THE BATTERED WOMAN SYNDROME IN THE AGE OF SCIENCE

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I. INTRODUCTION

The battered woman syndrome illustrates all that is wrong with the law's use of science. The working hypothesis of the battered woman syndrome was first introduced in Lenore Walker's 1979 book, *The Battered Woman.*[1] When it made its debut, this hypothesis had little more to support it beyond the clinical impressions of a single researcher. Five years later, Walker published a second book that promised a more thorough investigation of the hypothesis.[2] However, this book contains little more than a patchwork of pseudo-scientific methods employed to confirm a hypothesis that its author and participating researchers never seriously doubted.[3] Indeed, the 1984 book would provide an excellent case study for psychology graduate students on how *not* to conduct empirical research. Yet, largely based upon the same political ideology driving the researchers, judges have welcomed the battered woman syndrome into their courts.[4] Because the law is driven by precedent, it quickly petrified around the original conception of the defense. Increasingly, observers are realizing that the evidence purportedly supporting the battered woman syndrome is without empirical foundation,[5] and, perhaps more troubling, that the syndrome itself is inimical to the political ideology originally supporting it.[6] In short, in the law's hasty effort to use science to further good policy, it is now obvious that the battered woman syndrome is not good science nor does it generate good policy.

As originally promulgated in the language of self-defense doctrine, the use of syndrome evidence advanced several laudable goals. First, it helped expose the horrifying pervasiveness of domestic violence in the United States.[7] By highlighting the issue in the stark context of the criminal law, it contributed to concerted efforts to remedy the problem. Since the time the battered woman syndrome was first hypothesized, resources for victims of domestic violence have dramatically increased.[8] Syndrome advocates deserve substantial credit for

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1. LENORE E. WALKER, THE BATTERED WOMAN (1979) [hereinafter WALKER (1979)].

2. LENORE E. WALKER, THE BATTERED WOMAN SYNDROME(1984) [hereinafter WALKER (1984)].

3. *See* David L. Faigman, Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent,* 72 VA. L. REV. 619 (1986).

4. For a discussion of courts' responses to the battered woman syndrome, see *infra* notes 73–273 and accompanying text.

5. *See infra* notes 20–72 and accompanying text.

6. *See infra* notes 288–309 and accompanying text.

7. A 1993 House of Representatives report revealed the disturbing dimensions of domestic violence in America. H.R. REP. NO. 395, 103d Cong., 1st Sess., Violence Against Women Act of 1993, at 26 (1993). An estimated four million American women are battered each year by their spouses or partners. *Id.* Law enforcement statistics indicate that at least 21,000 domestic crimes were reported to police every week in 1991, and the number of unreported domestic violence incidents probably exceed reported incidents by more than three times. *Id.* Finally, about 35 percent of women's emergency room visits are due to injuries caused by abusive spouses and boyfriends. *Id.*

8. In 1994, President Clinton signed the Violence Against Women Act, which authorizes $1.6 billion in grants over the next six years to support state and local law enforcement and prosecutorial efforts to reduce violent crimes against women, including domestic violence. Pub. L. No. 103–322, 108 Stat. 1902 (codified in scattered sections of 8

this improved situation. Second, the use of the battered woman syndrome focused attention upon the weaknesses inherent in the traditional conception of self-defense, including the fact that the law has been largely driven by male conceptions of violence. Hence, in most jurisdictions, the defendant must show that she used only a proportional amount of force and only in response to an imminent harm.[9] These elements are rooted in an idealized version of the way men should combat violent aggressors. But a woman who is physically smaller than a man must defend herself at her only opportunity. Thus, a woman may respond to a man's unrelenting physical attacks by using a deadly weapon, since many women are simply unable to fend off assaults with their fists.[10] Finally, syndrome advocates deserve substantial credit for focusing researchers' attention on the psychological dynamics of violence in intimate relationships. Although the law has become fixated upon the syndrome model, many researchers are currently conducting excellent, sustained research on the psychology of both battered women and the men who batter them. Some of this work is relevant to legal decisionmaking and future work will undoubtedly provide substantial insights into the psychology of domestic violence.[11]

The battered woman syndrome ultimately fails because it was never a matter of science to begin with, and yet it was treated as a "scientific fact" by courts.[12] Good science rarely serves the specific interests of any political viewpoint. Science has political consequences, but its results should remain untainted by political influence. Today, the majority of courts have accepted the scientific jargon of syndrome advocates, with ramifications not altogether salutary for battered women. Perhaps the most serious consequence of the use of syndrome evidence is the courts' tendency to pathologize battered women, referring to them as "sufferers" of the syndrome, as paralyzed by "learned helplessness," and, possibly, as victims of an identifiable psychological disability.[13] Courts describe women who kill after suffering years of abuse, and who killed only after pursuing every reasonable alternative, as psychologically disabled and as deserving to be excused for their action. The pathology of the violent relationship has become the pathology of the battered woman. Other than archaic stereotypes about the weak character of women, there is no foundation for this characterization.

Thus, battered women who kill have either responded reasonably and

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U.S.C., 18 U.S.C., and 42 U.S.C.).

9. WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., HANDBOOK ON CRIMINAL LAW § 53 (1972).

10. For instance, the Washington Supreme Court observed in State v. Wanrow, 559 P.2d 548, 558–59 (Wash. 1977), that "women suffer from a conspicuous lack of access to training in...those skills necessary to effectively repel a male assailant without resorting to the use of deadly weapons." Based on this conclusion, the court held that "self-defense instructions [must] afford women the right to have their conduct judged in light of the individual physical handicaps which are the product of sex discrimination." *Id.*

11. *See infra* note 20. Although implicit in the text, it should be emphasized that this Article is critical of only one line of scientific inquiry into the psychology of domestic violence. Because this theory is the adopted view of most courts and expert witnesses, it merits close scrutiny. It is our emphatic view that the law should encourage quality research concerning domestic violence, and, when relevant and warranted, admit it into evidence.

12. *See supra* note 1.

13. *See infra* notes 127–31 and accompanying text (discussing Louisiana courts) and notes 139–51 and accompanying text (discussing state-compelled psychiatric examinations for defendants intending to introduce syndrome evidence).

justifiably to the violence inflicted upon them or not. The courts' continued treatment of battered women as less than rational actors demeans women, distorts science, and fails to do justice. By continuing to adhere to the faulty reasoning inherent within syndrome evidence, courts have managed to avoid answering the difficult and disturbing question that lies within all domestic homicide cases: is the defendant's killing of an abusive partner after continuous, brutal physical assaults a justifiable homicide?[14] If the notion of expanding self-defense doctrine to permit acquittals for such killings is found to be overly repugnant to courts and legislatures, then the proper solution is to devote the necessary resources to the eradication of domestic violence. The continued use of syndrome evidence as a theory of excuse that is cloaked within the language of justification has dangerous implications for battered women. First, courts inevitably begin referring to those women who rely upon syndrome evidence as riddled with psychological pathology. And, as a practical matter, syndrome evidence rarely wins the acquittals that one would expect from a theory that is expressly tailored to fit the narrow constraints of self-defense doctrine.[15]

This Article chronicles the rise and fall of the battered woman syndrome. Some readers might object that the battered woman syndrome has yet to fall; therefore, predictions of its demise are premature. To be sure, there is little evidence of its imminent passing. Nonetheless, this event should be anticipated and, indeed, eagerly so. The battered woman syndrome has no basis in science and has received its main support from the politics it was believed to advance. There are thus two sound reasons for expecting it to pass from the courtroom stage. First, as courts begin to apply a more sophisticated understanding of science to evaluations of the admissibility of expert testimony, the syndrome's pseudoscientific nature will become obvious. Second, as the anti-feminist implications of the syndrome's use become more apparent, advocates for battered women will increasingly abandon it.

This Article examines the anticipated passing of the battered woman syndrome from the legal scene by providing an overview of the current uses of the syndrome and exploring the demands and expectations increasingly being made on this expert testimony. After this Introduction, Section II discusses the scientific research that actually supports syndrome theory and finds that it is largely wanting.[16] The doctrinal disarray surrounding the case law is partly attributable to the vacuity of the research program supporting the theory. Section III provides a detailed overview of the many uses now made of the syndrome.[17] It is no longer just an expertise wielded in self-defense cases. Its success in a wide array of legal contexts, in fact, turns out to be the first sign of its impending doom. As scientific evidence without a scientific basis, the syndrome has been stretched well beyond its self-defense origins. Courts are increasingly reluctant to accept that there is a basis for the syndrome in fact, as proponents stretch the hypothesis to even greater creative heights. Section IV

14. For an argument that battered women who kill their abusers are morally justified in doing so, see Elisabeth Ayyildiz, *When Battered Woman's Syndrome Does Not Go Far Enough: The Battered Woman as Vigilante*, 4 AM. U.J. GENDER & L. 141, 142 (1995).

15. *See* Charles P. Ewing, *Psychological Self-Defense: A Proposed Justification for Battered Women Who Kill*, 14 LAW & HUM. BEHAV. 579, 580 (1990) (observing that battered women who plead self-defense and present syndrome testimony are nonetheless frequently convicted of murder or manslaughter).

16. *See infra* notes 20–72 and accompanying text.

17. *See infra* notes 73–260 and accompanying text.

addresses the often-stated proposition that research on domestic violence cannot be expected to be very good, given the difficulty in conducting it. This section argues that when science is hard to do, bad science is not the solution. Finally, Section V explores the future of this area of the law.[18] Most courts now follow the United States Supreme Court's recently crafted standard for scientific evidence which requires that scientific expert testimony be based on research that employed the scientific method.[19] The battered woman syndrome will fare poorly under this standard. Given the lack of a scientific basis for the theory, and the fact that the theory is essentially inimical to the women it was designed to serve, the syndrome should eventually be abandoned. Its passing should not be mourned by either advocates of battered women or those who cherish scientific integrity.

II. THE THEORY AND RESEARCH BEHIND THE BATTERED WOMAN SYNDROME

A. The Theory of the Battered Woman Syndrome

Psychological research regarding domestic violence against women can no longer be limited to "syndrome" research.[20] Yet, expert witnesses and courts continue to approach this matter primarily, if not exclusively, from the syndrome perspective. In fact, the psychology has nearly merged with the law to form a hybrid self-defense/battered woman syndrome defense.[21] This result has led to an interdependence that is not unusual between law and science, however unfortunate it might be. Instead of the law simply borrowing from social science, it actually shapes both the type of social science that is performed and the conclusions that researchers draw from their studies. Moreover, the law has become myopic; after initially accepting the syndrome perspective, it now fails to inquire about the latest developments in the field. Therefore, although other perspectives have been offered, they have been largely ignored, and the

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18. *See infra* notes 274–87 and accompanying text.

19. *See* Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

20. *See* Regina Schuller & Patricia A. Hastings, *Battered Woman Syndrome and Other Effects of Domestic Violence Against Women, in* MODERN SCIENTIFIC EVIDENCE: THE LAW AND SCIENCE OF EXPERT TESTIMONY ch. 8 (David L. Faigman et al. eds., forthcoming 1997). Professor Charles Ewing offers an alternative that has yet to gain adherents among courts and has been severely criticized by commentators. CHARLES PATRICK EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION (1987); *contra* David L. Faigman, *Discerning Justice When Battered Women Kill,* 39 HASTINGS L.J. 207 (1987); Stephen J. Morse, *The Misbegotten Marriage of Soft Psychology and Bad Law: Psychological Self-Defense as a Justification for Homocide,* 14 LAW & HUM. BEHAV. 595 (1990).

21. Although courts sometimes confuse the issue, proponents of syndrome theory insist that they do not intend to create a new legal category of defense. Instead, they believe that the syndrome explains apparent inconsistencies between the factual circumstances of some cases in which battered women kill and traditional notions of self-defense. *Compare* ElizabethVaughn & Maureen L. Moore, *The Battered Spouse Defense in Kentucky,* 10 N. KY. L. REV. 399, 399 (1983) ("The defense of battered woman 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.") *with* Roberta K. Thyfault, Comment, *Self-Defense: Battered Woman Syndrome on Trial,* 20 CAL. W. L. REV. 485, 495 (1984) ("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.").

syndrome approach continues to predominate.[22]

Battered woman syndrome researchers posit two theories to address the discrepancies between the paradigm of self-defense and the facts of many battered women cases.[23] The first is the "Walker Cycle Theory," used to demonstrate 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.[24] Second, researchers extend the psychological theory of learned helplessness, coupled with the Walker Cycle Theory, to explain the battered woman's inability to leave the abusive relationship.[25]

1. The Cycle Theory

The cycle theory[26] 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. According to proponents, three distinct phases typify the typical battering relationship. A "tension building" phase erupts into an "acute battering incident," which in turn is followed by "loving contrition."[27] The first phase is marked by verbal bickering and increasing tension between the man and woman.[28] In the second phase the batterer explodes into an uncontrollable and violent rage.[29] In the final phase the batterer typically expresses regret and profusely apologizes, usually promising never to batter the woman again.[30] Despite the man's promises during this third phase, the cycle eventually begins anew.[31]

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,[32] and her perception of danger extends beyond the battering episodes themselves. A

22. *See, e.g.*, Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993).

23. Walker broadly 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." WALKER (1984), *supra* note 2, at 203. Walker further defines an intimate relationship as one "having a romantic, affectionate, or sexual component." *Id.* "Repeatedly" merely means "more than on[ce]." *Id.* Finally, "abuse" includes, in addition to physical assaults, "extreme verbal harassment and...comments of a derogatory nature with negative value judgments." *Id.*

24. *See, e.g.*, 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, 478 A.2d 364, 377 (N.J. 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, 685 P.2d 564, 570 (Wash. 1984) (expert testimony "offered to aid the jury in understanding the reasonableness of [the defendant's] apprehension of imminent death or bodily injury").

25. *See* State v. Kelly, 478 A.2d at 372.

26. *See* WALKER (1984), *supra* note 2, at 95–104; WALKER (1979), *supra* note 1, at 55–70.

27. *See* WALKER (1984), *supra* note 2, at 95–96; WALKER (1979), *supra* note 1, at 55–70.

28. WALKER (1984), *supra* note 2, at 95.

29. *Id.* at 96.

30. *Id.*

31. *Id.*

32. *See* Loraine Patricia Eber, Note, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 HASTINGS L.J. 895, 928 (1981).

"cumulative terror" consumes the woman and holds her in constant fear of harm.[33] This fear continues even during the peaceful interlude between episodes of abuse.[34] It is during this lull in the violence that the woman may seize the opportunity to strike back at the batterer.[35] Thus, according to the cycle 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, usually during a lull in the violence.[36]

The cycle theory primarily addresses two essential aspects of the law of self defense: the defendant's knowledge of the aggressor's history of violence and the defendant's physical inability to protect herself. First, according to the theory, the battered woman's knowledge of the batterer's history of violence shapes her perception of harm. A woman's prior experience with the recurring cycles of violence instills a constant fear of what appears to her as imminent harm. This factor addresses 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 concerning 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. Thus, the cycle theory also speaks to another important 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 order to prevent assaults by an unarmed but more powerful man.[37]

2. Learned Helplessness

By itself, the cycle theory may be insufficient to convince a jury that the

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33. *See In re* Appeal in Maricopa County, Juvenile Action No. JV–506561, 182 Ariz. 60, 63, 893 P.2d 60, 63 (Ariz. Ct. App. 1994) (referring to the state of mind resulting from battered woman syndrome [here a child] as a "sustained 'heat of passion'" that was "'sufficient to deprive a reasonable person of self-control'"); *see generally* Nancy Fiora-Gormally, Comment, *Battered Wives Who Kill: Double Standard Out of Court, Single Standard In?* 2 LAW & HUM. BEHAV. 133, 164 (1978).

34. *See* Robinson v. State, 417 S.E.2d 88, 91 (S.C. 1992) (observing that, because battered women suffer from a "perpetual terror of physical and mental abuse...[that] does not wane," a sense of imminent danger could exist "even when the batterer is absent or asleep"). *See also* Michael A. Buda & Teresa L. Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. FAM. L. 359, 375 (1984–85).

35. Walker argues that "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." WALKER (1984), *supra* note 2, at 142. *But see* State v. Reid, 155 Ariz. 399, 403, 747 P.2d 560, 564 (Ariz. 1987) (rejecting use of the battered woman syndrome where defendant killed the batterer when he was asleep).

36. *See* Lumpkin v. Ray, 977 F.2d 508, 509 (10th Cir. 1992) (asserting an Equal Protection claim, the defendant argued "that the cyclical trap of the 'battered woman syndrome' sets the battered woman apart from others who have...financial and other resources..., including reasonable access to police and courts, to supplement their smaller physical size and lack of ability to defend themselves").

37. *See generally* Catherine A. MacKinnon, *Toward Feminist Jurisprudence*, 34 STAN. L. REV. 703, 732 (1982) ("Women thus perceive the need and do need to resort to deadly force, [and] are more threatened...than they would be if they were trained the way men are trained.").

battered woman acted in self-defense. Some states require the defendant to show that retreat from the threat of harm was not possible. More generally, Walker and others have argued that, even in those jurisdictions that do not formally impose a duty to retreat, jurors will assume the defendant was unreasonable in failing to leave the abusive relationship.[38] According 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."[39] Courts readily accept Walker's view that jurors, if they are not specially instructed, will believe the battered woman somehow consented to the beatings inflicted upon her.[40]

To explain why a woman in a "constant state of fear" does not simply leave the battering relationship, Walker invokes Martin Seligman's "learned helplessness" theory.[41] 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.[42] When subsequently placed in an escapable situation, the dogs failed to escape.[43] Seligman generalized this phenomenon to

38. Lenore E. Walker et al., *Beyond the Juror's Ken: Battered Women,* 7 VT. L. REV. 1, 5 (1982).

39. *Id.* at 1–2.

