

## Using Battered Woman Syndrome Evidence With a Self-Defense Strategy in Minnesota

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On March 5, 1942, Hastings, Minnesota police arrested Regina Schabert for killing her husband.<sup>1</sup>

The previous morning, Frank Schabert had refused to go to work and demanded five dollars "to go out and get drunk." Regina gave her husband two dollars and did not see him again until he returned home at eight o'clock that evening.<sup>2</sup>

When he arrived home, Frank refused to eat the dinner Regina laid out for him and insisted that the two visit some saloons. Regina put their child to bed and accompanied Frank to several taverns. After drinking whiskey for a number of hours, Frank became so intoxicated that Regina took the car keys from him and drove them home herself. During the trip Frank slapped Regina on the head and arms<sup>3</sup> while at the same time pulling on the hand throttle, making the car speed up and causing a minor traffic accident.<sup>4</sup>

Once home Frank continued to beat Regina. She eventually escaped and carried her sleeping child to a neighbor's house, where she telephoned the police. The police arrived and put Frank in a squad car, but released him when he promised to "behave himself." When the police left Frank became enraged, threatening to kill Regina and attacking her with a chair.<sup>5</sup> Regina eluded her

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1. *State v. Schabert*, 15 N.W.2d 585, 586 (Minn. 1944) [hereinafter *Schabert I*].

2. *Id.*

3. Frank frequently beat Regina during their five-year marriage. *Id.* This fact was corroborated by several witnesses at Regina Schabert's second trial. Record at 425-26, 428, 456-58, 486-87, 612, 626, *State v. Schabert*, 24 N.W.2d 846 (Minn. 1946) [hereinafter *Schabert II*].

4. *Schabert I*, 15 N.W.2d at 586.

5. *Id.*

husband, however, and shot him with a shotgun, killing him.<sup>6</sup> She then went to her mother's house and, on her mother's advice, turned herself in to the police.<sup>7</sup>

At trial, defense counsel presented evidence that Regina was "feeble-minded"<sup>8</sup> and argued that she did not have the mental capacity to formulate a criminal intent.<sup>9</sup> Alternatively, defense counsel argued that Regina had acted in self-defense.<sup>10</sup> The jury rejected both arguments and found Regina Schabert guilty of first-degree murder. She was sentenced to life imprisonment.<sup>11,12</sup>

At the time Regina Schabert stood trial for murdering her husband, social scientists knew little about the causes and effects of domestic violence against women. In the 1970s social scientists began to focus their research on the plight of battered women. Minnesota courts now allow battered women accused of killing their abusers to use this research to help explain their actions. This paper surveys domestic violence research and discusses how theories about battered women might be used in Minnesota courts to defend a woman accused of killing her abuser. Part I surveys the contemporary research and theory regarding a battered woman's behavior and focuses on theories explaining why a battered woman might respond to her abuse by killing the abuser. Part II evaluates various theories that might be used in Minnesota to defend a battered woman charged with killing her abuser, concludes that self-defense is the best defense strategy, and discusses evidentiary issues relevant to a battered woman's self-defense claim.

## I. The Battered Woman Syndrome and Other Theories

Wife beating has existed for centuries and can be seen as a reflection of western society's patriarchal orientation.<sup>13</sup> Early ac-

6. There was some confusion as to whether Regina shot Frank accidentally during a struggle over the gun, or as he lay asleep on the bed. Compare *id.* at 586-87 with Schabert II, 24 N.W.2d at 848.

7. Schabert I, 15 N.W.2d at 587.

8. *Id.* at 586.

9. Appellant's Brief at 46-49, 54, Schabert I (No. 33714).

10. *Id.* at 49-51, 55.

11. *Id.* at 2. The Minnesota Supreme Court reversed Regina Schabert's conviction and remanded for a new trial on the ground that the trial court had improperly admitted a coerced confession into evidence. Schabert I, 15 N.W.2d at 588, 589. After a second trial, the court upheld her conviction for second-degree murder and sentence of life imprisonment. Schabert II, 24 N.W.2d at 850.

12. See Victoria M. Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self-Defense, and Expert Testimony*, 39 MERCER L. REV. 545, 547 (1988); Mira Mihajlovich, Note, *Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony and the Law of Self-Defense*, 62 Ind. L.J. 1253, 1254 (1987).

13. Mather, *supra* note 12, at 547 & nn.10-13.

ceptance of violence toward women appears in Greek myths and Biblical passages.<sup>14</sup> In the Middle Ages, wife beating was not only tolerated, but encouraged.<sup>15</sup> The English common law and the Napoleonic Civil Code continued this practice.<sup>16</sup> In the United States, wife beating was acceptable in many state legal systems until the mid-20th century.<sup>17</sup> Even after state courts no longer expressly condoned marital violence, government authorities and health professionals "systematically ignored" domestic violence toward women.<sup>18</sup>

As the feminist movement gained momentum in the 1960s and 1970s, the problem of domestic violence began to receive more attention.<sup>19</sup> After the first shelter for battered women opened in 1971, some health professionals began to focus their study on domestic violence toward women.<sup>20</sup> By the end of the decade, Dr. Lenore Walker, a clinical psychologist, had reported several common characteristics among female victims of domestic violence.<sup>21</sup>

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14. *Id.* at 547 & n.14.

15. *Id.* at 547-48 & nn.15-16.

16. *See, e.g., Wolfe v. Wolfe*, 198 S.E. 209, 213 (W. Va. 1938). The *Wolfe* court noted that although "the common law right of a husband to chastise his wife is not recognized in [West Virginia] . . . 'courts generally recognize that provocation given by the complaining spouse is always a material matter for consideration.'" *Id.* (citations omitted). The court held that because the plaintiff had refused to allow her abusive husband to see their child, she had "provoked" him, and his subsequent beating of her did not constitute sufficient grounds for divorce. *Id.* *See also* Mather, *supra* note 12, at 548 & n.17 (citing several United States cases excusing abusive behavior by men against women).

17. *See* Mihajlovich, *supra* note 12, at 1254-55 & nn.11-12. This apparently was a reflection of society's continuing acceptance of domestic violence. Among other things, the author recounts a 1971 psychological study describing a relative reluctance of male subjects to intervene in "male-upon-female" physical abuse. *Id.* at 1255 n.12. According to the author, "[o]ne reason posited for the unresponsiveness of males in situations of male-upon-female violence is the assumption that the man was the woman's husband, and she somehow deserved the violence." *Id.* (citation omitted).

The record in *Schabert II* reveals that several of Regina Schabert's friends and her family, were well-aware that she was beaten regularly by Frank. Record at 425-26, 428, 456-57, 486.

18. *See* Mihajlovich, *supra* note 12, at 1254.

19. *See* Mather, *supra* note 12, at 548 & nn.20-22 (citing in particular ERIN PIZZEY, *SCREAM QUIETLY OR THE NEIGHBORS WILL HEAR* (1974)). Mather notes that "[t]he battered woman's movement really did not achieve momentum in the United States until the mid-1970s when the National Organization for Women established a Task Force on Battered Women and Household Violence, and shelters and coalitions began springing up across the country." *Id.* at 548 (citation omitted).

20. *See* LENORE E. WALKER, *THE BATTERED WOMAN* (1979). *THE BATTERED WOMAN* was based on preliminary research conducted by Dr. Walker during a three-year study of domestic violence.

21. *See* LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* (1984), in which Dr. Walker provided more extensive findings and analysis in her final report.

Based on her observations, Walker theorized that female domestic violence victims suffered from a mental disorder she called "battered woman syndrome."<sup>22</sup> Although Walker's research is the most commonly accepted explanation for the responses of battered women to abuse, another approach worth noting derives from feminist theory. This theory focuses on society's ills rather than individual behavior. Each approach is looked at more closely below.

### A. *The Battered Woman Syndrome*

Battered woman syndrome, often described as a type of post-traumatic stress disorder,<sup>23</sup> is a set of psychological and behavioral reactions displayed by women who are subjected to severe, long-term domestic abuse.<sup>24</sup> Walker defines a "battered woman" as "a woman, 18 years of age or over, who is or has been in an intimate relationship with a man who repeatedly subjects or subjected her to forceful physical and/or psychological abuse."<sup>25</sup> The "abuse" element includes such behavior as excessive jealousy, extreme verbal harassment, restriction of activity, nonverbal or verbal threats of punishment, sexual assault, and physical attack.<sup>26</sup> As the definition indicates, a woman need not be physically injured by the batterer,<sup>27</sup> although some sort of physical abuse usually accompanies the psychological harm inflicted.<sup>28</sup>

In her three-year study, Walker examined 400 women who

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22. See, e.g., Sarah C. Madison, Comment, *A Critique and Proposed Solution to the Adverse Examination Problem Raised by Battered Woman Syndrome Testimony in State v. Hennum*, 74 MINN. L. REV. 1023, 1028 & n.23 (1990) (citing court cases classifying the syndrome as a sub-category of post-traumatic stress disorder).

23. See WALKER, *supra* note 21, at 7-13 (providing an overview of the syndrome).

24. *Id.* at 203.

25. *Id.* An "intimate" relationship is one "having a romantic, affectionate, or sexual component." *Id.* Although most battered women in the study reported more than four battering incidents, "repeatedly" means simply more than once. *Id.*

26. Most other researchers define a battered woman similarly. See, e.g., Mary A. Douglas, *The Battered Woman Syndrome*, in DOMESTIC VIOLENCE ON TRIAL 39, 39 (Daniel J. Sonkin ed. 1987) (defining a battered woman as "[a] woman who has been the victim of physical, sexual, and/or psychological abuse by her partner").

27. WALKER, *supra* note 21, at 27 (recognizing that "[t]he physically abusive incidents [studied] were so compelling and overwhelming in the amount of overt violent behavior that the psychological components got less attention").

