

The Battered Women's Syndrome: A History and Interpretation of the Law of Self-Defense as it Pertains to Battered Women who Kill their Husbands

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This paper seeks to address the role of the battered women's syndrome in criminal court cases where battered women have killed their husbands in self-defense. A historical analysis of law pertaining to domestic relationships and violence reveals the male biases imbedded in the law and the obstacles women face in seeking equality and justice in the legal system. After a brief description of the development of self-defense law and Lenore Walker's "battered women's syndrome", court cases starting mostly from the mid-1970's during the second wave of the women's movement are examined. Legal criteria for self-defense are then analyzed along with important precedents that trace the emergence through a series of court cases of legal opportunities to use this psychological condition to support pleas for self-defense. In addition, important precedents are studied that have been made over the past few decades permitting expert witness testimony in the courtroom to explain this psychological theory as it pertains to the case. The latter part of the paper deals mostly with controversies surrounding the use of the battered women's syndrome in the courtroom and the current state of self-defense law. I conclude with a proposal for reformation of expert witness testimony and for redefining legal terms in the criteria for self-defense.

History of Laws Governing Domestic Relationships and Violence

In order to discuss the role of the battered women's syndrome in relation to self-defense, it is necessary to trace back the history of law as it pertains to domestic relations between men and women. Violence and disputes between a husband and wife have long been considered private matters not subject to scrutiny under the law. In fact, history reveals not only a preference for men under the law in domestic disputes, but also a legal protection for men to punish their wives and to exert physical and social domination over them.

The authority and control of husbands over their wives is firmly established through ancient laws and traditions dating back to 753 B.C. when Romulus, credited with the founding of Rome, set up the first known "law of marriage" which commanded women "to conform themselves entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions." Women had no legal rights apart from their husbands and were seen and treated as possessions. The attitude expressed in this ancient law requiring women to conform themselves around a man's temperament is strikingly similar to the behavior exhibited by women who are battered and abused by their

husbands. The male supremacy evident in this law requiring men to rule over their wives as personal property is also comparable to the attitudes of violent men in the cases discussed in this article.

Friar Cherubino of Siena in the late 1400's extended the established domineering relationship between man and woman in his *Rules of Marriage* by defining the man's duty to govern and control his wife.

When you see your wife commit an offense, don't rush at her with insults and violent blows. . . . Scold her sharply, bully and terrify her. And if this doesn't work . . . take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body. . . . Then readily beat her, not in rage, but out of charity and concern for her soul, so that the beating will redound to your merit and her good.

Here in Friar Cherubino of Siena's rules governing marriage, violence is explicitly validated and encouraged in order to discipline women for their benefit. The impact of the legality of brutality in ancient laws continues into English law and early laws of the United States of America.

Sir William Blackstone in his commen-

tary on English law spoke of the authority of a man to exert control over his wife under a legal instead of moral standard.

The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to intrust him with his power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his servants or children; for women the master or parent is also liable in some cases to answer.

Married women were characterized by Blackstone as being legally bound to their husbands, husband and wife joined as one person under the contract of marriage. A married woman had no legal identity of her own separate from her husband. This legal status of coverture prohibited married women from taking part in any legal activity on their own accord such as sitting on a jury or owning property in their own name. In fact, due to their conjoined legal status with their husband under the law, a married woman could not bring a lawsuit against her husband because it was considered bringing a case against herself. The influence of Blackstone's coverture on the formation of United States laws is still evident today especially in laws regulating domestic violence.

The earliest court cases involving domestic violence towards women upheld Blackstone's concept of coverture and the legal right of a man to physically assault his wife in order to discipline her. In 1824, the Mississippi Supreme Court ruled in *Bradley v. State*, "Let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehavior, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned." Although this ruling did emphasize that chastisement should be moderate and only in times of emergency, still it reinforced the husband's role as the disciplinarian of the home by whatever means necessary, even through the use of physical force.

After the Seneca Falls Convention in 1848, the first wave of the women's movement began to grow in strength and support. The Declaration of Sentiments drafted at the Convention explains women's criticisms of prevailing laws governing domestic relations. In discussing the

injustices women suffer under the law, the document states, "In the covenant of marriage, she is compelled to promise obedience to her husband, he becoming, to all intents and purposes, her master – the law giving him power to deprive her of her liberty and to administer chastisement." As the movement gained momentum, women pursued the issue of the injustice of domestic chastisement and abuse through litigation where they achieved some results as the courts slowly restricted and eventually overturned laws that allowed violence against women in the home.

