

RICHARD A. SELTZER (SBN 092317)
CHRISTOPHER T. CODY (SBN 111464)
ANN M. HANSEN (SBN 122951)

SELTZER & CODY
180 Grand Avenue, Suite 1300
Oakland, CA 94612
Telephone: 510-893-6622

DENNIS CUNNINGHAM (SBN 112910)
3163 Mission Street
San Francisco, CA 94110
Telephone: 415-285-8091

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA
ESTATE OF MARIA TERESA) Case No. C-96-03658-DLJ
MACLAS, et al.,

Plaintiffs,) DECLARATION OF DR. DANIEL J.
v.) SONKIN IN SUPPORT OF
) PLAINTIFFS' OPPOSITION TO
) DEFENDANTS' MOTION FOR SUMMARY
) JUDGMENT

DEPUTY SHERIFF MARK LOPEZ,)
et al.,) Date: December 23, 1998
) Time: 10:00 a.m.
Defendants.) Ctrm: #1

I, Daniel J. Sonkin, Ph.D., declare as follows:

1. I am a licensed Marriage, Family and Child
Counselor whose areas of clinical expertise are domestic
violence and child abuse. I have written numerous articles and
books on domestic violence including, Learn ma to Live Without
Violence: A Handbook for Men, The Male Batterer: A Treatment
ADDroach, Domestic Violence on Trial: Leaal and Psychological
Dimensions of Family Violence, and A Counselor's Guide to
Learnina to Live Without Violence. Among the numerous

articles I have written are several articles on the psychological assessment of male batterers and the legal and ethical issues regarding "dangerousness". I have also authored a publication concerning the treatment of obsessive perpetrators who stalk their partners, like Avelino Macias, entitled, Stabilization Program For Stalkers: A Manual For Counselors, and Stabilization Program For Stalkers: A Workbook For Men. (See attached Curriculum Vitae)

I have developed a system of risk assessment for domestic violence perpetrators for mental health and law enforcement professionals to assist in identifying high risk clients and how to intervene effectively with them.

In addition to my independent clinical practice, I am a consultant to the Domestic Violence Prevention Program at Family and Community Counseling Services in Santa Rosa, California. This program provides treatment services for men and women on probation for domestic violence related offenses. This program is one of the programs Avelino Macias would have been referred to by Probation Department should he had been arrested and charged with violating a restraining order, stalking or making threats to kill his wife.

Over the past twenty years I have testified 30 to 40 times in domestic violence homicide and assault cases. I have testified for the Sonoma County District Attorney's Office and the Public Defender's Office about battered women syndrome.

A copy of my Curriculum Vitae is attached as Exhibit A.

2. I was retained by Plaintiff to provide expert testimony in this matter and in connection therewith I have

reviewed diary excerpts, depositions and attached exhibits, records of the Sonoma County Sheriff, and psychological reports concerning Avelino Macias and Maria Teresa Macias..

3. Based upon my review of these materials, and upon my expertise and experience with men like Avelino Macias, who are domestically violent and are obsessive stalkers, I have concluded that it was reasonably foreseeable throughout the period beginning on January 21, 1996, when it was reported that Avelino Macias forced his way into his wife's home, until her murder on April 15, 1996, that if Avelino was permitted to continue his pattern of stalking, harassment, sexual obsession and threats to kill, his conduct could escalate to lethal violence, particularly as he came to realize that Maria Teresa was not going to resume living with him.

4. Avelirio Macias was a man who should have been considered extremely dangerous to Maria Teresa and her family. His history of domestic violence and child sexual abuse prior to their separation and history of stalking, harassment, sexual assault and threats to kill subsequent to their separation, made Mr. Macias, in my opinion to be at considerable risk to commit lethal violence. The fact that the pattern of violence and stalking during the period from January through April, 1996, did not involve any reported physical assaults (the last reported sexual assault was on December 27, 1995) is not significant from a risk assessment standpoint.

