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COURTROOM, CODE AND CLEMENCY: REFORM IN SELF-DEFENSE JURISPRUDENCE FOR BATTERED WOMEN

Panel Discussion

SUSAN RUTBERG: Hello, I'd like to welcome all of you to the Feminist Jurisprudence Speaker Series. This presentation is the second in a series for this academic year and we are very gratified to see all of you here. Our topic today is Courtroom, Code and Clemency: Reform in Self-Defense Jurisprudence for Battered Women. We are lucky to have with us today three women who have worked in this field and who have experiences to share with us from very different perspectives. Our fourth panelist is a survivor of years of battering who became a criminal defendant charged with first degree murder when she killed her abuser. My name is Susan Rutberg and I teach here at Golden Gate University Law School. I would like to recognize and thank the women who helped to organize this panel discussion. First, the students: Sarah Hughes, Gina Harmon, and Rosanne Calbo-Jackson. Secondly, we would like to thank Professor Joan Howarth for all of her assistance in helping to organize this panel. Lastly, we would like to thank the Dean of the Law School, Tony Pagano, for the support that the law school has given this speaker series.

1. This article is a reproduction of a panel discussion which took place at Golden Gate University School of Law in January 1993. Of the four panelists who participated in the discussion, three panelists' comments are reprinted here. Thanks to Gina Harmon, Sarah Hughes and Rosanne Calbo-Jackson for their work, along with the Golden Gate Feminist Jurisprudence Speaker Series, in organizing this event. Much appreciation goes to Karen Brkick for her help in typing this article and to Rosanne Calbo-Jackson for her editing of this article. Also, thanks to Richard Karoly for filming the panel discussion. Finally, thank you to Professors Joan Howarth, Maria Ontiveros and Susan Rutberg of Golden Gate University for their advice when things got a little rough.
Our first speaker this afternoon is Rebecca Isaacs who is currently Associate Director of Legal Services for Women Prisoners with Children, formerly Director of Battered Women’s Alternatives Legal Advocacy Program and co-chair of the California Alliance Against Domestic Violence. Following Rebecca we will hear from Professor Cathleen Ridolfi. Cathleen is also known as Cookie Ridolfi. She’s a full-time law professor at Santa Clara Law School where she currently co-directs the Law Clinic. Previously she taught a criminal defense clinic at CUNY Law School in New York, and formerly was a criminal defense lawyer with the Philadelphia Defender Organization. Cookie was the director of the Women’s Self-Defense Law Project at the Center for Constitutional Rights in New York in the late 70’s and actually is a pioneer in the use of Battered Woman Syndrome evidence and in the development of strategies for trial, specifically designed to aid battered women in self-defense cases. Our fourth speaker is Harriette Davis. In 1982, Harriette was found guilty of voluntary manslaughter in connection with killing a man who had abused her for eight years. She is here with us this afternoon to give us her perspective on the criminal justice system, its treatment of her, to tell her story and to tell us about her work now with the California State Commission on Women in Prison. Thank you all for your attention. Rebecca.

REBECCA ISAACS: Hi, I thank you for inviting me here today as I think this is very timely. I think once the issue gets on the cover of Time Magazine, you know it’s an issue that’s really arrived. For any of you who haven’t seen it, this is the latest issue of Time Magazine (with the issue of Battered Women on the cover). As of January 1, 1992, Section 1107 of the California Evidence Code became new law. Titled “Evidence Regarding Battered Woman Syndrome”, it allows in expert testimony regarding Battered Woman Syndrome by either the prosecution or defense in a criminal action. It specifically includes as part of Battered Woman Syndrome the physical, emotional or mental affects upon the beliefs, perceptions or behavior of victims of domestic violence. A note regarding the legislative history states that the Legislature does not intend Section 1107 of the California Evidence Code to preclude the admissibility of evidence of Battered Woman Syndrome under other statutory or case law.

Today I want to use the example of the passage of Section 1107 as a prism through which to raise questions about the legis-
ervative process and its relationship to the Battered Women's Movement. It is a narrative that reveals both the compromise and power of using the legislative process as a forum for launching broader public awareness of domestic violence.

In California, the major domestic violence lobby is the California Alliance Against Domestic Violence (CAADV) which is a coalition of over 100 domestic violence programs throughout the State and which sponsors criminal justice in family law legislative committees. These committees have been extremely successful in sponsoring, supporting and opposing legislation in Sacramento for the past several years, including an annual package of legislative proposals which is presented at an annual meeting with legislative aides who select bills for their prospective legislators to carry.

The process of codifying Section 1107 has been several years and much negotiation in the making. The legislation was first introduced as Assembly Bill 2613 in 1990 by assembly member Jerry Eaves rather than by the CAADV. Domestic violence activists thought that the bill had numerous problems and it was killed in conference committee after women's groups objected to amendments which were exclusionary and actually more limiting than then current case or statutory law.

Assembly member Eaves reintroduced the flawed bill again in the 1991 legislative session as Assembly Bill 785 and the Alliance again mobilized to defeat it or force changes in the bill. I thought that the bill included some of the problems of poor construction that have plagued other State statutes including language limiting Battered Woman Syndrome evidence to cases involving spouses, which would almost surely have been construed as married heterosexual couples.

A second limitation which we objected to was the exclusion of civil cases. Increasingly Battered Woman Syndrome is being used in civil cases to explain, for example, why in a custody action, a woman would fail to protect her children from a batterer or why she would sign an extremely disadvantageous marital settlement agreement.

Finally, CAADV was committed to pushing for legislation
which declared the admissibility of experiences of battered women as a way of ensuring that a jury would hear about the abuse she suffered. We feared that the use of the term Battered Woman Syndrome would focus expert testimony on the psychological state of the battered woman rather than on the history of the abuse. When Assembly Bill 2613 was introduced the year before, the Bill made no mention of Battered Woman Syndrome at all. Instead it stated partially “in any action, expert testimony is admissible regarding the nature and effect of physical, sexual and emotional abuse on the behavior, beliefs or perceptions of persons in a domestic relationship including descriptions of the experiences of battered women.” The bill was heavily amended after opposition was mounted by prosecutors, highlighted by the lobbyist for the district attorneys shouting that this bill was tantamount to a “license to kill men.” When Assembly Bill 785 was signed in 1991, CAADV had lost the broad language regarding the experiences of victims of domestic violence - now the statute refers to Battered Woman Syndrome. Assembly member Barbara Friedman carried a CAADV sponsored attempt this year to amend the statute to reintroduce the experiences language. The attempt was unsuccessful and the opposition was even more organized. This time both Governor Wilson’s office and the Office of Criminal Justice Planning were actively opposed to adding the language “the experiences of victims of domestic violence.” They argued that this was a dangerous expansion of defendants’ rights and a major change in the law of self-defense. The Governor’s representative threatened a veto of the whole bill, which contained other important provisions, so we agreed to drop the language.

As you can see it’s an ongoing struggle, so when Jayne talks about the incredible shortcomings of Battered Woman Syndrome legislation, I really agree with her. A shortcoming of the law in general is that people tend to think that passage of a statute will solve a particular problem in the case of battered women who are convicted of killing their abusers. There’s a sense that admissibility of Battered Woman Syndrome evidence will ensure an acquittal by a jury. This process is further complicated by the limitation of the term “Battered Woman Syndrome.”

2. Jayne Lee was the panel participant whose comments are not reprinted in this piece.
There's also a tendency for policy makers to think that expert testimony on Battered Woman Syndrome is the key to keeping abused women who kill their abusers out of prison. The implications are dire for clemency movements which appeal to state governors to commute the sentence for battered women who kill their abusers.