Two cases decided by the North Carolina Supreme Court, *State v. Jesse Black* (1864) and *State v. Richard Oliver* (1874), set up and upheld a "curtain rule" as a barrier between private and public life. Both cases involved incidents where a husband physically assaulted and injured his wife, and both cases justified the husband's actions and rights in disciplining his wife. *Oliver* ruled, "If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive." Although the Alabama Supreme Court's landmark decision in *Fulgham v. State* (1871) rescinded the legal rights of husbands to physically assault their wives saying this privilege "is not now acknowledged by our law", still the curtain rule has been used over the past century to justify the reluctance of the courts to protect battered women from their abusers and to prosecute her batterer for domestic crimes of assault. Little progress was made in the courts for achieving legal justice and domestic equality from the 1880's until the 1970's. However, many historical shifts in society influenced the perception of domestic abuse through the early twentieth century. Even though domestic abuse was outlawed in the late 1800's, most abused women were not prosecuting their husbands for beating them nor trying to separate from their husbands on the grounds of domestic violence. Although the law at least superficially protected them, women were not capable of economic independence and were therefore unable to realize and utilize their rights. Without the hope for financial independence, women were unable to achieve psychological independence or an understanding of their rights to protection against marital violence.

The changes in society during the Great Depression in the 1930's when the economy dropped and jobs were scarce may have encouraged women's psychological independence due to a necessity for more economic and domestic

equality between the husband and the wife as both worked to keep the family functioning and make ends meet. When women entered the workforce in the 1940's during World War II, women continued to discover independence and their rights inside and outside the home. Also, through the late 1950's and 1960's when the battered women's movement began to emerge, the second wave of the women's movement and conscious raising groups began to illuminate the widespread issue of domestic violence in the lives of countless women in America. As two groups of women, lesbian feminist collectives and radical feminist activists, began the grassroots movement to assist abused women, battered women's shelters and telephone hotlines emerged revealing further the widespread and common issue of domestic abuse. As the issue gained more attention, so did the legal injustice of women who are convicted for standing up against and stopping the abuse by killing their husbands in order to survive.

When activists began addressing the legal injustice facing battered women who kill their husbands, they entered the legal world where the concept of privacy and the curtain rule between domestic life and public life still prevailed. The reluctance of the courts to regulate domestic relations and the concept of a legal separation between the role of the law in public and private life have greatly influenced the development of the law as it pertains to battered women and those who have murdered their husband to stop the abuse. The introduction of the "battered women's syndrome" as a legal argument for self-defense in these cases has been met with reluctance because it often requires an expert witness to reveal evidence of domestic battery through insight into the violent relationship between the husband and wife. This testimony unveils the curtain drawn between the public crime, the murder, and private crimes, the domestic assaults. Many court cases dating mostly from the mid-1970's during the second wave of the women's movement tried to include the "battered women's syndrome" in the self-defense plea, and gradually over the past few decades, important precedents have been set permitting expert witness testimony in the courtroom to explain this psychological theory as it pertains to the case. After a brief description of the development of self-defense law and Lenore Walker's "battered women's syndrome", these court cases and the important precedents they set will be discussed leading up to an analysis of self-defense laws today.

Laws Governing Self-Defense

When men were creating laws governing self-defense, it is evident that domestic battering was not only legal but accepted in society in the newly established United States. Therefore, it is clear that men who developed the criteria of the law of self-defense did not anticipate it to be used by battered women who kill their husbands in order to survive. In fact, self-defense arose out of the "barroom brawl" scenario representing a one-time conflict between two men. Both combatants then were assumed to be relatively equal in size and strength and have little prior experience with each other.

In addition, the confrontation is assumed to have a clear beginning and end understood by both parties. These assumptions constituted the only situations in which killing was excused by the law as self-defense. Robbin S. Ogle and Susan Jacobs contrast these conditions with those of a battered woman writing, "battering generally involves two socially and physically unequal combatants with intimate knowledge of each other developed over a long period of time, participating in an ongoing, long-term confrontation where neither party can identify a foreseeable end." The situation of a battered woman then clearly does not fit into the traditional self-defense categories because her circumstances do not meet the assumptions imbedded in the law for self-defense. Self-defense in the terms in which it was written then clearly cannot be strictly applied to the situation between a battered woman and her abuser. The law was written regarding the circumstances surrounding the "barroom brawl" scenario, and for this reason women have had much difficulty arguing for a plea of self-defense in the courtroom because their situation does not fit into the law's original framework.