5. Mr. Macias followed Maria Teresa to private homes she was hired to clean, occasionally causing her to lose jobs.

After she obtained the restraining order he followed her to her night school, to church, into stores, he appeared outside her apartment on a nearly daily basis, he telephoned her apartment repeatedly, he blocked her car with his in a parking lot on one occasion and persisted in doing so even after being ordered to move his car by a Deputy Sheriff; [Source: Duffy Depo. 12:9-15:8, CAD printouts (Bates #COS 0271, 0272, 0273, 0274, 0276), Cabello Depo. 159:6-160:9, 170:25-173:2, 175:6-178:10, Armstrong Depo. 21:3-22:25, 23:10-24:7, 137:2-138:9-24, Levi Depo. 58:2-60:25, Schimm Depo. 7:15-9:11, Hansen Depo. 5:19-7: E. Wells Depo. 40:20-41:9, 17:3-22, 36:24-37:9 Crime Incident Report #960131-58, Crime Incident Report #960221-60. Supplemental Report #960221-60]

6. Mr. Macias made repeated threats to kill Maria Teresa and her mother Sara Hernandez in the months preceding the shooting, which threats were communicated to the Sheriff's Department; [Source: Carmona-Hernandez Depo. 83:15-17, Cabello Depo. 190:14-191:7, 203:13-18, 205:1-17, 222:5-25, 317:11-319:25, 572:15-573:20, Armstrong Depo. 35:19-36:24, Soledad Macias Depo. 49:2-50:15] Maria Teresa told Sheriffs' Deputies that she feared for her life. Another witness told the Sheriffs that Avelino was going to kill Maria Teresa. Over two dozen incidents of stalking, restraining order violations and threats were reported to the Sheriffs.

The Sheriff's Department's failure to interrupt this pattern of conduct by taking steps to effectively intervene, placed Maria Teresa in great danger of being physically assaulted or murdered throughout that time because it gave Mr.

Macias the unintended message that his behavior was not illegal.

7. The pattern of stalking in which Avelino Macias was engaged is conduct which feeds on itself. That is, the more the stalker gives in to stalking to fulfill his obsessive urges concerning his victim, the more he will do it again and again, and become more and more obsessed and irrational.

It was crucial to Maria Teresa's safety, and her life, that, during the months before her murder, Mr. Macias be held accountable, that he get the message that his behavior was illegal and that the consequences outweigh the benefits from continuing to act abusively by harassment and stalking. Arrest and incarceration would have been sufficient interventions to break Mr. Macias' pattern of conduct. In addition, psychological treatment could have been made a condition of probation. This would have allowed him a context to discuss these specific problems (as opposed to issues of coparenting, etc. which he was receiving through HHS). This treatment program also would have provided additional persons monitoring his compliance with the court and conditions of probation. The system in Sonoma County was in place from January through April 15, 1996 to do just this if the Sheriff had not failed to bring Mr. Macias into the criminal system.

8. It has been demonstrated in communities throughout the country that swift and firm law enforcement intervention in domestic violence cases works to decrease the risk of further violence, and substantially reduces the risk of domestic violence homicides. An arrest communicates to the

stalker that his behavior is illegal and unacceptable and that he will face serious consequences if he continues to break the law. An arrest communicates to the stalker that he is no longer in control. It gets him into the system where his conduct will be monitored and punished with increasing severity if it keeps recurring. It gets him into mandatory counseling. And it empowers the victim to have the ability to do something herself to stop stalking and threats whenever they occur, encouraging her to report each and every violation.

9. If Avelino Macias had been arrested and convicted for violation of the restraining order under California Penal Code §273.6, he would have been either fined or imprisoned for up to one year. Under this statute he also could have been placed on probation and ordered to undergo counseling.

10. If Avelino Maclas had been arrested and convicted for stalking during the pendency of a restraining order under California Penal Code §646.9(b), he would have been subject to a sentence of two, three or four years in state prison. If granted probation, participation in a counseling program would have been a condition.

