IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APRIL ROSE WILKENS,
PETITIONER,
VS.
MILLICENT NEWTON-EMBRY, WARDEN,
RESPONDENT.

CASE NO. 02-CV-244-K(J)

REQUEST FOR PERMISSION TO FILE
PETITIONER'S REPLY TO STATE'S RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS

I ASK THE COURT TO ACCEPT MY ATTACHED REPLY FOR FILING, AND TO PLEASE EXCUSE ITS LENGTH BECAUSE I WROTE IT BY HAND AND IT CONTAINS A SIGNIFICANT AMOUNT OF PERTINENT BATTERED WOMAN SYNDROME AUTHORITY.

RESPECTFULLY SUBMITTED,

April Wilkens

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FILED
23 DEC 2004

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IN BECHTEL V. STATE, 840 P2d. 1 (OKLA. CRIM. APP. 1992), THE O.C.C.A. HELD THAT EXPERT TESTIMONY AS TO HOW A WOMAN'S "PARTICULAR EXPERIENCES AS A BATTERED WOMAN SUFFERING FROM THE BATTERED WOMAN SYNDROME AFFECTED HER PERCEPTIONS OF DANGER, ITS IMMINENCE, WHAT ACTIONS WERE NECESSARY TO PROTECT HERSELF AND THE REASONABLENESS OF THOSE PERCEPTIONS [IS] RELEVANT AND NECESSARY TO PROVE [HER] DEFENSE OF SELF-DEFENSE." BECHTEL, 840 P2d. AT 10. "MISCONCEPTIONS REGARDING BATTERED WOMEN ABOUND," THE O.C.C.A WROTE, "MAKING IT MORE LIKELY THAN NOT THAT THE AVERAGE JUROR WILL DRAW FROM HIS OR HER OWN EXPERIENCE OR COMMON MYTHS, WHICH MAY LEAD TO A WHOLLY INCORRECT CONCLUSION. THUS, WE BELIEVE THAT EXPERT TESTIMONY ON THE SYNDROME IS NECESSARY TO COUNTER THESE MISCONCEPTIONS." BECHTEL, 840 P2d AT 8. I MAINTAIN THAT MY ATTORNEY DID NOT PRESENT THIS ESSENTIAL EXPERT TESTIMONY AT MY TRIAL; AND THAT THE EXPERT IN MY DEFENSE, DR. JOHN CALL, WAS NOT A BATTERED WOMAN SYNDROME SPECIALIST.

WEBSTER'S DEFINES AN "EXPERT" AS "ONE WITH SPECIAL SKILL OR KNOWLEDGE REPRESENTING MASTERY OF A PARTICULAR SUBJECT," AND EXPOUNDS THAT "EXPERT IMPLIES EXTRAORDINARY PROFICIENCY AND OFTEN CONNOTES KNOWLEDGE AS WELL AS TECHNICAL SKILL." TO BE SURE, DR. CALL'S CREDENTIALS SOUND IMPRESSIVE: HE TESTIFIED TO HIS BEING A MEMBER OF THE BOARD OF DIRECTORS OF THE DEPARTMENT OF MENTAL HEALTH THAT IS RESPONSIBLE FOR ALL STATE CERTIFIED AND CONTRACTED DOMESTIC VIOLENCE FACILITIES IN THE STATE OF OKLAHOMA, AND HE SAID THAT HE HAD BEEN INVOLVED IN THE TREATMENT OF BATTERED WOMEN AND THE ANALYSIS OF BATTERED WOMEN WHO KILLED THE ALLEGED ABUSER. THE TRUTH IS THAT DR. CALL'S DEGREE OF INVOLVEMENT IN THE TREATMENT OF BATTERED WOMEN DOES NOT AMOUNT TO EXPERTISE IN THE FIELD OF BATTERED WOMAN SYNDROME. DR. CALL WAS NOT ESPECIALLY EXPERIENCED WORKING WITH OR STUDYING BATTERED WOMEN, AND HE WAS SIMPLY NOT REGARDED AS A BATTERED WOMAN SYNDROME EXPERT.

BECAUSE DR. CALL DID NOT POSSESS A TRUE EXPERT'S EXTRAORDINARY UNDERSTANDING OF BATTERED WOMEN AND OF THE BATTERED WOMAN SYNDROME, HE WAS UNABLE TO

EFFECTIVELY COUNTER THE STATE'S NUMEROUS EFFORTS TO USE COMMON MISCONCEPTIONS ABOUT BATTERED WOMEN AGAINST ME. FOR INSTANCE, THE STATE ALLEGED THAT I WAS NOT A TYPICAL BATTERED WOMAN BECAUSE I WAS FINANCIALLY INDEPENDENT OF TERRY, HAD MY OWN HOME, AND WAS COLLEGE-EDUCATED. RESPONSE AT 21. IN THE BATTERED WOMAN SYNDROME, DR. LENORE WALKER, THE FOREMOST AUTHORITY ON BATTERED WOMAN SYNDROME, WRITES:

> IT IS INTERESTING TO NOTE THAT MANY OF THESE WOMEN WERE WELL-EDUCATED, HELD RESPONSIBLE JOBS, AND CAME FROM FINANCIALLY STABLE FAMILIES.... IT WAS LIKELY THAT THE BATTERER HAD THE POWER IN SOCIAL AND FINANCIAL AREAS, WHETHER OR NOT THE WOMAN HAD HER OWN ACCESS TO MONEY. WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2ND. ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 35-36.

THE STATE ALSO ASSERTED THAT MUTUAL COMBAT EXISTED BETWEEN TERRY AND ME. IT IS MYSTIFYING THAT THE STATE CONTINUES TO PURSUE THIS ARGUMENT EVEN IN THE FACE OF INDISPUTABLE EVIDENCE TO THE CONTRARY — i.e., THE AUDIOTAPE RECORDING OF CONVERSATIONS BETWEEN TERRY AND ME. THE FOLLOWING IS AN EXCERPT FROM THAT AUDIOTAPE:

> APRIL: "I SUPPOSE THAT EVERYBODY DOES THINGS THAT ARE AGGRAVATING TO THE OTHER PERSON. I JUST DON'T UNDERSTAND THE NEED FOR PHYSICAL VIOLENCE."

TERRY: "I SEE, SO IT'S OKAY FOR YOU.. TO PULL OUT THE STOPS AND DO EVERYTHING THAT YOU CAN DO TO PISS ME OFF BUT YOU KNOW AS SOON AS I YOU KNOW REACT IN THE SAME WAY AND PULL OUT THE STOPS AND DO THE THINGS I CAN DO TO HURT YOU WHAT'S THE DIFFERENCE, APRIL? YOU KNOW, WHAT'S THE DIFFERENCE? YOU'RE FUCKING WITH ME. I'M FUCKING WITH YOU. YOU UNDERSTAND?..."

THE AUDIOTAPE RECORDING CLEARLY PROVES THAT MUTUAL COMBAT DID NOT EXIST BETWEEN TERRY AND ME, AND THAT TERRY PHYSICALLY ASSAULTED ME. HERE IS ANOTHER EXCERPT:

TERRY: "... I'M NOT SATISFIED WITH THIS BECAUSE WHAT YOU'RE GOING TO DO IS GO TO A VICTIMS' GROUP, OKAY, AND YOU'RE ALL GOING TO SIT THERE AND TELL EACHOTHER IT'S NOT YOUR FAULT THAT THIS HAPPENED TO YOU AND PAT EACHOTHER ON THE BACK AND FEEL SORRY FOR EACHOTHER AND, YOU KNOW, IT'S GOING TO BE WHAT A BASTARD I AM, OKAY, AND YOU'RE NOT GOING TO BE WORKING ON YOUR OWN PROBLEMS, OKAY? YOU'RE NOT GOING TO WORK ON WHY YOU FEEL IT IS NECESSARY TO DO THOSE PETTY LITTLE THINGS THAT MAKE ME ANGRY AND YOU WOULD STILL DO THEM, YOU KNOW, IF I DIDN'T DO THE VIOLENCE, IF THE VIOLENCE THING WAS NOT EVEN A FACTOR...."

TERRY CARLTON WAS A BATTERER AND A RAPIST WITH A LONG HISTORY OF ABUSING WOMEN INCLUDING ME AND HIS EX-WIFE, SHERRY, WHO ALSO OBTAINED A VICTIM'S PROTECTIVE ORDER AGAINST HIM. WHAT'S MORE, TERRY REPEATEDLY LIED TO OR OTHERWISE MANIPULATED AUTHORITIES, AND HE WENT TO ASTONISHING LENGTHS TO AVOID RESPONSIBILITY FOR HIS VIOLENT BEHAVIOR.

IN SPITE OF TERRY'S WELL-DOCUMENTED HISTORY OF VIOLENCE AGAINST WOMEN, AND IN DEFIANCE OF AUDIOTAPE RECORDED EVIDENCE WHEREIN TERRY FLAGRANTLY ADMITS THAT HE BEAT AND RAPED ME — AND THAT HE ALONE WAS THE PERPETRATOR OF VIOLENCE AND AGGRESSION BETWEEN THE TWO OF US — THE STATE SHAMELESSLY PERSISTS IN ITS OWN ASTONISHING EFFORTS TO NEGATE TERRY'S VIOLENT BEHAVIOR. EVEN WORSE, THE STATE WOULD HAVE YOU BELIEVE THAT TERRY WAS AN UNFORTUNATE VICTIM OF DOMESTIC VIOLENCE WHO NEEDED POLICE PROTECTION FROM ME.

THE STATE ARGUES THAT MY ATTORNEY'S FAILURE TO INTRODUCE THE AUDIOTAPE WAS STRATEGIC BECAUSE "THERE WERE LIKELY COMPELLING CALLS THE DECEDENT MADE TO SEEK PROTECTION FROM THE PETITIONER, SUCH AS THE APRIL 11, 1998 INCIDENT, WHERE THE POLICE TOOK THE PETITIONER AWAY AFTER SHE POINTED A LOADED GUN AT MR. CARLTON AND PULLED THE TRIGGER." RESPONSE AT 7-8. FIRST OF ALL, THIS ARGUMENT IS INCOHERENT, BECAUSE THE AUDIOTAPE IS UNRELATED TO THE 911 CALLS. SECOND, MY ATTORNEY FAILED TO INVESTIGATE AND DISCOVER THE AUDIOTAPE, SO HE COULD NOT HAVE MADE A STRATEGIC DECISION NOT TO INTRODUCE IT. AND THIRD, THIS ARGUMENT IS GROSSLY MISLEADING AND IS JUST ONE EXAMPLE OF THE STATE'S COPIOUS USE OF MISSTATED FACTS AND DISTORTED TRUTHS IN ITS RESPONSE. MY TRIAL TRANSCRIPTS REFLECT THAT IT IS UNCONTROVERTED THAT I — NOT TERRY — MADE THE CALL FOR

HELP ON 11 APRIL 1998. OFFICER JAMES BENNETT TESTIFIED THAT POLICE WENT TO TERRY'S HOME THAT MORNING AFTER A CALLER IDENTIFIED AS ME SAID A MAN THERE WITH A GUN WAS GOING TO ATTEMPT SUICIDE AND WOULD KILL ANYONE WHO TRIED TO PREVENT IT. AS I MYSELF TESTIFIED, TERRY HAD ABDUCTED ME FROM MY HOME AT GUNPOINT, TAKEN ME TO HIS HOUSE, AND WAS THREATENING TO SLIT MY THROAT AND THEN KILL HIMSELF. FORTUNATELY, I WAS ABLE TO ESCAPE TO TERRY'S NEIGHBORS' HOUSE AND CALL A DOMESTIC VIOLENCE AGENCY THAT IN TURN NOTIFIED THE POLICE.

IN ITS HEINOUS ATTEMPTS TO PORTRAY ME AS THE "UNLAWFUL AGGRESSOR" WITH A "PROPENSITY TO RESORT TO VIOLENCE," THE STATE HAS MADE MUCH IN ITS RESPONSE OF OFFICER BENNETT'S TESTIMONY ALLEGING THAT I TOLD HIM THAT EARLIER THAT MORNING — 11 APRIL 1998 — I POINTED A LOADED GUN AT TERRY AND PULLED THE TRIGGER, BUT THE GUN DID NOT FIRE. THIS IS NOT WHAT I TOLD OFFICER BENNETT. AS I TESTIFIED, I WAS RELATING AN INCIDENT TO THE OFFICER THAT HAD OCCURRED AT MY HOME IN EARLY FEBRUARY 1998 AFTER TERRY SURREPTITIOUSLY ENTERED MY HOME AND CORNERED ME IN MY BEDROOM. TRUE,

I DID POINT A LOADED GUN AT TERRY AND PULL THE TRIGGER. EVEN SO, I DID IT IN SELF-DEFENSE AT A TIME WHEN TERRY WAS THREATENING ME, AND WHEN HE HIMSELF HAD A LOADED GUN, A BILLY CLUB, A STUN GUN, AND PEPPER SPRAY ON HIS PERSON. WHEN THE GUN THAT I HAD POINTED AT TERRY DID NOT FIRE, TERRY PROCEEDED TO PHYSICALLY ASSAULT ME. HE WAS FURIOUS.

IT WAS LATER THAT SAME MONTH, ON 21 FEBRUARY 1998, THAT TERRY WAS ARRESTED AT MY HOUSE WITH A LOADED, CHAMBERED PISTOL AND A STUN GUN. SUBSEQUENTLY, HE WAS CHARGED WITH TRANSPORTING A LOADED WEAPON; AND IT WAS HIS FAILURE TO APPEAR IN COURT ON THIS CHARGE THAT LED TO HIS HAVING A TULSA COUNTY BENCH WARRANT FOR HIS ARREST THAT OFFICER JAMES BENNETT FAILED TO ENFORCE ON 11 APRIL 1998. THE STATE DISMISSES OFFICER BENNETT'S FAILURE TO ARREST TERRY ON 11 APRIL 1998 BY CLAIMING THAT THE OFFICER WAS "LIKELY UNAWARE" OF THE BENCH WARRANT FOR TERRY'S ARREST AND THAT TERRY "WAS ALSO SENT TO EASTERN STATE AFTER THIS INCIDENT." RESPONSE AT 10. TERRY WAS NOT TAKEN TO EASTERN STATE AFTER THIS INCIDENT;

HE WAS TAKEN TO PARKSIDE HOSPITAL IN TULSA FOR A BRIEF EVALUATION AND THEN RELEASED SHORTLY AFTER HIS ARRIVAL THERE (POLICE EXPLAINED THAT IT IS A STANDARD PRECAUTION TO TRANSPORT SOMEONE TO THE HOSPITAL FOR AN EVALUATION WHEN IT HAS BEEN ALLEGED THAT HE OR SHE IS SUICIDAL). RATHER THAN EXCUSING OFFICER BENNETT'S FAILURE TO ENFORCE THE BENCH WARRANT FOR TERRY'S ARREST, THE FACT THAT TERRY WAS TRANSPORTED TO PARKSIDE HOSPITAL FOR AN EVALUATION MAKES THE STATE'S CLAIM THAT OFFICER BENNETT WAS "LIKELY UNAWARE" OF THE BENCH WARRANT EVEN MORE IMPLAUSIBLE. SURELY, GIVEN ALL OF THE CIRCUMSTANCES OF THE 11 APRIL 1998 INCIDENT, OFFICER BENNETT CHECKED TO SEE IF TERRY HAD ANY OUTSTANDING BENCH WARRANTS FOR HIS ARREST.

THE STATE ALSO ASSERTS IN ITS RESPONSE THAT "ANOTHER EXAMPLE OF PETITIONER PHYSICALLY ASSAULTING CARLTON CAME IN THE CROSS-EXAMINATION OF DR. CALL, WHO KNEW OF THE INCIDENT WHERE TOM KING AND BRENDA FRITZ SAW PETITIONER KICK DECEDENT IN THE GROIN WITH SUCH FORCE THAT HE DOUBLED OVER IN PAIN." RESPONSE AT 8. THE STATE MAKES IT SOUND LIKE DR. CALL PERSONALLY

KNEW THAT SUCH AN INCIDENT ACTUALLY HAPPENED, WHEN ALL THAT DR. CALL COULD POSSIBLY HAVE KNOWN WAS THAT THE INCIDENT WAS ALLEGED TO HAVE OCCURRED. THIS DISTINCTION IS SUBTLE BUT IMPORTANT, BECAUSE THIS ALLEGED EXAMPLE OF MY PHYSICALLY ASSAULTING TERRY NEVER HAPPENED AND NEITHER TOM KING OR BRENDA FRITZ TESTIFIED AT MY TRIAL. FURTHER, THE STATE COULD NOT PRODUCE ONE SINGLE WITNESS AT MY TRIAL WHO COULD TESTIFY TO HAVING SEEN ME PHYSICALLY ASSAULT TERRY: THIS IS BECAUSE IT NEVER HAPPENED.

