

ENDING THE CYCLE OF VIOLENCE:
THE BATTERED WOMAN SYNDROME, *PEOPLE V. GENOSA*,
AND RA 9262, A CRITICAL ANALYSIS*

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*"What is done to women is either too specific to
women to be seen as human or too generic to
human beings to be seen as specific to women."*

Catherine MacKinnon¹

*"But you will not escape: you should die with me;
the blood of both will drip from the same sword,
although that murder will disgrace me—
it may be a disgrace, but you will die just the same."*

Propertius²

*"[y]ou end up staying because you really want to
Believe that the person you love loves you back
. . . . Because you hate what they're doing, it doesn't
Mean that you hate them. . . [a]nd
you believe they'll change."*

Patty Hennessy

Defending our Lives

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² David Fredrick, *Reading Broken Skin: Violence in Roman Elegy*, in *ROMAN SEXUALITIES* 172, 181 (1997).

PROLOGUE

Act I Scene 1

Her husband approached her with a gun in his hand. In a "bushed angry tone," he told her: "P----- ina mo! Who the hell do you think you are?" Then he wrapped his left arm around her, raised the pistol to her abdomen, then pulled the trigger. Bleeding, she pleaded with one of her husband's bodyguards, a certain Castillo, to rush her to the hospital, and as they staggered out of the condominium unit her husband yelled: "P----- ina mo, Castillo! Mamili ka, pera ko o buhay niya? [Choose, my money or her life?]" Castillo then shouted back: "Buhay po, sir [Life, sir]."³

I. INTRODUCTION

Violence exists not only among strangers, but also among family members.⁴ In fact, one of the cruelest and most insidious kinds of brutal abuse is the kind that takes place in our homes, and in the intimacy of our interpersonal relationships.⁵ Family violence is a serious social problem. It transcends race, religion, age, gender, and socioeconomic strata; its occurrence is nondiscriminatory, frequent and widespread.

³Rina Jimenez-David, *Her "first love" tried to kill her*, at http://www.inq7.net/opi/2004/apr/17/text/opi_rj david-1-p.htm This excerpt is from Ms. David's column in the *Philippine Daily Inquirer*, on the Melissa Mercado Martel case.

⁴Jay B. Rosman, *The Battered Woman Syndrome in Florida: Junk Science or Admissible Evidence?* 15 St. Thomas L. Rev. 807 (2003).

⁵LENORE E. WALKER, *TERRIFYING LOVE, WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* 4 (1989).

II. DOMESTIC VIOLENCE

The term "domestic violence" includes wife beating, intimate violence, physical violence, spouse abuse, and family violence. Collectively, these terms describe domestic violence between spouses, family members, and opposite sex partners. Domestic violence is unique in that it embodies a continuum of coercive behaviors that includes physical, sexual, psychological, emotional, and/or economic abuses that tend to escalate in frequency and severity over time.⁶ The term "battering," therefore, goes beyond physical beatings, it includes the pattern of controlling behaviors that effectively maintain the fixed imbalance of power over the victim. Women, however, are by far the most common victims of battering in intimate relationships. A range of tactics such as threats, physical beatings, isolation, and the manipulation of fear and other emotions are used to establish a pattern of behavior that maintains power and control.⁷

Since family violence is both personal and subjective, it frequently goes unreported. Shame often prevents the victim from seeking assistance and denial causes a victim to interpret acts of aggression as typical rather than criminal.⁸ Moreover, the labeling of intimate violence as "domestic" creates the perception that it falls within the private realm of the family, and is therefore better treated outside the ambit of the criminal justice system.⁹

A TALE AS OLD AS TIME: HISTORY OF DOMESTIC VIOLENCE

Violence in the home, particularly violence against women, is not a new or recent phenomenon.¹⁰ To understand and address the present needs of families ravaged by domestic violence, one must revisit the history of

⁶J. CARTER, C. HEISLER & N. LEMON, DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES (1991).

⁷LENORE E. WALKER, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS 35 (1989).

⁸*Supra* note 2.

⁹Albert P. Cardarelli, VIOLENCE BETWEEN INTIMATE PARTNERS 2 (1997).

¹⁰Lewis Okun, WOMAN ABUSE: FACTS REPLACING MYTHS 2 (1986).

domestic violence, which dates back almost to the beginning of recorded time.¹¹

For centuries, men were encouraged to beat their wives and children as a right of entitlement by gender for social, economic, political, and psychological power¹². Physical beating was an accepted corollary of male dominance.¹³ Wife beating is steeped in the concept of marital privacy and the belief that wives are the personal property of the husband. Indeed, at one time a wife killing her husband was regarded as a much more heinous crime than if the husband killed his wife, because in “throw[ing] off all subjection to the authority of her husband” she was considered to have committed treason.¹⁴ Blackstone, in his Commentaries, advanced the “theory of coverture.” Under this theory, punishment for the mistreatment of a wife was impossible since the husband and the wife were considered as one.¹⁵

In many cultures, women and children were considered as “chattel,” or property of their husbands and fathers. Social customs and written laws gave men the right and responsibility to control their wives and to use force when necessary to preserve “order” in their families. The husband’s right to discipline their wives was codified in law as early as ancient Rome.¹⁶

For instance, in 753 B.C. Rome, the “Laws of Chastisement” was created wherein husbands were permitted to strike their wives as a method of preventing the wife from exposing her husband to criminal and civil

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴Elizabeth Schneider, BATTERED WOMEN & FEMINIST LAWMAKING 117, 135 (2000).

¹⁵*State v. Hundley*, 693 P.2d 475, 479 (Kan. 1985).

¹⁶R. E. Dobash, and R. P. Dobash, VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY. 61 (1979).

liability.¹⁷ The only restriction imposed by the government was that the circumference of the rod or stick had to be no greater than the girth of the husband's right thumb, hence the phrase "Rule of Thumb."¹⁸ The common law of Anglo-America permitted the "master of the household" to "chastise" his wife using corporal punishment, as long as he did not inflict permanent physical injuries.¹⁹

In the United States, before 1871, marital violence was a "privilege," a husband was able to go unpunished for "beating [his wife] with a stick, pulling her hair, choking her, spitting in her face, kicking her about the floor."²⁰ In 1824, the Mississippi Supreme Court upheld a man's right to assault his wife in response to her "misbehavior" without having to face prosecution, because a trial would result in public shame "that is unwarranted."²¹ In 1864, the North Carolina Supreme Court upheld the notion of domestic privacy, stating that the law "will not invade the domestic forum or go behind the curtain" but rather will "leave the parties to themselves" unless "some permanent injury be inflicted or there be an excess of violence."²² Until the late nineteenth century, common law and written statutes regulated, but did not prohibit, the physical abuse of wives. Men were allowed to discipline their wives as they saw fit, backed by strong community tolerance and hampered by little or no interference from the outside world.²³

By the late nineteenth century, although American judges had explicitly rejected the doctrine of chastisement, they began substituting it

¹⁷Virginia Murray, A COMPARATIVE SURVEY OF THE HISTORIC CIVIL, COMMON, AND AMERICAN INDIAN TRIBAL LAW RESPONSES TO DOMESTIC VIOLENCE, IN DOMESTIC VIOLENCE LAW 2 (1988).

¹⁸*Id.*

¹⁹Reva B. Siegel, *"The Rule of Love": Wife Beatings as Prerogative and Privacy*, 105 Yale L. J. 2117, 2123 (1996).

²⁰Sue E. Eisenberg and Patricia A. Micklow, *The Assaulted Wife: "Catch 22" Revisited (An Exploratory Legal Study of Wifebeating in Michigan)* unpublished (1974).

²¹*Supra* note 14.

²²R. E. Dobash, and R. P. Dobash, VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY. 61 (1979).

²³*Id.*

with a common law doctrine of "family privacy" that justified legal non-intervention in the marital relationship, despite evidence that a husband was subjecting his wife to physical abuse.²⁴ In the early twentieth century, laws that promoted or regulated domestic violence were for the most part repealed. However, patriarchal control of women by men continued to be culturally tolerated and socially acceptable, and the traditional view that a man's home was his private domain still prevailed. The activities in a man's home were seen as "private matters" and thus exempt from public scrutiny and concern.²⁵

Thus, from 1900 through the 1960s, woman battering did not come to public attention because it was considered a "private matter" and not the business of public officials; and often was redefined as a "family problem," "personal squabble," "dispute," or "disturbance" that did not require an active response by the criminal justice system. Hence police, prosecutors, and the courts maintained a hands-off attitude in these cases, which were considered an annoyance and tended to be minimized or avoided whenever possible.²⁶

III. CHRONICLE OF A DEATH FORETOLD: THE MARIVIC GENOSA CASE

Marivic and Ben Genosa were married on November 19, 1983. Marivic worked as secretary to the port managers in Ormoc City. The couple had three children. In the first year of their marriage, Marivic and Ben "lived happily." But soon thereafter, the couple would quarrel and their fights would become violent. Ben and Marivic quarreled generally when Ben would come home drunk.²⁷ He would slap her, sometimes he would pin her down on the bed, and sometimes beat her up. These

²⁴Reva B. Siegel, *"The Rule of Love": Wife Beatings as Prerogative and Privacy*, 105 Yale L. J. 2117, 2123 (1996).

²⁵*Supra* note 20.

²⁶E. Pleck, DOMESTIC TYRANNY: THE MAKING OF AMERICAN SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT.182-83 (1987).

²⁷*People v. Genosa*, G.R. No. 135981, January 15, 2004. 419 SCRA 547.

incidents happened several times and she would often run home to her parents, but Ben would follow her and seek her out, promising to change and asking for her forgiveness. During her marriage she had tried to leave her husband at least five times but Ben would always follow her and they would reconcile.²⁸ From July 6, 1989 until November 9, 1995, there were six battering episodes inflicted upon Marivic.

On that fateful night of November 15, 1995, Marivic went home after work to find that her husband was not yet home. She went out in search of her husband whom she fears may have gone gambling since it was payday. Upon her return to the house after a futile search, she found Ben in the house, drunk. Ben nagged Marivic for following him and even challenged her to a fight. She ignored him and attended to her children. Disappointed by her reaction, Ben switched off the lights, and with the use of a chopping knife, cut the television antenna to keep her from watching television.

