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Gender Inequality in the Law: Deficiencies of Battered Woman Syndrome and a New Solution to Closing the Gender Gap in Self-Defense Law

Meredith C. Doyle
Claremont McKenna College

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CLAREMONT McKENNA COLLEGE

**GENDER INEQUALITY IN THE LAW: DEFICIENCIES OF BATTERED WOMAN
SYNDROME AND A NEW SOLUTION TO CLOSING THE GENDER GAP IN SELF-
DEFENSE LAW**

SUBMITTED TO

PROFESSOR KENNETH MILLER
AND
PROFESSOR DANIEL KRAUSS

AND

DEAN GREGORY HESS

BY

MEREDITH DOYLE

FOR

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Women have made progress toward closing the gender equality gap; however, there are still some contexts in which the law does not treat women as fairly as it treats men. One of these contexts is self-defense law. Traditional self-defense law is based on a male-centered idea of using proportional force to defend oneself in the event of an imminent threat when no other escape is possible. Compared to a man, a woman often has less ability to protect herself, so she may reasonably fear an imminent threat under different circumstances than a man. In the case of a battered woman, the abused may fear for her life, but may not be able to act effectively to escape from a violent relationship. She may also perceive an imminent threat even when her abuser is showing no sign of violent aggression toward her. As a result, some battered women preemptively kill their abusers while they are asleep or incapacitated.

In the midst of the 1970's feminist movement, Lenore Walker attempted to address the problem of domestic violence in relationships by developing the theory of Battered Woman Syndrome (BWS). Later, BWS expert testimony was applied to murder trials of battered women who killed their partners while they were not posing an imminent threat. Previously, these women could not have argued self-defense because traditional self-defense law did not consider inherent gender differences, like stature and strength, and was limited to the context of an imminent threat of death or serious bodily harm. Battered Woman Syndrome was a crude attempt to accommodate battered women who kill because they perceived as "imminent" a threat that was not immediately present.

Supporters of gender equality often assume that men and women are indistinguishable, and advocate that women should be treated the same as men. While this is an appropriate approach in many cases, the law cannot ignore gender differences as they relate to self-defense. Gender related testimony is important to explain the differences in the situation a woman faces

and explain why she may act differently than a reasonable person confined by traditional self-defense law. Although Battered Woman Syndrome provides an explanation of why a battered woman may act in a certain manner, it is not particularly effective.

One problem is that BWS has a very weak scientific basis, and should not be admissible under evidentiary admissibility standards for expert testimony. Dr. Walker's research methods were problematic and her results are not consistent with her conclusions. The theory is also rife with contradictions. BWS testimony generalizes that this syndrome affects all battered women rather than taking into account differences among women's responses to battering.

In addition to the faulty scientific application of this testimony, BWS also can cause inappropriate social and legal consequences. BWS testimony was initially an attempt to attack gendered notions about self-defense, but it instead increases gender stereotypes in the law. It Studies on jurors also indicate that it is ineffective in informing jurors about the effects of battering. Also, BWS creates a blurred line between a justification and excuse defense. Although BWS is intended to justify a killing by proving that a battered woman acted reasonably in killing, it also creates the abnormal pathology in that woman, which is at odds with her reasonableness. The focus on her altered mental state seems like an excuse defense.

Battered Woman Syndrome is ineffective in reconciling female situation characteristics with the male characteristics that underlie conceptualization of self-defense law. Instead, courts should allow expert testimony on patterns of abuse and social agency framework to contextualize gender differences in physical stature and other characteristics to confront the realities of domestic abuse. This framework will show how a battered woman's observations about her environment, her circumstances, and her social limitations to explain behaviors that are difficult for a non-battered person to understand. Social agency framework can apply to both women and

men, but women are more likely to be battered. Rather than applying self-defense law uniformly to people from all social circumstances, social agency framework takes into account individual social circumstances on a case by case basis to identify why someone behaved in a certain way. Testimony on gender differences is inherently part of one's situation, so gender-related testimony should be incorporated in this way.

Battered Woman Syndrome is usually ineffective when the defendant uses it to claim perfect or imperfect self-defense in the killing of her abuser. In most cases, these women are convicted of murder. A verdict of perfect self-defense would mean that the battered woman who killed her incapacitated batterer was found innocent, and would bear no responsibility for the killing. A verdict of imperfect self-defense, on the other hand, would mean that the defendant would be held accountable for the killing, but the jury would take into consideration BWS as a mitigating factor. The result in an imperfect self-defense verdict would be voluntary manslaughter. In the future, jurors would look at social agency framework to determine whether a woman's situation rather than pathology warranted perfect or imperfect self-defense. The absence of pathology legitimizes its potential as a justification defense. If jurors do not believe the woman acted in perfect self-defense, they can claim imperfect self-defense and use her situation as a mitigating factor to convict her of voluntary manslaughter.

Chapter 1 of this paper offers a broad historical overview of gender inequality in the law. It identifies the biological observations, societal constructions, and court cases that contributed to female stereotypes and their subordination under the law, including some cases that have increased gender rights, but that have still not provided women equal footing to men under the law.

In addition to self-defense, rape and manslaughter are areas in criminal law in which women face unfair hurdles to justice. In Chapter 2, how self-defense is different than rape and manslaughter is examined. They are unfair for different reasons than self-defense. Rape and manslaughter laws are problematic because of juror perceptions and stereotypes about women. In this paper, self-defense is the focus because social agency expert testimony is more applicable to explain self-defense than it would be in rape and manslaughter cases. Changing deep-rooted juror stereotypes about women's behavior surrounding rape and manslaughter would be more difficult.

Chapter 3 examines Dr. Lenore Walker's theory of Battered Woman Syndrome (BWS). Walker developed this "syndrome" in order to explain the abnormal behaviors of some battered women, like their inability to leave an abusive relationship or their killing of their batterers while he is not abusive and incapacitated. She describes psychological theories like "learned helplessness" and the "cycle theory of violence" to give credence to her findings.

Chapter 4 explores the scientific deficiencies inherent in BWS testimony, and why it should not be admissible in any jurisdiction. Chapter 5 will explain legal difficulties created by BWS and the tendency of BWS to support negative female stereotypes. Chapter 6 critically evaluates other alternatives for managing murder cases in which battered women claim self-defense other than using BWS testimony. This chapter will also talk about the strengths and weaknesses of these proposals. Finally, Chapter 7 describes why social agency framework is the most effective way to incorporate gender differences in order to accommodate untraditional self-defense claims by battered women.

Chapter 1: History of Women and the Law: A Husband Shields His Wife From Justice

For centuries, the law has subordinated woman. Marriage required that women give up their legal rights, and surrender them to their husbands. Although husbands were expected to be protectors of their wives, his acquisition of her legal rights often allowed his abuse of her to remain hidden. The institution of marriage is different today, but the law still does not offer perfect protection of the wife in situations in which she may be abused.

Early Legal Theory: William Blackstone

Women used to be the property of their husbands, or if they were unmarried of their fathers. Women could not have careers, take part in politics through voting, or make legally binding contracts. William Blackstone stated in his influential *Commentaries on the Laws of England* that once a woman was married, she and her husband became one person under the law.ⁱ Becoming one person under the law did not mean that the spouses had equal rights in a cooperative partnership, however. Men were the sole decision-makers and legal entities in the marital relationship. Blackstone called the wife's status under marriage her coverture, which meant that her legal rights were combined with his, so that he had ultimate authority over all of their affairs.ⁱⁱ As a result, men could not enter into any covenants with their wives because "that would suppose her separate existence."ⁱⁱⁱ If a woman wanted legal redress, the husband would have to agree to take part in the action under his name.^{iv} Further, their unity under law prevented wives from testifying for or against their husbands, because a single person could not testify for or against his own cause.^v Blackstone *Commentaries* also gives the husband a right to discipline his wife in some ways because "he is to answer for her misbehavior."^{vi} She is like a child. He

says that this discipline must be “within “reasonable bounds,” but this definition is murky and could lead to abuse.

Women’s Legal Rights Regarding Protection from Abuse: A Case History Progression

State v. Rhodes (1868) was a trial that accepted the practice of wife beating under certain limitations. In this case, the defendant was on trial for assault and battery against his wife.^{vii} The judge in that case believed that it was appropriate for the husband to whip his wife if the switch was smaller than his thumb.^{viii} On the State’s appeal, the judge found that it would have been battery if the victim was not his wife, but the fact that she was his wife changed this.^{ix}

Perpetuating the idea that men are dominant and can harm their wives if they are angry by something she does. Court again believes that evil of publicity in domestic disputes does more harm than the acts that took place in the dispute, except when “permanent or malicious injury is threatened or inflicted, or the condition of the party is intolerable.”^x The court states that it “will not interfere with family government in trifling cases.”^{xi} Family government by definition is the husband, so the court chose to ignore the welfare of the wife in favor of the husband’s pride. This again gives the husband the right to do what he pleases because the courts are not as willing to protect wives. The appellate court did not necessarily accept the husband’s “rule of thumb” standard. The judge was more concerned with “the effect produced, not the type of instrument used.”^{xii} At that time, however, the effect produced only dealt with the physical consequences, rather than emotional torment.

