from others.¹⁹¹ The battered woman may be re-victimized by subsequent intimate partners, and may even be re-victimized by professionals to whom she has turned for help.¹⁹²

Problems that battered women may experience within relationships include attachment to or dependency upon the abusive partner.¹⁹³ The battered woman's attachment to her abusive partner reflects both the attachment that is characteristic of love relationships in their early stages,¹⁹⁴ as well as the attachment that develops as a function of the abusive dynamic in the relationship. A battered woman's decreased sense of self-worth and the increased isolation associated with a forced dependency upon the abuser as the violence

189. See generally HERMAN, *supra* note 47.

190. See generally *id.*

191. Protection from the manipulation and control of others, especially when that manipulation or control is presented as being "for her own good" (e.g., not being allowed to go out alone, to have contact with others, or to work) is as important an issue as protection from more overt acts of violence and abuse (e.g., attempted rape or physical assault). Women socialized in a sex-role stereotypic manner may look to a man to provide their basic needs, from financial support to physical protection.

192. See generally CAROLYN M. BATES & ANNETTE M. BRODSKY, *SEX IN THE THERAPY HOUR* (1989); KENNETH S. POPE & JACQUELINE C. BOUHOUTSOS, *SEXUAL INTIMACY BETWEEN THERAPISTS AND PATIENTS* (1986); GARY SCHOENER ET AL., *PSYCHOTHERAPISTS' SEXUAL INVOLVEMENT WITH CLIENTS* (1989).

193. See generally Donald Dutton & S.L. Painter, *Traumatic Bonding: The Development of Emotional Attachments in Battered Women and Other Relationships of Intermittent Abuse*, 6 *VICTIMOLOGY* 139 (1981); Dee L. R. Graham et al., *Survivors of Terror: Battered Women, Hostages and the Stockholm Syndrome*, in *FEMINIST PERSPECTIVES ON WIFE ABUSE*, *supra* note 104, at 217.

194. See generally John D. Cunningham & John K. Antill, *Love in Developing Romantic Relationships*, in *PERSONAL RELATIONSHIPS 2: DEVELOPING PERSONAL RELATIONSHIPS* 27, 32-34 (Steve Duck & Robin Gilmour eds., 1981).

escalates over time can actually increase the battered woman's attachment to her abusive partner.¹⁹⁵ In essence, the extreme imbalance of power between abuser and victim can actually lead to the development of a strong emotional bonding, accomplished primarily through the abuser's threats to harm the victim, the victim's perception of the abuser's ability to do so, the victim's inability to escape and social isolation, and the victim's perception of some degree of kindness shown by the abuser.¹⁹⁶ The lives of many battered women include some or all of these elements.

Difficulty with trust and intimacy can result when violence and abuse occur in a relationship thought to be based on love, care, and commitment.¹⁹⁷ Following the betrayal of trust through the batterer's use of violence, a woman may have difficulty with trust or intimacy in a subsequent relationship. She may avoid relationships altogether, or develop relationships where there is a limitation on the level of intimacy that can be developed.¹⁹⁸ Alternately, she may seek trust and intimacy too readily or too intensely, in a desperate attempt to replace what was lost, to find security or comfort, or to ease the pain of the prior relationship.¹⁹⁹

4. Diversity of Women's Psychological Reactions to Violence

All women exposed to violence and abuse in their intimate relationships do not respond similarly, contradicting the mistaken assumption that there exists a singular "battered woman profile." Like other trauma victims, battered women differ in the type and severity of their psychological reactions to violence and abuse, as well as in their strategies for responding to violence and abuse.²⁰⁰ For example, in a study of battered women seeking help at one counseling program, five distinct profile types generated from the Minnesota Multiphasic Per-

195. See ELLEN L. PENCE, *IN OUR BEST INTEREST* (1987); Dutton & Painter, *supra* note 193.

196. See Graham et al., *supra* note 193, at 218-21; Dutton & Painter, *supra* note 193.

197. See MCCANN & PEARLMAN, *supra* note 152, at 202; see generally HERMAN, *supra* note 47.

198. For example, she may have become involved with someone who is "unavailable" (e.g., someone who is married, who lives in another state with little likelihood of closer contact, or who travels so much that he or she is never home).

199. See generally HERMAN, *supra* note 47.

200. For example, not all battered women report symptoms that meet the criteria for PTSD. See Houskamp & Foy, *supra* note 171, at 372; Kemp et al., *supra* note 176, at 141; see also LEE H. BOWKER, *BEATING WIFE-BEATING* 63-73 (1983) (describing six personal strategies women have employed in the face of violence).

sonality Inventory (the "MMPI") were identified, indicating different patterns of psychological functioning, including profiles that are considered "normal."²⁰¹ Other research has also shown that battered women vary in terms of their reported emotional state during the abuse,²⁰² and their perception of the negative effect on the relationship caused by abuse from their partner.²⁰³ Finally, battered women's beliefs about safety, trust, and intimacy have been found to relate to their appraisal of the severity of prior violence, their attributions concerning the cause of past violence, and their expectations of future violence.²⁰⁴

The range of possible psychological sequelae to domestic violence is broader than generally considered. In order to develop an individual case formulation relevant to a specific legal context,²⁰⁵ a comprehensive psychological assessment is necessary to identify those psychological responses that are relevant with regard to a particular battered woman and to provide an understanding of those responses within the context of the scientific literature.

