

IN QUEST OF GENDER-BIAS IN DEATH PENALTY CASES: ANALYZING THE ENGLISH SPEAKING CARIBBEAN EXPERIENCE

Leonard E. Birdsong*

I.	INTRODUCTION	317
II.	A PERSPECTIVE ON THE DEATH PENALTY IN THE CARIBBEAN ...	319
	A. <i>The Death Penalty Debate</i>	319
	B. <i>Pratt and Morgan</i>	321
III.	TRINIDAD, WOMEN ON DEATH ROW, AND RAMJATTAN	323
	A. <i>Trinidad</i>	323
	B. <i>Women on Death Row</i>	324
	C. <i>The Ramjattan Case</i>	324
	D. <i>The Privy Council Ruling</i>	326
IV.	BACK TO THE COURT OF APPEAL	328
	A. <i>The Personal Interviews</i>	328
	B. <i>The Approach in the United States</i>	330
	C. <i>The Reluctance to Put Women to Death</i>	332
V.	CONCLUSION	334
VI.	POSTSCRIPT	336

I. INTRODUCTION

For many years I assumed that there was gender-bias with respect to the imposition and carrying out of the death penalty in the United States. The NAACP Legal Defense Fund reports that as of January 1, 1999, there were forty-nine women on death row in the United States. These forty-nine women constitute 1.4% of the total death row population in the United States.¹ The death sentencing rate and the death row population remain very small for

* Assistant Professor of Law, Barry University of Orlando School of Law. J.D., 1973 Harvard Law School. B.A., *cum laude*, 1968 Howard University. Professor Birdsong served as a Special Assistant United States Attorney to the U.S. Virgin Islands in 1984-85 and as American Consul for Visa Affairs at the American Embassy in Nassau, Bahamas in 1988-89. Professor Birdsong wishes to thank Professor Stephen Leacock, Visiting Professor from DePaul University College of Law, for his encouragement, guidance, and insight leading to the publication of this Article. Professor Birdsong also wishes to thank Warren M. McEwen, Jr. and Michael Schau of the Barry University of Orlando School of Law library for their research assistance.

1. See Women and the Death Penalty: Brief Facts and Figures, Death Penalty Information Center, *available in* LEXIS at 1.

women in comparison to that of men. The United States' total death row population is comprised of 3400 individuals, and there are 50,000 women in prison in the United States.²

However, Elizabeth Rapaport, writing for *Law & Society Review*,³ maintains that such results are not evidence of gender-bias at work. Instead, she argues that women are represented on death row in numbers commensurate with the infrequency of female commission of those crimes that our society labels sufficiently reprehensible to merit capital punishment.⁴ Ms. Rapaport contends that the death penalty under modern era law is only a dramatic symbol used for those predatory crimes that evoke our society's most extreme condemnation. These predatory crimes are usually committed by men against other men and sometimes by women against those who are not intimates or family members.⁵ Women who kill while in the domestic sphere, killing husbands, lovers, or their children, usually kill out of anger, but not for predatory purposes.⁶

Statistics reveal that actual execution of female prisoners is quite rare, with only 533 documented instances beginning with the first in 1632. These female executions constitute less than three percent of the nineteen thousand confirmed executions in the United States since 1608.⁷ Only four female offenders have been executed since 1976.⁸ Death sentences and actual executions for female prisoners are rare in comparison to male offenders. It appears that women are more likely to be dropped out of the system the further the capital punishment system progresses. Again, statistics reveal that although women account for about one in eight of murder arrests (thirteen percent), they account for only one in fifty-three of the death sentences imposed at the trial level, or 1.9% of such sentences imposed.⁹

I came upon these interesting facts and figures concerning our female death row population while investigating the re-emergence of the use of the death penalty in the English-speaking Caribbean ("ESC").¹⁰ These statistics

2. *See id.* at 4.

3. *See* Elizabeth Rapaport, *The Death Penalty and Gender Discrimination*, 25 L. & SOC'Y REV. 368 (1991).

4. *See id.* at 369.

5. *See id.*

6. *See id.* at 370.

7. *See id.* at 2.

8. The four executed female offenders are Betty Beets, Texas, February 2000; Judy Buenoano, Florida, March 1998; Karla Faye Tucker, Texas, February 1998; and Velma Barfield, North Carolina, November 1984. Prior to these executions, Elizabeth Ann Duncan was the last female executed in the United States. Duncan was executed in 1962 by the state of California. *See id.*

9. *See id.*

10. The ESC includes Jamaica, Trinidad and Tobago, Guyana, St. Lucia, St. Kitts and Nevis, Antigua and Barbuda, Grenada, St. Vincent and the Grenadines, Barbados, Dominica, Bahamas, and Suriname.

from the United States, contrasted with several cases of women on death row in Trinidad and Tobago, leads one to speculate that despite arguments to the contrary, there is gender-bias with respect to use of the death penalty on women that reflects an inherent reluctance to put women to death.

This is not necessarily a bad trend. I do not believe that civilized countries should continue to impose the death penalty on any of its citizens, whether male or female. However, many still do.

This Article will address the gender-bias question with respect to the female death penalty debate in Trinidad and Tobago, with special emphasis on the case of Indrawani Pamela Ramjattan. The Privy Council recently remanded her case to the Trinidad Court of Appeal. A decision in her favor may set a regional precedent which will, for the first time, allow women in the ESC to present defense evidence akin to Battered Spouse Syndrome.¹¹

A review of the female death penalty debate in the ESC may encourage reflection on whether there should be gender limitations placed on the imposition of the use of the death penalty in the United States and other nations.¹²

II. A PERSPECTIVE ON THE DEATH PENALTY IN THE CARIBBEAN

A. *The Death Penalty Debate*

Amnesty International and other human rights groups report that over half the countries in the world have abolished the death penalty in law or practice. Specifically, Amnesty International reports that as of April 1998, sixty-three countries and territories have abolished the death penalty for all crimes, while ninety-one other countries, a number of which are in the ESC, retain and use the death penalty.¹³ A number of human rights groups have decried what they believe to be a resurgence of the use of the death penalty in some of these ESC nations.¹⁴ Many of these ESC nations have experienced

11. A typical definition of "Battered Spouse Syndrome" is found in the laws of Maryland. The Maryland statute recognizes that "Battered Wife Syndrome" is a psychological condition where the victim is exposed to repeated physical and psychological abuse by a spouse, former spouse, cohabitant, or former cohabitant. This defense is also recognized in the scientific community as the "Battered Woman's Syndrome." MD. CODE ANN., [CTS. & JUD. PROC.] § 10-916(a)(2) (1999).