IN CONTRAST, TERRY'S NEIGHBOR, DR. BRENT LAUGHLIN, TESTIFIED AT MY TRIAL TO HAVING WITNESSED TERRY RUN ME DOWN AND PHYSICALLY ATTACK ME IN MY CAR — BREAKING OUT THE DRIVER'S SIDE WINDOW IN ORDER TO REACH ME. ONE OF MY NEIGHBORS, GLENDA McCARLEY, TESTIFIED THAT SHE SAW TERRY CHASE ME DOWN OUTSIDE OF MY OWN HOME, GRAB ME BY MY HAIR, AND DRAG ME BACK BEHIND MY FENCE. MS. McCARLEY AND TWO MORE OF MY NEIGHBORS, MAXINE CALLICOAT AND CARL HUGHES, ALSO TESTIFIED TO HAVING WITNESSED TERRY STALK ME AND REPEATEDLY BREAK INTO MY HOME. SEVERAL OTHER WITNESSES — INCLUDING EASTERN

STATE HOSPITAL EMPLOYEES, A CONVENIENCE STORE CLERK, (AND) A COLLEAGUE OF TERRY'S IN THE CAR BUSINESS — (ALSO TESTIFIED (ABOUT DIFFERENT INCIDENTS THAT THEY WITNESSED WHERE TERRY WAS HOSTILE AND THREATENING TOWARDS ME.

STILL, (AT MY TRIAL, THE STATE FIERCELY PURSUED ITS (ASSERTION THAT TERRY AND I WERE ENGAGED IN MUTUAL COMBAT — AND THAT, THEREFORE, I WAS NOT A BATTERED WOMAN SUFFERING FROM BATTERED WOMAN SYNDROME. THIS MISGUIDED, SHADY EFFORT BY THE STATE TO DISCREDIT MY DEFENSE IS DESCRIBED IN THE STATE'S RESPONSE LIKE THIS:

> WHAT DAMAGED DR. CALL'S CONCLUSIONS WERE THE NUMEROUS INSTANCES IN CROSS-EXAMINATION WHERE THE PROSECUTOR RECEIVED BEGRUDGING ADMISSIONS THAT PETITIONER'S ACTIONS WERE ATYPICAL OF ONE SUFFERING BWS. DR. CALL HAD TO ADMIT, FOR EXAMPLE, THAT SINCE ONE OF THE SYMPTOMS OF BWS IS PASSIVENESS AND FEELING OF HELPLESSNESS, THE PETITIONER'S ACTS OF PHYSICALLY ASSAULTING THE DECEDENT AT TIMES WAS INCONSISTENT WITH PASSIVE ACTS ASSOCIATED WITH BWS. (TR. 15 AT 2928-29) THIS SAME ADMISSION WAS GARNERED BASED ON PETITIONER'S EXTREMELY PROVOCATIVE ACTION OF PLACING A LOADED GUN TO THE DECEDENTS HEAD AND PULLING THE TRIGGER, WHICH OCCURRED ON APRIL 11, 1998 (TR. 15 2928). RESPONSE AT 21.

NOT ONLY IS THIS A PERVERSE DISTORTION OF FACTS, IT IS ALSO TERRIBLY INACCURATE WITH RESPECT TO BATTERED WOMAN SYNDROME. HERE IS DR. WALKER'S

EXPLANATION:

> THE ISSUE OF THE WOMAN'S RESPONSE TO VIOLENT ATTACKS BY THE MAN WHO LOVES HER HAS BEEN FURTHER CLOUDED BY THE MYTHOLOGY THAT SHE BEHAVES IN A MANNER THAT IS EITHER EXTREMELY PASSIVE OR MUTUALLY AGGRESSIVE. RATHER, THESE DATA SUGGEST THAT BATTERED WOMEN DEVELOP SURVIVAL OR COPING SKILLS THAT KEEP THEM ALIVE WITH MINIMAL INJURIES.
> WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2nd ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 40.

DR. WALKER ALSO WRITES:

> .... SIMPLE COUNTING OF AGGRESSIVE ACTS DISTORTS RATHER THAN AIDS THE UNDERSTANDING OF VIOLENCE IN THE FAMILY BY MISLEADING OTHERS INTO ACCEPTING A MUTUAL EXPRESSION OF VIOLENCE NOTION. RATHER, OUR DATA SUGGEST EVALUATING THE MEN'S VIOLENT ACTS FOR POWER AND CONTROL DIFFERENTLY THAN THE WOMEN'S, WHO STRIKE BACK IN SELF-DEFENSE, TO STAY ALIVE OR MINIMIZE THEIR POSSIBLE INJURIES.
> WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2nd ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 41.

AND

> WHILE IT IS POPULAR TO SUPPORT THE NOTION THAT "IT TAKES TWO TO MAKE A FIGHT," CAUSATION FOR THESE VIOLENT ACTS CANNOT BE EQUALLY ASSIGNED TO THE MEN AND WOMEN. THESE DATA STRONGLY POINT TO THE SOCIAL LEARNING THEORY EXPLANATION THAT WHEN THE WOMEN USE VIOLENCE, THEY ARE REACTING TO THE MAN'S VIOLENT AGGRESSION..., THE NOTION OF "MUTUAL COMBAT" CANNOT BE SUPPORTED BY THE DATA.
> WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2nd ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 38.

IF DR. CALL HAD TRULY BEEN AN EXPERT ON BATTERED WOMAN SYNDROME, HE WOULD HAVE EXPLAINED TO MY JURY THAT THE NOTION OF MUTUAL COMBAT VERSUS PASSIVITY IS A MISCONCEPTION ABOUT BATTERED WOMEN, AND HE WOULD HAVE PROVIDED CONTEXT FOR THE JURY FOR ANY ACT

THAT THE PROSECUTION CLAIMED WAS AGGRESSIVE ON MY PART BUT WAS REALLY DONE IN SELF-DEFENSE IN ORDER TO SURVIVE. INSTEAD, DR. CALL INACCURATELY GAVE "BEGRUDGING ADMISSIONS THAT PETITIONER'S ACTIONS WERE ATYPICAL OF ONE SUFFERING BWS." RESPONSE AT 21. HERE YOU CAN SEE WHERE DR. CALL'S LACK OF A TRUE EXPERT'S UNDERSTANDING OF THE BATTERED WOMAN SYNDROME WAS DISASTROUS TO MY DEFENSE.

ANOTHER EXAMPLE OF DR. CALL'S FAILURE TO PROVIDE CONTEXT FOR THE JURY IS WHEN HE TESTIFIED THAT I TOLD HIM THAT ON THE MORNING OF 28 APRIL 1998, JUST BEFORE THE SHOOTING, I WAS GOING TO USE THE PHONE TO GET "BETTER DOPE." RESPONSE AT 27. THIS, TOO, WAS SOMETHING THAT I WAS GOING TO DO TO AVOID OR AT LEAST MINIMIZE FURTHER ABUSE—AND SURVIVE THAT DAY. AT THE TIME, TERRY HAD ALREADY BEAT AND RAPED ME THAT MORNING AND HE WAS REFUSING TO LET ME LEAVE. WE WERE IN TERRY'S BASEMENT, WHERE HE WAS INSISTING THAT I USE DRUGS WITH HIM AGAIN (AS I TESTIFIED, I WAS ABLE TO EMPTY THE SYRINGE ONTO THE FLOOR THIS TIME WHILE TERRY WAS DISTRACTED). TERRY WAS HAVING TROUBLE INJECTING HIMSELF BECAUSE HE HAD INJECTED A LARGE QUANTITY OF DRUGS RECENTLY AND BECAUSE

THERE WERE NO CLEAN SYRINGES. HE WAS BECOMING MORE AND MORE AGITATED AND ALSO COMPLAINING THAT THE QUALITY OF THE DRUGS WAS NOT AS GOOD AS USUAL. HE WANTED "BETTER DOPE," AND THAT WAS THE ONLY REASON THAT HE LET ME GO UPSTAIRS TO GET THE PHONE. AS I TESTIFIED, IT WAS WHILE I WAS LOOKING FOR THE PHONE THAT I SAW HIS GUN AND GRABBED IT, TOO. PLEASE SEE AMENDED PETITION AT 9.

BECAUSE THE STATE REPEATEDLY USED MY DRUG ABUSE TO CAST DOUBT ON MY CREDIBILITY AND VERACITY AT MY TRIAL, THE ENTIRE ROLE OF DRUG ABUSE IN BATTERED WOMEN SHOULD HAVE BEEN EXPLAINED TO MY JURY BY A QUALIFIED BATTERED WOMAN SYNDROME EXPERT. AS DR. WALKER EXPLAINS:

> ALCOHOL AND DRUG ABUSE HAS BEEN FOUND TO BE USED AS A FORM OF SELF-MEDICATION TO BLOCK THE INTENSE EMOTIONS THAT ARE OFTEN EXPERIENCED BY ABUSE VICTIMS, PARTICULARLY PHYSICAL AND SEXUAL ASSAULT VICTIMS.... THE MAJOR RISK FACTORS WERE NOT POVERTY OR EXPOSURE TO SUBSTANCE ABUSING PARENTS BUT RATHER CHILDHOOD PHYSICAL OR SEXUAL ABUSE, ADULT VICTIMIZATION BY DOMESTIC VIOLENCE, AND A PARTNER WHO ABUSES SUBSTANCES.... SOME OF THOSE WOMEN SAID THAT THEY AVOIDED FURTHER ABUSE BY GOING OUT AND DRINKING WITH THEIR PARTNERS. IT IS NOT UNCOMMON FOR WOMEN TO BECOME ADDICTED TO DRUGS THAT ARE SUPPLIED BY THEIR BATTERER WHO THEN HAS GREATER POWER AND CONTROL OVER THE WOMAN AS HE DISPENSED THEIR DRUGS BASED ON HOW THEY BEHAVED... IN ONE OF OUR CASES, THE WOMAN DESCRIBED HOW HER ENTIRE DAYS WERE SPENT TRYING TO FIND WAYS TO OBTAIN SUFFICIENT PRESCRIPTION DRUGS TO KEEP HER BATTERER CALM SO HE'D BE LESS LIKELY TO BEAT HER UP. WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2ND ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 95-97 (EMPHASIS ADDED).

MY OWN HISTORY OF DRUG ABUSE IS PERFECTLY IN LINE WITH THIS DESCRIPTION BY DR. WALKER OF DRUG ABUSE IN BATTERED WOMEN, ALTHOUGH THE STATE WOULD HAVE YOU BELIEVE THAT I TESTIFIED THAT I "WAS A SEVERE DRUG USER AND HAD BEEN SINCE [I] WAS A TEENAGER." RESPONSE AT 27. THAT IS NOT WHAT I SAID, AND IT IS NOT TRUE. I TESTIFIED THAT I HAD USED DRUGS WHEN I WAS A TEENAGER — NOT THAT I HAD BEEN A SEVERE DRUG USER SINCE I WAS A TEENAGER. AS OUTLINED IN MY APPLICATION, PRIOR TO MEETING TERRY, AND FOR OVER A YEAR THEREAFTER, I DID NOT USE DRUGS; AND MY DRUG USE HISTORY CONSISTED ENTIRELY OF HAVING USED MARIJUANA A FEW TIMES IN AND AROUND MY COLLEGE YEARS. I FIRST USED — AND THEN ABUSED — OTHER DRUGS WITH TERRY, WHO WAS A LONG-TERM SEVERE DRUG USER. PLEASE SEE AMENDED PETITION AT 5.

I ALSO TESTIFIED AT MY TRIAL THAT ON THE MORNING OF THE SHOOTING, TERRY INSISTED THAT I USE DRUGS WITH HIM EVEN THOUGH I DID NOT WANT TO. I HAD COME FOR A PEACEFUL RESOLUTION TO OUR PROBLEMS SO THAT I COULD FEEL SAFE AND HE COULD GET ON WITH HIS LIFE, AND I DID NOT WANT TO BE IN AN ALTERED STATE — SO I MIXED A WEAK SOLUTION OF METHAMPHETAMINE TO USE (VOL. XI, TR. 2131-2133). MY DESIRE NOT TO USE

DRUGS THAT MORNING IS ALSO STARTLINGLY CONSISTENT WITH THE BATTERED WOMEN IN DR. WALKER'S STUDY WHO ALSO USED DRUGS. AS DR. WALKER REPORTS:

> BATTERED WOMEN'S USE OF DRUGS WAS LOWER... FOR THE FIRST THREE [BATTERING] INCIDENTS AND... FOR THE LAST ONE. ONE POSSIBLE EXPLANATION FOR THE APPARENT DECREASE TOWARD THE END IS THAT THEY NEEDED TO BE DRUG-FREE TO PERCEIVE THE ALTERNATIVES INVOLVED IN TERMINATING THE RELATIONSHIP. WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2nd ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 93.

IN MY FOURTH CLAIM, I EXPLAINED THAT MY ATTORNEY TOLD ME THAT MY URINALYSIS FROM THE AFTERNOON OF THE SHOOTING WAS NEGATIVE FOR DRUGS. I MAINTAIN THAT HE SHOULD HAVE INTRODUCED THIS TEST RESULT AT MY TRIAL BECAUSE IT SUPPORTS MY TESTIMONY AND DEFENSE. THE STATE RESPONDS THAT THE NEGATIVE URINALYSIS DOESN'T MATTER BECAUSE IT "WOULD NOT HAVE ADVANCED HER ARGUMENT THAT SHE USED REASONABLE FORCE BASED ON HAVING SUFFERED FROM BWS." RESPONSE AT 12. THE STATE ALSO POINTS OUT THAT "[T]HERE IS NO CASE LAW THAT INDICATES A BWS DEFENSE IS UNAVAILABLE TO SOMEONE UNDER THE INFLUENCE OF AN INTOXICANT." RESPONSE AT 12. THEN THE STATE GOES ON TO CLAIM THAT "[T]HERE IS NOTHING IN THE RECORD TO SUGGEST THE STATE ARGUED HER VOLUNTARY INTOXICATION INCREASED HER CULPABILITY

OR HELPED PROVE ANY ELEMENT OF THE CRIME." RESPONSE AT 12. THIS IS NOT TRUE. NOT ONLY DID PROSECUTORS CLAIM AT MY TRIAL THAT I SHOT TERRY BECAUSE I WAS ON DRUGS, THEY ALSO HAD THIS TO SAY TO THE LOCAL NEWSPAPER AT MY SENTENCING:

> "IT'S NOT THAT WE DON'T BELIEVE IN THE BATTERED WOMAN SYNDROME," SAID FIRST ASSISTANT DISTRICT ATTORNEY SHARON ASHE. "IT IS ACCEPTED IN THE LAW IN THIS STATE. BUT IF WE FEEL IT IS A VALID DEFENSE, WE ARE NOT FILING THE CASE AT ALL."
>
> AND APRIL WILKENS IS NOT A CLASSIC CASE OF A BATTERED WOMAN, ASHE SAID....
>
> ... TULSA COUNTY PROSECUTORS CONTENDED THAT WILKENS WAS ANYTHING BUT A CLASSIC EXAMPLE OF A BATTERED WOMAN. THEY SAY DRUG ABUSE, NOT DOMESTIC ABUSE, MADE WILKENS SNAP AND PULL THE TRIGGER.
>
> "SHE DIDN'T ACT IN SELF-DEFENSE," ASHE SAID. "SHE WAS NOT IN A RELATIONSHIP WHERE SHE WAS A BATTERED WOMAN. SHE WAS IN A RELATIONSHIP WHERE THERE WAS VIOLENCE PERPETRATED BY BOTH PARTIES, AND SHE WAS THE WORST OFFENDER."...
>
> PARISH, ASHLEY, "ABUSED WOMAN RECEIVES LIFE SENTENCE," TULSA WORLD, 08 JULY 1999: A-11 (EMPHASIS ADDED).

THAT THE STATE NOW CLAIMS THAT THE ISSUE OF MY DRUG USE IS IRRELEVENT BECAUSE "NO CASE LAW" EXISTS "THAT INDICATES A BWS DEFENSE IS UNAVAILABLE TO SOMEONE UNDER THE INFLUENCE OF AN INTOXICANT" IS DUPLICITOUS. TIME AND TIME AGAIN AT MY TRIAL, THE STATE EXPLOITED MY DRUG ABUSE TO DISCREDIT ME AND INVALIDATE MY BATTERED WOMAN SYNDROME DEFENSE. ESSENTIALLY, IT WAS THE STATE'S CONTENTION THAT DRUG ABUSE PRECLUDED MY

BATTERED WOMAN SYNDROME DEFENSE. ALTHOUGH THIS IS NOT TRUE AT ALL, I DID NOT HAVE A BATTERED WOMAN SYNDROME EXPERT TO DISPEL THIS MYTH AT MY TRIAL; AND THE NEGATIVE URINALYSIS WOULD HAVE SUPPORTED MY TESTIMONY THAT MY DRUG USE ON THE MORNING OF THE SHOOTING WAS MINIMAL. BECAUSE PROSECUTORS CLAIMED THAT "DRUG ABUSE, NOT DOMESTIC ABUSE, MADE WILKENS SNAP AND PULL THE TRIGGER," THE NEGATIVE URINALYSIS WOULD CLEARLY HAVE HELPED SUPPORT MY TESTIMONY THAT I SHOT TERRY IN SELF-DEFENSE — NOT BECAUSE I WAS STRUNG OUT ON DRUGS, AS THE PROSECUTION ALLEGED.

