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The Battered Woman Syndrome and Self-defense: A Legal and Empirical Dissent

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NOTES

THE BATTERED WOMAN SYNDROME AND SELF-DEFENSE: A LEGAL AND EMPIRICAL DISSENT

The abuse of women is a significant social problem,¹ with some researchers estimating that twenty-eight percent of all married women suffer abuse at the hands of their husbands.² Domestic violence often culminates with the woman killing her mate.³ With increasing frequency abused women charged with killing their husbands or lovers justify their acts as self-defense and seek to support these claims with expert testimony on "battered woman syndrome."⁴ In self-defense cases this testimony typically centers on two theories of battering relationships that together purport to explain why some women stay in battering relationships and ultimately kill their tormentors. The scholarly commentary has over-

¹ See generally R. Gelles & C. Cornell, *Intimate Violence in Families* 63-81 (1985) (discussing factors leading to wife abuse); U.S. Dep't of Justice, Attorney General's Task Force on Family Violence: Final Report (1984) (recommending judicial responses to family violence); *The Dark Side of Families: Current Family Violence Research* (1983) (collection of studies documenting the causes and extent of wife abuse).

² See M. Straus, R. Gelles & S. Steinmetz, *Behind Closed Doors: Violence in the American Family* 32 (1980). These estimates are generally limited to the incidence of *physical* rather than *psychological* abuse, though researchers often measure both. See L. Walker, *The Battered Woman Syndrome* 27-28 (1984) [hereinafter cited as L. Walker (1984)]. One study found that 44 of 80 couples interviewed engaged in some form of physical violence during their marriages. R. Gelles, *The Violent Home: A Study of Physical Aggression Between Husbands and Wives* 48 (1972); see also L. Walker, *The Battered Woman* ix (1979) [hereinafter cited as L. Walker (1979)] (estimating that 50% of all women are battered at some time during their marriages).

³ See Roy, *Some Thoughts Regarding the Criminal Justice System and Wifebeating*, in *Battered Women: A Psychosociological Study of Domestic Violence* 139 (M. Roy ed. 1977).

⁴ See cases cited *infra* note 6. Self-defense has emerged as the preferred defense for women who have killed their spouses, but some defendants use expert testimony on battering relationships to support other defenses, such as insanity or diminished capacity. See *Hawthorne v. State*, 408 So. 2d 801, 806 (Fla. Dist. Ct. App. 1982) (battered woman syndrome evidence offered to show that defendant suffered from an impaired mental state). The facts of many of these cases, however, do not lend themselves to these defenses. See Schneider & Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 *Women's Rts. L. Rep.* 149, 153-60 (1978); Comment, *The Battered Wife Syndrome: A Potential Defense to a Homicide Charge*, 6 *Pepperdine L. Rev.* 213, 221-23 (1978).

whelmingly endorsed the use of battered woman syndrome evidence.⁵ Similarly, several appellate courts have upheld the admissibility of battered woman syndrome evidence or have remanded cases to the trial courts for failure to examine adequately the relevance of such evidence.⁶

⁵ See Buda & Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. Fam. L. 359, 368-78 (1984-85); Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense*, 8 Harv. Women's L.J. 121, 137-44 (1985); Comment, *Self-Defense: Battered Woman Syndrome on Trial*, 20 Cal. W.L. Rev. 485 (1984) [hereinafter cited as Comment, *Self-Defense*]; Note, *Defense Strategies for Battered Women Who Assault Their Mates: State v. Curry*, 4 Harv. Women's L.J. 161 (1981); Note, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 Hastings L.J. 895 (1981) [hereinafter cited as Note, *Wife's Dilemma*]; Comment, *The Admissibility of Expert Testimony on Battered Wife Syndrome: An Evidentiary Analysis*, 77 Nw. U.L. Rev. 348 (1982) [hereinafter cited as Comment, *Evidentiary Analysis*]; Note, *Battered Woman's Syndrome and Premenstrual Syndrome: A Comparison of Their Possible Use as Defenses to Criminal Liability*, 59 St. John's L. Rev. 558 (1985); Comment, *The Use of Expert Testimony in the Defense of Battered Women*, 52 U. Colo. L. Rev. 587 (1981); Note, *A Woman, A Horse, and a Hickory Tree: The Development of Expert Testimony on The Battered Woman Syndrome in Homicide Cases*, 53 UMKC L. Rev. 386, 397-410 (1985); Comment, *The Expert as Educator: A Proposed Approach to the Use of Battered Woman Syndrome Expert Testimony*, 35 Vand. L. Rev. 741 (1982); Comment, *The Battered Spouse Syndrome as a Defense to a Homicide Charge Under the Pennsylvania Crimes Code*, 26 Vill. L. Rev. 105 (1980-81); Comment, *Evidence: Admitting Expert Testimony on the Battered Woman Syndrome*, 21 Washburn L.J. 689 (1982). But see Acker & Toch, *Battered Women, Straw Men, and Expert Testimony: A Comment on State v. Kelly*, 21 Crim. L. Bull. 125 (1985); Note, *Does Wife Abuse Justify Homicide?* 24 Wayne L. Rev. 1705 (1978).

⁶ The use of battered woman syndrome evidence was noted by Justice Brennan, joined by Justice Marshall, in a dissent from denial of certiorari in *Moran v. Ohio*, 105 S. Ct. 350 (1984). Justice Brennan observed that "[a]lthough traditional self-defense theory may seem to fit the situation only imperfectly, . . . the battered woman's syndrome as a self-defense theory has gained increasing support over recent years." *Id.* at 351 (citations and footnote omitted). In *State v. Anaya*, 438 A.2d 892 (Me. 1981), the court ruled that an expert on battered woman syndrome should have been allowed to testify to "his profession's analysis of the behavior and emotional patterns of women suffering from repeated physical abuse inflicted by their husbands or lovers." *Id.* at 893. The court held that testimony as to the "cyclical process" of the abuse, "the psychological and environmental factors which contribute to the individual male's disposition towards abuse," and the fact that "abused women often continue to live with their abusers even though beatings continue" were all relevant to the defendant's reliance on the "theory of self-defense or provocation to mitigate or justify her conduct." *Id.* at 893-94 (footnote omitted). Similarly, in *Smith v. State*, 247 Ga. 612, 277 S.E.2d 678 (1981), the court held that the expert should have been allowed to testify. According to the court, the expert could testify "that it is not unusual for a battered woman who has been abused over a long period of time to remain in such a situation" and that "the battered woman becomes increasingly afraid for her own well-being, and that the primary emotion of a battered woman is fear." *Id.* at 614, 277 S.E.2d at 680; accord *State v. Allery*, 101 Wash. 2d 591, 596-97, 682 P.2d 312, 315-16 (1984) (expert could testify regarding the "three distinct phases" of the syndrome and "why a person suffering from the battered woman syndrome would not leave her mate, would not inform police or friends, and would fear increased aggression against herself?"); cf. *State v. Baker*, 120 N.H. 773, 775-76, 424 A.2d

The use of this evidence to support self-defense claims is troubling because the facts of these cases often do not conform to traditional conceptions of self-defense. Typically, the term "self-defense" conjures up images of a defender who, backed against a wall and facing imminent death, strikes out at the last moment to kill the attacker.⁷ Frequently, however, a battered woman kills her mate after an attack has ended or at some time when, seemingly, no immediate threat is present.⁸ Further, a

171, 172-73 (1980) (in a prosecution of a husband for wife abuse, expert on the battered woman syndrome permitted to rebut the defendant's contention that he abused his wife because he was insane). Several appellate courts have expressed approval of battered woman syndrome testimony but have remanded to the trial court for determination of its admissibility. In *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979), for example, the court stated that the "testimony on battered wives was highly probative" and remanded to allow the trial court to evaluate the scientific acceptability of the evidence. *Id.* at 639-40. The trial court again barred the expert testimony, and the appellate court affirmed. See *Ibn-Tamas v. United States*, 455 A.2d 893, 894 (D.C. 1983); see also *Hawthorne v. State*, 408 So. 2d 801, 806 (Fla. Dist. Ct. App. 1979) (observing that "there has been no determination below as to the . . . extent to which [the expert's] methodology is generally accepted . . ."); *State v. Kelly*, 97 N.J. 178, 213, 478 A.2d 364, 381 (1984) (prosecutor not "given the opportunity fully to cross-examine the expert on the reliability of this developing field of scientific knowledge").

Not all courts have been receptive to expert testimony on battered woman syndrome. Some have questioned the scientific acceptability of the evidence. In *Buhrle v. State*, 627 P.2d 1374 (Wyo. 1981), the court did not expressly find the evidence inadmissible, but it observed that "the state of the art was not adequately demonstrated to the court, and because of inadequate foundation the proposed opinions would not aid the jury." *Id.* at 1378. Other courts have rejected the evidence in the case at hand without addressing its admissibility generally. See, e.g., *State v. Martin*, 666 S.W.2d 895, 899 (Mo. Ct. App. 1984). Still other courts have flatly excluded the evidence as irrelevant to the woman's self-defense claim. See *People v. White*, 90 Ill. App. 3d 1067, 1072, 414 N.E.2d 196, 200 (1980) ("The opinion of the doctor [on battered woman syndrome] was neither relevant nor material, and it would serve no useful purpose."); *State v. Thomas*, 66 Ohio St. 2d 518, 520-22, 423 N.E.2d 137, 139-40 (1981) (holding that the evidence should be excluded because: (1) "it is irrelevant;" (2) the subject matter "is within the understanding of the jury;" (3) the testimony is "not . . . a matter of commonly accepted scientific knowledge;" and (4) "its prejudicial impact outweighs its probative value").