When Ben was about to attack her, she ran to the bedroom, but he got hold of her hand and whirled her around. She fell on the side of the bed and screamed for help. Ben left. Marivic packed his clothes because she wanted him to leave. Ben flew into a rage, and dragged Marivic outside of the bedroom towards a drawer containing a gun.

Ben could not open the drawer because he did not have the key. He pulled his wallet which contained a blade about three inches long. Marivic was aware that Ben was going to kill her. She smashed his arm; the wallet and the blade fell. As Ben was picking up the wallet and the blade, Marivic smashed him on the head with a pipe and ran to the other room.

In that moment, all that was on her mind was pity for herself. She felt her blood pressure rise. This was the same feeling she had before, when she had to be admitted in a clinic. She felt like vomiting. She was afraid she was about to die because of her blood pressure and her unborn

²⁸*Id.* at 548.

baby. She went out of the room, broke open the drawer, got the gun, went to the other room, and shot Ben.

IV. WHEN LOVE TURNS TO TERROR: THE BATTERED WOMAN SYNDROME

A. GENERAL CONCEPTS

The term "Battered Woman Syndrome" ("BWS") was coined from the 1984 book of American psychiatrist Dr. Lenore Walker. It refers to any woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights.²⁹ Dr. Walker defines "repeatedly" as involving more than one assault or at least two acute battering incidents.³⁰

BWS was initially utilized to explain why the female victim resorted to violence as the appropriate response to the battering relationship. Her overall intent in using violence is to stop her partner from abusing her (*i.e.* self-defense)³¹ and not to harm her partner. Research shows that a woman would not use violence if she believed that it could harm her partner.³² The syndrome has also been described as a type of profile, *i.e.*, a psychological study showing a correlation between certain traits or characteristics and certain forms of behavior, from which diagnostic or predictive profiles can be constructed from such behavior.³³

The syndrome offers explanations of a battered woman's behavior by linking that behavior to the syndrome's psychosocial elements. Battered women generally believe that they are responsible for their batterer's violent

²⁹Lenore E. Walker, *THE BATTERED WOMAN* 44-54 (1979).

³⁰*Id.*

³¹Andrea D. Lyon, *Be Careful What You Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence Cases in Two Cities in Michigan*, 5 Mich. J. Gender & L. 253 (1999).

³²A. Murray, *Physical Assaults By Wives: A Major Social Problem*, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE 67, 80 (1993).

³³Edward W. Cleary, *McCormick On Evidence*, § 206 at 634-35 (3d ed. 1984).

behavior, and they believe their batterers are both capable of and likely to kill them.³⁴ They feel there is no escape, not only because they may be found and be hurt more seriously if they try, but also because women, and specially battered women, often lack the financial resources to survive on their own.³⁵ Lastly, battered women will often not tell their friends and family or seek help, either because they fear it will further enrage their spouse, or because they are embarrassed or discouraged by societal and familial pressures to make the relationship "work."³⁶

It is also important to understand why battered women stay in abusive relationships. It has been stated that battered women tend to stay in abusive relationships for a number of reasons. Among those reasons are the following: (1) women are still positively reinforced during the honeymoon phase; (2) women tend to be the peacekeepers in relationships--the ones responsible for making the marriage work; (3) adverse economic consequences; (4) it is more dangerous to leave than to stay; (5) prior threats by a batterer to kill himself or the children; (6) threats to abscond with the children; (7) loss of self-esteem; (8) and absence of psychological energy to leave, resulting in psychological paralysis or "learned helplessness."³⁷

It must be noted, however, that there is no real difference in the psychological makeup of battered women who kill and those who do not. Most are average, "normal" women in many ways. The difference lies, perhaps, in the extremely life-threatening nature of the violence to which they are subjected, and from which some of them can escape alive only by ending their abusers' lives.³⁸

However, most victims of the battered woman syndrome who assault their batterers tend to do so during non-confrontational moments,

³⁴*Ibn-Tamas v. U.S.*, 407 A.2d 626, 633-34, 638 (D.D.C. 1979).

³⁵*Id.*

³⁶*Id.*

³⁷*California v. Aris*, 215 Cal. App. 3d 1178, 1195 (1989).

³⁸Lenore E. Walker, *TERRIFYING LOVE, WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* 7 (1989).

hence they have a difficult time meeting the legal requirements of the self-defense doctrine, which focuses on the necessity of proportional force in response to imminent harm.³⁹ The battered woman syndrome theory is thus indispensable to illuminate how a victim might be considered as having satisfied these requirements, even when not under immediate attack. The concepts of the "cycle theory of violence," "learned helplessness," and "powerlessness," could aid in understanding why a battered woman chooses to remain in a relationship that is both psychologically and physically harmful.⁴⁰

B. CYCLE OF VIOLENCE

To understand battered woman's syndrome, one must first understand how someone becomes a "battered woman." Dr. Walker explains that a woman must experience *at least two complete battering cycles* before she can be labeled a "battered woman."⁴¹

The cycle has three distinct phases. The first phase is the *tension building phase*. During this phase, minor abusive incidents occur which both parties seek to control. Ultimately, however, the tension builds up and the syndrome moves to the second phase. The second phase is that of an *acute battering incident*. The abuse becomes more severe during this phase. Most injuries occur at this time. The third phase is a "*period of loving-contrition* or absence of tension." This phase "often revives and reinforces a battered woman's hopes that her mate may reform and thus keeps her emotionally attached to the relationship." In cases where the violence has become extreme, the third phase may not be apparent. As the syndrome progresses, the cycle repeats itself and the assaults become more frequent and severe.⁴²

³⁹Donald A. Downs, MORE THAN VICTIMS: BATTERED WOMEN, THE SYNDROME SOCIETY, AND THE LAW 138-82 (1996).

⁴⁰Washington v. Kelly, 685 P.2d 564, 571 (Wash. 1984).

⁴¹Lenore Walker, THE BATTERED WOMAN 54 (1979).

⁴²Walter W. Steele, Jr. & Christine W. Sigman, *Reexamining the Doctrine of Self Defense to Accommodate Battered Women*, 18 Am. J. Crim. L. 169, 181 (1991).

The battered woman is reduced to a state of fear and anxiety during the first two phases of the cycle,⁴³ and her perception of danger extends beyond the battering episodes themselves. A "cumulative terror" consumes the woman and holds her in constant fear of harm.⁴⁴ This fear continues even during the peaceful interlude between episodes of abuse.⁴⁵ It is during this lull in the violence that the woman may seize the opportunity to strike back at the batterer.⁴⁶ 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 violence⁴⁷ (*i.e.* during phase three).

According to battered woman syndrome theorists, the cyclical nature of domestic violence causes a battered woman's perception of danger to extend beyond the time of a particular battering episode. Thus, the woman lives under a constant reign of terror and may kill during an apparently peaceful moment out of fear that she will not be able to protect herself from the next, inevitable attack.

But why doesn't the battered woman just leave the battering relationship?

⁴³Lorraine Patricia Eber, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 Hastings L. J. 895, 928 (1981).

⁴⁴Nancy Fiora-Gormally, *Battered Wives Who Kill: Double Standard Out of Court, Single Standard In?* 2 Law & Hum. Behav. 133, 164 (1978).

⁴⁵Michael A. Buda & Teresa L. Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. Fam. L. 359, 375 (1984-85).

⁴⁶"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." Lenore Walker, *THE BATTERED WOMAN SYNDROME*, (1984).

⁴⁷*Lumpkin v. Ray*, 977 F.2d 508, 509 (10th Cir. 1992).

C. LEARNED HELPLESSNESS

Learned helplessness shows why the BWS victim does not retreat from the threat of harm.⁴⁸ Also, from a self-defense standpoint, learned helplessness explains why the battered victim simply does not leave the relationship before resorting to the use of deadly force.⁴⁹ Moreover, many battered women may choose to remain in the abusive home because sometimes, the choice of leaving is more dangerous than staying.⁵⁰ Moreover, battered women often consider returning to the abusive environment and continuing their existing relationship either for "emotional, financial, or cultural reasons."⁵¹

"Learned helplessness" describes a woman's lack of motivation to change her abusive surroundings due to her sincere belief that no response, decision or course of action will ever alter the present situation.⁵² This theory posits that women lose the ability to predict normally expected contingent outcomes when she does a particular act.⁵³ Without an understanding of how to stop the violence, she eventually drowns herself into a depressed posture, hoping that her partner will unilaterally end the abuse once he realizes that she is not willing to expose their secret shame.⁵⁴ In effect, the battered woman is psychologically broken down to the point of relinquishing any sense of autonomy and ends up complying with all the wishes of the captor.⁵⁵ No matter how hard she tries to end the violence, it will always be there, haunting her until either her batterer voluntarily leaves

⁴⁸Dunn v Roberts, 963 F2d 308, 313 - 14 (10th Cir 1992).

⁴⁹Joshua Dressler, UNDERSTANDING CRIMINAL LAW 199-200 (1995).

⁵⁰Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation* 90 Mich. L. Rev. 1 (1991).

⁵¹Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A. Why Abuse Victims Stay*, 28 Colo. Law. 19 at 49 (1999).

⁵²Lenore E. Walker, THE BATTERED WOMAN 44-54 (1979).

⁵³*Id.*

⁵⁴*Id.*

⁵⁵*Id.*

or she dies from the abuse. The victim in the end has become content with being helpless.⁵⁶

The theory of learned helplessness was first developed by psychologist Martin Seligman. Working with dogs, Seligman had shown that administering electrical shocks could induce animals to expect ill-treatment to the extent that, when it becomes possible for them to leave their cages, they refuse to do so. He thus discovered that laboratory dogs exposed to shock "learn" that they are helpless and thus fail to escape even when provided with an opportunity to do so; Seligman later generalized this phenomenon to depression in humans.⁵⁷

Walker applied this theory to domestic violence, arguing that women who were subjected to long-term abuse responded in a similar manner. She argued that the cyclical nature of the violence immobilized a woman's ability to act decisively in her own interest, making her feel trapped in the relationship with no means of escape.⁵⁸ As the cycle of violence is repeated many times, the woman finds herself reduced to a state of "learned helplessness." To the battered woman, her abuser's violence appears random, unpredictable, and, most importantly, uncontrollable. As the woman "learns" that she is "helpless" to prevent the cycle from recurring or to predict the consequences of her own actions, she becomes "psychologically trapped" and unable to leave the violent battering relationship.⁵⁹ As Walker explains: "[b]attered women don't attempt to leave the battering situation even when it may seem to outsiders that escape is possible, because they cannot predict their own safety; they believe that nothing they or anyone else does will alter their terrible circumstances."⁶⁰

⁵⁶Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will It Work This Time?* 31 Pepp. L. Rev. 709.