Elizabeth M. Schneider argues that viewing woman battering as private is dangerous because that assumes the problem is individual and that we have no social responsibility to remedy it.^{xiii} Women deny it because they have this distant vision of “the battered women,”

juror's are in denial that something like that would ever happen to them.^{xiv} Society often does not want to get involved, and police officers do not want to intervene in private life.^{xv}

Wives used to have no sexual autonomy. Sir Matthew Hale, a judge from the Seventeenth century, said that a husband cannot rape his wife because by marrying him she has given her sexual autonomy to her husband.^{xvi} In *Frazier v. State* (1905), the complainant tried to divorce her husband, but the court would not allow it, so they remained living in the same house in separate rooms. When the husband demanded sex and his wife refused, he raped her. The court ruled that the husband had not raped his wife because she gave matrimonial consent when she entered the marriage.^{xvii} She also could not testify against him. Essentially, the legal system failed her because she had no way of escape once the marriage started to fail because the court denied her of a divorce, resisted giving her sexual autonomy, and silenced her side of the story. The husband's rape of his wife was not viewed as abuse at the time, but rape is a form of trauma regardless of whether the victim knew the person well.

Later, the American Law Institute's Model Penal Code 213.1 (1980) codified the concept that traditionally, marriage is "blanket consent" to sex, and wife cannot escape unless she dissolves the marital relationship.^{xviii} This is called the marital exemption.^{xix} The reason the law upholds this idea is related to the court's avoidance of disrupting family life.^{xx} Modern laws are more sympathetic of female choice, but also uphold the idea that rape is different when committed by a husband rather than a stranger. This idea is unfair because a husband is capable of sexual abuse as well.

In *People v. Berry* (1976), a man was convicted of assaulting and later killing his wife. On appeal, the defendant argues that he was in a state of "uncontrollable rage caused by provocation and flowing from a condition of diminished capacity."^{xxi} Berry was enraged because

he found out that his wife had met another man, was sexually involved with him, and wanted a divorce. In addition, he claimed she provoked him repeatedly with sexual taunts. Berry wanted the jury to be instructed on voluntary manslaughter because of this. Voluntary manslaughter is defined as “the unlawful killing of a human being, without malice...upon a sudden quarrel or heat of passion.”^{xxii} The appellate court reversed the conviction and held that Berry was in fact provoked and that voluntary manslaughter instruction should have been given. The court determined that the provocation was cumulative and reached a head when his wife started screaming at him right before he killed her.^{xxiii} In this situation, the court views her provocation of her husband as a justification for mitigating what would otherwise be murder down to manslaughter. Nevertheless, the law has been slow to recognize a similar provocation justification for women who kill their abusers.

Married Women and Testimony Against Their Batterers

An abused wife in the past had very little opportunity to seek legal redress against her battering husband or to testify against him. Wives have gained the ability to testify against their husbands. However, if they choose not to testify out of fear or concern for their husband, their out of court statements will not be heard by jurors as a result of *Crawford v. Washington* (2004), which makes inadmissible out of court testimonial hearsay statements.

State v Hussey (1852) was a case that a husband appealed after being convicted of assault on his wife. In the first trial, his wife testified against him. The court on appeal ruled that allowing a husband and wife to testify against each other would be against public policy by harming the sanctity of marriage of husband and wife.^{xxiv} Further, since the wife was under her husband’s coverture, she has the same legal identity as he does, which prohibits her from testifying. The justice who gave the opinion also worries that if husband and wife could testify

against each other, “it would break down the great principle of mutual confidence and dependence; throw open the bed-room to the gaze of the public; and spread discord and misery, contention and strife, where peace and concord ought to reign.”^{xxv} The only scenario in which a wife has a right to testify against her husband is if he tries to commit a felony on her that would cause “lasting injury or great bodily harm.”^{xxvi} In this case, the judge ruled that no lasting injury was inflicted. This ruling protects the husband in cases in which he may be harming his wife in favor of privacy, as long as the harm was not too great. A wife could have tried to seek protection from an abusive husband, but the judge did not value her misery as highly as her husband’s right to privacy or the maintenance of the marriage. He believed that her complaints would create more problems in the marriage and made no attempt to diffuse the abuse.

There is also a question as to what defines lasting harm and harm that is not lasting. Today psychologists would acknowledge that there is lasting psychological harm that battered women face, which people were not aware of the time of *State v. Hussey*. Charles Patrick Ewing argues that harm to psychological aspects of the self is just as devastating as harm to the physical self.^{xxvii} Clearly, at the time women had no legal opportunity for redress in a battering relationships because the law held that causing more strife in the marriage was a larger harm than physical or emotional harm that courts did not view as “lasting” at the time.

Hawkins v. United States (1958) was a case in which a wife testified voluntarily against her husband after he transported a girl from Arkansas to Oklahoma for “immoral purposes.” Prior cases said that women could not be compelled to testify because doing so would cause marital disharmony. The *Hawkins* court noted that peace in the family would not be less disturbed by voluntary testimony of the wife than it is when the wife is compelled to testify.^{xxviii} The court acknowledges that marriages have rough patches, which may cause a wife to wish to

testify against her husband, but they are not always permanent. Because of an interest in protecting marriage, the court would not admit the wife's voluntary testimony against her husband just as it would not admit the wife's compelled testimony against her husband.

Trammel v. United States (1980) prohibited a husband from blocking a wife's testimony against him in a court of law, which is called the privilege against adverse spousal testimony. This case had to do with a husband and wife who were heroin traffickers. The husband and two other men were indicted for bringing heroin from Thailand and the Philippines to the United States. These charges were brought against them when one of the men's wives was arrested in the airport after a customs check for having four ounces of heroin from Thailand on her person. She agreed to cooperate with the government after speaking with Drug Enforcement Administration agents. The husband then tried to separate his case from the case of the other two men so he could try to use the privilege against adverse spousal testimony since he knew the government would use the wife as an adverse witness.^{xxix} She was called as a Government witness and was given immunity. The court ruled that the husband's case would not be separate from the other defendants and that the wife could testify about any observations or conversations that took place with a third person present, but not those that were confidential between the husband and wife.^{xxx} Also, the spouse who could testify is the one to make the decision about whether or not to testify, not the spouse being testified against. Mr. Trammel was found guilty, and on appeal he said that the testimony of his wife was improper because of the precedent set by *Hawkins v. United States* (1958). The Supreme Court disagreed.^{xxxi} This case was an important step for women in that they could testify voluntarily against their husbands.

Crawford v. Washington (2004) was a blow to the legal rights of abused women. In this case, a husband stabbed another man in the presence of his wife. The husband was upset at the

man because he had allegedly tried to rape his wife. During the trial, the State played a tape of a statement by the wife, which was taped by the police. This was incriminating evidence against the husband, and led to his conviction in the crime. The Washington court at the time ruled this evidence was reliable, but the Supreme Court later ruled that it violated the Sixth Amendment. The Amendment says that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.”^{xxxii} Since the husband could not cross-examine the witness against him. The significance of this case is that it now requires that all witnesses against someone accused of a crime must testify in a court of law and endure cross-examination. In other words, a recorded out of court statement, however incriminating, is inadmissible alone.^{xxxiii}

The decision in this case has had a significant impact on women affected by domestic violence. For whatever reason, many women who have dealt with domestic violence at the hands of their partners are unwilling to appear in court to testify against the partner. They may still have deep feelings of love for the person, may fear him, or may simply not want to incriminate him. Because a number of women will not appear in court on the witness stand, and their recorded testimony is inadmissible in court, this has led to a number of men avoiding justice in these cases. Men are not being held accountable for crimes they committed, which may perpetuate the problems of domestic violence. If a battering is not penalized, he is unlikely to learn from his actions.

Chapter 2: Rape, Manslaughter, and Self-Defense Law Still Subordinate Women

Women face unequal treatment in three main areas of the law: rape, manslaughter, and self-defense. Yet, of these three areas, self-defense is the one area that is most open to adjustment. In rape and manslaughter cases, the inequality of the law is imposed by the gendered perceptions and stereotypes of jury members. The difference in self-defense cases is that the law itself is what produces the inequality. Traditional law is based on a fight between two men, so it does not address deficiencies women face in battering situations. As self-defense law stands, battered woman syndrome testimony addresses battered women's unique notions of self-defense. Adjusting the way jurors evaluate self-defense in relation to the differing physical capacities and perceptions of men and women is a more promising change than replacing common societal stereotypes about the genders. Socialization and cultural factors have shaped these stereotypes over time, and they can only be eroded with as women close the equality gap with men.