IN ITS RESPONSE, THE STATE PERSISTS WITH ITS DUBIOUS, UNABASHED EFFORTS TO PAINT ME AS A DRUG-ADDLED LIAR, AND EVEN CLAIMS THAT "[I]T DID NOT HELP PETITIONER'S VERACITY THAT SHE WAS CAUGHT MAKING PATENTLY UNTRUTHFUL STATEMENTS. FOR EXAMPLE, THE PETITIONER TOLD POLICE THAT THIS WAS THE FIRST TIME SHE HAD USED METH..." RESPONSE AT 27. I DID NOT TELL POLICE OR ANYONE ELSE THAT THE FIRST TIME I HAD EVER USED METHAMPHETAMINE WAS ON THE MORNING OF THE SHOOTING, AND THE STATE DOES NOT PROVIDE ANY CITATION TO THE RECORD TO PROVE THIS CLAIM. WHILE THIS MAY BE ANOTHER INSTANCE WHERE THE STATE HAS TAKEN PART OF SOMETHING I HAVE SAID

AND TWISTED IT OUT OF CONTEXT TO SUIT ITS PURPOSE, A THOROUGH REVIEW OF THE RECORD PROVES THAT I HAVE CONSISTENTLY BEEN FORTHRIGHT ABOUT MY DRUG USE AND ABUSE.

OBVIOUSLY, THE ROLE OF DRUG ABUSE IN BATTERED WOMEN SHOULD HAVE BEEN EXPLAINED TO MY JURY TO COUNTER THE OFT EXPLOITED MISCONCEPTION THAT DRUG ABUSE PRECLUDES BATTERED WOMAN SYNDROME. DR. CALL FAILED TO DO THIS, THOUGH, AND HERE IS ANOTHER EXAMPLE OF HOW HIS LACK OF EXPERTISE IN THE FIELD OF BATTERED WOMAN SYNDROME WAS DISASTROUS TO MY DEFENSE.

THE FACT THAT DR. CALL WAS NOT TRULY AN EXPERT ON BATTERED WOMAN SYNDROME PROBABLY HURT MY DEFENSE THE MOST, HOWEVER, WHEN HE TESTIFIED "THAT THE BALANCE OF THE DATA SUPPORTS THE CONCLUSION THAT THE DEFENDANT WAS PSYCHOTIC AT THE TIME OF THE SHOOTING, BELIEVED SHE WAS IN DANGER, AND BELIEVED THAT HER USE OF FORCE WAS JUSTIFIED." (TR. 15 AT 2851-52). PLEASE SEE RESPONSE AT 20. THIS MAKES IT SOUND LIKE I SHOT TERRY BECAUSE I WAS PSYCHOTIC AND COMPLETELY UNDERMINES MY DEFENSE OF SELF DEFENSE. AS DR. WALKER EXPLAINS:

> THE BEHAVIOR OF BATTERED WOMEN WHO KILL THEIR ABUSERS NEEDS TO BE UNDERSTOOD AS NORMAL, NOT ABNORMAL. DEFENDING ONESELF FROM REASONABLY PERCEIVED IMMINENT DANGER OF BODILY HARM OR DEATH OUGHT TO BE CONSIDERED A PSYCHOLOGICALLY

HEALTHY RESPONSE. MOST BATTERED WOMEN WHO KILL DO SO IN SELF-DEFENSE, NOT BECAUSE THEY ARE MENTALLY DISORDERED. AND THE EXPERT WITNESS WHO CAN PROVIDE JUDGES AND JURIES WITH A GENUINE UNDERSTANDING OF THIS FACT CAN HAVE A CRITICAL ROLE IN CHANGING OUR CRIMINAL JUSTICE SYSTEM'S INADEQUATE RESPONSE TO THE ENTIRE PROBLEM.... DIAGNOSES OF MENTAL ILLNESS, DELIVERED BY UNINFORMED MEDICAL PERSONNEL AND MENTAL HEALTH PROFESSIONALS, ARE OFTEN WRONG. AND... THESE WOMEN USUALLY ABANDON THEIR ABNORMAL BEHAVIOR WHEN THEY ARE FREE OF THE INSANE, TERRIFYING CIRCUMSTANCES THAT PRODUCED SUCH BEHAVIOR IN THE FIRST PLACE. WALKER, LENORE E., TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPERPERENNIAL, 1990), 11-13 (EMPHASIS ADDED).

DR. WALKER ALSO WRITES:

> .... IT WOULD BE QUITE EASY TO MISDIAGNOSE BATTERED WOMEN AS HAVING A SERIOUS MENTAL ILLNESS IF CAUTIONS WEREN'T TAKEN TO ACCOUNT FOR THE INFLUENCE OF HAVING TO COPE WITH BATTERING. FOR EXAMPLE, IT IS REASONABLE FOR A BATTERED WOMAN TO BELIEVE SHE HAS BEEN BETRAYED AND THAT SOMEONE IS OUT TO GET HER WITHOUT IT BEING INDICATIVE OF PARANOID IDEATION. AND, IT IS COMMON FOR BATTERED WOMEN TO BECOME COGNITIVELY CONFUSED WITHOUT HAVING PSYCHOTIC IDEATION. WALKER, LENORE, E.A., THE BATTERED WOMAN SYNDROME, 2nd ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 103. (EMPHASIS ADDED).

DR. CALL'S TESTIMONY AT MY TRIAL THAT I WAS "PSYCHOTIC" AND "BELIEVED" I WAS IN DANGER UTTERLY FAILED TO ADDRESS THE REASONABLENESS OF MY PERCEPTION — AND INSTEAD LED MY JURY TO BELIEVE THAT MY FEAR OF TERRY WAS UNREASONABLE. HERE IS WHERE MY ATTORNEY'S FAILURE TO PRESENT TESTIMONY FROM A QUALIFIED BATTERED WOMAN SYNDROME EXPERT ABSOLUTELY SABOTAGED MY DEFENSE OF SELF-DEFENSE.

IN BECHTEL, THE O.C.C.A. ESTABLISHED:

> ... DR. WALKER'S [i.e., EXPERT] TESTIMONY AS TO HOW APPELLANT'S PARTICULAR EXPERIENCES AS A BATTERED WOMAN SUFFERING FROM THE BATTERED WOMAN SYNDROME AFFECTED HER PERCEPTIONS OF DANGER, ITS IMMINENCE, WHAT ACTIONS WERE NECESSARY TO PROTECT HERSELF AND THE REASONABLENESS OF THOSE PERCEPTIONS ARE RELEVANT AND NECESSARY TO PROVE APPELLANT'S DEFENSE OF SELF-DEFENSE. BECHTEL V. STATE, 840 P2d 1, 10 (OKLA. CRIM. APP. 1992) (EMPHASIS ADDED).

MY ATTORNEY FAILED TO PROVIDE EXPERT TESTIMONY TO EXPLAIN THE REASONABLENESS OF MY FEAR OF TERRY BASED ON MY PERCEPTION AS A BATTERED WOMAN, AND THIS WAS AN ERROR THAT THE STATE ALSO EXPLOITED REPEATEDLY.

IT WAS UNDISPUTED AT MY TRIAL THAT I HAD ENDED MY RELATIONSHIP WITH TERRY RECENTLY. AS I TESTIFIED, MY LEAVING TERRY LED TO AN INCREASE IN THE FREQUENCY AND SEVERITY OF EPISODES WHERE TERRY HARASSED, STALKED, AND PHYSICALLY ATTACKED ME. PLEASE SEE AMENDED PETITION AT 6. THINGS GOT SO BAD THAT I WAS SURE TERRY WAS GOING TO KILL ME JUST AS HE HAD THREATENED TO DO. ALL OF THIS IS CONSISTENT WITH THE EXPERIENCES OF OTHER BATTERED WOMEN. AS DR. WALKER EXPLAINS:

> LEAVING THE BATTERER IS, IN MANY CASES, MORE DANGEROUS THAN REMAINING; AS WE HAVE DEMONSTRATED, SEPARATION IS THE TIME OF GREATEST VOLATILITY AND PERIL IN BATTERING RELATIONSHIPS. WALKER, LENORE E., TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPER PERENNIAL, 1990), 256.

> THE VIOLENCE DOESN'T CEASE SHOULD SHE PURSUE DIVORCE OR DISOLUTION OF THE MARRIAGE, BUT RATHER, ESCALATES TO HIGHER LEVELS, EVEN BECOMING POTENTIALLY LETHAL.

> THE MEN ARE AT GREATER RISK FOR EMOTIONAL BREAKDOWNS, HOMICIDAL, AND SUICIDAL REACTIONS. MEDIA STORIES ABOUT DESPONDENT HUSBANDS WHO SHOOT AND KILL THE WHOLE FAMILY HAVE BECOME MORE COMMONLY LINKED WITH SPOUSE ABUSE AS REPORTERS BECOME MORE SOPHISTICATED IN THEIR UNDERSTANDING OF DOMESTIC VIOLENCE. WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2ND ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 205.

AND

> ... MOST HOMICIDES/SUICIDES THAT ARE REPORTED TAKE PLACE IN DOMESTIC VIOLENCE FAMILIES. AND, WE ARE MUCH MORE AWARE OF THE FACT THAT FROM THE POINT OF SEPARATION UNTIL ABOUT TWO YEARS AFTERWARD IS THE MOST DANGEROUS TIME FOR A BATTERED WOMAN AND HER CHILDREN. WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2ND ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 42.

THIS WAS MY DEADLY REALITY; BUT OVER AND OVER AGAIN AT MY TRIAL, THE STATE EXPLOITED THE MISCONCEPTION THAT I WAS SIMPLY FREE TO LEAVE TERRY AT ANY TIME—WITHOUT NEGATIVE REPERCUSSIONS — AND EVEN ASSERTED THAT MY BREAKING UP WITH TERRY HELPED PROVE THAT I WAS NOT SUFFERING FROM BATTERED WOMAN SYNDROME. THE STATE PERSISTS WITH THIS ERRONEOUS ASSERTION IN ITS RESPONSE, WHERE IT CLAIMS, "ALSO ATYPICAL [OF A BWS SUFFERER] WAS THE FACT THAT THE PETITIONER HAD A NEW BOYFRIEND AND WAS ADMITTEDLY JUST TRYING TO BREAK UP "PEACEFULLY" WITH THE DECEDENT." RESPONSE AT 22. FAR FROM PROVING THAT I WAS NOT A BATTERED WOMAN SYNDROME SUFFERER, THIS FACT INSTEAD PROVES THAT I WAS IN VERY REAL DANGER. AS DR. WALKER ALSO WRITES:

> .... THERE WERE A NUMBER OF HIGH-RISK FACTORS TO LOOK FOR WHEN ATTEMPTING TO PROTECT WOMEN FROM BEING KILLED. SOME CHARACTERISTICS OF RELATIONSHIPS AT HIGH RISK FOR INTERSPOUSAL HOMICIDE INCLUDE....
>
> • NEW RELATIONSHIP FOR MAN OR WOMAN...
>
> CAMPBELL (1981) CITES DATA TO SUPPORT JEALOUSY AS THE PREDOMINATE REASON GIVEN BY MEN WHO KILL THEIR WIVES OR LOVERS.... THE PRESENCE OF EXCESSIVE JEALOUSY IS A HIGH RISK FACTOR FOR PREDICTION OF LETHALITY.
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> WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2nd ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 48-53, ALSO CITING CAMPBELL, J.C. (1981). "MISOGYNY AND HOMICIDE OF WOMEN." ANS: WOMEN'S HEALTH AMERICAN NURSING SOCIETY, 167-185.

AS I TESTIFIED, TERRY HAD BECOME VERY ANGRY AND THREATENED ME AFTER I TOLD HIM THAT I WAS IN LOVE WITH SOMEONE ELSE. THIS HAPPENED JUST DAYS BEFORE THE SHOOTING, WHEN HE APPROACHED ME AT EASTERN STATE HOSPITAL AND INSISTED THAT WE TALK. EASTERN STATE HOSPITAL EMPLOYEES WITNESSED TERRY'S HOSTILE BEHAVIOR TOWARDS ME DURING THAT INCIDENT, AND TESTIFIED ABOUT IT AT MY TRIAL. ONE WITNESS, RIZA JOHNSON, WAS A MENTAL HEALTH AIDE AT EASTERN STATE, AND SHE TESTIFIED THAT TERRY APPEARED AGITATED AND EVEN MADE HER "VERY UNCOMFORTABLE." SHE SAID THAT TERRY GOT UPSET WITH ME BEFORE "SQUEALING HIS TIRES" AS HE LEFT THE HOSPITAL. MS. JOHNSON ALSO TESTIFIED THAT ALTHOUGH I WAS "NERVOUS" AND "UNEASY" WHEN TERRY WAS THERE, I "NEVER GAVE [EASTERN STATE] ANY TROUBLE AT ALL."

CHILLINGLY, 50% OF ALL FEMALE MURDER VICTIMS ARE KILLED BY MEN WITH WHOM THEY HAVE BEEN IN A VIOLENT RELATIONSHIP. DR. WALKER WRITES THAT "[T]HERE ARE APPROXIMATELY

15 FACTORS THAT STAND OUT AS ADDING TO THE HIGH RISK OF LETHALITY":

LETHALITY CHECKLIST
- FREQUENCY OF VIOLENT INCIDENTS IS ESCALATING
- FREQUENCY OF SEVERITY OF VIOLENCE IS ESCALATING
- MAN THREATENS TO KILL WOMAN OR OTHERS
- FREQUENCY OF ALCOHOL AND OTHER DRUG ABUSE IS INCREASING
- MAN THREATENS TO KIDNAP OR HARM CHILDREN
- MAN FORCES OR THREATENS SEX ACTS
- SUICIDE ATTEMPTS
- WEAPONS AT HOME OR EASILY ACCESSIBLE
- PSYCHIATRIC IMPAIRMENT OF MAN OR WOMAN
- CLOSE TO EACHOTHER AT WORK AND AT HOME
- MAN'S NEED FOR CONTROL AROUND CHILDREN
- CURRENT LIFE STRESSES
- MAN'S PRIOR CRIMINAL HISTORY
- MAN'S ATTITUDE TOWARDS VIOLENCE
- NEW RELATIONSHIP FOR MAN OR WOMAN

WALKER, LENORE E.A., THE BATTERED WOMAN SYNDROME, 2ND ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 48-49, ALSO CITING SONKIN, D.J., & WALKER, L.E.A. (1993). JURIS MONITOR STABILIZATION AND EMPOWERMENT PROGRAMS. DENVER, CO: ENDOLOR COMMUNICATIONS.

THIS LETHALITY CHECKLIST IS ALMOST A PERFECT PICTURE OF MY RELATIONSHIP WITH TERRY.

"PSYCHOTIC" OR NOT. "MENTALLY ILL" OR NOT. IRRESPECTIVE OF HOWEVER ANYONE LABELED ME, TERRY WAS A VERY REAL AND INTERMINABLE THREAT TO MY LIFE. WHEN I SHOT TERRY, I HAD EVERY REASON TO BELIEVE THAT I WAS IN IMMINENT DANGER AND THAT I HAD TO SHOOT HIM TO PROTECT MYSELF (PLEASE NOTE: ALTHOUGH THE STATE MAINTAINS THAT I SHOULD NOT HAVE SHOT TERRY BECAUSE HE WAS UNARMED, TERRY WAS 6' TALL AND WEIGHED 185 POUNDS, WHEREAS I AM 5'7" TALL AND I WEIGHED ≈110 POUNDS). DR. CALL DID NOT EXPLAIN THE REASONABLENESS OF MY POINT OF VIEW AT THE TIME OF THE SHOOTING TO MY JURY. I MAINTAIN THAT DR. CALL FAILED

TO EXPLAIN THE REASONABLENESS OF MY POINT OF VIEW BECAUSE HE HIMSELF DID NOT UNDERSTAND IT, AND I ASSERT THAT HE DID NOT UNDERSTAND BECAUSE HE WAS NOT TRULY A QUALIFIED EXPERT ON BATTERED WOMAN SYNDROME. IN FACT, IT IS MY UNDERSTANDING THAT MY CASE WAS THE FIRST BATTERED WOMAN SYNDROME CASE IN WHICH DR. CALL HAD EVER WORKED AS A CONSULTANT FOR THE DEFENSE.