⁵⁷Martin E.P. Seligman, et al, *Alleviation of Learned Helplessness in the Dog*, 73 J. Abnormal Psych 256 (1968).

⁵⁸Lenore E. Walker, *THE BATTERED WOMAN* (1979).

⁵⁹Lenore Walker, *THE BATTERED WOMAN SYNDROME* (1984).

⁶⁰Lenore Walker, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989).

Syndrome theorists believe that repeated domestic violence diminishes the battered woman's motivation to respond and instills in her a negative belief about the efficacy of her actions.⁶¹ Because battered women perceive their escape attempts to be futile, they have decreased motivation to attempt to avoid violence. Beyond this hypothesized reduction in motivation, Walker goes still further and opines that battered women also have impaired escape skills and become incapable of recognizing their escape options.⁶² Walker speculates that the battered woman develops heightened survival skills and becomes hyperalert to her environment in an attempt to prevent further violence.⁶³ Unfortunately, the development of her survival skills comes at the expense of her escape skills.⁶⁴ Walker's version of "learned helplessness" describes the battered woman as suffering from a diminished cognitive capacity to perceive the possibility of success and an inability to visualize alternatives to the battering relationship.⁶⁵

Eventually, she may reach a level of resigned terror at which she can foresee only two possible exits from her tortured life—her own death or her abuser's.⁶⁶ At this point, if the severity of the attacks escalates to the life-threatening level, she may reasonably believe she has to strike back with lethal force in order to survive.⁶⁷

V. WHEN PSYCHOLOGY MEETS THE LAW: BATTERED WOMAN SYNDROME AND SELF-DEFENSE

A battered woman who kills her batterer has to hurdle the traditional requirements of self-defense which proves problematic for battered women. In large part, this is brought about by society which has for so long believed that women, having once been regarded as property of

⁶¹*Supra* note 56 at 18-31.

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶Lenore Walker, TERRIFYING LOVE 104-106 (1989).

⁶⁷*Id.*

their husbands, ought to obey their husbands. Another hurdle that has to be overcome is the very concept and formulation of the Battered Woman Syndrome itself which poses a host of problems as well. Studies indicate that most jurors adhere to various "myths," "misconceptions," and "stereotypes" concerning domestic violence and women who remain in abusive relationships.⁶⁸

A. REALIGNING SELF DEFENSE: BATTERED WOMAN SYNDROME STRAINING TO FIT IN

The traditional views of self-defense, imminence, and reasonableness, did not contemplate the realities of a battered woman's experiences because "traditional self-defense doctrine envisions a confrontation between male strangers. The doctrine holds that a person is justified in killing another in self-defense if a reasonable 'man' would have acted the same way." Added to that, the self-defense doctrine and its history are "derived from a male model."⁶⁹ A woman who kills her spouse would thus be automatically considered insane or inherently unreasonable.⁷⁰

Thus in a self-defense case involving the battered woman syndrome defense, the woman must particularly explain why she stayed in the relationship and did not leave her home; why she did not call the police or get other assistance before acting; and why she believed that at the time she responded the danger she faced was imminent, posed a threat to her life, and was therefore different and more serious than other times when she had been beaten, had not acted, and had survived.⁷¹ Notwithstanding their testimony, defendants are confronted by judges and officers who disbelieve their claims.

⁶⁸State v. Kelly, 478 A.2d 364, 370 (N.J. 1984).

⁶⁹Gartland, 694 A.2d at 570.

⁷⁰Hope Toffel, *Crazy Women, Unharmful Men, and Evil Children: Confronting the Myths about Battered People Who Kill Their Abusers, and the Argument for Extending Battering Syndrome Self-Defenses to All Victims of Domestic Violence*, 70 S. Cal. L. Rev. 337, 358 (1996).

⁷¹Schneider & Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 Women's Rts. L. Rep. 149 (1978).

Judges in self-defense cases involving battered women may find it difficult to put themselves in the "situation" of the accused. Their accounts of the events, though truthful, may be disbelieved and dismissed as self-serving.⁷² This skepticism is enhanced by the reality that many battered women cannot provide corroboration of their abuse.⁷³

Also, traditional self-defense contemplates a one-time encounter that focuses exclusively on the circumstances at or immediately preceding the killing. Future threats of death or grave injury do not present an "imminent" danger, and preemptive strikes based on the decedent's violent reputation, a history of prior abuse, or a prediction of future violence, are strictly prohibited.⁷⁴ "Imminence" can thus pose serious obstacles to battered women who kill their batterers in non-confrontational situations. To many courts, the lack of an "imminent" threat in non-confrontational cases gives a battered woman "ample time and opportunity to resort to other means of preventing further abuse by her husband." Even in more traditional confrontation cases, a court might find the killing unnecessary under the assumption that the battered woman could earlier have left the abusive relationship or sought the assistance of the police or a women's shelter.⁷⁵

It is submitted that necessary uses of force by battered women may be justified by realigning, rather than expanding, the right to use defensive force.⁷⁶ It is likewise submitted that changing the rules of self-defense to encompass more accurately the standard of necessity is simply a realignment, and not an expansion, of the right to defensive force.⁷⁷ It must be noted, however, that nothing about the traditional formulation of

⁷²Judith McMorow, *The Power and Limits of Legal Naming: A Case Study of "Battered Women Syndrome"*, *THE EYES OF JUSTICE*, 217, 224 (1993).

⁷³Richard Gelles, *THE VIOLENT HOME* 107 (1987).

⁷⁴Joshua Dressler, *UNDERSTANDING CRIMINAL LAW*, 191-213 (1987).

⁷⁵Laurie K. Dore, *Downward Adjustment and the Slippery Slope: The Use of Duress in Defense of Battered Offenders*, 56 *Ohio St. L. J.* 665 (1995).

⁷⁶Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 *N.C.L. Rev.* 211 (2002).

⁷⁷*Id.*

the self-defense doctrine necessarily requires specialized evidence pertaining to domestic violence whenever its survivors use force against their batterers. This critical but obvious point may be overlooked. When the facts of the case warrant a claim of self-defense as those claims are traditionally defined, a domestic violence victim is entitled to rely on the doctrine, notwithstanding the domestic relationship. A woman who shoots her abusive husband while he is trying to stab her should encounter no hurdle to a self-defense claim, with or without the use of social science theories regarding the effects of domestic violence.⁷⁸

One of the principal impediments preventing a battered woman from successfully claiming self-defense in a non-confrontational killing is the requirement that the abuser pose an "imminent" threat of death or serious bodily harm to the defendant at the time of his death. "Imminent" traditionally means "immediate" or "such as must be instantly met." The lethal threat must occur contemporaneously with the killing and the defendant must be faced "with an instantaneous choice" between killing or being killed or seriously injured.⁷⁹ Within the legal context, the cycle theory addresses two components of successful self-defense claims when a battered woman harms her abuser: (1) fear of imminent harm and (2) proportional response to harm.

Professor Richard Rosen posits that "imminence has no significance independent of the notion of *necessity*."⁸⁰ According to him, imminence is a "translator" for necessity, which is to say that imminence is a way in which we determine if an action is truly necessary. Imminence is thus a "condition precedent for a finding of necessity."⁸¹ Professor Rosen further argues that when imminence and necessity conflict, imminence must give way, for the whole purpose of making an inquiry regarding imminence

⁷⁸Joshua Dressler, *Battered Women Who Kill Their Sleeping Tormentors: Reflections on Maintaining Respect for Human Life while Killing Moral Monsters*, in CRIMINAL LAW THEORY: DOCTRINES OF THE GENERAL PART 264.

⁷⁹Joshua Dressler, UNDERSTANDING CRIMINAL LAW, 191-213 (1987)

⁸⁰Richard A. Rosen, *On Self-Defense, Imminence, And Women Who Kill Their Batterers*, 71 N.C. L. Rev. 371, 380 (1993).

⁸¹*Id.*

is to determine if an action was necessary.⁸² Professor Rosen proposes to limit the situations where necessity replaces imminence by placing the burden on the defendant to present evidence that the killing was necessary despite the lack of an imminent threat.⁸³

The defendant's knowledge of the aggressor's history, coupled with her physical inability to protect herself, can explain how a battered woman could feel imminent harm even when her abuser is not attacking her. These factors may suggest to the judge how a reasonable person in the defendant's position might have perceived a necessity to fight back, because she perceived imminent harm, even though those not experiencing the battered woman syndrome would not.⁸⁴ Thus, the battered woman who kills her sleeping husband arguably satisfies that notion of imminence, just like the hostage who is being slowly poisoned over a period of time, or who has been told to expect to die later in the week, and who suddenly has a window of opportunity to attack her kidnapper and save her life.⁸⁵ The battered woman defense thus helps to establish that a battered woman honestly believed that a preemptive, fatal strike was the only way to finally and effectively thwart her abuser's certain, impending attack.⁸⁶

At a minimum, therefore, syndrome evidence may be used to persuade courts to expand "imminence" beyond immediacy in order to capture "the build-up of terror and fear systematically created over a long period of time" in battering relationships.⁸⁷ The battered woman defense may also persuade a court to stretch "imminence" beyond its inherent temporal borders. Experts in these cases, for instance, frequently testify that the learned helplessness experienced by the battered woman, as well as the

⁸²*Id.*

⁸³*Id.*

⁸⁴David L. Faigman and Amy J. Wright, *The Battered Woman Syndrome in the Age of Science*, 39 *Ariz. L. Rev.* 67, 68 (1997).

⁸⁵*Bechtel v. State*, 840 P.2d 1, 12 (Okla. Crim. App. 1992).

⁸⁶Lenore E. Walker, *Battered Women Syndrome and Self-Defense*, 6 *Notre Dame J. L. Ethics & Pub. Pol'y* 321 (1992).

