The telegram read:

LT. ERIC BLAIR
MOULMEIN DISTRICT OFFICE
TOP SECRET SOURCES REVEAL SUBSTANTIAL LOCAL
LEAVE DUE MOULMEIN'S DISTINGUISHED DISTRICT
OFFICER STOP PLEASE VISIT RANGOON FOR A WEEK AT
LEAST AS MY GUEST EXCEPT SUGGEST YOU RESIDE
OFFICERS CLUB STOP COME TO MY BUNGALOW
MONDAY MORNING TWELFTH FOR BREAKFAST STOP
CAR WILL COLLECT YOU SEVEN THIRTY STOP EVEN
MORE DETAILED PLANS IN FOLLOWING LETTER STOP
NO EXCUSE ACCEPTABLE STOP CORDIAL REGARDS

U TIN HLHANG
RANGOON

My chagrin at his boasted access to confidential police files did not long delay my accepting his invitation. Lang interested me. He amused me. I had much to learn from him. And I could easily persuade myself that what I learned would help me to do my job better in Moulmein. He was, after all, a leading Silk and prominent in an important Burmese political group. And, I must confess, the resonance of his earlier invitation to "breakfast with my elephants, my horses, and my mistresses" had rung insistently and alluringly in my lonely ears for some weeks.

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†† Julius Kreeger Professor of Law and Criminology, The University of Chicago. This is the seventh in a series of short stories by or about Eric Blair (George Orwell), who served for five years as a District Officer in Moulmein, Burma (as it then was). Professor Morris originally claimed that the stories were based on a set of handwritten manuscripts that he discovered in Moulmein and attributed to Blair. This claim grows increasingly suspect. The other stories are The Planter's Dream, 49 U Chi L Rev 609 (1982); The Brothel Boy, in Norval Morris, Madness and the Criminal Law 6 (U Chicago, 1982); The Best Interests of the Child, 51 U Chi L Rev 447 (1984); Ake Dah, 52 U Chi L Rev 553 (1985); The Verawami Story, 52 U Chi L Rev 948 (1985); and The Watching Brief, 54 U Chi L Rev 1215 (1987).

Professor Morris wishes to express his gratitude to Charles Webber of the Class of 1990, who wrote the selected annotated bibliography appended to this story.
I heard a trumpeting and some neighing, and there they were on a path through the trees on the other side of the beach, just as he had promised: two elephants and their mahouts, a few horses and their handlers, a few dogs (he hadn’t mentioned the dogs—took them for granted, I suppose) and several young sari-wrapped women, rather portly for mistresses, I thought. U Tin Hlang hurried ahead towards me, a largish dog bounding around him. He clasped me in a brief, warm hug. He had never done that before, though I did recall that I had behaved similarly when I had once come across him unexpectedly at Moulmein Station.

He looked wonderful. Energy flowed from him, and fueled my joy in his friendship. Even the sometimes sinister-looking curved scar on his cheek seemed to have faded in the exuberance of the morning. He wore native garments, but of a quality no villager could afford: a soft, blue, loose-fitting, round-necked, silk shirt above a calf-length dhoti of off-white linen, and simple, shining leather sandals. I felt overdressed in my military cap, shirt and shorts, Sam Browne belt, long socks and shoes, and carrying in my hand, wrapped neatly in a towel, my neck-to-knee swimming costume, which is the appropriate attire for a European who might be observed bathing by a native—or so I had been instructed.

He led me immediately to a promontory of rocks and stones that curved out above the light surf some fifty yards from the left of the beach. The rocks and stones had been collected from the waters in front of the beach—and it must have been a huge task—so that pale yellow sand and only pale yellow sand formed its floor, giving the water a translucent blue-green clarity, perfect for swimmers and for U Tin Hlang’s elephants, dogs, and horses in their pre-breakfast ablutions. His mistresses seemed to avoid the water. We picked our way to the end of the stony promontory and looked back on the scene.

The horses high-stepped in the shallows and plunged as they were taken into deeper waters; the elephants rolled on their sides close to the beach while their mahouts scrambled about on them, splashing water on them so as to rub them down with their hands, and receiving an occasional playful squirt from the trunks of the elephants. The dogs barked about meaninglessly and snapped at the wavelets on the shore. The mistresses seemed less enchanted by the occasion, huddling together under the palm trees close to where the breakfast tables were being laid, showing no inclination to join the other mammals in the water.
"Aren't you going in, Blair?"
"Of course; let me change into my costume."
"Costume. Costume. You sound like the West End, Blair. Change here." And he gave me a vigorous push off the rocks into the gentle surf.

I came up determined to return the compliment, but he forestalled me. His clothing was already suited to the waters and, kicking off his elegant sandals, he dove off the end of the rocks before I could move to seek revenge for my own unexpected inundation.

Fortunately it was not deep where he had pushed me in and I had kept a grip on my now soggy towel and swimming costume. I waded toward the shore and a clump of palms that seemed a suitable screen behind which to change out of my dripping military attire. The clothes would dry; once I was properly costumed, a swim would be a joy.

When I emerged, U Tin Hlang had swum to shore and was greeting a European lady on horseback at the waterline. I walked toward them. He spoke and her head turned sharply. Rosemary! She did not seem surprised to see me, but she did seem pleased. "Blair, how jolly to see you here. I had no idea. What a schemer Lang is!"

I knew she was teasing me but I had no reply other than what I suppose was an inane grin. I think I made as if to salute her by way of greeting, but my hand stopped, elevated only a few inches—a full bathing costume is an entirely inappropriate getup for a salute.

She did not prolong my embarrassment. "I'm going for a swim. Come in with me. I won't be a moment." And horse and rider set off toward the back of the beach.

I called to U Tin Hlang, "Why didn't you tell me Rosemary would be here? Is George Brett coming?"

"I'm sorry to disappoint you, Blair. George is most unfortunately in Upper Burma for a few days, possibly a week or two, accompanying what he calls his 'General' on an inspection tour I learned about some time ago. I should have told you. We could have deferred your visit until his return. Stupid of me."

I ignored his efforts at badinage: "Do you see them often?"

"I find him heavy going, but I'm glad to say that Rosemary quite often joins me here at these breakfasts."

I felt stirrings of jealousy. What a ridiculous thought, Rosemary and U Tin Hlang. She never would. But I did not let myself pursue the analysis.
Rosemary joined us, leading the horse. "Will you have one of your men wash and rub him down for me please, Lang?" She passed the bridle to U Tin Hlang's outstretched hand and then, to my delight, took my hand and, child-like, pulled me toward the surf.

* * * * *

My memories of that morning are scattered but strong; I shall never lose them.

U Tin Hlang persuaded me to let myself be picked up by one of the elephants. Had Rosemary not been there I should most certainly have refused. It is an extraordinary feeling. The trunk is so strong, yet gentle as it wraps itself over your shoulder and around your waist; the lift is steady yet inexorable—and there you are, swung over, upright though canted left en route, seated astride the hump, surprised by the gently moving, huge head in front of you.

I remember too that I never have eaten a larger breakfast, even as a youth returning home for school holidays. First, a typical Burmese breakfast of fruit and fried plankton; then we celebrated U Tin Hlang's London barrister period with chops and sausages and eggs and toast and marmalade and tea. Then, prostrate and happy, we lay silent on the sand as the sun gradually took on its tropical fire.

Later, we went back to what U Tin Hlang called his bungalow, though its size and complexity belied the title. It seemed to have grown rather than to have been built, hewn from the jungle, polished wood, sweeping balconies, thatched roof and carved shutters—orderly, comfortable, and spacious, yet still a part of the jungle.

U Tin Hlang had been testy with one of the mahouts for not bringing the baby elephant to the beach along with its mother; the man had resisted his criticism, saying it was better to let the baby rest longer that morning. U Tin Hlang had yielded to the wisdom of his decision. Now Rosemary insisted that we visit the baby. Baby, indeed. It pushed up to me, eye to eye, trunk waving about not under any apparent control, a threatening playfulness, a pot ent inquisitiveness. I rubbed it behind the ear, as instructed, which it seemed to enjoy.

"May I feed him?" Rosemary asked.

The mahout found a largish bottle with a very substantial nipple, and while I stood on one side of the animal rubbing behind its ear as self-protection, Rosemary stood on the other side and held
The bottle in the baby’s mouth, tucked in behind its trunk, while we smiled in delight at one another across its huge baby head.

The mahout handed me a banana, indicating it was for the elephant. “Should I peel it?” I asked.

“He prefers it that way, I should think,” Lang replied, rolling his eyes at the absurdity of my question. “Don’t they keep elephants at Eton?”

So I peeled it—one-handed since I was determined to continue the self-protective behind-the-ear rubbing—and then, handing the peel to the mahout, speculated how to give the banana to the small-large beast. I held the banana in my left hand, waving it in front of the elephant’s eyes, my right hand continuing the self-preserving ear-rubbing. The delicate pink end of the trunk curved up, sniffed at my hand, and then eased the banana from my hand, waving it uncertainly in front of our two heads. Clearly the small giant had no intention of abandoning the bottle, and this made it difficult for him to ingest the banana. The trunk waving continued, the banana clutched firmly, and then the trunk curled down and around toward the side of the mouth that was not fastened on the bottle. It missed. The banana squashed on the elephant’s cheek. With a slight squeal of surprise, the animal reared backwards, abandoning the bottle, and began cleaning its cheek with its trunk, this time safely conveying the remains of the banana to its now available mouth.

The mahout pushed at it and stroked it with his hands, delighting in the fuss that was being made of his pet.

U Tin Hlang said, “Now everyone has had breakfast, though I must admit this little one eats a lot less than we did, certainly than Blair did.”

“What’s his name?” Rosemary asked.

“He hasn’t been named, yet,” Lang said. “Have you a suggestion?”

“Let’s not call him Eric,” Rosemary said. “He doesn’t eat nearly as neatly as Eric. I’ll think of something and let you know.”

U Tin Hlang said he had to be off—litigants awaited. But we could stay as long as we liked. Would we be free to have dinner with him that night? I certainly was, and not to my surprise by now, so was Rosemary.

I found myself shy in Rosemary’s presence after U Tin Hlang left. It was all too obvious, too contrived. She, too, seemed somewhat strained. We walked to where her horse was stabled and she left to ride back to her bungalow, arrangements having been made.
for U Tin Hlang’s Fiat, in which I had been driven out that mor-
ing, to collect us for dinner that night.

* * * * *

The drive to dinner, the three of us through the evening (for U
Tin Hlang had come himself to pick us up), our conversation—all
fade in my memory into the reality that that was the night Rose-
mary and I first became lovers. U Tin Hlang made no effort to
conceal the role he was playing, but it seemed in such warm friend-
ship that even embarrassment left me after a while. Dinner was
served on the veranda of a smallish bungalow near the beach where
we had bathed that morning, a bungalow U Tin Hlang said he
“kept for house guests he did not particularly want in his house.”
And he managed to leave us there later in the evening in circum-
stances that could have but one end.

I had not known that there could be such easy and light sensu-
ality; certainly it seemed far from my character and far, far distant
from any prior experience of mine. Rosemary stayed the night. U
Tin Hlang joined us for a swim in the morning, coming alone, with-
out his usual retinue. Presumably he had a servant watch our bun-
galow through the night and alert him when we were up. To my
surprise, this did not trouble me at all.

When we were sitting on the beach after our swim, Rosemary
asked me why I had not come to Rangoon on the previous Monday
when U Tin Hlang had invited me. She said it cut our time to-
gether and this was a pity. I had never before been so openly ad-
mired and I still found it hard to accept. But it was certainly true
that I had had to defer my holiday for three days because of the
Seymour affair in Moulmein.

“The Seymour affair?” U Tin Hlang asked.

“My near neighbors, Brian and Jean Seymour; you must have
met them when you were in Moulmein.” But neither Rosemary nor
U Tin Hlang could call them to mind.

“Anyhow,” Rosemary said, “what about them?”

“He beat her up rather badly a few nights ago. Dr. Veraswami
and I tried to bring some peace to their marital relationship. I
couldn’t leave until some semblance of order was restored.”

U Tin Hlang looked serious, for once. “The tropics are hard on
Englishmen like you, Blair,” he said, “more than on other Euro-
peans. You do better, I think, in the daytime; but in the evenings and
nights you drink too much—more even than the Dutch—and you
treat our Burmese women only as whores. It has something to do, I
think, with the pedestals you use for your wives and girlfriends in England. You divide women into two groups: wives or potential wives to be respected, the others not to be respected at all—to be used, if possible, but only to be used. And, of course, that is how you see all our women. It is sad.”

U Tin Hlang may have been talking sense, but it didn’t seem to me a suitable occasion for such animadversions, considering Rosemary’s and my present situation; nor did he seem to me to be in the best position to offer this type of sagacity. The night before he had been boasting to us that his name had been prominent in a competition run by the Rangoon Times to compose epitaphs of well-known Burmese. U Tin Hlang had been the subject of the winning epitaph: “At last. He sleeps alone.” The energetic pattern of his bachelor life was well known; it seemed to help his career, and not only among the wealthy Burmese. The Europeans did not seem to find this aspect of his life an impediment to their purchasing his skills as an advocate. But he was probably right about most middle-class Englishmen; for me the idea of love—I had never experienced the reality—pertained to, and only to, Englishwomen. I did not think of it as possibly applying to a Burmese.

“But Rosemary is right, Blair,” U Tin Hlang continued. “Don’t be so mysterious. Tell us precisely what did detain you.” So I told them. It was probably a breach of professional confidence, but I’m glad I did.

* * * * *

I couldn’t expect Brian Seymour to believe it, but I had to give some excuse, devise some way of protecting his houseboy. I could hardly have heard screams at that distance. True, the Seymours lived just three doors down the track, but three bungalows distant in Moulmein often exceeded a quarter of a mile. So I said I was out for a walk before retiring and had heard a shout as I passed by his bungalow and thought somebody might be in trouble. “Could I be of help in any way?”

“Yes. Get the hell out of here, Blair. It’s none of your damned business. Just clear out.” And he made to slam the screen door in my face.

But I could see through the screen door from their veranda into the lit interior and there was no doubt that Mrs. Seymour was on the floor, her clothes dishevelled, blood about the corner of her mouth, and what looked like a substantial swelling above her left eyebrow. And Seymour was obviously in a rage and far from sober.
I put my foot forward to stop the screen door and, as calmly as I could, said: “Your wife seems unwell. Should I call a doctor?”

He kicked at the door, trying to move my foot, and continued to shout at me and then at his wife. “Get out of here, Jean. Let me deal with this idiot.”