In Ohio, for example, where the largest number of women were granted clemency, Governor Celeste justified his actions on the grounds that there was a state Supreme Court decision specifically barring such testimony until 1990. In Maryland, the clemency effort also relied heavily on the inability of the women to introduce evidence in their trials. In fact, many women are convicted and sentenced for first and second degree murder even with expert testimony. A statute allowing Battered Woman Syndrome evidence is not necessarily going to prevent convictions, but policy makers may feel that there is no longer a problem.

There are several other problems with laws regarding Battered Woman Syndrome admissibility. First, in California, some would argue that Section 1107 was unnecessary because Battered Woman Syndrome evidence is admissible anyway under the People v. Aris case. I am not convinced having attended a District Attorney Seminar on Domestic Violence during which a prominent district attorney called for a prosecution strategy to overturn Aris. Secondly, expert testimony should include a broad conception of battering in society, including the obstacles faced in leaving a relationship, social and cultural factors, the dynamics of abuse, as well as the specific experiences of the woman on trial. Battered Woman Syndrome, first developed by Dr. Lenore Walker in the 1970's, is partly based on the theory of learned helplessness which posits that women become passive in the face of continued abuse over which they have no control. In fact, women react in many different ways in abusive relationships because of different experiences and because of race, class and cultural differences. Judges who are resistant to letting in evidence of abuse may choose to narrowly construe Battered Woman Syndrome and thereby screen out those who do not fit the normative model.

Finally, use of the term Battered Woman Syndrome has connotations of a pathological state of mental deficiency which
challenges a woman’s competency and credibility. The focus is on the woman’s state of mind rather than on the experiences of abuse and the survival techniques she employs to deal with the abuse. The Syndrome also maintains attention on the woman and looks to her to explain her goal in an abusive relationship, rather than focusing on the batterer and his behavior and acts. This is exemplified by a new legislative proposal which refers to a battered woman’s “mental defect.” In summary, lobbying, media representations, clemency petitions and organizing are all attempts to heighten public education and awareness of domestic violence. The issue of battered women in prison for killing their abusers is a profoundly political one which exists in the public arena. Public support is critical. Particularly in a state like California, in which the Governor is unsympathetic to prisoners and reluctant to grant parole in most cases in which prisoners are serving long sentences and are eligible for parole.

A legislative hearing at the California Institution for Women in 1991 galvanized the number of legislators to do something about battered women in prison. Since that hearing, there have been ongoing requests by legislators for ideas for clemency and self-defense related legislation. Legislators participate in raising public awareness because they respond to relatively popular women’s issues like domestic violence — this is even more the case with other domestic violence legislation which is prosecution oriented.

To date clemency-related legislation, either past or current, includes: 1) a resolution from the Assembly asking the Governor to review cases of women incarcerated for killing their abusers; 2) a bill mandating Battered Woman Syndrome Training for all commissioners who review clemency petitions; and 3) a bill adding Battered Woman Syndrome as a specific criteria for clemency consideration in the clemency statute.

The Governor and many other Legislators have made it clear that Section 1107 of the Evidence Code is as far as they are willing to go on the issue of battered women and self-defense, although several other proposals will be submitted this session. Still there are several reasons that the passage of 1107 and the legislative arena in general is important. Domestic violence is an appealing women’s issue for Legislators since it has bipartisan
appeal both as a victims' rights issue for conservatives and a feminist issue for progressives.

Politicians in both the executive and legislative branches are pressured by battered women and activists to address the inequities which put battered women in prison. The sympathetic images of battered women portrayed over the last decade are not easily reconciled with harsh prison terms. The media plays a critical role in educating the public about the issues of domestic violence and women in prison for killing their abusers. Unfortunately, media attention is double edged because it is necessary to keep the issue alive and to pressure the Governor even as too much media exposure can jeopardize the women's appeal for clemency. In order to get a “balanced” view, the media interview prosecutors and family members of the deceased abuser. The media and the public seem captivated by two poles of representation. One portrays women as further beaten by a system that not only failed to protect them, but then locks them up for long periods. The other focuses on titillating the audience with images of women who kill and so step beyond the bounds of gender expectations into a “vigilante world of revenge.” [Along with the impressive organizing by prisoners in groups such as Convicted Women Against Abuse at the California Institution for Women, domestic violence activists and private attorneys representing the prisoners, legislation and legislators, personal commitments have helped to attract and to sustain media attention. Media attention also focuses on the failure of the system in protecting battered women. I agree with Holly McGuigan that battered women who kill their abusers need defense attorneys and judges who apply existing self-defense theory and law correctly. I also think that this public political process and media focus help create the climate and awareness for judges and defense attorneys to be more aware of battered women's issues. In the end, the problem of domestic violence can only begin to be resolved by taking it out of bedrooms and courtrooms and into the arena of public consciousness.

SUSAN RUTBERG: Thank you. We will hear next from Cookie Ridolfi. I wanted to remind all of you that questions are welcome, but we ask that you hold them until all of the panel have presented their ideas and then you may either come forward and ask your questions here at the microphone or pass them down on the cards that you've been provided with and they can be
asked from up here. Cookie.

**Cookie Ridolfi:** As Susan explained, most of my work has been in the courtroom although most recently I find myself in the classroom. My recent work on this issue has been with the California Coalition for Battered Women in Prison, with the other speakers on this panel, Rebecca Isaacs and Jayne Lee. The focus of this project has been to take the cases of battered women convicted of killing their abusers, to review their trials or the circumstances of their pleas, do new investigations and in many of these cases, submit petitions to Governor Wilson asking for executive clemency.

As our project began, I was drawn by the question of what exactly we were dealing with when we were asking for executive clemency. What is clemency? On what basis does the executive grant it? Is there a right to executive clemency? Is it a political favor? Or is it something else altogether? Despite my years as a criminal defense attorney, I had no experience with this particular legal maneuver, for want of a better description, and I had questions about what we were asking for. And so I decided to take a closer look. I did a little probing into the origins and purpose of the executive pardoning power and that's what I'm going to focus on today.

What I found was that the pardoning power is a universal principle which has existed since ancient times and still exists in every country of the world except China. In the United States, it is explicitly spelled out both in the Federal Constitution and in most state constitutions, including California. To understand why it's important enough to be considered in the Constitution itself, you have to look to the records of the Constitutional conventions, which I did with respect to both the Federal Constitution and the California State Constitution.

Although there was no explicit constitutional right to an executive pardon set out in the Federal Constitution, it was understood to be an essential and integral part of the criminal justice system that the framers were devising. There wasn't a lot of debate at the Constitutional Convention about the executive pardoning power, probably because most of the framers were well steeped in English law and had accepted the pardoning power as a necessary and integral part of any system of justice. Since
there wasn't much debate in the records of the constitutional conventions, I went to the Federalist Papers, which are made up of a series of essays explaining the purpose of the Federal Constitution. It's there that you really get a sense of what the pardoning power is about. As you've undoubtedly heard, one of the major criticisms of the exercise of the pardoning power is that it violates separation of powers principles. It is often argued that when the executive grants clemency, he is interfering with the role of the courts, whose job it is to resolve questions of criminal responsibility and to punish people, and also interfering with the role of the legislature that writes the laws that the courts follow.