40. In State v. Kelly, 478 A.2d 364 (N.J. 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 372; *see also* State v. Borelli, 629 A.2d 1105, 1112 (Conn. 1993) (citing "research" that "'indicates that potential jurors may hold beliefs and attitudes about abused women at variance with the views of experts who have studied... abused women'"); State v. Hodges, 716 P.2d 563, 566 (Kan. 1986) ("The expert evidence would counter any 'common sense' conclusions by the jury that if the beatings were really that bad the woman would have left her husband much earlier."). The courts frequently voice their assumption that most lay people—and hence most jurors—believe battered women enjoy or participate in the abuse. *See, e.g., Kelly,* 478 A.2d at 370. Indeed, this proposition seems to have taken on mythical proportions. 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* WALKER (1979), *supra* note 1, at 20. Without providing any references, Walker merely alludes 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 further suggested that the beatings provided "apparent masochistic gratification." John E. Snell et al., *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 psychologists believe women enjoy beatings; it cannot be interpreted as evidence that the general public holds this view. *See* James R. Acker & Hans Toch, *Battered Women, Straw Men, and Expert Testimony: A Comment on* State v. Kelly, 21 CRIM. L. BULL. 125, 138–41 (1985) (noting that many jurors may be sympathetic to the woman's failure to leave). *See generally* PAULA J. CAPLAN, THE MYTH OF WOMEN'S MASOCHISM (1985) (exploring the psychoanalytic evidence regarding the masochism of women and questioning its validity).

41. *See* WALKER (1984), *supra* note 2, at 86.

42. *See* Martin E. P. Seligman et al., *Alleviation of Learned Helplessness in the Dog,* 73 J. ABNORMAL PSYCHOL. 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.

43. Many dogs overcame their helplessness after the experimenter physically dragged

depression in humans.[44] Walker, applying this theory to 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.'"[45] The court in *State v. Kelly*[46] 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."[47]

In addition, the third phase of the cycle theory—the loving contrition phase—is invoked to explain why battered women fail to leave violent relationships. According to Walker, the batterer's "extremely loving, kind, and contrite behavior"[48] operates as a "positive reinforcement for remaining in the relationship."[49] This loving and contrite behavior follows the acute battering incident and softens the woman's response to the pain of the preceding phase. Therefore, 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.[50]

B. The Empirical Vacuity of the Battered Woman Syndrome

In 1986, one of us published a student Note criticizing the research methodology employed to study the hypothesis that women in violent relationships respond similarly and that these responses can be grouped as a "syndrome."[51] This section will briefly summarize the earlier Note's main points. Surprisingly, no proponent of the battered woman syndrome has responded to this methodological critique leveled in 1986.[52] Moreover, although significant amounts of excellent research have been done in the last decade, none of it has obtained results that support the hypothesis of the battered woman syndrome.[53] In fact, the best research in this area casts

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

44. *See* MARTIN E. P. SELIGMAN, HELPLESSNESS: ON DEPRESSION, DEVELOPMENT, AND DEATH (1975); Lyn Y. Abramson et al., *Learned Helplessness in Humans: Critique and Reformulation,* 87 J. ABNORMAL PSYCHOL. 49, 50 (1978).

45. WALKER (1984), *supra* note 2, at 87 (quoting WALKER (1979), supra note 1, at 49).

46. 478 A.2d 364 (N.J. 1984).

47. *Id.* at 372.

48. WALKER (1979), *supra* note 1, at 65.

49. WALKER (1984), *supra* note 2, at 96.

50. *Id.*

51. Faigman, *supra* note 3.

52. We define "proponent" as psychologists and other social scientists that support the syndrome theory. We acknowledge that substantial numbers of legal commentators have rallied around the use of syndrome evidence. For a representative sample, see Christine Emerson, Note, United States v. Willis*: No Room for the Battered Woman Syndrome in the Fifth Circuit?,* 48 BAYLOR L. REV. 317 (1996) (advocating the admission of syndrome evidence in cases where female defendants claim duress); Kimberly B. Kuhn, Note, *Battered Woman Syndrome Testimony:* Dunn v. Roberts, *Justice is Done by the Expansion of the Battered Woman Syndrome,* 25 U. TOL. L. REV. 1039–65 (1995) (supporting the admissibility of syndrome testimony to negate prosecutorial contentions that battered women defendants had the necessary specific intent to commit various crimes); Rachel A. Van Cleave, Essay, *A Matter of Evidence or of Law? Battered Women Claiming Self-Defense in California,* 5 UCLA WOMEN'S L.J. 217 (1994).

53. *But see* Krista L. Duncan, Note, *"Lies, Damned Lies, and Statistics"? Psychological Syndrome Evidence in the Courtroom after* Daubert, 71 IND. L.J. 753, 765 (1996) (concluding

considerable doubt upon the hypothesis that women in violent relationships respond the way syndrome proponents predict.[54]

Before discussing the empirical frailty of the research that supports the syndrome, we must begin with a few brief observations about the scientific method. Foremost, science should be rigorous and skeptical; moreover, the burden of corroborating any particular hypothesis is on the researcher who advances it. Scientists should not embark upon research in order to confirm their ideas about the world; rather, they should perform research in order to truly test their hypotheses. A hypothesis only gains strength through a scientist's many attempts to falsify it.[55]

In addition, scientists must define their parameters narrowly enough so that successful and failed attempts to corroborate the theory are clearly identifiable. For example, astrology has resisted vigorous debunking attempts because its predictions are so broad that they always can be said to be true. By explaining everything, astrology explains nothing. When complex phenomena are involved, one study will never be able to provide the sort of confirmation needed to establish policy. Instead, the law should expect sustained empirical work over many years, typically by many different researchers. To expect that one or two studies could provide any real insight into the complexities of domestic violence is absurd. Finally, the law should remember, indeed, it should insist, that scientists behave like scientists first and as advocates and expert witnesses second. In the case of the battered woman syndrome, advocacy was first and foremost, and science has yet to occur at all.

1. The Cycle Theory

In order to test the cycle theory, Walker and her associates conducted interviews in which interviewers questioned subjects[56] concerning four battering incidents—the first, the second, one of the worst and the most recent. Walker explains her methodology as follows:

> 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),...the interviewer recorded whether or not there was "evidence of tension building and/or loving contrition."[57]

Walker's methodology, unfortunately, contains at least five readily identifiable flaws. These flaws, it might be added, are blatant violations of some of the most elementary aspects of the research method. Because of the limited

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that "it appears that later studies have confirmed much of Walker's theory"; *see infra* notes 274–87 and accompanying text).

54. *See generally* Schuller & Hastings, *supra* note 20.

55. *See generally* David L. Faigman, *To Have and Have Not: Assessing the Value of Social Science to the Law as Science and Policy*, 38 EMORY L.J. 1005, 1014–25 (1989).

56. Walker studied four-hundred "self-identified" battered women from six states. WALKER (1984), *supra* note 2, at 202. According to Walker, "A woman was considered eligible to participate if she reported that she was battered at least 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 employ a control group in the study. *Id.* at 203. About half of the women in the study reported on nonbattering relationships, however, and Walker used these data for comparison purposes. *Id.*

57. *Id.* at 96.

scope of this Article, the errors in Walker's methodology can only be summarized here.[58]

First, Walker's interview technique allowed the subjects to easily guess what the researchers hoped to verify in the study. Most social scientists avoid this problem by disguising their hypotheses, thus avoiding the well-known problem of "hypothesis guessing."[59] A second, related problem with Walker's methodology concerns the experimenter's expectancies of the subjects' responses. Walker's interviewers not only knew the "correct" outcome, but reported *their* estimation of whether the subject substantiated that outcome; the subjects' responses were not recorded, only the interviewer's interpretation of the subjects' answers were documented.[60] Most social scientists avoid this basic problem by employing interviewers who are not informed about the hypotheses being tested.[61] In fact, it would be difficult to imagine a research design more conducive to experimenter expectancies than Walker's.

The third and fourth major flaws in Walker's research are particularly relevant to the legal relevance of her work. The third flaw concerns the fact that the cycle theory was posited in the absence of any time frame that might give it legal meaning. The research does not indicate whether the elapsed time of—or the time between—cycles is a few minutes, several hours or many weeks. Walker's study also omits any discussion of whether a period of normality occurs between the third phase and the onset of a new cycle. If so, the cycle actually contains four phases. The fourth flaw concerns Walker's failure to empirically relate the cycle theory to the "cumulative terror" that purportedly grips the defendant in the interim between the batterer's attack and her response.[62] The research simply fails to empirically connect the hypothesized phenomenon of the cycle theory to the hypothesized—and legally relevant—outcome of constant fear.

The fifth major flaw is perhaps the most basic and incomprehensible. Walker claims that her data indicate the existence of a distinct behavioral cycle.[63] 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—as a single relationship. Walker relates her data 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.[64]

Walker's data do not support her conclusion. She provides data on the tension building and loving contrition phases separately. This division offers little evidence regarding the number of women who experienced all three

58. For a more extensive treatment of Walker's research methodology, see Faigman, *supra* note 3, at 637–40; *see generally* Schuller & Hastings, *supra* note 20.

59. *See* THOMAS D. COOK & DONALD T. CAMPBELL, QUASI-EXPERIMENTATION: DESIGN AND ANALYSIS ISSUES FOR FIELD SETTINGS 66–67 (1979).

60. WALKER (1984), *supra* note 2, at 96–97.

61. COOK & CAMPBELL, *supra* note 59, at 66–67.

62. *See* WALKER (1984), *supra* note 2, at 95–104.

63. *Id.* at 96–97.

64. *Id.*

phases as a "cycle." If sixty-five percent *of all subjects* experienced tension building before an acute battering incident 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 as studied.[65] Thus, it is not at all clear that, as Walker claims, the "data support the existence of the Walker Cycle Theory of Violence."[66]

Of course, to be legally relevant, the cycle theory need not be shown to occur in all, or even most, battered women cases. And the research seems to indicate that most battered women do not experience the violence as cyclical. The syndrome might still have legal relevance, however, if only thirty-eight percent experienced the violence cyclically. But the other four major research flaws undermine this conclusion. In fact, one should be surprised that the percentage is so low, given that the experiment was so obviously designed to confirm the theory. Moreover, even knowing that some women experienced the violence as a cycle gives us no assistance as regards the pertinent legal inquiry. The research never ties the cycle theory to the matter of the women's fear of harm. Hence, the research fails to indicate what percentage of women experience the violence as "a cycle," and what consequences flow from knowing that the violence was cyclical (or, for that matter, non-cyclical).

2. Learned Helplessness

Of the two main components of the syndrome theory, learned helplessness has received the coldest reception from commentators.[67] Most scholars reject the concept out of concern that it belittles the women themselves, and many question its empirical accuracy.[68] The empirical limitations can be quickly summarized here.

First, the application of the psychological concept of learned helplessness to battered women who kill demonstrates a basic confusion in Walker's understanding of the phenomenon.[69] In the original research, dogs that were rendered helpless by being subjected to noncontingent electric shocks proved to

65. 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. WILLIAM 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 percent) is multiplied by the probability that a woman experienced loving contrition after an acute battering incident (58 percent). This calculation yields the 38 percent 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 percent experiencing tension building, no more than 58 percent could have experienced the entire cycle. At the same time, the proportion experiencing the entire cycle could have been as low as 23 percent (the sum of 58 percent and 65 percent is 123 percent; because the entire sample constitutes only 100 percent, 23 percent must have experienced both phases as they were studied in the research).

66. WALKER (1984), *supra* note 2, at 97.

67. *See, e.g.*, Acker & Toch, *supra* note 40, at 141; *see also* JULIE BLACKMAN, INTIMATE VIOLENCE: A STUDY OF INJUSTICE 192 (1989).

68. *See* Regina A. Schuller & Neil Vidmar, *Battered Woman Syndrome Evidence in the Courtroom: A Review of the Literature*, 16 LAW & HUM. BEHAV. 273, 280 (1992); OLA W. BARNETT & ALYEE D. LAVOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 105–07 (1993).

69. *See* Seligman et al., *supra* note 42.

be extremely resistant to learning to control their environment.[70] From a theoretical perspective, therefore, 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.[71]

This lack of a theoretical foundation would be less troubling if there were any empirical basis for believing that battered women suffer from helplessness. In fact, however, Walker studied factors that have no obvious connection to the helplessness insight.[72] Moreover, Walker failed to employ a control group, so any statement about the "helplessness" of the battered women cannot be placed in any context. Finally, most of Walker's subjects did not kill anyone. Although nine of her subjects did kill their batterers, Walker provides no comparative data. It is not obvious that the psychological profile of most battered women generalizes to the small number of battered women who kill.

As is evident in the structure of the syndrome theory, it closely tracks the situation of battered women in an attempt to explain why they sometimes kill. As the next section describes, this remains the primary legal application of the syndrome. Increasingly, however, the syndrome is being employed outside this traditional context and is no longer a tool for criminal defendants alone. The battered woman syndrome has spread like ivy into multiple legal domains; and like ivy, it has tended to choke the surrounding flora as it spreads. The integrity of legal doctrine has suffered immensely from the syndrome's spread across the landscape.

III. LEGAL APPLICATIONS OF THE BATTERED WOMAN SYNDROME

A. The Battered Woman Syndrome in Self-Defense Cases

Although practice varies widely, most jurisdictions begin their analyses of self-defense claims with a discussion of the four traditional requirements of self-defense.[73] First, at the time of the act, a defender must have believed that

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70. *See id.* at 260–61.

71. Subsequent research conducted by other researchers indicates that battered women are not passive victims of the violence. *See* RICHARD J. GELLES & CLAIRE PEDRICK CORNELL, INTIMATE VIOLENCE IN FAMILIES 77 (1985) (reporting that battered women 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").

72. *See* WALKER (1984), supra note 2, at 91.

73. It should be noted that a number of states provide for the admission of the battered woman syndrome through legislation. Ohio recently passed legislation declaring that the syndrome "is a matter of commonly accepted scientific knowledge" and "not within the general understanding or experience of a person who is a member of the general populace." OHIO REV. CODE ANN. § 2901.06(A) (Banks–Baldwin 1994). The statute provides that defendants who contend that they used force against another in self-defense "*may* introduce expert testimony of the 'battered woman syndrome.'" *Id.* § 2901.06(B) (emphasis supplied). Ohio's statute further requires that expert testimony introduced pursuant to the statute must "be in accordance with the Ohio Rules of Evidence." *Id. See also* CAL. EVID. CODE § 1107 (West Supp. 1996); MASS. GEN. LAWS ANN. ch. 233, § 23E (West Supp. 1995); MD. CODE ANN., CTS. & JUD. PROC. § 10–916 (1995); MO. ANN. STAT. § 563.033(1) (West Supp. 1994); WYO. STAT. ANN. § 6–1–203(b) (Michie Supp. 1994). Of course, to the extent that a state statute mandates admission of battered woman syndrome expert testimony, many of the evidentiary issues discussed in this section do not apply. *See, e.g.*, State v. Williams, 787 S.W.2d 308, 311 (Mo. Ct. App. 1993)

he or she was in *imminent danger* of *unlawful bodily harm.*[74] Second, the defender must have used a reasonable amount of force to respond to the threatened danger.[75] Third, he or she cannot have been the aggressor.[76] Fourth, under some circumstances the defender must have had no opportunity to retreat safely.[77] Although courts and commentators sometimes view the four elements of self-defense categorically,[78] the essential premise of self-defense doctrine should not be lost: where individuals cannot resort to the law in response to aggression, they may use reasonable force to protect themselves from physical harm.

(concluding that the Missouri legislature's passage of section 563.033 made it unnecessary for the court "to engage in...[an] examination...[of] the scientific validity of the syndrome or its admissibility where self-defense is raised"). However, legislation does not solve the problems associated with poor research methodology or advocacy masquerading as science; in fact, it exacerbates it. If legislators believe that the values represented by battered woman syndrome advocates are substantively correct, they should create an exception that reflects this judgment. By carving the exception in terms of the admissibility of research that has doubtful scientific validity, legislators send exactly the wrong message to social scientists about the kind of research they should be doing and an entirely convoluted message to the public about the values reflected in the legislation. It is a cowardly approach to a profound social problem that needs courageous solutions.

74. LAFAVE & SCOTT, *supra* note 9, at 391 (emphasis added). The imminence requirement contemplates an element of necessity; the threatened actor had no choice but to defend himself or herself. *See* GEORGE FLETCHER, RETHINKING CRIMINAL LAW, pt. 2, at 856 (1978) ("Stressing 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.").

75. LAFAVE & SCOTT, *supra* note 9, at 391. An actor is limited to the use of nondeadly force against a nondeadly attack, but he or she can respond to deadly force with deadly force of his or her own. *Id.* LaFave 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.* at 392 (footnote omitted).

76. *Id.* at 394–95.

77. *Id.* at 391. The duty to retreat reflects the general tensions within the law underlying the self-defense doctrine. On the one hand, an individual should be encouraged to retreat in order to avoid injury to that individual 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 he or she is in danger of death or serious bodily injury. A substantial minority of states, however, require the defending party to retreat if he or she can do so in complete safety. *Id.* at 395–96.