IV. THE PRIOR STRATEGIES USED (OR NOT USED) BY THE BATTERED WOMAN IN RESPONDING TO DOMESTIC VIOLENCE

A. *The Question: What Strategies Has the Battered Woman Used (Or Not Used) in Responding to Domestic Violence?*

Perhaps the most commonly asked question about the battered woman (especially in a forensic context) is, Why didn't she leave? The question, to some extent, suggests that the battered woman, by remaining in (or returning to) an abusive relationship, is deviant, odd, or blameworthy in some way. Further, the question assumes not only that there are viable options for alternative behavior, but that she should have employed them,²⁰⁶ and that doing so would have led to her safety. However, in the criminal context, this common perception is contrary to a fundamental legal premise: "[T]he law has al-

201. See Mary Ann Dutton et al., *MMPI Trauma Profiles for Battered Women* (Aug. 1990) (Paper Presented at the Annual Convention of the American Psychological Association, on file with author).

202. See, e.g., Follingstad et al., *supra* note 53, at 200-02.

203. *Id.*

204. Dutton et al., *supra* note 155 (manuscript at 4-6, on file with *Hofstra Law Review*). These beliefs were also found to be related to measures of post-traumatic stress. *Id.*

205. See *supra* note 148 and accompanying text.

206. See GILLESPIE, *supra* note 1, at 146.

ways been clear . . . that a person has no obligation to rearrange her . . . entire life, or even inconvenience [her]self, in order to avoid a situation in which the need to act in self-defense might arise."²⁰⁷ When a battered woman has not left (or has returned to) a battering relationship, it might inaccurately be presumed that she was falsely claiming abuse, that she was responsible for the violence in the first place, that she enjoyed the violence (especially if it included sexual abuse), or, at least, was not bothered by it. Gaining an understanding of what a battered woman did (or did not do) during and after prior incidents of violence and of the basis for her actions (or inactions) can inform the factfinder regarding key elements of a legal argument as well as other issues relevant to the case at issue.

Thus, the third key question reframed for the legal context is, What are the strategies previously used (or not used) by the victim in responding to the domestic violence? This question addresses a far more complete picture of the battered woman's efforts than the simple question, Why didn't she leave? The reframed question suggests that what the victim did is as important as what she didn't do, and that the consequences of actions taken (and the anticipated consequences of actions not taken) are relevant towards understanding her behavior.

B. Review of the Literature

Battered women utilize an impressive array of strategies for attempting to stop the violence, strategies which include efforts to escape, avoid, and protect themselves and others from the violence and abuse of their intimate partners. These strategies have been categorized as personal, informal, and formal.²⁰⁸

Personal strategies include complying with the batterer's demands (or anticipated demands) in order to "keep the peace,"²⁰⁹ attempting

207. *Id.* at 145; see also Maguigan, *supra* note 1, at 450-51 (discussing the requirement of a "duty to retreat" in various states).

208. See, e.g., BOWKER, *supra* note 200.

209. Compliance with a partner's request is, of course, not by definition a strategy for resisting violence. However, compliance may be a strategic effort to keep the batterer calm, thus avoiding a possible violent or abusive episode. One example I encountered involved a battered woman who was making a sandwich at the "request" of her abusive partner. She could not remember whether he had asked for a half or a whole sandwich, but she feared that if she brought him the wrong thing, he would beat her for "not listening" to him. Her solution was to prepare one half sandwich and one whole sandwich in an effort to "comply" with his request, hoping that he would reach for the one he wanted.

to talk with the batterer about stopping the violence,²¹⁰ temporarily escaping from the batterer's presence,²¹¹ hiding or disguising one's appearance,²¹² physically resisting the batterer's violence or abuse,²¹³ defending oneself against the batterer's violence,²¹⁴ and using the children.²¹⁵ Informal strategies include soliciting help from neighbors, family, and friends in efforts to escape or hide from the batterer,²¹⁶ or asking others to intervene in an attempt to get the batterer to stop his violence and abuse.²¹⁷ Formal strategies may include efforts that involve the legal system, such as calling the police, seeking protective orders, initiating contact with a state attorney's office and/or participating in criminal prosecution against the batterer, or seeking help from a divorce lawyer. Formal strategies may also include efforts that involve shelters for battered women, or specialized domestic violence programs offered by women's support groups, health and mental health professionals, or members of the clergy.²¹⁸

No single strategy has been identified as clearly and consistently the most effective means to end battering.²¹⁹ In one study, the most

210. For example, the victim may attempt to solicit a promise from the abuser to end the violence, or threaten the abuser with certain actions (e.g., calling police, filing for divorce). See BOWKER, *supra* note 200.

211. For example, the victim may attempt to escape by walking into another room, leaving the house, or barricading herself in a locked room or car. See BOWKER, *supra* note 200; DUTTON, *supra* note 27, at 42.

212. For example, the victim may attempt to hide or disguise herself from the abuser by changing her physical appearance, driving a different car, changing her children's school or babysitter, changing residences (even when she is already living away from the batterer), or changing jobs. See DUTTON, *supra* note 27, at 42.

213. For example, the victim may resist by saying "no" to the violence and abuse in some way—including physically blocking the violence, or by refusing to comply with batterer's demands (e.g., refusing to give him the car keys, to get out of the room, or to make dinner).

214. The victim may attempt to defend herself by hitting or punching the batterer, or by using weapons or household objects to fight against the batterer's actual or threatened violence. See BOWKER, *supra* note 200, at 68.

