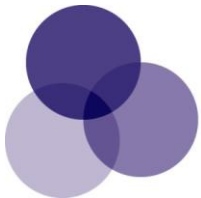


Role of Expert Witnesses and Types of Cases

August 12, 2010



NATIONAL CENTER
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Expert Witness

▶ Definition

- An Expert is someone who has knowledge beyond the ken of the jury and the general public.
- An Expert's knowledge can inform the judge and/or jury on a particular issue that the general public might not fully understand but that is relevant to the case.

Expert Witness



▶ Purpose

- *Translate* the experiences of battered women into what is understandable and reasonable to the Trier(s) of Fact, so they will understand concepts that those of us working in the field understand.
- *Help* show how experiencing IPV shaped a battered woman's actions.
- *Convey* concept of “reasonable **person**” rather than “reasonable **man**”.
- *Explain* the criterion of IPV, and how it had bearing on actions.

Expert Witness

▶ Task

- Although an attorney (representing a particular client or the government) might contact you, consider all the facts and evidence and render your opinion based on *all* the information. Depending on your opinion, the contacting party may decide either to use or not to use you.

▶ Training

- Best training is having been involved in battering intervention and prevention work for 20+ years.

Kinds of Expert Witnesses

▶ Scientific

- This Expert, usually in research field, may be required to pass a Daubert challenge that the opinion is not based on “junk science.”

▶ Fact

- This Expert is called because s/he has definite knowledge about the case.



Kinds of Expert Witnesses

- ▶ **Based on Knowledge, Experience and / or Training**
 - Most advocates, and those with direct experience, will qualify as an Expert under this category.
 - **Generic.** An Expert testifies / explains IPV in general terms.
 - **Specific.** An Expert testifies about generalities and specifics about the particular case because s/he has knowledge and possible contact in the case.
 - Refer to the handout, “State’s Trial Brief on Expert Testimony Regarding Domestic Violence Behavior”

Types of Cases

▶ Criminal

- Murder
- Other Crimes
 - Welfare fraud
 - Embezzling
 - Drugs
 - Guns
- Duress



▶ Family

- Children, Custody, Visitation
- Concept of “Friendly Parent,” Parental Alienation Syndrome
- Property
- Parental Abduction



The New Yorker,
April 26, 2010

"Great news! We found a syndrome that fits your case like a glove."

Types of Cases

▶ Civil

- Personal Injury
- Damages
- Long-Term Care
- Provision for Child(ren)

▶ Immigration

▶ Licensing Boards

▶ Social Security Disability

Determination

▶ Governmental and Legislative Hearings



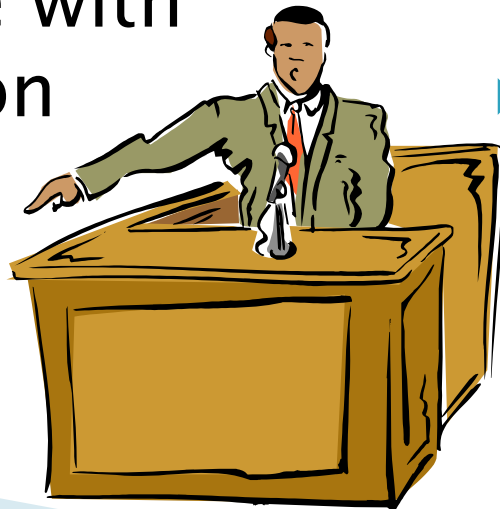
What an Expert Might Testify About

- ▶ Nature and Dynamics
- ▶ Battered Woman as Parent
- ▶ Batterer as Parent
- ▶ Coping Mechanisms, such as substance abuse
- ▶ Sequelae of Child Witnessing
- ▶ Co-occurrence of IPV and Child Molestation
- ▶ Lethality / Dangerousness
 - Jacqueline Campbell
<http://www.dangerassessment.org/WebApplication1/>
 - Barbara Hart
<http://www.mincava.umn.edu/documents/hart/hart.html>



What an Expert Might Testify About

- ▶ Guns
- ▶ Why She Doesn't Leave; Why She Stays
- ▶ Why She Doesn't Cooperate with Prosecution
- ▶ Recanting
- ▶ Willingness to Give Up Fair Share for Custody
- ▶ Perspective of Cumulative *vs.* Discrete
- ▶ Primary Aggressor *vs.* Mutual Combat



Possible Concepts to Address

▶ Definition of Imminence

- HIV/AIDS has helped expand the definition of imminence. It may be years after exposure that symptoms develop. When a man is sleeping, a woman makes a pre-emptive strike.