An individual has no duty to retreat if attacked by an intruder in his or 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; H. J. Alperin, Annotation, *Homocide: Duty to Retreat Where Assailant and Assailed Share the Same Living Quarters*, 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. *See, e.g.*, Robinson v. State, 417 S.E.2d 88, 92 (S.C. 1992) (A battered woman could "claim the inapplicability of this element of self-defense because she [often] acts while on her own premises, and has no duty to retreat."). The rationale for this position apparently is that the defender has no safer place to which he or she can escape. Nevertheless, a minority of jurisdictions ignore this logic and impose a duty to retreat in this situation. *See, e.g.*, State v. Ordway, 619 A.2d 819, 823–24 (R.I. 1992) ("'[A] person assailed in his or her own residence by a co-occupant is not entitled under the guise of self-defense to employ deadly force and kill his or her assailant.'"); *see also* Elizabeth 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); Sarah Baseden Vandenbraak, Note, *Limits on the Use of Defensive Force to Prevent Intramarital Assaults*, 10 RUT.–CAM. L.J. 643, 654 (1979).

78. *See* LAFAVE & SCOTT, *supra* note 9, 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) (Holmes, J.)).

In many cases in which women kill their batterers, the traditional criteria of self-defense are not met, or are met imperfectly. Typically, the defensive act occurs during a lull in the violence and, sometimes, when the batterer is sleeping.[79] A battered woman may have used a knife or gun while the abuser was unarmed.[80] In addition, though most jurisdictions impose no formal duty to retreat, the "defensive" act usually follows a long history and pattern of violence in the relationship, thus possibly raising the question of why the woman did not leave the abusive relationship earlier. Proponents of the battered woman syndrome maintain that these departures from the traditional expectations of self-defense law can be explained by the psychological concomitants associated with violence in intimate relationships.

In general, courts have been sympathetic toward defendants' use of the battered woman syndrome in homicide prosecutions, and most admit expert testimony concerning this issue. Nevertheless, this sympathetic approach has not been entirely uncritical and some courts remain adamantly opposed to the introduction of this evidence on the basis of legal doctrine[81] or inadequate science.[82] This section surveys the major issues that arise when battered women defendants proffer expert testimony to support claims of self-defense.

1. The Real and Supposed Requirements of the Defense of Self-Defense

The battered woman syndrome is a multifaceted construct that addresses a wide assortment of legal issues ranging from implicit concerns over why the woman did not escape the violence to explicit concerns over the application of self-defense doctrine. Inextricably linked to these multifarious issues is a basic query common to all admissibility standards for expert testimony: is expert testimony on the battered woman syndrome sufficiently beyond the ken of the ordinary layperson so that it will be helpful to the trier of fact? In fact, in each of the contexts discussed below, courts evaluate the legal doctrine at two levels. First, they consider the parameters and integrity of the legal doctrine itself. Second, courts consider whether the expertise will assist triers of fact in applying the pertinent doctrine to the facts of the case before them.

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79. *See supra* notes 34–36 and accompanying text.

80. *See supra* note 37 and accompanying text.

81. *See, e.g.*, State v. Norman, 378 S.E.2d 8, 12–14 (N.C. 1989). Recently, the California Supreme Court overruled People v. Aris, 215 Cal. App. 3d 1178, 1197 (Ct. App. 1989), in which the *Aris* court held that the battered woman syndrome was "irrelevant to the issue of the reasonableness of the defendant's belief in the need to defend herself." People v. Humphrey, 921 P.2d 1 (Cal. 1996). The supreme court also found that syndrome evidence was relevant to the honesty of her belief in the need to use force. *Id.* Acknowledging the California Legislature's decision to decree that syndrome evidence was generally admissible in criminal trials when relevant, the court held that juries may consider syndrome evidence in deciding whether the defendant actually believed it was necessary to kill in self-defense *as well as* in deciding whether that belief was a reasonable one. *Id.* at 10; *see* CAL. EVID. CODE § 1107 (West Supp. 1996). Moreover, the court concluded that syndrome evidence was also relevant in weighing the defendant's credibility, thus explicitly clearing the way for prosecutorial use of syndrome evidence in California courts. 921 P.2d at 9. For an earlier California Court of Appeal decision upholding the prosecution's use of syndrome testimony to rehabilitate a battered woman's testimony, see People v. Dillard, 53 Cal. Rptr. 2d 456 (Ct. App. 1996).

82. *See* Hill v. State, 507 So. 2d 554, 555 (Ala. Crim. App. 1986) (noting that, in regard to the battered woman syndrome, "the danger of a jury's according undue weight to unproven and perhaps unreliable scientific testimony justifies excluding such evidence").

a. Failure to leave the abusive relationship

Although not a component of self-defense doctrine in most jurisdictions, many courts and commentators express concern that triers of fact will misconstrue a woman's failure to leave a violent relationship.[83] Courts and commentators hypothesize that jurors will believe that the violence was not that bad or that the woman actively participated in or enjoyed the abuse. Many worry that these lay conjectures will undermine a battered woman's claim of self-defense.[84] Moreover, the need to dispel "common myths" is especially urgent, courts find, when those myths are relied upon by the prosecution in making its case.[85]

In practice, however, courts do little more than cite the recurring fear that juries hold these "common myths" about battered women.[86] They do not cite any research indicating that such myths are actually commonly held by jurors, nor do they express chagrin that such minimal research has been pursued on this issue.[87] In addition, courts rarely take the trouble to determine the fit between explanations such as learned helplessness and the facts of a particular case. Indeed, learned helplessness, as a psychological construct, is fundamentally at odds with a situation in which a woman has exercised the degree of control reflected in the act of self-defense.[88] Finally, in many cases, non-psychological factors, such as threats or economic dependence, might fully explain the woman's failure to escape the violence. The need for expert testimony on the syndrome is not obvious where such factors are present.

b. Imminent harm

In self-defense cases in which battered woman syndrome is introduced, courts and defendants alike typically struggle to wrench the facts of their cases into the traditional framework. In the paradigmatic case of self-defense, a person is confronted with no choice but to kill; using a proportional amount of force, this defender kills out of necessity. Proponents of the battered woman

83. Many jurisdictions require that the expert testimony be "beyond the ken of the average layperson" for admission. The Federal Rules of Evidence require that the expert evidence "assist the trier of fact," a standard generally thought to be more liberal than the "beyond the ken" standard. FED. R. EVID. 702. Nevertheless, many courts use these standards interchangeably. *See, e.g.,* State v. Hennum, 441 N.W.2d 793, 798 (Minn. 1989).

84. The "common myths" believed to be held by triers of fact regarding the reasons why a battered woman might fail to leave an abusive relationship are discussed *supra* note 40.

85. *See, e.g.,* People v. Day, 2 Cal. App. 4th 405, 416–18 (1992) (holding that defense counsel's failure to proffer battered woman syndrome expert testimony constituted ineffective assistance of counsel because of the misconceptions relied upon by the prosecution regarding the battered woman's role in the violence and her failure to escape it).

86. *See, e.g.,* State v. Hodges, 716 P.2d 563, 567 (Kan. 1986) ("Expert testimony on the battered woman syndrome would help dispel the ordinary lay person's perception that a woman in a battering relationship is free to leave at any time.").

87. Research regarding layperson's conceptions about battered women and domestic violence has been performed in recent years, but the results of this research are mixed. One study found that one-third of potential jurors subscribed to the belief that battered women are somehow responsible for the attacks against them, and two-thirds believed that battered women could leave abusive relationships. Charles P. Ewing & Moss Aubrey, *Battered Woman and Public Opinion: Some Realities about the Myths,* 2 J. FAM. VIOLENCE 257, 261 (1989). However, another study found that potential jurors' belief in these myths was not as common as courts have asserted. Edith Greene et al., *Jurors' Knowledge of Battered Women,* 4 J. FAM. VIOLENCE 105, 115 (1989).

88. *See supra* notes 67–72 and accompanying text.

syndrome have been successful in showing that primarily male notions of self-defense inform this scenario, a scenario that bears little resemblance to the circumstances and necessities confronting women in violent relationships. The syndrome specifically targets the insight associated with the imminence requirement by indicating that even when not confronting a specific overt act threatening immediate harm, a woman can honestly and reasonably believe she must kill in self-defense.[89] This part begins by examining the parameters of self-defense doctrine and, in particular, how courts have struggled to define the acceptable limits of these parameters, both before and after the fatal act. It then goes on to examine the honesty and reasonableness factors intrinsic to the defense. Finally, this part briefly examines the philosophical bases for the defense and the syndrome's convergence with this foundation.

[i] Incongruence between battered women cases and traditional notions of self-defense

The perceived need to educate triers of fact sometimes depends on the specific circumstances of the case. For example, in *People v. Minnis*,[90] the defendant testified that her husband died after she kicked him off of her while he was raping her.[91] After she ascertained that he was dead, she decided it was necessary to dismember the body and subsequently deposited various sections of the corpse in different dumpsters.[92] At trial, the defendant proffered the battered woman syndrome to explain this bizarre act. In essence, the defendant introduced the evidence to demonstrate that her status as a battered woman controlled her actions both before and after she killed her partner. The trial court excluded the evidence; the Illinois appellate court reversed. The trial court had "arrived at the fixed and immutable conclusion that the syndrome applies only to explain the woman's conduct at the time of the victim's death, *not to events which transpire afterwards.*"[93] The appellate court disagreed with the trial court's limited perspective, noting that the "defendant clearly has the right to introduce evidence [on the battered woman syndrome] to rebut the State's evidence of consciousness of guilt."[94] In light of the relevance of the testimony, "the defendant had a right to present evidence relevant to her explanation of her conduct, no matter how far-fetched it might appear to the average individual."[95]

In contrast, in *Lentz v. State*,[96] the Mississippi Supreme Court upheld the trial court's exclusion of battered woman syndrome expert testimony because the circumstances surrounding the killing were inconsistent with the defendant's theory of self-defense.[97] In *Lentz*, the defendant had shot her boyfriend twice,

89. *See* Bechtel v. State, 840 P.2d 1, 12 (Okla. Crim. App. 1992) ("[T]he meaning of imminent must necessarily envelope the battered woman's perceptions based on all the facts and circumstances of...her relationship with the victim.").
90. 455 N.E.2d 209 (Ill. App. Ct. 1983).
91. *Id.* at 215.
92. *Id.*
93. *Id.* at 217 (emphasis supplied).
94. *Minnis*, 455 N.E.2d at 217.
95. *Id.*
96. 604 So. 2d 243 (Miss. 1992).
97. *Id.* at 249; *see also* Fultz v. State, 439 N.E.2d 659, 662 (Ind. Ct. App. 1982) (excluding expert testimony on battered woman syndrome "because the victim had not committed an aggressive act sufficient for [the defendant] to form a reasonable belief that an imminent use of force was necessary").

once in the back, in two physical locations.[98] After the first shot, the evidence indicated that the victim tried to retreat, but the defendant followed him and shot him again as he tried to escape.[99] According to the court, evidence on the battered woman syndrome was irrelevant: "upon these facts...neither the evidence nor the issue of whether [the defendant] acted as a reasonable person would in similar circumstances have been made clearer by expert testimony...."[100]

Perhaps the most extraordinary use of the syndrome in self-defense cases is in response to a homicide charge arising out of the defendant's hiring of a "hit-man" to perform the killing. Courts uniformly exclude expert testimony in these kinds of cases.[101] In *People v. Yaklich*,[102] for example, the defendant hired a man to kill her husband, paying him $4,200 to commit the offense.[103] At her trial, the defendant was acquitted of murder after presenting a self-defense claim based on her status as a battered woman;[104] however, the jury convicted her of conspiracy to commit first-degree murder.[105] The state appealed this verdict and argued that the trial court's instructions to the jury on self-defense were erroneous.[106]

At the outset, the court of appeals noted that no Colorado court had yet decided whether women who kill their batterers during a lull in the violence were entitled to a self-defense instruction.[107] Next, the court reviewed the general characteristics of the battered woman syndrome and observed that "numerous cases across the country have held that the battered woman syndrome is 'a recognized phenomenon in the psychiatric profession and is defined as a technical term of art in professional diagnostic textbooks.'"[108] After examining several other battered women cases that included "murder-for-hire" situations, the court concluded that a self-defense instruction should not be

98. 604 So. 2d at 247.
99. *Id.*
100. *Id. See also* State v. Norman, 378 S.E.2d 8, 12–16 (N.C. 1989) (ruling that a self-defense instruction was inappropriate where the battered woman was not abused immediately prior to the shooting, retrieved a gun from her mother's house and, after the gun jammed the first time she tried to shoot it, fixed it, then shot her husband three times in the head).
101. *See* People v. Yaklich, 833 P.2d 758 (Colo. Ct. App. 1991); *see also* State v. Martin, 666 S.W.2d 895, 899 (Mo. Ct. App. 1984) (concluding that "the evidence here falls woefully short of establishing an issue of justifiable self-defense"); State v. Anderson, 785 S.W.2d 596, 600 (Mo. Ct. App. 1990), *aff'd,* Anderson v. Goeke, 44 F.3d 675 (8th Cir. 1995) (finding that the defendant had failed to raise the issue of self-defense adequately).

The situation of a battered woman who hired a "hit-man" provided the background for a challenge, ultimately rejected, to the imposition of a capital sentence in *Ex parte* Haney, 603 So. 2d 412 (Ala. 1992). In *Haney*, the defendant argued that her status as a battered woman should have precluded the court from imposing the death penalty as a punishment for her husband's murder. *Id.* at 413. Haney and two family members plotted to kill Haney's husband after Haney fled her home to escape from her husband's abuse. *Id.* at 416. The murder was committed by Haney's brother-in-law, and Haney paid him $3,000 for the killing. *Id.* at 417. The conspirators eluded detection for nearly four years, until Haney's sister finally confessed to the crime. *Id.* The Alabama Supreme Court did not find that these circumstances counseled leniency. *Id.* at 418. The court observed that the "record discloses a continuous pattern of lies told by Haney...and reveals a cold and calculating attitude toward the murder." *Id.* at 417.
102. 833 P.2d 758 (Colo. Ct. App. 1991).
103. *Id.* at 759.
104. *Id.* at 760.
105. *Id.*
106. *Id.*
107. *Id.* at 762.
108. *Id.* at 760 (quoting State v. Allery, 682 P.2d 312, 315 (Wash. 1984)).

provided in such cases.[109] The court explained that no other jurisdictions permitted these instructions under similar circumstances.[110] In addition, the court declared that "a self-defense instruction in a murder-for-hire situation would undermine ancient notions of self-defense which originated in the common law and were later codified in Colorado law."[111] Finally, the defendant's active role in the crime precluded a self-defense instruction: "[W]e would be establishing poor public policy if [the defendant] were to escape punishment by virtue of an unprecedented application of self-defense while the...[contract killers] were convicted of murder."[112]

[ii] Honesty of belief in need to use deadly force

Most American courts require juries evaluating a self-defense claim to focus on the *objective* reasonableness of the defendant's belief that he or she was in imminent danger.[113] Under this objective test, the defendant must in fact have believed self-defense was necessary, and this belief must also be reasonable by the standards of the ordinary person. By contrast, the subjective test followed in a minority of jurisdictions requires only that the defendant honestly believed that self-defensive action was necessary; the unreasonableness of this belief will not defeat the defendant's claim.[114] The distinction between the objective and subjective tests can be elusive.[115] A court nominally applying the

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109. *Id.* at 762.
110. *Id.*
111. *Id.*
112. *Id.* at 763.
113. *See* LAFAVE & SCOTT, *supra* note 9, at 393–94. 40 AM. JUR. 2D *Homocide* § 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).

114. *See, e.g.*, State v. Leidholm, 334 N.W.2d 811, 818 (N.D. 1983) (concluding that the trial court erred in not instructing the jury to "assume the physical and psychological properties peculiar to the accused...to place itself as best it can in the shoes of the accused," before deciding whether the circumstances surrounding the incident were sufficient to create a sincere and reasonable belief in the need to use force"). *See generally* WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW § 5.7(c), at 457 (2d ed. 1986 & Supp. 1995). 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 Penal 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 force or threat...." *Id.* § 3.04(2)(b).

115. In a widely quoted passage, the Kansas Supreme Court observed as follows regarding the mental state of the defendant in syndrome cases:

> Battered women are terror-stricken people whose mental state is distorted and

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.[116] The jury may thus come close to evaluating the necessity of self-defensive action as the defendant saw it.[117]

The defendant's honest belief in the need to use deadly force is generally

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> bears a marked resemblance to that of a hostage or a prisoner of war. The horrible beatings they are subjected to brainwash them into believing there is nothing they can do.... Under the facts of this case, after ten years of abuse, [the defendant] finally became so desperate in her terror...[of the decedent that] she fled. Her escape was to no avail; he followed her. Her fear was justified.... The objective test is how a reasonably prudent battered wife would perceive...[the decedent's] demeanor. Expert testimony is admissible to prove the standard mental state of hostages, prisoners of war, and others under long-term life-threatening conditions.