12. Although not an ESC nation, it is interesting to note that Cuba's amended criminal laws of 1994 forbid the imposition of the death penalty on pregnant women. See Ley No.62, Dodigo Penal, Modificada po el Decreto Ley No. 140, y el Decreto Ley No. 150, de 6 de Junio de 1994.

13. See Amnesty International Report 50/09/98, *Death Penalty: Facts and Figures on the Death Penalty*, April 1998.

14. Telephone Interview with Sarah DeCosse, an expert on the Caribbean for Human Rights Watch (Jan. 21, 1999). Ms. DeCosse reaffirmed that she believes that due process rights are being taken away from Caribbean death row prisoners. See also Shelly Emling, *Hangings*

a rise in crime rates over the past decade and it is believed that the death penalty will deter serious crime.¹⁵

Recently, death warrants were issued by Jamaica, the Bahamas, and Trinidad and Tobago for death row prisoners who still have applications pending before international bodies, such as the Inter-American Commission on Human Rights and the United Nations Human Rights Commission. The Bahamas was the first of these countries to carry out the death penalty in 1998, with the double execution of Trevor Fisher and Richard Woods on October 15, 1998—the first double hanging in the Bahamas since 1983.¹⁶ The applications of Fisher and Woods are still pending before the Inter-American Commission on Human Rights.¹⁷ Over a three day period in June 1999, Trinidad and Tobago hanged reputed drug lord and convicted murderer Dole Chadee and eight of his co-defendants in a murder conspiracy case. These were the first executions in Trinidad and Tobago since 1994 and only the second since 1979.¹⁸

Although I have not limited my research to the Amnesty International and the Human Rights Watch positions, I often refer to these organizations in this Article because they tend to be the most active and vocal in seeking the abolition of the death penalty everywhere in the world. For instance, Amnesty International contends that ESC nations now have 245 people on death row out of a population of approximately five million.¹⁹ Amnesty International and other human rights groups believe that this rate is one of the highest in the world.²⁰ Amnesty International also reports that Trinidad and Tobago account for one hundred three cases, Jamaica is next with forty-seven cases, and the Bahamas has forty such cases.²¹ In comparison, the death row rate of the Caribbean is almost four times that of the United States, which has 260 million people and 3400 awaiting execution.²²

Resume in Caribbean, NEW ORLEANS TIMES-PICAYUNE, Sept. 27, 1998, at A20 (quoting Ms. DeCosse with respect to her position on capital punishment).

15. As of July 10, 1999, the Jamaican police reported 486 slayings for the year in that nation of 2.6 million people. See *Jamaicans Protest Extradition of a Suspect in 1,500 Deaths*, ORLANDO SENTINEL, July 10, 1999, at A9.

16. See Darold Miller, *Prison in Lock Down for Double Hanging*, EVENING JOURNAL (Bahamas), Oct. 13, 1998, at 1, 3.

17. See AMNESTY INTERNATIONAL, *Bahamas—Hanging Challenge International Human Rights Protection System*, M2 Presswire (London), Oct. 1998.

18. See Mark Wilson, *Trinidad Triple Hanging Defies EU Protest*, DAILY TELEGRAPH (London), June 5, 1999, Issue 147, available in LEXIS.

19. See AMNESTY INTERNATIONAL, *English Speaking Caribbean has 250 on Death Row*, American Embassy Nassau Report, Nov. 18, 1998 [hereinafter AMNESTY, 250 on Death Row].

20. See Serge F. Kovaleski, *Jamaica Sets Hanging as Death Penalty Gains Favor in Caribbean*, WASH. POST, Sept. 1, 1998, at A13.

21. See AMNESTY, 250 on Death Row, *supra* note 19.

22. See *id.*

Human Rights Watch and other human rights organizations view with alarm what they believe is a trend toward the increased popularity of hangings in the Caribbean, a vestige of British colonial rule.²³ They decry the fact that a number of governments in the Caribbean have undertaken controversial steps to change their justice systems and constitutions and sever ties with international appeals bodies, making it easier to carry out such executions.²⁴ An example was cited in 1998 by Human Rights Watch when Trinidad and Tobago partially withdrew from the U.N. International Covenant on Civil and Political Rights and also withdrew from the Inter-American Commission on Human Rights, both of which give individuals convicted of capital offenses an international avenue of appeal.²⁵

Of course, many in the United States are not aware of the death penalty debate that is raging between human rights groups and the governments of many of the ESC nations. An examination of the background of the discussion is instructive. To do so, we must look at what has become known to both the proponents and opponents of the death penalty as the *Pratt and Morgan* cases.²⁶

B. *Pratt and Morgan*

Pratt and Morgan, two consolidated death penalty cases from Jamaica, resulted in a 1993 landmark judgment of the Judicial Committee of the Privy Council, the British Court of last resort for many Caribbean nations. In essence, that judgment established the principle that both Pratt and Morgan, who had been prisoners on Jamaica's death row for a period exceeding five years, could be seen as victims of cruel and inhumane punishment if they were sent to the gallows and should, therefore, have their sentences commuted to

23. See Kovaleski, *supra* note 20.

24. See *id.*

25. The American Convention On Human Rights, Pact of San Jose, Costa Rica, which established the Inter-American Commission on Human Rights provides: "Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority." See American Convention on Human Rights, Pact of San Jose, Costa Rica, Nov. 22, 1969, art. 4, para. 6, 1144 U.N.T.S. 144.