28. *Id.* at 204-05. The 400 women in Dr. Walker's study constituted a non-randomized, self-selected sample taken from Colorado, Montana, South Dakota, North Dakota, Wyoming, and Utah. The sample included women from urban, suburban, rural and mountain areas, as well as various racial groups. The sample also included women who had killed their abusers, were separated from their abusers, or were still in the abusive relationship. As the data collection phase of the study progressed, additional efforts were made to obtain as wide a representation as possible. *Id.*

met the above criteria.<sup>29</sup> The study revealed that battered women tend to share several common characteristics, including low self-esteem, a traditional upbringing, stereotypical beliefs about marital roles, and severe stress reactions.<sup>30</sup> A battered woman is also likely to have been raised in a home where family members were subjected to domestic abuse.<sup>31</sup> Battered women often blame themselves for the battering, believe that only they can resolve their problems, and deny feeling fear or anger about the situation.<sup>32</sup> Battered women also attempt to manipulate the domestic environment to avoid further abuse, and may rely on sex to maintain intimacy with the batterer.<sup>33</sup>

Walker identified a three-phase "cycle of violence" that repeats itself throughout the battering relationship.<sup>34</sup> During the "tension building" phase, tension gradually escalates in the relationship as the woman is subjected to name-calling, other mean-spirited psychological abuse, and/or physical abuse.<sup>35</sup> Phase two, the "acute battering incident," is "the uncontrollable discharge of the tensions that have built up during phase one."<sup>36</sup> At this time the batterer subjects the woman to an onslaught of psychological and physical punishment that may leave the woman severely shaken and/or injured.<sup>37</sup> Phase three, "loving contrition," is characterized by the batterer's kindness toward the woman and re-

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29. WALKER, *supra* note 20, at 31; WALKER, *supra* note 21, at 18.

30. WALKER, *supra* note 21, at 19. Between the woman and the abuser, the abuser is more likely to have been raised in a violent household. *Id.*

31. *Id.* at 31. See also LEE HOFF, BATTERED WOMEN AS SURVIVORS 46-49 (1990); Dee L. R. Graham, Edna Rawlings, & Nelly Rimini, *Survivors of Terror: Battered Women, Hostages and the Stockholm Syndrome*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 217 (Kersti Yllo & Michele Bograd eds. 1988) [hereinafter FEMINIST PERSPECTIVES] (noting that because the woman must anticipate the abuser's every move to survive, she tends to over-sympathize with his actions).

32. WALKER, *supra* note 20, at 31.

33. WALKER, *supra* note 21, at 95.

34. *Id.* The woman attempts to placate the batterer by accepting his criticism and often blames herself if she is unable to soothe him. The tension continues to escalate to the point where the woman withdraws from the batterer, wary of setting off an explosion of violence. Sometimes the woman is even able to predict when the next phase will begin, and accordingly takes precautions to minimize the extent of her injuries by controlling when and where the battering occurs. *Id.* at 96.

35. *Id.* (citing WALKER, *supra* note 20, at 59).

36. *Id.* Walker notes that "[w]hen injuries do occur it [sic] usually happens during this second phase. It is also the time police become involved, if they are called at all. The acute battering phase is concluded when the battering stops, usually bringing with its cessation a sharp physiological reduction in tension." *Id.*

37. *Id.* The batterer "may apologize profusely, try to assist his victim . . . and shower her with gifts and/or promises." *Id.* Walker further observed, however, that the last phase may include no loving-contrition behavior, but simply an absence of tension or violence. *Id.*

morse about the battering incident.<sup>38</sup> The third phase provides the woman with positive reinforcement for staying in the relationship.<sup>39</sup>

As the relationship progresses, the tension building phase grows more common, while the intensity of the last phase declines.<sup>40</sup> Also, the psychological and/or physical abuse in phase two increases in severity over time.<sup>41</sup> The cycle is likely to recur until the woman seeks outside intervention<sup>42</sup> or the relationship ends.

Although a battered woman may seek outside help as the abuse escalates, many women find it difficult to seek such help or abandon the abusive relationship.<sup>43</sup> Walker's and other studies indicate that social isolation,<sup>44</sup> lack of financial resources,<sup>45</sup> concern for children left behind,<sup>46</sup> and ineffective community response<sup>47</sup> may contribute to a battered woman's reluctance to leave her abuser. While recognizing the effect of these external forces,<sup>48</sup>

38. *Id.* Walker notes that "[t]he woman wants to believe the batterer and, early in the relationship at least, may renew her hope in his ability to change." *Id.* Walker further observes that phase three is positively reinforcing even if characterized solely by an absence of tension or violence, rather than extraordinary efforts at reconciliation. *Id.*

39. *Id.* at 101.

40. *Id.* at 26 (noting that "about double the number of women receiv[e] serious injuries in later incidents," and that "[t]he use of weapons also increased over time").

41. *Id.* at 103. Walker cites a 1983 study by R. J. Gelles indicating that "[o]nce the cost of living in a violent relationship begins to escalate, paralleling the escalation of the seriousness of the abusiveness and injuries, women's help-seeking behavior breaks through the privacy of the home, if they perceive actual help is available." *Id.* This conclusion comports with Walker's data: she observed that "[w]hile only 14% sought help after the first battering incident . . . 49% sought help after the [fourth] incident." *Id.* at 26.

42. See generally *id.* at 86-94 (theorizing why some women leave the relationship, and others remain).

43. See WALKER, *supra* note 21, at 28; DEL MARTIN, *BATTERED WIVES* at 81-82 (1981); Rae Randolph, *The Diminished Capacity Defense of Battered Women: An Alternative Political Approach*, 70(4) *WOMEN LAWYERS J.* 24-25 (1983); Lillian Rogers, *Theories of Deviance in Explanations of Spouse Abuse*, 11(2) *RESPONSE TO THE VICTIMIZATION OF WOMEN AND CHILDREN* 10, 12 (1988); Mather, *supra* note 12, at 552.

44. See WALKER, *supra* note 21, at 28; MARTIN, *supra* note 43, at 83-85; Mather, *supra* note 12, at 552.

45. Mather, *supra* note 12, at 552; HOFF, *supra* note 31, at 64.

46. See Douglas J. Besharov, *Family Violence: Research and Public Policy Issues for the '90s*, 13(1) *RESPONSE TO THE VICTIMIZATION OF WOMEN AND CHILDREN* 6 (1990); Demie Kurz & Evan Stark, *Not-So-Benign Neglect: The Medical Response to Battering*, in *FEMINIST PERSPECTIVES*, *supra* note 31, at 249, 259-60.

47. See WALKER, *supra* note 21, at 28, 89, 117-19.

48. *Id.* at 86-87. Dr. Walker analogizes her theory to a study conducted by Dr. M. Seligman in the 1970s. The Seligman study revealed that when laboratory dogs were repeatedly and noncontingently shocked, they became unable to escape, even

Walker offered a psychological explanation, "learned helplessness," for the apparent inability of some women to leave.<sup>49</sup> As a battered woman continues to experience abuse regardless of her attempts to prevent it,<sup>50</sup> she becomes pessimistic about the likelihood of ending the abuse, grows increasingly depressed, and eventually loses her will to escape.<sup>51</sup> This psychological response warps the battered woman's evaluation of the situation and effectively imprisons her in the abusive relationship,<sup>52</sup> as she shifts her focus solely to a survival strategy rather than attempting to end or escape the abuse.<sup>53</sup>

Walker's work was a milestone in the study of domestic violence toward women, and her theories regarding battered woman syndrome remain the most well-accepted explanation for battered

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when an escape route was made obvious. Seligman compared this phenomenon, which he called "learned helplessness," to human depression. He concluded that "[t]he inability to predict the success of one's actions was . . . responsible for the resulting perceptual distortions." *Id.* at 86.

49. See *id.* at 87 (referring to a battered woman's "noncontingent . . . attempts to control the violence").

50. *Id.* at 87-89. Walker tested her theory by comparing women who had left their abusers ("outs") with women who had remained in their relationships since the last battering incident ("ins"). She found that the "outs" displayed a significantly greater level of "active" emotions like anger, disgust, and hostility toward themselves and their abusers. The "ins," however, displayed more "passive" emotions, and were generally more fearful, anxious, and depressed about their situations. *Id.* at 87-89. Walker found this data consistent with the "learned helplessness" theory. *Id.* at 89. The notion that fear plays a large part in a woman's decision to stay in an abusive relationship has been explored by other researchers as well. See MARTIN, *supra* note 43, at 76-79; Mather, *supra* note 12, at 554-55.

Walker found that women who had been socialized to be passive in childhood were more likely to develop learned helplessness in a battering relationship. WALKER, *supra* note 21, at 94. The data revealed that women currently in abusive relationships "report[ed] worse . . . childhoods and generally did not see themselves as victims of learned helplessness." *Id.* Walker theorized that childhood passivity "training" prepared these women for learned helplessness, and that as a result "either their battering experiences were not as severe or they do not yet see them as so severe." *Id.* Subsequent research supports the notion that women taught to be passive as children are more likely remain in abusive relationships as adults. See, e.g., Rogers, *supra* note 43, at 10.

51. See WALKER, *supra* note 21, at 87.

52. *Id.* at 33. Dr. Walker maintains that "[i]f a woman is to escape such a relationship, she must overcome the tendency to rely on learned helplessness survival techniques." *Id.* at 87.

Feminist scholars, while agreeing that battered women often resort to survival techniques rather than leave the abuser, object to the term "helpless" to describe battered women. They argue that the term does not accurately reflect the woman's behavior, nor her role in the relationship. Moreover, they maintain that the word furthers unfavorable stereotypes about women in general and battered women in particular. See *infra* notes 76-82 and accompanying text.