11. Research indicates that arrest in itself can be an effective deterrent to domestic violence. In a study conducted by Family and Community Counseling Services in Santa Rosa the findings indicated that men who were arrested for domestic violence were more likely to successfully complete treatment than those men who attended treatment voluntarily. Additionally, those men who spent two or more days in jail

prior to receiving treatment were less likely to be arrested subsequent to treatment. Clearly, arrest can be a powerful deterrent to continued violence.

12. Based on my review of psychological reports on Avelino Macias, evidence of his conduct and statements reflecting his state of mind, and also my experience in studying and working with domestic violence perpetrators, it is my opinion that Mr. Macias fits the profile of obsessive domestic violence perpetrators who stalk their partners. These individuals usually respond positively to effective law enforcement intervention. Mr. Macias was suffering from a personality disorder that contributed to his violence actions. However, although he had serious emotional problems, he was also someone who knew how to manipulate situations to avoid being sent to jail. he did not want to go to jail. (Enrique Carmona Hernandez Depo. 50:13-52:5). Mr. Macias repeatedly tried to persuade the Sheriffs that he did not do anything wrong, and that his wife was "crazy". In the last three months of their interactions, Mr. Macias kept doing to Maria Teresa exactly what he knew he could get away with without going to jail- and he wasn't stopped, he kept doing it.

13. Mr. Macias was in periodic counseling for child sexual abuse with Dr. Borrajo and parenting issues with Dr. Alvarez. Domestic violence counseling is a specialized area that needs to be structured in a particular way for it to be effective. Many male batterers who have seen therapists not trained in domestic violence have continued to act violent without the therapist being aware of it. Additionally, most

therapists are not knowledgeable regarding the intricacies of risk assessment as it relates to domestic violence perpetrators. Therefore, unless a therapist is aware of specific behavioral patterns (such as stalking, threats to kill, history of physical, sexual or psychological violence) either through asking the patient directly, having contact with his partner or through collateral contacts with law enforcement agencies (such as adult probation) these therapists are not likely to take steps to reduce the risk that the patient will commit lethal violence.

During January through April 15, 1996, Sonoma County had Adult Probation Department certified providers of domestic violence counseling who were specially trained to work with clients like Mr. Macias. There was the possibility that had Mr. Macias been arrested, his attorney or the court would have suggested that he attend one of these programs even though they were not mandated at the time. Many male batterers start their treatment before it's actually required in order to show the court that they are likely to succeed without restrictive intervention such as supervised probation. However, had Mr. Macias not started counseling on his own, he would have been required to attend 52 weeks of psychological treatment specially designed to address domestic violence issues. Additionally, his compliance with the court's orders would have been closely monitored by the treatment program through contact with his partner, other therapists, and probation.

14. The repeated failure of the Sheriff's Department to arrest or charge Avelino Macias with any crime when more than

two dozen reports were made to them of stalking, threats to kill, restraining order violations and other criminal conduct toward Maria Teresa, reinforced Avelino Maclas' behavior toward his wife and fed his feelings of omnipotence with respect to her, placing Maria Teresa in ever increasing danger as she maintained her separation from him. Thus, his statements such as "the Sheriffs are on my side", "they think Maria Teresa is crazy", "every time you call the Sheriffs and they don't do anything to me", and "if I was doing anything wrong I'd be in jail by now" all demonstrate that he thought that he could continue his pattern of stalking and threats without any consequence. This placed Maria Teresa in greater and greater danger of being physically assaulted or killed.

15. Law enforcement officers frequently express frustration at the fact that so many victims stay with their abuser and continue to expose themselves to more frequent and more serious acts of violence. Tragically, in this case Maria Teresa was a victim who attempted to escape her abusive relationship and stop the violence, but could not get the necessary help from law enforcement to succeed.