Similarly, the International Covenant on Civil and Political Rights of the United Nations provides: "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases." International Covenant on Civil and Political Rights, U.N. GAOR, 21st Sess., Part III, art. 6, para. 4., Dec. 16, 1966, 999 U.N.T.S. 171, U.N. Doc. A/6316.

26. See *Pratt v. Attorney General for Jamaica*, 2 App. Case 1 (1993).

life imprisonment.²⁷ The Privy Council also recommended that other prisoners on death row in the region for five years or more should also have their sentences commuted.²⁸

The Privy Council in *Pratt and Morgan* reviewed the tortured chronology of the appellants' appeals process which included lost appeals applications, rulings denying their appeal with no written explanation, and Jamaica's failure to recognize the recommendations of the Inter-American Commission on Human Rights based on its review of the case.²⁹ Pratt and Morgan were arrested sixteen years earlier for an October 1977 murder and remained in jail from the date of their arrest. They were convicted of the crime and sentenced to death in January 1979.³⁰

On appeal, Pratt and Morgan argued that to hang them after they had been held in prison under a sentence of death for so many years would be inhumane punishment, and thus, in breach of the Jamaica Constitution.

The Privy Council ruled that in any case in which execution is to take place more than five years after sentencing there would be strong grounds for believing that the delay is such as to constitute inhumane treatment or punishment as proscribed by the constitution.³¹

As a result of *Pratt and Morgan*, all prisoners in the Caribbean who had been on death row for longer than five years had their sentences commuted to life in prison. For those remaining, the *Pratt and Morgan* decision has set off a scramble to extend their appeals process beyond the five year limit. Before *Pratt and Morgan*, there were 450 prisoners on death row throughout the ESC. While only a handful of hangings have occurred in the region since *Pratt and Morgan*, the death row population is less than half of what it was in 1993—a direct consequence of the commutation of sentences.³²

The murder rates in Jamaica, Trinidad, and the Bahamas have increased during the last decade.³³ Many citizens of these three nations believe that the imposition of the death penalty will deter crime.³⁴ In these countries, new administrations have recently been elected to office and have responded to public opinion to deter crime.³⁵ It appears, as a result of their actions in issuing death warrants, that the governments of Jamaica, Trinidad, and the Bahamas believe that their laws should be followed and executions of condemned death row prisoners be carried out before expiration of the five-

27. See *id.* at 35.

28. See *id.* at 35-36.

29. See *id.* at 33.

30. See *id.* at 19-27.

31. See *id.* at 34-35.

32. See, e.g., USIA Press Summary Sent from American Embassy Nassau to U.S. Department of State, Washington, D.C., Oct. 15, 1998.

33. See Kovaleski, *supra* note 20.

34. See *id.*

35. See *id.*

year period mandated by *Pratt and Morgan*.³⁶ Meanwhile, human rights proponents fear due process will be trampled, especially if executions are carried out while death row prisoners have appeals pending before international bodies.³⁷

My quest for answers to the gender-bias question in death penalty sentences led to a more recent Amnesty International survey of all of the death penalty cases in the Caribbean.³⁸ This report reveals that Trinidad and Tobago is the only ESC nation with women on death row. As of April 1999, seventy-six men and five women were on death row in Trinidad. Further, there are seven men on death row in Antigua, twenty-four men in the Bahamas, two men in Barbados, eight men in Belize, one man in Dominica, twenty-three men in Guyana, eight men in Grenada, forty-three men in Jamaica, three on St. Kitts and Nevis, nine men in St. Lucia, and three men in St. Vincent and the Grenadines.³⁹

III. TRINIDAD, WOMEN ON DEATH ROW, AND RAMJATTAN

A. *Trinidad*

I recently traveled to Trinidad to learn more about the country and about the women on death row.⁴⁰ The ESC islands of Trinidad and Tobago (Trinidad) form a unitary state, with a parliamentary democracy modeled after the United Kingdom. The country is headed by a president who is elected by the parliament. There is an independent judiciary, but constitutional cases may be appealed to the Judicial Committee of the Privy Council.⁴¹ The two islands host a population of 1.3 million people and comprise a land mass about 1.5 times the size of Rhode Island. The southernmost tip of Trinidad is only three miles from the Coast of Venezuela. Trinidad's ethnic population is comprised of people of East Indian descent (40.3%), followed closely by those of African descent (39.5%), then people of mixed nationality (18%), and those of European descent (0.6%). The country is endowed with rich deposits of oil and natural gas and in 1996 boasted a gross national product of \$5.4 billion.⁴²

36. *See id.*

37. *See* Telephone Interview with Sarah DeCosse; *supra* note 14.

38. *See* JONATHAN O'DONOHUE, AMNESTY INTERNATIONAL, DEATH PENALTY CARIBBEAN, ESC NUMBERS ON DEATH ROW AND DATES OF LAST EXECUTIONS AS OF APRIL 1999 (London 1999).

39. *See id.*

40. The author visited Trinidad from June 18 through June 22, 1999.

41. *See* U.S. Dep't of State, *Background Notes: Trinidad and Tobago*, released by the Bureau of Inter-American Affairs (Mar. 1998).

42. *See id.*

B. *Women on Death Row*

In my research, I have learned about three of the five women on death row in Trinidad. There is Giselle Stafford who was sentenced to death in 1996 for the murder of a man. Angela Ramdeen was sentenced to be hanged in 1997 for the murder of her stepchildren. And then there is Indrawani Pamela Ramjattan who went to death row for the 1995 slaying of her common law husband, Alexander Jordan.⁴³

No women have been executed in Trinidad since its independence from Great Britain in 1962.⁴⁴ Most of the women on death row are there as a result of some form of domestic violence. A number of women's groups, as well as Amnesty International, believe that domestic violence against women is a way of life in Trinidad. In 1998, twenty-seven women were murdered in domestic violence encounters.⁴⁵ In total there were 2282 reported cases of domestic violence in the same year.⁴⁶ Unfortunately, there are only six women's shelters in the entire nation and no legal aid exists for battered women. Further, the battered wife syndrome, recognized in United States courts as a defense to assault or homicide of a spouse is unknown in Trinidad. If presented in a Trinidad court, such evidence can only be used to show "diminished responsibility."⁴⁷

C. *The Ramjattan Case*

Among the women on death row in Trinidad, Ms. Ramjattan's case is the most chronicled because of interest by women's groups and human rights activists. Despite Trinidad's Attorney General's zeal to carry out the death penalty within the *Pratt and Morgan* five-year limitation,⁴⁸ local speculation abounds that the government of Basdeo Panday will not execute women.