She struggled to her feet and it became apparent to me that though she was not badly injured she had been beaten more than lightly. I had no choice in the matter. I could not leave. I remembered what I had been taught at the Mandalay Police Training College, at least the part that said that domestic disputes were both difficult to handle (I could have guessed that) and often the cause of injury to the police. The fact that both parties to the dispute sometimes inflicted injuries on the police seemed to me grossly unfair but, on reflection, also not surprising.

Seymour was a largish man, overweight and too full of alcohol to be a serious threat to me in a fight unless he were armed, but I had no inclination whatsoever to struggle with him. Nevertheless, I did push the door open when he turned his head to shout at his wife. I shoved my way past him to assist her. She seemed dazed and grateful, but as he rounded on us both she jerked away from me and tried to grab his upraised arm. He shook her off.

The three of us stood there bewildered, as in a tableau vivant, for what seemed an appreciable time. I broke the strain by doing what I remembered had been suggested by one of our teachers in Mandalay. “If you want to avoid a fight, and think you can get away with it, take off your cap and sit down. It’s very hard for anyone to hit a man when he’s sitting down. Goes against the grain of most everyone.” I had no cap to take off, but I pursued the rest of the advice, pulled a chair from the table in the center of the room, and sat down.

I thought I had better try to interrupt Seymour’s continued shouts for me to get out and mind my own business. I was getting tired of the repetition, even if he did vary the imprecations surrounding his central message. “Shut up for a moment, Seymour, and listen to me. It’s clear you’ve assaulted your wife and I should arrest you, but I don’t want to do that. But I can’t just do nothing and leave.”

“Arrest me. Arrest me! You miserable prick. You can’t arrest me. It’s you who ought to be arrested for bursting in here and meddling in what doesn’t concern you.”

My effort to get him to come to his senses had merely raised the decibel level of his fury; but after a while he did seem to become a little more controlled and, turning to his wife, ordered her
Poor Jean Seymour was sobbing quietly in a chair in the corner. She nodded her head in agreement. Triumphantly Seymour turned to me: "Now will you get the hell out of here?"

The general advice given in Mandalay on such matters was that family disputes in the villages should be left to the headman, unless someone was in danger of death or lasting injury, and that if European spouses fought, as they occasionally did, it was best not to take any official action unless the injured party wanted to swear out a formal complaint, and even then only if considerable injury had been inflicted. Yet I could not just leave Jean Seymour to the mercies of this brute.

"All right, Seymour, if you will just go out on the veranda for a few minutes while I talk to your wife, I will go if she then wants me to."

He hesitated for a while and then walked onto the veranda. "You'd better be sensible about this, Jean," he shouted as he left the room.

I took my chair over beside hers and offered her my handkerchief—surprisingly clean, I noted. She took it and mopped at her face and tried to rearrange her hair.

"He hit you, of course. What do you want me to do about it? Would you like me to take you to the Club for the night? I could arrange it quietly, if you wanted."

She gave no answer, the sobs becoming sniffles.

"Should I arrest him for assault? I will if you want, but you will have to come to the police station in the morning and sign an information against him."

The sniffles turned back to sobs and then to words, at least a few words: "No. No. Don't do that. Please don't." And then, grabbing at my hand, she said, "Stay for a little while. He will calm down. He always does after he has been drinking. He comes to his senses quite quickly. Then leave us."

Perhaps it was good advice, but I remained unsure. "Does he hit you often?"

"Oh, no. Never. Never before. He gets angry, but this is the first time he has hit me." Her previous sentence had tended to contradict what she was now saying, and, that apart, she was a poor liar. I knew this was not the first beating she had received. So I decided what to do, and did it. I sat with her for a few minutes, until she seemed more in control, and then called to Seymour to come in. He was obviously still furious but in better control. I told..."
him I would go but only on condition that Dr. Veraswami be allowed to call on his wife the next morning to be sure she had no lasting injury. I was sure she didn't, but it seemed one way to give her some protection through the night.

"You really are a meddling fool, Blair, but if you insist, I assume that your pet Indian doctor won't do her any harm. But I'm not going to pay for it. You can be sure of that."

I told him there would be no charge to him—I would see that Dr. Veraswami's fee was otherwise met—and, leaving my handkerchief with Jean Seymour, as a tribute to my safe retreat, I made my way back to my bungalow and, I had better confess, felt quite pleased with myself. I thought I had handled it rather well.

* * * *

I had hoped to leave for Rangoon the next day as I had arranged with U Tin Hlang, but I decided to await Dr. Veraswami's report on Jean Seymour in case I had to take any action in the matter—I certainly didn't want to leave that to the Indian sergeant who would be in charge during my absence. After all, Seymour had been a major in the Burmese Rifles in the War and was now a quite successful rubber planter. Any police action against a European gave Mandalay anxiety. So, the next day I tried to telephone U Tin Hlang, but finding him away from his office I left a message deferring my trip to Rangoon and expressing the hope that it would not inconvenience him if I came a day or two later. I then called on Dr. Veraswami at the hospital.

Dr. Veraswami listened quietly to my story of the events of the night before and said he would call on Jean Seymour immediately; there seemed no need for him to make an appointment with her since I felt sure she would not show herself out of her bungalow with the facial bruises she must still have.

Veraswami suggested I come to his bungalow for a beer in the early evening and I accepted. Perhaps I would soon be able to get away to Rangoon.

* * * *

"First, Eric," he said, as he fussed over me and my Watney's Pale Ale on the veranda of his bungalow that evening, "there iss a problem of medical confidences, ethics, keeping mum. When I got to the Seymours, Brian was there also and tried to insist on being present while I examined Jean. I refused, of course, and told him I
had come not as her doctor but representing you, Mr. District Officer Blair. I told him if he didn’t want me to examine his wife and if she didn’t want to be examined, I could do nothing except report that to you and, of course, to a court if it should come to that. I have no idea, Eric, if that makes any sense, but that is what I said. And I did even more.” Here Veraswami rubbed his palms together in self-satisfaction, bouncing about the veranda. “I gave her a paper to sign, saying she was not my patient and that this examination and whatever I should learn from it could be told to you.” Veraswami paused and beamed at me, producing a slip of paper from his hip pocket and waving it high, anticipating applause.

I gave it: “What a wonderfully astute, legally acute, medical officer the Raj has in Moulmein,” I allowed, earning his high-pitched giggle. But it did not really seem a subject for hilarity to me and I said, “Surely, after such an introduction, you cannot have got much information from her.”

“No. No. Not at all. Once we got rid of Mr. Seymour I performed a quiet, complete, and very leisurely medical examination of Mrs. Seymour, paying close and friendly attention to her medical history, which becomes, isn’t it, a life history. She spoke to me very freely, yess, freely indeed. I don’t think many people have ever taken an interest in her. Here is what I found out.” And with sudden seriousness of purpose and precision of language he told me how matters stood between Jean and Brian Seymour.

The gist of it was that when Brian drank he became both aggressive and suspicious of his wife, though she had given no cause for suspicion. She would protest, whimper, become fearful of him, and this would feed his anger. Quite often he struck her, never doing serious damage but bruising and hurting her greatly. Sobriety would bring repentance and contrition, followed by a period of gentle affection, which she regarded as the “real” Brian. Then the slow cycle would repeat itself.

Though the drinking and violence seemed to have been growing over recent months, Jean Seymour refused to consider either leaving him or taking any legal action to have him bound over to keep the peace—which she knew could be done. Such action would ruin his career; his firm would likely sack him, and their work together over the years would be for naught. She thought the events of last night had brought him to his senses. He had been solicitous and loving when Mr. Blair had left them alone last night. She said she was grateful to Dr. Veraswami for coming but asked him to do nothing further, and asked him to say the same thing to me.
I confess that I felt relief. I was looking forward to the Rangoon holiday, and Seymour's squalid attacks on his wife were an unpleasant distraction. I said as much to Veraswami, who did not disagree, but who did give me the uncomfortable feeling that he thought I should perhaps have a talk with Brian Seymour.

"But what am I to say to him? We both know what happened. He knows I know. He knows I won't do anything unless his wife wants me to."

Veraswami waved his head in a circular motion indicating neither agreement nor disagreement.

"These are very difficult matters, Eric. As some men's potency declines, they drink more, and their potency further declines, and they blame their wives, and they drink more, and they look elsewhere, and they blame their wives for that too, and on and on . . . ." His sentence trailed off into his beer glass, his free hand making circular motions away from his body.

I drew him back to one aspect of my talk that night with Jean Seymour. "I remember, Dr. Veraswami, that Jean Seymour seemed worried for her husband rather than for herself, even when she knew that I was not going to arrest him and make their problems public. It seemed to me more than just some queer sort of affection for the brute. She said something about him not being able to help it, about him having been often beaten by his father as a child. Did she say anything like that to you?"

"Yess, indeed. Indeed she did. I tried to tell her that was no excuse for his beating her, that he had been beaten. And I don't think it iss, but she kept on about it."

"Well, it does help to explain his behavior, don't you think?"

"Explain, yess. Excuse, no no no," and his head-waving became vigorous.

The distinction seemed elusive; surely it did help to explain, and therefore to excuse, his conduct and I recall I pursued that line of argument with Dr. Veraswami. He would have none of it and drifted to what seemed to me very unreal comparisons. "Eric, we are all of uss responsible for what we are. Some are born very intelligent, like you, but that iss not at all to their credit; they couldn't help it. Some are born with wonderful, caring parents and they find it easier to become loving husbands and true friends; some are born retarded; some are born to brutal, neglectful parents and they find life very cold and very hard; some are born to the rich, some to the poor. There is no less virtue in inheriting money than in inheriting brains, and no more. There is no more virtue in having loving parents than in having brutal parents, and no less."
We are all of us responsible for what we do with what we are given, whatever it is or was."

It seemed to me a most unfair doctrine, and I said so. Veraswami stopped his head-waving and glared at me in mock indignation: "Unfair, you say. Of course it is unfair. Who ever thought that life was fair? Look about you, Eric my friend. How fortunate we are; how sad the lives of some around us, and no fault of theirs. All you can do, ass I say, is hold people responsible for their actions, whatever caused them, and then try to alter your own response to what they have done, in accordance with your best understanding of all that caused them to do it—and you will never be sure, so you had best be kind. But don't pretend they are not responsible; it is a maudlin and dangerous way to think. Brian Seymour was responsible for his drunkenness and for his brutality to his wife even though we believe he was heavily pushed to drunkenness and brutality by his own parents."

I forget how that discussion ended. I think I lost track of it after a while. But I remember that at the time I doubted that it had much to do with the likelihood of Seymour again beating his wife—and anyhow, I was most anxious to be on my way to Rangoon. I found it easy to persuade myself that it was proper for me to leave Mandalay for a few days. I have always found it easy to persuade myself of the wisdom of doing what I want to do—perhaps that is what Veraswami meant by being responsible, or should I say, irresponsible.

* * * * *

Rosemary and U Tin Hlang had listened to my narrative without interruption, but it was clear that Rosemary was troubled by it. "And you have done nothing about it, Eric? He can just go on hitting her and apologizing."

"What should I do? Arrest him, try and convict him, bind him over to keep the peace? Get him sacked? That won't be much help to her. Surely it is best to consider her needs first."

"It depends on what sort of world you want to live in, Eric. I want one where it is a crime for a husband to strike a wife or a wife to strike a husband. A few like your Seymours may suffer in the process, but I think there should be no tolerance at all for such domestic tyranny. I'm not talking about a rare drunken quarrel that turns violent; what you describe is a regular pattern, a predictable pattern, of oppression and violence."
I felt beleaguered, and U Tin Hlang did not seem inclined to help. His offering the thought that, at early common law, it was an offense for a man to strike his wife with a stick thicker than his little finger, was no help at all. Rosemary turned away from us both in annoyance.

Shattered by her disapproval, I promised that my first task on returning to Moulmein would be to call on the Seymours and make clear to them both that I proposed to take a continuing interest in the prevention of any repetition of violence in their household, and if there was a recurrence that I would initiate the prosecution of Brian Seymour whether his wife wished it or not.

This somewhat mollified Rosemary, and we turned to more pleasant topics, and after that, when U Tin Hlang again quietly left us, we entered on another relaxed, joyful, and intimate day and night.

* * * * *

U Tin Hlang had told us that he would have his driver take him to his chambers each morning while we were his guests and bring the Fiat back to us; we should make use of the car as we wished. If we were out when he wanted to come home he could easily get a tonga. It seemed overly generous but he insisted.

Rosemary decided, on the third day of our idyll by the beach, that she had better go to Rangoon to check that all was in order at her bungalow; we might then go on a drive down to the mouth of the Irrawaddy, which was said to be a most fertile and lovely delta.

Rosemary liked to drive; she drove well, if slightly flamboyantly; there were no punctures for me to repair; and the day should have been a joy for me. But it wasn’t, and it was clear that my resulting reticence was beginning to annoy Rosemary.

I did my best to be bright and cheerful, but it was no good. And it made no sense to me. Here I was on leave with a lovely and affectionate lady, with no obligations, no expectations of me except to do what came so easily—to adore her; I was free to chatter about myself, which she seemed particularly to enjoy, and also about her, which with some reservations seemed acceptable to her and certainly engrossing for me. And yet I felt a knot of sadness below my rib cage. I was morose.

Rosemary did not exactly show me off when we called in at her bungalow; she asked me to wait in the car, but she certainly took no pains to hide my presence. And the same was true as we drove south through Rangoon. Indeed, she drove to the Officers’
Club and waited while I went in to check if there was mail for me. In Rangoon, as she must have known, the word would get back to her husband that she and I were driving about in U Tin Hlang's very recognizable Fiat tourer, and that I had both been staying and not staying at the Officers' Club for a few days. That she essayed no concealment whatsoever troubled me.

I knew I was being childish and did my best to cast off the spell of gloom. I think I largely succeeded; at least I don't think it spoiled her day. But that night, after perhaps too much wine at dinner, the dam of concealment broke.

It was such a trivial occurrence. We were in bed. One of the shutters outside a window of a neighboring room had come loose and was flapping. I favored letting it flap. Rosemary thought it would keep us awake. I said that the way we were behaving, before long nothing would keep us awake. She persisted. I said I would try to fix it and asked if she thought there was a torch in the bungalow.

She got up—scrambling out from under the mosquito netting and tucking it in behind her—and walked into the second bedroom, not bothering to put on any lights. I heard a drawer being opened and then she was back with a torch. I, too, pushed the mosquito netting aside, got up and pulled on some shorts, stuffed my feet into my shoes and, taking the torch from the still naked and lovely Rosemary, made my way out of the bungalow and around to the shutter, guided by its squeaking and clumping.