Attention to the problem of wife abuse has not been limited to the courts. The California legislature, for example, recently enacted a statute directed at abusive husbands. See Cal. Penal Code § 273.5 (West 1986) (making willful corporal injury to a spouse resulting in a traumatic condition a felony with a penalty of up to four years in prison); see also J. Costa, *Abuse of Women: Legislation, Reporting and Prevention* 39-74 (1983) (listing state statutes relating to wife abuse); Note, *Wife Abuse Legislation in California, Pennsylvania and Texas*, 7 *Thurgood Marshall L. Rev.* 282 (1982) (examining three representative state statutes providing civil and criminal penalties for wife abuse).

⁷ See Note, *Dwelling Defense Law in Missouri*: In Search of Castles, 50 *UMKC L. Rev.* 64, 66 (1981). This "retreat to the wall" is "reached in a figurative sense when further retreat would increase the danger to defendant's life." 2 *Wharton's Criminal Law* § 126, at 131-32 (C. Torcia 14th ed. 1979).

⁸ Cases in which the woman kills her mate while he is sleeping present perhaps the most

woman in a violent relationship would appear always to have an alternative to killing the man—leaving the relationship. Recognizing the incongruities between the facts of their cases and conventional notions of self-defense, battered women defendants seek to use social science research on battered woman syndrome to bring themselves within the bounds of self-defense doctrine.

This note questions the validity of the research on battered woman syndrome and argues that in self-defense cases courts should not admit expert testimony based on this research.⁹ The focus here is primarily on the work of Lenore Walker, the preeminent researcher in the field.¹⁰ Notwithstanding the weaknesses of the research on battered woman syndrome, it is clear that many battered women face a desperate predicament, and this note argues that courts should allow juries to consider *valid* social science research and the battered woman's own history of abuse in evaluating her self-defense claim. Part I of the note discusses the defense of self-defense and the connection between the theory of battered woman syndrome and self-defense doctrine. Part II critically examines the research on battered woman syndrome and rejects its application to self-defense cases. Part III identifies the types of evidence courts should admit when a battered woman relies on the defense of self-defense.

striking instances of "self-defensive" action taking place despite the apparent absence of an immediate threat to the woman. See, e.g., *State v. Leidholm*, 334 N.W.2d 811 (N.D. 1983).

⁹ This note concentrates on the use of battered woman syndrome evidence in cases where the woman is charged with killing her husband or lover. The defense of self-defense, of course, is also applicable to lesser offenses, such as assault or battery, see 2 Wharton's Criminal Law, *supra* note 7, § 192, and women might conceivably seek to introduce evidence on battered woman syndrome in criminal prosecutions for these lesser offenses. Most of the legal commentary, however, has centered on the murder and manslaughter cases, and it is these cases that most clearly illuminate the tension between the theories of battered woman syndrome and the legal doctrine of self-defense.

¹⁰ Of the researchers who have investigated battering relationships, Walker is the most active in relating battered woman research to the legal context, and it is her work that courts most often rely on in their decisions. See, e.g., *State v. Kelly*, 97 N.J. 178, 193, 478 A.2d 364, 371 (1984) (relying almost exclusively on Walker's theory and referring to her as a "prominent writer" in the field); *Buhrle v. State*, 627 P.2d 1374, 1376 (Wyo. 1981) ("by her own characterization [Walker] is the foremost authority on [battered woman syndrome]"). Law review commentary similarly recognizes Walker's central role in bringing battered woman syndrome evidence to the courtroom. See, e.g., Crocker, *supra* note 5, at 128 (citing Walker's research as the "prevailing theory on battering"); Comment, *Evidentiary Analysis*, *supra* note 5, at 350 (describing Walker as "the research pioneer in this area"). To be sure, many other researchers are involved in this field. See, e.g., R. Gelles, *supra* note 2; J. Giles-Sims, *Wife Battering: A Systems Theory Approach* (1983); R. Langley & R. Levy, *Wife Beating: The Silent Crisis* (1977); D. Martin, *Battered Wives* (1976); *Battered Women: A Psychosociological Study of Domestic Violence* (M. Roy ed. 1977).

I. SELF-DEFENSE AND BATTERED WOMAN SYNDROME

When a battered woman invokes the defense of self-defense in a criminal prosecution, she must of course cast her arguments in terms of the traditional elements of that defense. When the circumstances of a case do not cleanly fit the traditional model of self-defense, the defendant may seek to introduce evidence on battered woman syndrome in an attempt to convince the jury that her case does in fact contain all of the requisite elements of a self-defense claim. This section briefly surveys the law of self-defense and analyzes the application of battered woman syndrome theories to self-defense cases.

A. *The Defense of Self-Defense*

To prevail on a self-defense claim, a defendant must satisfy the four elements of the defense. First, at the time of her action she must have believed that she was in imminent danger of unlawful bodily harm.¹¹ Second, she must have used only a reasonable amount of force to counter the threatened danger.¹² Third, she cannot have been the aggressor.¹³ Fourth, under some circumstances she must have had no opportunity to retreat safely.¹⁴ Courts often view the four elements of a self-defense claim as

¹¹ W. LaFare & A. Scott, *Handbook on Criminal Law* § 53, at 391 (1972). When the harm is imminent, the threatened party essentially has no choice but to act; not acting means certain harm. Professor Fletcher explains that "[s]tressing the element of involuntariness is but our way of making the moral claim that [the actor] is not to be blamed for the kind of choice that other people would make under the same circumstances." G. Fletcher, *Rethinking Criminal Law* 856 (1978).

¹² W. LaFare & A. Scott, *supra* note 11, at 391. An actor is limited to the use of nondeadly force against a nondeadly attack, but she can respond to deadly force with deadly force of her own. *Id.* at 392. LaFare and Scott define deadly force as "force (a) which its user uses with the intent to cause death or serious bodily injury to another or (b) which he knows creates a substantial risk of death or serious bodily injury to the other." *Id.* (footnote omitted).

¹³ *Id.* at 394-95.

¹⁴ *Id.* at 391. The law's attitude toward the duty to retreat reflects the tensions underlying self-defense doctrine generally. On one hand, an individual should be encouraged to retreat in order to avoid injury to herself or the aggressor. At the same time, one who is attacked should not be required to adopt a cowardly or humiliating posture. The majority of American jurisdictions impose no duty to retreat if the aggressor employs deadly force and the defender reasonably believes that she is in danger of death or serious bodily injury. A substantial minority of states, however, require the defending party to retreat if she can do so in complete safety. *Id.* at 395-96.

An individual has no duty to retreat if attacked by an intruder in her home. Courts are divided, though, on whether there is an obligation to retreat when the assailant is a co-occupant of the dwelling. See *id.* at 396 n.36; Annot., 26 A.L.R.3d 1296 (1969). A majority of jurisdictions do not require retreat when the assault occurs within the home and the assailant is a co-occupant. The rationale for this position apparently is that the defender has no

categorical requirements,¹⁵ but an analysis of these elements should not lose sight of the basic premise of this defense: where an individual cannot resort to the law in response to aggression, she may use reasonable force to protect herself from physical harm.¹⁶

Most American courts have traditionally required juries evaluating the first element of a self-defense claim to focus on the objective reasonableness of the defendant's belief that she was in imminent danger.¹⁷ Under this objective test, the defendant must in fact have believed self-defense was necessary, and this belief must also have been reasonable by the standards of the ordinary person.¹⁸ By contrast, the subjective test followed in a minority of jurisdictions requires only that the defendant have honestly believed that self-defensive action was necessary; that this belief was unreasonable will not defeat the defendant's claim.¹⁹ Clearly, though, the

safer place to which she can escape. W. LaFave & A. Scott, *supra* note 11, at 396 n.36. Nevertheless, a minority of jurisdictions ignore this logic and impose a duty to retreat in this situation. *Id.*; see Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 Harv. C.R.-C.L. L. Rev. 623, 633 (1980); Note, *Limits on the Use of Defensive Force to Prevent Intramarital Assaults*, 10 Rut.-Cam. L.J. 643, 654 (1979).

¹⁵ See W. LaFave & A. Scott, *supra* note 11, at 392 ("On the question of what is reasonable, the law of self-defense has tended 'to ossify into specific rules,' not always fixed with regard to reason.") (quoting *Brown v. United States*, 256 U.S. 335, 343 (1921) (Hohnes, J.)).

¹⁶ See generally G. Fletcher, *supra* note 11, at 855-75 (contrasting the theory of necessary defense, which considers the pressures bearing on the defender, with the theory of self-defense, which asks, "Who was the aggressor?").

¹⁷ See W. LaFave & A. Scott, *supra* note 11, at 393-94. 40 Am. Jur. 2d Homicide § 154 (1968) sets forth the minority and majority positions, noting that the objective test is followed by most states:

The rule adopted in a few states, and what seems to have been the common-law rule, is that when a person is assaulted and kills his assailant in self-defense, the question to be determined is whether the slayer, under all the circumstances as they appeared to him, honestly believed that he was in imminent danger of losing his life, or of suffering great bodily harm, and that it was necessary to do what he did in order to save himself from such apparent threatened danger, and it is not whether a reasonable man, or a man of reasonable courage, would have so believed.

The rule followed by most of the courts is that the apprehension of danger and belief of necessity which will justify killing in self-defense must be a reasonable apprehension and belief, such as a reasonable man would, under the circumstances, have entertained.

Id. at 443 (footnotes omitted).

¹⁸ See, e.g., *State v. Mendoza*, 80 Wis. 2d 122, 150, 258 N.W.2d 260, 272 (1977).

¹⁹ See *Vigil v. People*, 143 Colo. 328, 353 P.2d 82 (1960). The Model Penal Code adopts the subjective test: "[T]he use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." Model Penal Code § 3.04(1) (Proposed Official Draft 1962). Under the Model Code "deadly force is not justifiable . . . unless the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or sexual intercourse compelled by

distinction between the objective and subjective tests can be an evanescent one. A court nominally applying the objective test may allow the jury to consider so many of the defendant's unique circumstances that the hypothetical "reasonable person" assumes most of the fears and weaknesses of the defendant. The jury may therefore come very close to evaluating the necessity of self-defensive action as the defendant saw it.