MY DEFENSE IS SELF-DEFENSE. THE KEY TO MY DEFENSE IS THE REASONABLENESS OF MY POINT OF VIEW AT THE TIME OF THE SHOOTING; WHICH, BECAUSE I WAS A BATTERED WOMAN SUFFERING FROM BATTERED WOMAN SYNDROME, CAN ONLY BE UNDERSTOOD WITHIN THE FRAMEWORK OF THE SYNDROME. IN BECHTEL, THE O.C.C.A. SAID THAT EXPERT TESTIMONY AS TO HOW A WOMAN'S "PARTICULAR EXPERIENCES AS A BATTERED WOMAN SUFFERING FROM THE BATTERED WOMAN SYNDROME AFFECTED HER PERCEPTIONS... AND THE REASONABLENESS OF THOSE PERCEPTIONS [IS] RELEVANT AND NECESSARY TO PROVE [HER] DEFENSE OF SELF-DEFENSE." BECHTEL V. STATE, 840 P.2d. 1, 10 (OKLA. CRIM. APP. 1992). (EMPHASIS ADDED).

SO, ALTHOUGH AN EXPERT CANNOT SPECIFICALLY TESTIFY TO THE ULTIMATE FACT OF WHETHER A BATTERED WOMAN'S FEAR WAS REASONABLE, EXPERT TESTIMONY EXPLAINING THE REASONABLENESS OF HER FEAR IS ESSENTIAL TO PROVE HER DEFENSE OF SELF-DEFENSE; AND THE POINT IS, ULTIMATELY, THAT THIS DID NOT HAPPEN AT MY TRIAL.

IN THE END, WHETHER OR NOT THIS COURT DETERMINES IF DR. CALL WAS A QUALIFIED EXPERT ON BATTERED WOMAN SYNDROME, MY ATTORNEY FAILED TO PROVIDE EXPERT TESTIMONY EXPLAINING THE REASONABLENESS OF MY FEAR AT THE TIME OF THE SHOOTING; AND THEREBY, LIKE THE ATTORNEY IN PAINE V. MASSIE, HE "FAILED TO DO SOMETHING THAT THE OCCA SAID WAS NECESSARY TO MOUNT AN EFFECTIVE SELF-DEFENSE CLAIM GIVEN THE JURY'S LIKELY MISCONCEPTIONS ABOUT BWS." PAINE V. MASSIE, 339 F.3d 1194 (10th CIR. 2003). IN PAINE, THE 10th CIRCUIT COURT OF APPEALS HELD:

> GIVEN THE OCCA'S EXTENSIVE FOCUS ON THE "KEY" REASONABLENESS COMPONENT OF A SELF-DEFENSE CLAIM IN A BWS CASE, BECHTEL, 840 P.2d AT 10-11, COUNSEL'S FAILURE TO OFFER EXPERT BWS TESTIMONY TO PROVIDE CONTEXT FOR THE JURY ON THE REASONABLENESS OF MS. PAINE'S SUBJECTIVE FEAR AMOUNTS TO OBJECTIVELY UNREASONABLE PERFORMANCE. PAINE V. MASSIE, 339 F.3d 1194 (10th CIR. 2003) (EMPHASIS ADDED).

LIKEWISE, I BELIEVE THAT MY ATTORNEY'S PERFORMANCE WAS OBJECTIVELY UNREASONABLE; AND THAT IF NOT FOR HIS ERRORS, THERE EXISTS AT THE VERY LEAST A REASONABLE PROBABILITY THAT THE OUTCOME OF MY TRIAL WOULD HAVE BEEN DIFFERENT.

REGARDING MY TRIAL ATTORNEY'S FAILURE TO PRESENT TESTIMONY FROM CLAIRE EAGAN, THE STATE WRITES IN ITS RESPONSE THAT "BRINGING IN AN ATTORNEY WHO HELPED [ME] OBTAIN A VPO WOULD ALLOW THE PROSECUTOR TO REMIND THE JURY THAT [I] ABANDONED THE SAME A SHORT TIME LATER." RESPONSE AT 7. IN REALITY, HAD

MY ATTORNEY EVER CONTACTED CLAIRE EAGAN OR MIKE COOKE, HE WOULD HAVE DISCOVERED NOT ONLY THE AUDIOTAPE BUT ALSO THAT THEIR TESTIMONY WOULD COUNTER SUCH MISCONCEPTIONS — OFTEN EXPLOITED BY THE PROSECUTION — THAT: 1) IF THE ABUSE HAD BEEN THAT BAD AND I HAD REALLY BEEN IN DANGER, I WOULD HAVE FOLLOWED THROUGH WITH THE VICTIM'S PROTECTIVE ORDERS; 2) THE ORDERS WOULD HAVE DETERRED TERRY; AND 3) THE POLICE COULD AND WOULD HAVE PROTECTED ME FROM TERRY.

JUST AS THE STATE DOES IN ITS RESPONSE, THE PROSECUTION AT MY TRIAL MADE MUCH OF THE FACT "THAT THE THREE TIMES [I] SOUGHT VPO'S, [I] NEVER FOLLOWED UP AND THE ORDERS WERE DISMISSED." RESPONSE AT 7. DURING CLOSING ARGUMENTS, THE PROSECUTION TOLD MY JURY THAT IF I HAD ALLOWED AUTHORITIES TO ASSIST ME — BY FOLLOWING THROUGH ON COURT ACTION NEEDED TO MAKE THE EMERGENCY PROTECTIVE ORDERS PERMANENT — TERRY "MIGHT HAVE BEEN PUNISHED, AND HE MIGHT STILL BE ALIVE." (MIND YOU, THIS WAS SAID TO MY JURY EVEN THOUGH TERRY HAD THE BENCH WARRANT FOR HIS ARREST AT THE TIME OF THE SHOOTING, AND POLICE HAD PREVIOUSLY FAILED TO ENFORCE IT — AS OUTLINED IN CLAIM THREE, MY JURY NEVER KNEW ABOUT THIS WARRANT.) RATHER THAN ALLOWING THE PROSECUTORS TO EXPLOIT THE FACT THAT

I DID NOT FOLLOW THROUGH WITH THE PROTECTIVE ORDER— SOMETHING THE PROSECUTORS DID REPEATEDLY ANYWAY— BRINGING IN CLAIRE EAGAN TO TESTIFY WOULD HAVE GIVEN JURORS PRECIOUS INSIGHT AS TO THE REAL REASON WHY I DID NOT PURSUE THE PROTECTIVE ORDER: I WAS AFRAID TO. AS MS. EAGAN WRITES IN HER AFFIDAVIT, SHE APPEARED FOR THE PERMANENT PROTECTIVE ORDER HEARING, BUT I DID NOT. WHEN SHE CALLED ME TO ASK WHY, I TOLD HER HOW TERRY HAD CALLED ME THE NIGHT BEFORE — IN VIOLATION OF THE EXISTING EMERGENCY PROTECTIVE ORDER — AND LET ME KNOW THAT HE WOULD BE AT THE HEARING. I WAS JUST AFRAID, AS MS. EAGAN RELATES THAT I TOLD HER.

MY FEAR WAS NOT UNFOUNDED OR UNUSUAL. WHENEVER I SOUGHT HELP FROM AUTHORITIES — INCLUDING THE THREE TIMES I OBTAINED EMERGENCY PROTECTIVE ORDERS AND THE ONE TIME THAT TERRY WAS ARRESTED AT MY HOME WITH THE LOADED PISTOL — TERRY ONLY BECAME MORE ANGRY AND THREATENING. AS DR. WALKER EXPLAINS, THIS IS NOT AT ALL UNCOMMON:

> SOME [BATTERED WOMEN] HAVE FEARED THAT THE BATTERER WILL BECOME MORE VIOLENT IF ARRESTED AND CHARGES ARE FILED. RESEARCH SHOWS THAT MOST ABUSERS DO LEAVE THE WOMAN ALONE, AT LEAST WHILE CHARGES ARE PENDING, ONCE THEY KNOW THEY HAVE NO POWER TO INFLUENCE THE STATE ATTORNEY (SHERMAN & BERK, 1984). RESTRAINING ORDERS ARE PROTECTION FOR MOST WOMEN WHO GET THEM (MELOY, COWETT, (PARKER, HOFLAND, & FRIEDLAND, 1997) ALTHOUGH

OBVIOUSLY THOSE WHO ENGAGE IN STALKING BEHAVIOR WON'T BE DETERRED BY COURT ORDERS (BURGESS ET. AL, 1997; DEBECKER, 1997; MELOY ET AL., 1997; WALKER & MELOY, 1998)....

IT IS A REAL NO-WIN SITUATION FOR SOME BATTERED WOMEN. THEY WILL CONTINUE TO BE BATTERED IF THEY DO NOT GET HELP AND THEY WILL BE HURT WORSE IF THEY DO! THIS IS CRITICAL FOR THOSE WHO WORK WITH BATTERED WOMEN TO UNDERSTAND!

WALKER, LENIORE E.A., THE BATTERED WOMAN SYNDROME, 2nd ED., (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000), 198; ALSO CITING SHERMAN, L.W., & BERK, R.A. (1984) "THE SPECIFIC DETERENT EFFECTS OF ARREST FOR DOMESTIC ASSAULT." THE SOCIOLOGICAL REVIEW, 49, 261-271; BURGESS, A.W. ET AL. (1997). "STALKING BEHAVIORS WITHIN DOMESTIC VIOLENCE." JOURNAL OF FAMILY VIOLENCE, 12, 389-403; MELOY, J.R. ET AL. (1997) "DOMESTIC PROTECTIVE ORDERS AND THE PREDICTION OF CRIMINALITY AND VIOLENCE TOWARDS PROTECTEES." PSYCHOTHERAPY. 34; AND WALKER, L.E.A., & MELOY, J.R. (1998). "STALKING AND DOMESTIC VIOLENCE." IN J.R. MELOY (ED.), THE PSYCHOLOGY OF STALKING: CLINICAL AND FORENSIC PERSPECTIVES (PP. 139-162). SAN DIEGO, CA: ACADEMIC PRESS. (EMPHASIS ADDED).

TERRY WAS ESPECIALLY DANGEROUS BECAUSE HE HAD A SENSE OF ENTITLEMENT — THAT HE WAS ABOVE THE LAW — AND BECAUSE HE WAS A STALKER. WHEN ONE OF MY NEIGHBORS, CARL HUGHES, CAUGHT TERRY TRYING TO SNEAK INTO MY HOUSE IN THE MIDDLE OF THE NIGHT, MR. HUGHES TESTIFIED THAT TERRY REBUFFED HIM WITH THE QUESTION "DO YOU KNOW WHO I AM.?!" ANOTHER NEIGHBOR, GLENDA McCARLEY, TESTIFIED TO WITNESSING SO MANY OCCASIONS WHEN TERRY LEFT MY HOME "JUST IN TIME" TO AVOID OFFICERS THAT "IT WAS ALMOST A JOKE AMONG THE NEIGHBORS ABOUT HOW HE HAD THE TIMING DOWN." THE OFFICER WHO ARRESTED TERRY AT MY HOME WITH THE LOADED GUN TESTIFIED THAT HE HAD BEEN TO MY HOUSE

ABOUT FOUR TIMES BEFORE AND THAT WAS THE FIRST TIME HE HAD FOUND BOTH OF US THERE. EVEN ON THAT OCCASION, 21 FEBRUARY 1998, OFFICER TROY DEWITT TESTIFIED THAT HE CAUGHT TERRY WHILE HE WAS TRYING TO LEAVE AND THAT TERRY WAS UPSET ABOUT BEING ARRESTED. AS OUTLINED IN CLAIM THREE, TERRY HAD SO LITTLE REGARD FOR THE LAW THAT HE DID NOT SHOW UP IN COURT ON THE FEBRUARY 1998 GUN CHARGE, A WARRANT WAS ISSUED FOR HIS ARREST, AND HE SOMEHOW MANAGED TO CIRCUMVENT BEING ARRESTED ON THE WARRANT AT LEAST TWICE JUST WEEKS BEFORE THE SHOOTING.

SO, WHILE THERE WERE TIMES THAT AUTHORITIES DID HELP ME — SUCH AS THE 21 FEBRUARY 1998 INCIDENT — THERE WERE ALSO NUMEROUS INCIDENTS WHEN THEY DID NOT — SUCH AS THE TWO TIMES IN APRIL 1998 WHEN DIFFERENT OFFICERS DID NOT ENFORCE THE BENCH WARRANT FOR TERRY'S ARREST. PLEASE SEE AMENDED PETITION AT 14. THE STATE CLAIMS THAT THE OFFICERS WERE "LIKELY UNAWARE" OF THE WARRANT, AND THAT MY ATTORNEY'S FAILURE TO PRESENT THE WARRANT AT MY TRIAL "APPEARS TO BE SOUND TRIAL STRATEGY." RESPONSE AT 9, 11. THIS ARGUMENT IS ABSURD, BECAUSE THE ISSUE IS NOT SO MUCH WHAT THE OFFICERS WERE OR WERE NOT AWARE OF AS HOW IT LOOKED TO ME AND WHETHER OR NOT MY PERSPECTIVE

WAS REASONABLE. THE WARRANT FOR TERRY'S ARREST — AND THE FACT THAT OFFICERS TWICE FAILED TO ENFORCE IT — IS ABSOLUTELY ESSENTIAL TO PROVE THAT MY BELIEF THAT I COULD NOT RELY ON LAW ENFORCEMENT TO PROTECT ME FROM TERRY WAS REASONABLE. THIS WAS SUCH A BIG ISSUE AT MY TRIAL, AND HERE AGAIN DR. CALL'S UNINFORMED TESTIMONY HURT MY DEFENSE. AS THE STATE WRITES IN ITS RESPONSE, "IMPORTANTLY, EVEN HER OWN EXPERT WITNESS, DR. CALL, CONCEDED THAT IN THIS CASE, THE POLICE TOOK THE PETITIONER SERIOUSLY AND SAYS THE LEGAL SYSTEM DID NOT FAIL TO PROTECT HER; THE FAILURE WAS HER OWN CHOICE NOT TO FOLLOW UP. (TR. 15, 2862-63)." RESPONSE AT 10-11. MY PURPOSE IN RAISING THIS ISSUE IS NOT TO ASSIGN BLAME; IT IS TO PROVIDE PERSPECTIVE — MY PERSPECTIVE — AND ESTABLISH THE REASONABLENESS OF THAT PERSPECTIVE. IN TRUTH, AT THE TIME OF THE SHOOTING, I FELT JUST LIKE MOST BATTERED WOMEN DO ABOUT CALLING THE POLICE FOR HELP. AS DR. WALKER WRITES:

> [A]LMOST ALL OF THE WOMEN [WHO HAD CALLED THE POLICE] STATED THAT THE POLICE HAD PROVIDED ABSOLUTELY NO HELP AT ALL. IN FACT THEY OFTEN MADE THINGS WORSE; ONCE THEY WERE GONE, AFTER SOME FEEBLE AND INEFFECTIVE ATTEMPTS TO PLACATE THE BATTERER AND AFTER THE BATTERER SAW THAT NOTHING HAD BEEN DONE TO STOP HIM, HE OFTEN CONTINUED HIS ABUSE WITH RENEWED VIOLENCE. WALKER, LENORE E, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPERPERENNIAL, 1990), 63. (EMPHASIS ADDED).

IN MY MIND, THE POLICE SHOULD HAVE ARRESTED TERRY WHEN THEY ENCOUNTERED US IN APRIL 1998. THAT TERRY REALLY DID HAVE THE BENCH WARRANT FOR HIS ARREST AT THAT TIME PROVES THAT I WAS RIGHT. TRUE OR NOT, NONE OF THE UGLY THINGS THAT THE STATE HAS TO SAY ABOUT ME IN ITS RESPONSE — e.g. ABOUT DRUGS, MENTAL HEALTH, ALLEGED MUTUAL COMBAT, ETC. — EXCUSES THOSE OFFICERS' FAILURE TO ENFORCE THE WARRANT FOR TERRY'S ARREST.