Indrawani Pamela Ramjattan, Haniff Hillaire, and Denny Baptiste were all convicted in 1995 in a joint trial for the murder of Ramjattan's common law husband, Alexander Jordan, at Cumuto, Trinidad. The facts of the case show that Ms. Ramjattan completed the equivalent of an eighth grade education. When Ms. Ramjattan was sixteen her parents accepted money from Jordan, a man in his thirties, for the privilege of making Ms. Ramjattan

43. See Avian Joseph, *Trinidad and Tobago: To Hang or Not To Hang, The Debate Continues*, INTER PRESS SERV., Feb. 10, 1998.

44. Telephone Interview with Mark Mohammad, Director of Public Prosecutions for Trinidad and Tobago (June 21, 1999).

45. Telephone Interview with Jonathan O'Donohue, death penalty expert for Amnesty International (June 9, 1999).

46. See *id.*

47. See *id.*

48. See Linda Hutchinson, *Trinidad: Caribbean Question Privy Council Ruling*, CANA NEWS AGENCY (Trinidad), Jan. 28, 1999, released by OAS Department of Public Information.

his common law wife. Together, Jordan and Ramjattan lived in Cumuto, and had six children in a ten year period. During this same period Ms. Ramjattan suffered abuse at the hands of Jordan and in 1991 she left him. She took two of her children and went to the town of Sangre Grande and began living with her childhood sweetheart, Denny Baptiste. Shortly thereafter, Jordan tracked her down, forcibly broke down Baptiste's door, and took Ms. Ramjattan back to Cumuto. Upon arrival in Cumuto, Jordan beat Ramjattan unconscious.⁴⁹

Shortly thereafter, Ms. Ramjattan wrote a letter to Baptiste and Hillaire, a friend of Baptiste who lived in the same housing complex, to come to Cumuto to rescue her. Ms. Ramjattan swore in a court affidavit that she did summon Baptiste and Hillaire but never asked them to kill her husband.⁵⁰ Nevertheless, late on the night of February 12, 1991, Ms. Ramjattan met Baptiste and Hillaire behind her house. She gave the two men a piece of wood and directed them to the area in the house where Jordan was sleeping. Baptiste and Hillaire entered the home and struck Jordan in the head several times with the piece of wood while he lay sleeping. They then rolled Jordan's body in a bed sheet, transported him to his van, and placed him inside. According to testimony, Ramjattan brought kerosene to Baptiste and Hillaire, who then sprinkled it on Jordan's body and set him and the van afire. An autopsy showed that Jordan had died from three blows to his head which fractured his skull. His body was also covered with first degree burns.⁵¹

Additionally, Ms. Ramjattan was pregnant by Baptiste when she was taken into custody after Jordan's murder. She did not speak to a lawyer until a year into her detention because she lacked money to hire a lawyer. The baby later died when prison officials refused to take her to the hospital when she went into labor.⁵²

Following her conviction, Ramjattan's appeals were heard by the local courts and by the Privy Council which found that her case did not fit the statutory definition of provocation or unlawful force.⁵³ However, one of the Privy Council Judges, Lord Browne-Wilkinson, described the case as "tragic" as it was clear that Jordan had "beaten her mercilessly."⁵⁴ Ramjattan's plight gained the attention of the Coalition Against Domestic Violence in Trinidad and other women's groups in Kenya and throughout the world which contended that to hang Ramjattan would be an injustice given what they

49. See *Their Chilling Journey to Death Row*, SUNDAY NEWSDAY (Trinidad), June 20, 1999, at A10.

50. See Mark Fineman, *The Case of the Death Row Widow*, LOS ANGELES TIMES, Jan. 27, 1999, at A1.

51. See *Their Chilling Journey to Death Row*, *supra* note 49.

52. See Wesley Gibbs, *Rights—Trinidad and Tobago: Merciless Murderer or Victim?*, INTER PRESS SERV. (Trinidad), Nov. 19, 1998.

53. See *id.*

54. *Id.*

believe to be her unstable mental state at the time of Jordan's death.⁵⁵ A new team of lawyers obtained expert evidence on her behalf to take to the Privy Council, and alleged that at the time of the murder, Ramjattan suffered emotional and cognitive distortions that would have rendered her psychologically incapable of understanding the consequences of her plan to have Jordan murdered.⁵⁶

It is interesting to note that at the trial level Ms. Ramjattan's lawyer chose not to present evidence of her years of abuse. Rather, it was the prosecution that used the abuse evidence to reinforce the argument that Ramjattan had a strong motive to murder her husband. Similarly, Ramjattan's lawyers chose not to focus on the abuse in her first appeal to the Privy Council.⁵⁷

D. *The Privy Council Ruling*

In late 1998, local attorneys and supporters of Ramjattan learned, through interviews with her on death row, the extent of Jordan's brutality over the years. These supporters hired Joanne Cross, a lawyer at a British law firm, to file a new appeal before the Privy Council.⁵⁸

The new appeal asked the Privy Council to reconsider the case based on new evidence. The new evidence consisted of a seventeen-page psychiatric report on Ramjattan by a London-based expert on domestic abuse. Forensic psychiatrist Nigel Eastman of London's St. George's Hospital Medical School concluded that Ramjattan was a classic victim of "Battered Woman Syndrome."⁵⁹ The report also stated that Ramjattan suffered from:

[R]epetitive physical violence, culminating in a most severe attack on [the] 4th [of] February, repeated rapes . . . enforced isolation . . . amounting ultimately to imprisonment as a hostage in the days leading up to the offense, threats to kill, attacks with weapons, threats with a shotgun, worsened violence if she protested, worsened violence when she escaped, humiliation and mental abuse[,] starving and beating their children [,]and refusing to allow them to go to school.⁶⁰

Many hoped that the Privy Council would rule in Ramjattan's favor and set a precedent for the ESC which would provide that domestic abuse could

55. *See id.*

56. *See id.*

57. *See Fineman, supra* note 50.