⁸⁷Laurie K. Dore, *Downward Adjustment and the Slippery Slope: The Use of Duress in Defense of Battered Offenders*, 56 *Ohio St. L. J.* 665 (1995).

dangers facing her if she attempts to escape the relationship, make her a virtual prisoner of her controlling batterer.⁸⁸ Like the hostage or prisoner of war, the battered woman is said to experience a "single and continuing state of siege" characterized by "constant" or "ever present" terror of death or serious bodily injury.⁸⁹

Domestic violence advocate and expert witness Nancy K. D. Lemon explains that many times, in order to seize her only opportunity to physically stand up for herself, a woman must act while her batterer is not confronting her.⁹⁰ "Because if she waits until the moment when he's actually coming at her about to kill her, it's too late. He's going to kill her."⁹¹ As author Cynthia Gillespie succinctly puts it, "In a situation of domestic violence, abuse does not occur as the singular episode the law assumes, but rather as an ongoing, constant threat from which the woman cannot, or believes she cannot, escape."⁹² Thus, for the battered woman, "the danger of death or serious bodily harm is always imminent."⁹³ As viewed by one court, the battered woman experiences "no let-up of tension or fear, no moment [of] release from impending serious harm, even while the decedent [sleeps.] [F]rom the perspective of the battered woman, danger is constantly 'immediate.'"⁹⁴

Aside from the imminence aspect, a battered woman who kills and asserts self-defense must face another hurdle: she must explain that her action was reasonable. In showing "reasonable necessity of the means," the battered woman has to show that her response to the attack was reasonable and the means she used was likewise necessary. Added to that is the obligation to hurdle the inherently gendered nature of the self-defense

⁸⁸*Id.*

⁸⁹Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1194 (1993).

⁹⁰Nancy K.D. Lemon, Associate Editor, DOMESTIC VIOLENCE REPORT, in Berkeley, Cal. (Dec. 1, 2003).

⁹¹*Id.*

⁹²Cynthia K. Gillespie, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW 49-69 (1989).

⁹³*Id.*

⁹⁴State v. Norman, 378 S.E.2d at 18.

doctrine. The law has been largely driven by male conceptions of violence. Hence, the defendant must show that she used only a proportional amount of force and only in response to an imminent harm.⁹⁵ These elements are rooted in an idealized version of the way men should combat violent aggressors.

Admitting evidence on the battered woman syndrome should make it possible to explain why a battered woman could perceive herself to be in imminent danger from a sleeping man. It can also serve to explain the reasonableness of the amount of force used to repel the aggression. Likewise, a battered woman's history and pattern of battering are among the circumstances relevant in evaluating what a reasonable person in her situation would have believed.⁹⁶ In effect, the battered woman syndrome should serve to "contextualize" and thus "normalize" the behavior of a battered woman.⁹⁷ The woman's experience as a battered woman and her inability to leave the relationship—her victimization—is the context in which that action occurs.⁹⁸

B. MAKING SENSE NOT SYNDROMES OUT OF THE BATTERED WOMAN: THE VALUE OF EXPERT TESTIMONY

What causes a battered woman to strike back in self-defense, to the point of committing homicide, is knowledge not normally expected of a lay person, in fact, even many professionals do not understand it.⁹⁹ Admitting evidence on battered woman syndrome should thus make it possible to explain to the judge or jury why a battered woman could perceive herself to

⁹⁵Wayne R. LaFare and Austin W. Scott, Jr., HANDBOOK ON CRIMINAL LAW § 53 (1972).

⁹⁶Stephen J. Morse, *The "New Syndrome Exxuse Syndrome,"* Crim. Just. Ethics, Winter/Spring 1995, at 11.

⁹⁷Fiona E. Raitt and M. Suzanne Zeeyk, THE IMPLICIT RELATION OF PSYCHOLOGY AND LAW, WOMAN AND SYNDROME EVIDENCE. 76 (2000).

⁹⁸Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering.* 14 Women's Rts. L. Rep. 213 (1992).

⁹⁹Lenore E. Walker, TERRIFYING LOVE, WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS 11 (1989).

be in imminent danger from a sleeping man. The testimony is admissible to show that the battered woman had the requisite state of mind to sustain a claim of self-defense despite the fact that, from a traditional self-defense perspective, the threat of harm was not "imminent" at the time of the killing.

Under the Rules of Court, the opinion of a witness on a matter requiring special knowledge, skill, experience, or training which he is shown to possess, may be received in evidence.¹⁰⁰ An expert witness is a witness who has made the subject upon which he gives his opinion a matter of particular study, practice, or observation. It being sufficient that he has (1) training and education; (2) particular, first-hand familiarity with the facts of the case; and (3) presentation of the authorities or standards upon which his opinion is based.¹⁰¹ An expert witness, after having been duly qualified, may testify on matters which are scientific, technical, or specialized, so as to assist the trial court in understanding the evidence or to determine a fact in issue.

C. PURPOSE OF EXPERT TESTIMONY

The purpose of admitting expert testimony has been to educate the courts about the common experiences of battered women and to explain the context in which an individual battered woman acted, so as to lend credibility and provide a context in the explanation of her actions.¹⁰² It is to aid the judge in evaluating the self-defense claim of the battered woman by explaining why a battered woman behaving reasonably might behave differently from an unbattered man or woman. The testimony may highlight why a battered woman's perception of imminence was at odds with a layperson's definition of the term. It may also explain why a battered woman might respond with such force that might seem excessive yet was in fact proportional to the threat. It finally explains why a battered woman

¹⁰⁰Rule 130 Section 49, Rules of Court.

¹⁰¹*People v. Abriol*, G.R. No. 123137, October 17, 2001.

¹⁰²*State v. Kelly*, 97 N.J. at 201-02, 478 A.2d at 375.

loses faith in the possibility of retreat.¹⁰³ Moreover, expert testimony can give the court information concerning the common experiences and characteristics of battered women in order to refute widely held myths and misconceptions concerning battered women that would interfere with the court's ability to evaluate the woman's action fairly.¹⁰⁴

Without expert testimony, the judge knew only that the defendant, A, killed her intimate partner, B, on C date in D place with E weapon, but this was far less than the complete story. What they did not know was how often he had threatened her life, or how many times she had been hospitalized or how she had gotten those scars, or what he made her do at gunpoint or why she had not told anyone.¹⁰⁵ Thus, absent the aid of expert testimony, judges may accept the appropriateness of woman abuse as part of the marital relationship, assume the woman deserved or was responsible for the brutality, and blame her for not ending the relationship.¹⁰⁶ Worse, in the absence of expert testimony, battered women's advocates feared that the law of self-defense would be applied in a gender biased fashion, since judges might fail to appreciate the contextual conditions of battered women's lives.¹⁰⁷

Introduction of expert testimony is thus important because a battered woman who alone explains a homicide as a reasonable and necessary response to abuse in the home, threatens deeply held stereotypes of appropriately submissive female conduct and of patriarchal authority.¹⁰⁸ Expert testimony can thus present a different picture by demonstrating that the battered woman was a victim. It can also answer specific questions that are in the judges' and jurors' minds of why the battered woman didn't leave

¹⁰³Gena Rachel Hatcher, *The Gendered Nature of the Battered Woman Syndrome: Why Gender Neutrality Does Not Mean Equality*, 59 N.Y.U. Ann. Surv. Am. L. 21 (2003).

¹⁰⁴*Smith v. State*, 247 Ga. 612, 619, 277 S.E.2d 678, 683 (1981).

¹⁰⁵Jill E. Adams, *Unlocking Liberty: Is California's Habeas Law the Key to Freeing Unjustly Imprisoned Battered Women?* 19 Berkeley Women's L. J. 217 (2004).

¹⁰⁶*People v. Emick*, 103 A.D.2d 643, 658 n.3, 481 N.Y.S.2d 552, 561 (App. Div. 1984).

¹⁰⁷Elizabeth M. Schneider, *BATTERED WOMAN & FEMINIST LAWMAKING* (2000).

¹⁰⁸Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 Harv. C.R.-C.L. L. Rev. 623 (1980).

her home, why she may not have reported the battery to the police, and, most importantly, why she believed that the danger she faced on the particular occasion was life-threatening. In short, it can show that her conduct was reasonable.¹⁰⁹ Its goal is to challenge these stereotypes and make it possible for the judge to identify with and understand the circumstances of the act and to thereby see the act as reasonable.¹¹⁰ In highlighting the psychological consequences of the abuse, it has the potential to contextualize the woman's actions so that they are more comprehensible to the court. This is particularly important where a woman's account of her experience and the law's expectation of her are in conflict.¹¹¹

The expert witness usually begins by explaining what is known about battering relationships and then proceeds to describe the battered woman syndrome and its effects on a woman's state of mind. The expert then points out the similarities between the battered woman syndrome model and the facts in the defendant's case. Finally, the expert will render an opinion as to whether the defendant was a victim of battered woman syndrome in order to explain why the defendant was in fear for her life.¹¹²

The difficulty with the expert's testimony is that it sounds as if an expert is giving knowledge to a judge about something the judge knows as well as anyone else, namely, the reasonableness of a person's fear of imminent and serious danger. However, that is not the primary intention of the testimony. The testimony is aimed at an area where the purported common knowledge of judges may be very much mistaken; an area where the judges' logic, drawn from their own experience, may lead to a wholly incorrect conclusion; an area where expert knowledge would enable the judges to disregard their prior conclusions as being common myths rather

¹⁰⁹People v. Minnis, 118 Ill. App. 3d 345, 356, 455 N.E.2d 209, 219 (1983).

¹¹⁰Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 14 Women's Rts. L. Rep. 213 (1992).

¹¹¹Fiona e. Raitt and M. Suzanne Zeedyk, THE IMPLICIT RELATION OF PSYCHOLOGY AND LAW, WOMEN AND SYNDROME EVIDENCE 66 (2000).