53. See Michele Bograd, *An Introduction*, in FEMINIST PERSPECTIVES, *supra* note 31, at 11, 13.

women's psychological and behavioral responses to domestic abuse. Feminist scholars, however, have offered a somewhat broader, societal explanation. Their theory incorporates much of Walker's conception, but places it in a larger social context.

### B. *Women as Survivors.*

While acknowledging the strength of Walker's research and theories, some feminist theorists focus more closely on the context of the violence, its nature and consequences, family members' roles, and the different "transactional sequences" that result in abuse.<sup>54</sup> In particular, these theorists stress the role gender differences play in the domestic abuse of women.<sup>55</sup> General patterns of gender-based domination, social dynamics within the family, the need to evaluate battered women's role from a female perspective, and reassessment of existing theories under a rubric of "feminist scholarship" are the main areas emphasized.

#### 1. General patterns of gender-based domination

As discussed above,<sup>56</sup> most western societies have historically encouraged domestic violence toward women.<sup>57</sup> Besides failing to provide a legal remedy for women who were physically abused by their spouses, these societies greatly restricted the rights of women to exercise political power, to hold and transfer property, or to enjoy other minimal liberties now regarded as essential for self-de-

54. *Id.*

55. See *supra* notes 12-17 and accompanying text.

56. See R. Emerson Dobash & Russell P. Dobash, *Wives: The 'Appropriate' Victims of Marital Violence*, 2 VICTIMOLOGY 426-32 (1978) (discussing historical acceptance of domestic violence toward women).

57. *Id.* at 427-28. The Dobashes note that under the first Roman law of marriage:

married women were "to conform themselves entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions". . . . The man was the absolute patriarch who owned and controlled all properties and people within the family. A wife was obligated to obey her husband and he was given the legal right and the moral obligation to control and punish her for any "misbehavior," including adultery, drinking wine, attending public games without his permission or appearing unveiled in public.

*Id.* (citation omitted). Tracing the influx of Christianity, the Dobashes reveal that although Christians desired religious change, "[they were] not struggling for revolutionary change but the maintenance of the power and authority of the patriarch. Christianity embraced the hierarchical family structure and celebrated the subordination of wives to their husbands." *Id.* at 428. With the rise of the western societies in Europe, the Church maintained this hierarchy "through a moral order and the State through actively propagandizing for the authority of husbands and legitimizing the use of violence against their wives." *Id.* at 429. In Great Britain, "[u]nder English Common Law a married woman lost all of her civil rights, had no separate legal status and became the legal chattel of her husband." *Id.*



termination.<sup>58</sup> Although women have more rights today than they did previously, many social and political observers note that men still enjoy substantially more political and economic power than women.<sup>59</sup>

Feminist scholars insist that a complete explanation of domestic abuse must include the socio-historical context in which it occurs — a system wherein men as a group wield substantial control over women. In such a social system, men maintain access to political and economic resources “while women are devalued as secondary and inferior.”<sup>60</sup> Physical violence is a primary means for maintaining this control. Even if men do not rely on actual violence in particular situations, the mere threat of male violence reinforces women’s passivity and subordination to male aggression.<sup>61</sup> Thus, social domination “is the most crucial factor contributing to and maintaining wife abuse at the personal level.”<sup>62</sup>

## 2. Social dynamics within the family

The “typical” family home traditionally has been represented as a “peaceful haven in a heartless world” in the male-dominated public realm.<sup>63</sup> Data collected in crime surveys indicate that a victim of violent crime is most likely to be a young, single, minority man, living in an urban area, who is attacked outside his home.<sup>64</sup> Thus, when discussing the general “fear of crime,” criminologists and policymakers focus on violent crime randomly committed by strangers.<sup>65</sup> Using gender-neutral terminology, these researchers essentially view the home as a “safety zone” and do not attribute

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58. See Bograd, *supra* note 53, at 14 (recognizing that “[a]s the dominant class, men have differential access to important material and symbolic resources”); Randolph, *supra* note 43, at 24 (noting that men as a group have greater political power than women); Mather, *supra* note 12, at 569-74 (arguing that legal standards like the “reasonable force” requirement for self-defense are written from a male viewpoint and imposed upon women).

59. Bograd, *supra* note 53, at 14.

60. See *id.* (reasoning that “[e]ven if individual men refrain from employing physical force against their partners, men as a class benefit from how women’s lives are restricted and limited because of their fear of violence by husbands and lovers as well as by strangers”). See also Elizabeth A. Stanko, *Fear of Crime and the Myth of the Safe Home: A Feminist Critique of Criminology*, in *FEMINIST PERSPECTIVES*, *supra* note 31, at 75, 84 (concluding that “women’s vulnerability [to violent attacks by men]—and women’s recognition of that vulnerability through expressions of fear—is itself a mechanism of social control over women”).

61. Bograd, *supra* note 53, at 14.

62. See Stanko, *supra* note 60, at 76 (observing that “[t]he myth of the safe home is deeply entrenched in the minds of most Americans”).

63. *Id.* at 81.

64. *Id.* at 78.

65. *Id.*

the fear of violent crime to domestic violence.<sup>66</sup>

Although the male perspective supports the notion that a general fear of violent crime is attributable to "unsafe streets," this perspective ignores the female experience. Crime data indicate that a woman is more likely to be killed near or inside her home by another family member than on the street by a stranger.<sup>67</sup> Other physical attacks like assaults and rapes also commonly take place within the home.<sup>68</sup> Any suggestion, however, that the home may be a dangerous place for women, is rejected because it "confronts deeply ingrained and hostile beliefs that support the ideology of the home as man's haven."<sup>69</sup>

Feminist scholars challenge the myth of the home as a haven and steer the debate away from its current focus on "unsafe streets" toward a greater emphasis on "unsafe homes."<sup>70</sup> They question the maintenance of traditional gender-based roles in the family unit<sup>71</sup> and re-conceptualize the unit as an institution that contributes to family violence.<sup>72</sup> These scholars further note that women are not likely to overcome their general fear of crime, especially from unknown men, as long as they are victimized in their own homes by men familiar to them.<sup>73</sup>

### 3. Evaluating the battered women's role from a female perspective

As described above, Walker theorizes that battered women eventually enter a condition of "learned helplessness" in which their pessimism and depression becomes so profound that they are unable to escape the abuse by leaving the abuser. Walker further postulates that women adjust their efforts to surviving the abuse, rather than escaping it.<sup>74</sup> She argues that a battered woman must overcome learned helplessness to take constructive steps toward ending the abuse.<sup>75</sup>

Some theorists criticize the use of the term "helpless" to de-

66. *Id.* at 82.

67. *Id.*

68. *Id.* at 86.

69. *Id.* at 83 (criticizing the United States Attorney General's Task Force on Family Violence for not "tak[ing] on the myth of the safe home").

70. See HOFF, *supra* note 31, at 38-46 (theorizing that a woman stays in an abusive relationship in compliance with a complex set of multiple-reinforcing factors that vests her spouse with authority and influence socially, and threatens the woman physically).

71. Stanko, *supra* note 60, at 82-83.

72. *Id.* at 86.

73. See *supra* notes 48-52 and accompanying text.

74. See *supra* note 52 and accompanying text.

75. *Id.*

scribe women. They argue that the term is relevant only when judging human behavior from a male perspective, without regard to a "female frame of reference"<sup>76</sup> in which women define their own experiences.<sup>77</sup> These theorists view the term as not only inaccurate from the female perspective, but counter-productive, reinforcing the stereotype of women as passive and weak.<sup>78</sup> The notion that the battered woman must overcome this condition to escape the abuse is also seen as unsatisfactory, as it effectively makes the woman responsible for ending the abuse, rather than the abuser or the community.<sup>79</sup>

The survival aspect of the woman's behavior is emphasized in a general effort to redefine much of the debate to reflect the female perspective.<sup>80</sup> Under this approach, "[i]n contrast to dominant views of battered women as helpless victims . . . feminists approach battered women as survivors of harrowing, life-threatening experiences, who have many adaptive capacities and strengths."<sup>81</sup> Thus, actions that might be characterized as manifesting "learned helplessness" are re-cast as part of an overall survival strategy.<sup>82</sup>

#### 4. Feminist scholarship

The fourth aspect of this approach is remedial: as the above discussion might indicate, the need for "feminist" research regarding battered women is recognized. Feminist scholars view their research as not only concerning women, but "dedicated to advocacy for women."<sup>83</sup> The woman's role in the abuse is not merely incorporated into existing theoretical contexts,<sup>84</sup> but the theories them-

76. Bograd, *supra* note 53, at 15.

77. See generally Liz Kelly, *How Women Define Their Experiences of Violence*, in *FEMINIST PERSPECTIVES*, *supra* note 31, at 114. Kelly criticizes traditional definitions relating to domestic violence as drawn from stereotypes, *id.* at 122-24, and calls for a process of redefinition to reflect the female perspective. *Id.* at 128-31.

78. EDWARD W. GONDOLF & ELLEN R. FISHER, *BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS* 14-20 (1988) (maintaining that labelling a woman as "helpless" reinforces sexist stereotypes and borders on victim-blaming).

79. See, e.g., Kurz & Stark, *supra* note 46, at 249 (arguing that labelling women as "helpless victims" detracts from the inadequacy of community services).

80. See generally GONDOLF & FISHER, *supra* note 78 (proposing a shift in emphasis to women as survivors, rather than as helpless victims).

81. Bograd, *supra* note 53, at 15.

82. See Kelly, *supra* note 77, at 124-28 (theorizing that "learned helplessness" behavior such as "forgetting" and "minimizing" is but one phase in an "active coping strategy").

