

# THE NEGATIVE EFFECTS OF EXPERT TESTIMONY ON THE BATTERED WOMEN'S SYNDROME

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## I. INTRODUCTION

Domestic violence has gained significant attention in the last decade. The attention focuses on the alarming statistics and the methods of prevention society must develop to combat this social problem. Domestic violence is an issue that merits constant attention because of the devastating and drastic effects it has on individuals, family members and society. This problem requires the efforts of state law enforcement agencies, state programs, assistance groups and communities.

The use of testimony regarding "Battered Women's Syndrome" (BWS) has increased in frequency in the past decade in cases involv-

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ing abused women killing their abusers during violent confrontations.<sup>1</sup> This Comment addresses the use of expert psychological testimony in trials of abused women who kill their abusers.<sup>2</sup> When the state prosecutes such a woman, the defense attorney typically submits evidence to establish the abused woman's state of mind at the time she killed her husband. States allow such defendants to submit expert testimony to demonstrate that they are suffering from Battered Women's Syndrome. Testimony on BWS involves portraying the defendant as suffering from a psychological condition that results in the inevitable act of killing her abuser. The defendant uses this evidence to illustrate her helplessness in an effort to mitigate or exonerate her conduct.<sup>3</sup>

Although the use of BWS testimony has helped many abused defendants, critics argue that such testimony perpetuates the view that women are weak and helpless.<sup>4</sup> This Comment asserts that the appropriate use of expert opinion in these cases should focus on gender inequality and its effect on women. This Comment also questions whether courts should continue to rely upon expert testimony concerning BWS or take a different approach towards the victims of domestic violence who kill their abusers.

Part II of this Comment furnishes background information on domestic violence. It provides a review of the statistics and the response by law enforcement officials to this social problem, as well as a short review of Battered Women's Syndrome and its use by courts. Furthermore, the Comment reviews the development of federal action and state laws in response to the rise in domestic violence. Part III considers the negative effects of using testimony regarding Battered Women's Syndrome. This section also examines gender differences and traditional societal beliefs that promote distinct gender classification. In addition, Part III advocates an approach reviewing courts should use in place of Battered Women's Syndrome testimony. Finally, Part III addresses the types of preventive measures society should take to stop domestic violence and discusses the case law that

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1. See *infra* Part II.A (providing background on the history of BWS).

2. Note that men, as well as women, are victims of domestic violence. See generally Hope 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 (1996) (dispelling the myth that only women are the victims of domestic abuse and violence). This Comment focuses on female victims of domestic violence who later kill their abusive partners.

3. See *infra* Parts II.A & II.B (discussing the history of battered women and Battered Women's Syndrome).

4. See *infra* Part III (arguing that testimony concerning abuse should be permitted but also that the effects of abuse should not be classified as a "syndrome or illness").

has developed when victims of abuse kill their abusers. Part IV summarizes the information presented and concludes with the proposal that expert testimony on BWS should focus on gender inequality, rather than women's psychosis, in those cases where battered women kill their abusers.

## II. BACKGROUND

### *A. History of Battered Women*

Until recently, police and law enforcement agencies were reluctant to become involved in domestic disputes because they perceived such events as family problems that should be resolved privately.<sup>5</sup> Traditional beliefs concerning women's subordination and husbands' rights to discipline their families also added to police inaction.<sup>6</sup> Police responding to domestic dispute complaints normally did not make an arrest and were usually unsympathetic to the victim, no matter how serious the assault appeared.<sup>7</sup> In most cases, the police accepted the man's version of the dispute.<sup>8</sup> At most, the officers would take the alleged abuser for a walk to the end of the road to cool down.<sup>9</sup> The report of the National Crime Survey showed that approximately 32% of battered women were re-victimized within six months after the assault that caused criminal justice intervention.<sup>10</sup>

During the late 1980's, gradual changes in police procedures for responding to domestic violence began to emerge. Actions by women's groups and publicized research regarding police responses to these types of cases caused these changes in police procedures.<sup>11</sup>

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5. See GILL HAGUE & ELLEN MALOS, DOMESTIC VIOLENCE ACTION FOR CHANGE 63 (1993) (explaining that the home is considered a private domain where men are the heads of their households and are permitted to control the members thereof).