*State v. Wanrow*²⁰ illustrates the extension of the objective test to take account of the unusual circumstances facing the defendant at the time of the act.²¹ The court believed that this extension was necessary to allow the jury to "'stand as nearly as practicable in the shoes of the defendant, and from this point of view determine the character of the act.'" ²² In *Wanrow* the defendant differed from the ordinary person in two important respects. First, at the time of the killing the defendant was aware of her victim's history of violence, and the court found this relevant to the reasonableness of her self-defensive action: "circumstances predating the killing by weeks and months [are] . . . entirely proper, and in fact essential, to a proper disposition of the claim of self-defense."²³ Second, because the defendant was significantly smaller than her victim and had a broken leg,²⁴ the court held that the jury should not have compared the defendant's response to the perceived danger with what an ordinarily robust person would be expected to do in the situation. In particular, the court found it unreasonable to expect someone with the physical characteristics of the defendant to fend off an attack without using a weapon.²⁵ Thus, in the version of the objective test set forth in *Wanrow*, it is proper for the jury to consider both the defendant's knowledge at the time of the killing and her individual physical traits.

The *Wanrow* court was somewhat atypical in its willingness to allow the jury to consider the defendant's idiosyncracies in evaluating the reasonableness of her actions. Most courts exclude evidence of the defendant's idiosyncracies and require the jury to consider the self-defense claim in light of a more rigorously objective standard of conduct.²⁶ Nevertheless, *Wanrow* highlights the basic flexibility of the reasonable person test

force or threat" Id. § 3.02(2)(b).

²⁰ 88 Wash. 2d 221, 559 P.2d 548 (1977).

²¹ See id. at 234, 559 P.2d at 555.

²² Id. at 235, 559 P.2d at 556 (quoting *State v. Ellis*, 30 Wash. 369, 373, 70 P. 963, 964-65 (1902)).

²³ Id.

²⁴ Id. at 240, 559 P.2d at 559. The victim, who apparently had molested Wanrow's daughter and had attempted to molest her son, was a large man and was "visibly intoxicated." Id. at 226, 559 P.2d at 551.

²⁵ Id. at 240, 559 P.2d at 558.

²⁶ See, e.g., *State v. Bess*, 53 N.J. 10, 247 A.2d 669 (1968).

of self-defense, a flexibility that battered woman defendants often attempt to exploit.

B. Battered Woman Syndrome

Research on battered woman syndrome offers two theories that defendants use to address the discrepancies between the paradigm of self-defense and the facts of their cases. First, battered women defendants²⁷ rely on the "Walker cycle theory" to show that, although the "defensive" act may have occurred during a period of relative calm, the defendant was reasonable in her belief at the time of the act that the man presented her with a threat of imminent harm.²⁸ Second, defendants use Walker's extension of the psychological theory of learned helplessness to explain the incapacity of the battered woman to leave the abusive relationship.²⁹ Defendants do not offer battered woman syndrome as the basis of a separate defense or even as a means of extending traditional self-defense theory.³⁰ They merely seek to use the theories of battered woman syndrome to demonstrate the reasonableness of the woman's actions in light of the battering relationship. Like the defendant in *Warrow*, they attempt to fit their claims within the framework of existing self-defense doctrine.

²⁷ Walker defines a battered woman as any 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." L. Walker (1984), *supra* note 2, at 203. Walker's definition is expansive, perhaps to a degree few legal observers realize. Walker defines an intimate relationship as one "having a romantic, affectionate, or sexual component." *Id.* "Repeatedly" merely means "more than once." *Id.* Finally, "abuse" includes, in addition to physical assaults, "extreme verbal harassment and expressing comments of a derogatory nature with negative value judgments." *Id.*

²⁸ See *Ibn-Tamas v. United States*, 407 A.2d 626, 634 (D.C. 1979) (expert would provide "a basis from which the jury could understand why [the defendant] perceived herself in imminent danger at the time of the shooting"); *State v. Kelly*, 97 N.J. 178, 204, 478 A.2d 364, 377 (1984) ("expert's testimony, if accepted by the jury, would have aided it in determining whether, under the circumstances, a reasonable person would have believed there was imminent danger to her life"); *State v. Kelly*, 102 Wash. 2d 188, 196, 685 P.2d 564, 570 (1984) (expert testimony "offered to aid the jury in understanding the reasonableness of [the defendant's] apprehension of imminent death or bodily injury").

²⁹ See, e.g., *State v. Kelly*, 97 N.J. 178, 196, 478 A.2d 364, 372 (1984).

³⁰ See *State v. Leidholm*, 334 N.W.2d 811, 820 n.8 (N.D. 1983) ("[T]he law of self-defense will not be judicially orchestrated to accommodate a theory that the existence of battered woman syndrome in an abusive relationship operates in and of itself to justify or excuse a homicide."); see also Comment, *Self-Defense*, *supra* note 5, at 495 ("The battered woman syndrome is not in or of itself a defense. The defense which is asserted is self-defense, not that the woman was a battered woman."). But see Vaughn & Moore, *The Battered Spouse Defense in Kentucky*, 10 N. Ky. L. Rev. 399, 399 (1983) ("The defense of battered women who kill their mates is slowly developing a distinct style or technique called the abused spouse defense. This defense emerges as akin to, but separate from, the more familiar and established defenses of self-defense and diminished capacity.").

1. *The Cycle Theory*

The Walker cycle theory³¹ forms the conceptual bridge that spans the time gap between the batterer's threat of death or serious bodily harm and the defendant's act. Walker describes three distinct phases of the typical battering relationship. A "tension building phase" erupts into an "acute battering incident," which is in turn followed by "loving contrition."³² The first phase is marked by verbal bickering and increasing tension between the man and woman.³³ In the second phase the batterer explodes into an uncontrollable and violent rage.³⁴ In the final phase the batterer typically expresses regret and profusely apologizes, usually promising never to beat the woman again.³⁵ Despite the man's promises during this third phase, the cycle eventually begins anew.³⁶

According to the cycle theory, the battered woman is reduced to a state of fear and anxiety during the first two phases of the cycle,³⁷ and her perception of danger extends beyond the time of the battering episodes themselves. A "cumulative terror" consumes the woman and holds her in constant fear of harm.³⁸ This fear of harm continues even during the peaceful interlude between episodes of abuse.³⁹ It is during this peaceful interlude that the woman may seize the opportunity to strike back at the batterer.⁴⁰ Thus, according to Walker's theory, the woman experiences the growing tension of phase one, develops a fear of death or serious bodily harm during phase two, and, perceiving that she will be unable to defend herself when the next attack comes, finally "defends" herself at her only opportunity.

³¹ For a discussion of the cycle theory, see L. Walker (1984), *supra* note 2, at 95-104; L. Walker (1979), *supra* note 2, at 55-70. Battered woman defendants frequently draw on aspects of Walker's research other than the cycle theory. See *infra* notes 43-55 and accompanying text (discussion of learned helplessness theory). The cycle theory, however, is the lynchpin of her work, and Walker describes many of her other findings in relation to that theory. See Gates, Book Review, 8 N.Y.U. Rev. L. & Soc. Change 301, 302 (1979) (reviewing L. Walker (1979), *supra* note 2) ("The most original and legally significant of Walker's ideas is what she calls the 'cycle of violence' between two people.").

³² See L. Walker (1984), *supra* note 2, at 95-96; L. Walker (1979), *supra* note 2, at 55-70.

³³ L. Walker (1984), *supra* note 2, at 95.

³⁴ *Id.* at 96.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See Note, *Wife's Dilemma*, *supra* note 5, at 928; see also *infra* notes 102-106 and accompanying text (criticizing this aspect of the cycle theory).

³⁸ See Comment, *Battered Wives Who Kill: Double Standard Out of Court, Single Standard In?* 2 Law & Hum. Behav. 133, 164 (1978).

³⁹ See Buda & Butler, *supra* note 5, at 375.

⁴⁰ Walker observes, "Sometimes, [the battered woman] strikes back during a calm period, knowing that the tension is building towards another acute battering incident, where this time she may die." L. Walker (1984), *supra* note 2, at 142.

The cycle theory addresses the two factors upon which the *Wanrow* court focused—the defendant's knowledge of the aggressor's history of violence and the defendant's physical inability to protect herself.⁴¹ First, the battered woman's knowledge of the batterer's history of violence shapes her perception of harm. A woman's experience in the recurring cycles of violence puts her in constant fear of what appears to her as imminent harm. This factor goes to the first element of the battered woman's self-defense claim, the reasonableness of her belief in the necessity for self-defensive action. If the court allows the defendant to introduce evidence on the implications of the cycle theory, the defendant may be able to convince the jury that a reasonable person in her position would have perceived imminent danger and responded accordingly.

Second, battered woman cases typically involve women who cannot easily defend themselves against the attacks of a larger and stronger man. Here the cycle theory speaks to the second element of the self-defense claim, the reasonableness of the amount of force used to repel the aggression. If a woman perceives herself to be trapped in a cycle of potentially deadly violence, she may reasonably feel compelled to resort to deadly force in preempting the aggression of the unarmed but more powerful man.⁴²

2. *Learned Helplessness*

The cycle theory, in itself, may be insufficient to convince a jury that the battered woman acted in self-defense. Some states require the defendant to show that she could not have retreated from the threat of harm.⁴³ More generally, Walker has argued that, even in jurisdictions that do not formally impose a duty to retreat, jurors will assume the defendant was unreasonable in failing to leave the battering relationship.⁴⁴ Ac-

⁴¹ See *supra* notes 20-25 and accompanying text.