83. Bograd, *supra* note 53, at 15 (emphasis in original).

84. Many theorists have recognized that supposedly "objective" research and theories are riddled with biases that favor the dominant male viewpoint. See, e.g., Lee A. Hoff, *Collaborative Feminist Research and the Myth of Objectivity*, in *FEMI-*

selves are re-drawn from a female perspective.<sup>85</sup> This is viewed as crucial not only to overcoming the devaluation of women in society, but to accurately explain both male and female perceptions and behavior.<sup>86</sup>

*C. Psychological Explanations for Why a Battered Woman May Respond by Killing Her Abuser*

As discussed above, Walker presents a complex set of psychological phenomena to explain why battered women remain in a battering relationship.<sup>87</sup> She further reveals factors that may result in the woman killing the abuser, and theorizes that women kill their abusers when they perceive "a high level of dangerousness" in the abuser while feeling desperate, fearful, or angry.<sup>88</sup> Other researchers have offered additional theories in an attempt to explain why some battered women respond to abuse by killing their abusers.<sup>89</sup>

1. Walker's theory

Walker suggests that women kill their abusers out of a mixture of intense frustration and fear. In her study,<sup>90</sup> most of the women did not believe anyone took them seriously, were convinced that no one would protect them from the abuser, and had determined from "observable changes" in the abusers' demeanor

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NIST PERSPECTIVES, *supra* note 31, at 269, 272. Hoff does not claim that feminist research is objective; rather, she proposes that regardless of the values underpinning the research, the values be made explicit in all cases. *Id.* See also James Ptacek, *Why Do Men Batter Their Wives?*, in FEMINIST PERSPECTIVES, *supra* note 31, at 133, 135-41 (explaining his political motivation for conducting a study on abusers, recognizing the potential for bias in all "objective" research, and explaining his attempts to limit the effect of bias in the study).

Ironically, when feminist scholars openly acknowledge their political motivations for conducting research, they are criticized as biased or overly political. See Bograd, *supra* note 53, at 21.

85. Bograd, *supra* note 53, at 15-16.

86. *Id.* at 16. See, e.g., Susan Schecter, *Building Bridges Between Activists, Professionals, and Researchers*, in FEMINIST PERSPECTIVES, *supra* note 31, at 299, 300. Schecter criticizes the use of the phrase "spouse abuse" as representing a "false notion of equality [that] men [are] the victims of violence as frequently as women [are]." She admits that women may hit men in some cases, but adds that "the experience of violence is usually not the same for both sexes." She reasons that because "battering is a pattern of coercive control over women" within "relationship of domination," it follows that "battering is not a gender-neutral experience." *Id.*

87. See *supra* notes 42-52 and accompanying text (discussing external and internal factors that trap battered women in abusive relationships).

88. WALKER, *supra* note 21, at 41.

89. See *infra* notes 99-112 and accompanying text.

90. Walker examined 50 women who had killed their abusers in self-defense. WALKER, *supra* note 21, at 40.

that the men intended to kill them.<sup>91</sup> Although they felt intense anger before attacking, most of the women had little recollection of how they reached their decision to kill the abuser, other than recalling "an intense focus on their own survival."<sup>92</sup> Other women attacked their abusers in a "desperate attempt to keep [the abuser] from gaining total control of their minds" as well as their bodies.<sup>93</sup> Overall, Walker's data suggest that the women "all resorted to [physical] violence as their last attempt at protecting themselves from further physical and mental harm."<sup>94</sup>

Besides hypothesizing why some women kill their abusers, Walker notes several factors that increase the risk of a woman responding violently. The presence of children in the home exacerbates stress and increases the chances of a violent response, especially if the children themselves are threatened by the abuser.<sup>95</sup> The abuser's threats to kill the woman, or to find her if she leaves, increase her fear of a deadly attack and similarly increase the risk of a violent response.<sup>96</sup> Other factors include the presence of weapons in the home, the woman's jealousy triggered by the abuser's open extra-marital affairs, and alcohol or drug abuse by the abuser.<sup>97</sup> Finally, it appears that a deadly response by the woman is more likely to occur later in the relationship,

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91. *Id.* See also *People v. Aris*, 264 Cal. Rptr. 167, 177 (Cal. Ct. App. 1989) (citing testimony by Walker that battered women have a "hypervigilance [sic] to cues of any kind of impending violence . . . [that makes them] more responsive to situations than somebody who has not been battered").

92. WALKER, *supra* note 21, at 40. Walker maintains that their defenses against anger were crumbling, but the women had no conscious recollection of angry feelings. She attributes this "desperate attempt at remaining unaware of their own unacceptable feelings" to the dangerousness of the situation: displaying anger would possibly result in their own deaths, as "batterers cannot tolerate the woman's expression of anger." *Id.* Note, for example, that several deputies testified that Regina Schabert appeared disoriented for days after the shooting. Record at 23, 76, 91-92, 217, Schabert II.

Other researchers include a larger feminist perspective in suggesting that anger leads to a deadly response by the woman. See, e.g., Randolph, *supra* note 43, at 25, 26-27 (suggesting that when women "become aware of the repressive nature of [their] lifestyle[s]" they may "become so stressful and angered at their situations that they find no other alternative than to strike back"). *Id.*

93. WALKER, *supra* note 21, at 41.

94. *Id.*

95. *Id.* at 41. This factor includes situations in which the children are attempting to protect their mother from the abuser, or the woman is attempting to protect her children. *Id.* See, e.g., *48 Hours: 'Til Death Do Us Part* (CBS television broadcast Jan. 30, 1990) (presenting the case of Linda Logan, who fatally shot her husband as he was attacking their child). Regina Schabert ran from her husband to a neighbor's house with her child. Schabert I, 15 N.W.2d at 586.

96. WALKER, *supra* note 21, at 41-42. Regina Schabert testified that her husband threatened to kill her the night she shot him. Schabert I, 15 N.W.2d at 586.

97. WALKER, *supra* note 21, at 42-43. See also Schabert I, 15 N.W.2d at 586.

when the severity of abuse escalates.<sup>98</sup>

## 2. Other theories

Other scientists have further explored the phenomena observed by Walker. One theory examines more closely the woman's fear of psychological harm, or "ontological insecurity."<sup>99</sup> This approach focuses on the severe psychological torment many battered women suffer at the hands of their abusers.<sup>100</sup> The theory further recognizes that many women are unable to leave or seek outside intervention due to external barriers<sup>101</sup> and psychological forces that bind the women to their abusers.<sup>102</sup>

Trapped in the relationship, these women attempt to preserve their psychological selves by denying or rationalizing their situations.<sup>103</sup> As the battering relationship continues, the women eventually reach a "turning point"<sup>104</sup> when their psychological defenses disintegrate and "the self is left without a reality base, in a crisis of ambiguity."<sup>105</sup> In such a state, the women are forced to

98. WALKER, *supra* note 21, at 43-44.

99. See CHARLES P. EWING, *BATTERED WOMEN WHO KILL* 63-66 (1987). Ewing argues that women kill their abusers not out of fear of severe physical harm, but out of fear of severe psychological harm, or "ontological insecurity." According to Ewing and others, ontologically secure people see their lives as continuous, and perceive themselves as clearly differentiated and autonomous. Ontologically insecure people, however, "[f]eel more unreal than real . . . more dead than alive." Their "identity and autonomy are always in question," they are unable to perceive themselves as "genuine, good [or] valuable," and they become "preoccupied with preserving rather than gratifying themselves." Unchecked, ontological insecurity leads to an increasingly withdrawn, schizoid existence in which the individual becomes unable to relate to others in any meaningful fashion. *Id.* at 63-64 (citations omitted).

100. *Id.* at 11-12 (citations omitted).

101. *Id.* at 13-17 (observing that "[b]attered women often face formidable, if not insurmountable environmental barriers to leaving their batterers or even seeking help," including the batterer himself, lack of money, social isolation, insufficient community resources, an ambivalent criminal justice system, and ineffective medical and psychiatric care).

102. *Id.* at 17-21 (noting that ingrained sex role stereotypes, the cycle of violence, the "traumatic bond" battered women develop with their abusers, learned helplessness, and intense depression combine to discourage escape attempts). Other studies have also focused on the "traumatic bond" that develops between the battered woman and the batterer. See, e.g., Graham, Rawlings, and Rimini, *supra* note 31, at 218 (suggesting that battered women remain with their abusers due to a set of "paradoxical psychological responses" observed among hostages who develop a fondness for their captors and a hostility toward authorities working for their release).

103. EWING, *supra* note 99, at 64.

104. This turning point can be precipitated by any of a number of events, including a marked increase in the severity of the abuse, questioning by persons outside the relationship to whom the abuse has become visible, or disappearance of the "loving contrition" phase of the cycle of violence. *Id.* at 65.

105. *Id.* (quoting John M. Johnson & Kathleen J. Ferraro, *The Victimized Self: The Case of the Battered Woman*, in *THE EXISTENTIAL SELF IN SOCIETY* 118, 127 (Joseph A. Kotarba & Andrea Fontana eds. 1984)).

take immediate steps to end the abuse and prevent the "anticipated breakup of the self."<sup>106</sup> Forced into a "choice" between staying with their abusers and suffering devastating psychological consequences, or preserving their psychological selves by killing their abusers, some women opt for the latter.<sup>107</sup>

Yet another theory suggests that the battered woman who kills her abuser is insane. It describes the battered woman's psychological state as so distorted by the abuse that she suffers from an impaired mental condition that causes her to kill her abuser.<sup>108</sup> This approach stresses that battered women often suffer from perceptual distortions, are themselves prone to violence, and suffer from mental health problems linked to the abuse.<sup>109</sup> The fact that a woman may not realize she has killed the abuser, or remember doing so, is also emphasized.<sup>110</sup> The homicidal act is thus attributed to a state of "borderline psychosis"<sup>111</sup> that prevents the woman from viewing her options accurately, or that drives the woman to desperate actions.<sup>112</sup>

Overall, Walker's theory of battered woman syndrome has served as a springboard for other explanations of women's psychological and behavioral responses to domestic abuse. While none of these theories directly contradict her observations, they modify some of her characterizations, further explore some factors, and cite additional factors that may affect a woman's response to abuse.