215. The victim may ask her children to seek help (e.g., asking them to call the neighbors or the police for help), to fight back against the batterer, or to comply with the batterer's demands (e.g., stay in the room or go outside as ordered, or submit to physical or sexual abuse).

216. See generally BOWKER, *supra* note 200.

217. For example, the victim may ask the batterer's friends, family, or co-workers to talk to him. See DUTTON, *supra* note 27, at 42.

218. See generally MARIE M. FORTUNE, VIOLENCE IN THE FAMILY: A WORKSHOP CURRICULUM FOR CLERGY AND OTHER HELPERS (1991); James M. Alsdurf, Wife Abuse and Christian Faith: An Assessment of the Church's Response (1985) (unpublished Ph.D. dissertation, Fuller Theological Seminary, School of Psychology).

219. See, e.g., BOWKER, *supra* note 200, at 111.

common strategy employed by those surveyed, talking with friends, was cited as being most effective by only 14% of the study sample.²²⁰ When determining the consequences of using a specific strategy, one needs to consider not only the strategy's effectiveness in ending violence, but also its propensity for increasing violence and the concomitant levels of danger in both the short and long run. Other consequences (or anticipated consequences) may also be important in determining whether battered women use particular strategies.²²¹

Among the strategies cited, perhaps those most commonly expected of the battered woman by the layperson include calling the police and leaving the home. However, empirical studies have shown that most battered women do not call police for help with domestic violence.²²² When battered women do call the police, the consequences may not always be positive. In one study, only 39% of battered women who called the police reported the outcome to be fairly effective,²²³ and almost 20% indicated that calling the police resulted in increased violence by the batterer, a rate higher than any other formal help-seeking strategy. In a study of sheltered battered women who had previously called the police, an arrest was made only 28% of the time, even though 60% of the women reported having asked to have their partners arrested.²²⁴

Most battered women do not use battered women's shelters.²²⁵

220. *Id.* at 122.

221. Possible consequences that the battered woman may wish to avoid include the negative reactions of others (e.g., being chastised or humiliated by a family member or helping professional), the possibility that she will be arrested (e.g., for violence used when fighting back, for drug use), loss of employment, or shame and embarrassment. Consequences that the battered woman may wish to avoid based on her own actions should also be considered. For example, even when a battered woman's use of physical resistance may lead to an escalation of the violence, her need to preserve the integrity of her psychological self-identity may require her to physically resist the batterer. *See generally* CHARLES P. EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION 25, 32 (1987).

222. *See, e.g.*, LANGAN & INNES, *supra* note 97, at 1 (stating that 48% of all domestic violence against women was not reported to police); SHERMAN, *supra* note 118, at 6 (stating that police are called in only 20% to 40% of all domestic violence cases). *But see* Eileen M. Abel & Edward K. Shu, *Use of Police Services by Battered Women*, 32 SOC. WORK 526, 527 (1987) (stating that 74% of shelter population had previously called police).

223. *See* BOWKER, *supra* note 200.

224. *See* Abel & Shu, *supra* note 222; *see also* Kirk R. Williams & Richard Hawkins, *The Meaning of Arrest for Wife Assault*, 27 CRIMINOLOGY 163, 170 (1989) (discussing factors that influence perceptions of arrest among perpetrators). Pro-arrest policies have increased the rate of arrest in domestic violence cases. *Id.*

225. *See* BOWKER, *supra* note 200, at 12.

One study reported that 74% of battered women had never used a shelter,²²⁶ although it should be understood that many battered women's shelters must turn away women due to lack of space.²²⁷ Another study found that among women who eventually sought shelter support, 70% delayed doing so for more than a year, in spite of their experience of severe or life-threatening abuse.²²⁸ Additionally, there was no association between the time lapse in seeking shelter support and severity of abuse.²²⁹ When battered women do seek shelter support, they often return to the abusive relationship following their stay.²³⁰ Overall, studies of shelter residents have found that approximately half of all women return to their relationship upon leaving the shelter,²³¹ although that number appears to decrease the longer the shelter stay.²³² Rates vary across studies,²³³ a variance that may partially be the result of such methodological factors as the amount of time that elapsed between the woman's arrival in the shelter and the compilation of the data, and whether the study reflects the woman's reported decision to leave the relationship or her actual behavior upon leaving the shelter. Another consideration in interpret-

226. *See id.*

227. *See, e.g.,* Ronnie F. Ryback & Ellen L. Bassuk, *Homeless Battered Women and Their Shelter Network*, in *THE MENTAL HEALTH NEEDS OF HOMELESS PERSONS* 55 (Ellen L. Bassuk ed., 1986) (reporting that in a study by the Massachusetts Coalition of Battered Women's Service Groups, between July 1, 1983 and June 20, 1984, 3,087 women were turned away by 31 battered women's programs, due to lack of space). Although there are numerous examples of battered women who could not use shelter services due to lack of space, many women do not use shelters for other reasons—they may not know that shelters are available to them, they may not be able to get transportation to the shelter, the shelter may not allow children of a specific age or gender, the requirements for access to and use of the shelter may be too restrictive, or the women may simply be too embarrassed. *See generally id.* at 57.

228. Ruth Reidy & Michael Von Korff, *Is Battered Women's Help Seeking Connected to the Level of Their Abuse?*, 106 *PUB. HEALTH REP.* 360, 362-63 (1991).