6. See *id.* (explaining that violence that takes place in public is typically treated more seriously than violence that takes place in the home). Traditionally, violence by a male, a person of higher social status, against his wife or children, persons of lower social status, has not been taken seriously. *Id.*

7. See *id.* at 68 (stating that police do not view "domestics" as "real crime" requiring police intervention). Police often fail to file reports in these instances or, when they do file, characterize the incidents as minor, resulting in inaccurate statistical figures concerning the number of domestic abuse cases actually occurring each year. *Id.*

8. *Id.*

9. *Id.* In one example, police, being unhelpful and unsympathetic to the victim, only noted the extent of the women's injury and called a doctor to attend to her injuries, but failed to take any criminal or disciplinary action against her husband. *Id.* at 69-70.

10. See Barbara Hart, *Battered Women and the Criminal Justice System*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 98, 99 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (setting forth statistics for recidivism for the years 1978 to 1982 and noting that only 13% of individuals who were assaulted by strangers experienced re-victimization during a six-month period).

11. See HAGUE & MALOS, *supra* note 5, at 72-73 (recommending guidelines for changes in

Domestic abuse generated more media attention recently with the trial of O.J. Simpson and the reports of his prior spousal abuse and the alleged murder of his wife.<sup>12</sup> The increase in public reports of spousal abuse and the pressure by women's advocates caused many states to enact mandatory arrest laws requiring police officers to make an arrest in any domestic violence situation.<sup>13</sup> These changes in the criminal justice system have resulted in more reports of domestic violence, as well as more accurate statistics regarding its frequency.<sup>14</sup> According to the National Criminal Victimization Survey, between the years 1987 and 1991, women were the victims of more than 572,000 violent incidents committed by an "intimate" (e.g., spouse, former spouse, boyfriend or girlfriend), compared with 49,000 comparable incidents committed against men.<sup>15</sup> The Federal Bureau of Investigation reports that in 1992 approximately 15% of the murders in which the relationship between the victim and assailant was known involved a victim who was an intimate.<sup>16</sup>

Despite the increase in societal awareness of domestic violence, many victims are still reluctant to seek assistance from the criminal justice system or their community. One factor motivating this hesitation is the woman's financial dependence on the male abuser.<sup>17</sup> Another reason is that a battered woman does not want her children to see their father taken away by law enforcement officers.<sup>18</sup> Also, a woman who has contacted law enforcement in the past without success is often reluctant to call for assistance again believing that this

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police practices including changing police responses, increasing use of female officers, using separate interviews of the parties involved, increasing officer training, and increasing emphasis on abuser arrests).

12. See Joan H. Krause, *Of Merciful Justice And Justified Mercy: Commuting The Sentences Of Battered Women Who Kill*, 46 FLA. L. REV. 699, 701 (1994) (citing Maria L. La Ganga & Elizabeth Mehren, *Simpson Case Compels Nation to Look at Domestic Violence*, L.A. TIMES, June 20, 1994, at A1).

13. See Hart, *supra* note 10, at 6 (stating that the use of mandatory arrest laws has removed the discretion of officers and is the method advocated by activists for battered women).

14. Donna Willis, *The Legal Corner: Domestic Violence and the Law*, L.A. SENTINEL, June 11, 1997, at A12.

15. See Hart, *supra* note 10, at 1 (noting "that levels of 'minor' domestic violence are staggeringly high").

16. Cf. Hart, *supra* note 10, at 2-3 (citing 1994 Bureau of Justice Statistics and explaining that the large number of assaults has resulted in "massive numbers of dead and injured victims").

17. See HAGUE & MALOS, *supra* note 5, at 71 (explaining that even if victims requested police intervention, some only seek temporary intervention because the family might suffer a financial hardship if the abuser is taken into custody).