⁴² Schneider sets forth an interesting hypothesis relating a woman's disadvantage in size to the escalating violence that ultimately results in the death of her mate. Women, she notes, are socialized not to use weapons, but battered women eventually learn weapons are necessary after unsuccessful attempts to defend themselves unarmed, which ultimately lead to more abuse. Schneider, *supra* note 14, at 632; see also Mackinnon, *Toward Feminist Jurisprudence*, 34 *Stan. L. Rev.* 703, 732 (1982) ("[W]omen thus perceive the need and do need to resort to deadly force, [and] are more threatened than a similarly situated man, largely because they are less able to care for themselves than they would be if they were trained the way men are trained.").

⁴³ See *supra* note 14.

⁴⁴ Walker asserts that "[d]espite the legal right in most states to stand one's own ground on one's own property, women appear to be expected to have good reason for *not* leaving their homes or withdrawing from their marriages if they are under the threat of or actually experiencing assault." Walker, Thyfault & Browne, *Beyond the Jurors' Ken: Battered Women*, 7 *Vt. L. Rev.* 1, 5 (1982).

cording to Walker, jurors subscribe to "popular myths" regarding women who remain in violent relationships. These myths include "the belief that battered women are masochistic, that they stay with their mates because they like beatings, that the violence fulfills a deep-seated need within each partner, or that they are free to leave such relationships if that is what they really want."⁴⁵ Courts have accepted Walker's view that jurors, if not specially instructed, will believe the battered woman somehow consented to the beatings inflicted upon her.⁴⁶

To explain why a woman in a "constant state of fear" does not simply leave the battering relationship, battered women defendants invoke Walker's adaptation of Martin Seligman's "learned helplessness" theory.⁴⁷ Seligman and his colleagues found that laboratory dogs, after being subjected to repeated shocks over which they had no control, "learned" that they were helpless.⁴⁸ When subsequently placed in an escapable situation, the dogs failed to escape.⁴⁹ Seligman generalized this phenomenon

⁴⁵ Id. at 1-2.

⁴⁶ In *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984), the court held that a jury must consider the factors restraining a battered woman before it can evaluate her conduct. The court stated that "[o]nly by understanding these unique pressures that force battered women to remain with their mates, despite their long-standing and reasonable fear of severe bodily harm and the isolation that being a battered woman creates, can a battered woman's state of mind be accurately and fairly understood." Id. at 196, 478 A.2d at 372.

The courts frequently voice their assumption that most lay people—and hence most jurors—believe battered women enjoy the abuse. See, e.g., id. at 194, 478 A.2d at 370. Indeed, this proposition seems to have taken on mythical proportions itself. The source the courts most often cite to buttress their assumption is Walker's 1979 book, *The Battered Woman*, which contains no empirical research on this question. See L. Walker (1979), *supra* note 2, at 20. Walker merely alludes (without providing a reference) to a twenty-year-old study on abused wives suggesting that some women might enjoy the abuse because of masochistic tendencies. Id. Perhaps Walker is referring to a 1964 study that characterized battered women as "aggressive, efficient, masculine, and sexually frigid" and suggested the beatings provided "apparent masochistic gratification." Snell, Rosenwald & Robey, *The Wifebeater's Wife: A Study of Family Interaction*, 11 *Archives Gen. Psychiatry* 107, 111 (1964). At most, this severely outdated study shows only that some research psychologists believe women enjoy beatings; it cannot be taken to show that the *general public* holds this view. See Acker & Toch, *supra* note 5, at 138-41 (noting that many jurors may be sympathetic to the woman's failure to leave). See generally P. Caplan, *The Myth of Women's Masochism* (1985) (exploring the psychoanalytic evidence regarding the masochism of women and questioning its validity).

⁴⁷ See L. Walker (1984), *supra* note 2, at 86.

⁴⁸ See Seligman, Maier & Geer, *Alleviation of Learned Helplessness in the Dog*, 73 *J. Abnormal Psychology* 256 (1968). Seligman and his associates placed the dogs in harnesses and subjected them to electrical shocks at random intervals. After initial attempts to escape proved futile, the dogs began to submit to the shocks without resistance. When the procedure was changed to present the dogs with an opportunity to escape, the "helpless" dogs failed to respond.

⁴⁹ Many dogs overcame their helplessness after the experimenter physically dragged them

to depression in humans.⁵⁰ Walker, applying this theory to the problem of battered women, explains that "the women's experiences . . . of their attempts to control the violence would, over time, produce learned helplessness and depression as the 'repeated batterings, like electrical shocks, diminish the woman's motivation to respond.'" ⁵¹ The court in *State v. Kelly*⁵² embraced this view, asserting that some women "become so demoralized and degraded by the fact that they cannot predict or control the violence that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation."⁵³

The third phase of the cycle theory—the loving contrition phase—has also been invoked to explain why battered women fail to leave violent relationships. According to Walker, the batterer's "extremely loving, kind, and contrite behavior"⁵⁴ operates as a "positive reinforcement for remaining in the relationship."⁵⁵ This loving behavior immediately follows the acute battering incident and softens the woman's recollection of the extremely negative preceding phase. Hence, a woman suffers the paralysis of learned helplessness due to the uncontrollable beatings, and, additionally, is lured into staying by that hope that things will be different in the future.

II. A CRITIQUE OF THE RESEARCH ON BATTERED WOMAN SYNDROME

The validity of the evidence on battered woman syndrome has received little critical attention in either the courtroom or the legal literature.⁵⁶

from their confinement; other dogs, though, never learned to escape. *Id.* at 260-61.

⁵⁰ See M. Seligman, *Helplessness: On Depression, Development, and Death* (1975); Abramson, Seligman & Teasdale, *Learned Helplessness in Humans: Critique and Reformulation*, 87 J. Abnormal Psychology 49, 50 (1978).

⁵¹ L. Walker (1984), *supra* note 2, at 87 (quoting L. Walker (1979), *supra* note 2, at 49).

⁵² 97 N.J. 178, 478 A.2d 364 (1984).

⁵³ *Id.* at 194, 478 A.2d at 372.

⁵⁴ L. Walker (1979), *supra* note 2, at 65.

⁵⁵ L. Walker (1984), *supra* note 2, at 96.

⁵⁶ Courts in some battered woman cases deliberately eschew any examination of the research methodology underlying the scientific evidence. In *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979), the court considered it improper for an appellate court to evaluate the validity of scientific findings. In response to the dissent's criticism of the sample size used in one study, the court stated, "We do not understand the basis on which an appellate judge can make a *de novo* determination here." *Id.* at 639 n.25. When courts do address the methodological questions, the analysis tends to be superficial. For instance, in *Buhrle v. State*, 627 P.2d 1374 (Wyo. 1981), the court rejected the expert's testimony because it had not been shown to be scientifically accepted, but the court did not take its analysis beyond the assertion that the "defendant failed to demonstrate to the trial court that the state of the art would permit a reasonable expert opinion." *Id.* at 1377.

Today most lawyers and judges are probably ill-prepared to evaluate the empirical validity of social science research. Two psychologists, hired by a prosecutor as expert witnesses in

Critical review usually focuses on the applicability of researchers' conclusions to the legal doctrine of self-defense, not on the validity of the conclusions themselves.⁸⁷ Commentators have smoothened over the numerous analytical problems involved in applying theories of battered woman syndrome to self-defense cases, and they have wholly neglected the empirical flaws of the research. This section begins with some general comments on the role of battered woman syndrome researchers as expert witnesses. Next, after briefly outlining the general requirements for the admissibility of scientific evidence, this section examines the methodological flaws of the research on battered woman syndrome and the analytical weaknesses of the cycle and learned helplessness theories.

A. *The Problem of Scientific Advocacy*

Legal analyses of battered woman syndrome often perfunctorily dismiss the significance of the time interval between the man's physical attacks and the battered woman's deadly response.⁸⁸ Likewise, some battered woman defendants seem to argue that since the attacks place the woman in a constant state of fear, her defensive action is justified no matter when it occurs.⁸⁹ In effect, these defendants seek to stretch self-defense doctrine's imminence requirement almost to infinity. The recent case of *State v. Martin*⁹⁰ illustrates the troubling implications of this line of thinking and demonstrates Walkers's willingness to offer her testimony on battered

a battered woman self-defense case, relate their experience: "A cursory reading of the expert's research indicated a litany of errors that any properly trained social scientist would have discovered. However, lawyers are not social scientists, and just communicating our conclusions to the prosecutor took many months." Gertz & True, *Social Scientists in the Courtroom: The Frustrations of Two Expert Witnesses, in Courts and Criminal Justice: Emerging Issues* 81 (S. Talarico ed. 1985). As creative advocates increasingly employ social science evidence in court, though, judges and other lawyers must become more sophisticated in their understanding of the validity and relevance of social science.

⁸⁷ The legal scholarship in this area seems to accept uncritically the conclusions of the social science researchers, with little regard for the reliability of the methods employed in arriving at these conclusions. To date, only one piece of legal commentary has ventured beyond the surface of the social science research to actually consider the accuracy of the research findings themselves. See Acker & Toch, *supra* note 5, at 139-43.

⁸⁸ See, e.g., Buda & Butler, *supra* note 5, at 375 ("A battered wife's perception of the imminence of . . . anger may reasonably encompass every moment in the presence of her frequently violent husband."); Comment, *Self-Defense*, *supra* note 5, at 493-94 ("Although she may not be receiving an actual physical attack at the time [of her self-defensive action], she nevertheless believes that her life is in imminent danger."); Note, *Wife's Dilemma*, *supra* note 5, at 929 ("[I]t makes little sense for the law to excuse the wife's killing if it occurs while she is being beaten, but to find her guilty of murder if she kills during a temporary respite between beatings.").

⁸⁹ See, e.g., *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984).

⁹⁰ 666 S.W.2d 895 (Mo. Ct. App. 1984).

woman syndrome even in extremely implausible cases.