¹¹²Ibn-Tamas v. United States, 407 A.2d 626, 631 (D.C. 1979); State v. Anaya, 438 A.2d 892, 894 (Me. 1981); State v. Kelly, 102 Wash. 2d 188, 655 P.2d 1202, 1203 (1982).

than common knowledge. After hearing the expert, instead of saying that the accused could not have been beaten up so badly for if she had, she certainly would have left, the judge could conclude that her failure to leave was very much part and parcel of her life as a battered wife. The judge could conclude that instead of casting doubt on the accuracy of her testimony about the severity and frequency of prior beatings, her failure to leave actually reinforced her credibility.¹¹³

Expert testimony on the battered woman syndrome was admitted for the first time in a battered woman's homicide case in 1977 in the case of *State v. Kelly*.¹¹⁴ In that case, it was explained that "[E]xpert testimony [may be] offered to aid the jury in understanding the reasonableness of [the defendant's] apprehension of imminent death or bodily injury. . . . [T]he expert testimony [is] offered to aid the trier of fact in understanding the evidence and determining a fact in issue. . . . The expert's testimony [is] not offered to show that the batterings so affected the defendant's mental state that she could not tell right from wrong and perceive the moral qualities of the act. It [is] offered to explain the reasonableness of her fear of imminent danger."

If battered women who kill are described as women who are victims but have fought back in order to survive, their actions in killing their batterers may be more effectively understood as reasonable.¹¹⁵ Moreover, in cases in which the police, the courts, and social services have proved non-responsive or ineffective to aid the battered woman when she sought for their help, an argument could be given that she honestly and reasonably believed that she was able to protect her life from the batterer's impending lethal violence only by the assaultive actions for which she is now on trial.¹¹⁶

¹¹³*State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984).

¹¹⁴*State v. Kelly*, 102 Wash.2d 188, 196 (1984).

¹¹⁵*Supra* note 96.

¹¹⁶Phyllis Goldfarb, *Intimacy and Injury: How Law Has Changed for Battered Women*, Boston College Law School Legal Studies Research Paper Series, Research Paper No. 43, September 27, 2004.

The approach of treating the battered woman as rational or reasonable in analyzing and understanding battered women and self-defense treats battered women as autonomous, competent decision-makers and recognizes their necessary use of force as justified, not merely excused.¹¹⁷ Hence, if the court allows the defendant to introduce evidence concerning the implications of the cycle theory, the defendant may be able to convince the judge that a reasonable person in her position would have perceived imminent danger and responded accordingly.¹¹⁸

D. DEBUNKING THE MYTHS AND STEREOTYPES OF THE BATTERED WOMAN SYNDROME

Ironically, the use of the term "Battered Woman Syndrome" itself poses a host of problems as well. Viewing a victim of abuse as suffering from a syndrome deflects attention from the abuser, and undermines an understanding that she conducted herself reasonably, albeit in desperate circumstances.¹¹⁹ Indeed, the very notion of a "syndrome" connotes a "damaged" mental state and psychological deviancy more closely akin to insanity than reasonableness.¹²⁰ This judicial perception of battered woman syndrome as a form of incapacity have problematic consequences for the defense of a battered woman because if battered woman syndrome is presented or heard in a way that sounds like passivity or incapacity, it does not address the basic fact of the necessity of the woman's action and at the same time contradicts a presentation of reasonableness.

This syndrome evidence, conjuring up images that the abuse victim suffers from a pathology, can have an adverse impact as well on perceptions of her reliability. Moreover, these adverse inferences can influence outcomes of legal proceedings and haunt other important efforts to achieve

¹¹⁷Joshua Dressler, *Justifications and Excuses: A Brief Review of the Concepts and the Literature*, 33 Wayne L. Rev. 1155, 1157- 67 (1987).

¹¹⁸David L. Faigman and Amy J. Wright, *The Battered Woman Syndrome in the Age of Science*, 39 Ariz. L. Rev. 67 (1997).

¹¹⁹Anne M. Coughlin, *Excusing Women*, 82 Cal. L. Rev. 1, 5 (1994).

¹²⁰Elizabeth 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).

stability in her life.¹²¹ The prosecution will typically exploit these misconceptions to attack the defendant's credibility, as well as to question the reasonableness of her perception of imminence and necessity. Unless disabused of these misconceptions, judges will likely find the battered woman's conduct "unreasonable" and dismiss her self-defense claim.¹²²

Thus, while testimony about battered woman syndrome can be a vehicle for educating judges about battered women's relationships, perceptions, and experiences, it can also reinforce a view of battered women as mentally impaired.¹²³ It may focus on the woman's defects (*i.e.* the woman subject to the "syndrome"). It implies that she is limited because of her weakness and her problems. It does not appear to affirm the circumstances of her act. As one commentator puts it, "the battered woman syndrome has thus come to be used in a way that 'pathologizes' women."¹²⁴ The effect is thus to produce another stereotype—that of the woman who, once battered, inevitably becomes mentally disordered.¹²⁵

Unfortunately, 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.¹²⁶ This "mental disability" perspective has important ramifications for the law as well as for battered women defendants.¹²⁷

¹²¹Phyllis Goldfarb, *Intimacy and Injury: How Law Has Changed for Battered Women*, Boston College Law School Legal Studies Research Paper Series, Research Paper No. 43, September 27, 2004.

¹²²Laurie K. Dore, *Downward Adjustment and the Slippery Slope: The Use of Duress in Defense of Battered Offenders*, 56 Ohio St. L. J. 665 (1995).

¹²³David L. Faigman and Amy J. Wright, *The Battered Woman Syndrome in the Age of Science*, 39 Ariz. L. Rev. 67 (1997).

¹²⁴Fiona E. Raitt and M. Suzanne Zeeyk, *THE IMPLICIT RELATION OF PSYCHOLOGY AND LAW, WOMAN AND SYNDROME EVIDENCE*, 76 (2000).

¹²⁵*Id.* at 85.

¹²⁶*Supra* note 123.

¹²⁷*Id.*

E. THE "REASONABLE" BATTERED WOMAN STANDARD

Commentators observe that the battered woman syndrome focuses attention on the psychology of the battered woman rather than on the batterer's pattern of coercive behavior. As a result, new stereotypes about battered women have been created--the "*Reasonable Battered Woman Syndrome*" standard, such that those who fail to meet the stereotypes are perceived to be less credible when they claim self-defense.¹²⁸ Feminist legal scholars have admonished that battered women who do not resemble the prototypical case may be jeopardized because their behavior may appear unreasonable vis-à-vis the "reasonable battered woman" standard. Indeed, the overall impact of the battered woman syndrome stereotype may be to limit rather than expand the legal options of women who cannot conform to these stereotypes.¹²⁹

The stereotype of the "reasonable battered woman" who suffers from battered woman syndrome creates a new and equally rigid classification, which has the potential to exclude battered women whose circumstances depart from the model and force them once again into pleas of insanity rather than expanding our understanding of reasonableness. As Susan Estrich observed, "a purely objective standard is unduly harsh because it ignores the characteristics which inevitably and justifiably shape the defender's perspective, thus holding him (or her) to a standard he simply cannot meet."¹³⁰ It is likewise observed that the problem of intimate violence seems to have more credibility and visibility in the abstract than it does when particular human beings—imperfect as they are—in a particular context—factually complex as it will be—are said to embody the problem.

¹²⁸Phyllis L. Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense*, 8 Harv. Women's L. J. 121, 144-50 (1985).

¹²⁹Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 14 Women's Rts. L. Rep. 213 (1992).

¹³⁰Susan Estrich, *Defending Women*, 88 Mich. L. Rev. 1430, 1434 (1990).

There is thus the danger of a scenario wherein we see an expression of support for battered woman as a class, followed by an assertion that this defendant is not a member of that class,¹³¹ this we shall see later in the case of *People v. Genosa*. It should be remembered however, that what is true about battered women, as it is of other victims of violent crimes, is that they are not all cut from the same cloth and do not all want the same outcomes. Courts should not lose sight of the fact that no profile of a battered woman "fits" all or most battered women.¹³²

VI. TAKING A CLOSER LOOK AT *PEOPLE V. GENOSA*

The Court, in this landmark case, set down requisites for a successful application of the battered woman syndrome defense. According to the Court, their cases must show the existence of the following elements, namely: 1) each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the accused and her intimate partner; 2) the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life; 3) at the time of the killing, the batterer must have posed probable, though not necessarily immediate and actual, grave harm to the accused, based on the history of violence perpetrated by the former against the latter. Taken altogether, these circumstances, the Court said, could satisfy the requisites of self-defense. Interestingly however, the Court failed to apply its own criteria in this case and came out with a different result.

¹³¹Michael Dowd, *Dispelling the Myths about the "Battered Woman's Defense": Towards a New Understanding*, 19 Fordham Urb. L. J. 581(1992).

¹³²Barbara Hart, *Battered Women and the Criminal Justice System*. DO ARRESTS AND RESTRAINING ORDERS WORK? 99 (1998).

A. JUDICIAL AVOIDANCE AND THE BATTERED WOMAN SYNDROME
IN GENOSA

First, the Court ruled that “the defense fell short of proving *all three phases of the ‘cycle of violence’*” supposedly characterizing the relationship of Ben and Marivic Genosa. The Court held that a single incident does not prove the existence of the syndrome. In other words, Marivic failed to prove that in at least another battering episode in the past, she had gone through a similar pattern. Further, Marivic did not proffer sufficient evidence with regard to the third phase of the cycle. She simply mentioned that she would usually run away to her mother’s or father’s house; that Ben would seek her out, ask for her forgiveness and promise to change; and that believing his words, she would return to their common abode.

The Court obviously just focused its attention on the particular incident which led to the killing of the deceased. It treated such battering incident as constituting only one “cycle” and was looking for another battering incident or cycle in the past to comply with the requirement of at least “*two incidents of battering*” as Dr. Walker stated in her book. The Court chose to ignore the 23 previous incidents of battering which was extensively testified to by the defendant. Not to mention the six episodes of physical injuries in the past which led to the defendant being hospitalized, all of which were testified to and adequately documented.¹³³ These incidents well demonstrate the “acute battering incident stage.” The Court also chose to overlook the fact that Marivic testified that during her marriage, she had tried to leave her husband at least five times but that Ben would always follow her and they would reconcile.¹³⁴ As regards the evidence on the third stage. One wonders what kind of evidence will be considered by the Court as being sufficient to show the third stage of the cycle? Marivic has already testified to the fact that 1) Ben would seek her out, 2) ask for forgiveness, and 3) she returning to their common abode. It is submitted that these facts more than sufficiently prove the existence of the “tranquil period” constituting the third stage of the cycle.

¹³³ *People v. Genosa*, 419 SCRA 550 (2004).

¹³⁴ *Id.* at 551.