All that was required was a finger-tightening of the attachment that held the open shutter back to the wall. It would have been just as easy to close the shutters from inside and leave the repair, such as it was, to the morning. But since I was there I fixed it.

By the time I returned, Rosemary was asleep and I was furious, wildly enraged. How the hell did she know precisely where that torch was? She must have been here often before, probably with U Tin Hlang and God knows how many others. This wasn't love, this wasn't affection; I was simply being used.

I wrenched the mosquito netting aside and shook her awake. "How did you know where that bloody torch was? Tell me! Go on, tell me!"

She was sleepily bewildered. I found I was still shaking her quite vigorously. "You must have been here with others. Even with Lang?" And now she was very awake and entirely perceptive.

"Eric, Eric, do be still. Sit down. Stop shaking me." She seemed warmly affectionate despite my fury, and her calm did
nothing to cool my rage. But I did let go of her and sat down on
the edge of the bed, fists clenched and banging on my knees.

She knelt in front of me, straight-backed, and wrapped her
arms around me, pinning my arms to my side, and made noises of
comfort and encouragement. “Dear Eric. Don’t be jealous. There’s
no one else. Of course I have not been here with Lang. The torch
was in the second bedroom. I have slept there occasionally when
George has been away, but never with anyone else. Please don’t be
angry and spoil it all.”

But I knew she was dissimulating. I knew she was not speak-
ing the whole truth. Part of the truth, perhaps, but not the whole
truth. I knew for a certainty I was not her only adulterous lover.
And in fury I wrenched my arms free. My clenched right fist struck
her sharply on the cheek. I felt the impact and heard the thud.

Did I mean to hit her? I certainly meant to escape what then
felt like a deceitful embrace—and to escape vigorously. Did I in-
tend my clenched fist to hit her? I must at least have realized that
possibility, but did I intend it? I still don’t know. Perhaps I meant
to hit her, perhaps not. Does it make a difference?

Her knees bent and she knelt backwards on her heels, her
hands clutching at her face where I had struck her. She made a
faint “Oh” noise.

Misery engulfed me, and I had her in my arms in the deepest
contrition.

She forgave me.

Thereafter, it was a wonderful night, and before long I doubt
that a houseful of banging shutters could have kept us awake.

But the bruise was there in the morning, a deep embarrass-
ment to us both.

* * * * *

We were lying in the shade beside the beach when a houseboy
came running from U Tin Hlang’s bungalow calling me to the tele-
phone. There was no telephone at Lang’s “guest house” but there
was at his bungalow. When I got to it, Lang’s secretary was holding
the line; Lang came on: “Sorry to disturb you, Old Boy, but you
had better hurry back to Moulmein. You’re needed there. Appar-
ently your Seymours had a bout more vigorous than their usual
fisticuffs. Dr. Veraswami tells me that Brian is dead and that he
has Jean hidden away in his hospital. He seems a little unclear
what to do, needs your help.”
I thanked U Tin Hlang for his hospitality, asked when the next train left for Moulmein, and asked his permission for his driver to take me to it. There was just time to pick up my things at the Officers’ Club and catch the afternoon train.

U Tin Hlang agreed, of course, and added that, if she cared to, Rosemary could drive me to the train and then leave the car at his chambers, or he could drive her home. Again I felt the stirrings of jealousy; I hope my voice did not reveal them. U Tin Hlang added, “And, by the way, Veraswami sent his best regards to Rosemary and yourself and expressed his deep regret at disturbing your honeymoon.”

We might as well have hired a hall for our affair!

* * * * *

I arrived in Moulmein early the next morning, blaming myself throughout a long and miserable night for my failure to have taken the Seymour matter more seriously—such selfishness, such neglect of obvious duty—and went straight from the station to the hospital. Dr. Veraswami was on his rounds but interrupted them to join me.

“What a pity to terminate your holiday, Mr. Blair. I am so sorry, so very sorry.” One would have thought he had killed Seymour, such was the intensity of his apology.

“It’s not your fault, Dr. Veraswami. I’m glad you were able to find me so quickly. Can you tell me now what happened, or would you rather I called back later?”

“Perhaps you should speak first to your duty sergeant. He is anxious and does not know what to do. He tells me he has not yet reported Seymour’s death to Mandalay. Mrs. Seymour is safe here. Perhaps you would be kind enough to return to us here as soon as everything is in control with your police.”

As usual, he was right and I did what he suggested. The duty sergeant was certainly glad to see me. Apparently it had been a call from the hospital that had brought him to the Seymours’ bungalow. Dr. Veraswami was there when he arrived. Seymour was obviously dead, naked on the bed with a sheet thrown over him, shot in the temple at close quarters. Dr. Veraswami had not—as the sergeant said he should have—left the scene of the death untouched, but had moved the body from the couch in the living room to the Seymours’ bedroom and had to a degree cleaned up the mess on the couch, where many bloodstains spoke to the site of the killing. He had also given an injection to Mrs. Seymour before the ser-
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The sergeant arrived, and had suggested to the sergeant that she was in no fit state to be interrogated. He further told the sergeant that he would take Mrs. Seymour to the hospital and would call me on the telephone to return to Moulmein.

The sergeant had then arranged to have the body taken to the hospital in case an autopsy was thought necessary.

All Dr. Veraswami's advice had appealed to the sergeant, though he seemed to resent Dr. Veraswami having taken charge so forcefully; but he did precisely as Veraswami had advised. When Dr. Veraswami later told him that I would be back the next day, he decided not to report to Mandalay, but to leave that to me.

I sent a telegram, marked IMMEDIATE, to Mandalay advising them of the death of Brian Seymour and that I would report details as soon as I knew them. I did not think it necessary to give the date or time of his death.

Dr. Veraswami was waiting for me when I got back to his untidy room in the hospital. His electric fan kept the air moving, but it was a typical hot and humid Moulmein noon of the rainy season, and we were both sweating miserably.

"It was the Seymour houseboy that came for me. The same one, I assume, that came for you a few days ago. He could not call me on the telephone; it had been torn from the wall. This was, it seems, a much worse fight than we knew of before. Jean Seymour says so and I think she speaks the truth."

When he got there, Veraswami found Brian Seymour naked and dead on the couch in the same room where I had found them battling before. Mrs. Seymour lay wailing on the bed in the bedroom, Brian’s rifle resting against the foot of the bed. There was no blood in the bedroom, but the couch and the carpet in the front room were saturated. Veraswami cleaned up the mess as best he could before the sergeant arrived.

I asked why he did this. He said he was not sure, but perhaps it would be better, he then thought, if the story of that night were not so obvious.

"Have you pieced together what happened, Dr. Veraswami?"

"Well, I have talked several times to Jean Seymour and I think I know, but, of course, I know only her story. Still, it does not vary and it is a sad, sad story."

What had happened was, he thought, this—though the details had been beyond her narration and he did not wish to imagine them: Brian had come home late—from the Club, he said, though he doubted this since he did not seem to have been drinking and he always did drink at the Club. He was late for dinner and she
expressed her annoyance. He became quite angry, but the meal passed in relative peace, though he did, over her objections, have several whiskies with dinner, which was unusual for him. For reasons she cannot recall, she became convinced he had not been to the Club that evening and suggested that he had visited a native girl. Words moved to deeds, blows and tears followed, and she rushed into the bedroom. He followed her in a rage, but in a rage which had amorous overtones—“sexual relations between them were often thus initiated, Mr. Blair, I think”—and despite her protestations he struggled with her, made her undress, and tried to force her to intercourse, “but it was not her strength but his weakness” that made this impossible.

His impotence enraged him further. He began to beat her more. His fury took a different but predictable turn: “It’s your fault. You’ve always been cold as a fish unless you’ve been pushed around a bit first. You never do what I want, and you know what it is. Of course I look elsewhere.”

She did not know what he was talking about, and then suddenly and clearly she did. His impotence was not only alcohol driven, he was sleeping with anyone who would have him, exciting him as he wanted to be excited—paying them, no doubt. A rage deeper than she had ever known supplanted her usual cringing terror. She challenged him with what she believed: that he was impotent unless he could hurt someone first, or unless it was a girl paid to do disgusting things to him. She would leave him the next day.

He made no denial, merely continued drinking and promising her that if she left or told anyone about this, he would kill her. And there were blows to prove it, more brutal than ever before. She tried to hide from him, but he dragged her back into the front room and held her there, terrorized. She believed herself in danger of death.

Veraswami said that her physical condition was powerful evidence of the truth of her story, at least as far as the protracted beating was concerned. She was bruised badly, heavily in the breasts and torso; there were many contusions, and heavy bruising about her thighs. She may well have feared for her life.

Eventually he fell asleep on the couch.

“And then the story becomes quite strange, Blair, but I think I know it. It’s hard to be sure, of course; one who knew is dead and the other is very, very upset and now quite heavily sedated. But I think she spoke the truth to me, the truth about what happened, not why it happened. I am sure she doesn’t understand that, nor do I, though I guess. But what happened, yes, she is mercilessly
honest about that. And it matches his injuries. Yess, she speaks
the truth ass best she can...” And he was silent for a while; then,
bringing his palms together and turning the fingers towards me for
emphasis, he said: “She tried to kill herself. She feared for her life
if he should wake. She knew she had to do something. Naked and
injured there seemed only one course—to kill herself.”

I could not help interrupting. “ Tried to kill herself and man-
ages to shoot him in the head? You can’t believe that?”

“I am sure of it.”

“Simply because she told you so—you believe her?”

“Eric, you become angry with me. Please stop it. This iss a
matter I have thought a lot about these past hours and there iss
more than her words to tell the tale of that night. I have examined
her physically, and the corpse too. They both tell a lot.”

I gestured an apology and managed to control myself.

“When I got to the Seymour bungalow that night I noticed she
was bleeding slightly from the mouth. I assumed he had struck her.
Well, he had, frequently, ass I told you, but not, so it happens, on
the mouth or jaw. He attacked her thighs and body, not her face. It
wass not until later that I understood.”

I had no idea of what he was talking about and thought it
better to hold my tongue.

“Well, you see, he was killed by his own rifle but that rifle had
also injured her. You know that little bit of metal that sticks up at
the end of the barrel of rifles with which you British aim at us
natives when you want to shoot us? The front sight, I think it iss
called.”

“Dr. Veraswami, I still don’t understand what you are talking
about. Please tell me briefly what you think happened and then let
us try to tease out its details. You are losing me with blood here
and blood there, and bits of metal and sights, the relevance of
which I am sure you know, but I don’t.”

“Yes, yes... it iss so. I do drag out these things... let me try
to be curt... brusque like a British, isn’t it.” He was quiet for a
moment, and then it burst out staccato and even more sibilant
than before. “After her severe beating and with her husband
drunkenly asleep, naked on the couch, Mrs. Seymour decided it
must end. Her disgust and hopelessness turned towards herself,
not her husband. She knew he kept a Lee Enfield 303 rifle on the
top of the wardrobe. She took it down, pulled back the bolt as she
had been shown and loaded the rifle. She then tried to shoot her-
self in the mouth. Why thus, I suspect, because of the particular
humiliations to which he had forced her that night. But obviously,
she could not reach the trigger. I can imagine her tortured, despairing wrestlings with the rifle. Her disgust with herself built on her hatred of her husband, and furious with the rifle, as if it too had betrayed her, she put it to his temple and now the trigger was within easy reach.”

The houseboy must have heard the earlier shouting but he knew better than to interfere, certainly after the treatment he had received when he had previously called me to the Seymour bungalow; but the noise of the shot and then the utter silence brought him to her and she managed to pull herself together enough to send him for Dr. Veraswami.

The facts seemed clear enough; even my duty seemed clear enough. Jean Seymour had murdered her husband; that was all there was to it. I must arrest her, hold a preliminary inquiry, and unless some extraordinary further facts emerged, and I could not imagine what they might be, commit her to the Assizes on a charge of murder. Her husband’s brutality might persuade a jury, exercising its prerogative of mercy, to convict her of manslaughter rather than of murder so that a more lenient sentence might be imposed; but that she was guilty of homicide seemed clear enough.

And yet, knowing the depth of her suffering I could not but be deeply sorry for her.

I told Dr. Veraswami that I would have to arrest her but that if he would hold her in a locked ward for the time being, I would not further trouble her today. She had enough to put up with without a callow District Officer arresting her in her misery.

* * * * *

Veraswami took a less clear-cut view of the matter when we met for our preprandial Watney’s on his veranda that evening. “Much of the fault is ours, Eric. Yours and mine. We knew her peril a few days ago and we did nothing about it. It iss not really surprising, abandoned as she wass, with no one to help her, far from any friends and fearful of that nasty man, that she finally broke. We should have helped her more.”

I was impatient with him. It was so easy to be wise after the event, and I said so, though I did not pretend that I did not share his sense of guilt. “Surely, Dr. Veraswami, you wrap a hair shirt around both of us needlessly. I don’t think it fits me. From what I knew—and we talked about this, you will recall—we had given Jean Seymour what little protection we could in the light of her insistent wish to do nothing that might embarrass her husband in
the Moulmein community and in his work. And she certainly did
not wish to leave him. In fact, she seemed more sorry for him than
for herself. I offered to have her put up at the Club and to keep
him away from her until she could make other arrangements, but
she would have none of it."

"As a doctor I should have seen her danger more clearly and
tried better to protect her, and, if I may, Mr. District Officer, per-
haps you too could have done more for her on the night you saw
her being attacked. You say, and I know it is true, that she told
you she did not want you to do any more. But surely you see her
impossible situation. If she wanted protection that night, perhaps
she wanted you to impose it on her—at least in the eyes of her
husband. You see, Eric," and his tone softened with the affection I
knew he felt for me, "you could have given her some of your au-
thority, strengthened her then and for the future in the eyes of her
husband by giving her the sure knowledge that—regardless of what
she said she wanted—you would not leave her helpless. I am un-
sure, but perhaps you should have arrested him and then later let
him go when she took no further action—not put her to election
then and there after a beating, with her husband lurking on the
balcony."

It seemed most unfair, and I said so. It would have been an
illegal arrest if I knew there would be no subsequent prosecution.
But still, was I sure? What harm would an illegal arrest do in such
a situation, and if no one could bring any action suggesting that
the arrest was illegal—and Brian Seymour certainly wouldn’t—then what does "illegal" mean here? Blast Veraswami,
he does upset me sometimes. I tried not to show my annoyance:
"You may be right, Dr. Veraswami, but we both did what we
thought was right at the time. It’s all one can do."

Veraswami would not be completely mollified, though he did
soften his criticism: "Yes, Eric, I am perhaps too hard on you, but
not on myself. I recognized the pattern of his behavior. I saw its
regularities, the cycle of violence, repentance, and sex which he
needed to escape impotence with his wife—though not perhaps
with others. I knew how they both were trapped. I should have
taken it more seriously, provided more help and protection for her,
insisted on talking and explaining matters to him, not just left it,
hoping for the best as I did."