58. *See id.*

59. *See id.*

60. *Id.*

justify homicide in self-defense. On February 3, 1999, the Privy Council ~~did~~ ruled in Ramjattan's favor. However, the ruling did not go as far as her supporters hoped in setting a clear precedent concerning whether abuse can justify homicide in self-defense. The ruling did, in fact, send the case back to the Trinidad Court of Appeal, and perhaps, more importantly, provided Ramjattan an avenue to escape the gallows.

The Privy Council accepted Ramjattan's new evidence as adequate to support her allegation of diminished responsibility on the grounds that she had not previously had the financial resources to procure such evidence.⁶¹ The Privy Council further held in relevant part:

Their Lordships' Board has jurisdiction to hear further petitions in respect of the same matter notwithstanding the dismissal of earlier petitions. The jurisdiction will however only be exercised in exceptional cases where new grounds of appeal are raised of such a character and of sufficient merit to justify a second petition.

* * *

The petitioner seeks leave to adduce new evidence, not previously relied upon, to support an allegation of diminished responsibility. If she can establish the facts required by s 4A of the Offences Against the Person Act 1925, she would have a defence to the charge of murder.

* * *

On this petition, their Lordships confined their consideration to the question whether a sufficient case had been made out for remission to the Court of Appeal. Having decided to remit, they did not enter upon the question whether the Court of Appeal should accept the new evidence nor what weight the Court of Appeal should give it nor whether it indeed justify the quashing of her conviction for murder and substituting a conviction for manslaughter or the ordering of a retrial. All of these are matters for the Court of Appeal to decide: they may choose to hear oral evidence: evidence in rebuttal of the new evidence may be adduced: what in the upshot the evidence proves and what its admissibility and relevance if called at the trial would have been will have to

61. See *Ramjattan v. The State*, slip op. (Privy Council Feb. 3, 1999).

be assessed as will the petitioners explanation for not having adduced that evidence at trial.

* * *

Their Lordships have after some hesitation decided that the evidence of Dr. Eastman does justify a remission to the Court of Appeal so that the Court of Appeal may reconsider the appeal of Indrawani Ramjattan taking into account that evidence. They do not overlook that there are still obstacles to be overcome before she can successfully challenge the jury's verdict.

* * *

It should also be noted that their Lordships' Board have dismissed the petitions of Denny Baptiste and Haniff Hillaire.⁶²

IV. BACK TO THE COURT OF APPEAL

A. *The Personal Interviews*

The Privy Council has firmly put the ball back in the court of the Trinidadian Court of Appeal. Arguments in the case had been set for July 8, 1999, but have been continued by the court of appeal to November 1999. It is not known how long it might take the court to rule after the arguments.⁶³

While in Trinidad I spoke with Anthony Carmona, Chief Deputy Director of Public Prosecutions, who is writing the brief for the government in the Ramjattan case and with Rangee Dolsingh, Deputy Director of Public Prosecutions, who will argue the case for the government in the court of appeal.⁶⁴ After a review of the Privy Council ruling, Carmona and Dolsingh opined that the court of appeal, after hearing arguments, may issue one of three rulings: 1) find a miscarriage of justice in the case and order a retrial; 2) enter a substitution of verdict and reduce the conviction to manslaughter; or 3) find the psychological evidence not credible, dismiss the appeal, and reestablish the original death sentence.⁶⁵

62. *Id.*

63. Telephone Interview with Rangee Dolsingh, Deputy Director of Public Prosecutions, Trinidad and Tobago (July 15, 1999).

64. I interviewed these officials at the Office of Public Prosecutions, Port of Spain, Trinidad on June 21, 1999.

65. Interview with Anthony Carmona, Chief Deputy Director of Public Prosecutions, Port

Mr. Dolsingh indicated that he will argue forcefully that the death sentence should be upheld. He believes that Ramjattan is an intelligent woman who has exaggerated the amount of abuse that she suffered at the hands of her deceased husband. It is his personal belief that the imposition of the death penalty should be gender-neutral and that the death penalty should be carried out in Ms. Ramjattan's case, given the brutality of the crime. Nevertheless, Prosecutor Dolsingh confided that he believes that public policy in Trinidad will not allow a woman to be hanged.⁶⁶ This sentiment was echoed by Justice George A. Edoo, Ombudsman of Trinidad and Tobago, with whom I also met during my visit to the country. Mr. Justice Edoo, who during his career presided over numerous murder trials, stated simply that women should not be put to death. He maintains that it is his opinion, and he believes the opinion of the majority of Trinidadians, that to put a woman to death, any woman, would be like putting one's sister or mother to death; it is too unseemly to contemplate.⁶⁷ Perhaps Justice Edoo has articulated the root of gender-bias in death penalty cases: the unseemly notion of, perhaps, putting our sisters or mothers to death.

I also had the opportunity to speak to others about the issue. Douglas Mendes is one of the attorneys who has worked on the brief for Ramjattan's case, as well as briefs for a number of other death penalty cases. Attorney Mendes resolutely does not believe that there should be gender equality in the death penalty because he believes there should be no death penalty anywhere in the world.⁶⁸ Further, Attorney Mendes refused to speculate as to how the court of appeal would rule respect to Ramjattan's case. Later, I had the opportunity to meet with Gaitry Pargass, local counsel for Ms. Ramjattan at the time of both her Privy Council appeals. Attorney Pargass believes the best ruling from the court of appeal would be the order of a new trial, thereby allowing counsel to present the very compelling Battered Spouse Syndrome evidence through expert and eyewitness testimony. She believes such evidence would lead to an acquittal. However, Attorney Pargass confided that Ms. Ramjattan has told her that she does not have the psychological wherewithal to endure a second trial. Attorney Pargass believes that if the court of appeal substituted a manslaughter conviction for the capital murder conviction, the trial team could then argue for her release on grounds that she had served adequate time for the crime.⁶⁹

of Spain, Trinidad (June 21, 1999).