Ironically, if you look at these early documents you find that these criticisms can't be more off base. In fact, if you read the convention records and the Federalist Papers, it is clear that the pardoning power was incorporated as a necessary complement to the other branches. The drafters understood when they put this package together that the lawmakers, no matter how careful, thoughtful, fair-minded and well intentioned they may be, are never going to be able to write laws that fairly anticipate every situation. Additionally, the courts, because they make errors and because they are bound by the laws that the legislature makes do not always justly resolve cases. It is precisely for these reasons that the pardoning power was given force. Its purpose is as an essential safety-net for the public good. Once it is understood to be essential to a fair system, as a necessary and important part of the structure of the criminal justice system, then it follows, in my mind at least, that the executive, who is entrusted with the exercise of the power, has an obligation to exercise it in appropriate cases for purposes of justice and mercy. I purposefully distinguish the justice reasons from the mercy reasons and I'll explain why in just a moment.

Before getting to that issue though, it is necessary to consider, assuming that I'm correct that the executive has a duty to exercise the power, the circumstances under which the power should be exercised and the way battered women's self-defense cases fall within that construct.

I suggest that there are really three proper areas for the exercise of the pardoning power. First there is the situation of factual innocence, second there is the case of technical guilt where
there are significant mitigating factors and third, there is the most challenging category which I call technical guilt with moral innocence.

The first situation needs little explanation. Many of you may have seen or heard of the movie, "The Thin Blue Line. The movie tells the story of a man wrongly convicted of murder and imprisoned for many years before it was eventually determined that he was innocent. I don't need any argument to convince you of the justification for clemency in this case.

An example of the second category, technical guilt with significant mitigating factors, is the recent California case of Robert Alton Harris. As you recall, Harris wasn't asking for a full pardon but was seeking a more limited use of the pardoning power. He was looking for a commutation of sentence from a death sentence to a sentence of life imprisonment. The basis of his claim was that, because of his extraordinarily harsh upbringing, the cruelty with which he had always been treated and the fact that there was evidence that he suffered from brain damage prior to the kidnapping and murders, execution in his case was unjust.

Another example in this second category are the cases of people serving sentences whose circumstances change dramatically after the imposition of sentence. The most recent notable cases are the cases of people who are suffering with AIDS. For a person really sick with the virus, a five-year sentence in a burglary case is likely to be a life sentence. For that individual, despite the fact that he is guilty, there are significant mitigating factors that warrant, while perhaps not a full pardon, a commutation to a shorter sentence.

The third category is what I call technical guilt but moral innocence. I have an old example to share with you. It's actually a thirteenth century case of a six year-old child named Catherine Passcavant. Catherine opened a door and accidently pushed a younger child into a vat of hot water. The younger child died. The law at that time did not provide for an infancy defense and there was no requirement that the prosecutors prove criminal intent. Technically, she was guilty of murder, but morally, I hope you agree with me, she was innocent. After having been
found guilty of murder, the only remedy for that child was for her family to go to the King and beg for a pardon which, in this case, the King granted. That's a non-battered woman's example of what I call the technical guilt/moral innocence category. The child was technically guilty under the law, because the law at that time didn't have the insight to provide for an infancy defense. Under correct application of the strict law, Catherine would have been executed, but for the King's pardon.

All three of these categories — factual innocence, mitigating factors, and moral innocence — justify clemency in battered women's cases. Indeed, the whole question of the legal treatment of battered women may be very much like the problem of the infancy defense in the thirteenth century case of Catherine Passcavant. Just as the thirteenth century law of murder developed to deal with the cases in which one adult killed another, so has the modern law of self-defense been patterned on the cases in which it most often arises — where one man kills another. The law of self-defense as it is currently being applied in the cases of battered women tried for murder does not lead to fair treatment for these defendants given their unique circumstances. This calls into question whether "justice" in its broadest sense is ever rendered in these cases.

As it has been pointed out, this society has had an inadequate response to the circumstances of battered women. Battered women have little or no protection by the system. Yet, when they kill, they are prosecuted with the same, or even greater fervor, than another person in a similar circumstance. In addition, despite the common misconception that there is some special battered woman self-defense and that battered women have an easier time at trial, as you heard from Jayne and Rebecca, this is a myth. Battered women are prosecuted under the exact same laws that men are — a man who kills another man in a barroom brawl is tried and prosecuted and has available to him the same law of self-defense as a battered woman. Moreover, the combination of public misconceptions and laws designed to deal with very different contexts make fair trials for battered women problematic. Further, where there has been law reform, in many instances those reforms have only added obstacles to these women in this situation. There is great confusion, for example, over the use and admissibility of expert testimony
on Battered Woman Syndrome, in some cases causing more damage to the defendants. For these reasons, in the context of the three models that I propose include ripe areas for the exercise of the pardoning power — there are battered women self-defense cases which fall within each of the three.

First, within the context of the factual innocence model, there are cases where the proper application of the law of self-defense would have protected her. In many cases, the law as written should have resulted in an acquittal, but for reasons such as jury bias or the trial court's failure to issue fair jury instructions, the battered woman does not receive a fair trial and is unjustly convicted.

As Susan pointed out, my work in this area began in the early 1970's when I was working with the National Jury Project, and as I think Jayne already said, the idea at that time of raising self-defense on behalf of a woman was a really radical thing. Up until then, lawyers routinely pled women to a lesser charge or pled her to some charge in exchange for probation, or raised an impaired mental state defense. The reason was that the law of self-defense requires that there be a finding of reasonableness. Because of negative attitudes about women, lawyers expected that it would be very hard to sell jurors on the idea that women could be reasonable. Given these expectations, it was considered bad strategy to raise a self-defense claim on behalf of a woman whatever the facts. That was not so long ago.

At any rate, at the time self-defense was beginning to be raised, I was working on these cases as a jury worker. It was my job to study juror attitudes and verdicts in these cases. It was clear from early on that there are many dangerous myths and misconceptions about battered women which really harmed them at trial. Commonly, a juror can't understand why a woman stays in her situation; if she stays with a batterer she's considered to be lying or exaggerating or somehow masochistic. Another common myth is that because battered women often don't report the abuse, the prosecutor is in a very comfortable position of arguing that it is not credible now where she is, after the fact, claiming that she was abused. And perhaps the biggest problem is in jurors' understanding of why a battered woman perceives the threat of great bodily harm or death as being imminent as is
required under the law of self-defense. Jurors have a difficult
time understanding that her perception is reasonable, and in
some cases, they need an explanation which is beyond the ken of
the average juror. That's what Jayne was talking about with re-
spect to expert testimony on Battered Woman Syndrome, which
as you have heard is a double-edged sword. So, in many of these
cases, the defendant, even under existing law, should have been
acquitted outright, but instead faces a lengthy prison sentence
because of the inability of the criminal justice system to address
these issues fairly.

The second category of the clemency model, that of techni-
cal guilt with significant mitigating factors also includes cases of
battered women convicted of killing their abusers. There are
cases where the woman may be guilty under the law which con-
victed her, but the mitigating circumstances surrounding her
case are so compelling that a commutation of sentence is called
for. An excellent recent example of this is the New York case of
Jean Harris. Jean Harris was convicted of second degree murder
in the death of her lover, Dr. Tarnower. At trial, she argued that
the killing was accidental, that she intended to kill only herself,
and that the gun went off accidentally when Dr. Tarnower tried
to take it away from her. The jury rejected the defense and con-
victed her. The trial court judge was recently quoted as saying
that, while he agreed that she should not have been acquitted
entirely, the murder conviction was too severe. He believed that
the killing was a product of the defendant's emotional condition,
a condition that was at least in part caused by the prescription
medication Dr. Tarnower had prescribed for her. Accordingly,
the trial judge said that he believed a manslaughter conviction
would have been more appropriate. Governor Cuomo, in com-
muting Harris's sentence emphasized that she had served twelve
years of a minimum fifteen year sentence, that she was in poor
health and might die in prison, and that she had worked hard on
behalf of other inmates. Both types of factors - - mitigating fac-
tors not fully taken into account in the conviction and sentenc-
ing and mitigating factors that arise after sentencing - - make
clemency appropriate, the former on ground of justice, the latter
on grounds of mercy.

