

**The Validity and Use
of Evidence Concerning
Battering and Its Effects in
Criminal Trials**

**Report Responding to Section 40507 of
the Violence Against Women Act**

U.S. Department of Justice
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important function in assisting the factfinder to consider the context of a battered woman's actions.

Expert Testimony in Cases Involving Battered Women

Expert testimony on battering and its effects is introduced in criminal cases involving battered women by both defense counsel and prosecuting attorneys. It is used by defense counsel to support various types of criminal defenses including self-defense, duress, and insanity. Expert witness testimony may also be used by the defense in conjunction with the sentencing phases of a trial for purposes of mitigation. Prosecutors use expert testimony in domestic violence prosecution cases to explain such matters as the battered victim's recantation or lack of cooperation with the prosecution. Further, both the prosecution and defense use expert witness testimony to provide an explanation for what may be misconceptions about battered women, battering, and its effects.⁹⁰ It is not the role of the expert witness to determine the ultimate issues (for example, whether it was reasonable for the battered woman to have held the perception that she was in danger). However, expert testimony is offered to assist in the determination of these issues.

A general framework for admissibility of expert testimony in criminal cases is provided in Rule 702 of the congressionally enacted Federal Rules of Evidence:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

It follows, therefore, that the framework for expert testimony in criminal cases involving battered women rests on the "scientific, technical, and other specialized knowledge base" concerning battering and its effects. Thus, information based on the expert witness' "knowledge, skill, experience, training, or education" provides the basis for his or her expert testimony.

A 1977 Supreme Court of Washington decision, *State v. Wanrow*,⁹¹ ruled in a self-defense case involving a woman defendant that she was "entitled to have the jury consider her actions in the light of her own perceptions of the situation."⁹² Counsel successfully argued that the jury instructions offered at trial did not take into account the woman's perspective, thereby failing to

correctly apply the existing standard of self-defense: "requiring the jury to consider the defendant's action 'seeing what (s)he sees and knowing what (s)he knows,' taking into account all the circumstances as (s)he knew them at the time."⁹³

In addition to testimony offered by the defendant, evidence concerning a battered woman's perceptions and the relevant circumstances in a situation in which she has been charged with a crime can be introduced through expert testimony. Such expert testimony has been introduced in criminal cases involving battered women since the late 1970s.⁹⁴ Based on a recent analysis, "expert testimony on battering and its effects is admissible, at least to some degree, or has been admitted (without any discussion of the standards for admissibility) in every state."⁹⁵ Expert testimony in criminal cases involving battered women was developed initially to explain "the common experiences of, and the impact of repeated abuse on, battered women."⁹⁶ That is, expert testimony is offered to show the trier of fact the context of a battered woman's actions.⁹⁷ This type of expert testimony, generally, has been referred to as social framework testimony: "employing social science research. . .to provide a social and psychological context in which the trier can understand and evaluate claims about the ultimate fact."⁹⁸

Expert testimony offered in cases involving battered women is either general or case-specific. A number of considerations influence which form of expert testimony is offered in a particular case. These include the facts of the case, case law or state statutes governing expert evaluation and testimony, available resources, and case strategy. General testimony is based on an understanding of the scientific and clinical⁹⁹ knowledge about domestic violence and its effects on battered women. In this type of testimony, there is no attempt to form opinions or conclusions related to a specific case.

Case-specific testimony provides information about a particular battered woman and the context in which domestic violence occurred; it places the unique facts of a specific case in a framework of what is known in the literature about battering and its effects. Case-specific testimony, or conclusions about a particular battered woman, requires a face-to-face evaluation of the battered woman, in addition to a review of relevant documents and other information. A suggested approach to case-specific expert testimony about battering and its effects is patterned after a clinical hypothesis-testing model of assessment.¹⁰⁰ Based on consultation with the attorney, an expert can generate a set of questions, or hypotheses, related to battering and/or its effects relevant to a particular case. The expert can then analyze data pertaining to the particular battered woman, relying on all the information