66. Interview with Rangee Dolsingh, Deputy Director of Public Prosecutions, Trinidad and Tobago, Port of Spain, Trinidad (June 21, 1999).

67. Interview with Justice George A. Edoo, Office of the Ombudsman of Trinidad and Tobago, Port of Spain, Trinidad (June 21, 1999).

68. Interview with Attorney Douglas Mendes, Port of Spain, Trinidad (June 21, 1999).

69. Interview with Attorney Gaitry Pargass, Port of Spain, Trinidad (June 21, 1999).

One of my final interviews while in Trinidad was with Keith Renaud, the Assistant Superintendent of Police. Superintendent Renaud believes that there should not be the amount of crime that his small nation is facing. He believes that the death penalty is needed in Trinidad to send a signal to criminals that the law will be upheld. However, he predicts, given the politics of the country, Ramjattan will not be hanged. While the Panday government has shown itself tough on crime by hanging nine people in the Dole Chadee gang, it would prove unpopular with the electorate to put one woman to death. Superintendent Renaud believes that there would be a backlash against the government.⁷⁰ The irony, Renaud points out, is that the Prime Minister and his party, the United National Congress (UNC), represent the ethnic majority—those of East Indian descent (40.3% of the population). All nine of the men members of the Dole Chadee gang executed in June were of East Indian descent. This was seen by the public as a bold and popular move to eradicate crime. Yet Ramjattan is also of East Indian descent. The majority of people in the country do not believe a woman should be put to death. Such an execution would harm the goodwill that the Panday government has built. There certainly appears to be gender-bias with respect to the death penalty in Trinidad. I think this is a positive sign, perhaps a first step to the abolition of the death penalty altogether.

B. *The Approach in the United States*

It will be interesting to learn how the court of appeal will rule in the Ramjattan case. Trinidad has an opportunity to make new law in this area. I suggested to officials that if there is such a widespread feeling against putting women to death, legislation could be passed that would recognize and admit at trial evidence of "Battered Spouse Syndrome." This has been the approach of many states in the United States. Although the approaches taken by courts differ toward the admissibility of Battered Spouse Syndrome, a survey of recent decisions indicates that a majority of the states admit evidence of Battered Spouse Syndrome.⁷¹

Typically, Battered Spouse Syndrome evidence is offered in cases when the accused woman is charged with killing a man who abused her. Expert testimony is offered in support of her claim of self-defense. States such as Georgia, Kansas, Maine, New Hampshire, New York, Pennsylvania, and Washington have held expert testimony on the Battered Spouse Syndrome

70. Interview with Keith Renaud, Assistant Superintendent of Police, Port of Spain, Trinidad (June 21, 1999).

71. See Cynthia L. Coffee, *A Trend Emerges: A State Survey on the Admissibility of Expert Testimony Concerning the Battered Woman Syndrome*, 25 J. FAM. L. 373, 396 (1986-87).

to be unconditionally admissible; others, such as Louisiana, Ohio, and Wyoming have not admitted evidence of this Syndrome.⁷²

In recent years, the Florida Supreme Court has also ruled on various aspects of this issue. In *Florida v. Hickson*,⁷³ the court held that an expert can generally describe the Battered Spouse Syndrome, the characteristics of a person suffering from the Syndrome, and can express an opinion in response to hypothetical questions predicated on the facts in evidence, but cannot give an opinion based on an interview of the defendant as to applicability of the Syndrome to that defendant unless notice of reliance on such testimony is given and the state has the opportunity to have its expert examine the defendant.⁷⁴ In *Weiand v. Florida*,⁷⁵ the same court ruled that a battered spouse has no duty to retreat from her house which she shared with the co-occupant abuser. The *Weiand* court also held that exclusion of eyewitness testimony at trial to corroborate an assertion of prior abuse by the victim spouse was not harmless error, even where expert testimony had already been presented concerning Battered Spouse Syndrome.⁷⁶

In 1996, the Maryland legislature specifically addressed the issue with an amendment allowing the state courts to admit Battered Spouse Syndrome evidence in trials where the defendant is charged with "(i) First degree murder, second degree murder, manslaughter, or attempt to commit any of these crimes; or (ii) Assault in the first degree."⁷⁷ The statute provides:

(b) Admissibility of evidence. Notwithstanding evidence that the defendant was the first aggressor, used excessive force, or failed to retreat at the time of the alleged offense, when the defendant raises the issue that the defendant was, at the time of the alleged offense, suffering from the Battered Spouse Syndrome as a result of the past course of conduct of the individual who is the victim of the crime for which the defendant has been charged, the court may admit for the purpose of explaining the defendant's motive or state of mind or both, at the time of the commission of the alleged offense:

(1) Evidence of repeated physical and psychological abuse of the defendant perpetrated by an individual

72. See Charles Bleil, *Evidence of Syndromes: No Need For a "Better Mousetrap,"* 32 S. TEX. L. REV. 37, 40 (1990).

73. *Florida v. Hickson*, 630 So. 2d 172 (Fla. 1994).

74. See *id.* at 173.

75. *Weiand v. Florida*, 732 So. 2d 1044, 1051 (Fla. 1999).

76. See *id.* at 1057.

77. MD. CODE ANN., [CTS. & JUD. PROC.] § 10-916 (a)(2) (1999).

who is the victim of a crime for which the defendant has been charged; and
 (2) Expert testimony on the Battered Spouse Syndrome.⁷⁸

Whether these observations on United States law concerning Battered Spouse Syndrome will guide the court in the Ramjattan case is open to conjecture. Ms. Ramjattan's case differs from many United States cases involving Battered Spouse Syndrome and does not fit neatly into the Maryland statute. First, Ms. Ramjattan did not deliver the blows that killed her husband. These were meted out by two male friends to whom she had turned for help. Throughout the trial she insisted that she called them merely to rescue her, not to kill her husband. The jury did not believe her.⁷⁹ She was convicted as an aider and abettor and was as guilty as the principals who struck the death blows. Second, at trial, Ms. Ramjattan did not once utter the words "battered spouse." Her strategy was simply to say that she was not a party to the violence that killed her husband.