106. *Id.* (quoting HEINZ KOHUT, *THE RESTORATION OF THE SELF* (1977)).

107. *Id.* (concluding that such women "tak[e] what they perceive to be the only avenue of self-assertion open to them. They kill their batterers").

Ewing also draws a link between learned helplessness, suicide, and homicide. He recounts studies indicating that a feeling of helplessness typically accompanies intense depression preceding suicide, and further notes that some of the homicidal battered women in Walker's study were prepared to kill themselves when they killed their batterers instead. *Id.* at 66-70 (citing WALKER, *supra* note 21, at 40). Ewing posits that in such cases, the woman's "helplessness and depression have led her to see no viable alternatives other than suicide and homicide"; she commits homicide to protect her psychological self as well as her physical self. *Id.* at 70.

Other commentators criticize the "ontological insecurity" theory on the ground that it is not in the "mainstream" of clinical or research psychology, nor does it comport with any legal doctrine of justification or excuse. See, e.g., David L. Faigman, *Discerning Justice When Battered Women Kill*, 39 HASTINGS L.J. 207, 221 (1987).

108. Rocco C. Cipparone, Jr., Comment, *The Defense of Battered Women Who Kill*, 135 U. PA. L. REV. 427, 440-41 (1987).

109. *Id.* at 441.

110. *Id.* See also *supra* note 92 and accompanying text (noting that several women examined by Walker could not recall certain aspects of killing their abusers).

111. Cipparone, *supra* note 108, at 441-42 (quoting an Illinois mental health official).

112. *Id.* at 440.

## II. Using Battered Woman Syndrome Evidence with a Self-Defense Strategy in Minnesota

The case in the Introduction described the trial of a battered woman who responded to abuse by killing her abuser. Her defense counsel argued justification and, alternatively, excuse. Although neither approach was successful in that particular case, an understanding of both doctrines is necessary to determine the best defense strategy available to women accused of killing their abusers.

The doctrines of justification and excuse represent the criminal justice system's attempt to evaluate intentionalist and determinist behavior.<sup>113</sup> An otherwise illegal act is *justified* when "society decides that the act was preferable to all alternative conduct available under the circumstances."<sup>114</sup> Under this view, which underpins the doctrine of self-defense, the person committing the act was not responsible for the circumstances justifying the act.<sup>115</sup>

In contrast, a person is *excused* for committing an illegal act if the actor is not blameworthy under the circumstances.<sup>116</sup> This approach excuses conduct not because it was justified, but because the actor is not culpable due to her unique mental state.<sup>117</sup> Thus, while justification involves an objective standard (reasonableness), excuse requires a subjective standard (the condition of the defendant).<sup>118</sup>

The tension between the doctrines of justification and excuse becomes evident when comparing the different legal explanations a battered woman might offer as a defense. Of the two approaches, battered woman syndrome evidence is most effective when used to support a "justification" claim of self-defense. In such cases in Minnesota, an expert witness may not testify to whether the defendant suffers from the syndrome, but may only give a general description of the syndrome and its characteristics. Defense counsel may, however, present evidence from other

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113. Intentionalism assumes that people have choices, and holds them responsible for their actions. Determinism, however, assumes that external forces are so influential that a person is not responsible for her actions. For an excellent discussion of justification and excuse in the intentionalist/determinist framework, see Donald L. Creach, Note, *Partially Determined Self-Defense: The Battered Wife Kills and Tells Why*, 34 STAN. L. REV. 615 (1982). See also Mather, *supra* note 12, at 563-64 (explaining generally the differences between justification and excuse).

114. Creach, *supra* note 113, at 630-31.

115. *Id.* at 630-34.

116. *Id.* at 631.

117. *Id.*

118. *Id.*



sources that indicates whether the defendant's characteristics conformed with those of a battered woman.

### A. *Self-Defense and Battered Woman Syndrome*

As noted above,<sup>119</sup> self-defense is a justification defense because it legitimizes the act, rather than the actor.<sup>120</sup> A successful claim of self-defense essentially "legalizes" the otherwise unlawful act, in that the defendant is completely exonerated and allowed to go free.<sup>121</sup> To establish self-defense in Minnesota, the defendant must show that:

- a) she honestly believed she was in imminent danger of death or great bodily harm,
- b) this belief was reasonable under the circumstances, and
- c) the amount of force she used was reasonable in light of the danger apprehended.<sup>122</sup>

Once the defendant raises a claim of self-defense, the state has the burden of proving beyond a reasonable doubt that the killing was not justified.<sup>123</sup> This shifting of the burden of proof on the prosecutor and the possibility of complete exoneration makes the claim particularly advantageous compared to excuse defenses.

#### 1. Honest belief of imminent danger

For the defendant to successfully argue self-defense, she must establish that she honestly feared she was in imminent danger of death or severe injury. "Imminent" does not necessarily mean "immediate": customary abuse can create an honest fear of imminent injury, even if the abuser was not immediately attacking the woman.<sup>124</sup> Defense counsel should present expert testimony about battered woman syndrome to show that the defendant honestly believed she was in imminent danger of attack.<sup>125</sup> This testimony should include information that abusive relationships go through cycles of progressively severe violence, that battered women live in constant fear of attack from their abusers, and that they are unable to leave their abusers for various external and

119. See *supra* note 115 and accompanying text.

120. Creach, *supra* note 113, at 632.

121. See Mihajlovich, *supra* note 12, at 1271 (noting that "[a] successful justification defense requires acquittal because, by definition, no crime has occurred").

122. See *State v. Boyce*, 170 N.W.2d 104, 111-12, 114 (Minn. 1969) (citations omitted); *State v. Sanford*, 450 N.W.2d 580, 585 (Minn. Ct. App. 1990).

123. See *State v. Buchanan*, 431 N.W.2d 542, 548 (Minn. 1988).

124. CYNTHIA K. GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW 186-87 (1989); Lynn B. Rosewater, *The Clinical and Courtroom Application of Battered Women's Personality Assessments*, in DOMESTIC VIOLENCE ON TRIAL 86, 92 (Daniel J. Sonkin ed. 1987);

125. Madison, *supra* note 22, at 1028-29.

psychological reasons.<sup>126</sup>

A battered woman has a good chance of convincing the jury she held an honest belief that the decedent was about to attack her if the evidence shows that the abuse was temporally imminent. In many cases, however, the defendant may have killed the abuser several hours or more after a violent attack.<sup>127</sup> In addition to showing that the defendant was in constant fear of the defendant, testimony about the syndrome can help establish that the woman's close relationship with the abuser made her "hypersensitive" to violence and thus able to determine when extreme violence was imminent.<sup>128</sup>

## 2. Reasonable belief under the circumstances

Besides showing that she honestly believed she was in imminent danger, the defendant must persuade the jury that her subjective belief was reasonable.<sup>129</sup> Again, expert testimony about battered woman syndrome can help show that the defendant had a reasonable belief of danger. The attacker's history of abuse, the progressive cycle of violence, and threats of imminent abuse are all relevant to the issue of reasonableness.<sup>130</sup> Moreover, testimony that battered women are sensitive to impending attacks helps es-

126. *Id.* at 1029-30 (citations omitted).

127. See, e.g., Cipparone *supra* note 108, at 436 & nn.51-53; Madison, *supra* note 22, at 1031-32 (citing cases in which the defendant killed her abuser during a lull in the physical abuse). The jury in Schabert II was apparently influenced by Regina Schabert's admission to police that she killed her husband while he lay sleeping. Schabert II, 24 N.W.2d at 847.

128. See *supra* note 91 and accompanying text. See, e.g., *People v. Torres*, 488 N.Y.S.2d 358, 362 (1985) (noting that "[an expert]" would testify that a battered woman, through her extensive experience with prolonged physical abuse, learns to distinguish between varying degrees of danger of violence;" this testimony "would provide a basis for the jury to understand how at the time of the shooting [the abuser's] violence had, in the defendant's mind, passed from the 'normal' and tolerable into the 'abnormal' and life-threatening"). See also Madison, *supra* note 22, at 1032 & n.40 (citing cases in which the jury heard evidence that battered women are particularly sensitive to impending violence).

129. See *State v. Sanford*, 450 N.W.2d 580, 587 (Minn. Ct. App. 1990) (observing that "imperfect self-defense," or a subjective, good faith belief that an objectively unreasonable killing was reasonable, is not recognized as a defense in Minnesota).

130. Gillespie emphasizes that syndrome testimony is important because "a battered woman, by definition, lives with a man who has repeatedly demonstrated his willingness to inflict pain on her and his ability to do so." GILLESPIE, *supra* note 124, at 124-25. She concludes that

[w]hen the man who has proved himself to be so brutal, so inexorable in his cruelty, begins to assault her yet again, it is hard to imagine that anyone could doubt the genuineness and reasonableness of her fear or question whether her belief that she is about to be seriously injured yet again is a reasonable belief.