The third category, which presents a very interesting ques-
tion, is the technical guilt/moral innocence category. A good ex-
ample of this is the case of Brenda Aris, which is a case now sitting on Governor Wilson’s desk. Brenda had been married to Rick Aris for twelve years at the time of the killing. They had three daughters, all under the age of 10. When she met him she was just sixteen years old, he was in his mid-twenties. She was very naive and he was the first man that ever paid attention to her. She fell in love with him and married him when she was seventeen. There were witnesses at her trial who testified to numerous instances of severe physical and verbal abuse. These witnesses included members of Rick’s immediate family who testified on behalf of Brenda.

Over the years she had been bruised, her jaw had been broken and wired, and her ribs had been broken. She left him many times through the course of their marriage, always returning; first because she really believed that he would change, and later, because of his threats that he would kill her and her family. They had no telephone in the house. They had no car and she had no access to one. The only time Rick allowed her to go out of the house without him was to go up to the corner store. He repeatedly threatened when he abused her that if she called the police he would kill her. In the four to six weeks before the killing, Rick beat her on a daily basis. Most of the information I’ve described was provided at trial. During the same four to six week period, using either a gun or a knife, he threatened her life no fewer than four times a week. When he wasn’t with her, he locked her in the bedroom and put a padlock on the outside of the door. On the day of the shooting, he had consumed large quantities of alcohol and drugs and he had beaten her many times during that day. At one point, while he was beating her, in her words at trial she said “he was pulling my hair back real hard to where my neck felt like he was breaking it and I had yelled you’re breaking my neck, and he began hitting me and telling me he didn’t think he was going to let me live until morning.” Rick then passed out from the combination of drugs and alcohol. Brenda testified that she knew it wasn’t over and that she was sure that when he woke up he’d pick up where he left off. She believed and she testified that she was convinced he would carry out his threat, and that she would not live through the night. Brenda waited ten minutes, making sure he was asleep, and then she shot him.
At her trial, Brenda’s lawyer tried to introduce expert testimony that Brenda suffered from Battered Woman Syndrome. An expert had evaluated Brenda and concluded, based on meetings with her, that she was a battered woman suffering from Battered Woman Syndrome. The trial court, while allowing an expert to testify about the syndrome in the abstract, wouldn’t allow the jury to learn the expert’s opinion that Brenda suffered from Battered Woman Syndrome. The jury convicted Brenda Aris and they cried as they returned their verdict. Later, in conversations with lawyers, the jurors said that because they had heard testimony about Battered Woman Syndrome but were not told that Brenda suffered from the Syndrome, they thought they were not allowed to conclude that she did. They said they believed that if Brenda suffered from the syndrome, the expert would have said so. So here is an instance, similar to what Jayne was talking about, where the use of an expert actually hurt her more than helped her.

Another major problem in the Aris case was the trial court’s refusal to instruct the jury on perfect self-defense. In California, a defendant is entitled to a complete defense if she honestly and reasonably believes that her use of deadly force is necessary to protect herself from death or serious bodily injury. Here, the trial court said that Brenda was not entitled to a jury instruction on perfect self-defense because no reasonable jury could have found that she reasonably feared imminent danger from her sleeping husband. The trial court’s decision was affirmed by the intermediate appellate court in a published opinion and is now precedent in California for “burning bed” cases, the generic name for cases where the alleged victim, the abuser, is asleep at the time a woman acts in self-defense - - which in many cases is the only time a woman believes she can safely act to defend herself. Following Aris, the law in California holds that a woman is not entitled to a self-defense instruction in a situation where she kills her batterer while he sleeps, even if there is no other time that she can protect herself in safety, because, in the court’s view, no reasonable jury could find that she really feared that she was in imminent danger of death or serious bodily injury.

The Aris case involves two of the three categories that justify clemency. There are outstanding mitigating factors in her case and, despite the harshness of the law and the finding of
technical guilt, Brenda Aris is morally innocent. Certainly, she was hurt by the jury instructions given and the jury's erroneous conclusion that resulted from the judge's ruling. The long abuse she endured, and the fact that she has three children should also be considered as mitigating factors. But the central issue is the defense of self-defense. Even if the law continues to define self-defense in such a way as to preclude acquittal in cases where the defendant kills an unconscious or sleeping "victim", that does not dictate the moral validity of a murder conviction. The long abuse Brenda Aris suffered, the failure of the law to provide meaningful protection, and a full understanding of Battered Woman's Syndrome - including appreciation for the likely accuracy of Brenda's perception of danger - all suggest that she is not morally guilty of murder in very much the same sense that the child who accidently pushed another child into a vat of boiling water wasn't guilty either. It is precisely in those cases where the law - - the rigid rules of courts and legislatures - - doesn't yet fully take into account the demands of individual justice that the clemency power assumes its greatest importance.

I'm not going to take up much more of your time, but I just want to underscore the fact that we're not really asking Governor Wilson for a favor. Given the nature and purpose of the pardoning power, Governor Wilson has an obligation to exercise the pardoning power for the public good, in the interest of justice and mercy.

HARRIETTE DAVIS: Hi. I guess I've been asked to speak because I'm admittedly a person who has been a victim of domestic violence. As a result of it, I had to defend my life and went through the "injustice" system and prison. I'll just start out telling you a little bit about myself. A lot of times before when I would speak about domestic violence, people would say, well you're different and I would say no. Of course, my experience is my own, but it's so similar to many of the women throughout the world and the United States.

I was born to mixed parentage and identify myself as an African American woman. I grew up in a family with two older sisters and a single parent. My mother raised us. She was very independent, very strong, working to support us. When I was about fourteen or fifteen, we moved to California from Ohio. When I was about sixteen years old, I had a child, a son. I fin-
ished high school and graduated. After I graduated, I wanted to move away from home because I felt I needed some time off from school to spend with my son. He was two weeks old when I went back to school. I needed to put my head together. I wanted to take a year off and then go to college.

The summer after I graduated, I met Henry. It was a chance meeting. He was a very intelligent person, very strong and very considerate. We dated for awhile and I thought we were a good match, kind of opposites. I was kind of liberal, outgoing and wanted things in life and he was the same way except he was real conservative. There was a lot of respect and caring between us. When the relationship first started out, there was a lot of courting, a lot of wining and dining so to speak. We spent a lot of time together. I'm the kind of person who is very considerate and very sensitive to other people's needs. Normally, we would spend almost every day together, so if I was going to be away or if I had other things I was going to do, spend time with my family or friends or something like that, I would always give him a call or let him know. We'd speak the night before and I would tell him my plans for the next day. A few months into the relationship, he began to expect that type of thing from me. One time I had gone out and left a note on the door saying, "I'm going to the store, see you later." I was going shopping at Capwell's. The store closed at nine.

I was gone all day and when I came home that evening Henry was really upset, saying he didn't know what I was doing or who I was with. He went into a tirade and I told him okay, next time, I'll be sure to let you know. I just took it kind of lightly. As the relationship progressed, there were other liberties that he began to take from me. I'd be on the phone and the phone would be busy for an hour and he would ask, "who were you talking to?" I would tell him it was a friend or family or whatever and I was just talking to them. He would say, if you're going to be on the phone for a long time, why don't you let me know and I won't try to get in touch with you because it's taking time from my work.