ATTORNEY MIKE COOKE'S TESTIMONY WOULD ALSO HAVE SUPPORTED THE REASONABLENESS OF MY BELIEF THAT I COULD NOT RELY ON LAW ENFORCEMENT TO PROTECT ME FROM TERRY. IN HIS AFFIDAVIT, MR. COOKE RELATES A DECEMBER 1997 INCIDENT INVOLVING TERRY. MR. COOKE WRITES THAT ON THIS OCCASION, I WAS "PANICKED AND FRANTIC" WHEN I CALLED HIM FOR HELP. AFTER HE ARRIVED AT MY HOME, HE TOLD ME THAT HE WAS GOING TO CALL THE POLICE, SAID I TOLD HIM THAT THEY "WOULD DO NOTHING." JUST AS I SAID THEY WOULD, THE POLICE ARRIVED AND DID NOTHING — EVEN AFTER MR. COOKE EXPLAINED TO AN OFFICER ~~WHAT HE~~ "KNEW ABOUT THE VIOLENT NATURE AND HISTORY" OF TERRY'S AND MY RELATIONSHIP. AS MR. COOKE WRITES, THIS IS HOW THAT OFFICER RESPONDED:

> THE OFFICER INDICATED THAT THEY HAD BEEN CALLED TO HER RESIDENCE "SEVERAL TIMES BEFORE." HE ASKED ME SEVERAL TIMES WHY SHE HAD CALLED A LAWYER. I OBSERVED THE POLICE OFFICER TO BE FAIRLY DISMISSIVE OF MS. WILKENS'S CONCERNS, AND TO MY KNOWLEDGE, NO FURTHER ACTION WAS

TAKEN BY THE POLICE REGARDING THIS MATTER. Michael Cooke, Affidavit in Appendix of Supporting Documents

NOW, I WILL ADDRESS THE STATE'S LAST-DITCH EFFORT TO PERSUADE THIS COURT — AS IT DID MY JURY — THAT EVEN THOUGH I "HAD PROBABLY SUFFERED DOMESTIC ABUSE, ... NOT ALL ABUSED PERSONS FIT INTO A BWS DIAGNOSIS, AND [I] WAS ONE THAT CLEARLY DID NOT." RESPONSE AT 14. THE STATE WRITES IN ITS RESPONSE:

> THE JURY ALSO HEARD TESTIMONY FROM DR. THERESA FARROW, THE PETITIONER'S PERSONAL PSYCHIATRIST.... WHEN [DR. FARROW WAS] ASKED IF SHE HAD FORMULATED AN OPINION AS TO WHETHER THE PETITIONER SHOWED SYMPTOMS SHE CONSIDERED CONSISTENT WITH BWS, SHE STATED: "I DO NOT BELIEVE SHE DID." RESPONSE AT 22.

WHAT THE STATE DOES NOT TELL YOU — EVEN THOUGH IT IS IN THE TRIAL RECORD — IS THAT FIRST AND FOREMOST, DR. FARROW WAS TERRY'S PSYCHIATRIST. TERRY WAS SEEING DR. FARROW FOR DEPRESSION, AND HE DEVELOPED SUCH A GOOD RAPPORT WITH HER THAT HE EVENTUALLY WANTED ME TO SEE HER, TOO. AND SO I DID, BUT ALWAYS WITH THE UNDERSTANDING THAT TERRY CAME FIRST. WHEN I BEGAN TO SERIOUSLY DRAW AWAY FROM TERRY, I STOPPED SEEING DR. FARROW AS WELL; AND DR. FARROW HAD NO CONTACT WITH ME AT ALL DURING THE MONTHS OF MY FINAL SEPARATION FROM TERRY. AT ANY RATE, FOR THE RECORD IN THIS APPEAL, I WAS ABSOLUTELY ASTONISHED BY DR. FARROW'S TESTIMONY AT MY TRIAL BECAUSE I VIVIDLY RECALL HER TELLING ME DURING ONE OF OUR SESSIONS THAT I WAS A "CLASSIC BATTERED WOMAN." BUT WHO WOULD BELIEVE ME?!

AND THAT BRINGS ME BACK TO THE AUDIOTAPE: THIS RECORDING OF CONVERSATIONS BETWEEN TERRY AND ME IS THE ONLY EVIDENCE THAT PROVES — BEYOND ANY DOUBT WHATSOEVER — THAT I TOLD THE TRUTH; BUT EVEN THOUGH I TOLD THE TRUTH, MY DEFENSE COULD NOT WITHSTAND THE PROSECUTION'S MISGUIDED ATTACKS ON MY CREDIBILITY. THIS IS WHY I ALSO RAISED THE ISSUE OF EXPERT TESTIMONY.

IN EVERY RESPECT, THE EXCULPATORY EVIDENCE THAT I PRESENTED IN MY AMENDED PETITION IS NOTHING SHORT OF EXTRAORDINARY; BUT BECAUSE THIS EVIDENCE WAS NOT PRESENTED AT MY TRIAL, THE PROSECUTION WAS ABLE TO EXPLOIT VIRTUALLY EVERY MISCONCEPTION GOING ABOUT BATTERED WOMEN TO OBTAIN A CONVICTION IN MY CASE — AND PROSECUTORS USED MY OWN SO-CALLED BATTERED WOMAN SYNDROME EXPERT TO DO THIS. IN PLAIN, UNVARNISHED ENGLISH, WHAT THE PROSECUTION DID WAS PAINT ME UP AS A VIOLENT, SADOMASOCHISTIC, SOCIOPATHIC, DRUG-ADDLED, WORTHLESS, LYING, COLD-BLOODED, CALCULATING MURDERER. THAT IS WHAT HAPPENED AT MY TRIAL, IT WAS A TERRIBLE INJUSTICE, AND THERE CAN BE NO MINIMIZING IT OR GLOSSING IT OVER WITH ELOQUENT DISCOURSE.

THE TRUTH IS THAT I WAS A BATTERED WOMAN.

IN BECHTEL, THE O.C.C.A. RECOGNIZED THAT "[M]ISCONCEPTIONS REGARDING BATTERED WOMEN ABOUND,..." AND SAID, "[W]E BELIEVE THAT EXPERT TESTIMONY ON THE SYNDROME IS NECESSARY TO COUNTER THESE MISCONCEPTIONS." BECHTEL, 840 2d. AT 8. IN MY CASE, YOU CAN SEE AGAIN HOW RIGHT THEY WERE; YOU CAN SEE HOW FAR THE PROSECUTION WILL GO TO EXPLOIT THOSE MISCONCEPTIONS, MAKING EXPERT TESTIMONY ALL THE MORE ESSENTIAL; AND YOU CAN SEE WHY THAT EXPERT TESTIMONY NEEDS TO BE GIVEN BY SOMEONE WHO IS TRULY A BATTERED WOMAN SYNDROME EXPERT. A BATTERED WOMAN DEFENDANT NEEDS TO BE REPRESENTED BY AN EXPERT WITH TRULY EXTENSIVE EXPERIENCE WORKING WITH BATTERED WOMEN — AN EXPERT WHO GENUINELY UNDERSTANDS THE COMPLICATED REALITY OF BATTERED WOMEN. AS DR. WALKER EXPLAINS:

> IT IS ESSENTIAL THAT WE LEARN TO RECOGNIZE BATTERED WOMAN SYNDROME FOR WHAT IT IS: A TERRIFIED HUMAN BEING'S NORMAL RESPONSE TO AN ABNORMAL AND DANGEROUS SITUATION. PSYCHIATRISTS AND OTHER HELPING PROFESSIONALS TEND TO CONFUSE THE EFFECTS OF DOMESTIC ABUSE WITH "MASOCHISM," "BORDERLINE PERSONALITY DISORDER," OR ANY NUMBER OF OTHER INAPPLICABLE DIAGNOSES. <u>THOSE INVOLVED IN DIAGNOSTIC PROCEDURES MUST REMEMBER THAT, IN THE CASE OF BATTERED WOMEN, LIVES DEPEND UPON PROPER, KNOWLEDGEABLE, AND ACCURATE EVALUATIONS AND CONCLUSIONS.</u>
>
> WE MUST ALSO BREAK THROUGH OUR DENIAL ABOUT THE SEVERITY OF THE SADISTIC MANIPULATION AND PSYCHOLOGICAL CONTROL — AMOUNTING, IN SOME CASES, TO REAL BRAINWASHING — THAT A BATTERER MAY EXERT OVER A BATTERED WOMAN....
>
> WHEN FREE, ONCE AND FOR ALL, OF THE BATTERING CIRCUMSTANCES, MOST OF THESE WOMEN CEASE TO MANIFEST ANY SO-CALLED BEHAVIORAL

DISTURBANCES OR PERSONALITY DISORDERS, A FACT THAT PROVES, TO THIS PROFESSIONAL, AT ANY RATE, THAT THEIR PREVIOUSLY ABNORMAL BEHAVIOR WAS DIRECTLY CAUSED BY THEIR VICTIMIZATION. WHEN THEY ARE NO LONGER VICTIMIZED, THE BIZARRE BEHAVIOR DISAPPEARS....

NOT ENOUGH IS SAID...ABOUT THE ABSOLUTELY "CRAZY-MAKING" BEHAVIOR OF THE BATTERER....

ORGANIZED PSYCHIATRY, IN GENERAL, HAS DISPLAYED AN APPALLING IGNORANCE ABOUT THE PSYCHOLOGY OF WOMEN IN GENERAL, AND OF BATTERED WOMEN IN PARTICULAR. WALKER, LENORE E., TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPER PERENNIAL, 1990), 188-189. (EMPHASIS ADDED).

CLINICAL PSYCHOLOGY, THE BRANCH OF PSYCHOLOGY IN WHICH MENTAL DISORDERS ARE STUDIED, EXPLAINS ONLY A VERY SMALL PART OF THE FIELD OF HUMAN BEHAVIOR, ALTHOUGH IT IS THIS PART OF PSYCHOLOGY WITH WHICH THE GENERAL PUBLIC IS MOST FAMILIAR. THIS FACT CAN BE A PROBLEM WHEN PROFESSIONALS WITH NO EXPERTISE IN THE FIELD OF BATTERED WOMEN, BUT WITH IMPRESSIVE PROFESSIONAL PSYCHOLOGICAL OR PSYCHIATRIC CREDENTIALS, TESTIFY IN A COURT OF LAW, AND IT IS ONE REASON WHY ONLY A QUALIFIED EXPERT WITNESS SHOULD TESTIFY IN ANY TRIAL INVOLVING A BATTERED WOMAN WHO KILLS. WALKER, LENORE E., TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPER PERENNIAL, 1990), 169. (EMPASIS ADDED).

★THE INFORMED EXPERT WITNESS IS THE ONLY PERSON, IN THESE CASES, QUALIFIED TO POINT OUT THAT THE PSYCHOLOGICAL REALITY OF THESE WOMEN JUSTIFIES THEIR ACTIONS. THEIR STATE OF MIND MEETS THE REQUIREMENT OF REASONABLE PERCEPTION. BATTERED WOMEN WHO KILL DO SO BECAUSE IT IS THE ONLY REMAINING WAY THEY CAN SEE OUT OF A PHYSICALLY LIFE-THREATENING AND EMOTIONALLY AND PSYCHOLOGICALLY UNTENABLE CIRCUMSTANCE. WALKER, LENORE E., TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPER PERENNIAL, 1990), 267. (EMPHASIS ADDED)

★AT MY TRIAL, RATHER THAN POINT OUT THAT THE PSYCHOLOGICAL REALITY OF BATTERED WOMEN JUSTIFIES THEIR ACTIONS, "DR. CALL... POINTED OUT THAT KILLING WAS NOT A SYMPTOM OF BWS; THAT VERY FEW BATTERED WOMEN KILL (TR. IS 2940 & 2936)." RESPONSE AT 21 (EMPHASIS ADDED).

EVEN IF, IN THE EYES OF THE LAW, THIS COURT DETERMINES THAT DR. CALL WAS QUALIFIED TO RENDER EXPERT TESTIMONY ON THE BATTERED WOMAN SYNDROME, IT WOULD BE HARD TO SAY THAT HE DID SO EFFECTIVELY; AND I AM SAYING THAT IN ORDER FOR MY ATTORNEY TO HAVE REPRESENTED ME EFFECTIVELY, A BATTERED WOMAN SYNDROME EXPERT NEEDED TO EXPLAIN THE SYNDROME EFFECTIVELY. CLEARLY, THAT DID NOT HAPPEN AT MY TRIAL.

THE STATE ARGUES IN ITS RESPONSE THAT DR. CALL IS A PSYCHOLOGIST LIKE DR. WALKER. PLEASE SEE RESPONSE AT 22. BUT I SAY THAT THAT NO MORE MAKES DR. CALL A BATTERED WOMAN SYNDROME EXPERT THAN, BY THE SAME LINE OF REASONING, AN ATTORNEY WOULD BE CONSIDERED AN APPELLATE EXPERT SIMPLY BECAUSE HE IS AN ATTORNEY (EVEN IF HE HAS BEEN "INVOLVED IN" APPEALS). AN EXPERT MUST DEMONSTRATE HIS EXPERTISE, AND HE MUST DO SO EFFECTIVELY— TIME AND TIME AGAIN.

AT MY TRIAL, "DR CALL... POINTED OUT THAT KILLING WAS NOT A SYMPTOM OF BWS; THAT VERY FEW BATTERED WOMEN KILL. (TR. 15 2940 & 2936)." RESPONSE AT 21. BY COMPARISON, HERE IS WHAT DR. WALKER EXPLAINS ABOUT BATTERED WOMEN WHO KILL AND THOSE WHO DO NOT:

> BATTERED WOMEN WHO KILL CAN PERHAPS BE SET APART FROM THOSE WHO DO NOT KILL IN TERMS OF THE PERCEIVED DANGER OF THEIR SITUATIONS AND THE SEVERITY AND BRUTALITY OF THE VIOLENT PHYSICAL,

SEXUAL, AND PSYCHOLOGICAL ABUSE THEY HAVE ENDURED. SEXUAL ABUSE PLAYS A BIG PART, AS DOES ALCOHOL AND/OR DRUG ABUSE ON THE PART OF THE BATTERER...

THERE ARE FAR MORE INTRINSIC SIMILARITIES THAN DIFFERENCES BETWEEN BATTERED WOMEN WHO KILL AND THOSE WHO DO NOT. THERE ARE ALSO MANY MORE SIMILARITIES THAN DIFFERENCES IN OUR SOCIETY BETWEEN BATTERED WOMEN AND WOMEN IN GENERAL. AND IT IS MY CONTENTION THAT DEATH AND MURDER ALWAYS LURK AS POTENTIALS IN VIOLENT RELATIONSHIPS.

BATTERED WOMEN COME FROM ALL TYPES OF ECONOMIC, CULTURAL, RELIGIOUS, AND RACIAL BACKGROUNDS. THEY ARE MILLIONAIRES, AND THEY ARE WOMEN ON WELFARE; THEY ARE UNEDUCATED WOMEN, AND THEY ARE PRACTICING PROFESSIONALS WITH J.D.S AND Ph.D.S; THEY ARE MOTHERS, AND THEY ARE CHILDLESS.... THEY ARE WOMEN LIKE YOU. LIKE ME. LIKE THOSE WHOM YOU KNOW AND LOVE.

WHETHER WE LIKE IT OR NOT, AND WHETHER WE ARE AWARE OF IT OR NOT WE ALL LIVE IN VIOLENT SOCIETIES. SOME KIND OF PHYSICAL ASSAULT OCCURS IN NEARLY ONE-HALF OF ALL AMERICAN FAMILIES. FOR OUR PURPOSES IN DRAWING A GENERALIZED PICTURE OF <u>THE "TYPICAL" BATTERED WOMAN</u> (AND LATER OF <u>THE "TYPICAL" BATTERED WOMAN WHO KILLS</u>), WE CONSIDER A WOMAN TO BE BATTERED IF SHE IS SUBJECTED REPEATEDLY TO COERCIVE BEHAVIOR (PHYSICAL, SEXUAL, AND/OR PSYCHOLOGICAL) BY A MAN ATTEMPTING TO FORCE HER TO DO WHAT HE WANTS HER TO DO, REGARDLESS OF HER OWN DESIRES, RIGHTS, OR BEST INTERESTS; IF SHE IS INTIMATELY INVOLVED WITH THIS MAN BUT NOT NECESSARILY MARRIED, ALTHOUGH SHE OFTEN IS; AND IF, AS A COUPLE, THEY HAVE EXPERIENCED AT LEAST TWO ACUTE BATTERING INCIDENTS, OFTEN GOING THROUGH THE CYCLE OF VIOLENCE AT LEAST TWICE.

THE TYPICAL BATTERED WOMAN HAS POOR SELF-IMAGE AND LOW SELF-ESTEEM, BASING HER FEELINGS OF SELF-WORTH ON HER CAPACITY TO BE A GOOD WIFE AND HOMEMAKER, WHETHER OR NOT SHE ALSO HAS A SUCCESSFUL CAREER OUTSIDE OF THE HOME.... SHE MAY BELIEVE THAT SHE IS THE ONE AT FAULT FOR NOT STOPPING HER BATTERER'S VIOLENT BEHAVIOR; CONSEQUENTLY, SHE SUFFERS GREAT GUILT. CAUGHT BETWEEN THE PILLARS OF GUILT AND VIOLENCE SHE LIVES IN GREAT DENIAL OF HER OWN FEAR AND RAGE; THIS DENIAL ENABLES HER TO FUNCTION DAY TO DAY. SHE MAY APPEAR TO BE PASSIVE, BUT THE TRUTH IS THAT SHE CAN BE STRONG, OFTEN MANIPULATING THE PEOPLE AND OBJECTS IN HER ENVIRONMENT EXTENSIVELY, AT LEAST ENOUGH TO AVOID BEING KILLED.