However, as I understand the defense, Ramjattan's attorney will use the evidence of her battered state to show that she had a mental state that would have indicated "diminished responsibility" for the crime. That is, her actions as an aider and abettor were a product of the abuse she had suffered for so many years from her husband, and thereby had distorted her mind and mental processes.⁸⁰

C. *The Reluctance to Put Women to Death*

Justice Edoo believes that Ramjattan's life will be spared because he believes that to execute a woman would be like killing a sister or a mother. Another way of expressing this thought may be that society prefers to think of women as passive, not powerful or aggressive. To execute a woman is to acknowledge that women can be violent.⁸¹

Leigh Beinen, a law professor who studies gender-bias in capital cases, contends the reason so few women face execution has to do with the symbolism that is central to the death penalty. She states that "[c]apital punishment is about portraying people as devils[,] [b]ut women are usually seen as less threatening."⁸² Beinen believes that juries and judges tend to find

78. *Id.*

79. See Tunku Varadarajan, *Battered but Not Yet Beaten*, TIMES (London), Oct. 13, 1998.

80. *See id.*

81. See *Every Woman Conversations: Readers Back Equality in Death Penalty*, PLAIN DEALER (Cleveland), Feb. 17, 1998, at 3E.

82. Thad Reuter, *Why Women Aren't Executed: Gender Bias and the Death Penalty*, 23 FALL HUM. RTS. 10 (1996).

more mitigating factors in capital cases involving women than in those involving men. She further maintains that women who kill spouses are often seen as victims.⁸³ Women are likely to kill someone they know without premeditation, which is considered less serious than killing a stranger.⁸⁴

Rapaport, a previously-mentioned scholar who does not believe that there is inherent gender-bias with respect to the death penalty in the United States, argues that most murders, whether committed by men or women, are not sufficiently aggravated to tempt prosecutors to pursue a death penalty.⁸⁵ She also believes that an important reason why so few women are eligible for capital sentences is that women who kill are more likely than men to kill family and other intimates in anger than for a predatory purpose. Predatory murder is committed to gain some material or other advantage, in contrast to killing that appears to be stimulated by powerful emotion. Felony and other predatory murders are most often committed against strangers and least often committed against family and other intimates.⁸⁶

Rapaport also suggests that a majority of death penalty states treat a prior history of violence as a factor in aggravation of murder that, if not outweighed by mitigating factors, permits a jury to impose the death penalty.⁸⁷ Such factors as a prior felony conviction, a prior history of violence, and a prior conviction for murder express the condemnation of a history of violence common in the capital statutes.⁸⁸ In this regard, Rapaport found that twenty percent of male murderers but only five percent of female murderers convicted in state courts in 1986 had prior convictions for a violent felony.⁸⁹

As a final factor, Rapaport cites that some theorize that women are often spared the death penalty because they are viewed by prosecutors and juries to be mere accomplices of dominant males,⁹⁰ and hence less culpable.

If we apply the theories of Beinen and Rapaport to the three women executed in the United States since 1976, one can believe that these women were put to death because their crimes were predatory ones and not simply domestic. In the case of Velma Barfield, prosecutors revealed evidence to show that she was a serial poisoner who was finally convicted for slipping roach killer into her fiancé's beer.⁹¹ Such crimes appear to be predatory.

Then there is the well-known case of Karla Faye Tucker. Evidence from her case revealed that while under the influence of drugs, she and her

83. *See id.*

84. *See id.*

85. *See Rapaport, supra note 3, at 370.*

86. *See id.* at 371.

87. *See id.*

88. *See id.* at 372.

89. *See id.*

90. *See id.* at 373.

91. *See To Kill A Woman: Gender Fuels Debate in Death Penalty Case*, *NEWSDAY*, Jan. 12, 1998, at A17.

boyfriend robbed and killed two people by repeatedly assaulting them with a pick ax while the victims were still in their bed. Tucker allegedly boasted to confidants after the crime that she had experienced a surge of sexual pleasure every time she swung and hit her victim with the pick ax.⁹² This certainly appears predatory.

Finally, Judy Buenoano, dubbed the "Black Widow" by Florida prosecutors, was sentenced to die for the 1971 arsenic poisoning death of her husband in Orlando. She had also been convicted of drowning her disabled nineteen-year-old son in a Santa Rosa County river in 1980, and for attempting to kill her fiancé with a car bomb in Pensacola in 1983.⁹³ Here were predatory crimes in conjunction with prior convictions.

Under the Beinen and Rapaport theories, it is understandable to see why these three women were put to death. Their crimes symbolized evil, the work of women who could only be "devils."⁹⁴

Could such analysis be applied in Trinidad to the Ramjattan case or to the other women on death row? Perhaps Ms. Ramjattan will not be put to death because she is not much of a "devil." Perhaps she will not be put to death because her crime against her husband was not predatory, but had only grown out of a domestic situation gone awry. Also, Ms. Ramjattan has no prior criminal record. Of course, what may be viewed as non-predatory in the United States would not pass muster in Trinidad. The prosecutor will argue to the court of appeal that Ms. Ramjattan called the killers to her home, she provided them the murder weapon, and then gave them the kerosene with which to set her husband afire. Although seemingly cold-blooded, these do not appear to be predatory acts as defined by Rapaport. They were not performed for material gain. Instead, it appears that revenge was the motive. Yet, Mr. Dolsingh believes the acts of Ms. Ramjattan were as predatory and as cunning as those of an animal.⁹⁵

V. CONCLUSION

Although we do not know what the outcome may be of the Indravani Pamela Ramjattan case, I am certain that the inherent gender-bias in sentencing women to death will prevail. It is possible that the Court of Appeal of Trinidad will rule in such a way as to establish Battered Spouse Syndrome as a legitimate defense in murder cases where there has been domestic violence. However, courts are usually conservative about forging new law

92. See Sam Howe Verhovek, *Women On Death Row: Should Texas Kill Her?*, Sun-Sentinel (Ft. Lauderdale), Jan. 4, 1998, at 3A.