So, there were little liberties, that at the time I didn't really see but, that I was conceding to him. I'm a very independent person and I always have been, but this time during my life for
some reason, I gave away that independence and that right to be my own person.

The first incident of violence occurred after we had some problems and an argument. He hit me, he slapped me. I can't remember, it was maybe two or three times. When he did this, I understood the anger and why he was that angry and felt that he could hit me, but at the same time I did not accept it. So, I broke up with him and said I didn't want to see him anymore. I didn't want to be around him and I wanted the relationship to end. He said fine, he could understand that. I told him I didn't allow anybody to put their hands on me. He understood and I went my way. I guess a couple of days had passed and he called me up and said he wanted to talk and that he was sorry. I did talk to him. In talking to him, he went through this whole apology thing, telling me how much he loved me and how much he respected me and he didn't know what happened and you know it wouldn't happen again. He kind of blamed it on me and I felt guilty because it was an action that I had taken which angered him. I would have been angry if he had done it to me but the difference is that I would not put my hands on him. So, I forgave him and the relationship went on.

I think it was at that time that I just kind of began to lose it. I was already kind of scared of him. I had never been scared of him before, but I knew the power of what it felt like to be hit. At the same time, I was giving parts of myself away, my independence and not knowing it. I can't really remember the next time that he hit me, but I can remember times he hit me and knocked me into a wall and made a hole into the wall with an imprint of my body. I just know at that time, I was already afraid to leave. I felt like I couldn't involve my family, I thought I had put myself into a situation that I had to get out of. I felt if I had gotten into that relationship, that I could get out of it. Here was a person that at one time was rational and intelligent and someone that I could talk to. Now, he wasn't like that at all. When I would say, that I don't want to be with you, I'm scared of you, you're hurting me, he did not even hear it. In fact, it would make him even more angry and it would cause him to hurt me more. As time went on, there were things that I couldn't do. I couldn't talk on the phone unless I had his permission, I couldn't go to the store. I couldn't go anywhere without his per-
mission, not even to see my family. My friends stopped coming over because he would come over and make it uncomfortable for them. My friends and I couldn’t communicate as much on the phone because he would make it uncomfortable for me to talk on the phone. If I went anywhere, he would time how long it took me to go and come back. The only people that he allowed me to see over a matter of time was my mother, my two sisters, and his family.

I began to feel like there was no way out of the relationship. Actually, I believed there was no way out. I had tried to run away because I thought there was no way out for me. I was so depressed. I just felt so much pain that I tried to commit suicide. My sister came and she found me. Henry had a key to the house and had to let her in to the house to revive me. During this time, they had a big fight because she told him that he was killing me and that she blamed him for everything that was happening to me. I don’t really remember because I had taken sleeping pills, but my sister told me that they had had this argument. He hit her and told her not to come around anymore. From that time on, because she had questioned him, she was not allowed in the house.

Shortly after this, I found out I was pregnant with my second child. I was about twenty years old then. During the time that I was pregnant, he also beat me. I can remember when I was about six months pregnant and he kicked me. I know that this sounds real mechanical. I remember when I was in court, I testified to what he did. He kicked me, he hit me, he did this and that. It was a whole line of things. When someone is doing it to you, it’s not like you can make a list because it sounds real, real cold. But he did, he kicked me, he choked me, he pounded me, he threw me down, he did all kinds of things to me. At one point, I just started to feel cramping and have slight bleeding. I remember just telling him that I hope that he just went on and kicked the baby out of me because that’s what he was doing. I told him I was glad because I had never wanted to have a child of his, or anything of his in this world. At that point in time, it just snapped him. For the next three months, he didn’t put his hands on me. Luckily, my daughter was born healthy and there were no complications. She’s seventeen years old now.
He also made threats to my family. He threatened that if I left him he would harm my family. There were times that I tried to leave and each time I left, the threats increased. First, if I left he would get me. After I got over the fear that if he got me, then there wouldn’t be anything more that he could do to hurt me. Then he said that if I left and took the baby again, I would leave and take the baby, he would do harm to my family. I believed him because of the type of person he was. He said he would never do the harm, that he knew people that he could pay to off my sister. Then he said that if I left again, he would kill everyone in my family. He knew that would bring me back. He would start with my sister, my grandmother and then go all the way down until I would have no one in my family left. So, I guess somehow I overcame that fear and at some point, I just took my two children and I left. I left everything in my home, I took very few personal possessions that I immediately needed, clothing, some towels and canned goods. I did everything I could. I pulled out all of my money out of the bank, I paid all my bills off and cut off my telephone and PG&E (utility). The only people who knew where I was were my mother and my two sisters and their husbands.

Well, I was gone a few months and he found me and called me up. I remember how I felt. It was cold and raining and it had been raining for days. I had been in Los Angeles with some people who were kind enough to take me in. I really didn’t go out too much because I was scared. I felt like that if I went outside, somehow, he would find me. I was always looking over my shoulders. I remember this day, it was raining really hard and it looked like it was nighttime, but it was still day. The streets were flooding and I needed to go to the store and get some food, some milk and bread, and some soup. I was just kind of waiting, just hoping that the rain would let up. I was dozing off when the phone rang. I picked up the phone and when I said hello, he called my name and he told me not to hang up. He said that he knew where I was and that if I left, he would have the house blown up and anywhere that I went, he would destroy the people that helped me. I still hadn’t said anything and I mostly just listened for probably half an hour without saying anything, trying to think of an escape.

My mind was just racing, trying to figure out what to do
and what was going on. I was stunned. Finally he said he just wanted to see his daughter. He said that if I tried to leave, there was a man outside on the corner watching the house. The first thing I thought was, how did he know the house was on the corner. How would he know? I looked outside and there was a man outside in the rain across the street. Henry said that he didn’t want to hurt me and that he had been talking to my mother. He understood how much he had hurt me and he just wanted to see his daughter and be a part of her life. He said that he was coming to get her, to see her. Then he came and he said that he wanted to take her. He wanted to just talk to me and find out why I had done what I did. At first, I began to explain to him the pain he caused not only me, but my children. My daughter was two years old and ever since she was born, she was watching me being beaten. I told him both my children were being hurt by this. I knew that sooner or later, he was going to kill me if I didn’t get away from him. At first, he was kind of understanding but then he told me to come home and to bring the children back because they shouldn’t be separated from their family. I told him I didn’t want to come back and that I wanted to go to school and to get a career. I wanted to be a nurse. I wanted to follow that career and I had just actually signed up for city college in Los Angeles.

At first he said no, I don’t think that’s what you ought to do. Then he became more and more forceful. I said yes, I do want to do that and then I told him he could take his daughter back with him if that’s what he wanted to do and that I wouldn’t object to that. I guess in my mind I thought that if he took her, I would be able to get strong enough to be able to go and take her back. I just figured that that’s what I would do, but that’s not what he wanted. Finally, I told him that I wasn’t going back. Then he started, how dare you talk to me like that, are you telling me no? I said, no, I’m not telling you no, I just don’t want to go. The whole pattern of the relationship began to unfold. It was a tone of threat in the words he was saying without saying it directly. So I said, no, I’m not and then he said again, are you telling me no? I said no, I’m not telling you no. He said, oh, you’re not? Then you’re coming? I said, no I’m not coming. Oh you’re telling me you’re not coming? And so it progressed like that to the point where I went because I had no choice but to go.
I went back. He had kept my apartment for me and everything, so I just moved back into it. First, he said that he would just allow me to be free of him. He just wanted to show me that he could be the kind of person that wouldn’t abuse me and that we could kind of have this separate relationship. He said he just wanted to maintain contact with his daughter and my son whom he had raised since he was two and considered his son. At that point, I guess I felt strong enough to tell him that there was nothing in the world that he could ever do to make me want to be with him because I would always be scared of him and I would always remember the things that he had done to hurt me and they would always be there and I could never love him as a woman loves a man. I now, in a way, regret that.