In order for a woman to meet the legal criteria for a homicide to be considered self-defense, she must demonstrate that "she had a reasonable belief her actions were necessary to avoid an imminent threat of death or serious bodily injury at the time of the killing." In addition, she must prove that she did not instigate the attack and was in fact acting in defense and that the amount of force she used was reasonable due to the circumstances of the attack. These criteria have caused problems in the past for the justification of self-defense in cases where the defendant has killed her abuser because they rely on the "objective standpoint of a reasonable man", or how a reasonable man would respond in the given situation. The legal criteria based on this standard are inapplicable to

the situation of a battered woman because it does not take into account the circumstances that the woman has endured in the past leading up to the homicide. These circumstances affect her perception and response to the situation. Self-defense law as it is written does not take into account the psychological state of the battered woman that may not be comparable to the psychological state perceived to be that of a reasonable man.

The battered women's syndrome was introduced into the courtroom to help explain the psychological state of the defendant due to the nature of her circumstances leading up to the crime. This was necessary because it was inadequate to evaluate the legal criteria for using a self-defense plea by a reasonable man standard when the battered woman had endured circumstances that psychologically altered her ability to think as a reasonable man who had not undergone the abuse. Therefore, a different standard was necessary to determine reasonability and imminent threat according to a new standard taking into account the reasonability of a battered woman. Lenore Walker defines this reasonability as the battered women's syndrome.

According to Walker, there are three phases in the battering cycle that she refers to as the cycle theory of violence. The first phase is called the "tension building" phase usually characterized by verbal abuse, heightening tension between the husband and wife, and light physical abuse. The wife generally responds to this stage with caution, trying to placate her partner and modifying her behavior to keep the tension from escalating. The tension continues to escalate until the partner's actions can no longer be controlled and the couple enters into the second phase of the cycle, the "acute battering incident." In this stage, the batterer inflicts severe verbal and physical abuse on the woman as a release of the tension from the first phase. If serious physical injury occurs, it takes place during this phase, and this is the phase where law enforcement sometimes becomes involved. Immediately following the acute battering phase is the final phase in the cycle, the "loving contrition" phase in which the batterer apologizes for his actions and begs for another chance in the relationship. During this phase, the tension is gone and the changed attitude of the man characteristic of this stage "provides the positive reinforcement for remaining in the relationship, for the woman". After a period of time the loving contrition phase ends and the tension building begins, and the cycle of violence continues.

Due to the cyclical nature of the abuse, the woman becomes adept at recognizing the transitions from phase to phase and being able to identify different cues in the cycle. She is psychologically affected by these changes in the cycle of violence with her abuser, and she learns to perceive situations as being potentially hostile that would be considered normal outside of her abusive living situation. She also becomes entrapped in what Walker has termed according to her theory of the battered women's syndrome as "learned helplessness", a state in which the woman feels incapable of changing her situation or disrupting the cycle leading to many more psychological problems such as depression and low-self esteem that render her unable to leave her batterer or escape her situation.

Expert Witness Testimony

Having established the functionality of the battered women's syndrome to evaluate the legal criteria for self-defense in homicide cases where a woman has killed her abuser, the primary legal issue addressed in the courts over the past few decades has been the admissibility of expert witness testimony to support these women's self-defense claims. In order to allow evidence to be admissible in court, it must meet a three-fold set of criteria according to the decision of *Dyas v. United States*,

- (1) the subject matter "must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman";
- (2) "the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth"; and
- (3) expert testimony is inadmissible if "the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert."

These criteria have caused considerable difficulty for the admissibility of expert witness testimony regarding the battered women's syndrome. One barrier is that the battered women's syndrome is a fairly new psychological concept and therefore has not established yet a significant amount of credibility, limiting both the concept itself and experts such as Lenore Walker who want to testify about it. These criteria and the legal criteria regarding self-defense law will

be addressed more thoroughly in the following court cases and the precedents and advancements made toward the admissibility of expert witness testimony about the battered women's syndrome and its relationship to self-defense law.

State v. Wanrow in 1977 was the first case where sex stereotyping in the law of self-defense was addressed in the courtroom. Yvonne Wanrow was on trial for killing a known child molester living in her neighborhood who had molested her child and forcefully entered a house where she was staying. The jury was instructed to follow an objective standard of reasonability and not take into account the many circumstances that had affected Wanrow's perception of reasonability and imminent danger. Wanrow was convicted of second-degree murder and first-degree assault, but on appeal these circumstances, that Wanrow was using a cane at the time of the killing and that previous circumstances regarding the victim were substantially threatening enough to have had an effect on Wanrow's mental state, were considered in light of the case. The Washington Court of Appeals reversed the decision and the Washington Supreme Court affirmed. Wanrow made several important advancements for battered women who have killed in self-defense. First of all, Wanrow's case was appealed after consideration of self-defense from a subjective standard taking into account the circumstances of and preceding the killing instead of the objective male standard originally evaluated in her case. Second, the stereotypes embedded in the laws of self-defense were addressed in the courtroom and legally discussed. Third, it established the legal groundwork for expanding self-defense to encompass battered women who kill their husbands in order to survive.