*Id.* at 127. See also *supra* note 126 and accompanying text.

tablish that the defendant reasonably believed she was threatened by imminent injury.<sup>131</sup>

Although syndrome testimony helps establish that the defendant reasonably believed she was in fear of an imminent attack, some juries have nevertheless rejected self-defense in cases where the evidence shows that the defendant was not threatened by a temporally imminent attack.<sup>132</sup> In response, some commentators have proposed relaxing the imminence requirement<sup>133</sup> or eliminating it entirely.<sup>134</sup> Other scholars, however, fear that such a modification would lead to "routine" acquittals for women who anticipatorially kill their batterers, and would encourage women to rely on violence rather than outside intervention to end abusive relationships.<sup>135</sup>

### 3. Reasonable degree of force

The woman must also show that her response to the threat was reasonable.<sup>136</sup> In particular, the defendant must explain to the jury why she did not leave the abuser, or choose a less injurious alternative such as retreat, instead of killing him.<sup>137</sup> If the de-

131. See *supra* note 128 and accompanying text (noting that battered women are extraordinarily sensitive to impending violence from their abusers).

132. See, e.g., *State v. Hennum*, 441 N.W.2d 793, 797 (Minn. 1988) (defendant convicted of second-degree felony murder for shooting her husband while he slept).

133. See GILLESPIE, *supra* note 124, at 185-87.

134. See, e.g., Maria L. Marcus, *CONJUGAL VIOLENCE: THE LAW OF FORCE AND THE FORCE OF LAW*, 69 CAL. L. REV. 1657, 1730 (1981) (addressing the argument that "judges in domestic homicide cases should provide a modified instruction on self-defense, replacing the imminent danger requirement with the certainty of harm in the future").

135. See ROSEMARIE TONG, *WOMEN, SEX, AND THE LAW* 148 (1984) (observing that "feminists . . . are not convinced that a major weakening of the imminent-danger rule is necessarily advisable"). Although a battered woman may be forced to rely on violence because she lacks the resources to escape, some battered women are able to leave their abusers. See *supra* note 50 and accompanying text (citing Walker's discussion of "ins" and "outs"). Assuming that "vigilante justice" is bad, and that it is better for a battered woman to leave the abuser rather than kill him, providing all battered women a broad right to retaliate against their abusers would not be good public policy. TONG, *supra*, at 148-49.

136. See *State v. Boyce*, 170 N.W.2d 104, 112, 116 (Minn. 1969) (holding that the defendant's "election to shoot" or "election to kill" must be reasonable in light of the anticipated danger).

137. Ordinarily the defendant "must retreat to avoid danger, if reasonably possible." *State v. Kaul*, 457 N.W.2d 252, 255 (Minn. Ct. App. 1990) (citing *State v. Morgan*, 296 N.W.2d 397, 402 (Minn. 1980)). In Minnesota, this duty applies even in cases where the attack occurs in the defendant's own home. *State v. Hennum*, 428 N.W.2d 859, 866 (Minn. Ct. App. 1988), *rev'd on other grounds*, 441 N.W.2d 793 (Minn. 1989).

In the context of a battered woman's defense, counsel must explain why the defendant remained in the abusive relationship. See GILLESPIE, *supra* note 124, at 145-46 (maintaining that "[e]xplaining to a jury why many battered women don't

fendant used a weapon to kill the abuser when he was unarmed, she must also persuade the jury that her resort to armed force was reasonable under the circumstances.<sup>138</sup>

Syndrome testimony helps explain why the woman was unable to leave the abuser.<sup>139</sup> The testimony should emphasize the complexity of the battered woman's situation, and the external and psychological forces that trap her in the abusive relationship.<sup>140</sup> The defendant's previously unsuccessful attempts to leave the abuser should be presented, as well as the abuser's efforts to keep the woman from abandoning the relationship.<sup>141</sup> Defense counsel should also present evidence about the impossibility of retreat under the circumstances of the defendant's decision to attack the abuser.<sup>142</sup>

Defense counsel can also emphasize several factors indicating that the degree of force used by the defendant was reasonable. When applicable, the jury should hear evidence of the relative disparity in strength and size between the parties,<sup>143</sup> that the defendant had no training in the use of firearms or fending off attackers,<sup>144</sup> and that resisting with less than deadly force was

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leave their husbands and, specifically, why *this* battered woman didn't leave her husband can be one of the most crucial and difficult tasks in the defense of a woman who kills her violent mate") (emphasis in original).

138. The traditional rule is that the use of deadly force against nondeadly force is per se unreasonable. See Mather, *supra* note 12, at 564. Although the rule against deadly force is no longer as strict, in many cases juries have rejected the self-defense claims of women who used weapons against their unarmed attackers. See, e.g., *People v. White*, 414 N.E.2d 196 (Ill. App. Ct. 1980) (woman who shot her husband after he beat her convicted of voluntary manslaughter); *State v. Hennum*, 441 N.W.2d 793, 795 (Minn. 1989) (woman who shot her unarmed husband after he beat her convicted of second-degree murder); *State v. Patri*, No. 78-187-CR (Wis. Ct. App. Dec. 19, 1980) (LEXIS, States Library, Wis. file) (woman who shot her husband in the back after he physically and sexually abused her convicted of manslaughter).

139. See *supra* notes 42-52, 73-82 and accompanying text.

140. *Id.*

141. See Elizabeth Bochnak, *Case Preparation and Development*, in *WOMEN'S SELF DEFENSE CASES* 41, 47 (Elizabeth Bochnak ed. 1981).

142. *Id.* (suggesting that such factors as the layout of the house, the weather, the time of day (or night), what the defendant was wearing, whether the defendant had money, whether she had keys to an automobile or the house, whether there were children in the house, and whether the abuser threatened her or others with injury if she left are relevant).

143. Mather, *supra* note 12, at 565 (observing that "when evaluating self-defense claims, the modern trend is to consider the respective size of the parties, their sex, the particularly violent nature of the attack, and the attacker's reputation for violence or violent history").

144. See *State v. Wanrow*, 559 P.2d 548, 558 (Wash. 1977) (recognizing that "[i]n our society women suffer from a conspicuous lack of access to training in and the means of developing those skills necessary to effectively repel a male assailant without resorting to the use of deadly weapons"); Mather, *supra* note 12, at 565

only likely to inflame the abuser.<sup>145</sup> Overall, the jury should be left with the impression that the defendant and her abuser became equal adversaries only when the defendant obtained a weapon.<sup>146</sup>

Even with battered woman syndrome evidence, however, the reasonableness requirement may prevent a successful claim of self-defense.<sup>147</sup> Many commentators note that traditional self-defense doctrine presumes a single encounter in public between adversaries of approximately equal strength.<sup>148</sup> These commentators thus criticize the standard as representative of the male viewpoint only, and propose changing the standard of reasonableness in cases involving battered women and self-defense.<sup>149</sup>

One proposal is to adopt an individualized gender-neutral standard of reasonable force: to inquire whether "this [defendant] act[ed] in a manner that was reasonable for this individual."<sup>150</sup> Unlike the "reasonable man" or "reasonable person" standard, the gender-neutral standard would not be slanted to the general male viewpoint. Rather, the individual characteristics of the particular defendant would serve as a yardstick for reasonableness, rather than a corruptible "objective" standard of reasonableness.<sup>151</sup>

An individualized gender-neutral standard is criticized on the ground that it might lead to sexual stereotyping, as it "run[s] the

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(noting that "[women] are not trained to use their bodies to fight or defend themselves, nor do they learn to take blows"). See also GILLESPIE, *supra* note 124, at 92 (questioning whether "[a] woman who, terrified, unfamiliar with firearms, having no confidence in her ability to hit the broad side of a barn, starts firing and doesn't stop until the gun is empty" should be faced with a homicide conviction).

It is worth noting that Regina Schabert went hunting with her husband regularly and was quite knowledgeable about firearms. Record at 389-90, 392-94, 450-51, Schabert II.

145. Mather, *supra* note 12, at 565.

146. See GILLESPIE, *supra* note 124, at 185.

147. See, e.g., State v. Hennum, 441 N.W.2d 793, 797 (Minn. 1989) (jury found defendant guilty of second-degree felony murder for shooting batterer while he slept).

148. See GILLESPIE, *supra* note 124, at 4-6; Mihajlovich, *supra* note 12, at 1257. This presumption does not accurately reflect a battered woman's situation. See *supra* notes 62-72 and accompanying text.

149. See Mather, *supra* note 12, at 569-71 (observing that the entire self-defense doctrine revolves around the male concept of a "fair fight," and that courts typically fail to point out to juries that "what is deemed to be reasonable for a man may not be so for a woman (and vice-versa)"); Faigman, *supra* note 107, at 226 (maintaining that "the existing [self-defense] doctrine's myopic vision of the justifiable use of force—a vision informed exclusively by male stereotypes of reasonableness—must be reexamined").

A related argument recounts the historical development of the notion that a man could kill his wife under certain conditions, but a woman killing her husband was as serious as killing the king. Mihajlovich, *supra* note 12, at 1256. Remnants of this policy are found in existing legal doctrines and media coverage of domestic violence. See *id.* at 1256-57.

150. Mather, *supra* note 12, at 571.

151. *Id.*

risk of emphasizing the weaknesses and idiosyncracies of the female sex in general and the battered woman in particular."<sup>152</sup> This criticism, however, can be addressed with reference to the "women as survivors" scholarship. For example, rather than characterizing a battered woman's inability to leave as arising out of weakness, an individualized gender-neutral standard could emphasize that her choices were limited by her role in the battering relationship and society, and that her behavior was part of a survival strategy.<sup>153</sup> Moreover, if the standard were available to everyone, it would allow men and women alike to emphasize the individual characteristics that made deadly force necessary. This would reduce the risk that women as a group would be perceived as weak.