Rape and Voluntary Manslaughter: Societal Constructions are Problematic

Women are vulnerable in cases in which they claim to have been raped because while it may be simple to use DNA to prove that a man has had sexual interaction with a woman, prosecutors often struggle to convince jurors that the "rape" was not consensual. Prosecutors sometimes find it difficult to prove rape because of the hindrance of juror stereotypes about women who claim rape against them, which are also known as rape myths. In "Rape" in the Yale Law Journal, Susan Estrich describes rape in criminal law as being sexist.^{xxxiv} She is troubled by the idea that rape is the only crime in which a "woman has had to resist physically in order to establish nonconsent," and in which prosecutors screen cases in which the victim knew her attacker.^{xxxv} These problems suggest jurors' perception that saying "no" is not enough of an

indication that a woman does not want sex. Nor do they believe that acquaintance rape is truly rape. Male perceptions of rape often displace the guilt of rape onto women especially in non-traditional rapes.^{xxxvi} Estrich is troubled by the refusal to focus on the mentality of the male offender at the time of the crime, and instead focus on the behavior of the victim at the time of the rape. She fears that this focuses the attention not on whether or not the man committed rape, but instead on whether the woman resisted enough to make the offender understand her lack of consent.^{xxxvii} The jury therefore is forced to look at the victim's behavior rather than the defendant's.^{xxxviii}

In rape cases, jurors question where the line between consensual sex and rape lies. For instance, it is unclear how much a woman has to fight the rape before the jury will view it as such. Also disturbing is that fact that males are less likely to be convicted of rape if their victims do not fit into conservative sex roles.^{xxxix} This shows the stereotype that women who are promiscuous are incapable of being raped because they likely brought the sexual encounter on themselves. In addition jurors may be less likely to find the defendant guilty if there is evidence that the victim has "bad character."^{xl} If the victim's lifestyle was one that includes drug and alcohol abuse or promiscuity, jurors were less likely to convict the defendant in cases in which the issue on trial was whether she had consented to sex.^{xli}

Manslaughter is another scenario in which women are disadvantaged under the law. Manslaughter deals with passion killings, or killings in which people intentionally kill because they have been provoked to the point when they lose the ability to reason. Generally, men are more likely than women to lose control of their reason in the heat of passion; hence, men are also more likely to succeed in using provocation that results in a loss of reason as an excuse.^{xlii} Emily Miller states in her article, "(Wo)manslaughter: Voluntary Manslaughter, Gender, and the Model

Penal Code,” that “angry men are much more likely to behave violently than are angry women.”^{xliii} Because of this, women are less likely to use a heat of passion defense successfully. Society still believes that males are more prone to infidelity, whereas women are expected to be faithful.^{xliv} As a result, women are not supposed to be surprised by infidelity by their husbands and are expected to react in a calm fashion, while men can lose control because women are expected to rarely commit infidelity. Further, gender socialization has taught women to not act with aggression when angry, unlike men.^{xlv} Like in rape law, juror stereotypes lead to women’s subordination under the law. When a woman acts in heat of passion, if she acts like a man she is more likely to be found guilty of murder because society holds different expectations for the typical woman. Women are more likely to kill for pecuniary gain than in a heat of passion, while men are more likely to kill out of passion to retaliate against a woman if she leaves a relationship.^{xlvi} The murders for pecuniary gain seem more calculated, while the men’s murders are the result of anger. As a result, a large proportion of women who kill their domestic partners are on death row for domestic killings, while a significantly small proportion of male domestic killers are on death row for domestic killings.^{xlvii} These statistics show that the law is more sympathetic to men who kill in domestic relationships, reducing their convictions from murder to manslaughter because of provocation by their partners. On the other hand, the courts view domestic killings by females as cold-blooded killings, and therefore are deserving of the most severe punishments.^{xlviii} People tend to expect a woman to keep her reason when provoked when men reach a boiling point. In other words, in self-defense law, women are expected to act like men, while they are expected to vary from men in their response to provocation. It is very difficult for women to have a viable defense or even a mitigating circumstance because the standards are based on the behavior, temperament, and physical stature of men.

The American Law Institute created the Model Penal Code to modernize the common law system that was based on sexist notions that the wife was the legal property of her husband, and therefore her infidelity was a provocation of her killing.^{xlix} The new law says that if a person can show that he acted under the influence of “extreme mental or emotional disturbance for which there is reasonable explanation or excuse,” he was not culpable for murder, but rather manslaughter.¹ Victoria Nourse argues that the nature of the relationship will determine whether the judge will permit the jury consider whether there is a reasonable explanation for his rage.”^{li} In a scenario in which a man is insulted by his friends, judges may view the rage as irrational, but if insulted by a woman with whom he is in an intimate relationship, his rage may be seen as rational. As a result, judges’ perceptions about what is reasonable lead to unequal treatment of women with regard to the manslaughter mitigation. Although the American Law Institute intended to eliminate gender discrimination explicitly, it unwittingly solidified women’s inequality under the law.

Since jurors considering the manslaughter situation must determine the state of mind of the killer at the time of the crime rather than whether the killer indeed committed a crime, jurors are free to bring in their subjective views about the reasonableness of the explanation for the mental disturbance.^{lii} The stereotypes surrounding men and women play a large role in the unfairness between genders under the law.

Self-Defense Problems Stem From the Law Itself

Self-defense law also subordinates women, but is different in that the law itself was developed based on male on male combat and does not take into consideration the differences between the genders. Self-defense law was based on a one-time violent altercation that involved men, not women.^{liii} An element required to make self-defense effective, which is universal

across jurisdictions, is the idea that there must be an imminent threat of death or serious bodily injury or the person who acted in self-defense must perceive a threat.^{liv} In addition, the force used in defense must be proportional, and in some jurisdictions the person will have had to try all other means of escape before the killing.^{lv} Self-defense is based on male violence that which directed at another male with equal strength and ability.^{lvi}

Women who are victims of abuse by a man may feel an imminent threat earlier than a man might in a similar situation. Further, the type of force a woman uses in self-defense is usually in the form of a weapon like a gun.^{lvii} In many cases, women kill their batterers when he is incapacitated or sleeping, because that is when she will not have to face the superior strength of her abuser. These types of cases are the ones in which defendants use battered woman syndrome to explain why their actions fit into the self-defense category, although it clearly does not fit into traditional self-defense law.

The outcomes in rape and manslaughter cases are largely influenced by juror stereotypes concerning men and women's interactions. In self-defense cases, on the other hand, jurors make their decisions without taking into account the full context of the differences between men and women. While gender stereotypes in the law can undermine the pursuit of justice in rape and manslaughter cases, it is important for jurors to appreciate the gender-specific characteristics that lead people to perceive threats differently to consider self-defense law properly. Specifically, a small woman could perceive a threat of death or serious bodily injury when a larger, stronger male may not. Further, a woman in an abusive relationship may perceive a threat when a man faced with a one-time argument may not. Jurors should have evidence available to them that addresses gender differences, but battered woman syndrome testimony does not address these differences effectively.

Chapter 3: Theory and Origin of Battered Woman Syndrome

Battered woman syndrome helps women who kill their abusers explain why they did so when he was not presenting an overt threat. The syndrome arose because of the gender gap in the legal standard of self-defense. Women are smaller in stature and weaker than men. The legally accepted idea that one can kill an assailant in self-defense only if that assailant poses an imminent threat of severe bodily harm or death is not a workable standard for women. In the case of a battered woman who kills her partner, she may be better suited to act in self-defense when her husband is asleep or debilitated so that she can defend herself in a future situation in which she may be harmed or killed.

Battered Woman Syndrome was first introduced by Doctor Lenore E. Walker in her book *The Battered Woman*. She created the syndrome after interviewing more than four hundred battered women and piecing together their experiences.^{lviii} The data was from a self-volunteered sample rather than a random one, so rather than using statistics, she generalized to all battered women from commonalities she discovered from speaking to a small group of battered women.^{lix} A syndrome is different than an actual psychological disorder because it is defined by a collection of similar symptoms with a common cause that prevents those affected from functioning normally.^{lx}

Walker wanted to dispel a number of myths about battered women by explaining why these women acted in a way that was at odds with the behaviors of a rational, non-battered person. She also found that these battered women tended to have low self-esteem, were traditionalists who grew up in families that taught them that men would care for them, tried to control everyone within their husband's environments so as to ensure that he would not get upset, and were constantly under severe stress and fear because of their battering situation.^{lxi}

Learned Helplessness

Learned helplessness is the social learning theory that Dr. Lenore Walker uses to explain the woman's inability to escape her situation because of "psychological paralysis."^{lxii} Sometimes she fears that if she tries to escape, he will kill her. She may also feel that she has nowhere to go and limited support in family and friends. Women in these relationships often are defined by low self-esteem and depression, which can cause them to perceive that they have "little or no ability to affect their own lives in general or the battering in particular."^{lxiii}

The learned helplessness theory is supported by Martin Seligman's experiment on dogs.^{lxiv} He restrained dogs and then shocked them while ringing a bell. This conditioned the dogs to associate the bell with a shock.^{lxv} Later, Seligman put the dogs in a box that was separated by a fence, which the dog could easily jump over and escape from the shock.^{lxvi} Still, when the formerly restrained dogs heard the bell they did not attempt to escape. Seligman figured that they had learned how to be helpless while they were restrained from escaping the shock.^{lxvii} Walker believed that the equivalent for battered women of the electric shocks for the dogs were "parental and institutional conditioning" that prevented women from ending up in shelters or a place that would be more embarrassing.^{lxviii}

Walker theorizes that there are three components of learned helplessness. One is information about what will happen, the second is the expectation about what will happen, and the third is the behavior that relate to what does happen.^{lxix} During the second component women can misinterpret the kind of power they have. The mistaken idea that the battered woman's response cannot influence the outcome of her situation is at the heart of learned helplessness.^{lxx} After they believe that they cannot control their outcome, their inability to control it becomes a self-fulfilling prophecy because they become submissive.^{lxxi}

As women continue to be battered, their motivation to respond decreases.^{lxxii} In addition, she ceases to believe that she can do anything positive to improve her plight and later generalizes that in anything she does she will have no influence.^{lxxiii} Finally, Walker says that the woman's emotional well-being deteriorates, resulting in anxiety or depression.^{lxxiv}

Cycle of Violence

Learned helplessness explains why women believe that they have no way out of the abusive relationship but to kill. The next element of the theory Walker explains is how women know when a battering incident will happen, and therefore perceive an imminent threat.