16. Instead of helping to stop or even slow down the pattern of stalking and threats, the Sheriffs' responses to reports made by Maria Teresa and others on her behalf had precisely the opposite effect - they allowed Avelino to avoid the criminal justice system altogether, preventing him from being arrested, going to jail or receiving any counseling for his stalking and other abusive behaviors.

17. The third component of an effective system for

dealing with problems of domestic violence is empowering the victim by effectively responding to her appropriate calls for assistance. In this case, however, rather than empowering Maria Teresa and those who were trying to help her protect herself from Avelino, the Sheriffs actively discouraged Maria Teresa and others on her behalf from calling the Sheriffs' Department each time Avelino violated the restraining order. Marty Cabello, who herself made several reports of Avelino's stalking, death threats and restraining order violations toward Maria Teresa, was told on her last call to the Sheriff that she should not call any more, but that Maria Teresa should keep a written record of violations to bring in. This explains why in the last month before she was killed, instead of calling the Sheriff each time Avelino would follow and stalk her, Maria Teresa was writing summaries of violations by Avelino, obtaining a letter from a homeowner concerning his stalking at her job, and carrying in her car cassette tapes of Avelino's abusive telephone messages.

18. Even when they were repeatedly calling the Sheriffs' Department to report Avelino's conduct, Maria Teresa and Marty Cabello were repeatedly told that Maria Teresa needed more proof" and that it was "normal" for Avelino to be in the same places where she was. The Sheriff's deputies were observed to laugh and joke with Avelino when responding to calls. When they told one deputy of Avelino's threats to kill and that they were afraid he would actually do it, the deputy responded that lots of people make death threats and that doesn't mean they actually go through with it. It is little wonder that

Maria Teresa made statements reflecting her state of mind that: "This is a crazy maker. Why are they telling me to call them every time he's in violation of this court order, and then they tell me: We can't do anything about it? What am I supposed to do?" (Palacios-Flaherty Depo. 37:13-19) Maria Teresa told Ms. Flaherty that Avelino would tell her that "if I am so bad and I've done such bad things, why am I not in jail. Obviously, I'm innocent," (Palacios-Flaherty Depo. 37:13-19) and the Sheriffs "just think of you as a crazy woman. Nobody's going to pay attention to you." (Palacios-Flaherty Depo. 40:5-7) Marty Cabello testified that when she and Teresa went into the Sheriff's substation on February 23, 1996, the deputy said to Ms. Cabello when Teresa went out to her car to get evidence: "She's on thorazine, you know." (Marty Cabello Depo. 227:9-228:4)

19. As a result of the Sheriff's Department's instructions not to call, numerous restraining order violations that were occurring in March and April, 1996, were not being telephoned to the Sheriff with anywhere near the frequency that they were being telephoned in January and February. Whatever power Maria Teresa thought she had to protect herself after she obtained the temporary and then the one year restraining order was essentially lost by March and April. Her state of mind was there was essentially nothing she could do to stop Avelino's terrorizing her except, perhaps, by moving out of the county which she was planning to do. She understood that it was useless and even bothersome to call the Sheriff and report violations.

20. It is my opinion that the Sonoma County Sheriff Department's handling of the reports made by Maria Teresa Macias and others in this case clearly did not rise to the acceptable standard of police intervention in domestic violence cases in place in Sonoma County and the State of California at the time. It should have been reasonably foreseeable to the Sheriffs from the time they started receiving reports concerning Mr. Macias' conduct toward Maria Teresa in January until her death on April 15th, that Mr. Macias' abusive behaviors of harassment and stalking could escalate into lethal violence. While there is no guarantee that any law enforcement intervention can prevent domestic homicides in all circumstances, it is far more probable than not that Avelino Macias would not have killed Maria Teresa and wounded her mother on April 15, 1996, had the Sheriffs responded appropriately to the repeated reports of stalking, restraining order violations and death threats by arresting Mr. Macias.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on December ___ 1998 at _____, California.

Daniel J. Sonkin, Ph.D., MFCC