State v. Hundley, 693 P.2d 475, 479 (Kan. 1985). *Hundley* entirely blurs any distinction between the objective and the subjective. In Bechtel v. State, 840 P.2d 1 (Okla. Crim. App. 1992), the court similarly had difficulty delineating the differences between the two standards. The Oklahoma standard for determining the reasonableness of the defendant's action is as follows:

> A person is justified in using deadly force in self-defense if that person reasonably believed that use of deadly force was necessary to protect herself from imminent danger of death or great bodily harm. Self-defense is a defense although the danger to life or personal security may not have been real, *if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that she was in imminent danger of death or great bodily harm.*

Id. at 11 (emphasis supplied). The court referred to this standard as a "hybrid" standard, "combining both the objective and subjective standards" of reasonableness. *Id.* While the jury was to "assume the viewpoint and circumstances of the defendant in assessing [her] reasonableness," the standard also requires "the defendant's viewpoint to be that of a reasonable person." *Id.* In order to accommodate its decision to allow sydrome expert testimony, the court decided to modify the self-defense instruction in cases involving self-defense claims by battered women. The modified instruction consisted of the following language:

> A person is justified in using deadly force in self-defense if that person believed that use of deadly force was necessary to protect herself from imminent danger of death or great bodily harm. Self-defense is a defense although the danger to life or personal security may not have been real, if a person, in the circumstances and from the viewpoint of the defendant, would have believed that she was in imminent danger of death or great bodily harm.

Id. Thus, the court omitted all references to "reasonable" beliefs or behavior in this modified instruction. The court also decided to state explicitly that, under this new standard, "the meaning of imminent must necessarily envelope the battered woman's perceptions based on all the facts and circumstances of...her relationship with the victim." *Id.* at 12.

116. In State v. Hodges, 716 P.2d 563 (Kan. 1986), the Kansas Supreme Court stated that battered woman syndrome was relevant under both subjective and objective interpretations of self-defense:

> In a state that follows the subjective standard, an evaluation of defendant's actions is made in light of her subjective impressions and the facts and circumstances known to her. In states following the objective standard, the jury must determine whether the defendant's belief in the need to defend one's self was reasonable and the expert's testimony, if accepted by the jury, would aid it in determining whether, under the circumstances, a reasonable person in the defendant's position would have believed her life to be in imminent danger.

Id. at 569 (footnotes omitted); *but see* Lentz v. State, 604 So. 2d 243, 246–47 (Miss. 1992) (ruling that syndrome evidence was "irrelevant" under the state's objective standard).

117. *See, e.g.*, People v. Goetz, 497 N.E.2d 41, 52 (1986) (maintaining an "objective standard," but permitting the defendant to introduce "any prior experiences he had which could provide a reasonable basis for [his] belief" that he would be "maimed" by his attackers); *see generally* GEORGE P. FLETCHER, A CRIME OF SELF-DEFENSE: BERNHARD GOETZ AND THE LAW ON TRIAL (1988).

relevant whether the jurisdiction applies an objective test or a subjective test in self-defense cases. Given the psychological etiology of the defense, courts readily find syndrome evidence to be relevant to the subjective aspects of the defendant's perception and thus the honesty of her belief. The New Jersey Supreme Court explained that the expert's testimony "would have helped the jury understand that [the defendant] could have honestly feared that she would suffer serious bodily harm from her husband's attacks, yet still remain with him."[118] Thus, the use of syndrome evidence to bolster a defendant's claim of honesty is closely linked to the circumstances presented in each case, and, especially to the duration of the abuse.

Similarly, in *Ibn-Tamas v. United States,* the District of Columbia Court of Appeals held that the defendant's credibility should be supported by expert evidence on the battered woman syndrome.[119] The court concluded that the expert's testimony "would have supplied an interpretation of the facts which differed from the ordinary lay perception...advocated by the government."[120] Because the government had implied that "the logical reaction of a woman who was truly frightened by her husband...would have been to call the police...or to leave him," the defense needed to offer evidence to rebut this assumption.[121] By proffering expert testimony on battered women's characteristics, the defense would have "enhanced [the defendant's] general credibility" and bolstered her assertion that "her husband's actions had provoked a state of fear which led her to believe she was in imminent danger."[122]

[iii] Reasonableness of belief in need to use deadly force

A somewhat more controversial application of the battered woman syndrome concerns its use to support the defendant's contention that her employment of deadly force was *reasonable.* Courts that allow the use of expert evidence to show reasonableness approach the question in one of two ways. First, some courts accept that the history of abuse and, in particular, the nature of that abuse, is pertinent to the reasonableness of the defendant's belief in the need to use deadly force. Alternatively, many courts appear to adopt a quasi-subjective reasonableness standard, by establishing the relevant comparison to be a reasonable battered woman rather than the ordinary reasonable person.

In *State v. Kelly,*[123] the New Jersey Supreme Court found expert testimony on the syndrome, with its description of the nature of the abuse suffered by the defendant, to be relevant to the reasonableness of the defendant's deadly action. The court observed as follows:

> At the heart of the claim of self-defense was defendant's story that she had been repeatedly subjected to "beatings" over the course of her

118. State v. Kelly, 478 A.2d 364, 375 (N.J. 1984).
119. 407 A.2d 626, 633–34 (D.C. 1979).
120. *Id.* at 634–35; *see also* State v. Allery, 682 P.2d 312, 316 (Wash. 1984) (holding that syndrome testimony would assist the "jury in understanding a phenomenon not within the competence of an ordinary lay person").
121. *Ibn-Tamas,* 407 A.2d at 633–34.
122. *Id.*; *see also* State v. Koss, 551 N.E.2d 970, 973 (Ohio 1990) (applying a subjective standard and finding that expert testimony was admissible "to help the jury understand the battered woman syndrome...[and]...determine whether the defendant had reasonable grounds for an honest belief that she was in imminent danger when considering the issue of self-defense").
123. 478 A.2d 364 (N.J. 1984).

> marriage. ... [A] juror could infer from...the detail given concerning some of these events (the choking, the biting, the use of fists), that these physical assaults posed a risk of serious injury or death. When that regular pattern of serious physical abuse is combined with defendant's claim that the decedent sometimes threatened to kill her, defendant's statement that on this occasion she thought she might be killed...could be found to reflect a reasonable fear; that is, it could so be found if the jury believed [the defendant's] story of the prior beatings...and, of course, if it believed her story of the events of that particular day.[124]

In contrast, many courts appear to adopt a quasi-subjective standard for reasonableness by changing the comparison group from ordinary reasonable persons to ordinary battered women. In *State v. Hundley*, for example, the court declared that "[t]he objective test is how a reasonably prudent battered wife would perceive...[the decedent's] demeanor."[125] This expansion of the objective test of reasonableness poses the danger of becoming so broad that it metamorphosizes into the subjective test. At some point, identification with the defendant's situation and circumstances can become so specific that, given her experience, whatever is honestly believed must also be reasonable.

2. *The Jurisprudential Basis for Self-Defense in Battered Woman Cases: Justification or Excuse*

The use of syndrome evidence generates substantial confusion regarding the jurisprudential bases for the defense. Specifically, many courts approach these claims as rooted in excuse theory—as opposed to justification—or create some hybrid of the two. However, self-defense claims are based entirely upon a theory of justification. Thus, someone who kills in self-defense is not morally culpable because society considers this act to be justified. Upon sober reflection, society has concluded that this action was correct under the circumstances. The theory of battered woman syndrome adheres closely to this justification rationale; in fact, the syndrome so closely parallels the law of self-defense that its basic parameters appear to be controlled more by legal convenience than by psychological observation or theory.

When battered woman syndrome testimony is offered, many courts construe the defense as partly or wholly based upon principles of excuse. Indeed, some jurisdictions have placed syndrome testimony within such legal categories as diminished capacity or insanity.[126] Even when courts correctly interpret the theory as one grounded in justification, they invariably describe the defendant as "suffering" from the *syndrome,* as though it were a medical malady.[127] This "mental disability" perspective has important ramifications for

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124. *Id.* at 377; *see also* Robinson v. State, 417 S.E.2d 88, 91 (S.C. 1992) ("Where torture appears interminable and escape impossible, the belief that only the death of the batterer can provide relief may be reasonable in the mind of a person of ordinary firmness.").

125. 693 P.2d 475, 479 (Kan. 1985).

126. *See, e.g.,* Anderson v. Goeke, 44 F.3d 675, 680–81 (8th Cir. 1995) (finding that the trial court had not violated due process by admitting battered woman syndrome "only as evidence of diminished mental capacity (by which to negate the mens rea element), and not as an affirmative defense"); State v. Mott, 901 P.2d 1221, 1224 (Ariz. Ct. App. 1995) (reversing the trial court's exclusion of battered woman syndrome in a child abuse case and rejecting the state's argument that the defendant was "essentially raising the defense of diminished capacity, a defense not permitted in Arizona").

127. *See, e.g.,* State v. Edwards, 420 So. 2d 663, 677–78 (La. 1982) (referring to battered woman claimants as suffering from a mental defect).

the law as well as for battered women defendants.

Louisiana perhaps best illustrates the interpretation of the use of syndrome theory as an indication that the woman suffers from a psychological infirmity. For instance, in *State v. Necaise*,[128] the defendant claimed self-defense in the shooting death of her husband. She was convicted of manslaughter and appealed, arguing that she should have been permitted to introduce expert testimony about the battered woman syndrome.[129] Relying on precedent, the appellate court affirmed the conviction.[130] The court expressed its reluctance to allow any evidence of the syndrome to be admitted in homicide prosecutions:

> We believe that allowing testimony which would attempt to prove the defendant a victim of "battered woman syndrome" and which would seek to establish her "state of mind" at the time of the shooting, absent a plea of "not guilty and not guilty by reason of insanity", [sic] would be, in effect, condoning the concept of "partial responsibility"—the allowing of proof of mental derangement short of insanity as evidence of lack of deliberate or premeditated design. The concept of partial or impaired responsibility has been rejected in this State in favor of an "all or nothing" (i.e., sane or insane) approach.[131]

Clearly, in light of the theoretical underpinnings of the defense, the Louisiana courts have misunderstood the nature and purpose of the use of syndrome evidence. Proponents of the syndrome have always maintained that the basis for the defense is the reasonableness of the woman's actions given the circumstances of her life; the basis does not rest on any claimed psychological incapacity inflicted on the woman by these circumstances.[132] For example, in *Hawthorne v. State*,[133] the court specifically cautioned that expert testimony on the battered woman syndrome should not be categorized as an attempt to establish the defendant's diminished capacity and lack of responsibility for the shooting.[134] Instead, such testimony "would be offered to show that because...[the defendant] suffered from the syndrome, it was reasonable for her to have remained in the home and...to have believed that her life and the lives of her children were in imminent danger."[135] Thus, this expert testimony spoke directly to the self-defense doctrine's requirement that the defendant "reasonably believed it was necessary to use deadly force to prevent imminent

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128. 466 So. 2d 660 (La. Ct. App. 1985).

129. *Id.* at 663.

130. *Id.* at 664–65 (citing *Edwards*, 420 So. 2d at 677). The *Edwards* court had categorized battered woman syndrome as a diminished capacity defense and noted that Louisiana law prohibits "evidence of a mental condition or defect...when the defendant failed to plead not guilty and not guilty by reason of insanity." *Edwards*, 420 So. 2d at 678.

131. *Necaise*, 466 So. 2d at 665 (footnote omitted). *See also* State v. Moore, 568 So. 2d 612, 617 (La. Ct. App. 1990) (concerning a case in which the defendant had asserted an insanity defense based on battered woman syndrome, but had failed to demonstrate insanity "by a preponderance of the evidence").

132. *See* People v. Torres, 488 N.Y.S.2d 358, 361–62 (Sup. Ct. 1985) (observing that the offered expert testimony of the syndrome was not "intended to establish that...[it] was a mental disease or defect relieving defendant of criminal responsibility" and asserting that "[t]he syndrome is best understood as being descriptive of an identifiable group of symptoms that characterize the behavior and state of mind of abused women rather than being disease-like in character").

133. 408 So. 2d 801 (Fla. Dist. Ct. App. 1982).

134. *Id.* at 806–07.

135. *Id.* at 807.

death or great bodily harm."[136]

Much of the blame for judicial confusion over the legal relevance of syndrome theory lies with proponents of the theory. Foremost, the choice of the label "syndrome" suggests a medical/biological genesis for the condition, rather than a social or behavioral basis. This pathology model is likely to be exacerbated by the current practice of linking the syndrome to post-traumatic stress disorder, a diagnosis in the Diagnostic and Statistical Manual for the Social Sciences. Undoubtedly, advocates believe that likening the phenomenon to a medical condition or malady enhances its credibility. While this may have occurred, this gain has been achieved at significant cost. In addition to doctrinal confusion, courts may be simply accepting traditional stereotypes of women in adopting a defense based on a "cycle of violence" that results in "helplessness."[137] What began as an attempt to educate the courts concerning the realities and necessities of domestic violence has evolved into an excuse-based defense premised upon the helplessness of the woman defendant. Moreover, the medical linkage makes the action "understandable" rather than "reasonable," and thus fails to explain why a battered woman killed with justification; instead, the syndrome defense merely makes triers of fact sympathetic to the woman's plight. This phenomenon might explain why syndrome testimony has been mainly effective in reducing the severity of the offenses for which these defendants are convicted, instead of winning outright acquittals.[138]

One particularly salient consequence of the courts' medical model approach to battered women cases is the likelihood that they will require defendants to undergo psychiatric examinations by the prosecution. This was the issue presented recently in *State v. Hickson.*[139] In *Hickson,* in response to the defendant's reliance upon syndrome evidence, the state filed a motion to require the defendant to submit to a psychiatric examination by the state's expert.[140] On appeal, the Florida Supreme Court held that the defendant would have to submit to a state psychiatric hearing, unless she chose not to present the syndrome evidence in her case.[141] Specifically, the court held that, as long as the defense's expert did not provide an opinion regarding whether the defendant herself suffered from the battered woman syndrome, no examination of the defendant could be conducted by the opposing side's expert.[142] However,

136. *Id.* at 806. In Pugh v. State, 382 S.E.2d 143 (Ga. Ct. App. 1989), the trial court had excluded all expert testimony regarding the battered woman syndrome because the defendant had failed to comply with a court rule entitled, "Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Incompetency." *Id.* at 143. The court of appeals held that this decision was clear error since "the Supreme Court [of Georgia] has specifically held that evidence of the battered woman syndrome is independently admissible in conjunction with a claim of self-defense." *Id.* at 144.

137. *See* Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering,* 9 WOMEN'S RTS. L. REP. 195 (1986).

138. *See* Ewing, *supra* note 15, at 55–56.

139. 630 So. 2d 172 (Fla. 1993).

140. *Id.* at 173.

141. *Id.* at 175–76; *see also* State v. Manning, 598 N.E.2d 25, 28 (Ohio Ct. App. 1991) (declaring that the defendant has "introduce[d] psychiatric evidence and plac[ed] her state of mind directly at issue...[thus,] she can be compelled to submit to a [sic] independent examination by a state psychiatrist"); Bechtel v. State, 840 P.2d 1, 7–9 (Okla. Crim. App. 1992) (finding that the battered woman syndrome is not a "mental disease," but also concluding that, "at the discretion of the trial court,...[defendants must] submit to an examination by the State's expert witness").

142. *Hickson,* 630 So. 2d at 175–76; *see also* State v. Schaller, 544 N.W.2d 247, 253

if the defendant chose to proffer expert testimony linking the syndrome to the facts of her case, then "she...[would waive] her right to refuse to submit to an examination by the state's expert."[143] The court reasoned that "[i]f a defendant were able to rely on her statements being presented to a trier of fact through an expert's testimony, she would, in effect, be able to testify without taking the stand and subjecting herself to the state's questions."[144]

Similarly, *People v. Rossakis*[145] offers a particularly illuminating example of courts' difficulty in grasping the jurisprudential basis for the defense and the concomitant dangers these misconceptions create for women employing the defense. In this murder case, the prosecution sought to preclude the defendant from offering battered woman syndrome expert testimony or, in the alternative, the state sought an order compelling the defendant to give notice of her intent to offer psychiatric or psychological evidence to support her claim of justification.[146] The defendant planned to enter a claim of "justification" in response to the People's murder charges and contended that the introduction of the battered woman syndrome did not "give rise to...[a statutory] notice requirement and the...obligation of subjecting herself to a psychiatric/psychological examination."[147]

The trial court held that expert testimony regarding the syndrome was admissible because it had "a substantial bearing on the defendant's state of mind at the time of the shooting and...is probative of the reasonableness of defendant's apprehension of danger at the time of the shooting."[148] However, the court also decided that such evidence fell within New York's statutory definition of "psychiatric evidence," thus requiring the defendant to provide written notice of her intent to present the evidence.[149] The court asserted that the "defendant seeks to escape punishment for the shooting by reason of her claimed mental condition at the time of the commission of the acts charged."[150] Thus, the court declared that "fundamental fairness requires that notice pursuant to [state law] be served and [that] the People be permitted to conduct a psychiatric/psychological examination of her."[151]

B. Judicial Responses to the Battered Woman Syndrome in Other Criminal Contexts

1. The Defense of Duress

The battered woman syndrome is increasingly employed by defendants in

(Wis. Ct. App. 1995) (determining that compelled psychiatric examinations are not required when the defendant's expert only proffers testimony concerning general characteristics of battering relationships).

143. *Hickson*, 630 So. 2d at 176.

144. *Id. See also* State v. Briand, 547 A.2d 235, 238–40 (N.H. 1988) (concluding that requiring the defendant to submit to a psychiatric examination did not violate her Fifth Amendment right against self-incrimination because the defendant waived this right by introducing expert testimony on the battered woman syndrome).

145. 605 N.Y.S.2d 825 (Sup. Ct. 1993).

146. *Id.* at 826.

147. *Id.* at 827.

148. *Id.* (footnote omitted).

149. *Id.* at 827–28.

150. *Id.* at 828.