229. *See id.*

230. *See generally* Ida M. Johnson, *Economic, Situational, and Psychological Correlates of the Decision-Making Process of Battered Women*, 73 *FAMILIES IN SOCIETY* 168 (1992); Michael J. Strube, *The Decision to Leave an Abusive Relationship: Empirical Evidence and Theoretical Issues*, 104 *PSYCHOL. BULL.* 236, 237 (1988).

231. *See, e.g.,* William C. Compton et al., *Intentions for Postshelter Living in Battered Women*, 17 *J. COMMUNITY PSYCHOL.* 126, 126 (1989).

232. *See, e.g.,* Andrea J. Sedlak, *The Use and Psychosocial Impact of a Battered Women's Shelter*, in *COPING WITH FAMILY VIOLENCE* 124 (Gerald T. Hotaling et al. eds., 1988).

233. *Compare, e.g.,* Johnson, *supra* note 230 (finding that 40% of a sample of 426 battered women returned to the batterer) with Compton et al., *supra* note 231, at 126 (finding that 11% of a sample of 141 battered women who were asked about their plans for post-shelter living arrangements intended to return to the batterer).

ing data regarding the decision to return to an abusive partner is the number of prior occasions on which the woman has attempted to leave, since women who eventually leave an abusive partner often report numerous prior efforts to do so.²³⁴

V. INTERVENING FACTORS: THE CONTEXT IN WHICH THE BATTERED WOMAN LIVES

A. *The Question: What Contextual Factors Influenced Both the Battered Woman's Psychological Reactions to Domestic Violence and Her Strategies for Responding to that Violence?*

In order to provide an adequate understanding of the battered woman, it is necessary to examine the context in which she lives.²³⁵ Numerous intervening factors may influence and thus help explain individual differences or variations in the battered woman's psychological reactions to the violence, the strategies she used (or did not use) in response to the violence, and, in cases where the battered woman is herself charged with a crime, her behavior in the situation that led to criminal charges. An inquiry regarding these contextual or intervening factors specific to a particular battered woman is the fourth key question, the answers to which may shed some light on the reasons why the battered woman responded to violence and abuse in the way that she did.

Contextual influences may be based on current or historical events or circumstances. Some contextual factors (e.g., the personal or psychological) are strongly influenced by or originate within other contextual factors (e.g., the social, cultural, or economic). Specific intervening factors—the attachment the battered woman has to her children, the economic resources required to support them, the cultural value placed on caring for them, her own childhood history—may cut across several dimensions, and may influence the battered woman in a

234. See generally Strube, *supra* note 230 (presenting conceptual models to examine decisions to leave an abusive relationship).

235. See Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 527 (1992); see generally Niall Bolger et al., *Development in Context: Research Perspectives*, in PERSONS IN CONTEXT: DEVELOPMENTAL PROCESSES 1 (Niall Bolger et al. eds., 1988) (stating that all of human behavior is potentially influenced by the social, psychological, biological, economic, political, and historical contexts in which it occurs); Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398 (1992) (discussing the extent to which the particular context of a woman's life is applied within the area of the law).

number of ways.²³⁶

Specific contextual factors that influence the battered woman include: (1) fear of retaliation; (2) the economic (and other tangible) resources available to her; (3) her concern for her children; (4) her emotional attachment to her partner; (5) her personal emotional strengths, such as hope or optimism; (6) her race, ethnicity, and culture; (7) her emotional, mental, and physical vulnerabilities; and (8) her perception of the availability of social support. This list is not meant to be exhaustive; in the evaluation of a particular battered woman, there may be other specific contextual factors that should be considered.

B. *Review of the Literature*

1. Fear of Retaliation

Much of the battered woman's behavior is based on what she knows about the batterer's behavior, both in the relationship and in general. This knowledge may cause the battered woman to fear retaliation by the abusive partner for actions taken or not taken. Retaliation for engaging in behavior that is unacceptable to the batterer may take the form of recurrent or escalating violence toward either the battered woman or others who are important to her (especially her children or other family members, and her friends).²³⁷ The battered woman's fear of violent retaliation may be based on her fear of death or physical injury, destruction of her property or pets, a loss of income or employment following his intrusion at her work, or her inability to work at all due to violence-related injury.

Violence that follows a battered woman's decision to separate or her actual separation from her partner has been termed "separation assault."²³⁸ A battered woman's fear of retaliation in this context is not unreasonable—most women who are killed by their abusive partners are killed once they have left the relationship.²³⁹

236. See DUTTON, *supra* note 27, at 137.

237. The victim may behave in ways that the batterer finds unacceptable by leaving the batterer, calling the police, telling others about his abuse, not complying with his demands, or simply engaging in any behavior that displeases the batterer, on whatever grounds. See, e.g., BOWKER, *supra* note 200, at 103 (finding that 70% of women who called the police reported negative reactions by husbands); see also SHERMAN, *supra* note 118, at 1-24 (concluding that arrest for some offenders, while resulting in short-term deterrence, was associated with a long-term escalation in violence).

238. Mahoney, *supra* note 15, at 6.

239. See, e.g., BROWNE, *supra* note 1, at 144.

A battered woman may have knowledge of violent behavior engaged in by her partner prior to her relationship with him. Especially when that knowledge includes information about an actual or attempted homicide, serious physical or sexual violence toward a former partner, child abuse, or other egregious behavior, the basis for the battered woman's fears is stronger than her direct experience with her violent partner may indicate.