Helen Martin separated from her husband Ronald in September, 1980, after a violent five-year marriage.⁶¹ Ronald moved in with another woman and talked about blowing up Helen's house for the insurance money. Helen feared he would do it while she was in the house. Helen hired Robert Bratcher for \$10,000 to kill Ronald. On December 5, 1980, after Ronald came to the house to sign some papers, Bratcher emerged from his basement hiding place and shot Ronald in the neck. Bratcher shot him a second time after Helen complained, "He's not dying fast enough—hit him again."⁶² Helen later went out to celebrate a friend's birthday. The next day, December 6, Helen reported her husband missing. On December 7 she paid the premiums on her husband's life insurance policies. Ronald's body was found on the 8th and she confessed to her involvement in his murder on the 9th.⁶³

Martin was convicted of murder.⁶⁴ She appealed her conviction on the ground, among others, that the trial court erred in refusing to admit evidence on battered woman syndrome.⁶⁵ Martin had planned to introduce expert testimony by Lenore Walker.⁶⁶ The Missouri Court of Appeals, however, rejected Martin's contention that as a result of repeated beatings she had reasonably believed she was in imminent danger of death or serious bodily harm.⁶⁷ The court held that the expert testimony was properly excluded, asserting that "the evidence here falls woefully short of establishing an issue of justifiable self-defense."⁶⁸

On one hand, Walker's willingness to testify in *Martin* might be explained as simply another instance of scientific expertise entering the adversarial process: since this process will generally screen out irrelevant evidence, the expert herself need not decide whether the testimony is appropriate in any given case. On the other hand, though, Walker's intended role in *Martin* is deeply disturbing. That the leading theoretician of battered woman syndrome would be willing to characterize *Martin* as a case of legitimate self-defense seems to call into question the credibility of her testimony in other cases. Certainly, few cases are as far removed from the paradigm of self-defense as *Martin*,⁶⁹ but it is precisely this will-

⁶¹ Id. at 897.

⁶² Id.

⁶³ Id. at 897-98.

⁶⁴ Id. at 897.

⁶⁵ Id. at 899.

⁶⁶ Id.

⁶⁷ See id. at 899-901.

⁶⁸ Id. at 899.

⁶⁹ *Martin* is not unique, however. See, e.g., *State v. Leaphart*, 673 S.W.2d 870, 872 (Tenn. Crim. App. 1983) (defendant hired a man to kill her husband and later sought to establish

ingness of experts to take the stand in extreme cases that reinforces the perception among many lawyers that psychologists and psychiatrists are simply "hired guns."⁷⁰

B. Analytical and Methodological Criticisms

Of even greater concern than advocacy accompanying the expert witness into the courtroom is advocacy accompanying the researcher into the laboratory. Walker explicitly recognizes her sympathy for battered women,⁷¹ and courts have criticized the bias this sympathetic perspective engenders. According to the court in *Buhrle v. State*,⁷² for example, Walker's statements in *The Battered Woman* and on voir dire suggested "that Dr. Walker may make certain conclusions and state certain theories, then engage in research to attempt to substantiate those theories and conclusions."⁷³ This section criticizes Walker's work in light of the prevailing evidentiary requirements for the admissibility of scientific evidence.

self-defense using battered woman syndrome evidence).

⁷⁰ See generally Morse, *Crazy Behavior, Morals, and Science: An Analysis of Mental Health Law*, 51 S. Cal. L. Rev. 527 (1978) (arguing that the use of mental health professionals as expert witnesses dilutes the role of moral issues in the criminal law). But see Bonnie & Slobogin, *The Role of Mental Health Professionals in the Criminal Process: The Case for Informed Speculation*, 66 Va. L. Rev. 427 (1980) (contending that courts should permit mental health professionals to offer opinions as expert witnesses).

⁷¹ In the introduction of *The Battered Woman*, Walker describes her perspective as follows:

I am aware that this book is written from a feminist vision. It is a picture of what happens in a domestic violent act from the perspective of only one of the two parties. The men do not have equal rebuttal time. Rather, I view women as victims in order to understand what the toll of such domestic violence is like for them. Unfortunately, in doing so I tend to place all men in an especially negative light, instead of just those men who do commit such crimes.

L. Walker (1979), *supra* note 2, at xvii. In the preface to her more recent book, Walker recognizes the difficulties in treating her subject dispassionately but suggests that her own work has somehow managed to remain objective:

It is foolish for academicians and professionals to stand behind the cloak of objectivity in a field of study as politicized as this. Wife-beating has been with us for as long as we have historical records, but there were few attempts to understand or change it until the feminists politicized it. . . . Neutrality or objectivity by anyone in this field, where estimates of incidence rates run higher than half of the population, is unlikely unless special precautions are used, such as those taken by a researcher.

L. Walker (1984), *supra* note 2, at x-xi.

⁷² 627 P.2d 1374 (Wyo. 1981).

⁷³ *Id.* at 1377; see also *Ibn-Tamas v. United States*, 455 A.2d 893, 894-95 (D.C. 1983) (Gallagher, J., concurring) (quoting at length from *The Battered Woman* and criticizing Walker's bias).

1. The Admissibility of Scientific Evidence

In determining the admissibility of novel scientific evidence, courts usually employ either the "general acceptance" test or the "relevancy" test.⁷⁴ The classic formulation of the general acceptance test was set forth by the Court of Appeals of the District of Columbia in *Frye v. United States*.⁷⁵ Under this test, a relevant scientific principle or discovery will be admitted if it has become generally accepted by scientists in the particular field of study.⁷⁶ Alternatively, the relevancy test⁷⁷ treats scientific evidence much like ordinary evidence.⁷⁸ Scientific evidence is admissible if it is relevant to a disputed fact in the case and if an expert testifies as to its validity.⁷⁹ At a theoretical level the two tests differ in the extent to which they require scientific evidence to be accepted in its field of origin.⁸⁰ In practice, however, the tests are quite similar; both focus on the

⁷⁴ See C. McCormick, McCormick on Evidence § 203, at 605 (E. Cleary 3d ed. 1984).

⁷⁵ 293 F. 1013 (D.C. Cir. 1923). In an oft-quoted passage the court stated:

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

Id. at 1014.

⁷⁶ See id.

⁷⁷ See, e.g., Fed. R. Evid. 702 ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.").

⁷⁸ Nonscientific evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401.

⁷⁹ See, e.g., Fed. R. Evid. 702. Rules of evidence do not establish the criteria of relevance. The court must rely on logic and experience to ascertain the probative value of evidence. As Professor Gianelli notes, however, "[t]he probative value of scientific evidence . . . is connected inextricably to its reliability." Giannelli, *The Admissibility of Novel Scientific Evidence: Frye v. United States, a Half-Century Later*, 80 Colum. L. Rev. 1197, 1235 (1980). "Reliability," as Giannelli uses the term, refers to "the validity of the underlying principle, . . . of the technique applying that principle, and . . . the proper application of the technique on a particular occasion." Id. at 1200-01 (footnote omitted). The validity of the research is thus the key to its probative value as evidence. Scientists distinguish between two types of validity in research findings, internal validity and external validity. Internal validity involves the accuracy of the conclusions drawn in the study itself. External validity concerns the extent to which the findings of the study can be generalized to other situations. See J. Monahan & Laurens Walker, *Social Science in Law: Cases and Materials* 33-81 (1985); P. Robinson, *Fundamentals of Experimental Psychology: A Comparative Approach* 92-99 (1976).

⁸⁰ Under the relevancy test it is sufficient for one or two experts to testify that the evidence is valid. See C. McCormick, *Law of Evidence* § 170, at 363 (1954) ("Any relevant

validity of the scientific testimony offered as evidence.⁸¹

Significant dispute surrounds the issue of precisely *what* it is that must be found valid. Here again the courts tend to split along two lines. One view holds that only the methodology used to obtain the results need pass judicial scrutiny. As the court in *Ibn-Tamas v. United States*⁸² succinctly stated, "Satisfaction of the criterion [of admissibility] begins—and ends—with a determination of whether there is a general acceptance of a particular methodology, not an acceptance, beyond that, of particular study results based on that methodology."⁸³ According to this view, the court simply identifies the relevant scientific field and determines whether the researcher's methodology is valid by the standards of that field; if the methodology passes this test, the jury assumes responsibility for evaluating the substance of the research findings.⁸⁴

Under the second and more exacting approach, the court determines the validity not only of the underlying methodology but also of the results this methodology yields. The court, not the jury, evaluates the strength of the scientific findings. The trial court in *State v. Hawthorne*,⁸⁵ for example, rejected the scientific evidence on battered woman syndrome because 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 . . ."⁸⁶

Whichever of these two approaches⁸⁷ a court adopts, it must as a

conclusions which are supported by a qualified expert witness should be received unless there are other reasons for exclusion." By contrast, under the general acceptance test even the testimony of several experts may not be enough to secure admission of the evidence; there must be a consensus in the applicable field that the evidence is sound. See Gianelli, *supra* note 79, at 1205.

⁸¹ Professor Gianelli argues that *Frye* sets forth a more conservative test and imposes more restrictions on the use of scientific evidence. The relevancy approach, he claims, suffers from the leniency of the requisite showing of reliability, since "probative value could be established by the assertions of one expert." Giannelli, *supra* note 79, at 1236. Professor Saltzburg contends, however, that "it is not very helpful to debate the question whether *Frye* or a relevance approach to scientific evidence is preferable." Saltzburg, *Frye* and Alternatives, 99 F.R.D. 208, 209 (1983). He continues:

The two approaches are essentially the same, despite the frequency with which they are assumed to differ. The question that is more significant is how much success a scientific claim must have before courts will rely on it. The answer to this question should be the same under *Frye* or a relevance approach.

Id.

⁸² 407 A.2d 626 (D.C. 1979).

⁸³ *Id.* at 638.

⁸⁴ See Comment, Self-Defense, *supra* note 5, at 505-06 ("If the methods are acceptable, the different conclusions, interpretations, and criticisms of that method should go to the weight which the testimony is given and not to its admissibility.").

⁸⁵ 470 So. 2d 770 (Fla. Dist. Ct. App. 1985) (affirming trial court's holding).