For about six months, he did seem to try and he didn’t really put his hands on me. But, he still maintained control over me with indirect threats. I guess you would have to know and I have to say that I know about I’ve read about Battered Woman Syndrome and I had testimony to it, and I feel that I, myself, suffered from an illness based on my experience with my batterer. During the first six months, there was no physical violence. I can’t quite remember what happened, but he ended up hitting me and beating me up again and finally, we got to the point where he said, fine, I could move away and be separate from him. She cashed in all of her savings and she bought a house for me and my children to live in. He said he didn’t want us in the area that he was living in and I couldn’t really afford to live anywhere else. After she bought the house, he told me I couldn’t move.

Well, in my mind, I guess I thought I would do it anyhow and that if I could get away long enough, I would be safe. He was supposed to go out of town one day and I attempted to pack up and put everything away, but he came over about 6:30 in the morning and caught me trying to move and beat me pretty severely. I tried to run out the door, and down the street away from him and he had a friend that was waiting outside in his van. He called to him and I ran down the street without any shoes or anything. I just ran down the street and they finally caught me and dragged me back in the house. Someone called the police and said that there was a woman that had been beaten and was being dragged down the street. It took the police
over forty-five minutes to respond to that call. I didn’t know it then, but I found out later. When they came, the policemen stood at my front door and I stood about twelve to fifteen feet away from him with Henry next to me. The policeman asked us our names and whether there had been a problem. We said no, and he asked if everything was okay and I said yeah and he left. Well, Henry beat me up again, but his friend was out in the van and I guess he was making some noises from snoring. The neighbor called the police and said she thought that the woman who had been beaten earlier had been stuffed in a van and was dying. It took the police an hour to respond to that call.

I never called the police myself because, in the community where I come from, this is something that’s normal. If the police came to situations that involve domestic violence, they would usually put blame on the woman. They wouldn’t tell her about her rights. If you did put someone in jail, if you did have the nerve to put someone in jail, the bail was so low or they’d be released on their own recognizance and they’d be out in a matter of hours. In my mind, I believed that if I ever did anything like that and he got out, he would kill me or hurt someone in my family. That wasn’t something I was willing to give up. I wasn’t really willing to die then either because I felt like my children were the most important things in my life and I had to be there for them.

Right after this, the beatings were less frequent, but they were worse. One night, he beat me because my mother had been over and he said that anytime my mother came over, I changed. I remember that he beat me so bad and when he went to sleep, I went over to my mother’s house. It was probably five or six o’clock in the morning and when she opened the door, my mom just broke down and started crying. She said if she hadn’t known me, my shape and my hair, that she wouldn’t have known who I was because my face was so distorted. It looked like some kind of monster that you would see on the Twilight Zone or Outer Limits shows.

He called me there. Every time I left, my daughter would have seizures and she would get sick. I guess that was a guilt trip. He would call and say she was sick or that he had taken her to the hospital and she needed me, and that I needed to come
back home and that the kids and I don’t need to be separated. I would always go back home. I have to tell you that when I ran away and he found me, he told me he put private detectives on me. I guess in my mind that just sealed my belief that there was nowhere I could go to get away from him. I also didn’t believe that the system would protect me.

Well, one night, not too long after Easter, there was a program my son was in at school and my mother had gone to see it with me. Afterwards Henry and I went through the same argument that when my mother came around, I changed. He told me that he was going to stop me from seeing my mother and that she wasn’t going to be allowed over to the house anymore and that my children weren’t going to have any contact with her. I guess in my mind it was almost then like being dead because I didn’t have anyone else. I called my mom and talked with her for a few hours and I told her what he had said. She assured me that she wouldn’t allow that to happen, and that I was her daughter, and that she would be there and we would figure something out.

After I talked to her, he called and he was angry. It was around 2:00 in the morning when I had gotten through talking to her and he wanted to know why I had been on the phone for so long. I told him I had talked to my mom. He came over not too long after that. He had a key but he always had me answer the door, and this time when I answered the door, he just hit me. All I can remember is that, just being hit right then. I don’t remember what happened right after that but, over a period of four hours, he hit me and banged my head against the wall and threw me down on the ground and slapped me and kicked me and he choked me and twisted my arm and did almost anything you can think of that someone beating a person up could do, things you wouldn’t even do to an animal. At one point, he held my head and I think he was just banging it against this wall over and over, and his eyes were blood red. I felt that I didn’t even know the person that was doing this to me. There was nothing in his face that I could recognize. I felt he had no feelings for me, that he could just do this to me. I knew I couldn’t go through this again and that he was going to kill me. He did stop and he said that he was going to rest and that after he rested he was going to finish what he started. And then he went to sleep.
There was a gun at the head of the bed that he gave me for protection. I felt like I had to get away. My son was sleeping in the other bedroom. I just knew that I had to get out of there and I picked up the gun and I was going to leave. People always ask me, why did I pick up the gun? In my mind, for whatever reason, I was going to get out of there, and there was nothing that was going to stop me. I guess in the back of my mind, I knew that if I had to use the gun, I would use the gun. All I wanted to do was to get away, I knew that I just didn't care and that I would never come back. At one point, I bumped the bed and when I bumped the bed, he woke up and called my name and I shot him. After I shot him, he lay there for I don't really know how long. I don't know. I just know that they say a "reasonable battered woman," but a "reasonable person". I know that I wasn't reasonable because I thought he was going to get up and beat me up for shooting him. That's what was going through my mind. At some point, I did realize that he wasn't going to get up and that I had shot him and that he couldn't get up. I woke up my son and had him get his sister and go to my mother's house. Then I called an attorney that my sister had been working for, and after that I was arrested and charged with first degree murder.

I went through the system. There are a lot of similarities in my case to what has been described. I did have an expert witness, I had a lot of testimony from people (neighbors and family) who had been around, and who knew about the beatings. The district attorney had evidence even before they charged me with first degree murder about the beatings that they never did acknowledge. They tried to portray me as someone who was vindictive and jealous and cold blooded, and someone who came from a family too intelligent to be put in that position. They said that I could have reached out and gone into a shelter, of which I think there was probably only one in the entire East Bay that I knew of at that time. The jury found me guilty of voluntary manslaughter. I don't really think that they could ever understand why I was so scared or why I felt like I might actually die. Afterward, one of the jurors said that, if she was going to leave, she would have taken her purse, and why didn't I take my purse with me? That right there, in my mind, just really showed me that they couldn't understand that someone who's in fear for their life does not really think rationally about what
they're doing. I don't even think the judge, who was a woman, really understood because when she went to sentence me, after I expressed my deep regrets for the pain that the families felt, my family, his family and even for his death. She said that she felt like that was the only time the truth had been told during the whole trial. His family did not acknowledge any of the abuse, even though his mother knew about it.