2. Economic (and Other Tangible) Resources

The lack of economic resources may make it impossible for some battered women to take certain actions (e.g., leaving the abusive relationship, or filing for divorce). Without income or other resources, it may be difficult or impossible to establish a residence, or to provide for child care, medical expenses, and other necessities. Some battered women and their children become homeless when they leave their abuser,²⁴⁰ an experience which itself may exacerbate current levels of traumatization.²⁴¹ Lack of economic resources can also prevent a battered woman from gaining the education or skills necessary for her to become self-sufficient.²⁴²

Apart from a lack of available economic resources, a battered woman's fear of losing those economic resources she may have already acquired can play a part in determining the action she will take. When a woman and her children are economically dependent upon the abusive partner, calling the police may eventually mean the loss of his (and thus her) income. Her inability to support the family financially may result in the loss of their home, and her inability to provide the basic necessities.²⁴³ It may even mean that she will lose her children due to her inability to provide for them adequately—or as well as her more economically advantaged partner—when child custody is an issue.

240. See generally Lisa A. Goodman, *The Prevalence of Abuse Among Homeless and Housed Poor Mothers*, 61 AM. J. ORTHOPSYCHIATRY 489, 497 (1991) (reporting that among homeless women and housed women receiving Aid to Families with Dependent Children, 67% reported an adult history of physical abuse and 37% an adult history of sexual abuse).

241. See generally Lisa A. Goodman et al., *Homelessness as Psychological Trauma*, 46 AM. PSYCHOLOGIST 1219 (1991) (explaining means of understanding the potential psychological effects of homelessness).

242. See DUTTON, *supra* note 27, at 120.

243. Loss of other tangible resources that battered women may face include ruined credit ratings, loss of health insurance coverage, and a loss of access to income-earning potential. Loss of access to income may even occur when the woman is working in a joint business with an abusive partner who has control over disposition of business funds.

A battered woman from a middle- or upper-class family may risk the loss of economic resources sufficient to maintain a lifestyle that she finds acceptable, especially when her current socio-economic status is based largely on her partner's income. Even though her abusive situation may be extreme, the strategies she uses in an attempt to deal with that situation may be circumscribed by her desire to avoid living in poverty (or in a lifestyle of significantly reduced means), and by her desire to avoid the social and cultural ostracism she may face from friends when she is no longer able to live in the same neighborhood (or one of comparable status), or send her children to the same private school.

3. Concern for the Children

While concern for their children may lead some battered women to leave a relationship that has reached an intolerable level of abuse,²⁴⁴ it may lead others to remain, believing that to separate the children from their father may be detrimental to the children.²⁴⁵ The detrimental effect on children of witnessing domestic violence has been well-documented in the literature,²⁴⁶ but it is, of course, the mother's awareness of these issues, as well as other factors, that ultimately influences her actions.

4. Emotional Attachment to the Abusive Partner

Emotional attachment to an intimate partner can be considered from two perspectives: the attachment that formed prior to the onset of abuse, and the attachment that developed subsequent to the abuse. The latter, considered as a psychological effect of violence, was addressed in part III and will not be discussed further here.

The development of an emotional attachment is a component of most intimate relationships, especially in the early stages of that rela-

244. See generally BLACKMAN, *supra* note 27 (noting that the point at which the situation becomes intolerable is, of course, different for different women).

245. This is more likely where the battered woman believes that the children are not themselves subject to violence or abuse and where she negates the effect that witnessing domestic violence may have on the children. Nevertheless, some mothers may consider the mere presence of the father even more important to the children than the abuse that they suffer, either directly or indirectly, as a result of his presence. See Mahoney, *supra* note 15, at 17.

246. See, e.g., JAFFEE, *supra* note 107, at 55; Davis & Carlson, *supra* note 107, at 290 (providing "strong empirical support for the difficulties that children of battered women are experiencing").

tionship.²⁴⁷ Emotional attachment and dependency often persist, at least for some time, even when the relationship is distressed or the couple has divorced. The initial developmental phases of a relationship that later become abusive are often nonviolent. The woman's perception of her partner's protectiveness, his exclusive interest in her, or his desire for intense closeness may lead to the development of the emotional attachment and to feelings of being loved and cared for.²⁴⁸ This may be especially true if the woman is looking for a "different" relationship, following a prior abusive relationship or a childhood where she witnessed violence between her parents.²⁴⁹

When the relationship becomes abusive, the woman's prior attachment to her partner does not immediately sever. If the batterer follows the abusive episode with apologies, gifts, promises, or the expression of vulnerability,²⁵⁰ the attachment may even strengthen.²⁵¹ As the violence and abuse continues, the battered woman may hold onto the attachment she felt for her partner based either on his actual behavior or on her image of him as he was—and as she hopes he will again become. Thus, the emotional attachment to the partner early in the relationship, and typically prior to the onset of violence, may influence the battered women's actions throughout.

5. Hope, Optimism, and Other Personal Strengths

Certain cognitive and affective styles may influence the battering victim's strategies for responding to the violence and her psychological reactions to the violence. Hope and optimism in the face of hardship are often considered psychological strengths.²⁵² Further,

247. See Cunningham & Antill, *supra* note 194, at 27, 32-34.

248. See generally Herb Goldberg, *The Dynamics of Rage Between the Sexes in a Bonded Relationship*, in CLINICAL APPROACHES TO FAMILY VIOLENCE 59, 60-66 (James C. Hansen & Laurence R. Barnhill eds., 1982) (discussing the differing phases of a relationship and the changing perceptions of the parties involved).