Admissibility of expert testimony regarding the battered women's syndrome was first introduced into the courtroom in *Ibn-Tamas v. United States* in 1979. In this case, the DC court of appeals ruled that expert testimony as evidence regarding the battered women's syndrome was relevant because it met part of the three-fold criteria established in *Dyas v. United States* (1977) by being "beyond the ken of the average layman" and therefore needing an expert witness to explain the concept to the jury. Nevertheless, the previous ruling that deemed the evidence as inadmissible was not overturned. The court was critical of Lenore Walker's qualifications as an expert witness due to the infancy of the concept of the battered women's syndrome. As a result, the case was remanded to trial court where the testimony was still ruled inadmissible because it did

not meet the two other criteria established by *Dyas*. The battered women's syndrome was still developing and gaining support as established scientific theory that would pertain to a criminal case, and therefore Lenore Walker was not yet considered to be a credible expert on this scientific concept.

Through the next several years after *Ibn-Tamas*, expert testimony was ruled inadmissible in many trials because it was seen as irrelevant, not fully developed, and even unnecessary because it was not a concept requiring explanation for the jury. The decision in *Buhrle v. State* (1981) corroborated the finding in *Ibn-Tamas* that Walker's battered women's syndrome was still being developed and had not yet gained enough credibility outside the courtroom in the scientific community to be utilized in the legal context. Arguments supporting this decision were made in both *Ibn-Tamas* and *Buhrle* citing parts of Walker's book *The Battered Woman* where she writes about the methodologies she uses in her study and her reluctance in stating her conclusions due to their tentative nature.

In 1984, expert witness on the battered women's syndrome was finally permitted by the New Jersey Supreme Court in *State v. Kelly* despite the relative newness of the theory. Indicted for the murder of her husband, Mrs. Kelly's attempt to use the battered women's syndrome to support her plea for self-defense was at first rejected as irrelevant to her case. Upon appeal, the New Jersey Supreme Court found that the trial court erred in excluding the evidence upholding that the battered women's syndrome would have been relevant because it explained Mrs. Kelly's psychological state and could have affected the outcome of the case. The court ruled in reviewing the case that the methodologies used in the development of the battered women's syndrome were proven to be "widely accepted by clinical psychologists" and therefore deserved more credibility in the courtroom. Although the ruling in this case did not establish a conclusive precedent on the admissibility of expert testimony regarding the battered women's syndrome and still revealed doubt to the validity of the theory, the court did conclude that the theory was more developed than it had been regarded in the past and had a "sufficient scientific basis to produce uniform and reasonably reliable results."

The Washington Supreme Court affirmed the decision of *Kelly* in 1984 in *State v. Allery*. In this case, Mrs. Allery shot and killed her husband after he violated a restraining order, entered her house, and threatened to kill her. He was not

assaulting her at the time of the homicide, and the defense wanted to use the battered women's syndrome to explain Mrs. Allery's actions as those of self-defense. The court ruled that in cases dealing with the perception of danger and reasonability of a battered woman, expert testimony on the battered women's syndrome would be beneficial for explaining the psychological state of the defendant to the jury as it is beyond the comprehension of an ordinary lay person. Also, the court concluded that "this evidence may have a substantial bearing on the woman's perceptions and behavior at the time of the killing and is central to her claim of self-defense."

The Oregon Court of Appeals reaffirmed these decisions in *State v. Moore* (1985) when they overturned the trial court decision which had excluded testimony concerning the battered women's syndrome. The court ruled that testimony was necessary to inform the jury about the psychological state of the defendant who was indicted for attempted murder and assault after shooting her abusive husband. Confirming *Kelly*, the court concluded that expert witness testimony on the battered women's syndrome to explain the reasonability of the defendant's perception of imminent danger at the time of the homicide should be admissible due to the credibility of the syndrome in the scientific world. According to *Moore*, "Numerous psychiatrists, psychologists, and social workers now consider the battered spouse syndrome an accepted basis for identification, counseling, and treatment. I suggest that there is now authoritative literature and persuasive judicial opinion to support the conclusion that the battered spouse syndrome has general acceptance in the field."