Unusually for me, I thought Veraswami was in maudlin error
and said so: "We could have arrested him, taken her into protec-
tive custody if she agreed, or done what we did. We could not fur-
ther force ourselves on them against their wishes. We cannot run
their lives. You blame yourself without reason, Dr. Veraswami. And anyhow, all this is spilled milk, spilled blood rather, and we had better talk about what is now to be done rather than what perhaps then should have been done, but was not.”

Veraswami held up both arms in front of his head as if to ward off my blows. “Be less severe with me, I beg you, my young friend. I merely regretted my own lack of foresight. But you are right, it iss spilled blood about which we can now do nothing. So now we must worry about the lady that did the spilling.”

“Not only her, Dr. Veraswami. As the representative of the law here in Moulmein I suppose I must also enforce that law. Killing unfaithful husbands would decimate the European population—more than decimate, few would be left standing—and it is my duty to restrict such carnage by punishing those who do the killing.”

“Surely she was pushed beyond all endurance, Eric. Must she be further punished? Few European husbands are as brutal as Brian Seymour. It wasn’t just his infidelities that made her kill him; it was the regular and increasingly violent beatings. Iss she not free to defend herself?”

I told Dr. Veraswami that I well remembered this part of the law I had been taught at the Mandalay Police Training School. A killing by one attacked could be justified or excused or could amount to the felony of either murder or manslaughter. But, to be justified or excused, there must be “imminent” danger to life or serious danger of personal injury at the time of the killing, the person killed providing the imminent threat. This just was not so in the story we now believed of Jean Seymour’s killing of her husband. He was asleep at the time, a deep, alcoholic sleep; he was an imminent threat to no one. She could have left the bungalow and sought safety at the Club. She could have sent her houseboy for me. (He wouldn’t have found me since I was in Rangoon, but that seemed irrelevant to my argument.) She could have gone to a neighbor. She certainly had no need whatsoever to protect herself from a then-helpless man by shooting him in the head. It was not as if she had children to protect and was thus tied to the house; she could just leave.

It was a rather long harangue, not broken by Dr. Veraswami’s hand waving his desire for me to pause so that he could interpolate comment.

When I stopped, he looked pained, and asked, “Do you really think she is a murderer, Eric? Think of the pressures on her. She had no one she was close to in Moulmein; am I not right that at
the Club she was seen as, would you say, déclassée? I don’t know what family she has in England but I doubt there is much to support her there. Brian Seymour was not only her master, her trainer in violence and love as she came to know it, he was also all she had by way of a meal ticket and a protector against poverty and the elements. Do you think she would give all that up if she could see any other way out? True, there were no children to bind her to the house, which is the situation too often in these miserable wife-beating cases, but she may well have thought that wherever she went in Moulmein he would follow her and that the beating would be worse for the departure. She was terrified for her life; you see that, I know; can she not defend herself? In her beaten condition she could hardly have been thinking too clearly. But it is quite possible, isn’t it, she thought she would be killed when he stirred from his drunken sleep—and so she tried to kill herself, failed, and seeing no other way, killed him. And there is another matter which is perhaps relevant, I am not sure, and it is hard to talk about. . . .” And his voice trailed off into meditative head wav-ings. “What will become of her now? How will she live?”

“Well, she won’t have much to live on now,” I pointed out. “Whether or not he left a will she can inherit nothing from him. On that, at least, the law is clear, if her killing him was a crime. But what is the other matter you hint at?”

“You speak of crime, Eric. Did he not force her to crime?”

“What do you mean?”

“Is not what is technically called fellatio still a criminal offense under your law, Eric? I am sure he thus compelled her. I know it is a very common matter, and not seen as a crime, but as your law stands it is a crime, a felony, is it not? Can that help her?”

I said that I thought that if it could be brought before a jury it would certainly help her, and I now saw more clearly the double relevance of her self-injured mouth. But it also was quite obvious that it gave no justification for her killing him.

“If she goes to trial the jury could bring in a verdict of man-slaughter rather than murder, or even find her not guilty—against the evidence, it seems to me, but within its prerogative of mercy nevertheless. But our juries generally follow the judge’s directions on the law and I think it very unlikely that she could do better than a manslaughter verdict, and then a light sentence. And, if that happened, whatever Brian had saved would not go to her.”

“Eric, I don’t think you understand how Mrs. Seymour was forced to do what she did. You speak as if it were planned, thought
out. You must understand, there's more to it than that, much more, and it isn't quite so obvious, not at all well understood, but certainly more than you might think.”

I gathered I was being obtuse and suggested I would do my best to follow what he would tell me if he would make it very simple. I laid it on a bit thick.

“Oh please no, Eric. I was trying to shape it for myself. Of course you will understand, better than me no doubt, no doubt at all . . .” And his head jerkily waved dissent and encouragement in contradictory circles.

I smiled and gestured for him to continue. He began the veranda-pacing that always accompanied his more formal presentations. “It is called, I believe, a syndrome, a regular pattern of behavior, a psychological condition, if you follow me as you undoubtedly do, a pattern that occurs in many people. And, if I am right, Mrs. Seymour’s syndrome was that of a woman who has become accustomed to, built her life around, regular beatings by her husband, followed by repentance, contrition and affection for a time . . . and then around and around and around again. She became dependent on and under the control of this pattern. Just as it controlled him, so it controlled her. It seems strange but I believe it happens in such cases. And you must remember there was no easy escape for her, no way to go that did not threaten entirely to overturn the shape of her life. So the acceptance of the pattern, the beating syndrome, develops. But it also contains seeds of explosion. Too great an increase in violence, some other brutal complication, and desperation is there. No way out. And now the usual pattern is broken. So, self-destruction. And if that for one or another reason is impossible, destruction of the brute that creates the pattern. It is, in short, a compulsion, an inexorable psychological pressure. It would be cruel to punish her further; she is not responsible for what she did that night. Perhaps she was responsible when months or years ago she accepted that pattern of dependence on the ritual of violence and forgiveness, but not when she shot him. She was then entirely helpless, entirely . . .” Dr. Veraswami stopped his pacing and turned to me, full face and expectant.

Possibly he was right, and, if he was, what should I do? It didn’t help me much. “They’d never accept all that in Mandalay. She shot him when he was helpless, that’s all they’d say, though they may add that he was a rotten bastard who deserved it. But then they’d also add that we can’t have wives shooting husbands; it would never do. No, Veraswami, your syndrome would never wash in Mandalay.”
"Perhaps not, but it iss so."

There was a period of silence and then Veraswami changed the direction of our conversation. "You have not talked to her since her husband's death. Don't you think you should?"

"Yes, I suppose I must see her; but really there is not much to talk about in such cases, knowing what we know, nor even much to do. Anyhow, it sounds easy: notify the next of kin, determine the cause of death, and if it might be the result of a crime, hold a preliminary inquiry. In this case I didn't think there was much point in notifying the next of kin—she already knew."

Veraswami glared at me in mock fury. "You are becoming light in the head, frivolous, between the Seymours and the Bretts. It iss unlike you, Eric, to feel no sympathy for Jean Seymour. I am quite troubled for her, quite . . ." And his enigmatic head-waving was clearly intended to drive home to me my own churlishness.

He was right. I did not feel much sympathy for the self-made widow. I knew, of course, I had to give her the opportunity to tell me her side of the story before I held the preliminary inquiry. After all, it might have been so clearly an accident, say while he was naked cleaning his gun (I did find it hard to avoid gallows humor in this case and still did not know why), that I might not face the need for any magisterial inquiry; but I had kept putting the visit off until Veraswami pressed my duty upon me.

When I went to her cell in the prison hospital the next morning, Jean looked even more mouse-like than when I had last seen her. She was curled in the bed, thin-faced and scraggily-haired, covered only by the light hospital gown, for it was steamy hot in the ward. Three other women were there, all Burmese, sitting close together on one of the beds. Dr. Veraswami had told me that he had put her in with others because he still thought there was a risk of suicide and she was safer if others were nearby at all times. But it did not make a congenial ambiance for a heart-to-heart conversation.

She was polite, withdrawn, almost servile, answering me in monosyllables. It seemed to me it would be a good idea to shake her vigorously and tell her to talk openly, but that was hardly my role.

I told her she did not have to talk to me at all about her husband's death if she didn't want to, and I told her further that what she said might be used in evidence against her.

She replied that she had told everything to Dr. Veraswami and had agreed that he could tell it to me or to a court—whatever the
law required. She glanced nervously at the others in the room: “It is hard to talk here.”

I said that they could not understand our conversation and repeated that she need not talk to me at all if she didn’t want to. I think I hoped she would turn me out; I certainly found the situation distasteful.

She said she did want to, and I had the feeling that she did; but then she never managed anything except brief replies to inquiries that retraced what Veraswami and the sergeant had told me. All I gained were her nodded or one-word assents. “What it amounts to, then,” I tried to sum up, “was that again he had beaten you, violently, that you believed he would carry out his promise to kill you if you left him or spoke to anyone else about it, and that you did not know anything else to do except to kill yourself. You tried to shoot yourself but did not know how and turned your anger on your husband and shot him.”

She nodded tearfully.

“And that’s all there is to it? No more? That’s it?” And again the tearful curt agreement, the crying nod. Yet I had the sense that I still did not understand all that had happened. I had not been willing to inquire about the sexual indignities that had been hinted at. I had inquired about Brian Seymour’s confession to having slept with someone else on the afternoon of his death, but this did not seem to have figured in her killing him as much as his brutalities to her. She seemed quite disinterested in other than appearances. Perhaps she was grieving for her husband. Perhaps she was deeply anxious for herself. But it was hard to tell; only when issues arose of others knowing that she had killed him did she manifest any emotion.

I decided I had better try to ask her about the forced fellatio that Veraswami said had precipitated her self-disgust and then her murderous rage—or was it murderous? I suppose that was the central question. At any rate, her lethal rage. “Dr. Veraswami tells me your husband made you do disgusting things to him, and that is why you killed him. Was that so?”

She buried her face in her hands. “Does all that have to come out? Poor Brian. What a terrible thing for people to know. He so hated himself when these fits occurred.” And, to my astonishment, she went on with sympathy for her late husband, even avowing that he was a wonderful man and that life without him had no meaning for her. She was a great one for melodramatic cliches, but I gained the impression that she meant them. I found her appallingly unattractive.
Getting nowhere, realizing that she was telling me nothing I
did not already know, and not even giving me any sense of what it
must be like to be in her situation, I became aggressive. I am usu-
ally too much of a Milquetoast, certainly in my dealings with
women, but she seemed so excessively meek, so tremulous, that I
found my voice rising and my anger too. “You know, Mrs. Sey-
mour, you are helping neither yourself nor me. No one wants to see
you locked up for years and years, but if you keep on whimpering
like this and saying nothing about why you shot Brian, you might
just manage it.”

She made no reply. Trying to get something out of her, I
asked, “Has he any relatives I should notify?”

And now she was suddenly impassioned. “Oh, please don’t.
Let me write to her. Not you.”

“Write to whom?”

“His mother, of course. It will kill her if she knows all these
horrible things. She has no one else. Do you have to tell her
everything?”

I made no reply.

She reached a hand out to me. “Please don’t. We write only
once a fortnight. Let me tell her. I’ll make something up, an acci-
dent or something. I promise to show it to you,” and the crying
intensified.

After a period of silence, to my surprise she asked, “What
have you done about Brian’s burial, Mr. Blair? Can we not have a
very private service, perhaps just you and me and Dr. Veraswami if
he wishes to come?”

It was clear she had no idea of what was to happen. Appar-
tently she thought the central though absent figure in a trial, the
corpse, was to be quietly buried before even a preliminary hearing
into the probably felonious death, while the killer mourned quietly
and then, grieving, left to get on with her quiet life. The desire to
shake her increased.

“Mrs. Seymour, you must understand your situation. There
will have to be a formal preliminary hearing into the cause of
Brian’s death and that had best be before his burial. These things
cannot be hushed up. Then you are likely to go to trial for killing
him—a public trial—in Rangoon or Mandalay. The papers will be
full of it. Of course his mother will know. The only question is how
to break it to her now.”

“But I loved him. I loved him,” she wailed. “All of this is cruel
to him, to his memory. He didn’t mean to do those dreadful things.
He got sick out here. We should never have come here. It would be
cruel for his mother to know. We were so happy, so happy . . . ."
And her body curved away from me on the bed toward the wall,
and the wails became sobs and the sobs tears and it was clear there
was no use my struggling on with this interview.

I left with a sense of dissatisfaction, with irritation towards
her, clear as to my duty but annoyed by it.

* * * * *

I felt the need for advice and guidance. It all seemed too pat.
Commit her to the Assizes. But nobody would gain, except the dis-
embodied law. Seymour's company would detest the public revela-
tions of his brutality to his wife, for that would surely come out at
the trial; the British community would perhaps enjoy the salacious
aspects but would resent being lowered in the estimation of the
Burmese; and it could do no good, no good at all, for Jean Sey-
mour. And I doubted it would have any influence on the incidence
of husband-killing in Burma, a rare event in any case. Yet there
seemed no other course for me to follow except that of the letter of
the law, for there certainly had been no "imminent" need for her
to kill Seymour in order to protect herself, which is what the law
required to justify lethal self-defense.

Could "imminent" be differently interpreted to mean some-
thing like "necessary at this time?" Even if it could, it was not
easy to see how that would help Jean Seymour—after all, she did
not have to stay there until he roused himself. She said she had no
choice, that there was no one she could turn to; but that was
plainly untrue, even if she thought it true. She well may have
thought that if she left him he would inevitably follow her and that
the eventual beating would be even more violent, more life-endan-
gering. Could Veraswami's talk of a syndrome, a psychological
compulsion, be used to turn her situation into one of an "immi-
nent—necessary and unavoidable at the time" automatic reaction?
And, in any case, such legal niceties were not for a District Officer
whose duty was clear; they were for His Majesty's judges and their
juries. My duty: if there is evidence to support a conviction of a
felony, arrest the felon, confirm the evidence at a preliminary in-
quiry, and, if it stands up, commit for trial.

Yet I remained dissatisfied. And then a wonderful idea came
to mind, an idea formed of a sweet combination of self-interest and
a desire to do my job better. I needed independent advice. Who
better than Burma's leading barrister and an independent-minded,
thoughtful, and loving woman, a trained nurse, excellently able to
advise me on the wife's viewpoint in such a difficult matter. How I went on embellishing this thought! Of course, I could catch the night train on Friday to Rangoon, consult with U Tin Hlang and Rosemary on Saturday and Sunday, and be back at work in Moulmein on Monday morning. I would not even have to dig into my stock of accrued local leave for such a two-day, weekend absence. It was obviously the best course—duty and delight combined.