The evidence on record is clear, there were more than two complete cycles of violence which existed in the past and all these were adequately testified to by Marivic. The various testimonies of the appellant's witnesses clearly reveal that she knew exactly when she would once again be subjected to acute battery. She presented evidence to prove that the tension building phase would occur whenever her husband would go out looking for other women, would lose at cockfights or would come home drunk. There is obviously a difference between the absence of a fact and one who merely refuses to see or notice its presence.

Anent the second and third requisites, the Court ruled that "...there was sufficient time interval between the unlawful aggression of Ben and her fatal attack upon him. She had already been able to withdraw from his violent behavior and escape to their children's bedroom. During that time, he apparently ceased his attack and went to bed. The reality or even the imminence of the danger he posed had ended altogether. He was no longer in a position that presented an actual threat on her life or safety."¹³⁵ The question to be asked here is thus, from whose point of view should the imminence requirement be considered?

We have to note that we are dealing here with the psyche of a battered woman who is trapped in a never ending cycle of violence. A psyche wherein for every moment, danger is imminent. That after the loving and contrite stage, what will surely come next is the tension building stage, as sure as night follows day. Obviously, the Court was judging from the point of view of an ordinary "reasonable" person and applying the rule of "traditional or ordinary" self defense.

This is ironic when considering that a few pages back, the Court explicitly mentioned, in justification for the use and admission of expert testimony, that "to understand the syndrome properly, however, *one's viewpoint should not be drawn from that of an ordinary reasonable person*. What goes on in the mind of a person who has been subjected to repeated, severe

¹³⁵ *People v. Genosa*, 419 SCRA 584 (2004).

beatings may not be consistent with—nay comprehensible to—those who have not been through a similar experience. Expert opinion is essential to clarify and refute common myths and misconceptions about battered women.” It is ironic that on the same breath the Court was saying that one should not use the viewpoint of an “ordinary reasonable person” in judging a battered woman who kills her abuser, but on the same breath applies the ordinary rules of self-defense applicable to the ordinary reasonable man. Then in the next breath the Court is saying that expert testimony should be utilized and be given credence and then on the same breath again brushes aside the testimony of the two expert witnesses which testified that Marivic more than fits the profile of the battered woman syndrome.¹³⁶

Interestingly, adding to the irony, the Court, after mentioning that there was sufficient time interval between the unlawful aggression of Ben and the fatal attack of Marivic, and hence there was no actual threat on her life or safety, in the next sentence goes on to say that “where the brutalized person is already suffering from BWS, *further evidence of actual physical assault at the time of the killing is not required. Incidents of domestic battery usually have a predictable pattern.* To require the battered person to await an obvious, deadly attack before she can defend her life *‘would amount to sentencing her to murder by installment’*” After this statement, the Court again makes a sommersault and adds to the irony by saying “Still impending danger (based on the conduct of the victim in previous battering episodes) *prior to the defendant’s use of deadly force* must be shown.” Then it closes with yet another turnaround, “We reiterate the principle that *aggression, if not continuous, does not warrant self-defense.* In the absence of such aggression, there can be no self-defense—complete or incomplete—on the part of the victim. Thus Marivic’s killing of Ben was not completely justified under the circumstances.”¹³⁷ (emphasis supplied)

One is then left confused in the continuous flip-flopping of the Court—all in one paragraph of the Decision. The Court is saying that it is not giving credence to the plea of self-defense by Marivic, because under

¹³⁶ *Id.* at 584-585.

¹³⁷ *Id.*

the ordinary rules of self-defense, once there is sufficient time interval between the unlawful aggression and the fatal attack, self defense cannot be appreciated. Then it says that if a person is suffering from Battered Woman Syndrome, further evidence of actual physical assault at the time of the killing is not required for to do so will be tantamount to sentencing her to "murder by installments". Then it turns around and says that nevertheless, impending danger, based on the conduct of the victim in previous battering episodes, must be shown. It concludes by saying that there can be no self-defense, complete or incomplete, that can be appreciated under the facts of the case.

Yes, the deceased may have been sleeping at the time when he was killed, yes he may not have been awaiting Marivic when she came out of their children's bedroom, but it must be remembered that she must be judged not as an ordinary reasonable man or person but as an "ordinary *battered woman*". Her testimony as to what she felt at those moments of despair is very enlightening: "... on that very moment everything on my mind was pity on myself, ...the feeling I had on that very moment was the same when I was admitted in Philphos Clinic, I was about to vomit. *I was afraid I was about to die* because of my blood pressure and my baby...." (emphasis supplied).

The dissenting opinion, it is submitted, may have been the more accurate view when it said "...the cycle of violence perpetrated by the deceased, which culminated in the physical assaults and an attempt to shoot Marivic when when she was 8 months pregnant, *took the place of unlawful aggression*, thus entitling her to a complete self-defense even if there was no actual employment of violence by the deceased at the time of the killing. Marivic *had every reason to believe that the deceased would kill her that night* not only because the latter was verbally threatening to kill her while attempting to get a gun from the drawer, but more importantly because the deceased wounded her on the wrist with a bolo, and because the deceased's previous conduct of threatening to cut her throat with a cutter which he kept in his wallet....." (emphasis supplied)

The expert testimonies likewise speak for themselves. The two expert witnesses' testimonies admitted by the Supreme Court were that of Dr. Dayan, a practicing clinical psychologist for 20 years, and that of Dr. Pajarillo, a practicing psychiatrist for 38 years.¹³⁸ Dr. Dayan testified that as a result of the battery of psychological tests she administered, it was her opinion that Marivic "*fits the profile of a battered woman*" because "in spite of her feeling of self-confidence...there is a feeling of loss, of humiliation...she sees herself as damaged and as a broken person. And at the same time she still has the imprint of all the abuses that she had experienced in the past."¹³⁹ Dr. Pajarillo on the other hand testified that in psychiatry, the post-traumatic stress disorder is incorporated under the anxiety neurosis or neurologic anxietism. It is produced by overwhelming brutality, trauma. He further explained that with 'neurotic anxiety', "the victim relieves the beating or trauma as if it were real, although she is not actually being beaten that time. She thinks of nothing but the suffering".¹⁴⁰ Dr. Pajarillo testified on cross examination that at the time she killed her husband, Marivic's mental condition was that she was *re-experiencing the trauma*. He explained that the re-experiencing of the trauma is not controlled by Marivic. It just comes in flashes and probably at the point when the killing occurred, the re-experiencing of the trauma flashed in her mind.¹⁴¹

The Supreme Court then asks: "How did the tension between the partners usually arise or build up prior to actual battering? How did Marivic normally respond to Ben's relatively minor abuses? What means did she employ to try to prevent the situation from developing into the next (more violent) stage?...Did she ever feel that she provoked the violent incidents between her and her spouse? Did she believe that she was the only hope for Ben to reform? And that she was the sole support of his emotional stability and well-being? Conversely, how dependent was she on him? Did she feel helpless and trapped in their relationship? Did both of them regard

¹³⁸ *Id.* at 553-557.

¹³⁹ *Id.* at 554-555.

¹⁴⁰ *Id.* at 556.

¹⁴¹ *Id.* at 557.

death as preferable to separation?...the defense failed to elicit from appellant herself her factual experiences and thoughts that would clearly and fully demonstrate the essential characteristics of the syndrome."¹⁴²

As stated by the dissenting opinion, to which the Chief Justice joins in, "To require appellant to prove the state of mind of the deceased, as seems to be required in the ponencia, would mean that no person would ever be able to prove self defense in a battered woman case. Appellant could not possibly prove whether the deceased felt provoked into battering by any act or omission of the appellant. She cannot possibly prove that she felt herself to be the sole support of the deceased emotional stability and well-being. Nevertheless, appellant felt trapped and helpless in the relationship as, in the end, she resorted to killing her husband as no one could or did help her, whether out of fear or insensitivity, during the violent marriage she endured..."

At this point, it must be remembered and pointed out that when the case was being tried in the lower courts and when the testimonies were being taken, the battered woman syndrome theory was not yet advanced by the parties. It was only on review that the defense offered the novel theory of the battered woman syndrome. Hence it will be impossible for the defense lawyer to be crafting the questions so as to elicit and demonstrate the existence of the elements of the battered woman syndrome. To ask for such is to penalize the defendant for the lapse of his counsel, such lapse not being brought out of negligence but out of its inherent impossibility. The defense lawyer, during the trial stage, could not have foreseen that the theory of the battered woman syndrome will be introduced during the automatic review. Hence it would be unfair to say that the defense was not able to show that all the elements of the battered women syndrome were adequately shown. Be that as it may, it can be observed from a perusal of the evidence on record during the automatic review that all the elements of the battered woman syndrome have been adequately elicited and shown.

¹⁴² *Id.* at 582-583.

B. EXCUSING WOMEN: TENDENCY OF THE COURT TOWARDS EXCUSE RATHER THAN JUSTIFICATION

A careful perusal of the case gives one an impression that the Court tends to refer to Marivic as “*suffering*” from the battered woman syndrome, this tendency betrays a predilection in viewing the battered woman as “diseased” or “afflicted” with the syndrome and hence treating the battered woman syndrome more as an excuse rather than as a justification of their acts.

Hence the Supreme Court, after a long exposition on the concept and principles behind the syndrome stated that “we meticulously scoured the records for *specific evidence* establishing that appellant, due to the repeated abuse she had suffered from her spouse over a long period of time, *became afflicted* with the battered woman syndrome... More specifically, we failed to find ample evidence that would confirm the presence of the *essential characteristics of BWS*”.¹⁴³ (emphasis supplied).

Further evidence of this theory is the unreasonably high and almost impossible bar or standard set by the Supreme Court in order for a battered woman to be able to claim the syndrome as a defense implies that no defendant will be acquitted by proffering the battered woman syndrome as defense. That the most that the battered woman can hope for is that the syndrome evidence will be treated as a mitigating circumstance and never a justifying circumstance. That ultimately, it is still the rules on self-defense which will be applied to determine whether the killing was justified or not. This hunch finds confirmation in the parting words of the Court to wit: “while our hearts empathize with recurrently battered persons, *we can only work within the limits of the law, jurisprudence and given facts*. We cannot invent them. Neither can we amend the Revised Penal Code. Only Congress, in its wisdom, may do so”. Obviously the battered woman syndrome is not in our statute books or in our jurisprudence, only self-defense is.

¹⁴³ *Id.* at 582.