151. *Id.*

trials for crimes committed seemingly in complicity with their abusers, but for which they claim duress. Most of the legal issues in duress cases are similar to self-defense cases, including the specific relevance of the expert testimony to the elements of a duress defense and general concerns over the objective versus subjective nature of the defense. Despite the doctrinal similarity, courts have been somewhat less sympathetic to the use of the battered woman syndrome in duress cases.

A recent Ninth Circuit decision, *United States v. Homick*,[152] described the elements that defendants must fulfill in order to argue successfully that they acted under duress: (1) defendants must have suffered an "immediate threat of death or serious bodily injury";[153] (2) they must have had "a well-grounded fear that the threat [would] be carried out";[154] and (3) defendants must have had "no reasonable opportunity to escape the threatened harm."[155] These elements bear a close resemblance to those of self-defense and, similarly, syndrome testimony is offered as relevant to all three elements of the defense.

The courts that have considered the syndrome in duress cases vary in their receptivity to this evidence.[156] *In United States v. Willis*,[157] the Fifth Circuit gave this evidence a cool reception.[158] In *Willis*, the defendant admitted that she and her male companion had planned to sell marijuana to an undercover officer; however, she contended that the gun found in her purse at the time of her arrest was her companion's gun.[159] She testified that she was extremely fearful of her companion and allowed him to put the gun in her purse immediately before their apprehension because she believed that if she objected to carrying the gun, he would have beaten her.[160] Accordingly, she argued, she had not "knowingly, intentionally or voluntarily" carried the gun and "did so only under duress."[161]

On appeal, the defendant argued that the trial court erroneously excluded

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152. 964 F.2d 899 (9th Cir. 1992).

153. *Id.* at 905 (quoting United States v. Contento–Pachon, 723 F.2d 691, 693 (9th Cir. 1984)).

154. *Id.* (quoting *Conento–Pachon*, 723 F.2d at 693).

155. *Id.* (quoting *Contento–Pachon*, 723 F.2d at 693).

156. Sometimes, courts' receptivity depends upon whether the specific facts of the case support the defense. For example, in People v. Herrera, 631 N.Y.S.2d 660 (App. Div. 1995), the defendant appealed her conviction, arguing that her proffered testimony regarding the syndrome should have been admitted by the trial court. She alleged that her accomplice and co-defendant "had abused and coerced her into committing the crime." *Id.* at 662. The court affirmed the trial court's decision, noting that there was no testimony "laying a foundation regarding the co-defendant's alleged abusive behavior toward [the defendant]." *Id.* Thus, the psychologist's proffered testimony "would not have been based on admissible evidence." *Id.*

157. 38 F.3d 170 (5th Cir. 1994).

158. The Ninth Circuit also gives syndrome evidence a chilly reception in duress cases. *See, e.g.*, United States v. Johnson, 956 F.2d 894 (9th Cir. 1992); United States v. Homick, 964 F.2d 899 (9th Cir. 1992). *See also* Foster v. Commonwealth, 827 S.W.2d 670, 682–83 (Ky. 1991) (finding that the trial court erroneously admitted syndrome testimony in a duress case in which the alleged abuser of the female defendant was another woman because "the syndrome by its own definition is inapplicable to the relationship which these co-defendants may have had with each other"); Cox v. State, 843 S.W.2d 750, 754–56 (Tex. Ct. App. 1992) (rejecting the use of syndrome evidence where the woman "was able to exert herself and could control her husband's actions to some extent when she deemed it necessary").

159. *Willis*, 38 F.3d at 173.

160. *Id.* at 174.

161. *Id.*

expert psychological testimony concerning the battered woman syndrome.[162] Applying an abuse of discretion standard, the circuit court reviewed the elements of a successful duress defense, emphasizing that the "requirements are addressed to the impact of a threat on a *reasonable* person."[163] According to the court, syndrome testimony was "inherently subjective" because it failed to provide any insight into "whether a person of reasonable firmness would have succumbed to the level of coercion present in a given set of circumstances."[164] Such testimony would merely establish that the defendant's psychological condition rendered her "unusually susceptible to...coercion."[165] Because syndrome evidence failed to address the objective components comprising a duress defense, the court concluded that the evidence was not relevant.[166] The court explained as follows:

> To consider battered woman's syndrome evidence in applying...[the] test...would be to turn the objective inquiry that duress has always required into a subjective one. The question would no longer be whether a person of ordinary firmness could have resisted. Instead, the question would change to whether this individual woman, in light of the psychological condition from which she suffers, could have resisted.[167]

The Ninth Circuit held similarly in *United States v. Johnson*,[168] observing that courts are reluctant to "vary legal norms with the individual's capacity to meet the standards they prescribe, absent a disability that is both gross and verifiable."[169] Despite its aversion to allowing the use of syndrome evidence in duress trials, the *Johnson* court concluded that syndrome testimony was relevant during sentencing.[170] The court noted that federal sentencing guidelines allow courts to reduce a sentence if the defendant "committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense."[171] Furthermore, the guidelines state that courts should

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162. *Id.*

163. *Id.* at 175 (emphasis supplied). The court summarized the elements of duress as follows:

> (1) The defendant was under an unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury; (2) the defendant had not recklessly or negligently placed herself in a situation in which it was probable that she would be forced to choose the criminal conduct; (3) the defendant had no reasonable legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm; and (4) a direct causal relationship may be reasonably anticipated between the criminal action taken and the avoidance of the threatened harm.

Id.

164. *Id.*

165. *Id.* Similarly, in State v. Riker, 869 P.2d 43, 45–46 (Wash. 1994), the defendant sought admission of syndrome testimony as part of her duress defense, even though she was not battered by the claimed source of the duress, but had merely once been in a battering relationship. The court observed that "[w]ithout requiring a foundation which would distinguish [the defendant's] fear from that of every other citizen who has a troubled past, there is a danger that the evidentiary doors will be thrown open to every conceivable emotional trauma." *Id.* at 51 n.5.

166. *Willis*, 38 F.3d at 176.

167. *Id.*

168. 956 F.2d 894 (9th Cir. 1992).

169. *Id.* at 898 (citation omitted).

170. *Id.*

171. *Id.* (quoting UNITED STATES SENTENCING COMMISSION GUIDELINES MANUAL § 5K2.12 (1987)).

consider "the reasonableness of the defendant's actions" as well as "the circumstances as the defendant believed them to be."[172] Therefore, although battered woman syndrome testimony could not be taken into account when determining a woman's criminal liability, it could be considered when her sentence was decided.[173]

The application of the battered woman syndrome to the defense of duress was received more warmly by the Tenth Circuit. In *Dunn v. Roberts*,[174] the court held that the state trial court's refusal to provide expert witness funds for syndrome testimony to a defendant claiming a duress defense infringed upon her due process rights.[175] The defendant was charged with aiding and abetting the following: felony murder, kidnapping, aggravated battery, and aggravated robbery.[176] The charges stemmed from the defendant's long trip to Florida with her batterer, Daniel Remeta.[177] During the trip, Remeta physically abused the defendant, repeatedly threatened her with a gun, and told her that he would hurt her or her family if she tried to leave him.[178] The trip culminated in a crime spree by Remeta, during which he shot a police officer and another man, then killed two hostages.[179] The defendant sought to introduce syndrome testimony to demonstrate that she lacked the necessary intent to aid and abet any of these crimes.[180] The trial court denied the defendant's request for funds to hire an expert witness, and she was convicted.[181] After the Kansas Supreme Court affirmed her conviction, the defendant petitioned for a writ of habeas corpus, and the district court granted the writ. The district court held that the defendant was unable to present an effective defense as a result of the trial court's refusal to grant expert witness fees and granted her a new trial.[182] The state appealed.

The Tenth Circuit observed that one of the "basic tools of an adequate defense" was expert psychiatric assistance "when a defendant makes a threshold showing that her mental condition at the time of an offense is likely to be a 'significant factor' at trial."[183] Finding that the case "rested on...[the defendant's] ability to show that she lacked the requisite intent," the court concluded that the trial court's denial of expert witness funds "precluded Petitioner from presenting an effective defense."[184] Because expert testimony could have explained "why a defendant suffering from the battered woman syndrome wouldn't leave her batterer," the court stated that "such evidence could have provided an alternative reason for Petitioner's continued presence

172. *Id.* (quoting UNITED STATES SENTENCING COMMISSION GUIDELINES MANUAL § 5K2.12 (1987)).
173. *Id.*
174. 963 F.2d 308 (10th Cir. 1992); *see also* United States v. Brown, 891 F. Supp. 1501 (D. Kan. 1995).
175. 963 F.2d at 310–12, 314. The issue of a defendant's right to state-supported expert witness testimony concerning battered woman syndrome is discussed *infra* in notes 223–34 and accompanying text.
176. 963 F.2d at 309–10.
177. *Id.* at 310.
178. *Id.*
179. *Id.*
180. *Id.* at 310–11.
181. *Id.* at 311.
182. *Id.* at 312.
183. *Id.*
184. *Id.* at 313.

with Daniel Remeta."[185]

Thus, in cases in which battered women defendants claim duress, syndrome testimony closely parallels its use in self-defense cases. Its relevance comes from its purported power to explain why a battered woman might believe she was in "imminent harm" and why she failed to leave the abuser before the perpetration of criminal acts.[186] Moreover, the syndrome is supposedly relevant to the issue of whether the defendant had the requisite intent necessary to commit a particular crime, especially when specific intent is required.[187] However, as in its application to self-defense doctrine, courts are confused regarding the exact import of the evidence. Some courts interpret the syndrome as an excuse-type defense, relevant to the defendant's subjective state of mind or mental disability, rather than to the objective reasonableness of her decision to comply with a threat of imminent harm.[188]

2. Miscellaneous Defenses

In addition to self-defense and duress, battered woman syndrome testimony has been offered in a variety of other contexts. These cases typically raise questions concerning the state of mind of the defendant at the time of the alleged crime.[189] For example, in *Clenney v. State*,[190] the Georgia Supreme Court considered whether syndrome testimony was admissible to determine the "voluntariness" of the defendant's pretrial statements.[191] At trial, defense counsel proffered expert testimony in order to "rebut the state's contention that the appellant was not remorseful and had lied in her statements, and to explain her post-arrest state of mind."[192] The court determined that the testimony was not admissible for this purpose since the "jury could decide the issue as to the appellant's remorse or lack of it without the aid of expert-witness testimony, this not being a conclusion 'beyond the ken of the average layman.'"[193]

In contrast, in *State v. Mott*,[194] the Arizona Court of Appeals reversed a trial court's exclusion of battered woman syndrome expert testimony in a child abuse case. In *Mott*, the defendant had left her two-year-old daughter with her

185. *Id.* at 314.

186. *But see* State v. Riker, 869 P.2d 43, 51 (Wash. 1994) (holding that duress requires "immediate" harm, while self-defense requires only "imminent" harm).

187. *See Roberts*, 963 F.2d at 313 (holding that battered woman syndrome is relevant as to whether the defendant had specific intent to assist the crimes).

188. See United States v. Sebresos, 972 F.2d 1347, 1992 WL 170987 (9th Cir. 1992) (unpublished disposition), in which the court held that the district court correctly rejected the defendant's expert testimony on "spouse abuse syndrome." *Id.* at *3, *6. The defendant was attempting to establish a duress defense; however, the proffered testimony would have focused on the expert's diagnosis that the defendant was suffering from depression and "dependent personality disorder" and could not act voluntarily. *Id.* at *5. The court declared that such testimony was at odds with a duress defense, which acknowledges that the defendant acted voluntarily, but claims no other choice was possible. *Id.* at *5, *6. The court concluded that "individual psychological incapacity cannot be the basis for a duress defense." *Id.* at *6.

189. *But see* McMaugh v. State, 612 A.2d 725, 728–34 (R.I. 1992) (granting the defendant post-conviction relief after she introduced credible evidence demonstrating that she implicated herself in a murder as a result of her husband's prolonged physical and verbal abuse, which was intended to force her to exonerate him.).

190. 344 S.E.2d 216 (Ga. 1986).

191. *Id.* at 218.

192. *Id.*

193. *Id.*

194. 183 Ariz. 191, 901 P.2d 1221 (Ariz. Ct. App. 1995).

boyfriend.[195] When she returned approximately an hour later, she found her daughter unconscious.[196] Her boyfriend claimed that her daughter hit her head when she fell off the toilet.[197] Although a friend offered to transport the child to a hospital several times that evening, the boyfriend refused and would not allow the defendant to accept the friend's offer.[198] The next morning, paramedics were summoned when her daughter began having seizures.[199] Medical tests revealed that the child had suffered a brain hemorrhage; she died a week later.[200]

The trial court denied the defendant's proffer of syndrome testimony, finding that "it was not relevant to any recognized defense."[201] According to the state, the defendant was "'essentially raising the defense of diminished capacity, a defense not permitted in Arizona.'"[202] The court of appeals rejected this argument, citing earlier Arizona cases that permitted "character evidence" to be introduced when it was intended to negate "the mental element of the offense charged," rather than "relieve the defendant of responsibility."[203] Because the Arizona statute under which the defendant was charged required that she "intentionally or knowingly" permitted a child to suffer physical injury, the court reasoned that syndrome testimony was admissible "to negate the state's contention that [the defendant] acted with intent or knowledge when she temporarily left [her daughter] with [her boyfriend], and when she failed to promptly take [her daughter] to the hospital."[204] The trial court's exclusion of the expert testimony constituted a denial of due process because the defendant had been denied "the opportunity to present evidence essential to her defense."[205]

3. Prosecution Use of the Battered Woman Syndrome

Prosecutors have only recently begun to employ the battered woman syndrome, but prosecutorial use of the syndrome presents a host of different issues and possibly somewhat greater dangers than utilization by defendants. Prosecutors typically offer the syndrome to support or bolster the credibility of battered women who testify in prosecutions of their batterers. Battered women witnesses occasionally change their testimony in favor of the defendant, and prosecutors present syndrome evidence to explain this otherwise contradictory behavior. Yet, introduction of the syndrome against defendants raises substantial questions of fairness under both the specific rules against character evidence and the general principles of the evidence rules, which declare that evidence should be excluded when its probative value is substantially outweighed by unfair prejudice.

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195. *Id.* at 192, 901 P.2d at 1222.
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.* at 194, 901 P.2d at 1224.
202. *Id.* (citation omitted).
203. *Id.*
204. *Id.* at 195, 901 P.2d at 1225.
205. *Id. See also In re* Glenn G., 587 N.Y.S.2d 464, 470 (Fam. Ct. 1992) (dropping child abuse charges brought against a mother who, because of battered woman syndrome, could not "be said to have 'allowed' the abuse within the meaning" of the statute and entering a finding of "neglect" against her because that statute imposed "strict liability").

Arcoren v. United States[206] offers a typical illustration of the prosecutorial use of the syndrome.[207] The defendant was charged with, among other things, aggravated sexual abuse.[208] The defendant's spouse provided details of the sexual and physical abuse that she suffered to the grand jury, but she later recanted this testimony at trial.[209] In order to explain her reversal, the prosecutor offered battered woman syndrome expert testimony from a psychologist. The trial court found that the testimony met the requirements of Rule 702 and admitted it. However, the trial court limited the scope of this testimony by prohibiting the expert from offering an opinion about whether "'a particular party in this case...actually suffers from battered women syndrome.'"[210]

On appeal, the Eighth Circuit commented that the jury was confronted with a "bizarre situation."[211] According to the court, "a jury naturally would be puzzled at the complete about-face [the victim] made, and would have great difficulty in determining which version...it should believe."[212] The court concluded that the "expert testimony regarding the battered woman syndrome provided [the] explanation."[213] The defendant, however, argued that the battered woman syndrome should not be permitted outside the context of defense use in self-defense claims.[214] The Eighth Circuit disagreed, and stated that "the standard under Rule 702...is whether the 'evidence will assist the trier of fact to understand the evidence or determine a fact in issue'.... [I]t is immaterial whether the testimony is presented by the prosecution or by the defense."[215]

The Eighth Circuit is not entirely accurate in its conclusion that the identity of the proponent of expert syndrome testimony is irrelevant. A battered woman defendant facing a homicide charge offers syndrome testimony

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206. 929 F.2d 1235 (8th Cir. 1991).

207. For a nearly identical factual pattern to *Arcoren,* see State v. Borrelli, 629 A.2d 1105 (Conn. 1993); *see also* Thompson v. State, 416 S.E.2d 755, 757 (Ga. Ct. App. 1992); State v. Cababag, 850 P.2d 716, 719 (Haw. Ct. App. 1993); People v. Christel, 537 N.W.2d 194, 198–99 (Mich. 1995); State v. Frost, 577 A.2d 1282, 1287 (N.J. Super. Ct. App. Div. 1990)

208. 929 F.2d at 1238.

209. *Id.*

210. *Id.* at 1239. The expert testified that "a 'battered woman' is one who assumes responsibility for a cycle of violence occurring in a relationship." *Id.* The expert also described the general characteristics of the syndrome, including the victim's belief that the violence is her fault, an inability to attribute responsibility for abuse to the batterer, fear for both her life and her children's and "an irrational belief that the abuser is omnipresent and omniscient." *Id.*

211. *Id.* at 1240.

212. *Id. See also* State v. Ciskie, 751 P.2d 1165, 1173 (Wash. 1988) (en banc) (allowing syndrome testimony in a rape prosecution where the "defense challenged [the victim's] credibility and attempted to persuade the jury that her failure to leave the relationship, or to complain earlier to a doctor or police, was inconsistent with [the behavior] of a rape victim").