I telephoned U Tin Hlang. It was arranged. I managed to convey my preference that my being in Rangoon not be known, except of course to Rosemary. U Tin Hlang said he thought his Fiat was a bit too well-known and that he would send another car and driver for me who would meet me at the station and take me to his guest house. U Tin Hlang seemed pleased by my plan. I told Dr. Veraswami about it. He thought it “a not too unwise indulgence” which, for encouragement of what at one level I knew to be an impropriety, was about as far as I could reasonably expect him to go.

* * * *

“A telephone call for you, Sir. Someone called Brett.”

It must be Rosemary confirming the arrangements for the weekend. My “hello” was more suited to the boudoir than to the barracks. George Brett sounded nonplussed: “Is that you, Blair?” It was indeed, and my tone of voice changed with remarkable alacrity. I made some noise about a bad connection.

Courtesies were not Brett’s long suit. He plunged into the purpose of his call, and I was glad I did not have to make small talk with my cuckolded acquaintance.

“It’s about Seymour’s death. He worked for quite a big company, you know. They have been talking to my General. There has been talk of your preparing to wash some very dirty linen in public. Wouldn’t help the company; wouldn’t help the Raj. Couldn’t it be an accident? Both playing with the gun, cleaning it, or something? Do your best, Blair.”

It did no good, of course, but I could not stand being demeaned by him in this way. “His” General indeed. And the expectation that I would lie about the facts, indeed find facts I knew to be false. I must have sounded unusually stuffy; I sounded so even to myself: “I shall have to do what I have been trained to do, Captain Brett. My police and magisterial duties are quite clear. I am sure you would not wish me to do otherwise.”
“Of course not, Blair. The General is not suggesting that at all. Just handle it as quietly as you can. Call me if you think I can be of any use.” And he rang off.

* * * *

Friday saw me up earlier than usual. A swim before breakfast and the day seemed exciting to me. The train through the night would be wearisome, but I would recover quickly from it—a shower would wash tiredness aside. And then a weekend with Rosemary, for surely she would be able to escape for a few hours from her dull husband. And, probably to comfort my conscience, I told myself what a help Lang and Rosemary would be in the Seymour matter that now seemed to be of interest even to the Rangoon authorities. What a wonderful world!

I worked diligently at my office at the police station. Not a memorandum would remain unwritten, not an inquiry unanswered, before my weekend away—I would be the very model of an administratively correct District Officer, every file filed, every return returned, every deadline slain.

As my euphoria reached its peak, about an hour before the Rangoon train was due to depart, Dr. Veraswami came unannounced to the police station. He had never done this before. Normally he telephoned or sent a messenger asking if he might call on me or asking me to call on him. But there he was, sweating freely, the tonga that had brought him standing outside.

“I am so sorry to burst in on you like this, Mr. Blair, but there iss something I must tell you before you go to Rangoon.”

I waved him to a seat and brought my chair around from behind my desk. I glanced at my watch. “I shall not detain you long, Mr. Blair; you will catch your train. Perhaps the tonga I brought could take you to the station; perhaps we could ride there together.”

I thanked him and accepted his suggestion. His news did add to the difficulty of my decision of what to do about Jean Seymour. I found myself on the edge of testiness with him; it is very hard not to be annoyed with the messenger bringing bad news. Or was it bad news? It certainly complicated my task emotionally, if not in law.

As we bounced about in the tonga, Veraswami told me that a cable had come for Brian and Jean Seymour in the morning. It had been addressed and delivered to the Seymour bungalow and the houseboy had had the sense to bring it on to the jail hospital. “I
took it to her myself,” Veraswami said. “I thought I should keep an eye on her; there is still the risk of a further suicide attempt.”

I found myself most improperly wishing that Veraswami would, in effect, give her her suicidal head. I could hardly say so, even to Veraswami, but I knew I would not much regret her bringing off the trick this time. Fortunately, I risked none of this with Veraswami and he pressed on: “At the first glance at the text of the cable she was in tears, and she thrust it at me to read. It was from Brian Seymour’s mother in a Southampton hospital. She says she has been diagnosed terminally ill—cancer, she says—a few weeks only to live. She hopes Brian and Jean can get leave and come to her before she dies. Apparently she does not know of her son’s death.”

I made no reply. It did not seem to alter matters, yet surely it must. Was there possibly some way that I could make use of this to sidestep the whole mess and get the maddening Jean Seymour out of the country? I found myself increasingly annoyed with her as if it were all her fault, which of course it wasn’t. She seemed such a nuisance and so useless, a punching bag for the fates—and for aggressive males like Brian and me, I supposed.

I dragged myself back to the moment and asked Veraswami how he had left matters with Jean Seymour.

“Eric, I did not disabuse her. Just promised to talk to you, and here I am.” And he bounced excessively to the trot of the weary horse dragging the tonga. “I think she thinks you will now send her home to England. That if her ex-husband’s mother is dyeing you would not be so cruel as to let her know of her son and daughter’s troubles. You would let her invent an innocent story of Brian’s death so that she can comfort the declining days of her mother-in-law’s life. Apparently, Brian’s mother and Jean were very close; Jean says she is the only person in the world who cares for her, and that it is mutual. She really is rather a fool. She kept saying that it would kill his mother if she knew how Brian had died, which, given that mother’s present situation, is a macabre turn of phrase. Anyhow it is another matter for you to think about as you pursue your ascetic consultations in Rangoon.”

* * * * *

U Tin Hlang’s driver met me at the station and took me to his master’s chambers, not to the guest house and to Rosemary as I had hoped.
The antechamber was vast, sweatily crowded, noisy, and untidy. Clients and potential clients were sitting on benches, squatting on the floor, shaking their legs in the anxious Indian fashion—most seemed to be Indian though there were a few more prosperous-looking Burmese—and those that were not arguing with one another were either remonstrating with or trying to catch the eyes of the two male clerks sitting at desks each side of what I deduced to be the entrance to Lang's inner chamber.

To shouts of annoyance, I was waved through.

Double doors silenced the noise of the antechamber. Quiet, book-lined comfort replaced the outside chaos.

Lang looked up from his desk, gestured for me to wait a moment, briskly concluded his business with a client, waved him out, and grasped my hand. I felt ill at ease. This was no time to interrupt him. I said as much. He agreed, but said he was interested to talk to me for a while—"a break from all that," motioning toward the antechamber—and led me to a couch and chairs set for comfortable conversation (for his more prosperous clients, I found myself thinking).

"Tell me about the Seymour case, Blair. We can talk about it this evening, but it will help me to have some idea of what happened before we talk. I find my later reflections much more reliable than my first reactions."

I could not help myself: "Will Rosemary be coming this evening to talk about the case?"

U Tin Hlang smiled kindly: "To talk about the case? I am not sure. She knows you are here for the weekend, but she is doubtful that it will be easy to get away. She told me to tell you that she will try but that you should not count on it."

I made no reply. After a pause, U Tin Hlang leaned back and raised his eyebrows at me: "Go on, tell me about the case. Don't just sit there gloomily."

I did my best, but gloom had indeed descended. I tried to shake it off and to tell him what I knew about Seymour's death. He listened without interrupting me, and when I had finished stood up and said: "And now you will have to excuse me, Eric. I begin to hear rage growing outside. I will get away as soon as I can and join you at the beach."

* * * *

I tried to persuade myself that it was good to be back at U Tin Hlang's guest house. I swam. I lay on the beach. I even visited the
baby elephant. But the day dragged on endlessly and my solitary presence, hiding in Rangoon, seemed both contrived and childish. Surely Rosemary could have sent word—a note, a telephone call at U Tin Hlang’s house. She must know they would fetch me. The day dragged. It had been a stupid mistake to make this rushed and unplanned trip.

U Tin Hlang arrived home in the late afternoon, joined me for a swim, and suggested I come to dinner at his bungalow later in the evening. Still no word from Rosemary. Had he heard from her? “No.” Was she expected for dinner? “No, but if she comes she will be most welcome.”

* * * * *

Rosemary did not appear for dinner. U Tin Hlang was a generous and amusing host, trying openly to shake me at least to a more lively participation in the evening. And his comments on the Seymour case did finally stir me from my jealous preoccupation with myself.

He quizzed me on the details of what I had outlined in his chambers earlier in the day and, when he had them straight to his satisfaction, asked what I wanted of him.

“Advise me what is the right thing to do, of course,” I said.

“What a quaint idea, Eric. I am not yet a judge, just a Silk. Tell me who my client is in this case. Am I the prosecutor or do I represent Mrs. Seymour? I am trained in the adversarial process, not in the role of a saint in the wilderness. Tell me my client and I shall swiftly marshal powerful arguments for him or her; ask me for a balanced and conclusionary opinion and I shall hem and haw, become verbose, talk about on the one hand and then on the other, and so on and on.”

“You mean: Tell you who pays you and it all comes clear,” I said, and, as I said it, regretted it.

U Tin Hlang did not bristle as I expected; rather, he shook his head sadly at me: “You make the common mistake, Eric. You miss the point. The good advocate is moved by the chase more than by the refresher. We really do quite quickly and genuinely persuade ourselves of the virtue of our client’s case, whatever virtue it may have.”

He repeated his original question: “Well then, Eric, whom do I represent in the Seymour matter?”

Since I was coming to the view that Jean would have to be prosecuted and would probably be convicted of manslaughter at
least, I thought it best to have him argue for her: "It seems clear enough to me. She was in no danger when she shot him. It cannot be justified. I must send her to the Assizes."

He was on his feet, moving out to the veranda, brandy balloon waving in his right hand. I followed and found a cane chair while he paraded back and forth before me. "You are quite wrong, your Honor. She should not be sent to trial and if you do send her to trial she will be acquitted. Totally acquitted; I will see to that since it will gravely embarrass your employers. What you have failed to do is to put together three quite distinct defenses. This is perhaps pardonable in the light of your lack of legal training, but my client must not suffer because of that. And it is also true that no case has as yet put these lines of defense together and formed the greater whole; but the conclusion is clear: she is not a criminal."

I was not really following him. "What defenses? She told me she shot him because she feared he would kill her when he awoke and the battle recommenced. But he was not then doing anything and that is what matters."

"Hornbook law, hornbook law, your honor, missing much. First, repeated beatings of a wife create a situation where the ONLY time she can safely defend herself against death or serious bodily injury is when she is NOT being attacked. I will persuade the court that she had no real alternative in light of the long history of brutality at his hands and the impossibility for her—conditioned as she was by him, made to respond like an obedient and mistreated animal—to do anything else. But that is only one line of defense, though a powerful line, you will agree. It alone, vigorously presented, will produce a manslaughter verdict if not a complete acquittal."

I indicated some doubt in the matter. He ceased his pacing and confronted me face on, looking down at me with warm intensity. "Well then, add this defense: What could be more outrageous than to be told by a brutal and faithless husband, one you know has had intercourse with a prostitute that very afternoon, that you must take his hateful private parts into your mouth—to be forced to do that in fear of your life—forced to commit a crime of such loathsomeness that for many decades it was punished capitaly. Oh, I will have the jury in an outrage; I won't be surprised if they attack the wicked police prosecutor who persecutes such a tortured woman. No court would find that less than adequate provocation for a lethal attack, and, though this alone may lead only to a manslaughter conviction, when you combine the self-defense and the provocation surely you have something larger than either"
here there was a long pause while he found his chair beside mine)—"an acquittal."

He seemed to relish the silence after his mock forensics. It was true that Jean Seymour had been cruelly abused and intensely provoked, but there still remained the fact that she could do much to protect herself other than shooting at her husband's head. Apart from anything else, with him asleep, she could scrabble together a few clothes and leave him. True, she could not call for help on the telephone—he had seen to that—but she could just go. It struck me that U Tin Hlang had said there were three lines of defense but had offered me only two—self-defense and provocation, each insufficient for an acquittal as the law stood but, he argued, together reaching that result. It seemed doubtful. And if I were not of the view that she would be acquitted under a proper application of the law, it was my duty to send her for trial, no matter what my sympathy for her.

"You said three defenses, Lang. Your powerful, though wordy, oration mentioned only two."

"Your Honor, don't protest my words. They are the coinage of my profession. Do you prefer grunted insinuations, hints, nods, and winks? Words are my coinage."

"But you spend so freely," I said, and urged him on: "What is this mysterious third defense? Or has it slipped your mind?"

"This, your Honor," he said, rising again to resume his forensic pacing. "Brian Seymour must have known that his wife was not consenting to intercourse: he was raping her. But, you say, a husband can't rape a wife." And here he struck an exaggerated pose, right arm outflung: "I will challenge that. I shall marshal the many arguments for you, if you like, but you will find it hard to stop me at the preliminary inquiry since there is no direct Burmese case holding that the husband is immune, even though the whole matter has been assumed so by you parochial British, who believe every culture suffers from the defects of your own while none matches its virtues. And, you see, I will win this argument even if I lose it."

His pause for dramatic effect went on for what seemed to me an absurd length of time. "Do press on, Lang. I am listening. Stop prancing about on a stage. You lose, you win, how?"

"That the jury will be impressed must be obvious even to an English judge, but I will win in another way, for it will allow me to develop a subsidiary argument. If, in law, he cannot rape her (which I doubt), he most certainly can assault her. And if he assaults her violently, either to overcome her resistance or simply be-
cause that is the way he behaves, it will be an assault occasioning grievous bodily harm, which is a felony. Seymour thus, at some earlier time, committed a felony of violence against his wife when he had intercourse with her, which in fact caused her grievous bodily harm; it was an assault to which she had not consented—and all this he knew. Do you follow me so far, your Honor?"

I nodded a somewhat desperate assent.

"Well, then. On the night she shot him she had suffered that felony and he had told her it would be inflicted again. His drunken sleep would not last long. She knew he would renew his sexually purposive violence against her. He might not kill her, I grant you that, but he would, she knew, succeed in forcing himself sexually upon her, renewing serious injury, committing a crime of violence. She clearly had a right to defend herself against this crime. There was no other way to avoid this further cruel crime against her. So, at least three defenses: self-defense, provocation, and preventing the commission of a crime of violence. They blend, I agree, which gives me even greater room for the forensic eloquence that Burma thirsts for." And U Tin Hlang subsided again beside me, reaching to replenish his brandy balloon and mine.

It seemed contrived, but I had to admit that if one could get all three lines of argument to a jury they would be powerfully inclined to acquit her. But was that my business? Surely that was the jury's prerogative of extra-legal mercy; was not my duty merely to follow the routine procedures of the law and if there were a prima facie case of homicide to commit her for trial?