After ruling on the issue of the availability of the battered woman syndrome as defense, and finding that Marivic “failed” the battered woman syndrome “test”, the Supreme Court proceed to rule on the issue of the availability of self-defense.

The very first statement of the Court is indeed very revealing. It stated “in any event, the existence of the syndrome in a relationship does not in itself establish the legal right of the woman to kill her abusive partner. Evidence must still be considered *in the context of self-defense*”¹⁴⁴ (emphasis supplied) Is the Supreme Court referring to the “traditional or ordinary” self-defense? Or is it referring to a “modified” form of self-defense. What can be gleaned from the statement of the Supreme Court is that, assuming that the defendant can adequately and successfully (a task which is next to impossibility) show that she “qualifies” as a person “afflicted” with the battered woman syndrome, she still has to show that she acted in self-defense (i.e. in the context of self-defense), meaning that the ordinary or traditional rules of self defense shall apply to her.

One then asks, what then is the use of taking pains to show the presence of the battered woman syndrome then? If ordinary rules of self-defense will be used anyway then the showing of the presence of the battered woman syndrome obviously serve only one purpose—to mitigate (i.e. excuse) the act of the defendant. Never to justify it.

To take the discussion one step further, in cases of confrontational situations, the defendant most certainly can adequately justify the killing as being done in self-defense, even without utilizing the battered woman syndrome. There is in fact no need for the battered woman syndrome in killings done in confrontational scenarios. Since self-defense can be shown, the defendant will be acquitted, then the battered woman syndrome ceases to be of utility even as a “mitigating circumstance”. The logical conclusion therefore, is that in non confrontational situations, based on the ordinary or traditional rules on self-defense, such defense will not be applicable since

¹⁴⁴ *Id.* at 583.

the element of either unlawful aggression or reasonable necessity will not be present. And if the mindset of the Court is to apply the battered woman syndrome evidence "in the context" of ordinary self-defense, then the syndrome theory again ceases to be of utility. This is shown in the portion of the Court's decision on the absence of self-defense.

C. "PATHOLOGIZING" WOMEN: THE BWS AND DOCTRINAL CONFUSION IN *GENOSA*

The Supreme Court considered the evidence of the cycle of violence and granted the two mitigating circumstances in consideration thereof. What is disturbing is that on the one hand the Court is saying that Marivic did not "fit" the "profile" battered woman syndrome "model" to claim battered woman syndrome as defense and hence the rules on ordinary self-defense should be made to apply, but on the same breath credits Marivic with two mitigating circumstances based on the same set of facts. Why did the Court not just reject the battered woman syndrome theory altogether and apply the rules on self defense and convict Marivic outright? On the other hand why did the Court not go one step further and give credence to the battered woman syndrome theory of Marivic and grant her an acquittal?

The ruling of the Court implies two things, one that the Court has the discretion to consider the battered woman syndrome defense as either a justifying circumstance or a mitigating circumstance depending on the factual peculiarities of each case. In effect the Court is treating a battered woman case just like any other ordinary self-defense case wherein either a complete or incomplete self-defense can be appreciated. This kind of ruling betrays a doctrinal misunderstanding or confusion of the theory behind the battered woman syndrome defense. The battered woman syndrome defense seeks to portray the battered woman as having acted rationally, the act of killing the abuser is a rational act under the factual circumstances she is in. It is hence not proffered as an excuse merely to mitigate the offense.

Once the cycle of violence is shown, the woman is considered as having satisfied the battered woman syndrome requirement and the killing is hence justified. Either that or the defendant failed to show the cycle of violence was present and hence does not qualify as a battered woman and therefore the killing was unjustified. No mitigating circumstance should be credited at all. The killing is either justified or not, nothing in between (i.e. mitigating or exempting circumstance).

What adds insult to injury is that the grant of the mitigating circumstance by the Court was based on paragraphs 9 and 10 of Article 13 of the Revised Penal Code which provides for a mitigating circumstance based on an *illness* of the offender as would *diminish the exercise of the will power* without depriving him of the consciousness of his acts. The accused here is portrayed as one suffering from an illness, one who is afflicted with a disease. We thus see a tendency to “pathologize” rather than to “contextualize” or “normalize”.

F. BATTERED WOMAN SYNDROME: QUO VADIS?

What complicates this case is the fact that Marivic killed her husband while he was sleeping in bed. The Court is at once confronted with the predicament of deciding whether or not to give credence to the plea of self defense in a non confrontational situation. Quite a gargantuan task is placed on the shoulder of the High Court considering that this is the first time that a case of this nature has reached its doors. Had the case been a killing done during a confrontational situation then the Supreme Court could have had an easier time in deciding the case. The Court could simply apply the rules on self-defense and just add the discussions on the battered woman syndrome to bolster its ruling. However, this case is different, as it involves a non confrontational scenario. Added to that is the fact that the Battered Woman Syndrome defense has never been used in the past. The Supreme Court understandably is treading on very dangerous ground. It is at the onset plunged head on into a gray area which is subject of a lot of debate in other jurisdictions with no prior decisions to support either outcomes. Added to that is the pervading threat that the battered woman

syndrome may be used by just anyone who wants to claim self defense after killing her spouse.

We thus understand the hesitation and reluctance on the part of the High Court. But on the other hand, the argument may be made that this is the very first time that the Court is dealing with a problem like this, thus whatever decision arrived at by the Court can be used as basis for future litigations. In handing out a decision like the one subject of our discussion, which showed an obvious reluctance to grant an acquittal, despite the glaring pieces of evidence showing the contrary, may be construed as nipping the efforts of the women's rights advocates in the bud.

It indeed is a sad day for women's rights advocates, for after years of struggle, the battered woman syndrome was merely considered by the Court as an excuse and not a justification. What may have been the reason for such ruling? Is brought about by the fact that the Court might itself be a victim of misconception? That it viewed the battered woman syndrome more appropriately as a mere excuse rather than a justification? Or is it brought about merely by conservatism on the part of the Court? That the Court does not want to unwittingly open the floodgates so to speak of future cases wherein defendants will simply plead self-defense and allege battered woman syndrome in support thereof? As the dissenting opinion wisely admonished "the ponencia's acknowledgement of the "Battered Woman Syndrome" as a valid form of self-defense, is a notable recognition of the plight of, and a triumph for battered women who are trapped in a culture of silence, shame and fear. This would however be an empty victory if we deliberately close our eyes to the antecedents of this case..."

Nevertheless, at the very least, this case can be considered as a small step towards the right direction. In this case the Court recognized the existence of the Battered Woman Syndrome and admitted expert testimony on proving the said theory. The Court recognized the fundamental difference in circumstance of a woman with the syndrome, and hence also recognized that this difference calls for the need to be aided by expert testimony. Such acknowledgement is evident when it had occasion to

mention that “because of the recurring cycles of violence experienced by the abused woman, her state of mind metamorphoses. In determining her state of mind, we cannot rely merely on the judgment of an ordinary, reasonable person who is evaluating the events immediately surrounding the incident...expert evidence on the psychological effect of battering on wives and common law partners are both relevant and necessary.”¹⁴⁵ The Court went on to state that “to understand the syndrome properly, however, one’s viewpoint should not be drawn from that of an ordinary, reasonable person. What goes on in the mind of a person who has been subjected to repeated, severe beatings may not be consistent with—nay comprehensible to—those who have not been through a similar experience. Expert opinion is essential to clarify and refute common myths and misconceptions about the battered woman.”¹⁴⁶

This small step taken by the Court in this case gave a ray of hope to the battered woman. It was a long shot back then for the women’s rights advocates, but their efforts saw its fruition and the ray of hope given by the Court saw its amplification in the form of a new law—RA 9262.

VII. RA 9262: A RAY OF HOPE FOR THE BATTERED WOMAN

After more than seven years of lobbying work, RA 9262, also known as the Anti-Violence Against Women and their Children Act, was signed by President Arroyo on March 8, 2004. The passage of RA 9262 is one positive measure undertaken by the Arroyo Administration to fulfill the Philippine Government’s commitment to the Beijing Platform for Action.¹⁴⁷ Under said law, violence against women and children or “VAWC” is an act or a series of acts committed by any person against his wife, former wife, a woman with whom he has or had a sexual or dating relationship, or with whom he has child; or against the woman’s child.¹⁴⁸ This act may have been committed within or outside the family residence

¹⁴⁵ *Id.* at 579-580.

¹⁴⁶ *Id.*

¹⁴⁷ Primer on Republic Act 9262.

¹⁴⁸ Section 3, RA 9262.

resulting to physical violence, sexual violence, psychological violence, and economic abuse.¹⁴⁹

A. PIERCING THE DOMESTIC VEIL

Before the passage of said law, police and barangay officials could not intervene for abused spouses because it was considered a “domestic affair”. Congress has thus seen it wise to provide that any person, police authority or barangay official who, acting in accordance with law, responds/intervenes without using violence to ensure the safety of the victim, shall not be held liable for any criminal, civil or administrative act.¹⁵⁰ It likewise mandates that temporary shelter, counseling, psychosocial services and/or rehabilitation programs, livelihood, and medical assistance be extended to her.¹⁵¹

RA 9262 addresses the mortal danger an abusive spouse presents and the immediate need to protect a woman and her children, hence the said law introduced a new innovation into our justice system—the protection order. Actually, a protection order is not a new concept. It has been existent and is being widely used in other jurisdictions. A protection order is an order which aims to safeguard the victim from further harm, it is also utilized to minimize any disruption in the victim’s everyday life, and it helps the victim regain control over her life.¹⁵²

The protection order may be secured from the barangay (i.e. a Barangay Protection Order or BPO) or from the court (either a Temporary Protection Order or TPO or a Permanent Protection Order or a PPO). The BPO has an effectivity period of 15 days while a TPO shall be effective for 30 days.¹⁵³ The filing of a TPO with the barangay does not preclude

¹⁴⁹ *Id.* Section 3.

¹⁵⁰ *Id.* at Section 34.

¹⁵¹ *Id.* at Section 40.

¹⁵² *Id.* at Section 8.