Another proposal calls for an entirely new defense based on the battered woman syndrome.<sup>154</sup> This defense would require that the defendant show she fits the profile of a battered woman, that her relationship with the decedent fits the general pattern of the syndrome, and that she acted as a "reasonable battered woman" in killing her abuser.<sup>155</sup> The most significant criticism of this proposal is that it might violate the Equal Protection Clause of the Fourteenth Amendment.<sup>156</sup> Classifications based on gender are subject to heightened constitutional scrutiny: the classification must serve an important state interest and be narrowly tailored to achieving that interest.<sup>157</sup> Because the "reasonable battered woman" standard would necessarily exclude males, it would be subject to heightened scrutiny.<sup>158</sup> Although it is important that women have their conduct judged fairly, the courts would be more likely to find

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152. *Id.*

153. See *supra* notes 55-61, 73-82 and accompanying text.

154. Mather, *supra* note 12, at 571. See also Michael A. Buda & Teresa L. Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 10 SOC. ACTION & L. 63, 67 (1984) (advocating such an approach).

155. Mather, *supra* note 12, at 571-72.

156. The Fourteenth Amendment of the United States Constitution provides "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV. The Fourteenth Amendment is applicable to state judicial action. *Shelley v. Kramer*, 334 U.S. 1, 14 (1947).

157. *Craig v. Boren*, 429 U.S. 190, 197 (1976). In *Craig*, a law forbidding the sale of beer to males between the ages of 18-21, but not females, was struck down as violative of the Fourteenth Amendment. The Court held that statistics showing a disproportionate number of males ages 18-21 drove while intoxicated were insufficient support for the discriminatory law, and that the state had non-discriminatory means of achieving its interest in public safety. *Id.*

158. A "reasonable battered woman" standard is facially discriminatory. Besides generally depriving men of its benefits, the standard may violate the rights of the victim by providing the defendant with a "right of retaliation [which is] protected by a sexually discriminatory defense." Steven D. Rittenmeyer, *Of Battered Wives, Self-Defense and Double Standards of Justice*, 9 J. CRIM. JUST. 389, 395 (1981).

the individualized gender-neutral standard to be a less discriminatory alternative.<sup>159</sup>

Other proposals include creating a "reasonable woman" standard or a defense of "psychological self-defense." Although the "reasonable woman" standard has the advantage of being accessible to all women, it still suffers from the criticism that it might perpetuate stereotypes and violate equal protection.<sup>160</sup> Moreover, the standard may be unwieldy, because the current standard of reasonableness is so influenced by the male perspective that "[w]e do not have a working concept of female objectivity untainted by the male viewpoint."<sup>161</sup> Finally, "psychological self-defense" has been dismissed as esoteric and unmanageable.<sup>162</sup> Despite its short-

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159. There is little doubt, of course, that the "reasonable man" standard is also a slanted measurement. The Washington Supreme Court specifically recognized this in *State v. Wanrow*, 559 P.2d 548, 559 (Wash. 1977) (maintaining that "[u]ntil such time as the effects of . . . history are eradicated, care must be taken to assure . . . our self-defense instructions afford women the right to have their conduct judged in light of the individual . . . handicaps which are the product of sex discrimination"). As such, the "reasonable man" standard presumably violates women's equal protection rights, especially in self-defense cases. Mather, *supra* note 12, at 572 & n.218. Nevertheless, this argument, while forceful, does not explain why the courts should substitute one discriminatory standard for another. *Id.*

Another criticism of a "reasonable battered woman" standard is that, like the gender-neutral standard, a "reasonable battered woman" standard might reinforce stereotypes about women in general and battered women in particular. *Id.* Also, the proposed standard would force battered women to fit into a "pigeonhole of the typical battering relationship," as the defense would be unavailable to her if either she or her relationship with the abuser did not closely follow characteristics of the syndrome. *Id.* The first problem can be dealt with in the same manner as the gender-neutral standard: that the battered woman's behavior can be explained as survival, rather than helplessness or hysteria. As for the second problem, the traditional self-defense standard would still be available to women who suffered abuse but did not fit the battered woman defense.

Finally, it is worth noting that at least one response to the argument that a gender-neutral standard provides a "less discriminatory alternative" is that a less discriminatory alternative is not necessarily better. After all, battered woman syndrome, like rape, is most commonly manifested with an assault by a man against a woman. If battered woman syndrome is not a gender-neutral problem, one wonders why the courts should seek a gender-neutral solution.

160. Mather, *supra* note 12, at 573. The equal protection problem arises with a separate standard for men and women. See *supra* notes 156-59 and accompanying text. One response to this criticism is that women and men should not be subject to the same standard of reasonableness because they are not "similarly situated": women have historically suffered from discrimination, are physically different, and are discouraged from learning and relying on male self-defense tactics. Elizabeth M. Schneider & Susan B. Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, in *WOMEN'S SELF-DEFENSE CASES*, *supra* note 141, at 1, 18.

161. Mather, *supra* note 12, at 573.

162. See, e.g., Faigman, *supra* note 107, at 224 (arguing that "[p]roponents of the defense] make no attempt whatsoever to provide specific criteria to enable a factfinder to discern when one battered woman kills justly and another kills unjustly").

comings, self-defense is a viable defense option for women accused of killing their abusers, as it justifies their conduct and results in acquittal. Expert testimony about battered woman syndrome and evidence about the defendant's particular circumstances can counter much of the inherent male bias in current self-defense doctrine. Beyond the current self-defense framework, an individualized gender-neutral standard of reasonableness is the best alternative to the traditional "objective" standard because it takes the battered woman's individual circumstances into account without creating equal protection problems.

### *B. Impaired Mental State Defenses and Battered Woman Syndrome*

The doctrine of excuse, which does not excuse the actor's conduct but rather the actor herself, is represented by defenses that claim the defendant was acting under an impaired mental state. These defenses range from insanity, which totally excuses the conduct, to partial responsibility defenses such as "heat of passion" or "diminished capacity." Although battered woman syndrome evidence can be used to support these defenses, the defenses themselves provide incomplete protection, and thus are not as appealing as self-defense. In addition, the diminished capacity defense is not available in Minnesota.<sup>163</sup>

#### 1. Insanity

Minnesota follows the M'Naughten test for insanity: the defendant is not excused unless she was "laboring under such a defect of reason . . . as not to know the nature of the act, or that it was wrong."<sup>164</sup> Battered woman syndrome, as well as other evidence of severe abuse, was initially used to establish that the defendant was legally insane at the time she killed her abuser.<sup>165</sup> An insanity defense should stress the history of physical and psychological abuse suffered by the woman. Ultimately, the defense should "suggest that the woman was driven to the breaking point

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163. See *infra* note 181.

164. See MINN. STAT. § 611.026 (1990). See also *State v. Lindberg*, 408 N.W.2d 589, 593 (Minn. Ct. App. 1987). This test is more narrow than the alternative "irresistible impulse" test for insanity. For a discussion of the difference between the two tests, see *State v. Worlock*, 569 A.2d 1314, 1317-18 (N.J. 1990).

States may choose for themselves which insanity test to apply in their criminal justice system. See *Leland v. Oregon*, 343 U.S. 790, 800-01 (1952). Whether Minnesota should retain or abandon the M'Naughten test is outside the scope of this paper.

165. See *Schneider & Jordan*, *supra* note 160, at 1, 5.



by the circumstances of her situation."<sup>166</sup>

An insanity defense based on battered woman syndrome is usually viewed as unacceptable for several reasons. First, unlike a claim of self-defense, the defendant has the ultimate burden of persuading the jury she is insane.<sup>167</sup> This means that the presumption is initially against the defendant, and that she, not the state, must satisfy the elements of the defense. Second, juries are generally suspicious of the defense, and may not be convinced that the defendant is legally insane unless she appears truly deranged.<sup>168</sup> Third, even if successful, an insanity defense does not exonerate the woman, nor does it necessarily gain her freedom. Although she is not incarcerated if acquitted by reason of insanity, she may be committed to a mental hospital for a period of time exceeding any time she would have served if found guilty of the crime.<sup>169</sup> Finally, the insanity defense helps perpetuate the stereotype that battered women are insane. This contradicts recent scholarship suggesting that battered women act logically and reasonably given their situations.<sup>170</sup>

## 2. Heat of passion

A reduced charge of manslaughter based on evidence of provocation might also be an option in a case involving a battered woman. A person commits first-degree<sup>171</sup> or second-degree<sup>172</sup> murder by killing another without provocation and with intent to effect the other's death.<sup>173</sup> A lesser charge of manslaughter, however, is applicable if the actor was provoked into a "heat of passion" that

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166. Cipparone, *supra* note 108, at 440 (quoting Elizabeth M. Schneider & Susan B. Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 WOMEN'S RTS. L. REP. 149, 160 (1978)).

167. *State v. Brom*, 463 N.W.2d 758, 761 (Minn. 1990); *DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984).

168. *See Schneider & Jordan, supra* note 160, at 31.

169. *See id.* at 29.

170. *See supra* notes 73-82, 129-46 and accompanying text.

171. *See* MINN. STAT. § 609.185 (1990) which states, in pertinent part:

Whoever does any of the following is guilty of MURDER in the first degree and shall be sentenced to imprisonment for life:

(1) causes the death of a human being with premeditation and with intent to effect the death of the person or of another . . .

(emphasis added).

172. *See* MINN. STAT. § 609.19 (1990) which states, in pertinent part:

Whoever does . . . the following is guilty of MURDER in the SECOND DEGREE and may be sentenced to imprisonment for not more than 40 years:

(1) Causes the death of a human being with intent to effect the death of that person or another, but without premeditation . . .

(emphasis added).

173. Under certain circumstances, both statutes also punish killings that are not

precipitated the killing.<sup>174</sup> Evidence of battered woman syndrome might be used to show that the defendant was repeatedly subjected to recurring abuse and was ultimately provoked by a particularly severe battering incident. The utility of this approach is limited, however, as it merely reduces the severity of the crime for which the defendant is charged, rather than exonerating her completely.<sup>175</sup> It is therefore a less attractive option than self-defense.