I tried another tack to lure U Tin Hlang to my assistance. "Suppose you were briefed by the prosecution—and I understand that does happen occasionally—what theory would you follow?"

"That's easy, my magisterial friend. I would bang away over and over and over at one theme: she was not a self-protector, she was a punisher. He deserved the punishment, but that is for the law to impose, not the wife. Hers was lynch law, not law. She was an executioner, she appointed herself to that role, and that is criminal homicide. You, the jury, are not trying him; you are trying her, and any sympathy you have for her must be left to the judge in sentencing and to the executive thereafter, who may pardon her if he wishes. You are the law. She was an unauthorized executioner. You must carry out your oath as jurors."

* * * * *
Rosemary didn't come to U Tin Hlang's bungalow or to the guest house.

I spent a lonely and, at first, sleepless night. Eventually I tossed and turned into sleep. A dream beset my sleep, troubling me deeply in ways I did not understand and leaving me uncertain, lacking confidence in myself and even more regretting having sneaked off from Moulmein for this ill-contrived weekend.

It started quite innocently, in black and white, though I often dream in color. I was talking to Rosemary and for some reason explaining the five senses to her. Touching my eyes I looked at her, then my ears, my nose, my lips and tongue, and the tips of my fingers, gesturing appropriately with each to convey their respective sensory roles. She made no response, just sat there demurely, distant, and proper. And then suddenly she was naked and not sitting at all, rather lying alluringly on our bed behind a mosquito curtain at U Tin Hlang's guest bungalow, in the bed I now in fact occupied, though not in my dream, beckoning me to join her.

But instead of moving towards her, I stood still, shouting at her, "There are only five, only five, only five!" She held up one hand, fingers and thumb extended, five digits uplifted, and then the other hand rose with the index finger pointing at me. "Six," she said, "six, six, six." And then it seemed she was saying "sick, sick." And counting the fingers—one, two, three, four, five, six. And then "six" and "sick" became indistinguishable.

I gestured at her angrily to be quiet. And now it became clear to me what she was telling me—that making love to her involved more than each of our five senses. They were involved, all of them, true; but there was more to it than their confluence. A different sense emerged out of the unity, not all five together but something more than all five together, a separate and compellingly quite different experience—a sixth sense, a real one, not the fictitious sixth sense of intuition that people deceive themselves about. It seemed to me a desperately important discovery, an insight that would bring me fame.

To this stage it was a dream, and a dream telling me something true that my conscious mind had not previously understood, which is the most useful kind of dream. But then it changed, into garish color and into a nightmare.

She was still on the bed. The mosquito net had disappeared; she was cringing in anguish and I was crouched above her trying, trying, trying to strike her, but my right arm, uplifted to strike her, would not move no matter how I tried. And I was helpless in another way: I was not ready to enter her. I desperately wanted to,
but I couldn’t. And I knew that if I could hit her my other disability would be cured. And the horror of it was that she was taunting me in both directions, suggesting that I was inept in two ways, and mocking my inability to cast off both weaknesses. I tried and tried to hit her, but my arm would not move; just like when you are trying to run away in a dream and your legs won’t work, so it was with my arm. And, still struggling, I awoke shaking and sweating.

It was the noise of a horse outside the guest house that awakened me rather than my efforts to escape the nightmare, and when I realized this my troubles vanished. She had come, and early!

As usual in the tropics, I had slept naked under the mosquito netting and since it had been such a miserable, tossing, turning, and humid night I had put a towel under me. Pulling the towel around me as a loincloth, I rushed out to the veranda. And there she was, dismounted, tying the bridle to a veranda post.

We kissed, somewhat briefly I thought, and she held me back with her two hands at arms’ length: “Eric, my sweet. It’s good to see you. I’m sorry I couldn’t get away last night but we had a dinner at our place. And I fear I can’t stay long now. I promised George to go to something at the barracks with him this morning; I only managed to get away now for my usual early morning ride.”

“Surely you can stay for a little while. Come on inside.” And I tried to lead her onto the veranda and into the guest house.

Glancing pointedly at my attire she said, “You’re not dressed to receive company. Better not. Let’s talk out here.”

And so it went. My erotic imaginings were to be frustrated. I did not try to conceal my disappointment.

“Eric, I’m too fond of you for that sort of a quickie,” and there was more than a hint of annoyance in her voice.

“You didn’t always take that view of it,” I said.

“It’s different when George is about. Surely you must see that. I made it plain enough, I would have thought.”

I struggled for composure. The last thing I wanted was to waste time with her in argument. “Why don’t you sit out here for a moment or two. I’ll pull on some shorts and a shirt and we can talk.”

Her response was immediate and affirmative. I would at least have a few minutes with her, and I had best not talk about our relationship or we would be biting at one another, I felt sure.

But in the event, no topic was much use that morning. Rosemary was ill at ease; so was I. We struggled along for five or ten minutes, though it felt much longer, and she said she had better be getting back. I said that I had wanted to talk to her about Jean...
Seymour, that I really did need her advice. She would, she said, try to get away for an hour or so in the afternoon, go for another ride perhaps. She would try but could not promise. "But it really is for a talk, Eric. I can't handle these affairs as lightly as you seem to think. I'll try, and if you are here we can talk, but no more than that."

I nodded a bleak assent. We kissed perfunctorily. I helped her mount. "I promise I'll try to make it," she said, and then added, after a pause and somewhat angrily, "but Eric, if I don't, you mustn't let that poor woman be further punished just because you failed to enforce the law."

She did manage a wave to me before she disappeared into the trees beside the beach, but it was little comfort. It was not only George's proximity that stood between us—"these affairs" indeed.

Of course, Rosemary didn't return and I took the night train back to the duties I should not have abandoned. I had come to hate that train and rather to dislike myself. I determined that I would spend the journey coming to a firm decision about what to do, firm other than in the sense that I would not do anything until I had consulted with Veraswami. At the very least, I must have a plan to put to him, not just meander around my own insecurities.

The plan came to me in the miseries of that night. I recalled that there are two paths to a criminal trial: an indictment by a magistrate, in this case by me, or an information that can be laid by a senior officer of the Crown before an Assize Court. I would hear the preliminary case, refuse to indict her, and give my reasons in some detail, making the most I could of the possible lines of justification of Jean's actions in her appalling situation.

With the record of the preliminary inquiry and my statement of the reasons for my decision, I would send to Mandalay a confidential report pointing out that I lacked sufficient training in the law to be secure in such a difficult case and I would suggest to my senior officers in Mandalay that, if they disagreed, my error could easily be rectified by their pursuing the path of laying an information of murder or manslaughter against Jean Seymour. I would add that there seemed no risk of her fleeing the jurisdiction if they wished to proceed further in the matter.

I thought I knew what Mandalay and Rangoon would do—nothing. They would be delighted to be rid of the embarrassment of the public washing of the soiled home life of the Seymours and, if they were criticized for failing to uphold the law, would slough it off as the usual inefficiency of that Rickshaw Wallah District Officer in Moulmein. I felt quite pleased with myself as I con-
templated telling Veraswami of my plan. I would reach the result I desired without deliberately contravening my duty to the law—for, if truth be told, I still thought that Jean Seymour should be charged with homicide. And, like a disgruntled and petulant child, I also thought that Rosemary had been grossly unfair in blaming it all on what she had called my failure to enforce the law. Oh yes, Veraswami would surely be pleased with me.

* * * * *

But, as I approached Veraswami’s bungalow for our evening chat, doubts began to stir. The words did not rehearse themselves easily. I felt I would have to explain and explain. And so it was. I talked too much. Veraswami nodded and smiled—somewhat weakly, I thought. The more I talked the less I was sure whether I was a principled magistrate, a man of mature judgment, or a simpering lover cowardly avoiding doing what should be done. Was I Solomon or Pilate? Surely Solomon. Everyone would be pleased with me—Rosemary, U Tin Hlang, Jean Seymour, my senior officers in their private conversations, even opinion at the Club as the details leaked out, as they surely would, and Veraswami . . . ?

“It iss not easy, Eric. I give you that. But Mr. Eliot, the American-English poet, you know, somewhat full of God ass he sees him, did he not say that the greatest sin wass to do the right thing for the wrong reasons? If what you really think the law says iss that she should go to trial for the jury to decide (and you hope they will acquit her), are you not doing what Mr. Eliot says you should not?”

“That’s not quite fair, Dr. Veraswami. I will give my reasons in detail why I think her actions can be justified in law and the argument why she should not go to trial. I know doing this stretches the law a bit, but I think it the right decision and that is where the law should go. And if I’m wrong, no harm done.” But as I spoke I knew I was dodging.

I found I wanted to tell Veraswami of my having hit Rosemary, but I could not bring myself to it. Yet the need to take him further into my confidence was very strong. Perhaps it was the Watney’s that liberated my tongue. I told him instead of my dream a few nights earlier in Rangoon, the dream from which Rosemary and her horse had awakened me. It seemed to me necessary to discuss the dream with someone the better to understand myself.

Bouncy and peripatetic as a talker, Veraswami was still and intent as a listener; he didn’t fiddle or look about, nor did he stare
at you unblinking in excessive concentration, but he did persist in
the usual Indian leg shaking. Still, I was used to it, and managed
not to be distracted.

When I had finished a somewhat long and detailed recounting
of the dream-nightmare, Veraswami made no immediate comment.
I reached for more beer and he pushed the oval tin with its load of
ice and Watney's towards me. And when he did speak he seemed
to have skipped several steps in our conversation: "So you think
Jean and Brian Seymour are equally guilty, that they did it to
themselves, that they did what they both wanted?"

I was baffled. I had not been talking about the Seymours; I
had been talking about a dream, or perhaps at another level about
Rosemary and that miserable time I hit her—and, I suppose also,
of our reactions to it, hers as much as mine. It had been an incredi-
ibly wonderful sixth, sick, oh hell, wonderful loving. I struggled to
turn my mind to the Seymours and to follow Veraswami's train of
thought.

"Surely that cannot be so, Dr. Veraswami. Surely Jean Sey-
mour did not want to be beaten by that husband of hers."

"Eric, you use 'surely' to mean something else, isn't it? You
often say 'surely' when you are very doubtful; many people do.
You are wondering whether she did or not, isn't it? Well, I am
never sure in such matters, but I have no doubt she dreaded the
beating even if she had come to accept this whole pattern of beat-
ing and loving, as you call it."

"But even if that is right, and we all have some understanding
of both—the beating and the loving—if we think about it, does
that alter anything? Does it help me to know what to do about
her?"

"Perhaps not, my admirable District Officer friend," and he
was now beaming at me in approval—why, I knew not. "But you
will be a better person for doing whatever you decide you have to
do, if you have some understanding of what you are about—unlike
your friends at the Club, I think." And his usual derogatory head
waving, which accompanied his every reference to the Club, began
its insistent rhythm.

"Eric, with your six senses you have me all at sixes and sevens,
or is it sixers or sickers and sevens . . . very bewildering; but I see
what you are driving at. For your age and your vast Rangoon sex-
ual experience, you seem perceptive, isn't it, in these matters. Oh
dear . . . let us stop talking about such things, most un-British. It
would never do at the Club; let us talk about something else."
And we did. One more Watney’s, light banter, and I made a somewhat relieved way to my bungalow.

On reflection I understood that Veraswami had been gentle with me, but he had offered no solution to my dilemma other than a conditional approval of the course I had hoped he would applaud. I had consumed more than my usual share of his Watney’s that evening and headed toward my bungalow determined to proceed with my plan but unsure whether I was guided by a larger sense of justice or was merely succumbing to Rosemary’s admonition, “You must not punish that poor woman further for your failure.” And constantly with me, insistent in my mind, was the thought that I had hit her.

* * * * *

Why it was so, I am unclear; but the next morning I woke in the confident and not regretful knowledge that Rosemary was a part of my past but not my future, an important part of my past but certainly not my future. And I also felt clear and less anxious about what I planned to do in the Seymour case.

As my first task on arriving at the police station, I instructed the sergeant to advise Jean Seymour that there would be a preliminary hearing into her case a week hence and that I would be calling on her at the hospital that evening to see how she could be helped and cared for in the interim. I instructed him to tell her that if she so wished, I would arrange for legal counsel to represent her at the preliminary hearing without cost to her and that I would discuss this with her. But as to an immediate trip to England to comfort her dying mother-in-law, no, that was not possible; a person charged with murder can’t become an international traveller, no matter what the circumstances, until that charge is disposed of.

I would certainly be helped in my efforts to spell out a satisfactory legal theory to justify Jean Seymour’s actions if I could persuade U Tin Hlang to come to Moulmein for a day or two to represent her. I knew he would enjoy it—he always enjoyed mocking me—and after our last meeting I could tell him truthfully how much I wanted to see him without the complicating circumstances of my transient affair in which he had so readily cooperated.
The University of Chicago Law Review

Selected Annotated Bibliography

Matrimonial violence presents challenging problems to both the police and the courts. In *The Tropical Bedroom*, Eric Blair had to decide what to do as a policeman when he discovered that a woman had been beaten, but that she did not want her husband arrested. He later had to decide, as a magistrate at a preliminary hearing, whether evidence of the "battered woman syndrome" would be admissible in defending against a charge of homicide.

A brief selection of the case law and statutes that bear on these issues follows. Section I deals with police practice in domestic violence cases; Section II deals with the "battered woman syndrome."

I. POLICE PRACTICE IN DOMESTIC VIOLENCE CASES

When Blair pushed his way into the Seymours' bungalow, he had three choices. First, he could have arrested Brian Seymour and charged him with battery, whether or not Jean Seymour wished him to do so. Second, Blair could have mediated the situation; he could have negotiated the conflict, and then left the two alone. Finally, Blair could have arrested Brian, held him overnight, and then released him without any judicial process.

Police officers must consider the possible legal consequences of pursuing the second and third courses of action. If they follow the second course of action, they may be civilly liable to the battered woman for failing (or refusing) to arrest the batterer, if she can show that they failed to make the arrest because it was a domestic violence case. If they follow the third course of action, however, by arresting the abusive man without intending to press charges (and then releasing him), they may be liable to him for unconstitutional arrest. The following cases and statutes address these issues.

A. Police Liability for Inaction

1. Case law.

   a) General liability for refusal to arrest. The following cases touch on the liability of police officers who fail to act when they have evidence of domestic violence and the battered person wishes to press charges against the abuser.
DeShaney v Winnebago County Dept. of Social Services, 109 S Ct 998 (1989).