In New York, the growing credibility of the battered women's syndrome and its admissibility as relevant evidence in the courtroom was affirmed in *People v. Torres* (1985), a case where an abused wife shot her husband while he was sitting in an armchair minutes after he had threatened to kill her with a pistol. The New York Supreme Court allowed expert witness testimony to support the defendant's plea for self-defense claiming, "the theory underlying the battered woman's syndrome has indeed passed beyond the experimental stage and gained a substantial enough scientific acceptance to warrant admissibility."

These court decisions reflect the growing acceptance of the battered women's syndrome as an admissible scientific theory in the courtroom to support a self-defense plea for battered women who assault or kill their husbands. Nevertheless, some states were still reluctant to permit

the use of the battered women's syndrome in criminal cases. In *Hawthorne v. State* (1985), the Florida Court of Appeals overturned a trial court decision that permitted expert witness testimony on the battered women's syndrome by Dr. Lenore Walker to explain Hawthorne's belief that she was acting in self-defense when she killed her husband. The court of appeals ruled Walker's theory was incomplete, claiming "the depth of study in this field has not yet reached the point where an expert witness can give testimony with any degree of assurance that the state of the art will support an expert opinion."

Nevertheless, states continued to accept Walker's battered women's syndrome in the courtroom to expand statutory justification for the use of deadly force in self-defense. Decisions in *State v. Hodges* (1986) by the Kansas Supreme Court, *State v. Hennem* (1989) by the Minnesota Supreme Court, *State v. Koss* (1990) by the Ohio Supreme Court, *State v. Hanson* (1990) by the Washington Court of Appeals, *Rogers v. State* (1993) by Florida District Court of Appeals, and *State v. Hickson* (1993) by the Florida Supreme Court all confirmed the scientific credibility of the syndrome therefore permitting the admissibility of the battered women's syndrome in self-defense testimony. Some courts have even created precedents that ruled the syndrome as a matter of law. These rulings will be further discussed in the next section that examines current self-defense laws and their acceptance of the battered women's syndrome.

Self-Defense Laws and the Battered Women's Syndrome

Courts over the past few decades have continued to follow a trend increasingly accepting the battered women's syndrome as an extension of self-defense criteria in cases where abused women kill their husbands. In 1993, the Florida Supreme Court set a precedent permitting the battered women's syndrome to be admissible in the courtroom as a matter of law. In *Rogers v. State* (1993), the court ruled that "because the scientific principles underlying expert testimony relative to the battered woman syndrome are now firmly established and widely accepted in the psychological community, we conclude that the syndrome has now gained general acceptance in the scientific community as a matter of law." This decision eliminated the case by case determination of the relevance and admissibility of the battered women's syndrome in homicide

cases where a battered woman kills her husband.

Beyond the courts, six state legislatures have enacted laws concerning this issue. Some of these laws were passed years before courts in other states created lasting precedents. In 1987, Missouri was the first state to pass legislation permitting the battered spouse syndrome in the courtroom upon the issue of self-defense in homicide cases involving domestic violence. Ohio created a statute in 1990 permitting evidence on the battered women's syndrome in the courtroom saying it met the three prong *Dyas* test for admissibility. Its legitimacy and admissibility would therefore no longer be questioned in cases involving women who want to claim self-defense in homicide trials. Maryland enacted a similar statute in 1991 that permitted expert testimony for the battered spouse syndrome in these cases to provide evidence for a self-defense plea.

Wyoming created laws in 1993 that legitimized the battered women's syndrome by citing its existence in the Diagnostic and Statistical Manual of Mental Disorders III (American Psychiatric Association) under Post-Traumatic Stress Disorder. These laws allowed the battered women's syndrome as an argument to support self-defense claims "to establish the necessary requisite belief of an imminent danger of death or great bodily harm as an element of the affirmative defense, to justify the person's use of force." South Carolina passed legislation in 1995 that permitted the admissibility of the battered spouse syndrome "in a criminal action on the issue of whether the actor lawfully acted in self-defense, defense of another, or defense of duress." In addition, South Carolina also included a clause explicitly stating that "this section does not preclude the admission of testimony on battered spouse syndrome in other criminal actions." Now that the battered women's syndrome, commonly referred to in some state statutes as the battered spouse or battered women's syndrome, is more accepted, cases have arisen trying to utilize expert testimony on the syndrome to explain other criminal action such as robbery or larceny by a battered wife. These cases have claimed the abused woman did not commit the crime of her own free reasonable will but instead as a result of the battered women's syndrome and pressure from her husband. Few laws have been made, but South Carolina legislation for the battered women's syndrome in 1995 was the first to address the issue by limiting the current laws concerning the battered spouse syndrome to cases involving pleas for self-defense.