### 3. Diminished capacity

Another avenue to a reduced charge of manslaughter, available in some states, might be a defense of "diminished capacity." This defense may be available if the defendant suffered from an "abnormal mental condition" while committing the crime.<sup>176</sup> Like a defense of provocation, this defense reduces the severity level of the offense to manslaughter, as it establishes that the defendant did not have the requisite intent for murder.<sup>177</sup>

As with insanity, evidence of battered woman syndrome can be introduced to show that the woman committed the crime under a diminished mental state. In particular, the defense should focus on the intense anger the battered woman felt at the time of the killing.<sup>178</sup> The oppressive social context should also be revealed as a source of anger.<sup>179</sup> Overall, under this defense, the homicidal act is presented as an irrational attempt to "fight back" prompted by severe physical and psychological abuse and social injustice.<sup>180</sup>

Like the other impaired mental state defenses, this approach has several weaknesses. First and most important, diminished capacity is not available as a defense in Minnesota.<sup>181</sup> This obviously

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necessarily intentional. See MINN. STAT. § 609.185(2), (5), (6) (1990); MINN. STAT. § 609.19(2) (1990).

174. See MINN. STAT. § 609.20 (1990) which states that a person commits manslaughter if he or she "[i]ntentionally causes the death of another person in the heat of passion provoked by such words or acts of another as would provoke a person of ordinary self-control under like circumstances." *Id.*

175. Note that a person convicted of first-degree manslaughter may be imprisoned for up to 15 years. MINN. STAT. § 609.20 (1990).

176. See Randolph, *supra* note 43, at 25-26.

177. *Id.* at 26. Randolph views this defense as more attractive than an insanity defense because it shifts the burden of proof to the prosecution, and because it results in a relatively short incarceration period rather than a lengthy commitment. *Id.*

178. See *id.* at 24-25.

179. See *id.* at 25, 26-27; see also *supra* notes 55-61 and accompanying text.

180. Randolph, *supra* note 43, at 25. It should be noted that Randolph advocates changing the diminished capacity defense itself for battered women, so that their actions are not seen as the result of psychological abnormalities, but as a logical response to their situations. See *id.* at 26.

181. *State v. Bouwman*, 328 N.W.2d 703, 706 (Minn. 1982). See also *State v. Neit-*

undercuts the utility of the defense. Second, even if it were available, the defense shares the same disadvantage as a "heat of passion" defense: it is incomplete, as it results not in acquittal, but in incarceration.<sup>182</sup> Third, as with insanity, the defense furthers stereotypes that a battered woman's responses are illogical.<sup>183</sup> The diminished capacity defense is thus relatively unappealing.

Because of their relative ineffectiveness and negative social implications, the impaired mental state defenses should be relied upon only as a last resort.<sup>184</sup> Although not perfect, self-defense is usually the best defense strategy for a battered woman accused of killing her abuser.

### C. Evidentiary Issues in Self-Defense Cases

When a female defendant attempts to introduce battered woman syndrome evidence to bolster a claim of self-defense, the court must decide whether expert testimony regarding the syndrome is admissible under existing tests under common law and evidentiary rules. Minnesota courts apply the three-part test set forth in *Dyas v. United States*<sup>185</sup>: the subject matter must be "beyond the ken of the average layman," the expert witness must be sufficiently versed in the area so that the testimony will aid the trier of fact, and the state of the scientific knowledge must allow the expert to articulate a well-founded opinion.<sup>186</sup> In applying the third part of the *Dyas* test, Minnesota courts generally rely on the standard in *Frye v. United States*<sup>187</sup> that the body of knowledge upon which the expert's opinion is based must be generally accepted by the scientific community to which the witness belongs.<sup>188</sup>

Besides meeting standards specific to expert testimony, the

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zel, No. C8-89-1229, 1990 WL 28051 (Minn. Ct. App. March 20, 1990); *State v. Patroude*, No. C9-89-1045, 1990 WL 3322 (Minn. Ct. App. Jan. 23, 1990) (holding that evidence of diminished capacity can be used for sentencing purposes).

182. See Randolph, *supra* note 43, at 26. Randolph asserts that ideally the "feminist theory of diminished capacity" will not lead to incarceration. She does not, however, explain how successfully pleading her conception of the defense will lead to a different result than the traditional diminished capacity claim.

183. *Id.* at 25.

184. See Schneider & Jordan, *supra* note 160, at 29 & n.90.

185. 376 A.2d 827 (D.C. 1977) (quoting MCCORMICK ON EVIDENCE, § 13, at 29-31 (Edward W. Cleary, 2d. ed. 1992)).

186. *Id.* at 832. The Minnesota Supreme Court applied the *Dyas*-like test in *State v. Hennum*, 441 N.W.2d 793, 798-99 (Minn. 1989). See also Madison, *supra* note 22, at 1046 n.93.

187. 293 F. 1013 (D.C. Cir. 1923).

188. *Id.* at 1014. See *State v. Hennum*, 441 N.W.2d 793, 798-99 (Minn. 1989); Madison, *supra* note 22, at 1046 n.93.

proffered evidence must meet relevancy standards. The expert testimony must be "logically" relevant: it must tend to prove the proposition it is offered to prove.<sup>189</sup> The testimony must also be "legally" relevant: its probative value must not be outweighed by the risk of prejudicing or confusing the jury, nor must the evidence be overly cumulative.<sup>190</sup>

Expert testimony regarding battered woman syndrome may be general evidence describing the syndrome, or specific evidence addressing whether a particular defendant suffers from the syndrome.<sup>191</sup> Some courts hold that general testimony regarding battered woman syndrome is irrelevant unless the expert testifies that the defendant suffered from the syndrome at the time of the killing.<sup>192</sup> Other courts force the defendant to submit to an adverse psychological examination if she presents expert testimony, based on a psychological examination, that she suffers from battered woman syndrome.<sup>193</sup>

In Minnesota, testimony about battered woman syndrome has been held to be helpful to the jury, and research about the syndrome is recognized as generally accepted by the scientific community.<sup>194</sup> A qualified expert witness may therefore testify generally about the syndrome. Defense counsel may not, however, present expert testimony that the defendant suffered from the syndrome, nor may the court order an adverse psychological examination of the defendant.<sup>195</sup> Rather, both sides are limited to presenting testimony from lay witnesses regarding the defendant's characteristics that correspond to, or conflict with, battered woman syndrome.<sup>196</sup>

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189. See MINN. R. EVID. 401.

190. See MINN. R. EVID. 403.

191. See Madison, *supra* note 22, at 1036.

192. See *id.* at 1036-37 & nn.53-57 for cases cited.

193. *Id.* at 1042-43 (citing New Hampshire and Missouri cases).

194. See *State v. Hennum*, 441 N.W.2d 793, 797-99 (Minn. 1989).

195. *Id.* at 799. The court apparently restricted the defendant to general testimony about the syndrome to avoid the need for an adverse examination of the defendant. Madison, *supra* note 22, at 1047 & n.97 (citing *Hennum*, 441 N.W.2d at 799). The court also wanted to leave the question of whether the defendant suffered from the syndrome for the jury. *Id.* at 1047 & n.98.

196. See *id.* This formulation has been criticized as illogical and contrary to well-established evidentiary rules. See Madison, *supra* note 22, at 1048, 1049-61.

Note that if the defendant wishes to use evidence of battered woman syndrome to support a claim of insanity, the State is entitled to an adverse examination of the defendant. See MINN. R. CRIM. P. 20.02; Madison, *supra* note 22, at 1038-39 & n.64. Thus, in an insanity defense, the defendant is presumably allowed to present testimony from an expert witness that she suffers from the syndrome. See *id.* at 1047 & n.97 (noting the *Hennum* court's decision to limit expert witness testimony regarding battered woman syndrome to general matters in self-defense cases, on the ground that this obviates the need for an adverse examination).

Thus, assuming the expert witness is qualified, defense counsel in Minnesota should have little trouble presenting general expert testimony about battered woman syndrome to bolster the defendant's self-defense claim. The court will limit this testimony to a general description of the syndrome, however, and will not permit the expert to testify as to whether the defendant suffers from the syndrome. Defense counsel must present other evidence indicating that the defendant displays characteristics common to the syndrome, and let the jury reach its own conclusion about whether the defendant suffered from battered woman syndrome.

### Conclusion

In the years since a jury convicted Regina Schabert for killing her abuser, clinical and research scientists have advanced theories to explain behavioral and psychological reactions of battered women to abuse. Walker's theories of the cycle of violence and learned helplessness laid the groundwork for the way the scientific community views battered women's responses today. Other theorists expanded on Walker's views by placing her model of the abusive relationship in its larger social and familial context, re-defining women's perspectives of domestic abuse, and calling for further scholarship to explain the female perspective. Still other research has been directed at explaining why some women respond to abuse by killing their abusers.

Minnesota courts use existing legal doctrines to give effect to the findings that have come out of the scientific community. Contemporary theories regarding battered women make a self-defense claim the best defense strategy for women accused of murdering their abusers. Because the realities of the syndrome have not always fit traditional self-defense doctrine, however, some commentators have proposed altering some aspects of the doctrine to make it more accessible to women generally and battered women specifically. Although Minnesota has not modified its self-defense doctrine, it has adopted an evidentiary rule that limits expert testimony regarding battered woman syndrome to a general description of the syndrome, thereby relieving the defendant of the need to submit to an adverse psychiatric examination.

One cannot say with certainty that had evidence of battered woman syndrome been available, Regina Schabert would have gone free. Recent cases indicate that while battered woman syndrome evidence may be helpful, it does not guarantee acquittal. It is also unknown whether existing self-defense doctrine will be modified to incorporate new scientific findings. Nevertheless, the

study of domestic violence and battered women has led to an extensive re-examination of established legal doctrines and the social institutions they help preserve.