I ended up getting five years probation, which I violated a few months later. I went through a ninety day observation at the California Institute for Women, while I was pregnant. When I got out, I violated probation by driving under the influence of alcohol. They suspended my probation and sent me to prison for six years. After getting out of prison, and during my last seven months of prison, I went through a program called Mother/Infant Program that allows women to have their children with them, from birth to six years, in a residential community program. I also went through a semester of college there and, after I got out, I finished and received my nursing degree which brought me to the California Commission on Women which is studying the special needs of women and their families in the California prison system. Rebecca is also a member of that commission. They wanted a woman who was an ex-prisoner and who has children. We're now halfway into our findings and we will be going down to Southern California to the California Institution for Women and to the California Rehabilitation Center which is for civil narcotic addicts, to finish our investigations. Thank you.

SUSAN RUTBERG: Thank you for telling your story. We have some time for questions if there are some questions. Yes - would you like to stand at the microphone.

Q. How long a period of time did this go on?
A. (Harriette Davis): It was an eight year relationship. It probably started about six months into the relationship.

Q. You indicated that you gave up little liberties as you went along and you finally said that just before something your whole relationship came about that he was going to go to sleep and he was going to finish the job.
A. (Harriette Davis): He said he was going to finish what he started when he got up.

Q. And what came into my mind as you were saying that was, essentially by giving up those little liberties, you gave him the
power to feel that he was omnipotent in the whole situation, that he could do what he did to you, go to sleep and even tell you that he was going to finish what he started and expect to be able to get up and do it.

A. (Harriette Davis): That's exactly right, he put a gun to my head one time, and he actually put the gun in my hands and told me to shoot him. He told me he knew that I hated him and that I could end it all right then. I couldn't even imagine doing that and I told him no. Then he took the gun and put it to the temple of my head and called me a name and told me that I better never think about anything like that because before I could do it, he'd blow my brains out. You're right, unknowingly and unwittingly, I did, over a matter of time give him that power.

Q. Is that something in your background and also in other backgrounds of battered women that you've seen or is that something common? I'm assuming it is.

A. (Harriette Davis): I think it begins psychologically. It began psychologically for me, but I can't speak for all women. There are some similarities, but I think that for me, it was psychological into physical.

Q. Yes, I'm Maria Ontiveros and I'm a professor here at Golden Gate. First of all, I'd like to start off by thanking Harriette for sharing her story with us. A lot of us here feel it is not so much something that you gave up or you did, but it was something that he took. And that's sort of a comment on the prior question. I do have another question as well that is really directed to Jayne. Can you give us in some basic terms and some of the specific gender traits that you see which are embodied in the model that don't describe the experiences of women of color, or poor women, or lesbians, or maybe in particular that would exclude people like Harriette. You talked a little bit about learned helplessness and how that would be a contributing factor, but are there other things more specific that you could identify to help us?

A. Answer deleted at request of panelist.

A. (Rebecca Isaacs): Just to add, it seems very important to look at the perpetrator and figure out what's going on with someone who has that violence, anger and need to control. I think it's really important to focus our energies on not why somebody is abused and beaten, as if that's somehow a choice, but to look at
the abuser and try to figure out what’s going on there.

A. (Harriette Davis): I’d like to make a comment. I think that when I said that, it was a personal thing because I had been such an independent person and the type of relationship that I ended up having with him and the things that I did for him, I would probably never do or have done for anyone else. But I felt like I was giving to him. On any other personal level, I think that when two people respect each other, and they have a relationship of giving, that it’s two sided, even in a family. With my mother, I would let her know where I’m going to be or around what time I’d be home, or things like that. She would do the same to us as children out of respect. A parent does not have to tell a child where they are going or what they are doing, but just out of consideration and respect for the family they normally do, in case there’s a problem or so they don’t worry. Those are the kinds of things I did with him that I would do with other people, but in other ways, he did not respect me and it wasn’t two sided, he used that against me which I didn’t realize at the time.

A: (Cookie Ridolfi): Actually now that we’ve set some kind of ground work I would like to refer specifically to one case that happened in New York. It involved an older African-American woman, about fifty five. She in fact had Lenore Walker testify. She was able to introduce expert testimony on Battered Woman Syndrome and Lenore Walker flew in from Colorado to testify. Lenore Walker explained once again the cycles of violence and that there were these three cycles and she posited her learned helplessness thesis, the two facets of which are 1) the repeated battering that the women suffer basically diminishes their incentive to leave making them passive and 2) the belief that they cannot control what will happen to them, additionally reinforcing their helplessness.

I think that this particular case was exacerbated by the defense attorney in the sense that he wasn’t quite familiar with these type of cases and he hadn’t defended a battered woman who was accused of having killed her abusive spouse previously. What happened is that to the extent that this testimony was given on her behalf, the prosecutor was able to rebut this testimony by showing, for example, that she was able to drive to the corner, therefore she was not a battered woman. Granted, this is perhaps one end of the spectrum of how bad you can get. But in terms of other racially specific examples, what had happened previously is that I think there were two instances where the
police were called to the house and had talked to a neighbor who had reported shouts and cries occurring in the house at which point they came and arrested both of them. The police arrested the husband and wife both for assault. To the extent that the prosecutor characterized what had happened as mutual combat, once again to the extent that the woman exercised any agency of her own that obviously didn’t conform to the model. It was really quite difficult. I think what happened is that the jury looked at the model and looked at her and said she’s not a battered woman.

Q: If I could just make a comment to that before we take further questions, it sounded to me from hearing your compelling story Harriette that that must have been what happened in your trial, there’s no way that the information you communicated and the way that you communicated it, it must have been the experts that derailed the jury from finding you justified in your actions.

A: (Harriette Davis): Well, there was quite a bit that helped me. I have to say that I had the women’s community behind me in this area and they helped me to raise money for my defense and helped to publicize the whole issue of domestic violence. There were people there helping me and supporting me. The project that Cookie was affiliated with gave our defense a lot of information because at the time, in 1981, there wasn’t a lot of information about Battered Women. But I had taken the tests, whatever they call those tests to prove if I was considered a battered woman or not and my scores were on the high end of the scale to say yes, I was. Lenore Walker didn’t come and testify for me, but they do the tests. The expert witness, Daniel Sonkin, had been with the district attorney’s domestic violence unit in San Francisco and he testified on my behalf. One of the jurors who spoke with my attorney after the trial said that the way he portrayed my case and explained the battered woman syndrome made it seem that I was so perfectly suited to the scenario that the jury couldn’t believe the expert. They thought that he was lying for me. The expert took a $100 initial consultation fee but, after that, because he was kind of in awe of how much I had been affected that he was willing to testify on my behalf and work with me free. So I think that that went against me because the jury couldn’t believe it, that I was like a textbook case.

Also, I went to trial a year after the initial act and I had changed so much because I was now out of the battering situation. I had been through a semester of school, I had been back...
with my family, I had made ties in the community, I had people who were backing me and I was reading about other people’s experiences. I was not feeling isolated, basically, I was free as an adult woman out on $50,000 bail to do the things that normal people can do. So, my whole life was different. I even developed another relationship with someone else that was normal and healthy. The person that they saw on the witness stand was not the person who was being portrayed from the past. It’s really hard because sometimes now I can distance myself and talk about it and not feel real emotional, but at other times, it’s very hard for me. When I was on the witness stand, I was almost like another person, telling my story. There was probably very little emotion or anything there, so I think that also went against me.

There are other things in my background that affected my case. I had had a child before getting out of high school, I had another child with this man not being married, and so there were a lot of things about me that were unconventional and different than the normal that society looks at. So I can say that it wasn’t only that I was on trial, my past was on trial as well. They brought up my health history and there was concern about abortions, my belief about life and death, and other things that had no bearing on the trial. I was tried for my values which might be somewhat different than the middle american person. As a matter of fact, they were different, and always had been, so they were also on trial. We did have one person of color on the jury and I believe we had a few women. Basically, the Alameda county jury pool is white middle-class suburbans and my life was somewhat different. The other thing was his life was not squeaky-clean. But when you’re in trial and you’re looking at the woman and the man, the jury asks itself, if the man is so horrible, then what kind of woman is this that would be with him in the first place. The jury therefore began to judge my character on that basis too. Now he’s dead and they forgive him for being this horrible person, but now you’re alive and they are judging you for even having been with him in the first place. So, those are some of the issues that came up at my trial.