California has been most progressive in their

enactment of laws over the past few decades. In 1992, California passed a law permitting expert testimony on the battered women's syndrome to be uniformly admissible for criminal cases to educate the jury on the psychological state of battered women leading up to the homicide. In 2002, California created another law allowing women convicted of murder before the 1992 law was passed to petition a judge to review their case instead of seek a pardon from the governor. Governors are reluctant to pardon criminals because it becomes a political issue that could affect their public image of being soft or hard on crime. Therefore, this law was very important to allow women to have their cases reviewed and perhaps receive a reduced charge if they felt they had suffered from the battered women's syndrome during the time when they killed their abusers. In contrast Maryland passed a law in 1996 excluding all cases tried before the law in 1991 from being reviewed or retried according to current law. These laws, though some similar in nature and others more strict or more radical, further prove the differing perceptions from state to state of the battered women's syndrome as an argument for self-defense and different state's assertiveness in achieving justice for battered women who have killed their husbands.

The most recent California law expanding the 2002 law was to address the growing emergence of the expansion of the battered women's syndrome to include other cases against battered women besides homicide. In 2005, the California legislature passed a law expanding the previous law to include not only those convicted of murder but also battered women convicted of manslaughter, attempted murder, and other cases where the admissibility of expert testimony on the battered women syndrome could have potentially affected the outcome of the case. These laws in California are the most progressive nationwide, and they reflect the growing acceptance of the battered women's syndrome in the courtroom. Nevertheless, there is still much controversy concerning the validity and therefore admissibility of the battered women's syndrome to support self-defense pleas, as well as controversy surrounding the wording and interpretation of self-defense laws. The women's movement also is split in terms of the success and effectiveness of the battered women's syndrome in overall goals for equality and justice for battered women. These controversies and others concerning the acceptance and effectiveness of the battered women's syndrome will be discussed in the next section of this paper.

Controversies Surrounding the Battered Women's Syndrome

One controversy concerning the current state of battered women in the legal system is whether the legislature should rewrite the laws pertaining to self-defense. These laws were originally written from a male perspective to deal with conflicts with respect to male behaviors. Therefore, supporters argue that self-defense laws as they are currently written do not apply to female behaviors nor self-defense from a female perspective. Advocates find many inconsistencies in the law including the differing circumstances under which women would kill and the differing physical size of most women relative to men. According to the law, women must meet their attackers with equal force in order to claim self-defense for their actions. However, due to the usually stronger physical state of the male attacker, the use of deadly force may be equal force in the situation. Advocates argue that these stereotypes that are embedded in the law require a redefinition of the language used as criteria for self-defense. Terms that would be redefined to more consistently examine pleas for self-defense in legal cases are reasonability, imminent danger, and the duty to retreat.

Another controversy still exists questioning the legitimacy of the battered women's syndrome in the courtroom. Some scholars and lawyers still argue that the objective standard for murder should be upheld in all cases regardless of psychological evidence seeking to prove different perspectives unless the defendant is pleading insanity. Walter Williams of *Capitalism Magazine* wrote an article recently addressing suspicions of the syndrome calling it "the politically correct legal rationalization for letting cold-blooded female killers off the hook." Further reservations for the syndrome still exist concerning the legal admissibility of expert testimony to prove the differing mental state of the battered woman in comparison to the reasonable man. Although much more research has been done by Lenore Walker and Cynthia Gillespie among other scholars, the admissibility of expert testimony on the subject of the battered women's syndrome is still met with reluctance due to the inconclusiveness of the prevailing psychological evidence of the cycle theory of violence and learned helplessness that are traditionally addressed in these testimonies.

Another debate exists within the women's movement about their support of the battered women's syndrome in light of their goals for equality. On one hand, the battered women's

syndrome has protected women from the laws of self-defense, biased from a male perspective, and created more equal legal opportunities for women to defend themselves. On the other hand, however, many feminists believe that the battered women's syndrome actually reinforces the traditional presumption that evidence presented by a woman is not sufficient in and of itself. By creating a scientific theory and medical and psychological terms to address the mental state of the defendant at the time of the homicide, the battered women's syndrome is contributing to a "therapeutisation of domestic violence" instead of addressing it as a systemic issue embedded in the societal construction of gender roles and power distribution. These feminists argue that the battered women's syndrome supports the assumptions that violent men are sick and the women who stay with them are crazy. In order for a woman to receive justice in the legal system, she must be suffering from something, and therefore her testimony as a battered woman is not credible by itself due to the stereotypes surrounding her "condition". Part of the controversy also concerns expert witness testimony on the battered women's syndrome for this reason. As expert testimony on the syndrome becomes more credible, valued, and accepted in the courtroom, the testimony of abused women becomes less credible and valued. The necessity of expert witness testimony to describe an abused woman's psychological state is argued to be harming the battered women's movement for equality because it discredits abused women's testimony without corroboration by a professional to her state of mind.