⁸⁶ *Id.* at 773.

⁸⁷ Both of the prevailing approaches treat scientific findings as factual evidence. Once the

threshold matter consider whether the scientific evidence in question sheds light on the facts at issue in the case and whether the researcher correctly employed a valid methodology. Thus, in battered woman cases the court should at a minimum ensure that the evidence is genuinely relevant to a material aspect of the self-defense claim and that the researcher offering to testify has correctly applied the methodology of the general field of clinical psychology. To stop short of this inquiry, as courts and commentators have done,⁸⁸ is to risk exposing the jury to unsound and potentially prejudicial⁸⁹ evidence. This approach satisfies neither the general acceptance nor the relevancy tests.⁹⁰ If research cloaks itself in the garb of an accepted scientific field, the court must examine the suitability of the fit. If the research violates basic tenets of its field, it should not go to the jury with the imprimatur of science.

2. *Flaws in the Cycle Theory*

Presented in the awe-inspiring language of science, Walker's cycle theory has been widely accepted by the courts.⁹¹ Close analysis, though, reveals that Walker's research actually provides little empirical support for the cycle theory. Walker tested her theory through a series of interviews in which interviewers questioned subjects⁹² concerning four bat-

evidence is admitted, the jurors evaluate it as they see fit. In a recent article, Professors Monahan and Walker propose a fundamentally different approach to social science evidence. The courts, they argue, should treat social science research, or "social authority," in much the same way as legal precedent. The trial court, in their view, should consider the validity and relevance of proffered social authority and give it the weight, if any, it merits. The court should then instruct the jury on the relevant social authority just as it does on the relevant law. At the appellate level the court should take the research into account as it sees fit. See Monahan & Laurens Walker, *Social Authority: Obtaining, Evaluating and Establishing Social Science in Law*, 134 U. Pa. L. Rev. 477 (1986).

⁸⁸ See, e.g., *Smith v. State*, 247 Ga. 612, 277 S.E.2d 678 (1981); *State v. Anaya*, 438 A.2d 892 (Me. 1981); *Comment, Self-Defense*, *supra* note 5.

⁸⁹ Even where the underlying scientific evidence is sound, expert testimony may unfairly prejudice the jury. The jury may be inclined to give the expert testimony undue weight because it has an "aura of special reliability and trustworthiness." *United States v. Amarel*, 488 F.2d 1148, 1152 (9th Cir. 1973). The trial court may exclude relevant expert testimony if necessary to prevent unfair prejudice. See, e.g., *Fed. R. Evid.* 403.

⁹⁰ Cf. Giannelli, *supra* note 79, at 1214 (rather than "focusing on the problems associated with empirical validation, the courts have confused the issue by concentrating on the qualifications of experts").

⁹¹ See *Ibn-Tamas*, 407 A.2d at 626; *State v. Anaya*, 438 A.2d 892 (Me. 1981); *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984); *State v. Allery*, 101 Wash. 2d 591, 682 P.2d 312 (1984).

⁹² The subjects for Walker's 1984 research consisted of 400 "self-identified" battered women living in six states. L. Walker (1984), *supra* note 2, at 202. Walker explains, "A woman was considered eligible to participate if she reported that she was battered at least

tering incidents—the first, the second, one of the worst and the most recent. Walker explains:

After the description of each incident, basing her judgment on both the open-ended description and a series of closed-ended questions concerning the batterer's behavior before the event ("Would you call it . . . irritable, provocative, aggressive, hostile, threatening?"—each on a 1-5 scale) and after the event ("nice, loving, contrite"), the interviewer recorded whether or not there was "evidence of tension building and/or loving contrition."⁹³

Walker's research design contains five major, readily identifiable methodological and interpretive flaws, each of which calls into question the validity of the cycle theory.

First, although Walker gives only sketchy details on the procedure used to establish the existence of the behavioral cycle, the interviewers' use of leading questions renders the subjects' responses suspect. It comes as no surprise that when asked, "Would you call it . . .?," a majority of subjects noted "tension building and/or loving contrition." This may well have been the result of "hypothesis gnessing"⁹⁴ on the part of the subjects. In many studies the hypotheses of the experimenters are not difficult to discern, and subjects may simply supply the researchers with what they want to hear. Properly executed social science research involving human subjects carefully guards against this behavior.⁹⁵ When possible, experimenters should disguise their hypotheses.⁹⁶ Under no circumstances should a researcher permit her hypotheses to become as obvious to her subjects as Walker did.

The above-quoted paragraph reveals a second and related source of difficulty. Walker derives her evidence of "tension building and/or loving contrition" not from the subjects' responses directly but instead from the interviewers' evaluations of those responses. This arrangement made the

two times by a man with whom she had an intimate or marital relationship. The criteria for physical abuse was any form of a coercive physical act, with or without resultant injury." *Id.* Walker did not use a control group of women with which to compare her sample's responses. *Id.* at 203. For a discussion of Walker's failure to use a control group, see *infra* notes 122-124 and accompanying text. About half of the women in the sample reported on nonbattering relationships, however, and Walker used these data for comparison purposes. Walker's researchers interviewed the battered women individually using a structured, 200-page questionnaire. This questionnaire contained a number of questions developed specifically for this study, *id.* at 226, and also incorporated several standardized scales, *id.* at 233.

⁹³ L. Walker (1984), *supra* note 2, at 96.

⁹⁴ For a discussion of hypothesis guessing, see T. Cook & D. Campbell, *Quasi-Experimentation: Design and Analysis Issues for Field Settings* 66 (1979).

⁹⁵ See *id.*

⁹⁶ See *id.* at 67.

research susceptible to the problem of experimenter expectancies.⁹⁷ Just as a subject may tailor her responses to fit what she believes the experimenter wants to hear, so too may the experimenter's expectations color her interpretation of the data the subject provides.⁹⁸ Cook and Campbell, in their seminal study of experimental designs, suggest that this danger "can be decreased by employing experimenters who have no expectations or have false expectations, or by analyzing the data separately for [experimenters who] have different kinds or levels of expectancy."⁹⁹ Allowing experimenters with obvious expectations to substitute their judgment in place of the subjects' responses clearly violates this basic precept. Indeed, it would be difficult to fashion a design more conducive to experimenter expectancies than the one used by Walker.¹⁰⁰

The third and perhaps the most legally significant flaw in Walker's development of the cycle theory is her failure to place the three phases of the cycle within any sort of time frame.¹⁰¹ For example, tension building that occurs only fifteen minutes prior to an acute battering episode does not seem to constitute a "constant state of fear." By contrast, tension building that lasts several days and always culminates in a severe beating assumes tremendous legal significance in a self-defense case. Moreover, Walker's data and discussion do not indicate whether a period of normality occurs between loving contrition and resumed tension building. If a period of normality does occur, this would suggest that the cycle actually has four phases, a complication Walker does not consider. Finally, by concentrating on only four beating episodes, Walker's research tells us nothing about tension building episodes that do *not* lead to severe beatings.

The fourth flaw in Walker's work is her failure to relate empirically the cycle of violence to the "cumulative terror" that purportedly grips the defendant in the interim between the batterer's attack and her response. Supporters of battered woman syndrome testimony have understood Walker's research to show that "during the first two stages, particularly

⁹⁷ See *id.*

⁹⁸ See *id.*

⁹⁹ *Id.*

¹⁰⁰ To her credit, Walker does note that "[c]omparisons between interviewers' responses indicated a high level of agreement," L. Walker (1984), *supra* note 2, at 96, suggesting the reliability of the interviewers' observations. Yet Walker presents no data showing the level of agreement and does not explain how she made the comparisons.

¹⁰¹ Although the cycle theory is silent as to the timing of the various phases of the cycle, Walker's arguments implicitly recognize that timing is a central issue. See, e.g., Walker, Battered Women, Psychology, and Public Policy, 39 *Am. Psychologist* 1178, 1179 (1984) ("Self-defense laws . . . require the perception of danger to be imminent and have not recognized the reasonableness of *prediction of imminence* based on a history of repeated violence.") (emphasis added).

in the second one, the woman is consumed by fear and feels powerless to do anything to end the violence."¹⁰² Yet this conclusion receives little support from the research.

Walker asked her subjects, "Did you think he ever would or could kill you?" Forty-eight percent said "yes"; twenty-six percent said "yes, if mad enough"; twelve percent said "yes, accidentally"; six percent said "maybe"; and eight percent said "never."¹⁰³ Thus, eighty-six percent of the women believed their husbands were capable of killing them under some circumstances. At the same time, fifty percent of the women believed they could kill their husbands under some circumstances.¹⁰⁴ There are serious problems in extrapolating from this data to the proposition that women caught in the cycle of violence are consumed by "constant fear." Foremost, the research does not link the women's fear of harm with any of the specific stages of the cycle. Also, only slightly less than half of the women in the sample responded with an unequivocal "yes," meaning that the rest probably experienced something less than a state of terror. Finally, all of the women Walker questioned were battered women.¹⁰⁵ Sound experimental design would require that other women—possibly some involved in discordant but nonviolent marriages—also be questioned for purposes of comparison.¹⁰⁶

The fifth major flaw lies in Walker's conclusion that her findings establish the existence of a distinct behavioral cycle. If the cycle theory is to have any coherence, it must refer to the occurrence of all three stages—tension building, leading to the acute battering incident, followed by loving contrition—in a single relationship. Walker relates her data to the cycle theory as follows:

In 65% of all cases . . . there was evidence of a tension-building phase prior to the battering. In 58% of all cases there was evidence of loving contrition afterward. In general, then, there is support for the cycle theory of violence in a majority of the battering incidents described by our sample.¹⁰⁷

Walker's data do not support her conclusion. She provides data on the tension building and loving contrition phases separately, and obviously this separated data provides little insight into the percentage of women who experienced all three phases as a "cycle." If sixty-five percent of *all subjects* experienced tension building before an acute battering incident

¹⁰² Note, *Wife's Dilemma*, *supra* note 5, at 928.