Prior to DeShaney, some lower federal courts had held that states have a duty under the Due Process Clause to protect citizens from the violent acts of others when a “special relationship” exists between state officials and the citizens. Courts had found this special relationship to exist when state officers were aware that a woman was habitually abused or that her husband or boyfriend was under a restraining order. They reasoned that the state deprives a woman of her liberty without due process of law if it fails to intervene and protect her from an abusive man when it knows that he habitually beats her. See, for example, Balistreri v Pacifica Police Dept., 855 F2d 1421, 1426-27 (9th Cir 1988).

In DeShaney, the Supreme Court rejected the “special relationship” doctrine, holding that “a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.” 109 S Ct at 1004 & n 4. The Due Process Clause, the Court held, protects people from the state, and does not require the state to protect citizens from each other. Id at 1003. The Court, however, did not foreclose equal protection claims against the states for refusal to arrest, stating in a footnote that “[t]he State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause. But no such argument has been made here.” Id at 1004 n 3 (citation omitted).

Thurman v City of Torrington, 595 F Supp 1521 (D Conn 1984).

Tracey Thurman sued the city of Torrington, Connecticut and several Torrington police officers on behalf of herself and her son, claiming that the defendants failed to respond to her ex-husband’s threats to kill her and rebuffed her attempts to file complaints. She sued the officers and the city under 42 USC § 1983 (1982), claiming that they had violated her rights under the Equal Protection Clause of the Fourteenth Amendment. The police moved to dismiss the claims. The court denied the motion, holding that Thurman had specifically alleged that the police had a policy of ignoring the complaints of abused wives and thus discriminated against them in violation of the Equal Protection Clause of the Fourteenth Amendment. Id at 1527, 1530. The judge ruled that po-

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1 In order to maintain this type of claim, the plaintiff must show that the unconstitutional action “implements or executes a policy statement, ordinance, regulation, or decision officially adopted” by the municipality or is the product of a governmental “custom.” Monell v Dept. of Social Services of the City of New York, 436 US 658, 690-91 (1978).
lice officers may not automatically decline to arrest a husband who
has assaulted his wife, simply because of the marital relationship.
Id at 1528. “Such inaction on the part of the officer,” the court
concluded, “is a denial of the equal protection of the laws,” and
thus Thurman’s complaint stated a claim against the city under §
1983. Id at 1528-29. The court specifically rejected the argument
that the police practice was justified because it promoted domestic
harmony by precluding police interference with marital disputes.
Id at 1529. See also Balistreri v Pacifica Police Dept., 855 F2d
1421, 1427 (9th Cir 1988) (abused woman set forth facts sufficient
to support a § 1983 action by alleging that the police treated her
domestic violence case differently from a non-domestic assault
case).

Watson v City of Kansas City, Kansas, 857 F2d 690 (10th Cir
1988).

The Tenth Circuit reversed a summary judgment for the city
on the plaintiff’s claim that the city’s policy of training its police
officers “to attempt to ‘defuse’ [a domestic violence] situation and
to use arrest as a last resort” effectively instructed them to treat
domestic and non-domestic assault cases differently, in violation of
the Equal Protection Clause. Id at 696. The court held that a jury
could reasonably find that the training policy evidenced a discrimi-
natory motive by the city and police department, and therefore vi-
olated Watson’s right to equal protection. Id.²

McKee v City of Rockwall, Tex., 877 F2d 409 (5th Cir 1989), cert

McKee was the first case to consider DeShaney’s application
to a § 1983 suit arising out of police inaction in a domestic violence
case. Recognizing that DeShaney directly addressed only due pro-
cess claims based on a state’s failure to protect an individual from
private violence, 877 F2d at 413, the court nonetheless found that
DeShaney’s reasoning may also preclude equal protection claims

² Watson involved a specific enforcement policy for domestic violence cases. The Su-
preme Court currently is divided on a related question—whether inadequate police training
can constitute a “policy” for purposes of § 1983 liability. If so, plaintiffs could sue police
departments if they did not adequately train officers to handle domestic violence cases. See
Oklahoma City v Tuttle, 471 US 808, 823 (1985) (plurality holding that a plaintiff must
show that the “policymakers deliberately chose a training program which would prove inad-
quate” in order to maintain a § 1983 suit under this theory), and the four-Justice dissent to
(O’Connor dissenting) (the “inadequacy” of police training may serve as the basis for § 1983
liability only where the failure to train amounts to a reckless disregard for or deliberate
indifference to the rights of persons within the city’s domain).
because it “leaves officers and law enforcement agencies with some discretionary authority: they need not fear that, in any close case, they must choose between liability for a potential false arrest and liability for a potentially actionable non-arrest.” Id at 414.

The court found no need to apply DeShaney, however, because McKee failed to prove that domestic violence victims were treated differently from other victims—the first element of an equal protection claim. Id at 416.

b) Liability for refusal to arrest when victim declines to press charges. In The Tropical Bedroom, Eric Blair faced a more difficult case than those above. Brian Seymour clearly assaulted his wife, but she did not wish to press charges. This case is similar to Hynson v City of Chester Legal Dept., 864 F2d 1026 (3d Cir 1988). Alesia Hynson called the police to report that her abusive ex-boyfriend had threatened her and attempted to break into her house. There was some dispute over what happened next. The police officers said that they asked Hynson if she wanted to press charges and she refused. The plaintiffs (her mother and children) claimed that the police never asked, and that Hynson would have filed a complaint if given a chance. Id at 1028 & n 6. Hynson’s ex-boyfriend eventually killed her. The plaintiffs filed a § 1983 claim against the city of Chester, Pennsylvania for ignoring Hynson’s complaints and for refusing to make an arrest.

The court relied on Watson and Balistreri in holding that the plaintiff could survive summary judgment on remand by offering evidence that would allow a reasonable jury to infer the following: that the police had a policy of providing less protection to victims of domestic violence than to victims of other kinds of violence; that discrimination against women was a motivating factor; and that the plaintiffs were injured by the policy. Id at 1031. The court further held that a police officer could not claim qualified immunity from a charge of applying a discriminatory law enforcement policy if a reasonable police officer would have realized that the policy had a discriminatory impact on women, that it was motivated by bias against women, and that it did not serve the public interest. Id at 1032. The court remanded the case so that the district court could apply a new standard for § 1983 cases arising from domestic violence situations.

The facts of Hynson suggest that the police may be liable for failure to arrest an abusive husband or boyfriend even if the victim does not wish to press charges.
2. Constitutional and statutory provisions.

US Const, Amend XIV, § 1.

No State . . . shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.


Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . .

Some states have tried to combat police reluctance to arrest in domestic violence cases by requiring officers to make an arrest whenever they have probable cause to do so. The state of Washington, for example, enacted the following law:

A police officer shall arrest and take into custody . . . a person without a warrant when the officer has probable cause to believe that . . . [t]he person is eighteen years or older and within the preceding four hours has assaulted that person’s spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.


B. Police Liability for Arrest Without Intent to Prosecute

A person arrested by the police generally has no cause of action for false or illegal arrest under § 1983 if probable cause existed for the arrest. See, for example, Dowling v City of Philadelphia, 855 F2d 136, 141 (3d Cir 1988). A more difficult question is presented when the police have probable cause to believe that a suspect has violated the law, but arrest him without any intention of pressing charges or presenting him to a magistrate. Some police departments have experimented with this course of action in an
attempt to determine whether subsequent incidents of violence are reduced only through arrest and aggressive prosecution, or through arrest alone. See Delbert S. Elliott, Criminal Justice Procedures in Family Violence Crimes, in Lloyd Ohlin and Michael Tonry, eds, Family Violence 427, 457 (U Chicago, 1989). The police may consider this a "compromise" between full prosecution and mere arbitration. The question is whether such action is legal. This problem has not yet been litigated in the domestic violence context; the cases below grapple with it in different contexts.

1. Case law.

*Llaguno v Mingey*, 763 F2d 1560 (7th Cir 1985).

The Chicago police arrested David Llaguno and took him into custody. Assistant State's Attorneys told the police twice that there was insufficient evidence to file charges against Llaguno. Id at 1568. The police held him for a total of forty-two hours, without presenting him to a magistrate for a determination of whether there was probable cause to hold him and without charging him with a crime. Id. Llaguno sued under § 1983 for violation of his Fourth Amendment rights.

The Seventh Circuit held that detaining Llaguno for forty-two hours without a judicial determination of probable cause and after Assistant State's Attorneys had told the police that charges would not be filed violated his Fourth Amendment rights, entitling him to damages. Id at 1567-68, citing *Gerstein v Pugh*, 420 US 103, 113-14 (1975).

*Czerniak v City of Milwaukee*, 611 F Supp 182 (E D Wis 1985).

The plaintiffs sued the City of Milwaukee and individual police officers on behalf of themselves and all people who had been arrested and jailed for "engaging in private, consensual sexual activities in private bookstore booths in the City...." Id at 183. The plaintiffs alleged that the police attempted to pursue charges against them for disorderly conduct, knowing that the City Attorney had an announced policy against such prosecutions. Id at 183, 186, 189. The plaintiffs claimed that the police department policy violated their Fourth Amendment rights because the arrests could not be supported by probable cause if the police knew that the prosecutor would refuse to charge. Moreover, the plaintiffs claimed that their incarcerations amounted to summary punishment by the
police without due process. Id at 184. The police moved for summary judgment, arguing that the prosecutor (not the police) made decisions not to prosecute, and that the decisions thus fell within prosecutorial discretion. Id at 185.

The court denied summary judgment for the police, making clear that the inconsistency between the police arrest policy and the City Attorney's non-prosecution policy did not itself establish that the arrests were illegal, id at 189-90, but cautioning that the Department's knowledge that the plaintiffs would not likely be prosecuted bore on the officers' reasonableness in apprehending the individual plaintiffs. Id at 190. The court called for more discovery to shed light on whether the plaintiffs' conduct was constitutionally protected and whether the arrests were without probable cause. Id.

2. Constitutional and statutory provisions.

US Const, Amend IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .

US Const, Amend XIV, § 1.

No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .


(3)(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case . . . .

(6) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed . . . .


A peace officer shall not be held liable in any civil action for an arrest based on probable cause . . . or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence . . . .
II. "Battered Woman Syndrome" and the Defense of Justification

In the past, a battered woman who killed her abusive husband frequently pled insanity as a defense to a criminal charge. A successful insanity defense, however, often landed the battered woman in a mental institution. Victoria Mikesell Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self-Defense, and Expert Testimony*, 39 Mercer L Rev 545, 560 (1988). Today, a woman in Jean Seymour's position would likely rely on a justification defense (for example, self-defense), seeking to present expert testimony at trial on the subject of "battered woman syndrome." Id at 563.

Literature on the "battered woman syndrome" has grown rapidly in recent years. Dr. Lenore E. Walker, one of the leading proponents of the theory, explains that abusive relationships tend to progress in repetitive cycles with distinct stages. Walker refers to the first stage as the "tension-building stage," with relatively minor batterings and verbal abuse that escalates over time. Lenore E. Walker, *The Battered Woman* 56-59 (Harper & Row, 1979). The fearful woman usually responds to the abuse by trying to placate the abusive man; she behaves passively in an attempt to avoid more serious violence. Id. The second phase is characterized by more serious violence, usually brought on by either a stressful event in the man's life that is external to the relationship or by increased resistance from the woman, who is tiring of the abuse. Id at 59-65. The third phase of the battering cycle is characterized by apologies and loving behavior by the battering man. He may promise to seek professional help or stop drinking; he almost always promises to stop beating the woman. Nevertheless, the battering cycle starts over again within a few months. Id at 65-70. The typical battered woman eventually becomes demoralized by the fact that she cannot control her mate's abusive behavior, perhaps coming to believe that he is omnipotent and that she can do nothing to improve the situation. Mather, 39 Mercer L Rev at 554. Eventually, she may conclude that the only way to avoid more attacks—attacks that may prove fatal—is to kill her attacker before he kills her. Id at 562.

Laypeople (and even law enforcement officers, such as Eric Blair) often consider the battered woman's reactions to be irrational. They find it difficult to understand why a woman exposed to such violence would stay with her mate. The "battered woman syndrome" theory gives several possible explanations for the wom-
an's reluctance to leave the relationship. For example, many women depend on the man financially and stay because they doubt that they could support themselves and any children they may have. Mather, 39 Mercer L Rev at 552. The man's loving behavior during the third phase may reinforce the woman's hope that he is changing his ways. Id. Women who were raised in abusive families may perceive battering as normal. See Terry Davidson, *Conjugal Crime* 51 (Hawthorn, 1978). Many women do not leave because they fear that it would lead to a violent response by the man. Mather, 39 Mercer L Rev at 554-55.

Sometimes jurors reason that battered women must be masochistic and actually enjoy being beaten: why else would they stay in such a relationship? See, for example, Gail A. Goolkasian, *Confronting Domestic Violence: A Guide for Criminal Justice Agencies* 2-3 (National Institute of Justice, 1986); and *State v Kelly*, 97 NJ 178, 478 A2d 364, 377-78 (1984). In combating such conclusions and convincing the jury that her violent act was a justified reaction under the circumstances, a battered woman defendant will often find evidence of "battered woman syndrome" crucial to her defense.

The battered woman syndrome is not itself a defense to a murder charge, but is instrumental evidence that will go toward the legal justification of self-defense. See *State v Koss*, 49 Ohio St 3d 213, 551 NE2d 970, 974 (1990); and *State v Hodges*, 239 Kan 63, 716 P2d 563, 570 (1986). Defendants invoking a self-defense justification, for example, must prove that they responded to an imminent threat in a reasonable manner. Battered women hope that evidence of the syndrome will persuade the jury to view the imminence and reasonableness requirements differently in domestic violence cases.


The cases and statutes below first address the elements of justification and how evidence of battered woman syndrome might affect a jury's application of those elements in domestic violence
cases. The discussion then turns to the admissibility of evidence of the syndrome.

A. The Justification Defense

1. Subjective versus objective belief.

The justification defense varies among states, with one of the most important differences being the state of mind that will justify the defendant's conduct. Some states require that a defendant *reasonably* believe she is threatened with great bodily harm at the time of her act—an objective standard. Other states apply a subjective standard requiring only that a defendant *honestly* believe she is threatened with great harm at the time of her act, even if that fear is unreasonable.

The mental state requirement is important in domestic violence cases because the woman's subjective fears may appear unreasonable to the average juror. This is especially true when an abused woman kills her mate while he is sleeping or drunk; the average juror may not find the woman's fear—however honestly held—reasonable under such circumstances because the husband was not threatening her at the time of her act.³

a) Case law. *State v Allery*, 101 Wash 2d 591, 682 P2d 312 (1984). The Washington Supreme Court held that expert testimony on battered woman syndrome was relevant to show "the defendant's point of view as conditions appeared to her at the time of the act." Id at 314. Evidence of the syndrome was crucial to the defendant's justification defense because Washington uses a subjective self-defense standard. Id at 314, citing *State v Wanrow*, 88 Wash 2d 221, 559 P2d 548 (1977) (applying subjective standard).