213. *Arcoren,* 929 F.2d at 1240. *See also* People v. Hryckewicz, 634 N.Y.S.2d 297, 298 (App. Div. 1995) (upholding prosecutorial use of the syndrome and observing that it "'explain[ed] behavior on the part of the complainant that might seem unusual to a lay jury unfamiliar with the patterns of response exhibited' by a person who has been physically and sexually abused over a period of time").

214. *Arcoren,* 929 F.2d at 1241.

215. *Id.* (quoting FED. R. EVID. 702); *see also* State v. Frost, 577 A.2d 1282, 1287 (N.J. Super. Ct. App. Div. 1990) ("It would seem anomalous to allow a battered woman, where she is a criminal defendant, to offer this type of expert testimony in order to help the jury understand the actions she took, yet deny her that same opportunity when she is the complaining witness...and her abuser is the criminal defendant.").

for very different purposes than a prosecutor might in an assault or homicide prosecution. In both, however, the evidence raises concerns over the use of character to prove conduct. Although syndrome testimony is typically portrayed as a description of the victim, it is actually a portrait of violence practiced by the abuser.[216] Inevitably, the presentation of syndrome evidence will reveal prior bad acts committed by the abuser to the trier of fact.[217] However, most evidence codes draw sharp distinctions concerning the admissibility of prior bad acts depending on whether the alleged perpetrator of those acts is the defendant.[218]

To be sure, the prosecution does not introduce syndrome evidence to prove the character of the defendant; instead, it is offered to bolster the credibility of the battered woman witness. The structure of all rules of evidence is such that one relevant use of the evidence is sufficient to allow introduction of the evidence. As in other contexts, the defendant is probably entitled to an instruction concerning the limited scope of the testimony. Moreover, given that juries probably pay little attention to such instructions, the danger that juries will be prejudiced by the evidence must be factored into a Rule 403 balance.[219]

The Rule 403 balance does not obviously favor admission of the syndrome to bolster the credibility of a prosecution witness. As many of the courts considering this evidence recognize, it does not contain overwhelming probative value. Indeed, as some courts have noted, it comes perilously close to testimony affirming the credibility of a witness, a use generally prohibited by courts.[220] Moreover, the syndrome was not designed with this use in mind and no research exists to support the conclusion that battered women are more likely than any other complainant to change their testimony at trial.[221] In fact, because there is no research *at all* regarding the likelihood that battered women will be more likely to change their testimony than other witnesses, Rule 702 should operate to exclude the testimony—there is simply no "fit" between the

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216. *See* State v. Pargeon, 582 N.E.2d 665, 666 (Ohio Ct. App. 1991) (asserting that the prosecution's use of the syndrome "really serves as evidence of the prior bad acts of the appellant from which the inference may be drawn that appellant has the propensity to beat his wife and that he beat her on this particular occasion"). *See generally* Robert P. Mostellar, *Legal Doctrines Governing the Admissibility of Expert Testimony Concerning Social Framework Evidence*, LAW & CONTEMP. PROBS., Autumn 1989, at 85, 109–12.

217. *See, e.g.*, Thompson v. State, 416 S.E.2d 755, 757–58 (Ga. Ct. App. 1992) (rejecting the defendant's complaint that the expert's testimony had exceeded its scope because the expert alluded to "certain acts committed by the defendant"and declaring that these references "were necessary and reasonable" to the expert's testimony concerning the syndrome).

218. *See* Chapman v. State, 367 S.E.2d 541, 542–43 (Ga. 1988) (holding that, when the "defendant makes a prima facie showing that the victim was the aggressor...and...the defendant was honestly trying to defend himself," then a defendant may introduce evidence about the victim's violent propensities).

219. Rule 403 provides as follows: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." FED. R. EVID. 403.

220. *See* CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, MODERN EVIDENCE §§ 6–6.4, at 918–20 (1995).

221. In State v. Bednarz, 507 N.W.2d 168 (Wis. Ct. App. 1993), the court concluded that because "[a]n untrained lay person does not know that recantation can be suggestive of post traumatic stress [disorder] in the form of 'battered woman syndrome,'" expert testimony provided by the prosecution allows the jury to assess an additional explanation for the victim's actions that would have been unavailable without expert testimony. *Id.* at 172. The court cited no support for this proposition and did not explain its basis for believing in its validity.

research and the expert opinion on this matter. Moreover, to the extent that the witness changes her story because of fear of retribution, this is a motive that is readily understandable by the average lay-juror. The admissibility of past occurrences of violence should be evaluated separately to determine their relevance and their possible prejudicial effects. Courts confronting expert testimony on the battered woman syndrome do not always carefully evaluate the true relevance of the research supporting the expert testimony.[222] As courts come to better understand the research methodology employed to study this issue, they should become more cautious as they approach the delicate task of balancing probative value and prejudicial effect.

C. Constitutional Issues Raised in Battered Women Cases

Two constitutional guarantees have been addressed at length in battered women cases involving defenses to homicide prosecutions. The first concerns the Fifth and Fourteenth Amendment guarantees of effective representation by counsel. The second concerns an Equal Protection challenge to a state's law of self-defense that assertedly discriminates against women. These issues are considered in turn.

1. Due Process and Effective Counsel

The matter of the minimum standard of representation guaranteed by the Constitution to battered women claiming self-defense in homicide prosecutions is manifested in two contexts. First, several courts have examined whether due process requires governments to provide funds for expert testimony on the battered woman syndrome. In addition, courts have considered whether counsel's failure to assert a defense premised on the syndrome constitutes

222. In State v. Baker, 424 A.2d 171 (N.H. 1980), the prosecution introduced battered woman syndrome for a highly unusual purpose. The defendant was charged with the attempted murder of his wife, and he entered a plea of not guilty by reason of insanity. After the defendant's experts completed their testimony indicating that the defendant was insane at the time of the crime, the prosecution introduced testimony from an expert on the battered woman syndrome. The prosecution's expert testified that "current research does not indicate that mental illness is an important cause of wife-beating." *Id.* at 172. Moreover, the expert concluded that the defendant's marriage "probably f[e]ll within the contours of the 'battered woman syndrome.'" *Id.* On appeal, the defendant argued that the prosecution's expert's testimony was "only marginally relevant" and was "highly prejudicial." *Id.* The New Hampshire Supreme Court disagreed, noting that "when the proffered evidence is relevant and otherwise unobjectionable, we will uphold the court's decision to admit evidence claimed to be prejudicial unless it is so inherently prejudicial as to constitute an abuse of discretion." *Id.* Because the battered woman syndrome testimony supplied "an alternative explanation for the defendant's assault on his wife," it was relevant to the determination of the defendant's mental condition at the time of the offense." *Id.*

Unfortunately, the court failed to observe that none of the syndrome research has actually studied the abusers as subjects. In all of this work, only the victims of abuse are interviewed or otherwise examined. Thus, the primary, if not exclusive, significance of the prosecution's use of syndrome expertise was to introduce prior bad acts of the defendant. The court did not consider the possible prejudice of this evidence and, indeed, appeared to find it particularly helpful because of its ability to provide insight into the defendant's character. The court remarked that this evidence supported the prosecution's theory that the defendant's attempted murder was only a "single episode in a recurring pattern of domestic violence," which was similar to prosecutorial arguments in child abuse prosecutions in which admission of battered child syndrome expert testimony is sought to prove that pediatric injuries are "not accidental but rather...consistent with a pattern of physical abuse." *Id.* This explanation reverberates with the sounds of character evidence.

ineffectiveness of counsel.

The most important decision to hold that due process requires governmental support of defendant's expert witnesses is *Dunn v. Roberts*.[223] In *Roberts,* the Tenth Circuit granted the petitioner's writ of habeas corpus from her conviction following the trial court's refusal, later affirmed by the Kansas Supreme Court, to grant her expert witness funds.[224] The court observed that one of the "basic tools of an adequate defense" was expert psychiatric assistance when "a defendant makes a threshold showing that her mental condition at the time of the offense is likely to be a 'significant factor' at trial."[225] The court concluded that the trial court's denial of expert witness funds "precluded Petitioner from presenting an effective defense"[226] and thus "deprived [her] of the fair trial due process demands."[227]

Similarly, in *People v. Evans*,[228] the Illinois Appellate Court reversed the trial court's denial of an indigent defendant's request for funds to hire an expert on the battered woman syndrome.[229] The defendant hired the expert before petitioning the court for the necessary funds, and the court refused to authorize funds to pay the expert, finding that the "hours are padded" and "the amount of money is excessive."[230] The appellate court stated that if the defendant's case would be prejudiced without the expert and the expert's services are needed "to prove a crucial issue in the case," then the expert is "necessary."[231] Applying this standard, the court determined that the expert's services were needed to address the "defendant's state of mind at the time of the killing."[232] According to the court, without the expert's testimony, the "evidence at trial would tend to belie the conclusion that [the defendant] reasonably believed that deadly force was necessary...and thus undermine her claim of self-defense."[233] The court remanded the matter to the trial court to determine a reasonable fee for the

223. 963 F.2d 308 (10th Cir. 1992); the facts and general analysis of *Roberts* are discussed *supra* in notes 174–85 and accompanying text.

224. 963 F.2d at 314.

225. *Id.* at 312.

226. *Id.* at 313.

227. *Id.* at 314.

228. 648 N.E.2d 964 (Ill. App. Ct. 1995).

229. *Id.* at 965. In State v. Dannels, 734 P.2d 188 (Mont. 1987), the Montana Supreme Court affirmed the lower court's denial of defendant's request for expert witness funds. Dannels is somewhat unusual, however, since the defendant sought expert assistance to "buttress her credibility." *Id.* at 192–93. The court stated that, since the defendant "did not seek to prove that she suffered from abused spouse syndrome [sic] and...did not have the necessary state of mind to commit the homicide," her expert testimony was inadmissible. *Id.* at 192. The court referred to a Montana statute that allows evidence of a defendant's "mental disease of defect" to be admitted if "it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense." *Id.* (citing MONT. CODE ANN. § 46–14–102 (1995)). Presumably, however, if the defendant had offered "abused spouse syndrome" to prove a "mental disease or defect" and presuming that such evidence is relevant to this issue, expert witness funds would be made available in Montana.

230. *Evans,* 648 N.E.2d at 966.

231. *Id.* In State v. Aucoin, 756 S.W.2d 705 (Tenn. Crim. App. 1988), the court rejected the defendant's claim that she was entitled to receive funds to hire a private psychologist to testify on the syndrome. The trial court had provided enough funds to hire a psychiatrist who testified on her behalf. According to the court, the provision of these funds was sufficient to satisfy due process. *Id.* at 714.

232. *Evans*, 648 N.E.2d at 969.

233. *Id.*

defendant's expert witness.[234]

Courts have also defined the parameters of due process in considering whether a defense counsel's failure to rely on syndrome testimony in a homicide prosecution of a battered woman constituted ineffective assistance of counsel.[235] For example, in *People v. Day*,[236] the court held that the defendant was denied effective assistance of counsel because her attorney failed to "investigate or present evidence of Battered Woman Syndrome."[237] The court ruled that syndrome testimony should have been proffered to rebut the prosecution's argument that the defendant's conduct was inconsistent with self-defense.[238] The court explained that "[battered woman syndrome] evidence would have deflected the prosecutor's challenge to appellant's credibility...[and] would have assisted the jury in objectively analyzing appellant's claim of self-defense by dispelling many of the commonly held misconceptions about battered women."[239] Since the failure to present such evidence may have led "to a conclusion based on misconceptions," the court held that defense counsel's oversight was prejudicial.[240] Furthermore, the court noted that the jury had deliberated for a lengthy period of time, had requested clarification on self-defense law, and had reviewed the testimony, indicating that the "case was close."[241] Thus, the defendant was entitled to a new trial.[242]

2. Equal Protection

In a novel challenge to traditional self-defense law, the defendant in *Lumpkin v. Ray*[243] argued that she was "deprived by Oklahoma law of a reasonable opportunity to present...evidence [concerning the battered woman

234. *Id.* at 971.

235. In Commonwealth v. Stonehouse, 555 A.2d 772 (Pa. 1989), although defendant's appellate counsel informed the court during oral argument that "battered woman syndrome is not implicated in the case," a plurality of the court concluded otherwise. *Id.* at 774. The plurality declared that "there was no reasonable basis for trial counsel not to call an expert witness to counter the erroneous battered woman myths upon which the Commonwealth built its case." *Id.* at 784–85. Two other justices joined the plurality's conclusion that trial counsel was ineffective, but they protested the plurality's decision to address the syndrome. *Id.* at 785.

236. 2 Cal. App. 4th 405 (1992), *overruled on other grounds,* People v. Humphrey, 921 P.2d 1 (Cal. 1996).

237. *Id.* at 420. *But see* People v. Ransome, 615 N.Y.S.2d 911, 911 (App. Div. 1994) (dismissing appellant's ineffective assistance of counsel claim where the defense counsel "made appropriate motions and objections, vigorously cross-examined the People's witnesses, and strenuously argued the defendant's position to the jury").

238. *Day,* 2 Cal. App. 4th, at 415–16.

239. *Id.* at 416.

240. *Id.* at 419–20.

241. *Id.* at 420.

242. *Id.* In a consistent holding, the court in *State v. Scott* granted the defendant's motion to withdraw her guilty plea to a manslaughter charge after determining that the defendant received ineffective assistance of counsel. 1989 WL 90613 (Del. Super. Ct. July 19, 1989). The defendant's attorney urged her to plead guilty, telling her that the "battered woman's defense" was "relatively novel" in Delaware and "express[ing] reservations as to its applicability." *Id.* at *1. Interpreting Delaware's self-defense statute, the court found that deadly force is justifiable if the *defendant,* rather than a reasonable person, believes that it is necessary to employ such force to protect herself from death or serious bodily harm. *Id.* at *1–*2; DEL. CODE. ANN. tit. 11, § 464(c) (1994). Since the statute uses a subjective test to determine whether deadly force was justified, the court reasoned that the defendant's own perceptions about the danger posed by the victim were relevant. 1989 WL 90613, at *2. Thus, the court concluded that it was "not open to doubt that a colorable claim of self-defense was available to [the defendant]." *Id.*

243. 977 F.2d 508 (10th Cir. 1992).

syndrome] because of the imminence requirement of the Oklahoma statute defining self-defense."[244] In addition, the defendant claimed "that the cyclical trap of the 'battered woman syndrome' sets the battered woman apart from others who have the financial and other resources and support, including reasonable access to police and courts, to supplement their smaller physical size and lack of ability to defend themselves."[245] The Tenth Circuit rejected this argument, finding that the defendant failed to produce evidence at trial of "the existence or characteristics of the discrete group of women suffering from 'battered woman syndrome.'"[246]

The court's analysis emphasized that the defendant had failed to articulate clearly "whether the basis of her equal protection claim was that the Oklahoma self-defense statute discriminated against her because she was a woman or because she was a *battered* woman."[247] The court explained that if the defendant sought to challenge the statute because it discriminated against *all* women, she would not have to define the class, "nor would she be required to prove her inclusion in that class."[248] However, the defendant would have to prove "why the class of all women is disadvantaged by the statute."[249] On the other hand, if the defendant claimed that the statute discriminated specifically against *battered* women, then "she would be required at trial to define the class of women with 'battered woman syndrome,' to prove her inclusion in that class, and to show why the class of those with battered woman syndrome is disadvantaged by strict application of the statute."[250] The Tenth Circuit concluded that the defendant had failed to provide sufficient "discrete group evidence" at trial to support her equal protection challenge to the Oklahoma statute.[251]

D. Battered Woman Syndrome in Civil Cases

In the civil context, expert testimony on battered woman syndrome is typically offered in divorce or child custody cases. As in criminal cases, the evidence is often introduced to explain behavior by battered women that appears inconsistent with the supposed expectations of laypersons. For instance, in *Pratt v. Wood*,[252] a child's maternal grandparents filed a petition to obtain custody. The child's mother had been arrested on charges relating to the death of another child. The grandparents offered evidence that the child's father had abused the child and the child's mother. Following their daughter's testimony about the abuse she had suffered, the grandparents attempted to introduce expert testimony regarding the battered woman syndrome, but the trial court excluded the evidence and ultimately awarded custody to the father. The appellate court held that the trial court's exclusion of this evidence was error: "[I]t has come to be recognized that expert testimony in the field of domestic violence is admissible since the psychological and behavioral characteristics typically shared by victims of abuse in a familial setting are not generally

244. *Id.* at 509.
245. *Id.*
246. *Id.* at 510.
247. *Id.* (emphasis supplied).
248. *Id.*
249. *Id.*
250. *Id.*
251. *Id.*
252. 620 N.Y.S.2d 551 (App. Div. 1994).

known by the average person."[253] The appellate court found the trial court's exclusion of syndrome testimony especially prejudicial since the trial court had "found [the mother's]...testimony [regarding domestic violence] to be incredible because she never went to a hospital or sought treatment."[254]

Similarly, the battered woman syndrome is sometimes considered relevant in divorce proceedings and the attending property settlement.[255] In *Blair v. Blair*,[256] the wife contested a divorce order, claiming that the court's property distribution award was an abuse of discretion. At trial, the wife introduced evidence of the physical abuse she had endured during her four-year marriage.[257] The Vermont Supreme Court found the lower court's reaction to the abuse testimony troubling. The family court judge made the following remarks during the proceedings:

> The marital misdeeds that have been attributed to [the husband], most of them, we don't believe.... [T]here may be these temper tantrums,...but the strangling...and violence and threats that were described by [the wife] have been blown way out of proportion as evidenced by the fact that she stayed throughout the four years of marriage. The children were in the house and don't relate any corroboration at all regarding these things.... I think that they're blown up by her own hurt with what happened to the marriage.[258]

According to the supreme court, the lower court's belief that the allegations were inflated because the woman had not left the marriage was a typical example of one of the myths surrounding abusive relationships and the behavior of battered women.[259] In its concluding remarks, the court remanded for a new trial, emphasizing that "the findings were inadequate to afford meaningful review...given defendant's extensive testimony which dovetailed [with] the profile of a battered woman."[260]

E. Conclusion

This review of the case law leaves two distinct and overwhelming impressions. First, courts take widely varying approaches to answering the question of the relevance of the battered woman syndrome. Hence, some courts employ it to support justification-based defenses while others find it relevant to excuse-based defenses; some courts apply it solely to the subjective honesty of

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253. *Id.* at 553.

254. *Id.* For another example of the use of syndrome evidence in the civil context, see *In re* Victoria C., 630 N.Y.S.2d 470, 471 (Fam. Ct. 1995). In seeking a protective order against her husband, the petitioner sought to introduce syndrome testimony to explain her reaction to the abuse and her failure to escape it. The family court judge ruled that syndrome expert testimony "has found acceptance in the courts of New York" and was "*presumptively admissible* in this family offense proceeding." *Id.* (emphasis supplied).

255. *See, e.g.*, Quebodeaux v. Quebodeaux, 657 N.E.2d 539, 541 (Ohio Ct. App. 1995) (affirming the trial court's reliance on battered woman syndrome expert testimony to dissolve an earlier dissolution agreement that the lower court had found to be the product of duress); Soutiere v. Soutiere, 657 A.2d 206, 208–09 (Vt. 1995) (declaring that "the severity and long-lasting effects of defendant's abuse on plaintiff's emotional health, her future counselling needs, and her potential employability" made syndrome evidence relevant in determining an equitable property distribution).

256. 575 A.2d 191 (Vt. 1990).

257. *Id.* at 192.

258. *Id.* at 192–93.

259. *Id.* at 193.

260. *Id.* (citation omitted).

the woman claiming the defense while others find it more generally relevant to her objective reasonableness. Second, there are a wide variety of legal uses that proponents and courts find for the research. Some courts permit it to show the reasonableness of the defendant's decision to kill, while others permit it to show the woman's mental defect in deciding to kill. It is relied upon to explain why some women kill their batterers as well as to explain why some women testify for their batterers when they are prosecuted for their violent acts. The battered woman syndrome is an enormously elastic concept that can cover a wide variety of difficult cases. Of course, it is not unusual for the law to stretch doctrine for the sake of political convenience. Here, however, science has been stretched for the sake of convenience. The fault, or perhaps opportunity, for this situation lies primarily with the proponents and researchers who originally hypothesized the syndrome. The battered woman syndrome can be all things to all people because the research has largely not defined any parameters for it. Like Rorschach ink blots, what the observer sees tells us more about the observer than the ink blot. A common response to the obvious lack of rigor displayed by syndrome researchers is that the complexity of human behavior resists careful and rigorous scientific study. The next section responds to this dilettantish complaint.

IV. WHEN SCIENCE IS HARD TO DO, BAD SCIENCE IS NOT THE SOLUTION

It has become a common refrain among many legal scholars that social science cannot be rigorous,[261] or that it is not a "real" science.[262] There is some truth in the refrain, though not very much, and little, if any, explanatory power. Underlying this argument appears to be the superficial insight that studying human behavior is difficult. But most science is difficult to conduct. Suppose, in 1980, someone asked which fact was more likely to be known through scientific study by the year 2000: that scientists could map the DNA molecule or that we would know the percentage of battered women who suffered both a "cycle of violence" and experienced "learned helplessness." Surely the latter is "easier" to study.

Many legal scholars will respond by insisting that human behavior in areas such as battered women is "impossible" to study given the contexts involved.[263] After all, in contrast to DNA, ethical rules obviously prevent scientists from conducting controlled experiments on such phenomena. This reaction, however, shows not only the lack of scientific imagination of the speakers but also the lack of scientific training of most legal scholars. A science is not defined as such by virtue of its ability to conduct controlled experiments.

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261. It should be noted that the claim that social science is not truly "science" is separate from the argument that jurors are unlikely to be overwhelmed by the aura of infallibility of social science due to its soft methodology. Although research on whether jurors can critically evaluate social science remains scarce, if legal scholars are any indication, we should be skeptical of jurors' abilities in this regard.

262. *See* Andrew E. Taslitz, *Interpretive Method and the Federal Rules of Evidence: A Call for a Politically Realistic Hermeneutics,* 32 HARV. J. ON LEGIS. 329, 367 (1995); David McCord, *Syndromes, Profiles and Other Mental Exotica: A New Approach to the Admissibility of Nontraditional Psychological Evidence in Criminal Cases,* 66 OR. L. REV. 19, 86 (1989).

263. *See, e.g.,* Myrna S. Raeder, *The Admissibility of Prior Acts of Domestic Violence:* Simpson *and Beyond,* 69 S. CAL. L. REV. 1463 (1996).

If that were the case, most areas of biology,[264] chemistry and physics would not qualify. Part of a sophisticated understanding of science includes a complex appreciation of the difficulties of the subject. Legal scholars seem to assume that because a subject is difficult to study, any researcher who assumes the task should be recognized as an expert, whatever his or her true expertise. This perspective is not unlike consulting the Farmer's Almanac for tomorrow's weather. Meteorologists assume a difficult task, and much of their subject cannot be studied in the laboratory, but they have proved themselves enormously effective nonetheless. Most of the expertise offered under one or another syndrome is akin to the prognostications of the Farmer's Almanac.

A fair question might be asked concerning whether, in the absence of meteorology, the Farmer's Almanac should be relied upon; this query implicitly raises the issue of whether the law should simply accept the best available evidence when rigorously tested evidence does not yet exist.[265] However, this argument displays a simplistic appreciation of the law and science connection. The science of meteorology advanced beyond the Farmer's Almanac stage because consumers demanded more accurate information. Although much of syndrome work is borrowed from therapeutic practices, the standards in the therapeutic and legal contexts are entirely different. When used in the therapeutic process, syndrome work is not specifically concerned with the relationship between cycles of violence and constant fear. The principal consumers for the forensic use of syndrome-styled social science are the courts. If judges do not expect and demand better science, researchers will not provide it. Anecdote has replaced rigorous testing of hypotheses.

But anecdotal research is not science, it is literature.[266] Voluminous

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264. Evolutionary biology is a particularly good example. Although biologists increasingly use computer models, and some have experimented with the origins of life in the laboratory, they typically rely on natural experiments or quasi-experiments. For example, see JONATHAN WEINER, THE BEAK OF THE FINCH (1994) for Weiner's Pulitzer-Prize winning description of the fieldwork of Peter and Rosemary Grant. The Grants studied the evolution of finches on the isolated islands of the Galapagos archipelago, employing a variety of natural experiments.

265. For an examination of the role "necessity" should play in the admissibility of expert testimony, see David L. Faigman, *Mapping the Labyrinth of Scientific Evidence*, 46 HASTINGS L.J. 555, 566–72 (1995).

266. In a 1989 article, one of us rhetorically likened some aspects of social science to literature and suggested that the work of Feodor Dostoevsky was at least as scientific as much of Freudian-based psychology. David L. Faigman, *To Have and Have Not: Assessing the Value of Social Science to the Law as Science and Policy*, 38 EMORY L.J. 1005, 1065 n.220, 1085–86 (1989). The article points out the following: "The Dostoevskean psychologist would have a rich literature from which to draw his opinions. For example, Dostoevsky's masterpieces, *Crime and Punishment* and the *Brothers Karamazov* provide robust examples [of] analyses of human psychology which could support much expert testimony." *Id.* at 1065 n.220. The somewhat tongue-in-cheek lesson of this statement is that courts must be prepared to admit testimony such as the "Karamazov syndrome" if they are to remain consistent with a liberal admissibility policy reflected in their approach to evidence such as the battered woman syndrome. When this observation was made, it seemed an unlikely illustration. In a recent news story regarding Timothy J. McVeigh, an alleged perpetrator of the Oklahoma City federal building bombing, the *New York Times* described the sort of character capable of commiting such an act. The *Times* reported that "[i]t is a personality that a Seattle forensic psychiatrist, Kenneth Muscatel, has described as the 'Smerdyakov Syndrome,' after the scorned half-brother in Dostoyevsky's 'Brothers Karamazov' who listens to the other brothers inveigh against their father until, finally, he commits patricide." John Kifner, *Oklahoma Bombing Suspect: Unraveling of a Frayed Life*, N.Y. TIMES, Dec. 31, 1995, at 1. To date, neither party has indicated an intention to offer "Smerdyakov Syndrome" at trial. It is a characteristic of this sort of evidence, however, that,

anecdotal research rarely produces more than volumes of anecdotes. Both the "earth as the center of the universe theory" and the "flat earth theory" are well-supported by anecdote. The point of science is to test, test and then test again. This process provides insights into both the psychological phenomenon and its legal relevance that mere anecdote can never match. For example, the knowledge that most violence is cyclical is legally irrelevant. Its relevance derives from inferences that might be drawn from it. For example, if cycles of violence lead to a "constant state of fear" or "learned helplessness," then knowing about the cyclical nature of the violence would have meaning.[267] Unfortunately, the research does not come close to addressing this question.

This issue offers a good illustration of legal scholars' lack of careful consideration when proclaiming the inevitable uncertainties of social science research. As discussed above, one hypothesis of battered woman syndrome theory is that a woman who is a victim of cyclical violence is more likely to suffer from learned helplessness.[268] First, of course, the researchers must explicitly define what is meant by a cycle of violence and what clinical symptoms define "learned helplessness." Although subject to reasonable disagreement, this is not an impossible task.[269] Next, the researchers might study a population of battered women and, perhaps, also a population of women from discordant but nonviolent relationships. Suppose that, of the women in the violent relationships, 38 percent suffered a cyclical pattern of violence. Also, suppose that 30 percent of the battered women studied suffered from "learned helplessness."[270] Of course, to seriously examine the hypothesis of interest, we need to know what percentage of the women who experienced the cycle of violence also suffered from "learned helplessness." Based on the above statistics it could be 0 percent or 100 percent. This example reveals that researchers of battered woman syndrome have not come close to a serious scientific examination of their hypotheses.[271]

The *sine qua non* of the scientific enterprise is testability. Importantly, however, Sir Karl Popper, the philosopher of science most closely associated with this insight, originally described it as "falsifiability."[272] The main point, he urged, was that scientific hypotheses gain strength and are corroborated through their ability to withstand attempts at falsification.[273] This failure to subject syndrome research to falsification attempts is perhaps the greatest weakness of the battered woman syndrome theory. The researchers have ceased

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assuming its admissibility, it is impossible to determine which side would be more likely to use it.

267. Of course, if the particular case evidences a "cycle" or pattern of violence that reasonably led the woman to anticipate a violent attack, this evidence is relevant to a defense of self-defense. But this evidence is unique to the individual case and expert testimony is not needed to explain its relevance to the triers of fact.

268. *See supra* notes 67–72 and accompanying text.

269. All the sciences must define their variables. For example, even something as straightforward as temperature can be variously defined as degrees of celsius, degrees of fahrenheit, degrees Kelvin, wind chill factor and so on.

270. Walker's study of learned helplessness is so hopelessly flawed that this statistic is employed for illustrative purposes only. *See* WALKER (1984), *supra* note 2, at 86–94.

271. *See id.*

272. *See generally* KARL POPPER, CONJECTURE AND REFUTATIONS: THE GROWTH OF SCIENTIFIC KNOWLEDGE 33–59 (1963) (explaining clearly and succinctly the development and import of this philosophy).

273. *Id.*

to be scientists, if they ever were, for they are not interested in *truly* testing their hypotheses. They merely want to obtain some confirmation in order to fulfill a political agenda. The difficulty in conducting social science research, therefore, does not lie in the subject's complexity, but rather in the condemnation that would result from unpopular findings. Legal scholars can be sympathetic to this difficulty, but they should not succumb to the mistaken belief that these politically motivated observations are valid in any empirical sense.

V. THE FUTURE OF THE BATTERED WOMAN SYNDROME IN THE AGE OF SCIENCE

A. The Age of Science: Battered Woman Syndrome Evidence Under Daubert

In 1993, the United States Supreme Court held in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* that federal trial court judges must evaluate the scientific validity of the basis for expert testimony.[274] Although limited to an interpretation of the Federal Rules of Evidence, most state courts have adopted the *Daubert* validity test.[275] *Daubert* rejected the use of the general acceptance test, first fully articulated in *Frye v. United States.*[276] *Daubert*'s significance for the battered woman syndrome is substantial. *Daubert* requires judges themselves to be convinced of the validity of scientific research; they cannot, as was the practice under *Frye,* defer to the "pertinent field."[277] Judges are the "gatekeepers" under *Daubert,* charged with the responsibility of excluding all invalid science from the jury's consideration.

Not surprisingly, courts reviewed expert testimony regarding the battered woman syndrome leniently under *Frye*'s general acceptance test. Usually, courts roughly defined the "pertinent field" to be surveyed as the group of clinical psychologists who use the battered woman syndrome. Of course, the validity of astrological forecasts would receive equally positive reviews among astrologers. Under *Daubert,* courts should be expected to independently assess the research methodology and must be persuaded of its validity before admitting expert testimony based upon these methods.

Judges obviously cannot be expected to have the time, resources or competence to conduct a thorough evaluation of the validity of all of the research that supports an expert's testimony. Judges cannot be expected to be "amateur scientists." The *Daubert* Court recognized this brute reality and suggested four factors that judges might consider: (1) the scientific basis is

274. 509 U.S. 579 (1993).

275. *See generally Legal Standards for the Admissibility of Scientific Evidence, in* MODERN SCIENTIFIC EVIDENCE (David L. Faigman et al. eds., forthcoming 1997).

276. 293 F. 1013 (D.C. Cir. 1923).

277. *Id.* at 1014. The often-quoted *Frye* test provides as follows:

> 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. (emphasis supplied).

testable, and has been tested; (2) the error rates associated with the technique or science are acceptable; (3) the research has been published in a peer reviewed publication; and (4) the scientific basis has been generally accepted.[278] When these four factors are applied to syndrome research, the theory fails to satisfy any of the four prongs of the *Daubert* validity test.

Testability is, by far, the most important factor upon which admissibility should depend. To be sure, syndrome researchers have "tested" their hypotheses, albeit in a superficial and self-confirming fashion. But this cannot be all that the law asks. The testability factor requires not merely that the theory has been tested, but that it has been tested adequately.[279] In making this determination, courts should take into account the difficulty in studying the phenomenon of interest. This must occur, however, in a sophisticated manner. However difficult research on domestic violence might be to do, there is no question that it can be conducted much more rigorously than so far has been demonstrated.

The second factor, error rates, was originally articulated to refer to the number of mistakes associated with some technology that might be used as evidence. For instance, polygraph tests and DNA profiling might have specific error rates that would affect admissibility determinations. Syndrome testimony is not specifically analogous to these kinds of techniques. Nonetheless, this factor raises a couple of significant issues as regards syndrome testimony. First of all, given the sloppy research methods used to validate the overall theory, one might expect these errors to permeate down to clinical assessments in the courtroom. In addition, and more importantly, syndrome experts should be required to specifically articulate what clinical indications qualify a woman as a battered woman sufferer. In other words, does the research offer any criteria to identify those women who suffered through a violent relationship but who do not suffer from the syndrome? So far, researchers have not offered any such criteria.

The *Daubert* Court suggested that a third factor that courts might consider is whether the research was published in a peer reviewed journal. Although publishing in a peer reviewed journal does not guarantee the validity of the research conclusions, a scientist's failure to publish his or her work in this fashion should raise significant questions. Most scientists view publication in a peer reviewed journal to be the last step of a successful research study. The principal research projects upon which battered woman syndrome expert testimony is based have never appeared in peer reviewed journals. Instead, the outlet of choice has been the popular press. Given the profoundly weak methodology employed, it would be very surprising indeed to find this research in refereed journals. In the end, this research was intended for popular and jurisprudential consumption; the audience, so far as can be determined by the research and its publication, was not scientists, but the public and the courts.

The last factor suggested by the *Daubert* Court was the general acceptance test borrowed from the old *Frye* rule. In fact, when it was applied alone, the general acceptance test typically led courts to allow expert testimony

278. *Daubert*, 509 U.S. at 580.

279. *See* Williamson v. General Motors Corp., 1994 WL 660649 *5–*6 (N.D. Ga. Sept. 30, 1994) (noting that *Daubert* requires not simply that "some" tests be carried out, but that "adequate" tests be conducted).

based on the battered woman syndrome. This permissiveness, however, illustrates one of the central weaknesses of the *Frye* standard. The test queries the general acceptance *in the pertinent field.* If the pertinent field is defined narrowly enough, here to clinical psychologists with little or no training in scientific research methods, the test is extremely liberal. A survey asking clinical psychologists who practice in the area of domestic violence whether the battered woman syndrome is generally accepted will have predictable results. The answer is yes because that is what they do for a living, not because what they do for a living has socially redeeming (or in this case, jurisprudentially redeeming) value. Although yet to be conducted, a more general sampling of experimental psychologists, almost certainly, would paint a very different picture. Like astronomers when asked about astrology, experimental psychologists who had considered the research methods actually used to study the phenomenon would be embarrassed that they might be perceived as plying the same trade.

The four factors the *Daubert* Court suggested are not the only ones that courts might consider in assessing the validity of the basis for expert testimony. The Ninth Circuit, for instance, when considering *Daubert* on remand, suggested an additional factor:

> One very significant fact to be considered is whether the experts are proposing to testify about matters growing naturally and directly out of research that they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying. That an expert testifies for money does not necessarily cast doubt on the reliability of his testimony, as few experts appear in court merely as an eleemosynary gesture. But in determining whether proposed expert testimony amounts to good science, we may not ignore the fact that a scientist's normal workplace is the lab or the field, not the courtroom or the lawyer's office.[280]

At first blush, this factor would appear to indicate the value of syndrome testimony for the courts. After all, battered woman syndrome research was conducted outside of any one particular case. On closer reflection, however, this factor should raise substantial questions regarding the value of syndrome research. Even the most superficial examination of Walker's work makes clear that the syndrome was devised to address a specific set of cases. The syndrome was crafted, by all appearances, in lawyers' offices and not through the rigorous testing of hypotheses in the lab or the field.

Although few courts have yet to seriously study the methods, principles and reasoning posited to support syndrome expert opinion, those who have considered this question have not been impressed.[281] In fact, no court has defended the methodology used to develop the syndrome or has suggested that adequate research methods were employed.[282] The battered woman syndrome

280. Daubert v. Merrell Dow Pharms., Inc., 43 F.3d 1317 (9th Cir. 1995) (*Daubert* II), *cert. denied,* 116 S. Ct. 189 (1995).

281. *See supra* note 82 and accompanying text.

282. At least one commentator has concluded that syndrome testimony would satisfy *Daubert*'s test. *See* Duncan, *supra* note 53, at 765. This commentator, however, did not review the literature before concluding "that later studies have confirmed much of Walker's theory." *Id.* Instead, she cited one study that had found "'a cluster of serious disorders...including major depression, post traumatic stress disorder, generalized anxiety disorder, and obsessive compulsive disorder,' which 'seem related to the battered woman syndrome described by

remains little more than an unsubstantiated hypothesis that, despite being extant for over fifteen years, has yet to be tested adequately or, when adequately tested, has failed to be corroborated.

Still, courts and commentators are likely to remain sympathetic to the plight of battered women who kill. Once the scientific shortcomings of the theory are recognized, this sympathy might take two forms. Some proponents might suggest that expert testimony on the battered woman syndrome should not be subjected to the scientific strictures of *Daubert*. Experts on battered women, some might argue, are "specialists," rather than scientists, and given the difficulties in studying this issue, should be held to a lesser standard of rigor.[283] The possibility of redefining some "sciences" as "specialties" in order to avoid the shoals of *Daubert* is highly problematic. Permitting testable "specialties" to avoid exclusion by not testing the objects of their specialty would entirely eviscerate *Daubert* and should be avoided no matter how sympathetic the beneficiaries of such a policy might be.[284]

Alternatively, courts and, more likely, legislatures might consider interpreting or altering the substantive law to make it more inclusive of the battered woman's perspective. As many courts and commentators have pointed out, the imminence and proportional force requirements of self-defense doctrine embrace an essentially male perspective regarding the proper and justifiable uses of force.[285] When women are physically beaten, isolated from friends and family, and given little hope of any useful assistance from the institutions of society supposedly designed to serve and protect them, it is not difficult to understand, and perhaps justify, why a few women subjected to domestic violence eventually use deadly force to defend themselves.

Finally, although battered woman syndrome remains little more than a poorly substantiated hypothesis, rigorous research continues to be carried out on multiple aspects of battered women's lives.[286] Yet, courts have focused narrowly upon a syndrome model to the exclusion of other research that, although less legally convenient, more accurately depicts the social and psychological consequences of domestic violence. In time, this research will do much to advance our understanding and will mold our responses to this important and disturbing problem. A good faith application of *Daubert* should lead courts to move away from the simple solutions embodied in syndrome-based defenses to a greater appreciation of the complex circumstances surrounding these cases. For example, in attempting to explain why women do not leave violent relationships, courts can be expected to reject opinions on

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Walker.'" *Id.* at 765 n.117, (quoting Walter J. Gleason, *Mental Disorders in Battered Women: An Empirical Study*, 8 VIOLENCE & VICTIMS 53, 62 (1993)). This study simply does not address any of the principal hypotheses of syndrome theory. The court in United States v. Brown, 891 F. Supp. 1501 (D. Kan. 1995), also found research on battered woman syndrome to meet the *Daubert* test. The court, however, cited no research and offered no analysis that would indicate it seriously applied the factors suggested in *Daubert*.

283. *See, e.g.*, State v. Borrelli, 629 A.2d 1105, 1110–11 (Conn. 1993) (determining that expert testimony on the general effects of domestic violence was not subject to the *Frye* test, since "the method is accessible to the jury, and not dependent on familiarity with highly technical or obscure scientific theories").

284. *See* David L. Faigman, *The Evidentiary Status of Social Science Under* Daubert: *Is It "Scientific," "Technical," or "Other" Knowledge?*, 1 PSYCHOL., PUB. POL'Y & L. 960 (1995).

285. *See* Schneider, *supra* note 137.

286. *See* Schuller & Hastings, *supra* note 20.

learned helplessness that are now offered with virtually no research basis to support them. Such rejection of facile expert opinion, however, will not leave battered women with no explanation for their conduct, for good research indicates that many factors conspire to trap women in violent relationships.[287] In the end, battered women, and society in general, will benefit from a more discriminating evaluation of ostensibly scientific research in this area. Courts should expect, indeed demand, more from social science.

B. A Good Idea Gone Wrong; Bad Science Produces Bad Policy

The negative implications of using syndrome evidence extend beyond concerns about the judicial system's endorsement of flawed science. Although syndrome proponents insist that the use of syndrome evidence provides insight into how a "reasonable" battered woman would react to danger after enduring abuse, repeated employment of the syndrome in criminal trials produces a portrait of battered women as helpless actors incapable of breaking the cycle of violence gripping their lives. Moreover, while introducing syndrome evidence in a homicide case may result in conviction on a lesser charge, it does not win the acquittals that one would expect from a theory that is so responsive to traditional self-defense doctrine.[288]

When battered women's behavior deviates from the paradigm described by Lenore Walker, some courts are reluctant to admit the expert testimony, stressing that the defendant fails to "fit" the "typical" model of a battered woman who kills. Most often, courts will not admit expert syndrome testimony when the woman defendant has failed to demonstrate that she was completely passive in the face of her partner's abuse. The Wyoming Supreme Court's decision in *Buhrle v. State*[289] provides a particularly illuminating example. The defendant in this case shot her husband at a motel the day after he moved out of their house and filed divorce papers. After standing outside the motel room arguing with her husband through a partially closed door, she shot him.[290] During the course of the trial, it was revealed that the defendant arrived at the motel with a hunting rifle and a pair of rubber gloves in her possession.[291] At trial, she claimed that she acted in self-defense and attempted to introduce psychological testimony from Lenore Walker.

The Wyoming Supreme Court upheld the exclusion of Dr. Walker's testimony, emphasizing both the unreliability of Walker's research methodology and the defendant's failure to behave like the "typical" battered woman.[292] Specifically, the court declared that the facts of this case did not fit "the standard battered woman self-defense situation" and observed that Walker "inadequately explained and apparently ignored" many of the troubling facts in the case "in arriving at an opinion."[293]

The Ohio Supreme Court's decision in *State v. Koss* nicely illustrates a behavioral pattern by battered women that courts may conclude provides a

287. *Id.*
288. *See* Ewing, *supra* note 15.
289. 627 P.2d 1374 (Wyo. 1981).
290. *Id.* at 1376.
291. *Id.*
292. *Id.* at 1377.
293. *Id.*

good "fit" with syndrome evidence.[294] In *Koss*, the court held that syndrome evidence was admissible when "the evidence establishes that a woman is a battered woman."[295] The defendant testified that, on the night of her husband's killing, she remembered him beating her in their bedroom. Although she recalled seeing a gun in the room, she testified that she could not remember anything else about the evening and was completely unable to remember shooting and killing her husband.

The portrayal of the defendant in *Koss* evokes all the right images of a woman who is so debilitated by the violence perpetuated against her that she cannot even recall mustering the resources to retrieve a nearby weapon and shoot her husband.[296] In stark contrast, the defendant in *Buhrle* took assertive steps to protect herself against her abusive spouse. Because Walker's "learned helplessness" theory places so much emphasis upon the woman's inability to rescue herself from the abusive situation, any proactive measures on the woman's part may thrust her outside of the protective realm of the syndrome theory in the eyes of the court.

The creation of such an unyielding portrait of battered women's behavior also fails to incorporate the cultural and ethnic differences that may exist among women, which may make jurors less likely to believe syndrome evidence when it is presented on behalf of women of color. One commentator has noted that African American women who attempt to use syndrome evidence must first overcome damaging stereotypes generally held about them by society, i.e., that they are "angry, masculine, domineering, [and] strong."[297] If jurors subscribe to these images, then they are unlikely to accept syndrome evidence when it is presented by African American women, because these women fail to match the portrayal of battered women as "powerless victims in need of protection."[298] In fact, Walker observed in one of her own texts that African American women who presented self-defense claims and syndrome evidence were less likely to be acquitted than white women.[299]

Although courts usually state that syndrome evidence is admissible to support the defendant's theory of justified self-defense, the language employed in court opinions reveals a disturbing pattern of portraying battered women as psychologically debilitated and mentally ill. In *State v. Hundley*, the court opined that domestic violence "create[d] a standard mental attitude in its victims," rendering them "terror-stricken people whose mental state is distorted and bears a marked resemblance to that of a hostage or a prisoner of war."[300]

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294. 551 N.E.2d 970 (Ohio 1990). It is important to note that Ohio did not allow the use of syndrome expert testimony until *Koss*. *See* State v. Thomas, 423 N.E.2d 137 (Ohio 1981).

295. *Koss*, 551 N.E.2d at 975.

296. *See* Anne M. Coughlin, *Excusing Women*, 82 CAL. L. REV. 1, 68–69 (1994) (observing that cases involving domestic homicides often describe the woman's actions at the moment of the killing as "[a]gentless, almost somnambulistic").

297. Shelby A. D. Moore, *Battered Woman Syndrome: Selling the Shadow to Support the Substance*, 38 HOW. L.J. 297, 302 (1995). *See also* Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57, 92–93 (1994) (stressing that the creation of a "general[] model of battered women invites courts to prevent fair trials of women" who fail to fit the contours of this model and noting that Asian women who kill their batterers may also be injured by this trend).

298. Moore, *supra* note 297, at 301–03.

299. LENORE E. WALKER, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS 207 (1989).

300. 693 P.2d 475, 479 (Kan. 1985).

Moreover, the court asserted that battered women were "brainwash[ed]" and "disturbed persons."[301] Similarly, in *State v. Norman*, the North Carolina Supreme Court quoted the testimony of the defendant's own expert witness, who described the defendant's mental condition as "'reduction to an animal level of existence, where all behavior was marked purely by survival.'"[302] The defendant's expert also stated that she "could not leave her husband because...she had no belief whatsoever in herself and believed in the total invulnerability of her husband."[303] Finally, the expert declared that, by choosing to use deadly force against her abusive husband, the defendant was "'*sacrificing herself*...for her family.'"[304]

All of these characterizations of battered women evoke classic stereotypical notions about women. In each case, the battered woman is described as a helpless creature, whose humanity and ability to function as an independent being has almost been completely erased by the beatings she suffers at the hands of her partner. The implications of this portrayal are dangerous: if women are to successfully plead self-defense after killing their batterer, their chances of success may depend upon their ability to appear completely dominated by him.[305] Those who deviate from this pattern, like the defendant in *Buhrle*, may not be believed by the jury.[306]

Finally, as a practical matter, syndrome evidence has fallen far short of defendants' expectations by obtaining relatively few acquittals for battered women who kill. Although almost all jurisdictions now admit battered woman syndrome testimony in self-defense cases, syndrome evidence may still be rejected if the defendant fails to demonstrate that she will be able to meet the elements of a self-defense claim.[307] A study by Charles Ewing revealed that, in eighty-five cases where battered women claimed self-defense, expert testimony was only admitted in twenty-six of the forty-four cases in which it was offered.[308] Despite the admission of expert testimony, only nine acquittals occurred in these cases.[309]

Thus, battered woman syndrome has failed to fulfill its promise to women defendants who kill abusive spouses. Over time, the use of the syndrome has produced an implicit assumption in the judicial system and society that battered women who kill must be rendered completely passive and psychologically disabled before their homicides will be labeled as justified. The greater the deviation between the typical syndrome sufferer and the individual

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301. *Id.*
302. 366 S.E.2d 586, 589 (N.C. Ct. App. 1988).
303. *Id.*
304. *Id.* (emphasis supplied).
305. *See* Coughlin, *supra* note 296, at 58–59 (arguing that "the woman who can be shown to have a taste for independence is the one who will be condemned and punished" when she is charged with the murder of her abuser).
306. *See* Allison M. Madden, *Clemency for Battered Women Who Kill Their Abusers: Finding a Just Forum*, 4 HASTINGS WOMEN'S L.J. 1, 36 (1993) (recounting the case of a seventy-two-year old woman defendant who was convicted because a jury could not believe she would accept fifty years of abuse "[b]ecause of her tough and abrasive demeanor").
307. *See, e.g.*, Lentz v. State, 604 So. 2d 243, 246 (Miss. 1992) (excluding syndrome evidence as "irrelevant" because the defendant shot her batterer once, then shot him again as he was retreating from her, placing her actions outside of the classic formulation of self-defense theory).
308. Ewing, *supra* note 15, at 584–85.
309. *Id.*

woman defendant's personality, the more likely the chance that the trier of fact will conclude that her actions were not justified. Moreover, this expert testimony has been only mildly successful in winning acquittals for battered women who kill. Despite its purportedly feminist philosophy, syndrome evidence has done nothing but mire images of battered women in classic stereotypes about women's weaknesses and easy domination by men.

VI. CONCLUSION

If a history of the law and science connection is written in a hundred years, the battered woman syndrome will serve as a particularly trenchant example of the law's inability to assess science at the close of the twentieth century. The syndrome, first proposed in the 1970's and based on the clinical observations of a single researcher, has yet to be corroborated by serious and rigorous empirical work. The syndrome, in fact, is a product of advocacy and not science, designed originally to support justification claims by battered women who have killed. However, the syndrome has been seriously misunderstood and misused by courts and it no longer serves the needs of its original constituency. Given the lack of a scientific basis and its failure to achieve specific political and policy goals, the battered woman syndrome can be expected to soon pass from the legal scene.

The battered woman syndrome has been employed in a wide assortment of cases, ranging from the prototypical self-defense case to the more novel prosecutorial use of the syndrome. In the former set of cases, courts define the syndrome's relevance variously, from supporting the honesty of the woman's belief in the need to use deadly force to her mental incapacity to form the requisite mental intent. In the latter set of cases, in which prosecutors use the evidence, the evidence's relevance is ostensibly offered to explain why a battered woman might change her testimony (i.e., commit perjury) and testify that she was not a victim of battering; in fact, it is probably used to buttress the prosecution's case by showing prior violent acts by the defendant that would otherwise be excluded by the rules of evidence.

The battered woman syndrome permits such broad interpretations because it is so little grounded in reality. Given the paucity of research that supports it, there are no empirical boundaries to contain it. As courts begin to apply tests of admissibility that query the scientific basis for expert testimony, they will see the serious lack of rigor in the tests used to study the syndrome hypothesis. Consequently, courts will begin to doubt the evidentiary relevance of this research.

Advocates for battered women also should be expected to begin doubting the political value of syndrome testimony. Although so elastic that it can be shaped to fit any case, the syndrome has caused certain unintended consequences. In particular, syndrome evidence is interpreted by many courts as an indication that battered women suffer from mental deficiencies. Concepts such as learned helplessness contribute to this perception. The syndrome has transformed the pathology of domestic violence to the pathology of the battered woman. For instance, courts are increasingly ordering women claiming the defense to undergo state psychiatric examinations. Originally proposed as a theory entirely sympathetic to feminist ideals, the syndrome now reinforces some of the most archaic and destructive stereotypes historically attached to

women.

Lawyers and judges are obliged to become better consumers of science. Too much is at stake for them to fail in this. The battered woman syndrome originally tapped into a reservoir of disenchantment with traditional conceptions of self-defense and, moreover, outrage at the pervasiveness of domestic violence. In the guise of science, it accomplished a small revolution in the way battered women cases were seen by courts and the public. But as is true with many revolutions, the ultimate consequences have not been entirely salutary for the original revolutionaries. Using the cloak of science to avoid the difficult jurisprudential questions raised when battered women kill, these advocates find themselves in the same old world, possibly worse off than before. The syndrome has become a medical-styled diagnosis in which the woman's *illness* has become the issue. Whereas the debate should concern the reasonableness of the woman's actions, it now revolves around her mental deficiency and helplessness. The syndrome has given all the old stereotypes the modern trappings of science. This is a most unfortunate result.

As courts begin to realize that the expert testimony lacks a scientific basis, and advocates realize that this testimony is inimical to their cause, the battered woman syndrome should fall into disuse. As it leaves the scene, advocates of battered women and proponents of good science should rejoice.