¹⁰³ L. Walker (1984), *supra* note 2, at 177.

¹⁰⁴ *Id.*

¹⁰⁵ See *supra* note 92.

¹⁰⁶ See P. Robinson, *supra* note 79, at 207; *infra* notes 122-124 and accompanying text.

¹⁰⁷ L. Walker (1984), *supra* note 2, at 96-97.

and fifty-eight percent of *all subjects* experienced loving contrition after an acute battering incident, then it is likely that only about thirty-eight percent of the women actually experienced the entire cycle.¹⁰⁸ Thus, it is not at all clear that, as Walker asserts, the "data support the existence of the Walker Cycle Theory of violence."¹⁰⁹

In addition to these five methodological flaws in Walker's research itself, there is a difficulty in Walker's facile application of the cycle theory to cases in which a woman has killed her mate. As noted in Part I, self-defense doctrine justifies only the defendant's use of a reasonable amount of force in repelling the threatened danger;¹¹⁰ a corollary of this principle is that the defender may employ deadly force only in response to the aggressor's threat of deadly force.¹¹¹ Even assuming the validity of the cycle theory, the theory does not provide a jury with any insights into the precise nature of the harm a woman perceives at the time she strikes out at the batterer. The theory posits that the cyclical nature of the violence subjects the woman to the fear that she is in danger of imminent harm, but the theory does not differentiate between perceptions of deadly harm and perceptions of lesser sorts of harm. Where a woman has resorted to deadly force in self-defense, the central issue is likely to be whether this degree of force was commensurate with the harm she perceived. On this issue Walker's research adds nothing to the jury's understanding.

3. *The Misapplication of Learned Helplessness Theory*

Like her cycle theory, Walker's adaptation of the learned helplessness concept is flawed, suffering from both theoretical inconsistency and the use of an inadequate research methodology. Walker uses the theory in a way that overlooks a crucial finding of Seligman's original research.¹¹² In

¹⁰⁸ This figure is obtained by employing the basic rule for deriving the joint probability of independent events. The probability of the joint occurrence of independent events is equal to the product of their individual probabilities. W. Hays, *Statistics* 42 (3d ed. 1981). Thus, to calculate the probability that a woman experienced the entire cycle, the probability that a woman experienced tension building before an acute battering incident (65%) is multiplied by the probability that a woman experienced loving contrition after an acute battering incident (58%). This calculation yields the 38% figure. Of course, this result is merely a probabilistic estimation, and it assumes that tension building and loving contrition are independent variables, which may not be the case. Still, even if all of the women experiencing loving contrition were among the 65% experiencing tension building, *no more* than 58% could have experienced the entire cycle. At the same time, the proportion experiencing the entire cycle could have been as low as 23% (the sum of 58% and 65% is 123%; because the entire sample constitutes only 100%, 23% must have experienced both phases).

¹⁰⁹ L. Walker (1984), *supra* note 2, at 9.

¹¹⁰ See *supra* note 12 and accompanying text.

¹¹¹ See *supra* note 12.

¹¹² See Seligman, Maier & Geer, *supra* note 48.

Seligman's experiment, once the dogs were rendered helpless, researchers found it extremely difficult, and in some cases impossible, to retrain the dogs to exercise control over their environment.¹¹³ Thus, from a theoretical perspective one would predict that if battered women suffered from learned helplessness they would not assert control over their environment; certainly, one would not predict such a positive assertion of control as killing the batterer.¹¹⁴

In an attempt to explain what has triggered battered women to use deadly force, Walker conjectures that "[t]he women felt that no one took them seriously, that they alone had to protect themselves against brutal attacks, and that they knew by observable changes in the man's physical or mental state that this time he really would kill them."¹¹⁵ Clearly, though, this explanation contradicts the basic insight of learned helplessness theory. For a battered woman to realize that she alone has to protect herself is antithetical to the notion that she is unable to assert control over her environment. If at the time of her action the battered woman believes she could be killed and recognizes that she must help herself, the claim of self-defense might be reasonable. But on these questions the jury must consider the individual circumstances of each case; Walker's generalizations concerning learned helplessness have no relevance to these issues.

Walker's examination of learned helplessness also suffers from a flawed research design. She compared women still in battering relationships with women no longer in such relationships.¹¹⁶ She hypothesized that the women still in battering relationships would exhibit more learned helplessness than the others. This learned helplessness, she believed, would manifest itself by the women still in the battering relationships being more fearful, anxious, and depressed, and less angry, disgusted, and hostile.¹¹⁷ She compared the two groups' responses on these variables for the last three beating episodes.¹¹⁸

There is little theoretical basis for Walker's selection of these factors as the variables representing learned helplessness. These are all factors that may be related to or correlated with learned helplessness, but there is no

¹¹³ See *id.* at 260-61.

¹¹⁴ Learned helplessness theory describes a pattern of essentially passive behavior, and, as Gelles and Cornell note, "Most battered women are far from passive." Gelles & Cornell, *supra* note 1, at 77. Indeed, women subject to constant abuse assert themselves in many ways; they "call the police, they go to social workers or mental health agencies, they flee to shelters or the homes of friends or parents." *Id.*

¹¹⁵ L. Walker (1984), *supra* note 2, at 40.

¹¹⁶ See *id.* at 203.

¹¹⁷ See *id.* at 87-89.

¹¹⁸ See *id.* at 86-89.

evidence that they are uniquely indicative of that condition. When Walker presents her data, she compounds the problem by lumping together the mean scores for fear, anxiety, and depression on the one hand and those for anger, disgust, and hostility on the other hand.¹¹⁹ Such a compound score has little value as a measurement of all three variables as a group; a high compound score may simply be the result of a high response on one variable and average or slightly low responses on the other two. More startling is Walker's complete failure to conduct any tests of statistical significance and her willingness to cite seemingly minute differences in scores as support for her theory.¹²⁰ She asserts that the "results are compatible with learned helplessness theory,"¹²¹ but neither her data nor her analysis supports this conclusion.

The most legally significant flaw in Walker's research design is her failure to interview women who were never in battering relationships.¹²² Such a control group would provide valuable and necessary data with which to compare the responses of abused women.¹²³ The success of a self-defense claim usually turns on the reasonableness of the defendant's action—how the action compares with what others would be expected to do in the same situation.¹²⁴ Walker's failure to study a control group makes it impossible for her to draw valid conclusions as to the reasonableness of a battered woman's behavior.

Finally, an obvious limitation to Walker's research is the simple fact that most of her subjects did not kill anyone. Although she had nine women in her sample who had killed their batterers,¹²⁵ she does not provide any comparisons between those who killed and those who did not.¹²⁶

¹¹⁹ See *id.* at 88.

¹²⁰ See *id.* at 89.

¹²¹ *Id.*

¹²² Walker explains her decision to omit this fundamental element of empirical research: "No control group was utilized for comparisons because of the time and expense involved [This study] was seen as an opportunity to empirically identify relevant variables in preparation for subsequent research that could then utilize control of meaningful variables." *Id.* at 203. Thus, Walker's conclusions, as she admits, can be viewed only as tentative, offering insights to be investigated in "subsequent research."

¹²³ Cf. Rosenbaum & O'Leary, *Marital Violence: Characteristics of Abusive Couples*, 49 *J. Consulting and Clinical Psychology* 63, 69 (1981) (evaluating the characteristics associated with spouse abuse by comparing violent couples with nonviolent but discordant couples and harmonious couples).

¹²⁴ See *supra* notes 17-18 and accompanying text.

¹²⁵ L. Walker (1984), *supra* note 2, at 39.

¹²⁶ Professor Browne recently conducted a study comparing battered women who have killed their batterers with battered women who have not. She found several factors that distinguished women in the "homicide group," including "severity of the woman's injuries, the man's drug use and frequency of intoxication, the frequency with which abusive incidents occurred, forced or threatened sexual acts by the man, the woman's suicide threats,

The economic, social, and emotional circumstances of the two groups may be very different. The factors that lead one woman to kill while others escape or continue to suffer beatings may or may not be relevant to the claim of self-defense, but if these subpopulations differ, it clearly calls into question the generalizations Walker derives from her research on learned helplessness.

III. DEFENDING BATTERED WOMEN

The research on battered woman syndrome is not yet sufficiently developed to merit its use as evidence in self-defense cases, but the basic insight informing the work of Walker and her followers is sound: a rigid, formalistic application of the traditional standard of justifiable self-defense unfairly ignores the special circumstances surrounding a battered woman's attack on her mate. By asking only what a highly abstracted "reasonable person" would do,¹²⁷ the law turns a blind eye to the woman's history of abuse, to the social and economic pressures preventing her from leaving, and to her engrossing fear.

Because of the peculiar predicament of battered women, courts should eschew the formalistic rhetoric surrounding the reasonable person test¹²⁸ and instead focus on the important underlying circumstances of these difficult cases. Indeed, it is too simplistic to distinguish between the objective analysis of self-defense claims, in which the jury considers only what a "reasonable person" would have done, and the subjective analysis, in which the jury fully adopts the defendant's perspective and evaluates only the honesty of her belief.¹²⁹ It is more accurate to view these tests as lying at opposite ends of a continuum of possible approaches. As the jury increasingly adopts the defendant's point of view, the objective standard merges with the subjective standard.¹³⁰

The crucial issue, therefore, is to what extent the jury should be allowed to inquire into the individual capacities or circumstances of the defendant. As Professor Fletcher argues, an individual inquiry is necessary to allow the jury to understand fully the defendant's claim.¹³¹ Professor Schneider extends this approach to battered women's cases and con-

and the man's threats to kill." Browne, *Family Homicide: When Victimized Women Kill*, in *Handbook of Family Violence* (forthcoming).

¹²⁷ See *supra* notes 17-18 and accompanying text.

¹²⁸ See W. LaFave & A. Scott, *supra* note 11, at 392.