There is also controversy concerning the exclusionary wording of the battered women's syndrome, and it has been given several different names including battered spouse syndrome and intimate battering. The battered women's syndrome through its clear interpretation to assist battered females excludes battered men, battered children, and battered homosexual relationships where the relationship is not based on heterosexual roles addressed through the syndrome. In addition, the battered spouse syndrome when used is exclusionary to abuse in couples who are not married but dating or cohabitating. This wording has caused numerous discussions but little action in several states over the past decade. California is currently discussing a law to rewrite all previous legislation and court precedents to change the wording from battered women's syndrome to a more inclusive term. Other states have yet to begin real

discussion on this controversial term, but they will perhaps follow California's lead in the future.

Conclusion and Redefining Self-Defense: Achieving Legal Equality for Battered Women who Kill their Husbands in Self-Defense

Historically, laws and traditions governing relationships between a husband and wife have given authority and preference to the man in cases of dispute. Court cases have given more rights to women over the past few centuries, but the remnants of laws biased toward men remain imbedded in the law interpreting self-defense. These laws were written originally from the perspective of men involved in spontaneous barroom brawl scenarios, and the traditional criteria for self-defense does not effectively apply to situations where battered women have killed their husbands in order to survive.

Lenore Walker introduced the psychological concept of the battered women's syndrome to explain the discrepancies in the law's interpretation of self-defense from a biased male perspective and self-defense through the perspective of an abused woman trapped in a cycle of violence. The primary legal issue in these cases has been the question of the admissibility of expert witness testimony concerning the battered women's syndrome in the courtroom to support claims of self-defense. The battered women's syndrome was introduced into the courtroom to help explain the psychological state of the defendant due to the nature of circumstances of abuse leading up to the crime. As explored in the previous historical analysis of this legal issue, the legal criteria for self-defense laws are applied based on a reasonable man standard that cannot be applied to battered women. As a result, expert witness testimony has been used to adapt the legal standards of self-defense laws to battered women with learned behaviors psychologically cultivated through circumstances surrounding domestic abuse.

The purpose of expert testimony has been to incorporate into self-defense laws different standards to determine reasonability and imminent threat that take into account the situation of a battered woman and therefore equalize the application of self-defense laws for men and women in the legal system. However, the inclusion of the battered women's syndrome into the courtroom through expert witness testimony has

not achieved the desired results of legal equality originally perpetuated by the women's movement. Instead the victimization and stereotypes of battered women perpetuated through the dialogue of the battered women's syndrome have actually undermined instead of reinforced the testimony of abused women who have retaliated against the abuse and killed their batterer. In order to remedy this problem, expert witnesses need to change their approach in giving testimony about the battered women's situation in these cases, and also the legal criteria for self-defense laws need to be redefined through legislative reform to provide equal protection for men and women.

Expert witness testimony has proven to be fundamental in educating the jury about the nature of abusive relationships before they address the reasonability of the woman in her actions against her batterer. Due to legal reforms in the past several decades, expert testimony has now been ruled as permissible in nearly every state appellate court. However, in recent years, negative consequences of the battered women's syndrome have arisen in light of the women's movement's goals for achieving equality between men and women. Due to the focus of feminist lawmakers on the admissibility of expert witness testimony to explain the abusive situation in which the defendant suffered, the discrepancy has deepened between the credibility of the battered woman's testimony concerning her reasonability at the time of the killing and her reasonability under the law based on her victimized condition. Instead of incorporating the battered women's syndrome into the interpretation of self-defense laws, the court has become more dependent on expert testimony in order to accept the reasonability standards of a battered woman and to adapt other conditions of self-defense law to the battered women's situation such as the definition of imminent threat of death or harm in relation to an intimate, abusive relationship. While expert testimony on the syndrome has gained credibility and acceptance, the testimony of abused women has become increasingly insufficient as evidence that their actions were self-defense. The equality sought after by the battered women's movement has fallen short because of the necessity of expert witness testimony to describe an abused woman's psychological state in order to corroborate her claim for self-defense.