Walker's theory is based on the idea that an abusive relationship typically runs through three phases repeatedly in a cycle. She called these phases the cycle of abuse. The cycle of abuse is made up of the tension-building phase, the acute battering phase, and the contrition phase.^{lxxv} The tension-building phase is a phase in which there are increasing problems in the relationship that are causing stress. During this period, there are some minor instances of battering, the woman takes some of the responsibility for the battering, and she does everything she can to prevent it, without of course leaving her batterer.^{lxxvi} In this phase the woman is in denial of the severity of her situation, and she minimizes her partner's actions by explaining them away.^{lxxvii} This phase can last for long periods of time, often years, because of the woman's attempts to prevent a brutal abuse incident and her continuous coping.^{lxxviii} As this phase escalates into more violence, battered woman may try to retreat, but this causes an increase in the batterer's oppression.^{lxxix}

The acute battering phase is one in which the tension comes to a head and the man begins to physically and emotionally batter his partner severely. It is usually caused by an external event or the batterer's internal state, and occurs in an uncontrolled manner.^{lxxx} Walker states that it is

impossible to predict when phase two begins or when it will end.^{lxxxii} The batterer must stop of his own volition. By the end of the attack, both the battered woman and the batterer try to make excuses for the attack and ignore the seriousness of the attack.^{lxxxiii} This phase only lasts for a short period of time.

The final phase, loving contrition, is defined by a break in the violence in which the batterer feels guilt for harming his partner, so he treats her well and assures her that he will never repeat his battering actions.^{lxxxiii} The battered woman usually believes him because his loving behavior serves as reinforcement for staying the relationship.^{lxxxiv} In addition, her traditional view of the permanency of marriage makes her fear breaking her marriage up.^{lxxxv} The battered woman is more likely to remember her husband in the light of this loving phase rather than the phase in which he batters her, which makes it more difficult for her to leave the situation.^{lxxxvi} Walker claims that this is not the end of the violence, however. Instead, the batterer will continue through the cycle once again to a more frequent and intense extent.^{lxxxvii}

The cycle allows the woman to learn what it feels like in the relationship when she is about to be beaten. In other words, if she begins to feel tension in the relationship, she will recognize that the acute battering phase is soon to follow. Her heightened attentiveness to her abuser's behaviors and cues that indicate violence is called "hypervigilance."^{lxxxviii} This creates the idea of the imminent threat in the woman's mind. The woman will learn to become accustomed to this routine, believing that she has no escape but to kill him because of the onset of learned helplessness.

A woman who has killed her abuser can use BWS as a defense if her crime involved self-defense or an impairment of reason that would cause confusion in distinguishing the difference between right and wrong.^{lxxxix} It is better to argue self-defense rather than insanity, because

people found to be insane are institutionalized.^{xc} It is also very rare to achieve a verdict of not guilty by reason of insanity. This defense is only used in 1% of felony cases and fails 75% of the time.^{xcⁱ} Further, BWS is better suited for a self-defense scenario because the syndrome tries to show that the battered woman was reasonable in believing that she faced an imminent threat of death or severe bodily harm. A battered woman would more likely like to maintain her status as an autonomous, sane individual and try to justify or mitigate her action with a self-defense claim.

Ibn-Tamas v. U.S. (1979) was the first case in which battered woman syndrome testimony was used. Mrs. Ibn-Tamas had shot her husband in what she claimed to be self-defense. During the first trial, the judge would not allow expert testimony on battered woman syndrome because it was not generally accepted in the field of psychology, and it would not help the jury reach a verdict because it was not new knowledge to a layperson.^{xcⁱⁱ} During that trial Mrs. Ibn-Tamas was convicted of second-degree murder. On appeal, the new court did not admit BWS testimony, but the judge only sentenced Ibn-Tamas to two years in prison.^{xcⁱⁱⁱ} This short sentence may indicate that the judge had heard the testimony and considered it as mitigating factor in the case.

Positive Effects of Battered Woman Syndrome

Dr. Lenore Walker's research on battered woman syndrome and expert testimony in cases in which an unprovoked woman kills her abuser has created widespread public attention. This attention has led to greater awareness about the problem along with increasing resources and strategies to remedy it.^{xc^{iv}} Walker has written extensively about how to decrease violence in relationships. She talks about the effectiveness of battered women shelters, the need for equality between the genders, and family therapy, while also addressing the barriers to the resolution of

the problem.^{xcv} Domestic violence is now a much more visible issue thanks to Dr. Walker, but the application of BWS in the legal system is imperfect.

Chapter 4: Flaws in Walker's Research and Admissibility of BWS Testimony

Battered women syndrome does not bridge the gap between psychology and law well. The legal system has adopted it despite the fact that the research that supports it is questionable. In fact, BWS should not be admissible because of the inadequacy of the research.

Walker's Research on Battered Women is Scientifically Invalid and Unreliable

Dr. Lenore Walker's research on battered women does not empirically show that battered woman syndrome exists because her research techniques were faulty. Doctor Walker formulated the Battered Woman Syndrome theory to explain how battered women are affected by abuse, rather than gathering evidence that proves each cycle's existence. In fact, the battered women who took part in her study did not experience all three cycles.^{xcvi} Women may experience one or two of the phases of the cycle, but rarely do they experience all three. Lenore Walker's evidence shows that in only 65% of all cases there was a tension building phase before the acute battering phase, and in only 58% of all cases there was a loving contrition phase.^{xcvii} She also provides evidence for each of these phases separately, which does not show that three phases exist together in a cycle.^{xcviii} In fact, a much smaller percentage of these women, about 38%, will experience these phases together, which clearly disputes Walker's theory rather than supports it.^{xcix}

There was likely also experimenter bias during data collection. The experimenters already knew what Walker's hypothesis was before they interviewed the subjects, so they were familiar with what behaviors and feelings they should expect to be indicative of battered woman

syndrome.^c David L. Faigman and Amy J. Wright explain in their “The Battered Woman Syndrome in the Age of Science” that advocates created battered woman syndrome before they had done research, and then tried to establish that the data they found in their research supported their ideas.^{ci} They argue that experimenters should have begun their research with no expectations, while looking at the data from a scientific, unbiased perspective.^{cii} Another possible bias that could have affected the research may have been caused by fact that all of the experimenters were women.^{ciii} Staffers may have interpreted the subjects’ statements in a feminist way, especially because they were aware of Walker’s motives in conducting the experiment.^{civ}

Not only were Dr. Walker’s researchers aware of the desired outcome, but Walker’s interview techniques did not adequately disguise her hypothesis from the subjects.^{cv} As a result, subjects could easily guess what results she was trying to confirm in the study and answer questions consistent with those results.

Also, much of the evidence of Battered Woman Syndrome is based on self-report, which was collected on a self-selecting basis.^{cvi} The people who chose to comment may not be a representative sample of women who are victims of battery because often women try to keep their plight a secret for fear of embarrassment. Further, there was not a control group of non-battered women whose experiences would determine which factors are unique to battered women.^{cvii} There is no scientific way to determine whether a woman suffers from BWS because it is merely a collection of psychological symptoms that might easily be feigned. The disorder is not present in the Diagnostic Statistical Manual of Mental Disorders (DSM-IV-TR), and therefore is not widely accepted as an existing condition.

The experiment's survey format itself increased the potential for bias and error within the data. Survey and interview experiment formats make standardizing codes for interpretation and creating guidelines for analysis difficult. Having multiple interviewers will ensure that the data is not interpreted, recorded, and analyzed universally. Researchers were free to interpret and record the data they collected in interviews in any way they wanted, and did not record the subjects' actual answers.^{cviii} They lacked objective guidance and were unable to analyze answers at a later date because they only recorded their own interpretations of the statement rather than the statement itself. Despite the deficiencies of interview experiments, researchers do not have another option because other experiment formats are not applicable. For example an experimenter cannot create an ethical laboratory simulation of a battering relationship that would generalize well to the outside world.

Another problem with the cycle theory is that Walker does not suggest any time frame during which the cycle could exist.^{cix} This creates increased ambiguity about the cycle of violence, and makes it more difficult to prove the legitimacy of the syndrome testimony. The cycle theory also does not empirically explain the constant terror that BWS testimony often describes between a battering event and the woman's response. During the cycles there are interim periods.^{cx} This is a serious issue when the testimony enters the legal realm because the fear the battered woman feels is vital in explaining why she felt threatened.

Further, Walker's theory of learned helplessness is contradictory. Seligman's experiments on dogs indicate that women who suffer from learned helplessness would give up, and not try to escape their battering relationship, as the dogs did.^{cxii} Conversely, battered women who kill their batterers clearly do not meet this classification because they are proactive in escaping the relationship by killing.^{cxiii} Walker's data does not include evidence that battered

women in fact suffer from learned helplessness. Further, Walker did not create a control group with which she could compare “helpless” women.^{cxiii} Therefore, it would be impossible to make an accurate judgment as to whether a woman suffered from learned helplessness. More significantly, most of Walker’s subjects did not kill their batterers.^{cxiv} Because BWS is mostly admissible in cases in which women kill their partners, there should have been more evidence of learned helplessness on those women who do in fact kill. One cannot assume that the features of battered women who do not kill match those of women who do kill.^{cxv}

Seligman’s experiment is problematic because it compared women to dogs. Seligman cautioned about generalizing from one species to another.^{cxvi} Dogs and women have very different cognitive abilities. Also, since dogs cannot communicate verbally with humans, researchers cannot determine their thought processes as we can with battered women. The dog experiment also cannot generalize to battered women because the methods in the experiments were not similar enough. The cage actually kept the dogs trapped, while the woman’s own perceptions relating to the effects of her abuse were what trapped her in the relationship.^{cxvii}