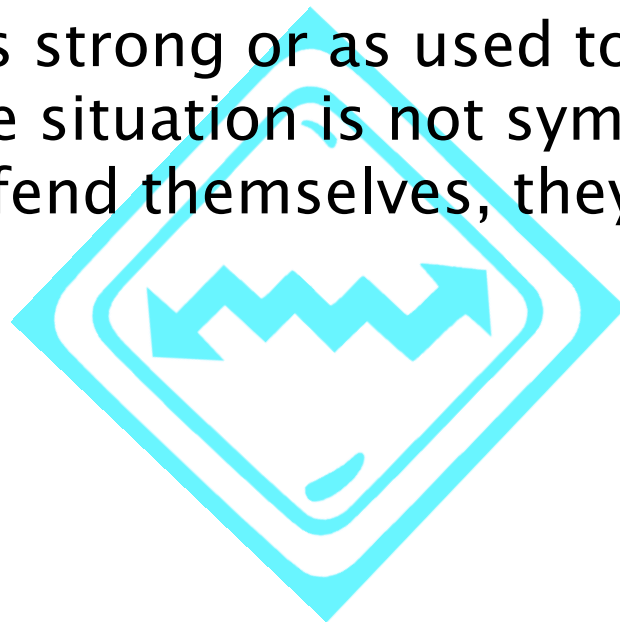
▶ Duty to Retreat

- How do you retreat from your own home? Where do you go if you have retreated to your bedroom? More in a bar fight, where should one leave? What if she tries to and he won't let her leave? "Castle doctrine" – a man's home is his castle. It is hers also.

Possible Concepts to Address

▶ Catch 22

- If a woman did not defend herself in prior battering incidences, does that constitute consent? Why then is she justified in using it at the time of killing him? Why not equal force? Because women usually are not as large or as strong or as used to physical solutions that the situation is not symmetrical and when they do defend themselves, they usually do it with a weapon.



Twists



and Turns

- ▶ Previous history
- ▶ Work history
- ▶ Shot him while he slept
- ▶ Hired killer
- ▶ Cop shot batterer
- ▶ Killing is recorded on victim's tape
- ▶ She "ambushed" him
- ▶ Not fitting the stereotype
- ▶ Lying to law enforcement
- ▶ Uncaring, unmotivated representation
- ▶ Representation not versed in IPV
- ▶ Historical evidence and battering history not brought in to create full context of decision
- ▶ Adequate testimony not elicited from woman or an Expert

Twists



and Turns

- ▶ **Oppositions' attempts to impeach woman's character and blame the victim not countered.**
- ▶ **Open season on men.** Decrease of killing males, partly because women do not want to kill them, they want to be safe. Shelters provide a place to go.
- ▶ **Things are better for women.** They are better for men. Battering intervention programs are part of male privilege. You don't see bank robbers sitting around in groups talking about why it is not a good idea to rob banks. Fewer killings of men by women.

Outcomes

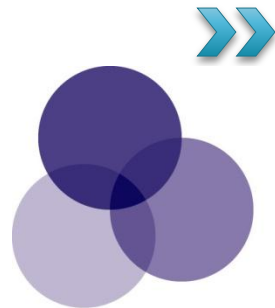
- ▶ Attorneys often see as *win vs. lose*.
- ▶ Experts seen as positive if victims believe they have *been heard and someone understood*. A sentence is not the end of the world.
- ▶ Usually, Experts *do not win* a case and *do not harm* it.
- ▶ Experts in books.
- ▶ Most cases *do not go* to trial.
- ▶ Most battered women take a *plea or get convicted*.



Role of Advocates >>

- Outreach
- Help her get a good lawyer
 - In court

Comments?



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