AS A RESULT OF ALL THESE FACTORS, SHE SUFFERS FROM CONTINUAL STRESS AND IS PARTICULARLY SUBJECT TO PSYCHOSOMATIC AILMENTS AND DEPRESSION. AN EXTREMELY

ISOLATED INDIVIDUAL — BECAUSE SHE OFTEN AVOIDS EXPOSING THE TERRIBLE SECRET OF HER HUSBAND'S UNPREDICTABLY VIOLENT BEHAVIOR TO OTHERS, AND BECAUSE HIS DOMINEERING AND JEALOUS NATURE OFTEN PREVENTS HER FROM SEEKING THE FRIENDSHIP OF OTHERS — SHE BELIEVES THAT SHE ALONE IS THE ONLY PERSON CAPABLE OF CHANGING HER PREDICAMENT; IF SHE CAN'T, SHE THINKS, NO ONE WILL. AND SHE BELIEVES THAT IF SHE CAN ONLY FIND THE RIGHT FORMULA, HER BATTERER'S "BAD" SIDE WILL DISAPPEAR, AND SHE WILL BE LEFT WITH THE WONDERFUL, KIND, SENSITIVE MAN SHE REMEMBERS FROM THE PAST.

IN TRYING TO DIFFERENTIATE THOSE BATTERED WOMEN WHO KILL FROM THOSE WHO DO NOT, WE CAN LOOK FOR SPECIAL CHARACTERISTICS COMMON TO THIS PARTICULAR GROUP.

DR. ANGELA BROWNE, WHO IN 1979 BEGAN WORKING ON OUR RESEARCH PROJECT THAT INVOLVED FOUR HUNDRED BATTERED WOMEN, COMPARED THE FORTY HOMICIDE CASES WE HAD COMPLETED BY 1983 WITH A SUBSAMPLE OF ONE HUNDRED BATTERED WOMEN WHO HAD BEEN LIVING OUT OF THE BATTERING RELATIONSHIP FOR LESS THAN A YEAR. THE ONLY REAL DIFFERENCES SHE FOUND WERE IN THE WOMEN'S PERCEPTIONS OF VIOLENCE. WOMEN WHO KILLED, SHE FOUND, PERCEIVED THEIR MEN AS USING GREATER VIOLENCE, MORE FREQUENTLY, RESULTING IN MORE AND IN GRAVER INJURIES TO THEM, THAN DID THOSE BATTERED WOMEN WHO DID NOT KILL. THE ONES WHO KILLED DESCRIBED THEMSELVES AS GROWING INCREASINGLY MORE DESPERATE IN THEIR ATTEMPTS TO STAY AS PHYSICALLY SAFE AS POSSIBLE.

THEY DESCRIBED THEIR MEN AS MAKING MORE DEATH THREATS. THEIR MEN WERE ALSO MORE LIKELY TO USE WEAPONS TO TERRORIZE THEM. THEY TENDED TO ABUSE ALCOHOL MORE FREQUENTLY AND SEEMED TO BE GROWING CONTINUALLY MORE DANGEROUS TOWARD THE WOMEN, TOWARD THEIR CHILDREN, AND TOWARD OTHERS.

BATTERED WOMEN WHO DO AND DO NOT KILL ARE ESSENTIALLY A HETEROGENEOUS GROUP....

EACH (AND EVERY WOMAN IN OUR STUDY HAD ENDURED EXTRAORDINARY BRUTAL AND TERRIFYING ABUSE BEFORE KILLING IN SELF-DEFENSE. TO KNOW THEIR STORIES IS TO UNDERSTAND WHY THEY DID IT.

LIKE OTHER BATTERED WOMEN, THOSE WHO KILLED COULD NEVER PREDICT EXACTLY WHEN AN ACUTE INCIDENT WOULD OCCUR OR HOW BAD THE VIOLENCE WOULD BE. ALL MENTIONED THE FACT THAT THEIR BATTERERS WERE EXTREMELY JEALOUS OF EVERY OTHER PERSON IN THEIR LIVES, INCLUDING FAMILY, FRIENDS, PEOPLE AT WORK, AND ESPECIALLY CHILDREN. THEIR MEN WERE UNUSUALLY SUSPICIOUS AND POSSESSIVE, AND OFTEN THREATENED TO KILL THE WOMAN'S RELATIVES OR FRIENDS.

ALL OF THE BATTERED WOMEN WHO KILLED WERE SUBJECTED TO VERBAL ABUSE AND CRITICISM THAT OFTEN AMOUNTED TO ACUTE PSYCHOLOGICAL TORTURE.

WHILE THEY OFTEN LATER REMARKED ON THE UNUSUAL SENSITIVITY AND SENSUALITY OF THE BATTERER WHEN HE WAS ON HIS "GOOD" BEHAVIOR, MANY ALSO NOTED HIS UNUSUAL SEXUAL BEHAVIOR: TENDENCIES TOWARD ACTIVELY VIOLENT PERVERSITY....

NEARLY ALL OF THEM NOTED THAT THEIR MEN HAD DIFFICULTY CONTROLLING INTAKE OF ALCOHOL. EVERY ONE OF THEM HAD BEEN THREATENED WITH GUNS, KNIVES, OR OTHER WEAPONS. AND EVERY ONE OF THEM WAS AWARE THAT THE BATTERER TRULY WAS CAPABLE OF KILLING EITHER HER OR HIMSELF.

WHEN A BATTERED WOMAN KILLS, SHE MOST LIKELY SENSES AN INCREASED LOSS OF CONTROL IN THE BATTERER AND IN THE LEVEL OF VIOLENCE. SHE SENSES, TOO, THAT SHE IS SOMEHOW LESS ESSENTIAL TO HIM THAN SHE HAS BEEN BEFORE; THAT THIS TIME HE MAY GO ALL THE WAY (AND COMMIT MURDER. SOMETIMES SHE KNOWS THIS, SOMETIMES MERELY INTUITS IT; IN ALL CASES, A SENSE OF ABSOLUTE HORROR IS PRESENT. AS THE VIOLENCE ESCALATES OUT OF CONTROL, THE WOMAN'S PERCEPTIONS OF IT CHANGE."

AT A CERTAIN POINT IN A BATTERING SITUATION, THE VIOLENCE HAS ACCELERATED TO SUCH A LEVEL THAT IT WILL NOT DIMINISH AGAIN AS IT HAS DONE IN THE PAST, IN LINE WITH THE PREVIOUSLY ESTABLISHED PATTERN OF THE CYCLE OF VIOLENCE; CONSCIOUSLY OR NOT, THE BATTERED WOMAN WHO KILLS SENSES THIS. ONCE THIS POINT IS REACHED, THE PHYSICAL BRUTALITY APPEARS TO SPIN WILDLY OUT OF CONTROL. BATTERED WOMEN WHO KILL HAVE ALMOST INVARIABLY DONE SO AFTER HAVING EXPERIENCED SUCH AN UNCONTROLLABLY SAVAGE ACUTE INCIDENT, OR AFTER THE RECURRENT ONSET OF TENSION-BUILDING PHASE BEHAVIOR, IN ORDER TO PREVENT SUCH AN ACUTE INCIDENT FROM HAPPENING AGAIN. EACH WOMAN SEEMS TO FEEL THAT SHE JUST CANNOT COPE WITH THE IMPENDING BRUTALITY OR THE PSYCHOLOGICAL TENSION ANY LONGER. FEW STATE LATER THAT THEY EVER INTENDED TO KILL; ALL SAY THAT THEY SIMPLY WANTED TO STOP HIM FROM HURTING THEM LIKE THAT AGAIN. ALMOST EVERY BATTERED WOMAN TELLS OF WISHING, AT SOME POINT, THAT THE BATTERER WERE DEAD, MAYBE EVEN FANTASIZING HOW HE MIGHT DIE. THESE WISHES AND FANTASIES ARE NORMAL, CONSIDERING THE EXTRAORDINARY INJUSTICE THESE WOMEN SUFFER AT THEIR MEN'S HANDS. BUT IT IS EQUALLY TRUE THAT THE SMALL NUMBER OF WOMEN WHO KILL THEIR BATTERERS DO NOT NECESSARILY WANT THEM TO DIE AT THE TIME; RATHER, THEY ARE SEEKING ONLY TO PUT AN END TO THEIR PAIN (AND TERROR....

[M]IDDLE-CLASS AND UPPER-INCOME WOMEN REALIZE (TRUTHFULLY, IN MANY INSTANCES) THAT OTHERS IN THE COMMUNITY WILL NOT COME TO THEIR AID BECAUSE THOSE OTHERS MAY HAVE FINANCIAL, POLITICAL, AND SOCIAL TIES TO THE BATTERER; SHOULD HE SUFFER DISGRACE OR EXPOSURE,

THEY STAND TO LOSE AS WELL. THUS, POWERFUL MEMBERS OF THE WOMAN'S COMMUNITY, RATHER THAN HELPING HER, MAY COLLUDE IN COVERING UP THE BATTERER'S CRIMINAL BEHAVIOR. THIS RESPONSE SUPPORTS THE COMMONLY HELD VIEW OF BATTERED WOMEN... THAT THEIR HUSBANDS ARE NEARLY OMNISCIENT AND CERTAINLY MUCH MORE POWERFUL THAN ANYONE WHO MIGHT EXPOSE THEM....

[B]EYOND THE SHADOW OF A DOUBT... THE ECONOMICALLY PRIVILEGED BATTERED WOMAN CAN HAVE JUST AS MUCH, IF NOT MORE, TROUBLE SEPARATING FROM THE BATTERER AS THE BATTERED WOMAN WHO LIVES IN POVERTY.

WALKER, LENORE E., TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPERPERENNIAL, 1990), 101-107, (ALSO CITING BROWN, ANGELA, WHEN BATTERED WOMEN KILL (FREE PRESS - MACMILLAN)) (EMPHASIS ADDED).

IN 1990, TWO YEARS BEFORE THE O.C.C.A. HANDED DOWN ITS HIGHLY PRAISED LANDMARK DECISION IN BECHTEL ALLOWING EXPERT TESTIMONY ON THE BATTERED WOMAN SYNDROME, DR. WALKER, WHO WAS THE EXPERT IN THAT CASE, DESCRIBED THE SECOND TRIAL OF DONNA BECHTEL, BECHTEL'S NAMESAKE, LIKE THIS:

> [I]N APRIL 1988, IN OKLAHOMA CITY, BATTERED WOMAN SYNDROME TESTIMONY WAS RULED INADMISSIBLE BY THE JUDGE PRESIDING OVER [DONNA BECHTEL'S] SECOND TRIAL. NOR WAS DONNA HERSELF ALLOWED TO TESTIFY TO MUCH OF THE ABUSE SHE HAD EXPERIENCED....
>
> THE ENTIRE TRIAL WAS A SHAM, A MOCKERY, ONE OF THE WORST TRAVESTIES OF JUSTICE I HAVE EVER BEEN UNFORTUNATE ENOUGH TO WITNESS. THE DEFENSE BELIEVED THAT EVIDENCE WAS RULED ADMISSIBLE OR NOT ACCORDING TO THE TRIAL JUDGE'S WHIMS. IN THE END, DONNA WAS FOUND GUILTY AND RETURNED TO COMPLETE HER LIFE SENTENCE IN PRISON. WALKER, LENORE E. TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (NEW YORK: HARPER PERENNIAL, 1990), 278.

THAT WAS NOT THE END, AS YOU KNOW. IN 1992, APPARENTLY IN GALLANT OPPOSITION TO WHAT DR. WALKER CALLED "POWERFUL POLITICAL FORCES IN OKLAHOMA CITY," THE O.C.C.A. REVERSED DONNA BECHTEL'S SECOND CONVICTION, SAYING IN ESSENCE THAT EXPERT TESTIMONY ON BATTERED WOMAN SYNDROME IS BOTH LAWFUL AND NECESSARY — AND THEREFORE ADMISSIBLE — **TO PROVE A BATTERED WOMAN'S DEFENSE OF SELF-DEFENSE.** PLEASE SEE BECHTEL, 840 2d AT 19. IT WAS A THOUGHTFUL DECISION THAT HAS SINCE BEEN MUCH APPLAUDED FOR ITS GROUNDBREAKING SENSITIVITY TO DOMESTIC VIOLENCE VICTIMS. OTHER COURTS, INCLUDING THE TENTH CIRCUIT COURT OF APPEALS, HAVE ISSUED RULINGS IN AGREEMENT WITH THE O.C.C.A.'S DECISION IN BECHTEL. IMPORTANTLY, THE ONLY MEMBER OF THE O.C.C.A. WHO DISAGREED WITH THE MAJORITY DECISION IN BECHTEL DID SO NOT BECAUSE HE WAS UNSYMPATHETIC

TO DOMESTIC VIOLENCE VICTIMS; BUT RATHER, JUDGE GARY LUMPKIN WROTE IN HIS DISSENTING OPINION, BECAUSE "[T]HE FACTS OF [DONNA BECHTEL'S] CASE DO NOT PRESENT THE EVIDENTIARY PREDICATE WHICH IS REQUIRED TO ADOPT THE CHANGES PROPOSED BY THE COURT." BECHTEL, 840 2d AT 16. AND ALTHOUGH JUDGE LUMPKIN DISSENTED IN BECHTEL, HE NEVERTHELESS DID EXPRESS THAT "[D]OMESTIC VIOLENCE IS APPALLING AND EACH MEMBER OF THIS COURT EMPATHIZES WITH THE VICTIMS OF THIS DEGRADING CONDUCT." BECHTEL, 840 2d AT 16.

IN MARCH 1998, NEARLY SIX YEARS AFTER THE OCCA HANDED DOWN ITS DECISION IN BECHTEL, TERESA PAINE, PAINE'S NAMESAKE, WAS CONVICTED IN OKLAHOMA OF FIRST-DEGREE MURDER FOR THE KILLING OF HER HUSBAND; AND SHE, LIKE DONNA BECHTEL, WAS SENTENCED TO LIFE IN PRISON. SINCE HER CONVICTION, MS. PAINE HAS CONSISTENTLY MAINTAINED THAT SHE WAS DENIED HER SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HER ATTORNEY FAILED TO PRESENT EXPERT TESTIMONY ON THE BATTERED WOMAN SYNDROME. THE O.C.C.A. DENIED MS. PAINE'S INEFFECTIVE ASSISTANCE CLAIM, AS DID THE FEDERAL DISTRICT COURT. MS. PAINE THEN APPEALED TO THE TENTH CIRCUIT COURT OF APPEALS, AND IN AUGUST 2003, THAT COURT RULED IN HER FAVOR. IN PAINE V. MASSEY, 339 F.3d 1194 (10TH CIR. 2003), THE TENTH CIRCUIT COURT WROTE:

> SIMPLY PUT, COUNSEL FAILED TO DO SOMETHING THAT THE OCCA SAID WAS NECESSARY TO MOUNT AN EFFECTIVE SELF-DEFENSE CLAIM GIVEN THE JURY'S LIKELY MISCONCEPTIONS

> ABOUT BWS. IN BECHTEL, THE OCCA ESTABLISHED THE PROFESSIONAL STANDARD IN OKLAHOMA FOR AN ATTORNEY REPRESENTING A BATTERED WOMAN CLAIMING SELF-DEFENSE, i.e., THE ATTORNEY MUST PUT ON AN EXPERT TO EXPLAIN BWS TO THE JURY.... FOR THESE REASONS, WE HAVE LITTLE TROUBLE CONCLUDING THAT COUNSEL'S PERFORMANCE FELL SHORT OF THE PROFESSIONAL STANDARD AND WAS OBJECTIVELY UNREASONABLE. PAINE V. MASSEY, 339 F. 3d 1194 (10TH CIR. 2003), ALSO CITING BECHTEL V. STATE, 840 P2.d. (OKLA. CRIM. APP. 1992).

NOW, IN MY CASE, I AM CLAIMING INEFFECTIVE ASSISTANCE OF COUNSEL FOR A NUMBER OF REASONS, INCLUDING MY ATTORNEY'S FAILURE TO PRESENT EXPERT TESTIMONY ADEQUATELY EXPLAINING BATTERED WOMAN SYNDROME TO MY JURY. WITH RESPECT TO MY EXPERT TESTIMONY CLAIM, I HAVE CITED BOTH DONNA BECHTEL'S AND TERESA PAINE'S CASES.