The New Jersey Supreme Court held that expert testimony on battered woman syndrome was relevant to the question of whether

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³ If a battered woman kills her mate with a subjectively honest but unreasonable fear of imminent harm, her self-defense claim will fail a purely objective test of justification. However, she may argue that the court should reduce the crime from murder to voluntary manslaughter because her subjective fear of harm negated the malice necessary for a murder conviction. This defense is often called "imperfect self-defense." For support of the notion of imperfect self-defense, see *State v Norris*, 303 NC 526, 279 SE2d 570 (1981). For general discussions, see *State v Faulkner*, 301 Md 482, 483 A2d 759, 768-69 (Ct App 1984); and *People v Flannel*, 160 Cal Rptr 84, 603 P2d 1, 7-9 (1980). See also 18 Pa Cons Stat Ann § 2503(b) (Purdon 1983) and Ill Ann Stat ch 38, § 9-2(b) (Smith-Hurd 1979) for state codifications of imperfect self-defense. See Commentary to Ala Code § 13A-6-4 (1975 & Supp 1989) for legislative rejection of the imperfect self-defense doctrine.
the defendant reasonably and honestly believed she was in imminent danger of death. 478 A2d at 374-77. The New Jersey court characterized its test as both subjective and objective, requiring a showing that the defendant "actually did believe in the necessity of acting with deadly force" and "that her belief in the necessity to use force was reasonable." Id at 374.

State v Hodges, 239 Kan 63, 716 P2d 563 (1986).

While stating that the state's justification standard was generally objective, the court in Hodges apparently created an exception for battered women, writing: "[W]here the battered woman syndrome is in issue, the proper standard to determine whether the accused's belief in asserting self-defense was reasonable is a subjective standard." 716 P2d at 569. The court explained that the distinction between an objective and subjective standard is somewhat artificial in the first place: "[T]o ask how a reasonably prudent battered woman would have perceived the aggressor's demeanor results in applying a subjective standard of reasonableness, i.e., from the viewpoint of defendant's mental state." Id. However, in State v Stewart, 243 Kan 639, 763 P2d 572 (1988), the court "disapproved" the language in Hodges that had advocated a subjective test for assessing a battered woman's self-defense justification, clarifying that (like New Jersey) Kansas uses a test with both subjective and objective components to assess all justification defenses. Id at 579.

b) Statutory provisions. New Jersey's statutory definition of the justification defense is objective:

[T]he use of force upon or toward another person is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

4 The court in Hodges also noted that evidence of battered woman syndrome is relevant to a claim of justification regardless of whether a subjective or objective standard is used: In a state that follows the subjective standard, an evaluation of defendant's actions is made in light of her subjective impressions and the facts and circumstances known to her. In states following the objective standard, the jury must determine whether the defendant's belief in the need to defend one's self was reasonable and the expert's testimony, if accepted by the jury, would aid it in determining whether, under the circumstances, a reasonable person in the defendant's position would have believed her life to be in imminent danger.

716 P2d at 569 (citations omitted).
The Tropical Bedroom


The Model Penal Code endorses a subjective test:

[T]he use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

Model Penal Code § 3.04(1) (Tent Draft No 8, 1958) (emphasis added).

Kansas’s statutory scheme combines the objective and subjective approaches:

A person is justified in the use of force against an aggressor when and to the extent it appears to him and he reasonably believes that such conduct is necessary to defend himself or another against such aggressor’s imminent use of unlawful force.


2. Imminence.

Eric Blair wondered whether the “imminence” component of the justification defense could be interpreted in domestic violence cases to mean “necessary at this time” rather than “immediately necessary at the time of the killing.” Some states have redefined the term “imminent” in accord with Blair’s hypothetical definition. See subsection “b” below. In most states, however, it is difficult to identify the time frame that the legislature intended “imminence” to encompass. Can a threat to a battered woman be “imminent” when the abusive husband was not acting in an obviously threatening manner at the time of the killing, but the wife was certain that an assault would follow?

a) Case law. State v Schroeder, 199 Neb 822, 261 NW2d 759 (1978). The Supreme Court of Nebraska rejected the argument that an aggressor who poses no immediate danger, such as one who is sleeping, can constitute an “imminent” threat. 261 NW2d at 761. In Schroeder, a prison inmate stabbed his sleeping cellmate to death after the cellmate threatened to sexually molest him later that night. Id at 760-61. The defendant was convicted of assault with intent to inflict great bodily injury. Id at 760. One justice dissented from the State Supreme Court’s affirmance of the conviction, arguing that the cellmate’s threats could have supported a finding that the defendant was justified in believing that the use of
force was necessary to protect himself from harm "on the present occasion." Id at 762 (Clinton dissenting). The dissenting justice quoted the comments to § 3.04 of the Model Penal Code (the model for the state's statute), which explain that the justification defense extends beyond cases where the threat is "imminent" in the traditional sense to cases where the actor believes he must defend himself against unlawful force that he "apprehends will be used on the present occasion," but not necessarily "immediately." Id.

State v Gallegos, 104 NM 247, 719 P2d 1268 (Ct App 1986).

Many women kill abusive husbands in the early stages of a pattern of behavior that, in the past, has regularly culminated in full-fledged assaults, even though the husband was not actually attacking the woman at the time of the killing. In Gallegos, Anita Gallegos was the victim of a recurring pattern of abuse: her ex-husband typically got drunk, became angry, went into the bedroom, called to her to join him, and then beat her. 719 P2d at 1273. One day when he called her to the bedroom, she entered with a gun and shot him while he lay on the bed. He was not threatening her at that time. Id at 1272. Gallegos claimed that she knew that a beating would follow—it always had in the past after her husband ordered her into the bedroom. She offered evidence of battered woman syndrome to demonstrate that her perception of and reaction to the recurring pattern of abuse was common among battered women. The trial court admitted the evidence but rejected her proposed jury instruction on self-defense, finding that without an obvious threat at the time of the slaying her ex-husband's prior violent conduct could not support a self-defense instruction. Id at 1269-70.

The appeals court held that the trial court erred in refusing to give the defendant's proposed self-defense instruction, finding that Gallegos's past pattern of behavior was sufficient to justify Anita's belief that an attack was imminent. Id at 1272-73. According to the court, evidence of battered woman syndrome was crucial to establishing that the commencement of the pattern of behavior fit within the definition of "imminence":

Incidents of domestic violence tend to follow predictable patterns. . . . Remarks or gestures which are merely offensive or perhaps even meaningless to the general public may be understood by the abused individual as an affirmation of impending physical abuse. To require the battered person to await a blatant, deadly assault before she can act in defense of herself
would . . . amount to sentencing her to 'murder by installment.'"

Id at 1271. The court held that Gallegos had introduced substantial evidence of imminent danger. Id at 1273.

State v Hundley, 236 Kan 461, 693 P2d 475 (1985).

Betty Hundley shot her husband while he was threatening her, but not actually attacking her. That ended a tumultuous ten-year marriage characterized by frequent, severe beatings. Carl Hundley broke his wife's nose "at least five times, and threatened to cut her eyeballs out and her head off." 693 P2d at 475. Betty Hundley was convicted of involuntary manslaughter and appealed her conviction on the ground that the trial court erred in instructing the jury on the self-defense justification.

The trial court employed the state's standard pattern instruction that would have justified Mrs. Hundley's use of force against her husband if she feared his immediate use of unlawful force. Id at 477. However, the applicable Kansas statute (Kan Stat Ann § 21-3211 (1988)) used the word "imminent." The committee that drafted the pattern instruction used the word "immediate" because it felt the jury would understand that word better. Id at 478. The Kansas Supreme Court held that the use of the word "immediate" in the instruction was improper. Id at 480. The majority fired the opening salvo in a war of dictionaries by citing Webster's Third New International Dictionary 1129-30 (Merriam-Webster, 1961), which defined "immediate" as "[o]ccurring, acting or accomplished without loss of time." 693 P2d at 478. "Imminent," on the other hand, was defined as "[r]eady to take place . . . or impending." Id. The court held that the word "immediate" focused the jury's attention on the husband's actions just prior to the killing, and did not allow it to consider Mrs. Hundley's terror over a long period of time. Id at 479.

A dissenting justice, who returned fire with Black's Law Dictionary 675-76 (West, 5th ed 1979), concluded that the difference between the two terms might require the use of "imminent" over "immediate" in cases involving "matters of seconds," but that Mrs. Hundley was not presented with either an immediate or imminent threat because her husband was not attacking her at the time of the killing. 693 P2d at 480-81 (McFarland dissenting).


The Wyoming Supreme Court affirmed a trial court's refusal to admit evidence of battered woman syndrome, in part because the case was "not the standard battered woman self-defense situa-
tion,” given that the assault provoking the defendant’s killing of her husband had occurred a week before. Id at 1377-78.

b) Statutory provisions. New Jersey has adopted the Model Penal Code’s imminence definition:

[T]he use of force upon or toward another person is justifiable when the actor believes [“reasonably believes” in NJ Stat Ann] that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

Model Penal Code § 3.04(1) (Tent Draft No 8, 1958) and NJ Stat Ann § 2C:3-4(a) (1982 & Supp 1989) (emphasis added). The comments to § 3.04 of the Model Penal Code explain the drafters’ reasoning:

[The draft] does not limit the privilege of using defensive force to cases where the danger of unlawful violence is “imminent,” as many formulations of the rule previously did. The actor must believe that his defensive action is immediately necessary and the unlawful force against which he defends must be force that he apprehends will be used on the present occasion, but he need not apprehend that it will be used immediately. There would, for example, be a privilege to use defensive force to prevent an assailant from going to summon reinforcements, given a belief that it is necessary to disable him to prevent an attack by overwhelming numbers—so long as the attack is apprehended “on the present occasion.”


B. Admissibility of “Battered Woman Syndrome” Evidence

1. Requirements of admissibility.

Expert testimony generally must meet three requirements before it is admissible in court. First, the expert’s testimony must be helpful to the jury. It must be on a subject that the jury is unlikely to understand without an expert’s aid—in some courts’ formulation, a subject “beyond the jury’s ken.” Second, the particular expert must have sufficient skill and experience in the field to be qualified to speak on the subject. Finally, the expert’s methodology must be generally accepted by the scientific community. This last requirement is known as the “general acceptance” or “Frye test,”
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from Frye v United States, 293 F 1013, 1014 (DC Cir 1923). See FRE 702 (requiring that the expert’s scientific, technical, or other specialized knowledge assist the trier of fact); and Dyas v United States, 376 A2d 827, 832 (DC App 1977) (adopting all three elements). Some commentators argue that the three requirements boil down to a simple test: whether the evidence will help the jury. See Mather, 39 Mercer L Rev at 587.

The cases below involve challenges to an expert’s “battered woman syndrome” testimony, based on these three requirements.

a) Beyond the jury’s ken. State v Kelly, 97 NJ 178, 478 A2d 364 (1984). The New Jersey Supreme Court held that the battered woman syndrome is beyond the jury’s knowledge. While expert testimony on the syndrome addresses an issue that jurors can understand by themselves—the reasonableness of the fear of harm—the jurors may have mistaken beliefs about battered women.

Experts point out that one of the common myths, apparently believed by most people, is that battered wives are free to leave. To some, this misconception is followed by the observation that the battered wife is masochistic, proven by her refusal to leave despite the severe beatings . . . . The expert could clear up these myths, by explaining that one of the common characteristics of a battered wife is her inability to leave despite such constant beatings . . . .

478 A2d at 377 (emphasis original). The court admitted the evidence.

See also State v Hodges, 293 Kan 63, 716 P2d 563, 567 (1986); and State v Allery, 101 Wash 2d 591, 682 P2d 312, 316 (1984), substantially agreeing with Kelly’s analysis.

b) General acceptance in scientific community. Ibn-Tamas v United States, 407 A2d 626 (DC App 1979) (“Ibn-Tamas I”), on remand, 455 A2d 893 (DC App 1983) (“Ibn-Tamas II”). The District of Columbia’s highest court thoroughly discussed battered woman syndrome in the first of its Ibn-Tamas opinions. The court held that the Frye “general acceptance” test focuses on the acceptance of the methodology of a field of study, not its subject matter. Ibn-Tamas I, 407 A2d at 638. “[T]he relevant question here,” the court wrote, “is whether [the expert’s] methodology for identifying and studying battered women has such general acceptance—not whether there is, in addition, a general acceptance of the battered woman concept derived from that methodology.” Id.
The court held that the trial court had erred in excluding expert testimony on the syndrome, but remanded the case so that the trial court could apply its newly articulated version of the Frye standard. Id at 640.

On remand, the trial court found that the defendant had failed to establish the general acceptance of the methodology used to study battered women, and therefore excluded the evidence again. In a brief opinion, the D.C. Court of Appeals affirmed that finding as within the trial court’s discretion. Ibn-Tamas II, 455 A2d at 894.

See also State v Kelly, 97 NJ 178, 478 A2d 364, 380 (1984) (theory has “sufficient scientific basis” to produce reliable results); and State v Thomas, 66 Ohio St 2d 518, 423 NE2d 137 (1981), overruled in part in State v Koss, 49 Ohio St 3d 213, 551 NE2d 970 (1990) (Thomas held without discussion that battered woman syndrome had not achieved widespread acceptance, 423 NE2d at 139; Koss reversed, citing growing study and acceptance of the theory in the intervening years, 551 NE2d at 974-75). And see Buhrle v State, 627 P2d 1374 (Wyo 1981), holding that “research in the ‘battered woman syndrome’ is in its infancy,” id at 1377, but might become sufficient at some point in the future. Id at 1378.

c) Expert qualified. The trial court generally has wide discretion to determine whether a particular expert is qualified to testify. Some appellate courts, however, have addressed an expert’s qualifications themselves. See, for example, Commonwealth v Craig, 1990 Ky LEXIS 9, 3 (1990); and State v Hodges, 239 Kan 63, 716 P2d 563, 569 (1986).

2. Statutes.

Mo Ann Stat § 563.033 (Vernon 1987 & Supp 1990) provides:

Evidence that the actor was suffering from the battered spouse syndrome shall be admissible upon the issue of whether the actor lawfully acted in self-defense or defense of another.

See State v Williams, 1990 Mo App LEXIS 282 (1990) (because of the statute, courts can forego the typical admissibility analysis for evidence of the battered woman syndrome).