249. See generally Goldberg, *supra* note 248.

250. For example, he may express feelings of hurt or shame for his violent behavior or talk about other stresses (e.g., loss of employment, death of a parent, low self-esteem, a problem with alcohol) that he attributes as a cause of his violence. This pattern is consistent with the contrite, loving phase of the "cycle of violence" experienced by some battered women. See WALKER, *supra* note 29, at 65-69.

251. See *id.* The "cycle of violence" theory posits that the "positive" behaviors (e.g., promises, tenderness, gifts) that the batterer may use following the occurrence of violence functionally serve to strengthen the battered woman's attachment to the batterer based on her renewed hope or belief that the violence will not recur. *Id.*

252. Hope and optimism are viewed as psychological strengths in other contexts as well, and are correlated with greater mental and physical health and better performance in work

stereotypic sex-role socialization for women has included the expectation that she will see her husband through hard times, hold the family together, and "forgive and forget." Similarly, religious or spiritual beliefs may provide the foundation for hope and optimism. Like persons in distressed but nonviolent marriages who may continue to hope for change, and may interpret even the smallest shift in behavior as an indication of change for the good, battered women often hope that the violence and abuse will stop.

Two main factors may contribute to the battered woman's hope that the violence will end. First, the batterer himself may provide her with ample indication that the violence will stop and that he will change. For example, one study showed that when the abuser has entered a treatment program for batterers, battered women were more likely to return to the home from the shelter.²⁵³ The behavior engaged in by the batterer during the contrite, loving phase of the "cycle of violence" (e.g., promising to end the violence, initiating periods of tender intimacy, giving gifts) also suggest to the battered woman that she has reason to hope that the violence will not recur.²⁵⁴

The second factor that may contribute to the battered woman's hope that the violence will end may be seeded in the image she formed of her partner prior to the onset of violence. She may see him much more positively than others do (e.g., friends, co-workers, helping professionals), based on her prior positive experience, and she may hold to that image of him. She may have learned to tolerate the "cognitive dissonance"²⁵⁵ inherent in the reality of a situation in which the person who is her intimate partner is also violent and abusive toward her.

6. Race, Ethnicity, and Culture

Research has shown that there exists little difference among Black, Anglo, and Hispanic sheltered battered women in the nature (i.e., severity and duration) of abuse they have experienced.²⁵⁶ Re-

and competitive situations. See, e.g., MARTIN E. P. SELIGMAN, *LEARNED OPTIMISM* (1990); see also Snyder et al., *Hope and Health*, in *HANDBOOK OF SOCIAL AND CLINICAL PSYCHOLOGY* 285 (Snyder & Forsyth eds., 1991) (discussing the role of hope in mental and physical health).

253. See Lewis Okun, *Termination or Resumption of Cohabitation in Women Battering Relationships: A Statistical Study*, in *COPING WITH FAMILY VIOLENCE*, *supra* note 232, at 107, 115.

254. See, e.g., WALKER, *supra* note 29, at 65-69.

255. See, e.g., BLACKMAN, *supra* note 27, at 178-83.

256. See, e.g., Edward W. Gondolf et al., *Racial Differences Among Shelter Residents: A*

search has also shown that when social class is accounted for, there are no differences between Black and Anglo women in the prevalence of domestic violence.²⁵⁷

Even so, a woman's racially, ethnically, and culturally-based values, beliefs, and attitudes may help her to resist and challenge violence or abuse in an intimate relationship, perhaps even at its first occurrence. Alternatively, culturally-based values may lead her to remain in an abusive relationship in spite of severe or even life-threatening abuse.²⁵⁸ In some social cultures, marriage vows, taken literally, may be interpreted as a "license to hit" when the woman believes that her vows require her to "love, honor, and obey until death do us part," even if the death is her own, and at the hands of her partner. The belief that leaving even an abusive marriage constitutes failure may also lead a battered woman to remain in the relationship longer than one might otherwise expect her to.

Some battered women may hold to the belief that preserving cohesion within the marriage or within the community is more important than seeking help, especially when seeking help would require her to go to "outsiders."²⁵⁹ For example, a woman from a racial or ethnic minority group may consider calling the police to be a betrayal not only of her partner, but of her community as well, where the police and judicial system may be seen as "outsiders" (i.e., institutions that are biased against and that often use excessive force upon persons of color).²⁶⁰ She may view the legal system not as a source of protection, but as a source of racial discrimination and maltreatment for her partner.²⁶¹ Similar influences may operate in lesbian

Comparison of Anglo, Black, and Hispanic Battered Women, in BLACK FAMILY VIOLENCE, supra note 131, at 102, 109-10.

257. See, e.g., Lockhart, *supra* note 132, at 603-09.

258. See generally BLACK FAMILY VIOLENCE, *supra* note 131; RICHARD J. GELLES & CLAIRE P. CORNELL, INTERNATIONAL PERSPECTIVES ON FAMILY VIOLENCE (1983); DAVID LEVINSON, FAMILY VIOLENCE IN CROSS-CULTURAL PERSPECTIVE (1989); Christine K. Ho, *An Analysis of Domestic Violence in Asian American Communities: A Multicultural Approach to Counseling*, in DIVERSITY AND COMPLEXITY IN FEMINIST THERAPY 129 (Laura S. Brown & Maria P. Root eds., 1990).

259. Cohesion is considered especially important when the community is considered outside the mainstream (e.g., racial or ethnic minority communities, gay or lesbian communities, or certain religious communities and cults). See Mahoney, *supra* note 15, at 12.