A: (Cookie Ridolfi): I want to just comment a little further on that, there’s probably not a person in this room who wasn’t incredibly moved by the story that was just told but I want to also say that in my experience in these cases, it’s often true that women, when they are forced to take the witness stand and tell their story, have this one opportunity to explain what has hap-
pened and what they've experienced and they become different people on the witness stand, they clam up. They become upset, they become frightened and it's very, very difficult in the context of a trial to convey what their experiences have been. One of the women that we filed a petition on behalf of is Francis who is 77 years old. She was very frightened of the media attention at her trial. She had been battered for forty eight years and one of the arguments of course that the prosecutor made at her trial was that she should have gone to a shelter. When the battering began in that relationship, there was no such thing as a shelter, there was no such thing as Battered Woman Syndrome, Lenore Walker probably wasn't born yet. She had been in the abusive patterned relationship for forty eight years and the prosecutor was arguing that she should have gone to a shelter. The point that I was trying to make was that in her trial, the judge allowed the press into the courtroom. She said that she couldn't tell her story if the photographers continued to click and take pictures of her and if the videocameras remained in the courtroom. Despite the trial lawyers' request to the judge that they be removed so that she could have an opportunity to tell this story where her entire life was hanging on the line like that, the judge denied the request. She was convicted. She's serving 15 years to life and in her case unless Governor Wilson acts soon, she will surely die in prison.

Q: (Susan Rutberg): Are there any other questions?

Q: I had a few questions if I could. One is that people that are talking about the legislation keep mentioning battering in the context of a marital relationship and I'm wondering if that is how this legislature is coming in? Is it applying only to spouses?

A: (Rebecca Isaacs): No, it's not limited. It applies to any partnership, any domestic relationship.

Q: I have one more question for Harriette Davis. Did Henry have a history of abuse in his family, had he had a history of abusing other people? Was this the first time and do you know why he became like this?

A: (Harriette Davis): Well, his mother personally told me, which she denied in court, that his father used to abuse her. She was from Georgia and that's why she brought her children to California. Later on, he came out here, but that's one of the reasons why she left him. Henry was a physically violent person, he had a friend of fifteen years that he beat down and the man died
from complications after he had to have his spleen removed because of this beating. I knew about that and that was his best friend. I don’t know all the reasons but there had been abuse in his family and I don’t know how his father treated him as far as spankings. But I know his mother had been abused. And I wanted to say that we did not use the Battered Woman Syndrome as a defense. We did use post-traumatic stress defense at that time, but the evidence was brought in to show why I was under such stress and duress and what led up to that. It wasn’t a Battered Woman Syndrome that was used, it was post-traumatic stress syndrome.

Q: One other thing, please. I worked as a law student at a public defender’s office one time and worked on a domestic violence case and we were defending the man who was accused of abusing his spouse who ended up not showing up in court, so the case was dropped. It was a really hard kind of case to deal with, but in that situation, I thought what happened in court was going to be bad for the woman and that the best thing for them would be to have some kind of forced counseling. In your experience, was there a certain period where somebody, whether it be through school, education classes could have intervened? Could this have maybe prevented what happened or helped you?

A: (Harriette Davis): Maybe in the beginning, someone could have helped me when it hadn’t yet gotten to that point where he really felt like he owned me. I think that if I had had a strong male figure in my life, coming in and saying, look, if you put your hands on my daughter or on my sister again I’m going to do the same to you. And I really believe this, that’s what he would have responded to. I did talk to him early on about getting help just for myself at first, but he said “No way.” And I tried to talk to him about the both of us going to talk to someone but he also said no. He would not even let me go and talk to my mother who did talk to me about getting help and I knew that it wasn’t a normal situation that I was in. I didn’t want to be in it but I just felt that I needed to find a way out. I thought I could do it on my own. That’s the type of person I am. If I had sent him to jail, he would have gotten out and he would have came and had me killed. So, I don’t even doubt that now, and I can tell you I’ve thought about it a lot, as a matter of fact I’ve had eleven years to think about it since he’s been dead. I can tell you maybe when he was a youngster he could have been helped. I think that maybe our society needs to deal with the problem now with the
children when they are young. You see all this crap on TV, men are men, women are women, they're these two different things and it's still going on, this role playing and what people are allowed to do to other people. Violence and ownership of other people is ingrained in our society and it's been that way since society was started with indentured slaves and then other slaves that were brought to this country. It's still that way. If people would begin to teach their children differently, that's what is going to change it. But as long as people think they can own other people, then they're going to be treating people like that. We see that men, more so in this society, get away with killing their wives all the time, that it's okay in the heat of passion.

A: (Rebecca Isaacs): I just want to make a quick point about one of the ways that we were able to get prosecutors interested in Section 1107. That section specifically says that it's for use by either the prosecution or defense. That's precisely because battered women make such notoriously bad witnesses either because they fail to show, because they're afraid and all of those other reasons. Battered Woman Syndrome evidence can be used by the prosecution in that kind of case of a domestic violence battery case to show or explain why she wouldn't show up or why she isn't willing to testify or why she is impeaching herself and for all of those kinds of things. That's another interesting twist.

A: (Harriette Davis): Let me just say something. The city of Oakland (CA), where this happened, had settled a class-action lawsuit with the one condition that they address domestic violence issues. One condition was that two officers were always to arrive anytime there was a call for domestic violence. The acute perpetrator is to be taken from the area and usually, if there is a female officer available, that officer will speak with the victim and advise her of her rights, advise her of shelters and options available to her. The police are to take the man away and to advise him also. There's a lot of different things in that law and I'm not familiar with all of them, but I can tell you in 1980, when the police were called to my house, that this suit had been settled for a year and a half and it still wasn't being implemented.

I don't know how many of you are attorneys yet, I guess most of you are law students, I want to say this because I think a lot of times when you hear the facts, that you're looking at the facts, but when you go to work for someone as an advocate or a
lawyer or whatever you have to look at the person as an individual. There are circumstances when, for example, the woman can't deal with cameras. You're going to get a lot of information, but then you have to deal with that woman and inform her. Don't victimize her anymore. Inform her of her rights, inform her of the law and have her be an equal partner in her defense. There is nobody who is so ignorant that she can't understand what's best for her if you give her the information and let her make informed decisions. It's her life, she's the one who will spend time in prison, she's the one whose life has been affected. What I say to you is you give that person the information so that they can, along with you, make decisions that are going to affect them legally. Because I know for me it was really important that I knew every step of the way what the law was, what could happen or not happen and make choices based on that information of how I wanted to proceed. I was the one facing 25 years to life in prison along with the possibility of losing my life and my children if I was going to be convicted. So that's something I think that's really important.

A: (Susan Rutberg): Thank you. And thank you all for your careful attention and I want to particularly thank each and every one of our speakers who shed light on the problem with one final word. I think one of the things that we have learned here tonight is that justice needs to be tempered with mercy. I seem to recall that it was a female, although fictional character who gave voice to that. I think it was Portia in the Merchant of Venice. Maybe with that idea, we can all, you can all, enter the profession and try to see that there is more mercy out there for the women who are victims of domestic violence. Thank you.