Finally, women are likely to respond differently to abuse by their husbands. Dutton argues that testimony should “incorporate the diverse range of traumatic reactions described in the psychological literature,” rather than simply using one profile to generalize across all women.^{cxviii} Dutton suggests that the name “battered woman syndrome” should be changed so as to not give the impression that one description of the syndrome fits all.^{cxix} Rather, it should be called expert testimony on “battering and its effects.”^{cxx} There are no ways that can universally measure whether or not women have BWS, which may confuse the jurors if the defense tries to use BWS when the defendant does not meet all of the symptoms that Lenore Walker describes.^{cxxi}

Admissibility of Expert Testimony In General

Congress enacted the Federal Rules of Evidence in 1975 to codify rules that govern admissibility of evidence.^{cxxii} Previously these rules were based on precedents of judge's decisions.^{cxxiii} First, Federal Rule 401 requires that the evidence is relevant, which means that the evidence presented has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence".^{cxxiv} According to Federal Rule 403, the probative value of the evidence must also outweigh its prejudicial effects or other factors that may diminish its usefulness to the jury.^{cxxv} Finally, Federal Rule 702 says that an expert can give testimony to assist the trier of fact if "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."^{cxxvi}

Two cases have defined the tests that determine whether expert testimony in general will be admitted in court. The first case was *Frye v. United States (1923)*, which required the testimony of the expert to have gained general acceptance in his or her field.^{cxxvii} *Daubert v. Merrell Dow Pharmaceuticals (1993)* changed the admissibility rules in several states. In the *Daubert* decision, Justice Blackmun said that trial judges should determine whether or not testimony should be admissible by looking at the "reasoning or methodology underlying the [expert] testimony is scientifically valid, and whether that reasoning or methodology can be linked to facts of the case."^{cxxviii} This gave the trial judge the "gatekeeping" function.

The Frye standard is much more stringent than the Daubert standard because it relies on the scientific field from which the evidence came to determine whether the evidence is admissible. The Frye test can eliminate a great deal of unreliable evidence that may have a

negative effect on the jury, but it can also be problematic in that it has the potential to eliminate evidence that is not generally accepted by the field that may be valuable to the outcome of the case. This evidence may in fact be reliable and valid, but could simply be in the midst of the time consuming process of gaining support in a constantly changing field.

Conversely, the Daubert standard broadens the possibilities of admissible evidence. Judges are given guidelines to determine admissibility under the Daubert standard. These guidelines include criteria like whether the evidence is falsifiable, or testable; whether it has been subjected to peer review; what kind of error rate the scientific techniques relating to the evidence has, or if one can determine the error rates; and finally, like the Frye standard, whether the evidence has been generally accepted in its field.^{cxxxix} These guidelines are not codified, meaning judges do not have to satisfy these criteria.^{cxxx} Rather, they were designed for the judge's convenience in helping them determine admissibility. Further, judges may only choose to use some of these criteria, but not all. Some of the criteria seem to have more weight than others. For example, some judges may consider general admissibility within the relevant field to be more important than error rate information. They have the discretion to choose which criteria to use since *Daubert v. Merrell Dow Pharmaceuticals* increased their power.

Much of the time, judges are not well versed in science, and therefore do not have the requisite skills to make these types of admissibility decisions.^{cxxxix} Startlingly, most of the judges, 96%, had not been instructed in general scientific method and principles, yet 91% believed that the role of judge as gatekeeper was an appropriate one.^{cxxxii} Other survey responses indicated that judges did not even know what the correct scientific definition of "falsifiability" was.^{cxxxiii} They also showed questionable knowledge about the other three criteria. The experimental survey on judges determined that they lack scientific literacy, and therefore require more judicial education

programs to improve their knowledge.^{cxxxiv} Until programs are instituted that improve judges' expert testimony knowledge deficiencies, the recommended Daubert criteria will not be effective in guiding judges to make admissibility decisions about expert testimony.

History of Admissibility of Battered Woman Syndrome Testimony

Each state's courts decide whether or not battered woman syndrome will be admissible in its state. Though no state allows BWS to be a defense in and of itself, it is often used to explain why women acted in self-defense.^{cxxxv} Courts in every state to some degree have allowed BWS expert testimony to build a case on self-defense.^{cxxxvi} *State v. Kelly* (1984) was the case that made BWS testimony admissible in every jurisdiction as long as it is used by the defense.^{cxxxvii} In *State v. Kelly*, Gladys Kelly killed her husband with a pair of scissors after suffering from extended abuse by her husband. The question at issue in the case was whether battered woman syndrome was relevant to the state of mind of the defendant.^{cxxxviii} The court ruled that it was because her past abuse could shed light on why she did not get out of the abusive relationship and why she may have felt like her life was in danger.^{cxxxix}

Expert testimony involving BWS is admissible if it follows all evidentiary standards and "when it concerns the syndrome itself, prior abuse, and the defendant's subjective fear."^{cxli} It is also admissible as long as it provides knowledge that is beyond the experience of an ordinary juror's experience.^{cxlii} Some states have codified BWS admissibility in statute.^{cxlii} Although most of the twelve states that have created statutes providing BWS testimony admissibility for any type of case, some have limited the testimony to self-defense cases.^{cxliii} If the prosecution has laid some foundation that there was abuse in the relationship, and as long as the evidence follows all other evidentiary rules, BWS testimony is admissible.^{cxliv} Further, the California Supreme Court ruling in *People v. Brown* (2004) says that it only takes one abusive incident to create

inconsistencies in behavior, so BWS expert testimony can be used without showing that there has been a pattern of abuse.^{cxlv}

BWS Does Not Meet Frye and Daubert Standards

Regardless of the fact that most jurisdictions accept Battered Woman Syndrome, it should not be admissible under evidentiary rules. The Frye standard requires that the evidence has achieved general acceptance from the scientific field from which it came. In the field of psychology, battered woman syndrome has not achieved general acceptance. Faigman and Wright claim that scientists have not subjected battered woman syndrome research to falsification attempts.^{cxlvi} Many people have written about the flaws of BWS, but few, if any, have written on why the research is sound. If other psychologists have not performed tests on the research methods of battered woman syndrome, it is impossible to know whether the results are valid. One study without follow up studies is insufficient to provide conclusive results. Further, Walker's results do not match the conclusions she made. These two factors make it impossible for BWS to be generally accepted in the field of psychology.

There is still not clear evidence that indicates how the Daubert standard affects the admissibility of BWS testimony because the standard is relatively new. Texas, a Daubert state, does not allow it as a defense.^{cxlvii} Texas is right to not admit battered woman syndrome testimony because the Daubert rule requires that the evidence is reliable and valid, and battered women syndrome testimony is not. The Daubert standard is only binding to federal courts, meaning that state courts are not required to use it.^{cxlviii} However, if a judge were to systematically examine the Daubert criteria, he or she would find that BWS does not meet the Frye rule and would have to consider whether the other criteria are met or if they should carry more weight than general acceptability in the field.

Walker's research may meet the standard of falsifiability, but not many people have tested her techniques.^{cxlix} In order to be falsifiable, a person would have to be able to perform a test that would determine whether Walker's conclusions are right or wrong. The second Daubert criteria examines whether the research is peer reviewed. Walker's findings have been published in her own books, which are not as highly regarded as journals within the field of psychology. Many law reviews have also written about her research, but legal theorists are not peers in the field of psychology. Her methodology has been criticized widely. The judge would need to weigh whether the negative reviews psychology of her works outweigh the positive ones. Third, Battered Woman Syndrome research cannot accurately give an error rate because of the subjectivity of the researchers and self-selected participants. It would be very difficult to determine how many times she was incorrect in identifying BWS.

Chapter 5: Social and Legal Consequences of Battered Woman Syndrome

Lenore Walker's book was written during the feminist movement in the 1970's. It was effective in that it increased national attention and responses aimed at preventing domestic violence, but it did not diffuse unfairness between men and women in self-defense law. Instead, battered woman syndrome testimony supports stereotypes of women as submissive to men, and detracts from their autonomy.

Walker theorized that women who are battered tend to take on more traditional roles, however, battered women in self-surveys they claim that they "present themselves as less traditional than a normative group of college students."^{cl} She also thought that these woman would be more likely to feel as though they were not in control of their lives, but rather than external sources controlled them. These women perceived themselves as having more control

that Walker had believed.^{cli} In addition, battered women seemed to define themselves as strong, rather than having low self-esteem.^{clii} They also suffered less depression when they remained in the battering relationship than if they left it, although depression did seem to be more prevalent in battered women.^{cliii} On the other hand, depression is not isolated to women in battering relationships, and many other life events or pressures could have triggered it.^{cliv} In other words, these women showed that they had an “internal locus of control and nontraditional attitudes to women’s roles in society.”^{clv} Walker’s beliefs about the characteristics of battered women make them seem like there is something psychologically wrong with them. She thinks that a result of the cycle of abuse, they become passive and their own perceptions keep them in a paralyzed state. However, the women’s non-traditional perception of their roles indicate that they may be victims of other external social circumstances, rather than a mental dysfunction that traps them in a relationship.