¹²⁹ See *supra* notes 17-19 and accompanying text.

¹³⁰ See Kelman, *Interpretive Construction in the Substantive Criminal Law*, 33 *Stan. L. Rev.* 591, 636 (1981); see also *supra* notes 20-26 and accompanying text (discussion of *Wanrow*).

¹³¹ Fletcher, *The Individualization of Excusing Conditions*, 47 *S. Cal. L. Rev.* 1269, 1292-93 (1974).

tends that without an individualized inquiry jurors might misinterpret the incident and perhaps fall prey to a "stereotypical attitude toward the circumstances surrounding the woman's act."¹³² Understanding the context in which the woman acted is essential to understanding the reasonableness of her act. To be sure, Walker and other researchers recognize the abused woman's own situation as the factor that most strongly contributes to her sense of entrapment and fear. Unfortunately, their focus in the courtroom tends to be the psyche of the defendant rather than her environment, leading courts to refer to battered women defendants as though they suffered from some identifiable ailment with easily recognizable symptoms or behavior patterns.¹³³ This tendency probably stems in part from the use of the word "syndrome" to describe the phenomenon in question.¹³⁴ Researchers have not, however, convincingly demonstrated that the battering experience gives rise to a single distinctive behavior pattern. It is a mistake to use one theoretical construct to describe all women who are victims of domestic violence.

Rather than considering an expert's dubious generalizations on battered woman syndrome, the jury should take into account the circumstances predating the individual woman's self-defensive act. As in *State v. Wanrow*, the court should allow the jury to evaluate the defendant's act "in light of *all* the facts and circumstances known to [her], including those known substantially before the killing."¹³⁵ Thus, the court should admit testimony—by the defendant or others familiar with her situation—about the violence in the defendant's relationship with the decedent.¹³⁶ Such testimony might illuminate the woman's fear of harm, her

¹³² Schneider, *supra* note 14, at 640; see also Crocker, *supra* note 5, at 132 ("Rather than focusing on the hypothetical reasonable man, individualization demands that the jury inquire into the individual defendant's characteristics and culpability.").

¹³³ See, e.g., *State v. Kelly*, 97 N.J. 178, 192, 478 A.2d 364, 371 (1984) (describing battered woman syndrome as "a series of common characteristics that appear in women who are abused").

¹³⁴ One significant concern with Walker's characterization of battered women as "helpless" and "suffering" from battered women syndrome is that such characterizations may serve to perpetuate existing sexual stereotypes. Schneider, who urges an individualized inquiry into the abused woman's circumstances, states:

[E]xpert testimony not clearly tied to the individual woman defendant's circumstances and perspective should be used with care. Such testimony may suggest to the trier of fact that there is a "battered woman's syndrome" defense, which could encourage sexual stereotyping. Thus, the use of expert witnesses is often prudently foregone, especially where the defendant is credible and articulate.

Schneider, *supra* note 14, at 646.

¹³⁵ *Wanrow*, 88 Wash. 2d at 234, 559 P.2d at 555.

¹³⁶ In *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984), the court recognized the relevance of such testimony and its high probative value:

It is well settled that when there is evidence of prior physical abuse of defendant by

inability to escape, the unresponsiveness of police,¹³⁷ and her lack of other alternatives. All of these factors are relevant to the reasonableness of her self-defensive action.

In addition, courts should permit juries to consider valid empirical evidence, evidence that derives from a correct application of a valid scientific methodology. For example, although learned helplessness theory does not satisfactorily explain a woman's failure to leave the battering relationship, other researchers have identified factors that may be linked to a woman's "decision" to stay. Chief among these are economic and social factors.¹³⁸ Staying with a violent man might be the only reasonable alternative when a woman has no economic resources and no family or friends to support her and her children. Perhaps jurors need only be told that many women do not leave violent relationships because they believe they have no choice.¹³⁹

the decedent, the jury must be told that a finding of provocation may be premised on "a course of ill treatment which can induce a homicidal response in a person of ordinary firmness and which the accused reasonably believes is likely to continue."

Id. at 218-19, 478 A.2d at 384 (quoting *State v. Guido*, 40 N.J. 191, 211, 191 A.2d 45, 56 (1963)); see also *Acker & Toch*, *supra* note 5, at 137 ("Most people realize that past encounters may color perceptions, and the psychology involved in this process is neither complicated nor foreign to lay thinking. No expert testimony is needed to 'explain' that prior harms breed present fears.").

¹³⁷ See generally *Finesmith, Police Response to Battered Women: A Critique and Proposals for Reform*, 14 *Seton Hall L. Rev.* 74 (1983) (discussing police guidelines for intervention in domestic violence).

¹³⁸ Research amply supports these less theory-oriented generalizations. For example, Professors Kalmuss and Straus found the following:

The primary group of women who tolerate severe violence are those highest in objective dependency [i.e., economic dependency]. For such women it is not a question of necessary motivation to overcome the obstacles keeping them in abusive marriages, because, in a sense, the obstacles for them are insurmountable. They have virtually no alternatives to their marriages and, therefore, "must" tolerate the conditions of those marriages.

Kalmuss & Straus, *Wife's Marital Dependency and Wife Abuse*, 44 *J. Marriage & Fam.* 277, 284-85 (1982); see also *Strube & Barbour, The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, 45 *J. Marriage & Fam.* 785 (1983) (concluding that economic dependence is a significant factor in the woman's decision to remain in an abusive relationship).

¹³⁹ The court itself could convey this information through instructions to the jury instead of admitting an expert to testify to the same effect. For instance, where eyewitness identification is in dispute, Professor Grano recommends that the court review the scientific research and instruct the jury on factors reliably found to interfere with eyewitness perception and recall. Grano, *Kirby, Biggers, and Ash: Do Any Constitutional Safeguards Remain Against the Danger of Convicting the Innocent?*, 72 *Mich. L. Rev.* 719, 796 (1974). See generally *S. Saltzburg, American Criminal Procedure: Cases and Commentary* 574-76 (2d ed. 1984) (discussing the efficacy of cautionary jury instructions). This approach of allowing the court, rather than an expert, to synthesize scientific evidence would help prevent the jury

In short, the courts should allow the battered woman defendant to establish the reasonableness of her conduct through the introduction of evidence concerning her inability to leave the violent relationship and her perceptions of imminent harm at the time of the killing. The standard of justifiable self-defense would remain "objective" in that the jury would determine the reasonableness of the defendant's action as distinct from her honest belief that self-defense was necessary; but, as in *Wanrow*, the jury would do so with an awareness of all the circumstances facing the defendant at the time of her action.¹⁴⁰

Jurisdictions unwilling to adopt fully the *Wanrow* approach could nevertheless allow a limited subjective inquiry. Most jurisdictions permit the introduction of evidence on the victim's violent disposition,¹⁴¹ which bears on the reasonableness of the defendant's action. If the defendant knew that an assault was coming, her preemptive defensive action may indeed have been reasonable. Conversely, some explanation may be needed where a woman who has endured years of abuse suddenly strikes out in apparent revenge or with little provocation; the defense must show what triggered the deadly attack. In the absence of a reasonable explanation, the defendant could be found guilty of murder or some lesser included offense.¹⁴²

The unique circumstances surrounding battering relationships require a flexible and perhaps unique application of the elements of the self-defense claim. Still, the four elements of self-defense should not be stretched into oblivion. The jury should consider the context in which the battered woman acted, but unreliable evidence should not come cloaked in the speciously objective garb of expert witness testimony. Research on battered woman syndrome does not yet deserve admission as evidence with the imprimatur of science. Instead, the woman's history of abuse should be admitted in those cases where it appears relevant to the reasonableness of her perception of imminent harm at the time of the killing. In some cases, the history of violence should be excluded as evidence because it is so unrelated to the deadly encounter that its relevance does

from misinterpreting the wife's failure to escape her violent relationship. It would expose the jury to important probative evidence while at the same time shielding it from unreliable and potentially prejudicial expert testimony.

¹⁴⁰ See *Wanrow*, 88 Wash. 2d at 235, 559 P.2d at 556.

¹⁴¹ See, e.g., Fed. R. Evid. 404(a)(2); see also Annot., 1 A.L.R. 3rd 571, 575 (1965) ("[T]he defendant, after laying a proper foundation by evidence tending to show that in committing the homicide or assault he acted in self-defense, may introduce evidence of the turbulent and dangerous character of the deceased.").

¹⁴² See *State v. Leidholm*, 334 N.W.2d 811, 816 (N.D. 1983) (describing lesser included offenses for which a defendant might be convicted where she acted unreasonably in self-defense).

not outweigh its prejudicial impact.¹⁴³ The courts must make this determination on a case-by-case basis. Although this approach creates some uncertainty, a bright-line rule admitting the evidence is far more likely to expose the jury to unreliable testimony.

IV. CONCLUSION

The prevailing theories of battered woman syndrome have little evidentiary value in self-defense cases. The work of Lenore Walker, the leading researcher on battered woman syndrome, is unsound and largely irrelevant to the central issues in such cases. The Walker cycle theory suffers from significant methodological and interpretive flaws that render it incapable of explaining why an abused woman strikes out at her mate when she does. Similarly, Walker's application of learned helplessness to the situation of battered women does not account for the actual behavior of many women who remain in battering relationships. Thus, in self-defense cases a court should not allow the jury to consider evidence on battered woman syndrome.

Cases involving battered women clearly pose a significant challenge to self-defense doctrine. Mechanical application of the traditional objective standard is unduly harsh because it fails to appreciate the forces at work in a battering relationship. To avoid this harshness, the court should admit into evidence relevant and reliable empirical findings, particularly those on the economic and social factors that force women to remain in violent relationships. In addition, the jury should be allowed to hear testimony on the decedent's prior history of violence toward the defendant. Consideration of such evidence should better equip the jury to do justice to the battered woman.

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¹⁴³ See Fed. R. Evid. 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .").