UCLA
UCLA Women's Law Journal

Title
Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes about Women

Permalink
https://escholarship.org/uc/item/73t5x0m5

Journal
UCLA Women's Law Journal, 8(1)

Author
Cornia, Rebecca D.

Publication Date
1997

DOI
10.5070/L381017687

Copyright Information
Copyright 1997 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at https://escholarship.org/terms

Peer reviewed

eScholarship.org Powered by the California Digital Library
University of California

ESSAY

CURRENT USE OF BATTERED WOMAN SYNDROME: INSTITUTIONALIZATION OF NEGATIVE STEREOTYPES ABOUT WOMEN

Rebecca D. Cornia*

ABSTRACT

In this Essay, Rebecca Cornia examines how courts currently use Battered Woman Syndrome ("BWS") to explain why society should excuse women who behave irrationally. Cornia compares BWS to the Marital Coercion Doctrine, a Nineteenth Century defense that excused women who committed crimes at the direction of their husbands. Cornia traces courts' use of BWS to excuse the criminal acts of women acting under duress from their batterers and to impeach women testifying on behalf of their abusers in domestic violence cases. Cornia analyzes the current use of BWS, which she asserts stereotypes women as irrational, leading to their detriment in other legal proceedings including: child custody battles, child abuse cases, and bar disciplinary proceedings. Cornia explains that the trend in the courts to use BWS in such a wide variety of cases portrays women as irrational and therefore undermines the position of women in society as a whole. She argues that the BWS defense should be reconstructed or replaced altogether.

TABLE OF CONTENTS

I. INTRODUCTION 100
II. OVERVIEW OF BATTERED WOMAN SYNDROME 101

* Rebecca Dao Cornia graduated from Harvard Law School in 1986. She is currently an Assistant Professor at Chapman University School of Law.

III. BATTERED WOMAN SYNDROME AS THE DOCTRINAL HEIR TO THE "MARITAL COERCION DOCTRINE" 105
IV. THE APPLICATION OF BATTERED WOMAN SYNDROME IN THE COURTS 107
  A. *Battered Woman Syndrome and Duress* 107
  B. *Use of Battered Woman Syndrome to Impeach Battered Women's Testimony* 111
V. THE INFLUENCE OF STEREOTYPES ABOUT BATTERED WOMEN IN OTHER CONTEXTS 114
  A. *Battered Woman Syndrome and Child Custody Cases* 114
  B. *Battered Woman Syndrome and Child Abuse* .. 118
  C. *Use of Battered Woman Syndrome in a State Bar Disciplinary Hearing* 119
VI. CONCLUSION 122

I. INTRODUCTION

> *Bree Walker (Reporter):* Tomorrow this woman, Karen Straw, faces the trial of her life. The charge: second degree murder. The penalty: life in prison. Karen Straw allegedly killed her husband after escaping to a shabby welfare apartment where she lived with her two children. She says she turned a knife on him after he broke in and raped her at knife point. After two years of repeated attacks, her attorney says she had no other way out.
>
> *Michael Dowd (Attorney):* She went to the family court. She had him arrested in the criminal court. She called the police numerous times. She moved away from him. And nothing that she did stopped him from coming back, beating her, threatening her, hospitalizing her, raping her.
>
> *Ann Jones (Author):* She'd done everything a battered woman can do to get out of that situation and to get the criminal justice system to be responsive and responsible for her safety. But it still didn't work . . . the only protection our society provided Karen was a flimsy paper shield.[1]

Faced with the prospect of repeated physical and psychological torture and the risk or certainty of serious injury and death, some battered women choose to attack the men who abuse them. Women like Karen Straw may perceive, perhaps correctly, that they must kill or be killed. Battered Woman Syndrome

1. *The News at Six* (WCBS TV, New York City, Sept. 5, 1987), *cited in* ANN JONES, NEXT TIME SHE'LL BE DEAD: BATTERING AND HOW TO STOP IT 133 (1994).

("BWS"), a theory which explains this behavior, was originally conceived of as a legal doctrine to help such women defend themselves from the criminal charges which followed their attempts to escape from abuse. However, the current use of BWS in the criminal courts portrays women as irrational, mentally deficient creatures. This portrayal has serious repercussions for women in diverse areas including their role in criminal cases, their ability to testify in court, and their rights as parents. Defenses based on BWS in the criminal courts sacrifice an emerging image of woman as equal to man and do our society an immense disservice.

Part II of this article describes BWS and explains how it is used in the context of self-defense. Part III compares BWS to the Marital Coercion Doctrine used in the last century. Part IV examines the use of BWS in criminal cases, as part of a duress defense or to impeach women's testimony in domestic violence cases. Part V explains how BWS is currently used in other legal contexts to stereotype women as irrational, leading to their disadvantage in legal proceedings such as: child custody battles, child abuse cases, and bar disciplinary proceedings. Current trends in this area show that the current use of BWS reinforces negative stereotypes of women that support limitations on women's rights.

II. Overview of Battered Woman Syndrome

Battered Woman Syndrome was developed by legal scholars and practitioners in the late 1970s and early 1980s as a defense for women who killed their batterers.[2] The Syndrome was conceived to explain why women choose to kill abusive partners rather than leave them.[3] Legally speaking, BWS is not, on its own, an affirmative defense. Instead, it is a psychological theory offered within the traditional law of self-defense to explain the behavior of battered women which otherwise seems irrational.[4]

2. Phyllis L. Crocker, *The Meaning of Equality for Battered Women Who Kill Men In Self-Defense,* 8 Harv. Women's L.J. 121 (1985).

3. BWS was popularized by Lenore Walker, a clinical psychologist and forensic expert witness. In her book, *The Battered Woman*, Walker defines both the battering relationship and BWS in an attempt to explain why women in battering relationships choose self-help over the legal options apparently available to them. Lenore Walker, The Battered Woman (1979).

4. BWS is not a separate affirmative defense such as self-defense or coercion. It is a psychological theory which is offered in the context of self-defense, duress, or other affirmative defenses to explain the reasonableness of the defendant's percep-

The question raised time and again in murder, attempted murder, and assault cases is, "if the abuse was so bad, 'why didn't she leave?'"[5] While the true answer may be that she tried to leave, but was prevented by the abuser's violence,[6] the answer as currently developed in the criminal courts is that she could not leave because she suffered from BWS. This answer presents BWS as a mental defect causing an otherwise normal person to behave irrationally and justifies disparate treatment of women.

The foremost expert on BWS, Lenore Walker, calls the battering relationship the "cycle of violence."[7] According to Walker, the cycle consists of three stages. Stage one is the tension building phase. During this stage, the woman experiences minor physical violence and verbal attacks by her spouse or lover. She minimizes these events and attempts to pacify her attacker.[8] In stage two, the battering stage, the batterer subjects the woman to extreme violence, or in Walker's words, the "acute

---

tions or actions. *See, e.g.*, People v. Romero, 13 Cal. Rptr. 2d 332, 337 n.8 (1992), *rev'd on other grounds* 883 P.2d 388 (Cal. 1994); State v. Walker, 700 P.2d 1168, 1173 (Wash. 1985); Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 385-86 (1991); Comment, *Self-Defense: Battered Woman Syndrome on Trial*, 20 CAL. W. L. REV. 485, 495 (1984).

5. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5 (1991). *See id.* at 71-72 (Mahoney and other commentators correctly observe that women in abusive relationships often face very real barriers to leaving those relationships. Women are at the greatest risk of physical danger when they leave their batterers. Moreover, women in abusive relationships often have no independent income and may risk losing their children if they leave their abusers.); Richard A. Rosen, *On Self-Defense, Imminence, and Women Who Kill Their Batterers*, 71 N.C. L. REV. 371, 399 (1993).

6. *See, e.g.*, State v. Stewart, 763 P.2d 572 (Kan. 1988) (involving a woman who left her abuser, who then tracked her down and physically and sexually assaulted her before she killed him); State v. Norman, 378 S.E.2d 8 (N.C. 1989) (involving a woman who was tortured by her husband for years and whose previous escape attempts resulted in violence and death threats); JONES, *supra* note 1, at 129-36.

7. WALKER, *supra* note 3, at 55-70.

8. *Id.* at 56-59. Perhaps the most extreme example of this phenomenon occurred in the case of Joel Steinberg and Hedda Nussbaum. Joel was an attorney in New York who took possession of a child brought to him for adoption. After battering Hedda, his live-in girlfriend, for a number of years, Joel turned his frustration on Lisa, his adopted daughter. He beat the six-year-old child so severely that she died as a result. However, she lay in a coma for hours before dying. During that period, Joel left the apartment, and Hedda was left alone with the injured child. During Joel's criminal trial, Hedda explained her failure to act on Lisa's behalf. Hedda testified that she had worshipped Joel as "God" and that he was a wonderful man who had special powers to heal. She testified that she did not call 911 while she was alone with the injured Lisa because she trusted Joel who told her that he would get Lisa up and heal her. JONES, *supra* note 1, at 174-75. Hedda's inability to perceive the real dangers of her situation and to understand Joel's culpability in causing

battering incident."[9] It is the anticipation of this stage which creates the most stress for the woman and drives much of her behavior.[10] Stage two is followed almost immediately by stage three, the "honeymoon phase," in which the batterer expresses remorse and exhibits what Walker calls "contrite loving behavior."[11]

Walker argues that the repetition of this cycle engenders a phenomenon she calls "learned helplessness" in its victims.[12] Walker writes:

> Once the women are operating from a belief of helplessness, the perception becomes the reality and they become passive, submissive, "helpless." They allow things that appear to them to be out of control to actually get out of control. . . . Women who have learned to expect battering as a way of life have learned that they cannot influence its occurrence.[13]

Walker concludes that such women become impervious to the seriousness of violence and death. She contends they will eventually kill or be killed by their batterers.[14]

It is worth noting that Walker lists many reasons why women stay in abusive relationships. In an early California case,[15] for instance, Walker testified that battered women stay in abusive relationships for several reasons: they receive positive reinforcement from the batterer during stage three of the battering relationship;[16] they have generally been trained to be peacekeepers who invest themselves emotionally in their relationships;[17] terminating the relationship can have adverse economic consequences as well as placing them and their children in extreme physical danger;[18] and some of them suffer from loss of self-esteem and learned helplessness.[19] The syndrome thus provides an answer to a complex question: why women faced with life threatening violence cannot escape or call on others for aid.[20]

Lisa's injuries typify (in an extreme form) the minimizing and justifying that some battered women engage in when examining the behavior of their batterers.

9. WALKER, *supra* note 3, at 59-65.

10. *Id.*

11. *Id.* at 65-70.

12. *Id.* at 47.

13. *Id.* at 47-48.

14. *See id.* at 52-53.

15. People v. Aris, 264 Cal. Rptr. 167 (Ct. App. 1989). This case will be discussed *infra* Part IV, Subpart A.

16. *See id.* at 178.

17. *See id.*

18. *See id.*

19. *See id.*

20. WALKER, *supra* note 3, at 45-67.

Battered Woman Syndrome was, in large part, developed as a reaction to the fact that women perceive situations differently from men. The traditional doctrine of self-defense was based on the experiences of men and did not accommodate acts of self-defense by battered women that were reasonable, but different from men's.[21] Battered women often have a heightened sensitivity to impending violence, perceiving danger sooner and more frequently than men.[22] Because the battering relationship follows a cyclical pattern, women who have experienced such relationships become capable of predicting violence where an outside observer might not perceive any danger.[23] Battered Woman Syndrome explains why such women react with extreme protective measures in non-confrontational situations. They know from experience that violence is around the corner, even though others might not see overt signs of impending catastrophe. The goal of BWS, as developed by feminist legal scholars and practitioners, was to make juries understand that the actions of women who kill their batterers were reasonable and justifiable.[24]

Instead of serving this end, BWS has been used by the judiciary to explain why society should excuse women who have behaved irrationally. Ignoring the complexities of Walker's explanation, they have focused on the "learned helplessness" aspect of BWS.[25] Not only does this interpretation limit the effectiveness of BWS in defending women who kill, it has negative consequences for every woman in society by painting women as irrational, flawed creatures for whom special allowances must be made. Rather than expanding on what constitutes "reasonableness"[26] in the context of self-defense arguments, the judiciary has used BWS to support the notion that battered women who kill

21. Crocker, *supra* note 2, at 123.

22. *See id.* at 127.

23. *See id.*

24. *See id.* at 130.

25. JONES, *supra* note 1, at 102-03.

26. Traditional self-defense doctrine is a complete defense to the charge of homicide when a jury finds that a defendant reasonably perceived imminent danger of great bodily harm or death and responded with that force necessary to defend against the harm. This defense is referred to as perfect self-defense. *See* WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 454-55 (2d ed. 1986). Some jurisdictions permit a partial excuse to criminal liability if a defendant honestly but unreasonably perceived herself to be in danger. *See, e.g.,* CAL. PENAL CODE §§ 197-98 (West 1992); People v. Flannel, 603 P.2d 1 (Cal. 1979); People v. Aris, 264 Cal. Rptr. 167 (Ct. App. 1989).

their batterers are unreasonable, but sincere. As one commentator explains, "courts have replaced the hysterical woman with a battered one."[27]

There is real danger in this construction of women's behavior. By emphasizing that battered women suffer from "learned helplessness" and by portraying BWS as a form of Posttraumatic Stress Disorder, defenses which rest on BWS reinforce a patriarchal view of society. According to this viewpoint, women are impaired, and courts must accommodate them by using special rules which pander to women's defects. The defense thus suggests the argument that women lack the same capacity for rational self-control that men possess and consequently exposes women to forms of interference which men need not face.[28] For instance, as described in parts IV and V of this article, women who have experienced battering may have an affirmative burden placed upon them to rehabilitate their credibility as witnesses in criminal cases or to prove their fitness as parents in child custody proceedings.

The cases in this area present a picture of women victimized to the point that their sanity has been impaired. Such a perspective fits the historical treatment of women in the criminal law which has often excused women from criminal responsibility on the theory that their capabilities are diminished in comparison to men.[29] However, this perspective is dangerous to women because it reinforces the law's historical stance that women are, or should be, subordinate to men in society.

III. Battered Woman Syndrome as the Doctrinal Heir to the "Marital Coercion Doctrine"

In the Nineteenth Century, the Marital Coercion Doctrine was a defense women could raise which would excuse their liability for criminal acts.[30] The doctrine was based on the premise that women were incapable of disobeying their husbands' commands. Hence, if a woman could prove that she committed a

---

27. Crocker, *supra* note 2, at 137.

28. Anne M. Coughlin, *Excusing Women*, 82 Cal. L. Rev. 1, 7 (1994) (noting that BWS depicts the battered woman as a collection of mental symptoms, motivational deficits, and behavioral abnormalities — "indeed, the fundamental premise of the defense is that women lack the psychological capacity to choose lawful means to extricate themselves from abusive mates").

29. *See id.* at 5.

30. The term "Marital Coercion Doctrine" was developed by Coughlin, who also compares it to BWS, arguing that the two doctrines are based on the same theory — that women are inherently defective. *Id.* at 29, 37.

criminal act at the behest of her husband, she could be excused from criminal liability.[31] If she committed the criminal act in the presence of her husband, the law would assume that she acted at his behest and the Marital Coercion Doctrine would apply.[32] The requirement that the husband be present during the criminal act was interpreted figuratively at times. The Marital Coercion Doctrine was applied in cases where the courts found the husband's "constructive presence" sufficient.[33]

Anne Coughlin notes that the Marital Coercion Doctrine persisted in American and English common law for twelve centuries,[34] long enough to shape attitudes and presumptions about law and society. While all of the reasons for and ramifications of this doctrine are too complex to analyze here, it is worth noting that the doctrine rested on and reinforced a hierarchical view of marriage, one in which a woman's place was inherently subordinate to that of her husband. Moreover, the doctrine portrayed women as cognitively defective and incapable of rationally evaluating their husbands' instructions.[35]

The premise behind the Marital Coercion Doctrine, that women were incapable of rational consideration, was historically used in a larger context to deprive women of many of the rights we take for granted today. Women were denied the right to own property or to vote in political elections, certain professions were closed to them, and their ability to make decisions about their own lives and the lives of their children was dramatically circumscribed.[36]

Coughlin argues that BWS is the doctrinal heir to the Marital Coercion Doctrine. She notes that BWS encourages women to establish as fact all the mental and emotional defects which the Marital Coercion Doctrine assumed.[37] Such a comparison is not immediately troubling in the abstract. Practitioners who use BWS as part of a criminal defense will argue that it is a small sacrifice to impugn a client's reputation in order to save her from a sentence of life in prison or the death penalty. However, the

31. *See, e.g.,* State v. Carpenter, 176 P.2d 919, 920 n.3 (Idaho 1947).

32. Coughlin, *supra* note 28, at 31-32.

33. For instance, courts found constructive presence in cases where the husband was in prison at the time of the wife's criminal act. *See, e.g.*, *Carpenter*, 176 P.2d at 920.

34. Coughlin, *supra* note 28, at 33.

35. *See id.* at 37-38.

36. *See id.* at 35-36.

37. *See id.* at 48.

Marital Coercion Doctrine arose from a larger social context which treated women in a way that we would find extremely troubling today. Because BWS reinforces the same hierarchical, patriarchal view of relations between the sexes, it supports similar inequities in the treatment of women.

IV. The Application of Battered Woman Syndrome in the Courts

To the extent that BWS reinforces the view of women as inherently incapable of rational decision making, it can and will be used as a basis for limiting the rights of women in modern times. Indeed, recent judicial opinions show that BWS has ancillary effects beyond the context of providing a defense to women accused of attacking their batterers. Battered Woman Syndrome can be used by parties other than the battered woman herself to discount the battered woman's testimony or to advance legal arguments that work to the detriment of the battered woman. Subpart A of this section describes how BWS is most likely to excuse a woman's criminal acts when she is obeying her abuser. Subpart B of this section examines how designation as a battered woman may limit a woman's ability to testify in court.

A. *Battered Woman Syndrome and Duress*

The first indicator that BWS is becoming ingrained in modern society as a basis for characterizing women as mentally and emotionally deficient appears outside the context of self-defense arguments. There is an emerging trend for criminal defendants to argue the existence of BWS as part of a duress[38] defense. This trend is troubling because women are more likely to be excused from criminal liability in cases where BWS allegedly led them to commit crimes against someone other than their abusers.

---

38. Duress requires a showing that the defendant has been unlawfully threatened so as to cause the defendant reasonably to believe that the only way to avoid imminent death or serious bodily injury to herself or another is to engage in the illegal act for which the defendant is being charged. LaFave & Scott, *supra* note 26, at 432; *see also,* People v. Lovercamp, 118 Cal. Rptr. 110 (Ct. App. 1974); People v. Richards, 75 Cal. Rptr. 597 (Ct. App. 1969).

BWS has been used successfully as part of a duress defense in several cases. *See, e.g.*, Barrett v. State, 675 N.E.2d 1112, 1116 (Ind. Ct. App. 1996); State v. Williams, 937 P.2d 1052, 1058 (Wash. 1997) (en banc) (holding evidence of BWS admissible to explain defense of duress in criminal welfare fraud case); State v. Lambert, 312 S.E.2d 31, 34 (W. Va. 1984) (holding that history of domestic violence can negate element of intent with respect to charges of fraud against woman defendant).

In one typical duress case *People v. Romero*,[39] the California Court of Appeal held that defendant Debra Romero was denied effective assistance of counsel when her attorney failed to argue the existence of Battered Woman Syndrome in support of her claim of duress.[40] When charged with robbery and attempted robbery, Debra Romero argued that she was forced to participate in criminal acts because of her fear of her co-defendant, Terrance Romero.[41] Debra assisted Terrance in a number of robberies and attempted robberies.[42] On at least one occasion, Debra was alone with the intended victim in his car for a lengthy period before the robbery attempt was made.[43] There were other time periods between robberies when Debra and Terrance were separated.[44] The prosecution argued that Debra could have left Terrance during these times.[45] The court of appeal agreed that testimony about BWS would be relevant to explaining Debra's claims of duress. The court found that duress requires a showing that the defendant had a "good-faith, objectively reasonable belief that there was an imminent threat of danger to her life."[46] The court then concluded that, "[w]e agree with Debra that there is a reasonable probability that presentation of expert testimony about BWS would have bolstered her credibility and persuaded the jury to accept the defense of duress."[47] Thus, the appellate court held that testimony about BWS would have been admissible to prove that Debra acted under duress.

The irony implicit in *People v. Romero* becomes clear when that case is compared to *People v. Aris*.[48] In the latter case, the court held BWS irrelevant to a woman's claims that she reasonably believed that she was in imminent danger when she shot her sleeping husband. The differing results in these two cases cannot stem from differences in the actual danger the two women faced.

---

39. 13 Cal. Rptr. 2d 332 (Ct. App. 1992), *rev'd on other grounds* 883 P.2d 388 (Cal. 1994) (although reversing on the issue of writ procedure and specifically questioning whether Debra could show that she suffered from BWS, the Court was not questioning the lower court's finding that BWS would be relevant to the issue of duress).
40. *See id.*
41. *See id.* at 335.
42. *See id.* at 332-35.
43. *See id.* at 334-35.
44. *See id.* at 332-35.
45. *See id.* at 337.
46. *Id.* at 338.
47. *Id.* at 340.
48. 264 Cal. Rptr. 167 (Ct. App. 1989).

Researchers have found that women attempting to leave their batterers face significant physical danger which extends past the moment they actually walk out the door. The phenomenon is so common that Professor Martha Mahoney named it "separation assault."[49] The explanation between the differing results in these cases appears to be that courts are more inclined to permit testimony about BWS in cases where women have acted in conjunction with their batterers than in cases where they have confronted their batterers.

Brenda Aris was convicted of manslaughter after shooting her sleeping husband.[50] Brenda had suffered extreme physical torture for ten years. She testified that her husband had beaten her and threatened her on the night of the killing, telling her "he didn't think he was going to let [her] live till the morning."[51] Believing that the physical abuse would begin again when her husband awoke, she shot him five times as he slept.[52]

By alleging that she suffered from BWS, the defendant was in essence arguing a form of self-defense. The doctrine of self-defense is divided into two parts in California. If a defendant honestly and reasonably believed herself in imminent danger, she can argue perfect self-defense which is a complete justification for her crime. If the defendant honestly, but unreasonably believed herself in imminent danger, she can argue imperfect self-defense. This claim will reduce a charge of murder to one of voluntary manslaughter. While the trial court permitted expert testimony on BWS in the *Aris* case, it refused to instruct the jury on perfect self-defense, reasoning that the facts defendant raised did not warrant such an instruction.

The California Court of Appeal upheld the trial court's judgment, reasoning that "'no jury composed of reasonable men could have concluded that' a sleeping victim presents an imminent danger of great bodily harm, especially when the defendant was able to, and actually did, leave the bedroom, and subsequently returned to shoot him."[53] Instead, the appellate court upheld the trial court's conclusion that, at most, Brenda Aris

---

49. Battered women are in the most danger when they choose to leave their batterers. ANN JONES, WOMEN WHO KILL 298-99 (1981); EVAN STARK & ANNE FLITCRAFT, *Violence Among Intimates: An Epidemiological View*, *in* HANDBOOK OF FAMILY VIOLENCE 293, 307-08 (Vincent B. Van Hasselt et al. eds., 1988).

50. *See Aris*, 264 Cal. Rptr. at 171.

51. *Id.*

52. *See id.*

53. *Id.* at 176 (quoting People v. Flannel, 603 P.2d 1, 10 (Cal. 1979)).

could use BWS to prove that she incorrectly, but honestly, believed herself to be in danger.[54] Ms. Aris' conviction for voluntary manslaughter was upheld on the grounds that she was, at best, honest, but mentally impaired.[55]

As is apparent from these two cases, BWS has been treated differently in the duress context than in the self-defense context. It is difficult to understand how BWS could be used to show an objectively reasonable fear of imminent danger in Debra Romero's duress case, but not in Brenda Aris' self-defense case. Both women had time and physical opportunity to escape from their batterers. Both women committed the acts for which they were tried at moments when their batterers could not immediately subject them to physical attack. The primary difference between them is that Debra Romero was cooperating with her batterer when she erred, while Brenda Aris was opposing her batterer. Our system of criminal justice, therefore, protects women who obey the violent men in their lives but it does not protect women who challenge those men.

Numerous other non-confrontational killing cases reach similar results. In all of these cases, courts either refused to consider the issue of self-defense or limited it to imperfect self-defense on the grounds that there was no overt act of violence at the time of the killing.[56] The use of BWS in these cases has the same negative implications as the Nineteenth Century's Marital Coercion Doctrine. Under both doctrines, women are held incapable of rational decision making without their husbands' support and are, therefore, excused for crimes they commit at their husbands' (or lovers') behest. On the other hand, women are not excused (or are only partially excused) when they directly challenge the violent authority of those same men. The implication of this legal framework is clear. Our legal system favors women who cooperate with their mates, even when such cooperation has

---

54. *See id.* at 181.

55. *Id.* at 176.

56. *See, e.g.*, Fultz v. State, 439 N.E.2d 659, 662-63 (Ind. Ct. App. 1982); People v. White, 414 N.E.2d 196, 200 (Ill. App. Ct. 1980) (excluding testimony about BWS as irrelevant because defendant was not under attack at exact moment when she killed husband); State v. Stewart, 763 P.2d 572, 578 (Kan. 1988); State v. Norman, 378 S.E.2d 8, 13 (N.C. 1989) (noting that interpreting "imminent" to mean "immediate" effectively denies a woman the right to self-defense when there was no immediate threat); State v. Thomas, 423 N.E.2d 137, 138 (Ohio 1981); Fennell v. Goolsby, 630 F. Supp. 451, 461 (E.D. Pa. 1985) (finding as harmless error the exclusion of testimony about BWS).

criminal objectives. "Good" women, who obey their violent spouses, can be excused when they present evidence about BWS to explain their actions. "Bad" women, who confront their violent partners and challenge their authority, lose the protection of the law. Thus, the use of BWS both reflects and reinforces patriarchal social roles but neither discourages criminal acts directed at battered women nor discourages battered women from committing criminal acts.

B. *Use of Battered Woman Syndrome To Impeach Battered Women's Testimony*

Battered Woman Syndrome also presents a picture of women as mentally and emotionally impaired when it is used to impeach the veracity of a battered woman's testimony. Battered women may find their credibility at issue when expert testimony on BWS is admitted, because experts often portray these women as incapable of telling the truth. Experts testify that battered women tend to lie about their batterer's actions or to recant testimony or statements about their batterers as part of BWS.[57]

The use of BWS to undermine credibility was recently upheld in a California criminal case, *People v. Dillard*.[58] The defendant, Adrian Dillard, was tried and convicted of corporal injury to a co-habitant,[59] his wife, Stephanie Dillard. The charges against Adrian arose out of an alleged assault made on Stephanie. The prosecution introduced evidence at trial indicating that Stephanie had identified Adrian as the cause of her injuries.[60] However, at trial, Stephanie testified that her injuries were self-inflicted.[61]

Stephanie explained her behavior by testifying that she had a long history of self-destructive behavior, beginning when she was twelve years old.[62] She testified to burning herself with ciga-

57. *See, e.g.*, Hawks v. State, 479 S.E.2d 186 (Ga. Ct. App. 1996); Carnahan v. State, 681 N.E.2d 1164 (Ind. Ct. App. 1997); State v. Griffin, 564 N.W.2d 370 (Iowa 1997).

58. 53 Cal. Rptr. 2d 456 (Ct. App. 1996) (depublished 47 Cal. App. 4th 527 (1996)) (While this opinion is no longer binding law in California, it exemplifies the kind of reasoning which is common on this issue and which is echoed in other cases, *see* note 57 *supra*, which have upheld impeachment of witnesses who allegedly suffer from BWS.).

59. California Penal Code section 273.5 applies to all co-habitants and covers spousal abuse. CAL. PENAL CODE § 273.5 (West 1977).

60. *See Dillard*, 53 Cal. Rptr. 2d at 459.

61. *See id.* at 460.

62. *See id.*

rettes and to several suicide attempts.[63] She also testified that she was drunk on the night on which Adrian allegedly assaulted her. She explained that she was not used to drinking, but that, in addition to beer, she had also taken lithium and Wellbutrin (an anti-depressant) on the same evening.[64] This testimony was in part verified by Dr. Jacqueline Green, who testified that she had prescribed the anti-depressants to Stephanie and that she had been treating Stephanie for her suicide attempt in November of 1993.[65]

Stephanie also testified that she told police detectives that Adrian had attacked her. She testified that these statements were lies. She explained she was afraid that she would be arrested and lose her children if she told the detectives the truth: that she had actually punched and kicked Adrian.[66] She claimed that she lied to Kimberly, another prosecution witness, out of a desire for sympathy and a feeling of embarrassment about her self-destructive behavior.[67]

The prosecution responded to Stephanie's testimony by calling Gail Pincus to testify as an expert witness about BWS. Ms. Pincus did not testify as to whether Stephanie herself was a battered woman, but limited her testimony to describing the syndrome in general.[68] In particular, Ms. Pincus testified that "[it is] very common for the . . . battered woman to recant her allegations of violent conduct by the man."[69] In upholding Adrian's conviction, the California Court of Appeal found testimony about BWS admissible to challenge the credibility of Stephanie's testimony even though the prosecution did not introduce any evidence to prove that Stephanie suffered from the syndrome.[70]

While the court's ruling may have been based on an intuitive feeling that Stephanie was not telling the truth at Adrian's trial, the ruling is troubling as a legal precedent.[71] Intuitive feelings aside, the only basis for applying BWS to this case appears to be

---

63. *See id.*
64. *See id.*
65. *See id.*
66. *See id.*
67. *See id.*
68. *See id.* Ms. Pincus testified to the three stage cycle of violence commonly attributed to battering relationships, noting that women in such relationships become isolated and tend to blame themselves for the violence in their relationships.
69. *Id.* at 461.
70. *See id.* at 467.
71. The court noted that previous uses of BWS all involved cases in which a female defendant claimed to suffer from BWS. *See id.* at 463.

the fact that Stephanie is a woman. While there are facts which would indicate that Stephanie may have been a battered woman and that she may have suffered from BWS, the court required no showing of the applicability of BWS to this particular case in order to justify the inclusion of the expert testimony about the way battered women behave. Under this ruling, any time the prosecution alleges that any female witness may have been battered, her testimony becomes subject to impeachment by this method.

The use of testimony about BWS in this way can be criticized in that similarly situated male victims do not face the same kind of impeachment. If a male assault victim changes his story, the jury will decide issues of credibility based on the fact that the victim has given two different versions of the same event. When a female assault victim changes her story, she will run the risk of having her mental capacities impugned if the prosecution makes any allegation that she has been battered.

Such impeachment is particularly troubling in light of the historical treatment of women's testimony under the common law. Historically, women's testimony was banned in courts of law or subject to limitations not imposed on men's testimony on the theory that women's testimony was unreliable.[72] Some commentators attribute this phenomenon to the fact that subordination of racial or gender groups is often expressed through deep, even subconscious, assumptions about the subordinated group's capacity for deviant or untruthful speech.[73] To the extent that the legal doctrine reinforces a perception of women as unreliable speakers, that image enters our social consciousness and can provide a basis for restricting women's rights.

The ruling in *Dillard* and other cases[74] echoes this same view of women's testimony. Women may be unreliable witnesses merely because they are women, if those seeking to discredit

---

72. Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 11-13 (1990).

73. *Id.* at 6 n.9. Professor Lucie White writes that "[c]ultural images that construct Woman's voice as dangerous and fearful rationalize the social control of real women." *Id.* at 8. In fact, western literature and philosophy historically characterized women as untruthful. Friedrich Nietzsche asked of women, "[d]o they not *have* to be first of all and above all else actresses?" FRIEDRICH W. NIETZSCHE, THE GAY SCIENCE 317 (W. Kaufman trans. 1974). *See also* SUSAN GRIFFIN, WOMAN AND NATURE: THE ROARING INSIDE HER (1978); PATRICIA PARKER, LITERARY FAT LADIES: RHETORIC GENDER, PROPERTY (1987).

74. *See, e.g.*, Carnahan v. State, 681 N.E.2d 1164 (Ind. Ct. App. 1997); Hawks v. State, 479 S.E.2d 186 (Ga. Ct. App. 1996); State v. Griffin, 564 N.W.2d 370 (Iowa 1997).

their testimony can make any showing that women have experienced violence in their relationships. This modern version of a historical bias against women's testimony can limit women's ability and opportunity to act in a legal setting.

V. The Influence of Stereotypes About Battered Women in Other Contexts

The negative view of women which BWS reinforces finds its way into other areas of the law in even more troubling forms. The view of women as inherently flawed — that is, mentally incompetent, unreasonable, or unable to function logically — appears to limit the options of women in the legal arena in cases in which BWS may not ever be formally raised. There is an emerging trend which impugns women's capabilities, and their corresponding abilities are legally circumscribed by being categorized as battered women. The designation becomes a permanent mark, a kind of Scarlet B,[75] which limits their ability to operate in a legal arena. In fact, women affected by domestic violence may find their rights limited in different contexts on the theory that they may continue to choose abusive partners in the future.

A. *Battered Woman Syndrome and Child Custody Cases*

The label "battered woman" may have ill effects which are most frightening in the area of child custody. Domestic violence is already a factor which child welfare agencies consider in making custody decisions. In fact, one court has gone so far as to rule that domestic violence in the same household where children are living is neglect.[76] The implication of this legal rule alone can place women who have undergone domestic violence under a severe burden. Although they have been victimized by their spouses or partners, they may be required to show the state that they have changed. Otherwise, they may be held responsible for neglecting their children simply because they experienced domestic violence. More importantly, some courts have used evidence of past battering as an indication that women may choose abusive partners in the future. This perceived "tendency" toward abusive relationships then becomes a sign of parental unfitness

75. *See generally* Nathaniel Hawthorne, The Scarlet Letter (Vintage Books 1990) (1850) (forcing adulterers to wear scarlet letter A on their clothes).

76. *In re* Heather, 60 Cal. Rptr. 2d 315, 321 (Ct. App. 1996) (denying custody to father in part because of belief that he would continue to engage in domestic violence toward future domestic partners).

and a basis for limiting or terminating child custody rights. In two recent child custody cases, courts justified terminating women's parental rights based on predictions that those women would probably choose abusive partners in the future.[77]

In one child dependency hearing, *In re John V.*,[78] a California Court of Appeal held that a mother's past choice of abusive partners could be considered as part of a pattern that supported a determination that her parental rights should be terminated. In that case Juanita W. sought the return of her children, John V. and Sophia V. Abuse was not an ongoing issue in the case, because Juanita had terminated her relationship with her abuser, the children's father.[79] The trial court refused to return them to her care on the grounds that her life showed a "pattern of instability" which included "inappropriate choices of living partners."[80] The court's determination was based on the report of a clinical psychologist who wrote that Juanita's "unresolved dependency needs" contributed to a "pattern of destructive, unstable relationships with men."[81]

Juanita objected to the court's ruling, arguing, in part, that the ruling was based on mere speculation about her future relationship choices.[82] She had terminated her relationship with the children's father and her subsequent boyfriend, so the court could not have been concerned about a current relationship in assessing the children's safety. The appellate court rejected her argument, ruling that the psychologist's prediction, coupled with Juanita's past behavior, supported the trial court's determination.[83]

In a similar case in Ohio, *In re Ranker*,[84] an Ohio appellate court upheld a lower court's ruling terminating parental rights of a woman who claimed to suffer from BWS.[85] The Portage County Department of Human Services ("DHS") first became involved with Angela Ranker and her four children after receiving complaints about the children's hygiene and Angela's parent-

77. *See In re* John V., 7 Cal. Rptr. 2d 629 (Ct. App. 1992); *In re* Ranker, 1996 WL 761159 (Ohio Ct. App. 1996) (unpublished).

78. 7 Cal. Rptr. 2d 629 (Ct. App. 1992).

79. *See id.* at 631-32.

80. *Id.* at 635.

81. *Id.* at 632, 636.

82. *See id.* at 636.

83. *See id.*

84. 1996 WL 761159 (Ohio Ct. App. 1996) (unpublished).

85. *See id.*

ing skills.[86] Angela and her husband entered into a voluntary plan with DHS where DHS agreed to help them improve their situation.[87] DHS was not satisfied with Angela's participation in that plan, however, and filed dependency and neglect complaints concerning Angela's children.[88] The court found the children to be dependent, but not neglected, and agreed that Angela could retain custody with protective supervision by DHS.[89]

As part of the subsequent DHS plan for Angela and her children, Angela was required to live in a battered women's shelter and her husband, the children's father, was required to undergo counseling for domestic abuse.[90] Angela left the children's father permanently, but acquired a new boyfriend and moved out of the women's shelter.[91] DHS thereafter sought to permanently terminate Angela's parental rights with respect to her four children. The trial court did so on the grounds that Angela had failed to remedy the problems.[92]

In objecting to the lower court's ruling terminating her parental rights, Angela made the claim that she suffered from BWS and that this fact had not been adequately considered by the court.[93] She claimed that the various plans the DHS created as terms for her reunification with her children were inadequate under Ohio Revised Code section 2151.414(E), which requires the DHS to make diligent efforts to help her remedy her problems and reunify the family.[94] Angela argued that the DHS plans were inadequate because they did not take the fact that she suffered from BWS into account.[95]

The appellate court accepted her claims of abuse-related disability, but found that BWS supported the DHS determination that she was an unfit parent. The appellate court accepted expert testimony that Angela was "dependent on men" and "incapable of [being] a strong enough person to successfully raise four chil-

86. *See id.* at *1. The DHS is an administrative body which initiated the legal action in this case by filing complaints alleging that Angela's children were neglected and dependent so as to be subject to the DHS's jurisdiction.

87. *See id.*

88. *See id.*

89. *See id.*

90. *See id.* at *6, *7.

91. *See id.* at *9.

92. *See id.* at *10.

93. *See id.* at *8, *9.

94. *See id.* at *2.

95. *See id.* at *8, *9.

dren."[96] The appellate court upheld the trial court's determination that Angela would be incapable of defending her children if she had to take a stand against a spouse or boyfriend.[97] The court made this determination in spite of the fact that there was no evidence that Angela's new boyfriend was or could become abusive. Thus, Angela's BWS undermined her case instead of helping it.

In both *John V.* and *Ranker,* appellate courts terminated women's parental rights after finding that they were likely to engage in abusive relationships. The courts arrived at these troubling conclusions even though both women had terminated their relationships with their abusers. Juanita W. was not in a relationship at the time of the ruling, and there was no evidence that Angela Ranker's new boyfriend was abusive. The courts held that Juanita and Angela, weak and dependent women, were predisposed to engage in abusive relationships. Hence, the courts justified their termination of parental rights. Such an inference can be made about every women whom the court labels as suffering from BWS. The current conception of BWS rests heavily on the notion of "learned helplessness," an exaggerated form of dependency which prevents women with BWS from taking positive action in their lives. To the extent that our society accepts this definition of BWS, women in abusive relationships run the risk of being labeled deficient and losing their parental rights, even if they leave those abusive relationships.

At the very least, such women will face the challenge of showing through expert testimony that they have "recovered" from the debilitating effects of BWS. This proof may be difficult to acquire. Establishing that a woman has recovered from BWS will require testimony about her psychological state. However, virtually every psychological assessment depends, at least in large part, on the subject's own statements to the assessor. The California Supreme Court rejected such psychological testimony in the *Lamb* case, as I will discuss *infra* in Part V, Subsection C, finding that the subject's own words are self-serving and the therapist's words are, therefore, suspect. Courts are then free to reject any favorable testimony offered by battered women seeking custody rights.

---

96. *Id.* at *9.
97. *See id.*

B. *Battered Woman Syndrome and Child Abuse*

Another trend in the treatment of BWS has frightening potential consequences for battered women. At least one court has upheld the admissibility of evidence designed to show that battered women are likely to engage in child abuse. In *State v. Stevens*,[98] the defendant, Gary Stevens, was accused of beating his girlfriend's eighteen-month old daughter to death. He sought to introduce evidence showing the likelihood that the child's mother had actually committed the crime.[99] In that case, the prosecution offered evidence showing that Lisa Rambeck, the mother of the murdered child, suffered from BWS.[100] The trial court found such evidence relevant because Gary's theory was that Lisa caused the child's death. The trial court found evidence about BWS relevant to explain what would otherwise have been incriminating conduct on Lisa's part.[101]

Gary then sought to introduce evidence about a phenomenon known as "pecking order battering" ("POB"). In essence, POB is the theory that some battered women have a propensity to batter those lower in the power scheme (often their children).[102] The trial court permitted general questions about POB, but prohibited Gary from inquiring into specific acts of POB by Lisa toward her other children.[103]

The Oregon Court of Appeals ruled that the trial court should have permitted Gary to introduce evidence about POB committed by Lisa toward her other children.[104] Gary did not seek to offer any evidence about Lisa's treatment of the murdered child. Instead, he sought to imply that, because Lisa suffered from BWS, she was likely to have murdered her daughter. The appellate court, in ruling that such evidence was relevant, indirectly endorsed the view that when a woman is alleged to suffer from BWS, one may infer that she has beaten or is likely to beat a particular child in her care. Such an inference reinforces

98. 938 P.2d 780 (Or. 1997).

99. *See id.* at 782.

100. *See id.* at 785.

101. *See id.* According to the appellate court, Lisa's actions before and after Sarah's death were susceptible to the inference that she had killed Sarah. Lisa needed to explain why she did not report her daughter's injuries and why she continued her relationship with Gary. *See id.* at 787.

102. *See id.*

103. *See id.*

104. *See id.* at 788. Gary sought to introduce evidence that Lisa slapped and screamed at her other two children in 1989 and 1992. *See id.* at 782.

the stereotype of battered women as irrational, illogical, unreasonable creatures. Moreover, if such a stereotype becomes widely accepted, it will surely form the basis for limiting the parental rights of battered women. The women will be viewed as deficient parents who have a tendency to abuse their children.

C. *Use of Battered Woman Syndrome in a State Bar Disciplinary Hearing*

In Re Lamb involved a female attorney who was disbarred when the court found that her history in an abusive relationship indicated a psychological problem that made her unfit to practice law.[105] Laura Beth Lamb was convicted of two felony counts of false personation to obtain a benefit. She posed as her husband, Morgan Lamb, in a photograph submitted to the State Bar as identification for the attorney bar examination in 1985. She later appeared at the examination, impersonating her husband, and took the bar examination on his behalf.[106] After an anonymous tip revealed her crime, Laura pleaded nolo contendere to the charges.[107] She submitted evidence to the State Bar disciplinary proceeding showing that her husband had suffered serious career setbacks, including failing the bar examinations in California and Texas, which caused him to become violent and rageful.[108] Laura became pregnant, and her health was seriously endangered by complications from chronic diabetes. According to the California Supreme Court, "[t]he confluence of emotional and physical stress caused [Laura] to conclude that her only hope for her unborn child was to accede to her husband's pleas that she take the July 1985 bar exam in his place."[109] After her arrest, Laura divorced her husband and voluntarily sought therapy. Her psychiatrist reported to the court that with an "adequate course of psychotherapy" she could function as a member of the bar.[110] A licensed clinical social worker treating Laura after her arrest wrote to the court that Laura was unlikely to "do anything remotely like this again" and that her prognosis for the future was good, provided she remained in long term therapy.[111]

105. 776 P.2d 765 (Cal. 1989) (en banc).
106. *See id.* at 765-66.
107. *See id.* at 765.
108. *See id.* at 766.
109. *Id.*
110. *Id.*
111. *Id.* at 767.

The State Bar hearing officer rejected Laura's pleas for leniency, noting that "[s]he could have gone to a battered women's shelter or to any of the persons who wrote letters on her behalf . . . if necessary for protection against her husband."[112] After the State Bar Court unanimously adopted the hearing officer's disbarment recommendation, Laura appealed.[113] The California Supreme Court rejected Laura's claim that her abusive marriage, which she had terminated through divorce, was a major contributing factor in her wrongdoing. Instead, the court focused on the diagnosis that Laura suffered from a "chronic emotional disability"[114] which was revealed through her attempts to minimize her husband's violence by agreeing to his illegal demands. The court also rejected evidence offered by mental health professionals on Laura's behalf. The court described such favorable testimony as mere opinion, based largely on Laura's own self-serving statements.[115] The court concluded that, given Laura's emotional disability, the danger that she would continue to transgress in the future was great. The court characterized Laura as one incapable of resisting the "legal, ethical, and moral pressures of daily practice" and hypothesized that Laura would be unable to resist the "sincere but misguided desire to please a persuasive or overbearing client."[116]

The court's conclusion, that Laura was likely to allow her "emotional disability" to cause her to commit criminal acts in the future, was the legal basis for the court's ruling. In a well-reasoned dissent, however, Justice Kaufman described Laura's breach as "one-time, aberrational conduct stemming from circumstances that no longer exist and as to which there is not the slightest possibility of recurrence."[117] Justice Kaufman was supported in this view by Laura's therapist and clinical social worker.[118] In fact, given that Laura had divorced Morgan and that her pregnancy was over, it is clear that the enormous pres-

---

112. *Id.* at 767 n.3. The Hearing Officer's view echoes the traditional treatment of battered women who are accused of crimes – "If things were so bad, why didn't she just leave." This view ignores the realities of separation assault and the fact that battered women are in the most danger when they choose to leave their batterers. *See, e.g.* RICHARD J. GELLES & MURRAY A. STRAUS, INTIMATE VIOLENCE 89 (1988); JONES, *supra* note 1, at 129-66; Mahoney, *supra* note 5, at 65-66.

113. *See Lamb*, 776 P.2d at 767.

114. *Id.* at 769.

115. *See id.*

116. *Id.*

117. *Id.* at 771 (Kaufman, J., dissenting).

118. *See id.* at 773.

sures on her when she impersonated Morgan were not likely to recur.

The irrationality of the Supreme Court's characterization of Laura and its decision to uphold her disbarment is made more clear when Laura's case is compared to other attorney discipline actions. Factors which typically mitigate State Bar Court punishments were present in Laura's case but were discounted. The State Bar Court considers the seriousness of the offense in deciding whether disbarring the attorney is warranted.[119] In addition, even where the offense warrants disbarring the attorney, the State Bar Court will not disbar attorneys who demonstrate that they have successfully rehabilitated themselves.[120] In Laura's case, the seriousness of the sanction she received may have exceeded that received by other attorneys in similar circumstances. Moreover, the court's unwillingness to rely on testimony about Laura's rehabilitation is troubling given that the court has accepted the same type of evidence in other cases.[121]

In Laura's case, the California Supreme Court noted that her crime "threatened innumerable clients with significant injury through unknowing exposure to an unqualified practitioner."[122] However, in other cases where attorneys have assisted non-attorneys in practicing law, the typical sanction is a suspension rather than disbarment.[123] Moreover, in cases sanctioning attorneys for drug trafficking and drug abuse, the California Supreme Court accepts psychiatric testimony to show rehabilitation sufficient to mitigate disbarment into suspension. This is the same type of testimony that the court rejected as unreliable in Laura's case. For example, in *In re Leardo*, the California Supreme Court overruled the State Bar Court's finding that an attorney convicted of drug trafficking should be disbarred on the grounds that the attorney had been rehabilitated.[124] In reaching that conclusion, the court relied on the attorney's own statements and on therapy results,[125] the same type of evidence it rejected in Laura's case. Hence, the court's characterization of the facts in Laura's case appears disingenuous.

---

119. *See, e.g., In re* Bragg, 3 Cal. State Bar Ct. Rptr. 615 (1997).
120. *See, e.g., In re* Leardo, 805 P.2d 948 (Cal. 1991).
121. *See, e.g. Bragg*, 3 Cal. State Bar Ct. Rptr. at 615; *Leardo*, 805 P.2d at 948.
122. *Lamb*, 776 P.2d at 768.
123. *See, e.g., Bragg*, 3 Cal. State Bar Ct. Rptr. at 615.
124. *See Leardo*, 805 P.2d at 953.
125. *See id.* at 951-52.

The ruling in Laura's case is ominous for women who assert BWS as a defense to criminal (or other) liability. Based on the existence of a long term mental condition related to domestic violence, the California Supreme Court concluded that Laura was not capable of regulating her own behavior within moral and legal limits. More frighteningly, her credibility as a witness could not be rehabilitated by the testimony of mental health professionals. Indeed, given the court's rejection of the testimony offered on Laura's behalf, it is difficult to say what evidence the court would have accepted. Virtually all evidence in the mental health field is based on communications made by the patient to the therapist or other mental health professional. This case indicates that battered women run the risk of being labeled as deficient and left without easily available means to show that they have recovered from the ill effects of the domestic violence to which they were subjected.

VI. Conclusion

Battered Woman Syndrome arose as a way of explaining the apparently irrational behavior of women who choose to kill rather than leave the men who abuse them. The great need to protect women who have suffered tremendous physical and psychological abuse cannot be ignored. But by admitting and even reinforcing the apparent irrationality of their behavior, BWS reinforces incapacity and inferiority in the women who invoke it. Current trends indicate that women may suffer as a result of this legal theory. Battered women may be perceived as suffering from a permanent condition which causes them to be untruthful (on the witness stand), inadequate (in caring for and protecting their children), dangerous (to children or other vulnerable persons in their care), unreliable (in protecting the interests of legal clients), and beyond hope of rehabilitation. Moreover, the case law indicates that these characteristics can be attributed to women who have experienced battering without proof that those women suffer from BWS. Hence, these stereotypes may adversely impact a great number of women including those who do not suffer from BWS.

Further discussion is necessary to consider whether BWS can be refined to avoid these negative consequences to women. Given the negative potential consequences of using BWS, however, it is clearly a weak defense. Just as Karen Straw was forced to face her murderous, estranged husband with no better protec-

tion than the "flimsy paper shield"[126] of a restraining order, women who take shelter behind BWS are unprotected at best. At worst, BWS is a double-edged sword which not only fails to protect women, but actually harms them.

126. *See supra* text accompanying note 1.