¹⁵³ *Id.* at Section 14-15.

filing one with the court as well. During the effectivity of the TPO, the woman's need for a Permanent Protection Order is assessed.¹⁵⁴

RA 9262 also addresses the methods abusive spouses employ to dissuade women from pushing their legal rights. Under the PPO, the accused is to post a bond to keep the peace.¹⁵⁵ Should the accused threaten, harass or harm the woman or her children, the money deposited in court shall be forfeited. The penalties under the Revised Penal Code are also increased by one degree when applied to violence against women offenses.¹⁵⁶ Indeed this serves as an added deterrent to the abusive spouse.

B. SUPREME COURT RULE ON VAWC

In line with the passage of RA 9262, the Supreme Court promulgated A.M. No. 04-10-11-SC, the Rule on Violence Against Women and their Children which took effect on November 15, 2004. The Rule applies to petitions for protection orders in cases of violence against women and their children under RA 9262.¹⁵⁷ On the occasion of the launching of the Rule, the Implementing Rules and Regulations of RA 9262 was likewise launched by the Implementing Rules and Regulations Committee of the Inter-Agency Council on Violence Against Women and their Children (IAC-VAWC). During the launching of the said Rule and IRR, Justice Reynato Puno highlighted three distinctive points of the new law.

According to him, the law is a recognition that violence against women often takes place in families belonging to low income groups. In order to address this, the Court has devised a standard form of the petition where the petitioner or her representative can simply check the boxes.¹⁵⁸

¹⁵⁴ *Id.* at Section 8 (k) last paragraph.

¹⁵⁵ *Id.* at Section 23.

¹⁵⁶ *Id.* at Section 6.

¹⁵⁷ Section 1, A.M. No. 04-10-11-SC.

¹⁵⁸ *Id.* at Section 12.

For indigent victims or petitioners, payment of docket fees and other expenses is waived and no longer required.¹⁵⁹ Second, he emphasized the criminalization of a number of acts punished under RA 9262. These prohibited acts need to be prevented immediately because any delay may be injurious to the victim. Thus, the Rule grants the judge the right to issue *ex parte* a temporary protection order with a lifetime of 30 days.¹⁶⁰ The protection order cannot be avoided by the offender because said order is enforceable anywhere in the Philippines.¹⁶¹ Third, he recognized the reality that judicial delay is one of the primary factors that negate the right of a victim of domestic violence. Thus under the Rule, the offender is banned from raising any opposition, any counter claim or cross-claim, or third party complaint.¹⁶² The Rule also requires the offender to file his opposition to the petition within five days.¹⁶³ Moreover, the Rule requires that the petition for a protection order has to be decided within 30 days after termination of the hearing,¹⁶⁴ or in cases where no hearing has been conducted, the court shall decide the petition within 10 days after the termination of the preliminary conference.¹⁶⁵

Justice Puno also pointed out that the filing of a petition for protective order is just one of the remedies of the offended party. She has also the remedy of filing a criminal case or a civil case for damages. Justice Puno admits however that "the success of RA 9262 lies in the cooperative endeavor of the police, the prosecution, and the judges." He also pointed out the big difference of domestic violence with other crimes in our statute books. According to him, "while RA 9262 has criminalized domestic violence, its criminalization may yet not be completely acceptable to some of our people considering the remnants of our male dominated society." He further admits that "in tension against this new approach of criminalizing domestic violence is the stubborn thrust of our laws

¹⁵⁹ *Id.* at Section 13.

¹⁶⁰ *Id.* at Section 15.

¹⁶¹ *Id.* at Section 17.

¹⁶² *Id.* at Section 20.

¹⁶³ *Id.* at Section 20.

¹⁶⁴ *Id.* at Section 29.

¹⁶⁵ *Id.* at Section 29.

proclaiming the sanctity and indissolubility of marriage, as well as the preservation of the family as an institution. The paradigm shift changing the character of domestic violence from a private affair to a public offense will require the development of a distinct mindset on the part of the police, the prosecution and the judges.”

C. CRITIQUE OF RA 9262

It is notable that the new law at the onset explicitly recognizes the “battered woman syndrome”. It defines said term as referring to “a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.”¹⁶⁶ Moreover, the law also explicitly considers the battered woman syndrome as a justifying circumstance and provided for the use of the battered woman syndrome as a defense. Section 26 of said law, provides that “the victim-survivors who are found by the courts to be *suffering* from battered woman syndrome *do not incur any criminal and civil liability notwithstanding the absence of any of the elements* for justifying circumstances of self-defense under the Revised Penal Code.” (emphasis supplied)

The use of the term “suffering” is however noticeable and problematic, as it tends to connote or imply that the woman is afflicted with an ailment or a mental condition. The Rule’s use of the term “suffering” likewise betrays a predilection or a misconception on the part of the Court to view battered women as akin to insane persons. Section 11 (g) of the Rule provides that “....An offended party who is *suffering* from Battered Woman Syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the batterer of a woman who is *suffering* from Battered Woman Syndrome.” (emphasis supplied).

¹⁶⁶ Section 3 (c), RA 9262.

Section 26 of the law was obviously Congress' response to the problem faced by the Court in the *Genosa* case, it remedied the difficult situation the Court found itself in in the said case. While the said law bridged the gap between the self defense doctrine and the Battered Woman Syndrome defense, it can be observed that the sweeping exemption from any criminal or civil liability notwithstanding the absence of *any* of the elements of self-defense may be a bit too overbroad and may be a cause for future problems. The exemption could have been limited to dispensing with either the unlawful aggression or reasonable means requirement under the self-defense doctrine. The law could have allowed the accused-victim to just show the presence of either and not both requisites anymore in order to claim self-defense as a justifying circumstance.

The admissibility of expert testimony to show the presence of the syndrome has likewise been statutorily provided for. The same section provides that "in the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/psychologists."

The use of the term "state of mind" may again be a bit problematic, it again implies that the woman is suffering from a mental condition akin to insanity. It is well known that insanity is not a justifying circumstance but is rather an exempting circumstance. Based on the discussions made above, it is clear that this is not and should not be the proper path of the Battered Woman Syndrome defense. The aim is to show that the woman acted rationally, that killing the abuser was a rational and reasonable action on her part and not merely as an excuse due to her "mental condition". The wording of the statute tends to show a predilection of treating battered women as insane rather than as rational beings acting reasonably. Again we go back to the discussions on "pathologizing" women rather than "normalizing" or "contextualizing" them.

The introduction of expert testimony must be for the purpose of giving the court a clearer picture of the personal circumstance of the victim

and why she acted that way, and not to give a run down of her “mental condition” so as to “excuse” her action.

Justice Puno mentioned in his speech that one of the highlights of the Rule is that the Court “took note of the fact that violence against women often takes place in families belonging to the low income group. The profile of victims of domestic violence will show that a lot of them (a) are ill-educated, (b) suffer from financial incapacity and (c) live in far away places where there are yet no Family Courts.” Nothing is farther away from the truth. As discussed above, domestic violence is a phenomenon that cuts across social strata, it is seen in families belonging to diverse income groups and educational attainment. One possible explanation on why there is a prevailing misconception that domestic violence is more prevalent in lower income groups is because the domestic violence that happens in families belonging to higher income groups more often than not go unreported for reasons of wanting to protect their privacy or their family’s honor and prestige.

VIII. CONCLUSION

Domestic violence has a long history. All throughout its long history, we see various ways in which societies have dealt with this problem. One theme however stands out, that of the general reluctance of government to interfere and the general conception that domestic violence is precisely that, a “domestic” problem. The history of domestic violence is likewise the history of women’s long and painful struggle not only for equality but more importantly for the very basic and fundamental right of survival. Perhaps the most significant development in this long and sad history is the groundbreaking legal and political development reconceiving intimate violence as no longer a personal matter in a private relationship, but one of major social dimensions.¹⁶⁷

¹⁶⁷ Phyllis Goldfarb, *Intimacy and Injury: How Law Has Changed for Battered Women*, Boston College Law School Legal Studies Research Paper Series, Research Paper No. 43, September 27, 2004.

Both the case of *People v. Genosa* and the passage of RA 9262, its implementing Rules and Regulations as well as the Supreme Court Rules on VAWC can be seen as the Philippine Government's recognition and response to this problem. This indeed is a step in the right direction and a clear affirmation that domestic violence is not simply a "woman's issue", rather it is a family and a community issue as well.¹⁶⁸ It is likewise a recognition that the wounds from domestic violence extends far deeper than the woman's body—it pierces not only her mind and soul but that of the community's as well.¹⁶⁹

The *Genosa* case and the passage of the law likewise addresses and bridges the gap between the seemingly conflicting philosophies behind the fairly recent concept of the battered woman syndrome and the age-old doctrine of self-defense. Indeed, in order to apply the battered woman syndrome and its effects appropriately to relevant criminal trials and petitions, one should have a strong grasp of its underlying concepts and philosophies, be aware of its misuse, recognize its importance, and know its power within the legal and penal systems.¹⁷⁰

The *Genosa* case and the new law likewise helped expose the horrifying pervasiveness of domestic violence in the Philippines. By highlighting the issue in the stark context of criminal law, it contributed to concerted efforts in remedying the problem. Since the conception of the battered woman syndrome, resources for victims of domestic violence have dramatically increased. Specific provisions regarding the battered woman syndrome were statutorily provided. Indeed, various women's advocate groups deserve substantial credit for this improved situation.

¹⁶⁸ Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will It Work This Time?* 31 Pepp. L. Rev. 709.

¹⁶⁹ *Id.*

¹⁷⁰ David L. Faigman and Amy J. Wright, *The Battered Woman Syndrome in the Age of Science*, 39 Ariz. L. Rev. 67 (1997).

EPILOGUE

Act 1 Scene 2

Ben dragged Marivic towards the drawer containing a gun. Ben could not open the drawer, he did not have the key. He pulled his wallet which contained a blade about 3 inches long. Marivic was aware that Ben was going to kill her. She smashed his arm, the wallet and the blade fell. As Ben was picking up the wallet and the blade, Marivic smashed him on the head with a pipe and ran to the other room.

At that moment, everything on her mind was pity on herself. She felt her blood pressure rise. The same feeling she had before, when she had to be admitted in a clinic. She felt like vomitting. She was afraid she was about to die because of her blood pressure and her unborn baby. She went out of the room, broke open the drawer, got the gun, went to the other room and shot Ben...¹⁷¹

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¹⁷¹ *People v. Genosa*, G.R. No. 135981, 419 SCRA 537 at 575, 592 (2004).