260. *Id.*

261. See DISTRICT OF COLUMBIA COURTS, FINAL REPORT OF THE TASK FORCE ON RACIAL AND ETHNIC BIAS AND TASK FORCE ON GENDER BIAS IN THE COURTS 28-31 (1992) (citing survey demonstrating that some courtroom participants perceive racial bias in sentencing and bond determination).

battering relationships, where the expectation may be that police officers, the court, helping professionals, or others may not only fail to provide protection, but may contribute further to the problem through discrimination or harassment, blaming the victim, or other negative treatment.²⁶² Fully understanding the battered woman's response to violence requires an attempt to see the world "through her eyes," which is in any event the legal standard of reasonableness in many states.²⁶³

7. Emotional, Mental, and Physical Vulnerabilities

Emotional, mental, and physical vulnerabilities may influence the battered woman's reactions to violence and abuse. Various life experiences or stressors in both childhood (e.g., childhood sexual and/or physical abuse,²⁶⁴ dysfunctional family of origin,²⁶⁵ serious illness or injury²⁶⁶) and adulthood (e.g., prior victimization,²⁶⁷ homelessness²⁶⁸) may, under certain circumstances, render the battered woman more vulnerable to revictimization and other adversities.

Certain physical limitations can make efforts to escape, avoid, or protect oneself from immediate violence even more difficult, or impossible.²⁶⁹ Physical limitations can also influence a woman's actions over the longer term. For example, health problems which are life-threatening, long-term, or which limit her ability to function independently, may place the battered woman in a position of increased dependence upon the partner who also abuses her.²⁷⁰ When there are limited resources available for alternative support,²⁷¹ the physically-

262. *See id.*

263. *See* Maguigan, *supra* note 1, at 409.

264. *See, e.g.,* JOHN N. BRIERE, CHILD ABUSE TRAUMA: THEORY AND TREATMENT OF THE LASTING EFFECTS 53-54 (1992); Herman, *supra* note 27, at 233.

265. *See, e.g.,* Stephen M. Rose et al., *Undetected Abuse Among Intensive Case Management Clients*, 42 HOSP. & COMMUNITY PSYCHIATRY 499 (1991).

266. *See, e.g.,* WALKER, *supra* note 15, at 331.

267. *See* DUTTON, *supra* note 27, at 83; Stark & Flitcraft, *supra* note 27, at 120; *see generally* Patricia A. Resick & Monica K. Schicke, *Cognitive Processing Therapy for Sexual Assault Victims*, 60 J. CONSULTING & CLINICAL PSYCHOL. 748 (1992) (reporting substantial improvement in quality of life for rape victims after therapy).

268. *See generally* Goodman et al., *supra* note 241 (explaining that losing one's home can itself cause psychological trauma).

269. For example, the victim may have a visual disability; be confined to a wheelchair or to bed due to illness or injury; or be unable to run or move quickly due to pregnancy, prior injury, or illness.

270. For example, one woman whose case I supervised experienced trauma-induced seizure disorders as a result of blows to the head during severe domestic violence which left her unable to drive and fearful of traveling alone, even on public transportation.

271. There may be limits on either economic or social support. Social service resources

limited battered woman faces even more obstacles to stopping the victimization.

Women who are at greater risk due to mental or cognitive limitations also face obstacles in responding to domestic violence, both in the immediate violent situation and in the period following it. An intellectual deficit may prevent the battered woman from understanding her options for responding to violence, following through with such actions, or even understanding the importance of doing so.

8. Perceived Availability of Social Support

Social support has consistently been linked to understanding one's ability to deal with stress and other adversity,²⁷² based largely on the notion of a "social support buffer hypothesis."²⁷³ This theory suggests that the social support one perceives as available may buffer the effects of negative life events. More recently, it has been suggested that both the absence of perceived "positive" social support and the presence of negative conflicting social interaction should be considered under the rubric of the study of social support.²⁷⁴

Applied to battered women, this dual approach is quite useful. Not only should one consider the extent to which there are persons in the battered woman's life with whom she can talk and share her experience, but also the extent to which there are persons working against her efforts to respond effectively to the violent relationship. In one example from my practice, a battered woman became much less cooperative in working with the state attorney's office in the prosecution of her battering husband when her husband's father, who happened to be the minister in the church where she attended, persuaded her it would be "better" not to pursue it. Another example was a batterer's mother who reported to him the whereabouts of his girlfriend so that he could monitor whether she had complied with his demand that she stay in the house.

The nature of the social and institutional response to the occur-

(such as Social Security disability payments) may be available for certain types of physical disabilities, but the amount of support may not be sufficient to provide for adequate care.

272. See, e.g., James C. Coyne & Geraldine Downey, *Social Factors and Psychopathology: Stress, Social Support, and Coping Processes*, 42 ANN. REV. PSYCHOL. 401 (1991).

273. See, e.g., Sheldon Cohen & Thomas A. Wills, *Stress, Social Support, and the Buffering Hypothesis*, 98 PSYCHOL. BULL. 310 (1985).