Excuse vs. Justification: State v. Norman

Sometimes BWS expert testimony can confuse jurors when it tries to explain self-defense, and is instead interpreted as an insanity defense.^{clvi} Battered Woman Syndrome seems to explain a woman’s loss of control or mental incapacity, which is an excuse defense rather than why it was justifiable for her to kill.^{clvii} This is closer to the insanity defense idea of an excuse, not a justification. It is contradictory to argue that battered women have distorted mental states, yet that they have an acute ability to predict harm, and therefore act reasonably when killing their spouse.^{clviii}

State v. Norman (1989) is a significant case because it dealt with a woman who shot her abusive husband while he was asleep and not posing any threat to her.^{clix} The wife in this relationship had endured significant physical and emotional abuse due to her husband’s

alcoholism. During the trial, an expert witness testified, stating that the wife felt that she had no way of escaping, except to kill her husband. Norman was convicted, but on an appeal, the court ruled that she should have a new trial in which the jurors should be instructed on perfect and imperfect self-defense because of “battered wife syndrome.”^{clx} Perfect self-defense would give the wife an excuse or justification for killing her husband, while imperfect self-defense would mitigate her actions and reduce the charge to a lesser one, like manslaughter. The North Carolina Supreme Court reversed this decision because it did not view the killing as a way for the defendant to prevent imminent harm or death.^{clxi} Justice Mitchell on the Court stated in his opinion that recognizing Battered Woman Syndrome (BWS) would create a slippery slope that would potentially legalize a wife taking the law into her own hands by killing her husband.^{clxii}

State v. Norman was decided by the state courts, so it does not apply to all jurisdictions as a case decided by the Supreme Court would. The case also does not completely throw out the defense in every situation. However, this case clearly indicates that Battered Woman Syndrome in this jurisdiction would not be an admissible defense if it were used as a justification for what the abuser had done. Battered Woman Syndrome cannot be used to further the claim of self-defense, but is admissible defense if it is used as an excuse. A woman who killed her abusive husband could use BWS in her defense if she were trying to explain her own mental infirmity at the time of the killing. This would resemble the insanity defense.

Excuse and justification mean very different things in relation to BWS. Justification means that an action was intentional and the actor who committed the action is responsible for it, but he or she is justified in the act because the harm they caused prevented a greater harm.^{clxiii} Excuse is different because it acknowledges the wrongfulness of the action without admitting

any mitigating factor, yet the person who committed the act is not responsible or accountable for it.^{clxiv} This means that something is wrong with the person, for instance a psychological state that is out of that person's control, which prevented the person from distinguishing between right and wrong. Battered Women Syndrome is controversial partially because it introduces the idea that the woman has a psychological abnormality that makes her act in a certain way, yet it seeks to justify her act as a reasonable person who weighed the options of harm and greater harm.

Anne Coughlin believes that women should retain their autonomy, which is at odds with BWS testimony. BWS testimony supports a psychological deficiency, which only furthers an excuse claim. Coughlin believes that if decision-makers excuse women from responsibility, the offender becomes "less than a full human being."^{clxv} She prefers a law of feminist responsibility rather than a law that continues to subordinate them by only allowing her to escape the blame if she claims she has a mental disorder.^{clxvi} BWS testimony makes women seem like they have no self-control and are irrational.^{clxvii} They seem like puppets of their husbands. Further, BWS testimony indicates that women do not have the capacity to abide by the law when they are suffering from the syndrome, and therefore supports they are not able to self-govern the way men are.^{clxviii} They expect women to give up when confronted by personal issues while men are able to hold their own.^{clxix} This submissiveness is at odds with most ideas about a responsible actor that Coughlin supports.^{clxx}

Coughlin says the syndrome defines women as "a collection of mental symptoms, motivational deficits, and behavioral abnormalities" and therefore supports the idea that women do not have the autonomy to escape their abusive situation.^{clxxi} This testimony tried to give reasons for why women behave differently, but ultimately frame women in a way that makes them seem weaker than men. In discussing various views about what it means to be a responsible

actor, Coughlin addresses Judge Bazelon's proposal to attribute criminal behavior to disadvantaged backgrounds rather than to a choice to do wrong, sometimes known as the disadvantaged background excuse.^{clxxii} Morse argues that this does not give the "disadvantaged the autonomy or freedom to make decisions," which further subordinates them.^{clxxiii} This case draws a parallel between the poor with disadvantaged backgrounds and a battered woman with abuse. If a woman perceives an imminent threat while her husband is not directly attacking her, a woman should still take personal responsibility for killing their husband, by acknowledging that they made a choice to do so, rather than excusing themselves from a crime for reasons they say are beyond their control.

BWS Will Only Work If a Woman "Fits" The Framework

Only women who strictly fit the framework of BWS can argue self-defense really.^{clxxiv} Women who show independence are punished, while women passive women are given an excuse.^{clxxv} If a woman kills but has stood up to her husband in the past does not meet the standards of BWS, and will be found responsible despite the violence she endured. Those who are passive may use the pathology excuse and get out of their crimes. This reinforces the idea that women should remain subordinated by their husbands. Anne Coughlin calls this situation the "double bind" because either the battered woman is submissive and troubled by a mental disorder, but innocent, or independent and, but guilty and evil.^{clxxvi} Women are changeable based on the power their husband has over them, but the male-centered notion of a responsible actor is that the person is autonomous regardless of influence.

If defense attorneys use Battered Woman Syndrome to defend their client who has killed her husband, the jury has the burden of proving that that woman in fact suffered from the disorder. Due to the inconsistencies of behavior and symptoms of unique women and the

unproven elements of the disorder, it would be extremely difficult for a jury to believe that a woman has the disorder unless she “fits” all of the paradigm that Lenore Walker introduced.^{clxxvii} The defendants must show that they have been completely passive when faced with their husband’s beatings in most cases.^{clxxviii} Even if she perceived imminent danger, yet had previously tried to escape from the violence, the court would likely not admit evidence on BWS.^{clxxix}

Cultural stereotypes also create preconceived notions within jurors’ minds about whether women of different ethnicities in fact suffered from BWS.^{clxxx} For example, African American women are often seen as strong and domineering, rather than fitting into the passive paradigm that Walker has suggested of battered women.^{clxxxi} Since battered woman syndrome does not generalize to women in all cultures, a theory that is not specific to one culture is needed. A theory that looks at women’s situations on an individualized, case by case basis can still address the realities of a woman’s circumstance that makes her act in a way that a non-battered woman would not act. This approach will also not have to ensure that all women fit the exact criteria of Walker’s “battered woman.”

A Bad Comparison

The fact that women are viewed as unable to control their lives by escaping a man’s violence make women seem hopeless. Martin Seligman’s experiment on dogs that Dr. Walker uses to explain the learned helplessness prong of Battered Woman Syndrome is demeaning to women. Walker generalizes that the effects on shocked dogs in research are similar or equivalent to the effects on battered women. The situations in which the dogs and women are in are not parallel, and women have a higher mental capacity than dogs. Therefore Martin Seligman’s

experiment does not provide Walker with a convincing argument. Instead, the argument grounds the stereotypes of women as unable to help themselves.

BWS Testimony's Effects (Or Lack Thereof) on Jurors

Research in the late 1980's on the effects of Battered Woman Syndrome testimony on jurors' decision-making showed surprising results. Follingstad et al. gave each participant a transcript of varying case facts, each involving a woman who killed her batterer.^{clxxxii} In the transcripts, the level of threat varied between low medium and high threats, and half of the participants were given BWS testimony, while the other half was not.^{clxxxiii} They also limited the verdict options available by giving some the opportunity to choose between guilt, not guilty by reason of insanity, and not guilty by reason of self-defense. Then, the participants were given all verdict options and could choose to change their verdicts. Half of the participants mostly those not provided with the not guilty by reason of self-defense verdicts, changed their minds. The results of the experiment showed that the BWS testimony itself did not influence the decision of jurors as much as the level of threat on the woman.^{clxxxiv} In other words, the woman was more likely to be found not guilty if the batterer was coming at her with a weapon rather than when he was asleep but had battered her earlier in the day. Battered woman syndrome testimony fail to help jurors frame self-defense in a different way when battered women are the defendant, unless the threat is imminent. In other words BWS was minimally effective in explaining why self-defense might look different when committed by a battered woman.

Schuller also did a study that determined that jurors' decisions were not influenced by receiving information on the effects of battering on a woman, but rather by their preexisting beliefs about battered women.^{clxxxv} Mock jurors who were less informed about battered women were not as likely to believe the defendant's defense. In addition, the expert testimony did not

decrease the guilty verdicts, but rather increased the manslaughter verdicts as opposed to murder verdicts, especially among women. Overall, this experiment showed that BWS expert testimony did not serve an informational function.^{clxxxvi} Further, the leniency among women when the expert testimony was introduced may indicate slight gender biases based on the fact that women are more often battered. This may have to do with leniency based on sympathy.

Sometimes battered woman syndrome testimony can lead to jurors having sympathy for a battered woman rather than helping them determine whether the woman was reasonable in her actions.^{clxxxvii} Jury nullification of the judge's instructions also may change the verdict outcomes in trials. These nullifications indicate that jurors can "disregard a strict interpretation of the law if such an interpretation would result in an unjust verdict."^{clxxxviii} In an experiment, jurors who were given a nullification instruction and heard a BWS defense were more lenient in their sentencing.^{clxxxix} The combination of the two led to leniency, not either one of the variables alone. It has been argued that a nullification instruction may cause jurors to act on feelings of sympathy for the defendant rather than their belief that she acted in a reasonable way given the psychological circumstances that she faced.^{cx} The fact that this outcome is possible "threatens the values embodied in the limitations of traditional self-defense doctrine."^{cxci} In cases in which battered women are the defendants for killing their husbands when he was not threatening her, jury nullifications happen some of the time. This might lead to the belief in juror's minds that the batterer deserved to be killed, which is not a legal standard by which to find the defendant innocent.