IN DENYING MY POST-CONVICTION APPEAL, THE O.C.C.A. WROTE:

> CONTRARY TO THE ASSERTION OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, [THE O.C.C.A.], IN BECHTEL V. STATE, 1992 OK CR 55, 840 P. 2d 1, DID NOT ANNOUNCE THE PROFESSIONAL STANDARD IN OKLAHOMA FOR AN ATTORNEY REPRESENTING A BATTERED WOMAN.... IN BECHTEL, [THE O.C.C.A.] DECIDED... WHETHER THE TRIAL COURT ERRED IN REFUSING TO ALLOW <u>ANY</u> EXPERT TESTIMONY ON THE BATTERED WOMAN SYNDROME. ("ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF," IN WILKENS V. STATE, O.C.C.A. CASE NO. PC-2003-1002, AT 3-4.)

SO, ESSENTIALLY, THE O.C.C.A. RULED IN MY CASE THAT AS LONG AS AN ATTORNEY PRESENTS <u>ANY</u> EXPERT TESTIMONY ON BATTERED WOMAN SYNDROME — BE IT ADEQUATE OR NOT — THEN THE ATTORNEY'S PERFORMANCE IS SUFFICIENT. HOWEVER, JUST TWO WEEKS AGO IN ANOTHER CASE, GARRISON V. STATE, THE O.C.C.A. RULED THAT THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL

BECAUSE THE EXPERT TESTIMONY PRESENTED BY DEFENSE ATTORNEYS WAS INADEQUATE. AS OUTLINED IN THE ATTACHED NEWSPAPER ARTICLE, O.C.C.A. JUDGE GARY LUMPKIN'S APPELLATE OPINION IN GARRISON V. STATE DECLARED THAT AN EXPERT PSYCHOLOGIST RETAINED BY THE DEFENSE GAVE TESTIMONY THAT "DID LITTLE TO EDUCATE THE JURY" OR "GIVE JURORS ANY MITIGATING REASON TO RENDER A VERDICT LESS THAN DEATH." (PLEASE SEE ATTACHMENT NO. 1: "TULSA CHILD MURDERER DUE RESENTENCING," BY BILL BRAUN, TULSA WORLD, 01 DECEMBER 2004: A-1) I DO UNDERSTAND THAT THE COURTS MAY BE INCLINED TO HOLD DEFENSE ATTORNEYS IN CAPITAL CASES TO A HIGHER STANDARD, BUT I ASK YOU TO PLEASE CONSIDER THAT SPENDING THE REST OF ONE'S LIFE IN PRISON IS ALSO A VERY GRAVE SENTENCE. I HAVE HEARD MY FELLOW INMATES SAY THAT BEING SENTENCED TO LIFE IN PRISON IS LIKE BEING SENTENCED TO "DEATH BY INCARCERATION." AND IT DOES FEEL THAT WAY SOMETIMES.

LIKE THE EXPERT IN GARRISON V. STATE, THE PSYCHOLOGIST EMPLOYED BY MY ATTORNEY ALSO DID LITTLE TO EDUCATE MY JURY ABOUT MY CIRCUMSTANCES. I HAVE MAINTAINED THAT DR. CALL'S TESTIMONY WAS INADEQUATE — EVEN DISASTROUS — BECAUSE HE WAS NOT QUALIFIED TO RENDER EXPERT BATTERED WOMAN SYNDROME TESTIMONY. THE O.C.C.A. WROTE IN ITS DECISION DENYING MY POST-CONVICTION APPEAL THAT I CONTEND DR. CALL "WAS NOT AN EXPERT BECAUSE HIS TESTIMONY WAS NOT CONSISTENT WITH WRITINGS BY DR. LENORE WALKER IN HER

BOOK THE BATTERED WOMAN SYNDROME, 2nd ED. (NEW YORK: SPRINGER PUBLISHING COMPANY, 2000)." ("ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF," IN WILKENS V. STATE, O.C.C.A. CASE NO. PC-2003-1002, AT 4-5.) FURTHER, THE O.C.C.A. WROTE THAT DR. CALL IS "A BOARD CERTIFIED PSYCHOLOGIST IN OKLAHOMA, AND TESTIFIED THAT HE HAD EXTENSIVE EXPERIENCE WITH BWS." ("ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF," IN WILKENS V. STATE, O.C.C.A. CASE NO. PC-2003-1002, AT 5.)

I AM NOT ARGUING THAT DR. CALL "WAS NOT AN EXPERT BECAUSE HIS TESTIMONY WAS NOT CONSISTENT" WITH DR. WALKER'S WRITINGS. I AM CLAIMING THAT DR. CALL WAS NOT A QUALIFIED BATTERED WOMAN SYNDROME EXPERT BECAUSE HIS DEGREE OF EXPERIENCE WORKING WITH AND STUDYING BATTERED WOMEN DOES NOT AMOUNT TO EXPERTISE. AND EVEN THOUGH DR. CALL MAY HAVE "TESTIFIED THAT HE HAD EXTENSIVE EXPERIENCE WITH [BATTERED WOMAN SYNDROME]," THAT DOES NOT MAKE IT TRUE. DR. CALL MAY HAVE CLAIMED TO BE QUALIFIED TO RENDER EXPERT BATTERED WOMAN SYNDROME TESTIMONY, BUT I AM CHALLENGING HIS FITNESS AS A BATTERED WOMAN SYNDROME EXPERT — AND THAT CREATES A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER OR NOT DR. CALL WAS TRULY A BWS EXPERT.

ALSO, THE OCCA DECLARED IN ITS DECISION IN MY POST-CONVICTION APPEAL THAT "[T]HE STANDARDS OF REASONABLENESS

DISCUSSED [IN BECHTEL J.... MAY BE USED TO PREPARE FOR AN APPROPRIATE BWS CASE, BUT WERE NOT MEANT TO BE ABA GUIDELINES OR OTHER PROFESSIONAL STANDARDS BY WHICH AN ATTORNEY'S PERFORMANCE IS MEASURED." ("ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF," IN WILKENS V. STATE, O.C.C.A. CASE NO. PC-2003-1002, AT 4.) ACCORDING TO THE AMERICAN BAR ASSOCIATION STANDARDS RELATING TO CRIMINAL APPEALS, THE PURPOSES OF APPEALS IN CRIMINAL CASES ARE:

> (i) TO PROTECT DEFENDANTS AGAINST PREJUDICIAL LEGAL ERROR IN THE PROCEEDINGS LEADING TO CONVICTION AND AGAINST VERDICTS UNSUPPORTED BY SUFFICIENT EVIDENCE;
> (ii) AUTHORITATIVELY TO DEVELOP AND REFINE THE SUBSTANTIVE AND PROCEDURAL DOCTRINES OF CRIMINAL LAW; AND
> (iii) TO FOSTER AND MAINTAIN UNIFORM, CONSISTENT STANDARDS AND PRACTICES IN THE CRIMINAL PROCESS.
> ABA STANDARD 21.1-2(a)

THE OCCA'S FUNCTION IN APPEALS IS THE "ARTICULATION AND DEVELOPMENT OF LEGAL DOCTRINE AND THE ASSURANCE OF UNIFORM ADMINISTRATION OF THE LAW." ABA STANDARD 21.1-2(b).

AND YET THE OCCA PROCLAIMED IN MY POST-CONVICTION APPEAL THAT THE TENTH CIRCUIT ERRED IN PAINE V. MASSIE, SAYING "[THE OCCA] CANNOT AND WOULD NOT IGNORE OUR ADVERSARIAL SYSTEM OF JUSTICE AND DICTATE THAT TRIAL COUNSEL IS REQUIRED TO PRESENT A CRIMINAL DEFENSE IN A SPECIFIED WAY. NOWHERE IN THE BECHTEL DECISION IS EFFECTIVENESS EVEN DISCUSSED." ("ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF," IN WILKENS V. STATE, O.C.C.A. CASE NO. PC-2003-1002, AT 3.)

IN BECHTEL, THE O.C.C.A. SAID THAT EXPERT TESTIMONY ON THE BATTERED WOMAN SYNDROME IS "NECESSARY" TO PROVE A BATTERED WOMAN'S DEFENSE OF SELF-DEFENSE. BECHTEL V. STATE, 840 2d AT 8, 10. GIVEN THAT THE O.C.C.A. IS THE HIGHEST CRIMINAL COURT IN OKLAHOMA — AND GIVEN THE ABA STANDARDS OUTLINED HEREINABOVE — I BELIEVE THAT IT IS REASONABLE TO EXPECT AN ATTORNEY HERE TO PRESENT EXPERT TESTIMONY ON THE SYNDROME BECAUSE THE O.C.C.A. SAID IT IS NECESSARY. THE O.C.C.A. DIDN'T COME RIGHT OUT AND SAY THAT THIS IS SOMETHING AN ATTORNEY MUST DO, BUT IT IS CERTAINLY REASONABLE TO CONCLUDE THAT COUNSEL MUST DO WHAT THE O.C.C.A. SAYS IS NECESSARY TO PROVIDE AN EFFECTIVE DEFENSE. THAT'S JUST COMMON SENSE, REALLY.

THE O.C.C.A. ALSO IMPLIED IN MY POST-CONVICTION APPEAL THAT THE TENTH CIRCUIT'S DECISION IN PAINE V. MASSIE WAS NOT JUST ERRONEOUS, BUT THAT IT VIOLATED THE STANDARDS OF "PROPRIETY" — i.e., THAT IT WAS OFFENSIVE TO OUR COUNTRY'S ADVERSARIAL SYSTEM OF JUSTICE. (PLEASE SEE "ORDER DIRECTING RESPONSE FROM THE ATTORNEY GENERAL" AT 2 AND "ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF" AT 3, IN WILKENS V. STATE, O.C.C.A. CASE NO. PC-2003-1002.) I FIND THIS TO BE A HYPOCRITICAL AND HIGH-HANDED IMPLICATION. AS THE SUPREME COURT HAS OBSERVED, "THE METHODS WE EMPLOY IN THE ENFORCEMENT OF OUR CRIMINAL LAW HAVE APTLY BEEN CALLED THE MEASURES

BY WHICH THE EQUALITY OF OUR CIVILIZATION MAY BE JUDGED." COPPEDGE V. UNITED STATES, 369 U.S. 438, 449, 82 S. Ct. 917, 923, 8L. Ed. 2d 21. TO ME, WHAT IS TRULY OFFENSIVE TO A CIVILIZED SYSTEM OF JUSTICE IS THE ARBITRARY MANNER IN WHICH THE O.C.C.A. DECIDED MY APPEALS. AND THE O.C.C.A.'S UTTER DISREGARD FOR THE EVIDENCE OF APPALLING DOMESTIC VIOLENCE PRESENTED IN MY POST-CONVICTION APPLICATION IS JUST PLAIN UNCIVILIZED.

AS NOTED BY THE STATE IN ITS RESPONSE, THE O.C.C.A. PROCEDURALLY BARRED THE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS THAT I RAISED IN MY POST-CONVICTION APPLICATION; AND, WITH THE EXCEPTION OF MY EXPERT TESTIMONY CLAIM, MY "APPELLATE COUNSEL CLAIMS WERE NEVER REVIEWED BY THE OCCA." RESPONSE AT 5. THE STATE CLAIMS THAT I DID NOT ASK THE OCCA TO REVIEW ALL OF MY CLAIMS FOR INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. RESPONSE AT 3. THAT IS SIMPLY NOT TRUE. AS THE OCCA WROTE IN ITS DECISION IN MY POST-CONVICTION APPEAL:

> IN THIS APPEAL, PETITIONER CONTENDS SHE WAS DENIED EFFECTIVE ASSISTANCE OF BOTH TRIAL AND APPELLATE COUNSEL. PETITIONER COMPLAINS HER TRIAL COUNSEL FAILED TO INVESTIGATE HER DEFENSES AND PRESENT CRITICAL EXCULPATORY EVIDENCE AS OUTLINED IN HER POST-CONVICTION APPLICATION FILED IN DISTRICT COURT. PETITIONER COMPLAINS HER APPELLATE COUNSEL FAILED TO RAISE THESE CLAIMS ON DIRECT APPEAL. ("ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF" IN WILKENS V. STATE, O.C.C.A. CASE NO. PC-2003-1002, AT 2.)

THE TRUTH IS THAT THE OCCA VIRTUALLY IGNORED ALL OF MY CLAIMS, AND USED MY POST-CONVICTION APPEAL FOR THE SOLE PURPOSE OF REBUTTING THE TENTH CIRCUIT COURT'S DECISION IN PAINE V. MASSIE.

THE STATE'S INSENSITIVITY TO THE EVIDENCE OF DOMESTIC VIOLENCE IN MY CLAIMS IS ALSO UNCIVILIZED — AND SUCH CALLOUSNESS TELLS US A GREAT DEAL ABOUT OKLAHOMA'S JUSTICE SYSTEM. CLEARLY, DOMESTIC VIOLENCE IS FAR MORE TOLERATED IN THE STATE'S LEGAL SYSTEM THAN MANY PEOPLE WANT TO BELIEVE OR ACKNOWLEDGE. OKLAHOMA HAS ONE OF THE HIGHEST RATES OF DOMESTIC VIOLENCE IN THE NATION, AND ITS INSIDIOUS EFFECTS PERVADE VIRTUALLY EVERY ASPECT OF OUR SOCIETY. ALSO, UNTIL RECENTLY, OKLAHOMA INCARCERATED MORE WOMEN PER CAPITA THAN ANY OTHER STATE (NOW WE'RE IN SECOND PLACE), AND THE VAST MAJORITY OF THE WOMEN IN PRISON HERE HAVE BEEN DOMESTIC VIOLENCE VICTIMS AT SOME POINT IN THEIR LIVES. IN PRISON, I SEE WOMEN WHO HAVE BEEN BEATEN DOWN AND OPPRESSED, CAST OFF AND FORGOTTEN. I SEE MOTHERS, GRANDMOTHERS, DAUGHTERS, SISTERS, AND WIVES BRANDED AS OUTCASTS AND WAREHOUSED IN CONCRETE BOXES. I SEE HUMAN BEINGS, NOT INMATE NUMBERS AND CASES, BULLIED AND DEGRADED DAY-IN AND DAY-OUT.

I SEE HOPELESSNESS, SORROW, AND INTENSE, PROTRACTED PAIN AND SUFFERING. AND I SEE ALL OF THESE INJUSTICES UNFOLD, IRONICALLY, IN THE NAME OF OKLAHOMA JUSTICE. IN MY EYES, OKLAHOMA'S SYSTEM OF JUSTICE IS HORRIBLY BROKEN.

THE EVIDENCE OF DOMESTIC VIOLENCE IN MY CLAIMS MATTERS, AND THE STATE KNOWS THAT. PLEASE SEE DOCUMENT #42 AT 2-3. (I FILED DOC. #42 IN THIS COURT ON 18 NOVEMBER 2004.) OF COURSE IT MATTERS THAT TERRY REALLY DID BEAT AND RAPE ME (AND THAT POLICE OFFICERS FAILED TO PROTECT ME FROM HIM). IF IT DIDN'T MATTER, THEN THE STATE WOULD NOT HAVE WORKED SO DESPERATELY TO CONVINCE MY JURY THAT IT NEVER HAPPENED (OR, IN THE ALTERNATE, THAT I WAS A WILLING PARTICIPANT OR MUTUAL COMBATANT).

NOW, LIKE IT DID MY JURY, THE STATE IS TRYING TO PERSUADE YOU THAT TERRY DID NOT BEAT AND RAPE ME ON THE MORNING OF THE SHOOTING, EITHER. AS THE STATE WRITES IN ITS RESPONSE:

> AFTER HER VIDEOTAPED INTERVIEW, THE PETITIONER ASKED FOR THE FIRST TIME IF SHE COULD BE TAKEN FOR A RAPE KIT EXAMINATION. (TR 6 1163) AT THE SCENE, THE PETITIONER DID NOT TELL FEMALE OFFICER FADEM THAT SHE HAD BEEN RAPED AND SPECIFICALLY DECLINED A REQUEST TO HAVE A RAPE EXAMINATION (TR 6 1108 & 1133) WHEN EXAMINED, THE SANE NURSE WAS UNABLE TO SAY IF THE PETITIONER HAD BEEN RAPED (TR 1695) THE HOLE IN HER PANTS THE PETITIONER SAID WAS RIPPED BY THE DECEASED WAS ONLY THE SIZE OF A PENCIL ERASER (TR. 6 1686) FINALLY, DESPITE BEING TOLD THAT THE DECEASED RIPPED THE SHOES OFF OF HER, THEN

FORCED HER TO DOUCHE AFTERWARDS, THE POLICE FOUND THE SHOES NEATLY STORED IN THE CLOSET AND NOT DOUCHE MATERIALS IN THE BATHROOM (TR.8 1555; S.E. 28) RESPONSE AT 37-38.

IT SEEMS THAT THERE IS NO END TO THE STATE'S SUBTERFUGE.