274. See, e.g., Coyne & Downey, *supra* note 272, at 411-14. Negative social interaction has also been termed "social obstructionism." See, e.g., Diana Gurley, *Understanding the Mixed Roles of Social Support and Social Obstruction in Recovery from Child Abuse* (1989) (unpublished manuscript, on file with the *Hofstra Law Review*).

rence of domestic violence, and to the battering victim's actions in response to that violence, also provides a context of either support or obstructionism. A given institutional response (i.e., a response by the police, state attorney, mental health professional, or physician) may be viewed either as supportive or obstructionistic, depending upon the battering victim's goals. Arrest and incarceration may be viewed by a battered woman as supportive if she believes that such action will stop the violence or, alternatively, as obstructionistic if she fears that arrest will only increase the likelihood of continued abuse after the batterer is released. A physician's reprimand to a battering husband who accompanies his partner to an emergency room may be viewed as supportive, if the battering victim views such action as likely to be effective, or as unwelcome if she believes that such action will only further anger her abusive partner.

Researchers in the area of social support generally suggest that a fine-grained analysis is necessary to capture the various influences social support may exert on a person's life.²⁷⁵ Both the category and source of support are thought to be important in determining how an individual perceives the availability and effectiveness of social support.²⁷⁶ Further, social support has been shown to be relevant for understanding battered women's experiences in particular, especially as that support relates to the psychological effects of violence.²⁷⁷

VI. CONCLUSION

There are numerous points within various legal proceedings where expert witness's consultation and/or testimony regarding a

275. See, e.g., Gayle A. Dakof & Shelley E. Taylor, *Victims' Perceptions of Social Support: What is Helpful from Whom?*, 58 J. PERSONALITY & SOC. PSYCHOL. 80, 86 (1990).

276. See *id.* at 82 (categorizing social support into the following areas: esteem/emotional support, informational support, and tangible support); see also Sheldon Cohen et al., *Measuring the Functional Components of Social Support*, in SOCIAL SUPPORT: THEORY, RESEARCH, AND APPLICATIONS 73 (Irwin G. Sarason & Barbara R. Sarason eds., 1985) (describing an instrument for measuring perceived support in the areas of (1) appraisal support (availability of someone with whom to talk about important personal issues), (2) tangible support (material aid), (3) belonging support (group with whom one can socialize and identify), and (4) self-esteem support (presence of others with whom one feels one can be compared favorably)).

277. See generally Diane R. Follingstad et al., *Factors Moderating Physical and Psychological Symptoms of Battered Women*, 6 J. FAM. VIOLENCE 81 (1991); Roger E. Mitchell & Christine A. Hodson, *Coping With Domestic Violence: Social Support and Psychological Health Among Battered Women*, 11 AM. J. COMMUNITY PSYCHOL. 629 (1983); Libby O. Ruch & Joseph J. Leon, *The Victim of Rape and the Role of Life Change, Coping, and Social Support During the Rape Trauma Syndrome*, in STRESS, SOCIAL SUPPORT, AND WOMEN 137 (Steven E. Hobfoll ed., 1986).

battering victim may be sought. For a criminal case, these points may occur at the pre-indictment or grand jury phase,²⁷⁸ the pretrial hearing,²⁷⁹ the trial,²⁸⁰ the post-conviction or sentencing hearings,²⁸¹ or during executive clemency proceedings.²⁸² In each case, expert witness testimony must be used to aid the factfinder in linking what is known about the experience of a particular battered woman (and about battered women generally) to specific and relevant legal issues. For example, in criminal self-defense at trial, the substantive legal issues include the reasonableness of the perception of danger, the temporal proximity of danger, and the use of equal force.²⁸³ However, other issues, such as why the victim remained in or returned to an abusive relationship,²⁸⁴ whether the violence and abuse represented in the case is known to occur in the population generally,²⁸⁵ and the overall perspective of this particular battered woman²⁸⁶ may be equally important to the case generally.

The expert witness uses his or her scientific knowledge and experience with battered women to assist the factfinder in considering the following: (1) the victim's direct experience with and knowledge of the batterer's past violent and abusive behavior, including, where relevant, evidence concerning violence in the situation leading to the case at issue; (2) the victim's prior strategies for attempting to protect herself (or others) from the violence and abuse, why she did (or did not) choose these particular strategies, and the consequences of their use; (3) the psychological reactions of the victim to prior violence and abuse at the hands of the batterer; and (4) the contextual factors that influenced the battered woman's behavior. Together, these ele-

278. See Blackman, *supra* note 1, at 232.

279. See *id.* at 233-35.

280. See Maguigan, *supra* note 1, at 425-32; Susan Murphy, *Assisting the Jury in Understanding Victimization: Expert Psychological Testimony on Battered Woman Syndrome and Rape Trauma Syndrome*, 25 COLUM. J.L. & SOC. PROBS. 277, 281 (1991).

281. See Blackman, *supra* note 1, at 237-38.

282. Governors of a number of states, including California, Florida, Maryland, and Ohio have granted clemency to incarcerated battered women. See, e.g., Donna O'Neal, *Clemency Board May Be Last Hope for Battered Killers*, ORLANDO SENTINEL, Sept. 2, 1993, at B1; Thomas Waldron, *8 Women Who Killed to Go Free: Schaefer Grants Clemency to Killers of Abusive Spouses or Lovers*, BALT. SUN, Feb. 19, 1991, at A1. The expert witness may be involved in assisting with the individual battered woman's application for clemency, or as part of the evaluation process by the State. See *supra* note 3.

283. See GILLESPIE, *supra* note 1, at 184; Maguigan, *supra* note 1, at 448-50.

284. See GILLESPIE, *supra* note 1, at 159.

285. See *id.*

286. See *id.*

ments define the overall social context necessary to adequately understand the responses of battered women to violence.