Studies Indicate That BWS is Not a Successful Defense

A study that analyzed one hundred cases in which women killed their abusers showed that the majority of the cases, eighty-five, went to trial and attorneys argued that these women

killed their abusers in self-defense.^{excii} About seventy-five percent of these women were convicted. The insanity defense was only used three times. The insanity defense is not often used because it is not particularly effective.

The National Clearinghouse for the Defense of Battered Women performed a trend analysis that did not show that BWS testimony was significantly decreasing the number of convictions or helping to reduce the crime from murder to manslaughter, as Dr. Lenore Walker thought it would.^{exciii} Parrish compiled the results of appellate court cases, whose defendants were convicted at trial after using BWS in their defense.^{exciv} She found that there was a 20% increase in affirmations of the convictions.^{excv}

Chapter 6: A Critical Analysis of Alternatives to Battered Woman Syndrome Testimony

Most agree that domestic violence is a terrible ordeal to have to go through. This has created a great deal of societal sympathy for women who kill their abusive husbands. Those who kill their batterers in the middle of a violent attack are protected under self-defense doctrine, however, others who kill their husband while they are incapacitated have a difficult time explaining their killings. Yet, battered woman syndrome entered the realm of the law in sympathy of women who had a troublesome life with their intimates, yet who still committed an act that is not accepted by the legal system. battered woman syndrome is not an appropriate defense, but it will be difficult to find a way to change the law itself, introduce new standards, or eliminate syndrome testimony altogether. Below are some alternatives that theorists have proposed. All of them are imperfect, like battered woman syndrome.

Continue Syndrome Testimony

Nancy Wright argues in “Voice for the Voiceless: The Case of Adopting ‘Domestic Abuse Syndrome’ for Self-Defense Purposed for All Victims of Domestic Violence Who Kill Their Abusers” that Battered Woman Syndrome should be extended to other victims of domestic violence, rather than just women. She suggests that domestic abuse defenses similar to BWS for adults and children should be termed “Domestic Abuse Syndrome” (DAS).^{cxvii} She also argues that DAS should be admissible as perfect self-defense.^{cxviii} Wright claims that even though male spouses are allowed to use “Battered Spouse Syndrome,” children cannot use a similar defense even if they are abused. Contrary to the popular belief that her proposal will increase the number of controversial syndrome defenses, Wright claims that she is actually trying to decrease the number of syndromes, by condensing multiple syndromes into one large umbrella syndrome.

Wright’s alternative addresses the problem of gender stereotyping because it applies the same syndrome evidence to all genders. In other words, she believes that all abused persons are prone to a syndrome like BWS, not just women. This clarifies that women are not the only people who suffer abuse, and there should be advocates for others, like children, who are abused. This testimony could also apply to adult men who are abused, although this is rare.

Domestic Abuse Syndrome may face many of the same problems that apply to Battered Woman Syndrome. If DAC uses the same theory to describe why battered women behave differently than a reasonable man in the same situation, this theory needs to be reexamined. Walker’s research only considered adult female subjects who were battered. Psychologists would need to do more research to determine what experiences abused children and men had. Further, if the research related to Domestic Abuse Syndrome is the BWS research, it should not be admissible in a court of law because it is scientifically invalid.

Another problem with continuing syndrome evidence is that syndromes are not defined as

diagnosable disorders in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR). In other words, if a group of people displayed any cluster of the same symptoms and had similar backgrounds, attorneys and psychologists could determine they suffer from a syndrome. When a Jamaican immigrant named Colin Ferguson, opened fire on a New York train, he killed six people and wounded another nineteen.^{cxviii} At his murder trial, his attorneys tried to claim that he had “Black Rage Syndrome.” Ferguson’s attorneys drew on a 1968 study called “Black Rage” that was done by African-American psychiatrists, William Grier and Price Cobbs. They claimed “racism forced blacks to make certain social adaptations, becoming mistrustful and suspicious of outsiders.”^{cxix} This continuous mistreatment would lead to a boiling point that would result in violence.^{cc}

The Texas Court of Appeals in *Werner v. State* argued that syndromes are simply ways to “explain, mitigate, justify, excuse, a defendant’s criminal conduct.”^{cci} The court was concerned about the danger of constructing syndromes to explain unlawful behavior. They set up limitations for the use of syndrome testimony. Until syndromes are generally accepted in the field of psychology and appear in the DSM-IV-TR, they should not be admissible in court.

Identify Expert Witnesses as Specialists if They Testify about BWS

Kumho Tire v. Carmichael (1999) set the precedent that gatekeepers should examine the reliability of all expert testimony, not just scientific testimony.^{ccii} The *Kumho* ruling notes that the Daubert criteria may not be applicable in determining reliability in a situation in which the expert is not a scientist and the subject and issues do not relate to scientific knowledge.^{cciii} However, they can be relevant to experts whose expertise comes from experience.^{cciv} Daubert criteria are not limited to science, yet they should only be considered when they help address the reliability of a certain subject.^{ccv}

If experts on BWS were classified as “specialists” rather than “scientists” they would be held to a lesser standard for their testimony to be admitted.^{ccvi} This would be a dangerous precedent because it would allow some sciences to be classified as specialties to avoid the Daubert standard. Specialists would no longer need to test their theories for validity regardless of testability of their research.^{ccvii} Allowing this would permit too much invalid evidence that went untested. The Daubert standard is an important way to keep invalid information out of the courtroom.

Reasonable Woman Standard

The reasonable woman standard will make men more empathetic to women’s values, create harsher consequences, and give them no excuses.^{ccviii} This will essentially make it illegal for a person to act in a way that is not in accordance with female values. This standard will require communicating values like “respect, personal autonomy, agency, and bodily integrity” to juries in jury instructions so they are not “simply putting another name onto male values and perspectives.”^{ccix} In other words, proponents of this standard believe jurors must understand these values well so that men on the jury do not simply construct their own perspective of what female values are. Men have a different idea about what should be illegal and law has been based on the acceptability of this view.^{ccx}

The reasonable woman standard as it relates to killings by battered women calls for the admission of history of threats and violence in the relationship and expert testimony about typical domestic violence patterns to show the reasonableness of the woman’s fear.^{ccxi} This approach would address the battering from a woman’s perspective and would therefore need to change the requirements of imminence and proportionality based on size and strength. The

Reasonable Woman standard also “hold[s] men to a standard of conduct that respects the physical integrity and well-being of women.”^{ccxii} In addition to asking if the defendant’s behavior is in line with what a reasonable woman would have done, advocates want to determine whether the abuser’s violence was reasonable in response to her conduct.^{ccxiii} Essentially they would judge the dead abuser under the reasonable woman standard as well.

Changing the objective standards of self defense to meet the reasonable woman standard is problematic because if these objective ideas are changed to accommodate women, women could take advantage of this and address their problems by killing without seeking external help. Changing the proportionality standard is reasonable because women are not as likely to kill with their bare hands and usually need to use weapons. On the other hand, changing the imminence standard is risky. If women are legally allowed to kill before they are threatened, they might feign the perception of imminence and simply kill their batterer because of being fed up. This is not sufficient to warrant a self-defense verdict. In addition, extensive testimony about the patterns of violence draws attention away from the killing and toward the victim.

Another problem with the reasonable woman standard is that it tries to address gendered standards that favor men with other gendered standards that favor women. Advocates of the reasonable woman standard claim that men mitigate their crimes by blaming women for their actions, however, their standard does just the opposite by blaming batterers for the woman’s killing rather than making her accountable.

The Reasonable Woman Standard argues that male stereotypes in the law are harmful to women’s rights in the law. Ironically, the reasonable woman standard would enforce stereotypes of women, further increasing the gaps between men and women by diminishing men’s rights under the law. Advocates of this standard are angry that women have to abide by laws created

with men in mind, but it is also unfair if men have to abide by laws that abide by feminine values.

In addition, stereotyping based on behavior of one gender does not take into account the idea that not all individuals that are members of their respective gender group fit into these stereotypes. Many women are aggressive, violent, and do not have a high regard for human life. Also, many men value integrity and bodily autonomy. Because of certain individuals that do not fit into gender stereotypes, it becomes difficult to determine what values encompass a reasonable woman, or a reasonable man for that matter.

Anchoring the Psychological Plight of the Battered Woman in an Accepted Disorder

Since battered woman syndrome is merely a collection of symptoms that some abused women share, rather than an accepted disorder in the field of psychology, it has created a great deal of legal controversy. BWS does not exist in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR), and therefore it is not a clinical disorder that can be diagnosed. One option for including BWS expert testimony is by allowing it to be considered as a subcategory of Post Traumatic Stress Disorder (PTSD), which is a diagnosable disorder in the DSM-IV.^{ccxiv} Battered women often do not display symptoms that are exactly like those in PTSD. However, experts who testify on battered Woman Syndrome as relating to PTSD would describe these women as exhibiting arousal symptoms, intrusive symptoms, and avoidance symptoms.^{ccxv} These symptoms can respectively explain a woman's hypervigilance, perception of an imminent threat, and their denial of how bad their situation is.^{ccxvi} These are all relevant explanations of why a woman acted differently than a non-battered adult. PTSD also offers a more objective way of diagnosing the disorder, through structured interviews.^{ccxvii}

A study by Terrance and Matheson showed that when Battered Woman Syndrome testimony was framed as a subcategory of PTSD, it gained legitimacy among jurors.^{ccxviii} Although PTSD helped obtain a more believable defense for the defendant, it also gave the jurors the impression that the defendant suffered from something closer to insanity rather than a reasonable act of self-defense.^{ccxix} In addition, PTSD may not be able to explain certain behaviors by battered women because it is a more generalized disorder that can result from any kind of trauma.^{ccxx} Battered women may have experiences and symptoms that are unique to them, and not covered in the information in the DSM-IV-TR.