93. See *Equity On Death Row*, SARASOTA HERALD-TRIBUNE (Florida), Mar. 21, 1998, at A18.

94. See Reuter, *supra* note 82, at 10.

95. See Interview with Rangee Dolsingh, *supra* note 66.

and would rather await input from the legislature. If the court of appeal does not decide to overturn the death penalty for Ramjattan, it is possible that the President or the Prime Minister could commute the death sentence to a life sentence. This is not without precedent and may make for a compromise for the country.

Many remember the actions of two Governors, Richard Celeste of Ohio and William Donald Schaefer of Maryland, in 1990 and 1991. In December 1990, Celeste, then the outgoing Governor of Ohio, commuted the sentences of twenty-five women who had been convicted of killing or assaulting abusive mates.⁹⁶ During the next month, Governor Celeste commuted to life in prison the sentences for all four women who were on Ohio's death row. Several months later, Maryland Governor Schaefer commuted the sentences of eight battered women. As a result, both governors became the focus of intense media debate that invoked opposing views of justice, mercy, and gender roles.⁹⁷

The Panday government, faced with the inherent gender-bias of the death penalty, should follow the lead of former Governor Celeste and commute to life imprisonment the death sentences of the five women on Trinidad's death row. The Panday government could use the justifications of both Governor Celeste and Governor Schaefer: that Ramjattan and the other women pose no threat to the community; that the women had been trapped in their battering relationships; that the women had served enough time for their crimes; and that commutation was the right thing to do and served the public interest.⁹⁸

Of course, the Panday government can also do nothing; that is, if the court of appeal sustains Ramjattan's original death sentence, the Panday government can hold off issuing her death warrant. After September 2000, five years will have elapsed since her original conviction and the death sentence will automatically be stayed because of *Pratt and Morgan*. This, I believe, will be the ultimate way out for Ms. Ramjattan. In the end *Pratt and Morgan* may be the double-edged sword that allows the government to perpetuate gender-bias with respect to the death penalty in the ESC.

The author intends to continue following the development of the Ramjattan case in Trinidad, as well as the continuing debate concerning the use of the death penalty in the ESC. Hopefully, as a result of gender-bias with respect to the death penalty, ESC nations like Trinidad will ban imposing the death penalty on women. This could be one small step on the way to abolishing the death penalty in the ESC altogether.

96. See Joan H. Krause, *Of Merciful Justice and Justified Mercy: Commuting the Sentences of Battered Women Who Kill*, 46 FLA. L. REV. 699, 704 (1994).

97. See *id.*

98. See *id.* at 743.

VI. POSTSCRIPT

Although writing a post script to a law review article is a novel concept, unexpected events that arose in this case dictated that I do so. Shortly after the foregoing Article was accepted for publication in its original form by this journal⁹⁹ the Court of Appeal in Trinidad stunned the ESC legal community by ruling in favor of Ramjattan, even before oral arguments could be heard.¹⁰⁰ Although oral arguments had been set for November 18, 1999,¹⁰¹ on October 8, 1999, the court of appeal voided Ramjattan's murder conviction and substituted one of manslaughter.¹⁰² Chief Justice Michael de la Bastide, in an oral opinion, overturned Ramjattan's death sentence, stated that she had suffered from battered wife syndrome, and as a result suffered "diminished responsibility" for the killing of her husband Alexander Jordan.¹⁰³

In reducing the charges against her, the judge then sentenced Ramjattan to five years in prison, in addition to the eight years she had already endured since first being arrested for the crime.¹⁰⁴ In essence, a precedent was set: for the first time in the ESC, battered wife syndrome was ruled a legitimate defense to a first-degree murder charge. However, to some the victory is a hollow one because of the five additional years Ramjattan must spend in prison. A Trinidadian newspaper aired the sentiment of many who have followed the Ramjattan case when it opined:

The removal of Indravani Pamela Ramjattan, 36, from death row was inadequate. She could have been set free given the brutality she endured which led to her crime. . . . While it is understandable that the courts would not want to send a signal to abused wives that conspiring to kill their husbands is a way out, the years Ramjattan has already spent on Death Row should have been taken into consideration in passing sentence.¹⁰⁵

Again, I sought the insight of Rangee Dolsingh as to the turn of events with respect to the actions of the court of appeal. Mr. Dolsingh, who was to argue the case on behalf of the government on November 18, 1999, was also

99. A copyright and publishing agreement was signed by the author and the Indiana International & Comparative Law Review on Sept. 10, 1999.

100. See *Battered-Wife Defense Wins in Trinidad Court*, ORLANDO SENTINEL, Oct. 9, 1999, at A12 [hereinafter *Battered-Wife*].

101. See Telephone Interview with Rangee Dolsingh, *supra* note 63.

102. See Editorial, *The Abuse Continues*, TRINIDAD EXPRESS, Oct. 10, 1999.

103. *Battered-Wife*, *supra* note 100.

104. See *The Abuse Continues*, *supra* note 102.

105. *Id.*

bewildered by the turn of events. He indicated that he still has not learned why the court of appeal made the decision to overturn the murder conviction without further argument. Further, Mr. Dolsingh indicated that he believed it was the psychiatric report of Dr. Nigel Eastman that convinced the court of appeal that there was ample evidence in the record of diminished responsibility because of the amount of abuse and battering suffered by Ramjattan.¹⁰⁶ Mr. Dolsingh believes that the case is not over yet. He maintains that Ramjattan has every right to, once again, go to the Privy Council in an effort to have her sentenced reduced to time served.¹⁰⁷

What we can say with some degree of certainty is that my prediction rang true. The inherent gender-bias with respect to putting women to death saved Ramjattan from the gallows in the English-speaking Carribean.

106. Telephone Interview with Rangee Dolsingh, Deputy Director of Public Prosecutions, Trinidad and Tobago (Oct. 19, 1999).

107. *See id.*