HERE IS WHAT REALLY HAPPENED:

1) PRIOR TO THE VIDEOTAPED INTERROGATION, I ASKED FOR MEDICAL ATTENTION AND A RAPE EXAMINATION (AND I'M PRETTY SURE THAT I CAN BE HEARD ON THE TAPE SAYING THAT THE RAPE EXAMINATION WOULD NOT BE MY FIRST ONE);
2) I TOLD OFFICER FADEM (WHILE WE WERE STILL AT TERRY'S HOUSE THAT MORNING) THAT TERRY HAD RAPED ME, AND I ASKED HER FOR MEDICAL CARE AND A RAPE EXAMINATION — I DID NOT REFUSE TO HAVE A RAPE EXAMINATION;
3) THE S.A.N.E. NURSE WAS UNABLE TO SAY IF I HAD BEEN RAPED BECAUSE, AS SHE TESTIFIED, IT IS HER JOB TO RECORD AND REPORT INJURIES, AND IT IS POLICY NOT TO TESTIFY AS TO WHETHER OR NOT ANY PERSON HAS BEEN RAPED (SHE DID TESTIFY THAT I HAD NUMEROUS INJURIES CONSISTENT WITH HAVING BEEN RAPED, INCLUDING "AN AREA OF TEAR IN TWO DIFFERENT PLACES" ON MY VAGINA; BRUISES ON MY WRISTS, ARMS, AND HEAD; AND REDNESS ON MY HANDS AND NECK (VOL. VI, TR. 1692, 1693));
4) TERRY RIPPED TWO HOLES IN MY PANTS WHEN HE RAPED ME THAT MORNING — ONE WAS THE SIZE OF A PENCIL ERASER, AND THE OTHER WAS A LARGE HOLE RIPPED IN THE KNEE AREA WHEN HE TRIED TO TEAR MY PANTS OFF OVER MY SHOES;
5) WHEN TERRY COULDN'T TEAR MY PANTS OFF OVER MY SHOES, HE RIPPED OFF MY SHOES AND HURLED THEM ACROSS THE ROOM (AND MY SHOES WERE NOT FOUND NEATLY STORED IN THE CLOSET — THEY WERE FOUND SCATTERED ABOUT ON THE FLOOR);
6) TERRY FORCED ME TO DOUCHE AFTER HE RAPED ME, AND THE ONLY REASON THAT POLICE DID NOT FIND THE DOUCHE IS BECAUSE THEY DID NOT BOTHER TO LOOK WHERE I TOLD THEM IT WAS DISCARDED (i.e., IN THE WASTEBASKET LOCATED IN THE CABINET UNDER THE SINK IN THE UPSTAIR'S HALL BATHROOM).

PLEASE TRY TO IMAGINE WHAT IT IS LIKE TO BE BEATEN AND RAPED — REPEATEDLY — ONLY TO HAVE PROSECUTORS CONVINCE A JURY THAT IT NEVER HAPPENED, AND THAT YOU WERE THE

VIOLENT PERPETRATOR. THAT IS WHAT HAPPENED AT MY TRIAL, AND IT HAS HAPPENED TO OTHER BATTERED WOMEN DEFENDENTS, TOO, INCLUDING DONNA BECHTEL AND TERESA PAINE.

IN ITS RESPONSE, THE STATE BERATES ME FOR COMPARING MY CIRCUMSTANCES TO BATTERED WOMEN LIKE MS. BECHTEL AND MS. PAINE. RESPONSE AT 24-26. HOWEVER, WHAT IS IMPORTANT TO REMEMBER HERE IS THAT THE STATE ALSO CLAIMED IN MS. BECHTEL'S AND MS. PAINE'S CASES THAT THEY WERE NOT BATTERED WOMEN. AS NOTED BY THE TENTH CIRCUIT IN MS. PAINE'S CASE:

> FINALLY, THE STATE ALSO APPEARS TO ARGUE THAT COUNSEL'S FAILURE TO OFFER BWS TESTIMONY AND THE FAILURE TO ESTABLISH DEFINITIVELY THAT MS. PAINE WAS A BWS SUFFERER WAS REASONABLE BECAUSE MS. PAINE SIMPLY COULD NOT QUALIFY AS A "BATTERED WOMAN." APLEE. BR. AT 10, 15-16. IN SUPPORT OF THIS ARGUMENT, THE STATE CONTENDS THAT THERE IS NO CLEARLY DOCUMENTED PATTERN OF ABUSE (I.E., MEDICAL TREATMENT FOR ABUSE, CALLING THE POLICE, TELLING FRIENDS, ETC.) AND THAT MS. PAINE DEMONSTRATED A LACK OF FEAR AND EVEN PHYSICAL AGGRESSION TOWARD HER HUSBAND. APLEE. BR. AT 13, 15-16. PAINE V. MASSIE, 339 F.3d 1194 (10TH CIR. 2003) (EMPHASIS ADDED)

NOW, IN MY CASE, THE STATE ATTEMPTS TO DISTINGUISH ME FROM TERESA PAINE BY POINTING OUT "THE PLETHORA OF WAYS IN WHICH SHE FIT THE SYNDROME," AND THEN HATEFULLY ASSIGNING A LITANY OF UNFLATTERING PERSONALITY TRAITS TO ME. RESPONSE AT 24-25. THE SAME ASSISTANT ATTORNEY GENERAL, WILLIAM HOLMES, THAT REPRESENTED THE STATE IN MS. PAINE'S TENTH CIRCUIT CASE

IS NOW REPRESENTING THE STATE IN MY CASE. HIS DOUBLE-DEALING IS HURTFUL, UNSETTLING, AND SURELY UNETHICAL.

HERE IS WHAT THE TENTH CIRCUIT WROTE ABOUT MR. HOLMES'S CONTENTION THAT TERESA PAINE WAS NOT A "BATTERED WOMAN":

> THIS ARGUMENT IS SPECIOUS AND MISSES THE POINT.... GIVEN THE EVIDENCE THAT MS. PAINE WAS BATTERED, AND THE FACT THE COURT AND BOTH PARTIES AT TRIAL SAW THIS AS A BWS CASE, IT SIMPLY MAKES NO SENSE FOR THE STATE TO ARGUE NOW THAT COUNSEL SOMEHOW ACTED REASONABLY BY FAILING TO OFFER EXPERT BWS TESTIMONY BECAUSE MS. PAINE WAS NOT A "BATTERED WOMAN." HAVING REVIEWED BECHTEL AND THE RECORD IN THIS CASE, WE CONCLUDE THAT COUNSEL'S PERFORMANCE WAS DEFICIENT AND FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS.... PAINE V. MASSIE, 339 F.3d 1194 (10th CIR. 2003) (EMPHASIS ADDED)

IT MAKES NO SENSE FOR THE STATE TO NOW ARGUE THAT I WAS NOT A BATTERED WOMAN, EITHER, ESPECIALLY GIVEN THE AFFIDAVIT OF CLAIRE EAGAN AND THE AUDIOTAPE RECORDING THAT PROVE DEFINITIVELY THAT I REALLY WAS A BATTERED WOMAN. AND IT MAKES NO SENSE FOR THE STATE TO ARGUE THAT MY ATTORNEY'S FAILURE TO PRESENT THIS EXCULPATORY EVIDENCE WAS "SOUND TRIAL STRATEGY" (RESPONSE AT 7, 11) WHEN HE NEVER CONTACTED MS. EAGAN — AND THEREFORE NEVER HAD HER INSIGHT OR THE AUDIOTAPE — IN THE FIRST PLACE.

FURTHER, IT DOESN'T MAKE ANY SENSE FOR THE STATE TO NOW ARGUE THAT CLAIRE EAGAN'S AFFIDAVIT AND THE AUDIOTAPE ARE "MINOR POINTS" (RESPONSE AT 11) AFTER HAVING ALREADY ARGUED IN THIS COURT THAT I HAVE "RAISED SOME SERIOUS ALLEGATIONS ABOUT TRIAL COUNSEL'S PERFORMANCE AND... EVEN OBTAINED AN AFFIDAVIT OF FEDERAL DISTRICT JUDGE CLAIRE EAGAN." (# 7 AT 5). (PLEASE SEE ALSO #42 AT 2-3). THE STATE IS TRYING TO PERSUADE YOU TO DISREGARD THIS AND THE OTHER EVIDENCE PRESENTED IN MY AMENDED HABEAS PETITION BY ASKING YOU TO PROCEDURALLY BAR ALL OF MY CLAIMS THAT WERE NOT RAISED ON DIRECT APPEAL EXCEPT MY BATTERED WOMAN SYNDROME TESTIMONY CLAIM. RESPONSE AT 3-5. I'M NOT EXACTLY SURE ABOUT THE LAW ON THIS MATTER, BUT I BELIEVE THAT THESE CLAIMS SHOULD NOT BE BARRED. (PLEASE SEE #35 AT 1). (ALSO, PLEASE NOTE THAT THE STATE'S CONTENTION THAT THESE CLAIMS WERE RAISED IN A "SECOND AMENDED" POST-CONVICTION APPLICATION IS NOT TRUE (RESPONSE AT 3-4): THEY WERE RAISED IN MY FIRST — AND ONLY — AMENDED APPLICATION FOR POST-CONVICTION RELIEF FILED IN STATE COURT.) I BELIEVE THAT BARRING MY CLAIMS FROM FEDERAL REVIEW WOULD BE AWFULLY UNJUST.

I HOPE THAT YOU WILL REVIEW ALL OF MY CLAIMS, AND, NATURALLY, I AM ALSO HOPEFUL THAT YOU WILL OVERTURN MY CONVICTION AND SENTENCE AND RELEASE ME FROM PRISON. (PLEASE SEE #37 AT 1-3).

STILL, I WOULD BE GRATEFUL FOR ANY RELIEF THAT YOU CONSIDER APPROPRIATE IN MY CASE.

RESPECTFULLY SUBMITTED,

April Wilkens

APRIL WILKENS, PRO SE
D.O.C. NO. 282399
M/ABEL BASSETT CORRECTIONAL CENTER
C1A-205
29501 KICKAPOO
McLOUD, OK 74851

STATEMENT OF MAILING

I GAVE THE FOREGOING TO WABEL BASSETT CORRECTIONAL CENTER OFFICIALS ON 2Ø DECEMBER 2ØØ4, WITH PROPER POSTAGE AFFIXED, FOR MAILING TO THE COURT CLERK OF THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA.

April Wilkens
APRIL WILKENS

CERTIFICATE OF MAILING

I MAILED A TRUE AND CORRECT COPY OF THE FOREGOING ON 2Ø DECEMBER 2ØØ4, WITH PROPER POSTAGE AFFIXED, TO:

WILLIAM HOLMES, ASST. ATTY. GEN.
23ØØ N. LINCOLN BLVD.
STATE CAPITOL BUILDING, ROOM 112
OKLAHOMA CITY, OK 7315Ø5-4894

DIANE SLAYTON, ASST. ATTY. GEN.
23ØØ N. LINCOLN BLVD.
STATE CAPITOL BUILDING, ROOM 112
OKLAHOMA CITY, OK 7315Ø5-4894

April Wilkens
APRIL WILKENS

ATTACHMENT No. 1

Wayne Henry Garrison

The appeals court left intact the finding of guilt in the 1989 slaying of 13-year-old Justin Wiles.

Tulsa child murderer due resentencing

▶ A state appeals court overturns Wayne Henry Garrison's death sentence on grounds he received inadequate assistance.

WED., 31 DEC '04, A-1

By Bill Braun
World Staff Writer

Convicted Tulsa child murderer Wayne Henry Garrison received ineffective assistance from his lawyers and is entitled to a new sentencing trial, a state appeals court ruled Tuesday.

The decision affirms his conviction for the first-degree murder of Justin Wiles, 13, but overturns his death sentence.

Garrison's case will return to a Tulsa County courtroom for a resentencing trial.

Jurors imposed the death penalty in 2001 after finding Garrison guilty of the 1989 murder of Justin.

The boy's body parts were found

SEE **GARRISON** A-6

GARRISON:

Court only hears from four witnesses when it should have featured more than 20.

FROM A-1

WED., 01 DEC 04, A-6

June 24, 1989, in Lake Bixhoma and on the lake shore, four days after his family last saw him alive at their Tulsa home.

Garrison, now 45, was not charged until 1999, more than a decade after he was identified as a suspect. He has maintained that he is innocent.

The Oklahoma Court of Criminal Appeals in March sent the case back to District Judge Jesse Harris for a hearing on Garrison's claims that his trial lawyers provided ineffective assistance.

Harris heard testimony from only four witnesses, after denying repeated requests from Garrison's appellate lawyers with the Oklahoma Indigent Defense System for more time to prepare for a hearing that the defense indicated should have featured more than 20 witnesses.

Harris decided in May that the performance of Garrison's trial lawyers was "not deficient" and that they adequately investigated issues "known to them to be of great significance."

But the state appeals court, in its ruling Tuesday, said Garrison "was likely denied the effective assistance of trial counsel with respect to the presentation of his second-stage case in mitigation.

"We say 'likely' because appellate counsel" — at the March hearing — "failed to ask trial counsel any questions regarding preparation, investigation, strategy, etc. of the case for mitigation," the appeals court noted.

While the appeals court ordered a retrial only on the punishment issue — leaving the finding of guilt intact — District Attorney Tim Harris said a resentencing jury will need to "know all the evidence" in order to determine a proper punishment.

He said he respects the appeals court's decision, but "it somewhat puts me in a quandary."

"I find it hard to believe that in the whole OIDS system, they couldn't find counsel to present these issues effectively," Tim Harris said.

The outcome of the appeal means this "goes in the victory column" for OIDS, he indicated.

When the appeals court heard arguments in May, OIDS attorney Michael Morehead faced sharp remarks from appellate judges about his performance.

At that time, Appeals Judge Gary Lumpkin told Morehead that the OIDS approach to the March hearing before Judge Harris "causes me consternation."

Two of Garrison's trial lawyers, private attorneys Art Fleak and Kurt Hoffman, have said they did their best to defend him.

During the sentencing stage of his trial, prosecutors presented evidence of two killings linked to Garrison when he was a boy.

When Garrison was 13 in 1972, he strangled a 4-year-old cousin. That case was resolved in juvenile court, and Garrison was committed to a state hospital.

At age 14, he suffocated a 3-year-old neighbor while on a pass from the hospital. He pleaded guilty to second-degree manslaughter and was sentenced to four years in prison.

"The problem with mitigation is you have to be able to bring up the past," Hoffman said Tuesday. "Mr. Garrison's past was so haunting, that became extremely difficult."

The defense asserted that Garrison did not kill Justin, and it became "very difficult" after the jury found him guilty to present mitigating evidence "to try to save his life," Hoffman said.

During the sentencing stage, Dr. Dean Montgomery, a psychologist retained by the defense, testified that Garrison told him he had been physically and sexually abused by a family member when he was about 6 years old. Garrison indicated that his family had a history of substance abuse, Montgomery said.

Lumpkin's appellate opinion said the defense's mitigation relied on brief testimony from Montgomery, who apparently "did what he was asked to do in the brief amount of time he was asked to do it." Montgomery's testimony "did little to educate the jury about Garrison's adolescence or to give jurors any mitigating reason to render a verdict less than death," Lumpkin wrote.

"While his trial attorneys were wise to attack the state's weak evidence in hopes of securing an acquittal, the record strongly suggests they made some grave tactical mistakes with respect to the case in mitigation," the appellate opinion says.

Had trial defense attorneys anticipated "the very real possibility" that Garrison would be convicted, "then they would have seen their next best hope was to focus on the reasons why anyone would commit such inconceivable atrocities. And this would have necessarily required a close examination of (Garrison's) horrendous past," Lumpkin wrote.

Fleak said focusing on Garrison's past would have allowed prosecutors to bring out "in even more detail" the two deaths attributed to Garrison during his own childhood.

"We had a game plan, we had witnesses, we had experts. The jury didn't go along with us," Fleak said.

In his opinion, Lumpkin indicated that evidence of Garrison's guilt is "not as strong as one would like when dealing with the issue of capital murder."

The appellate decision was reached with a 4 to 1 vote, with now-retired Judge Reta Strubhar concurring.

Appeals Judge Charles Chapel dissented. He voted to reverse the murder conviction because he thinks the "entirely circumstantial" evidence was insufficient to support that conviction.

Bill Braun 581-8455
bill.braun@tulsaworld.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APRIL ROSE WILKENS,

Petitioner,

vs.

MILLICENT NEWTON-EMBRY, Warden,

Respondent.

Case No. 02-CV-244-K (J)

ORDER

Before the Court is Petitioner's request for permission to file a reply to Respondent's response. Petitioner has provided the Reply along with her request. The Court finds Petitioner's request shall be granted. The Reply shall be filed of record as of December 23, 2004.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's request for permission to file a reply is **granted**. The Reply provided by Petitioner shall be filed of record as of December 23, 2004.

SO ORDERED THIS 29 day of December, 2004.

Terence Kern

TERENCE KERN
UNITED STATES DISTRICT JUDGE

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