Psychological Self-Defense

Charles Patrick Ewing believes that current self-defense law should be expanded to justify battered women's killings of partners.^{ccxxi} Self-defense law only includes threats on the "self" that translate only to physical threats rather than emotional ones.^{ccxxii} Charles Patrick Ewing believes that battered women should be accommodated in self-defense doctrine by allowing them to use psychological self-defense.^{ccxxiii}

Charles Patrick Ewing's argument is problematic, though. He believes that battered women often do not kill because of fear of death, but rather because of fear that they will forever be trapped in an existence with little value and no happiness.^{ccxxiv} According to Ewing, psychological self-defense should justify these women's killings of their abusive intimates because it was the only way to for the abused to protect their psychological health. This is a problem, because then jurors will have to determine whether the batterer did in fact abuse the defendant. This could be difficult if the relationship was private and no one witnessed any abuse. Further, jurors would have to place themselves in the mind of the defendant to determine whether she perceived her life to be meaningless unless she killed her abuser. There is no

objective way of determining this. Ewing's idea would create a slippery slope in which anyone could claim they killed because of psychological trauma, which is much more difficult to prove than physical abuse. It would have to rely on psychological testimony, more than witnesses that saw the abuse.

Stephan J. Morse argues that psychological self-defense is incompatible with the legal system and is based on very "soft" empirical support. He criticizes Ewing, saying that his concepts of psychological problems revolve around "client-centered, and existential psychology, which are notoriously vague and empirically unconfirmed."^{ccxxv} Morse regards it as impossible to determine whether the person feels "an extinction of self" as well as to prove that that extinction of self had a causal relationship directly tied to that person's partner.^{ccxxvi} Also, he believes that this defense would be used incorrectly as an excuse rather than a justification. He believes that if the battered woman was a reasonable person, she would have left the relationship, but instead she chose to kill her abuser.^{ccxxvii} Since there was clearly a reasonable alternative, Morse believes that using psychological self-defense would not provide a justification for the action.^{ccxxviii}

Eliminating the Imminence Requirement in Self-Defense

Since the idea of imminence of the threat is what is at odds with battered women who kill their abusers when they are asleep, one option is to eliminate the imminence requirement of traditional self-defense. One problem is that it must be replaced with something else, which could have consequences.^{ccxxix} The concept of necessity could replace imminence.^{ccxxx} This is not guaranteed to be a better alternative to the imminence defense in the case of battered women who kill because the necessity defense requires that there "must have been no adequate alternative" to kill.^{ccxxxi} The nature of the act of killing a sleeping batterer means that there is an

adequate alternative: simply leaving the situation.^{ccxxxii} The necessity defense would only work if the jury were to take into account other alternatives like whether her batterer had threatened to kill her if she left or other responsibilities pressures like financial insecurity or having no where else to go.^{ccxxxiii} Also, if the harm caused is not greater than the harm avoided, courts are still likely to hold women accountable for killing.^{ccxxxiv} Another problem is that eliminating imminence as a standard for self-defense could translate to a much too subjective standard of self-defense in any type of case, not just those of battered women.^{ccxxxv} Imminence is a key way of determining whether it is necessary to use deadly force because it indicates whether the situation is one of last resort. The necessity defense does not fit as well because it is more subjective than imminence, which can justify self-defense when there are other alternatives.

Chapter 7: Pattern of Domestic Abuse and Social Agency Framework as a New Alternative

Jurors are usually hostile to perfect self-defense or even imperfect self-defense especially when a battered woman kills her husband in a non-confrontational setting because of gender stereotypes.^{ccxxxvi} Social agency framework should replace Battered Women Syndrome to help battered women reach a middle ground when faced with the “double bind” problem. Instead of jurors either finding them guilty of murder because they are too independent to fit into the mold constructed by BWS testimony or innocent, but submissive and mentally disturbed, this new approach would acknowledge the social situation of the battered woman and show how external factors help to explain why they remain in abusive partnerships. In combination with social agency theory, testimony should be allowed on how women can start to recognize a pattern of abuse through experience without the pathology and hypervigilance described by Walker. This concept was proposed by Robert Schopp et al.

Social Agency Framework

The Social Agency Framework eliminates the need to “pathologize” the “battered woman’s behavior to explain her actions.”^{ccxxxvii} Schuller and Jenkins suggest that testimony could also focus on the “social reality of the battered woman’s situation as opposed to her psychological reactions to the abuse.”^{ccxxxviii} They must identify reasons other than pathology that caused the woman to stay. Some obstacles for a battered woman in trying to leave are fear of the batterer’s domination, fear that the batterer may kill her if she leaves, lack of financial independence, isolation from loved ones, and a lack of police intervention.^{ccxxxix} Instead of the learned helplessness idea causing the woman to stay in the situation, Stark argues that other impediments keep women in relationships with their batterers. Stark states that entrapment in a relationship is based more on factors like the “actual level of control enforced through violence, cultural constraints, and institutional collusion with the batterer.”^{ccxli}

The lack of police intervention was addressed in an experiment known as the Minneapolis Domestic Violence Experiment examined police responses to domestic abuse in the early 1980’s.^{ccxlii} The experiment determined that arresting batterers, rather than counseling both the abuser and the abused, or sending the batterers away from the home temporarily, was the most effective way to decrease domestic violence.^{ccxliii} Police sometimes will not make an arrest unless a misdemeanor was committed in front of them.^{ccxliv} The call to make an arrest is at their discretion, and sometimes cops are reluctant to do so. In fact, only between ten and eighteen percent of batterers are arrested after police arrive on the scene of domestic abuse.^{ccxlv} Civil protective orders are also minimally effective because they are not well enforced.^{ccxlvi} Daniel Krauss and Mark Costanzo argue that the social agency framework is a better fit for self-defense

trials because it does not indicate that there is something mentally wrong with the defendant, but that she was rational in her actions due to her unfortunate and inescapable circumstances.^{ccxlv}

Pattern of Domestic Violence Rather than Syndrome as a Defense for a Battered Woman Who Kills

Robert F. Schopp, in his “Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse,” argues that BWS is not the right way to defend women who have killed their spouses due to abuse. Instead, he argues that “the evidence required to establish the defendant’s reasonable belief in the necessity of deadly force must demonstrate the pattern of battering and the lack of available legal alternatives for defensive force.”^{ccxlvii} He says that BWS is used to show how it affects a woman’s judgment. The authors believe that it is contradictory to say that the woman acted “reasonably” in self-defense while at the same time her mind was impaired due to BWS.^{ccxlviii} The battered woman syndrome is irrelevant to doctrine of self-defense, but the woman’s relationship to her batterer is not.

Women may be able to accurately predict that their husband will pose a lethal threat to them by observing a repeating pattern of abuse, without suffering from BWS. Imminence does not solely determine justification of violence.^{ccxlix} It is possible for defensive force to become immediately necessary regardless of whether that harm is imminent.^{cc} If someone knows that they will suffer harm if they do not act on their last opportunity to use defensive force, the harm they will suffer should not have to be imminent. Schopp argues that “imminence of harm can promote the underlying justifications of self-defense when it serves as a factor to be considered in making judgments of necessity, but it can undermine those justifications if it is accepted as an independent requirement in addition to necessity.”^{cccli} For instance, if the harm is not imminent at the time, the threatened party will not kill the future attacker. However, as a result, the future attacker kills the innocent victim later, meaning that a greater social harm would have been

carried out. The one who posed the initial threat would be responsible for crime, while an innocent person would have been killed.^{cclii} This is different than the idea of replacing imminence with the necessity defense. Imminence is still a factor when applicable, but so is the necessity offense.

It would be possible that his repetitive actions could clue her in to when he would behave incredibly violently and put her at risk. She may recognize mannerisms or behavior that she has learned to associate with severe beatings. According to Schopp, this is “reasonable belief on the basis of her extensive experience with the batterer.”^{ccliii} He acknowledges that in order for jurors to believe that the woman has used past events to have a reasonable belief that she is in harms way, there must be some kind of concrete evidence that the woman has been battered in the past.^{ccliv} Witnesses of the abuse, medical records, or prior law enforcement responses to domestic disputes may help the jurors believe there had been a pattern of abuse that would warrant a woman’s defensive force.

Conclusion

Women faced a great deal of injustice under the law in the past due to coverture. Their husbands could beat their wives if they misbehaved, and the wives could not testify against him in these situations. Women have made progress in the law by becoming their own legal entities, but they are still not treated fairly under self-defense doctrine. Battered woman syndrome was created as a means to incorporate gender differences that would explain why battered women stay in abusive relationships, and why they perceive an imminent threat and kill when their partner is not overtly threatening them. Battered woman syndrome falls short because the research that Lenore Walker used to support is invalid and unreliable. Although many jurisdictions accept BWS testimony, they should not. Further, BWS testimony entrenches the

gender stereotypes that women are passive and helpless. This destroys feminine autonomy. BWS seems like an excuse because of a mental infirmity rather than a way that explains why a woman reasonably felt an imminent threat. Justification shows that the woman made a choice to avoid a greater harm, as opposed to randomly committing an act because of a mental instability.

Testimony on social agency framework and Schopp's idea that women act based on a pattern of abuse and a lack of legal alternatives addresses the realities of gender differences in self-defense better than BWS.

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