Those who support the current state of the law argue that expert testimony has protected women from inherent biases imbedded in the laws of self-defense and has granted women more legal

opportunities to defend themselves. Although this is true to some extent, feminist scholars and lawmakers such as Elizabeth Schneider believe that the battered women's syndrome actually has reinforced the traditional presumption that evidence presented by a woman is not sufficient in and of itself as defense. As discussed previously, the theurapeutisation of domestic violence diagnoses women as suffering from an altered state of mind, therefore delegitimizing the right of women to defend themselves against battery and receive equal consideration under the law.

Schneider argues that expert witness testimony on the battered women's syndrome optimally should not increase the discrepancy of credibility between the law and battered women, but instead should effectively incorporate the reasonability of the battered women who kills her abuser into the legal definitions surrounding self-defense. In order to achieve this goal, expert witnesses must restructure their approach of giving testimony in the courtroom to more thoroughly and accurately depict the situation of abused women who kill their batterers.

According to Schneider, "battered women who kill need not be portrayed solely as victims with the focus on the battering, but as actors and survivors whose acts are reasonable." Self-defense should be interpreted and understood in these cases of abused women who kill their husbands through a description of abused women as more than just victims of battery. Instead, they should be described and viewed as victims who fought their abusers and survived. By providing more thorough insight into the battering situation of these abused women, the actions and reasonability of a battered woman will be more effectively understood, therefore creating a more equal application of self-defense laws in these legal cases. The entire experience of a battered woman should be described through expert witness testimony to explain the victimization, the coping strategies, the behavioral adjustments, and the understanding of the battered woman of her lack of available options to protect her and her family in a culture that still places her in a subordinate role in society.

This legal strategy would transform the use of expert witness testimony for the battered women's syndrome in the courtroom in order to expand the interpretation of self-defense laws to incorporate the entire situation of a battered woman and her acts of self-defense against her abuser. Nevertheless, in order for equality to be met in spite of the ineffective consequences that have arisen from the inclusion of the battered

women's syndrome in the courtroom, political strategies of reform must be adopted to redefine the legal standards of self-defense laws to include the battered women's perspective.

There is much inequality embedded in the criteria of self-defense laws that does not include the differing circumstances under which abused women would kill, the differing type of relationship that exists between a battered woman and her abusive partner than between two men engaged in a conflict, and the differing perceptions of danger developed by battered women through a history of abuse. These discrepancies require a reexamination of important terms and criteria for self-defense in order to redefine laws so that they will better represent the perspectives of battered women in addition to male perspectives. Two important criteria that should be reevaluated in terms of self-defense law and the battered women's syndrome are reasonability and imminent danger.

The effects of enacting legislation to rewrite the self-defense criteria for reasonability are obvious in that they would redefine the terminology of the argument. Reasonability would change from the reasonable man standard currently in place to a more circumstantial standard conditional to the facts of the case. Expert witness testimony on the battered woman syndrome would no longer be needed to explain the psychological state of a battered woman and how it differs from that of a reasonable man because this distinction would be written in the law. Creating legislation to redefine legal criteria pertaining to reasonability should be the ultimate goal in achieving equal standards for battered women in the courtroom. The previous argument for more inclusive expert witness testimony should be working towards this goal by gaining acceptance for the reasonable standards applied to battered women in recent court cases.

Legislation should also redefine the criteria for imminent danger according to the redefined, more equal standards of reasonability pertaining to battered women. The redefinition of imminent danger and self-defense would permit the jury to review previous circumstances and behaviors of the victim leading up to the homicide as legal evidence relevant to cases where a woman kills her husband in presumably nonviolent conditions such as when her husband is not attacking her. In other words, if an abuser always takes off his ring before he attacks his wife and the wife is well aware of this habit and tries to prevent the attack, this presumably nonviolent situation of the husband taking off his ring could in fact be considered imminent danger

when his past history of abuse is examined.

In conclusion, although the current use of expert testimony for the battered women's syndrome in the courtroom has protected many women from being wrongfully convicted of criminal charges by allowing the psychological standards of reasonability to be examined from a victimized perspective, legal equality for battered women to defend themselves has not been met. Through the dialogue of expert witnesses of the battered women's syndrome, abused women's personal testimony as evidence of their actions of self-defense has been further devalued due to their perceived victimized, psychological condition. Changes must first be made in expert testimony to incorporate the full situation that affected the reasonability of a battered woman instead of just her condition as a victim. The ultimate goal in achieving equality for battered women who kill their husbands must however come through the legislature to ensure equal standards of application. As the reasonability of the battered women is legitimized by expert witnesses and adopted in the application of self-defense laws, feminist lawmakers and scholars must work toward achieving equality through a redefinition of the legal criteria of self-defense laws to include the growing acceptance of the battered woman's claims for self-defense.

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