18. See Hart, *supra* note 10, at 103 (stating that some women do not want to expose the fathers of their children to the state because of the negative effects on their children's views of the criminal justice system).

will anger her abuser and result in more violent batterings.<sup>19</sup> Furthermore, an abused woman often still loves her spouse or boyfriend and believes that the abuse will stop. The woman is frequently willing to refuse law enforcement intervention on the belief that her love and commitment to the relationship will stop the abuse and allow the relationship to continue without violence.<sup>20</sup>

In the case where a battered woman does not seek assistance from law enforcement, friends or family, her ultimate response may escalate into a final violent confrontation where she kills her abuser. In the subsequent criminal prosecution, the defendant's attorney attempts to offer an answer to the most frequently asked question in these cases, "why didn't she just leave?"<sup>21</sup> The answer lies in the fact that many abused women try to escape, but are caught by their abusers. As a result, they suffer further beatings and threats of violence, including the possibility of death.<sup>22</sup> Evidence regarding past abuse and the constant fear under which a domestic violence victim lived is admissible in most cases.<sup>23</sup> These cases have increased awareness of the frequency of domestic abuse and have brought to the public's attention the daily violence some women endure.

Testimony regarding BWS was first discussed in a 1984 New Jersey case, *State v. Kelly*.<sup>24</sup> New Jersey's high court recognized BWS as "a series of common characteristics that appear in women who are physically and psychologically abused over an extended period of time by

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19. See Hart, *supra* note 10, at 100. A battered woman who previously sought prosecution of a civil restraining order, only to have the batterer inflict further violence on her, may be unwilling to face the risk that prosecution may bring even more danger and violence. *Id.*

20. See Martha Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1302 (1992) (explaining that when her partner expresses regret and remorse an abused woman will continue with the relationship because she loves the non-abusive characteristics of her partner).

21. See ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* 109-110 (1987) (stating that many women leave for some period of time but that the longer the relationship's length, the more difficult it is for the abused to leave safely). Even if the abused leaves the household, her abuser often knows where she works and where her friends and family live, making it difficult for her to actually escape. *Id.*

22. *Id.* at 113 (describing statistics which indicate that in a group of women who had killed their abusers, 98% believed the abuser *could have killed them* and 90% believed the abuser *would have killed them*).

23. See *State v. Kelly*, 478 A.2d 364, 371 (N.J. 1984) (providing statistics and information on state evidence rules).

24. See *id.* In this case, Mrs. Kelly claimed that Mr. Kelly beat her throughout their marriage, most often when Mr. Kelly drank. Mr. Kelly reportedly threatened to kill Mrs. Kelly and to cut off parts of her body if she tried to leave him. Mr. Kelly often left following an attack, but later returned always promising no more beatings. During the final public attack, Mrs. Kelly, believing Mr. Kelly was going to kill her, stabbed him with a pair of scissors. The trial court denied expert testimony on the issue of BWS. *Id.* at 369.

the dominant male figure in their lives."<sup>25</sup> Following this case, many other courts have increasingly recognized expert testimony of BWS.<sup>26</sup>

### *B. Battered Women's Syndrome*

Dr. Lenore Walker introduced Battered Women's Syndrome.<sup>27</sup> She characterized BWS as a cycle of violence that is "common in all battering relationships."<sup>28</sup> The first phase, "the tension building phase," involves an abuser's display of irritability and impatience.<sup>29</sup> The second phase, the "battering incident," is the most violent period.<sup>30</sup> The third phase, "the honeymoon phase," begins immediately after the battering incident and is characterized by apologies and "extremely loving behavior."<sup>31</sup> The batterer convinces the woman that he will never beat her again. The woman believes that she will not suffer any further abuse and that her partner will change. These beliefs discourage the woman from seeking outside help from friends or counselors.<sup>32</sup>

The defense may offer Battered Women's Syndrome testimony through an expert witness, who provides information regarding the defendant's past conduct and psychological frame of mind in relation to each of the syndrome stages.<sup>33</sup> Expert testimony may achieve one of many results. For example, BWS testimony can help to reduce

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25. *Id.* at 371 (describing the statistics involving cases of batterings and discussing the research on BWS). The court remanded the case for a new trial to allow testimony by an expert on the syndrome. *Id.* at 383.

26. See Janet Parrish, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases*, 11 WIS. WOMEN'S L.J. 75, 80 (1996) (discussing the varying state evidentiary standards on the issue of BWS testimony). Parrish reveals that twelve states have enacted statutes providing for expert testimony. *Id.* at 83. In addition, of nineteen federal courts that considered the issue, all but three admitted expert testimony. *Id.* Parrish also notes that state courts have allowed expert testimony in traditional self-defense cases 90% of the time. *Id.* at 84. In contrast, courts have allowed BWS testimony only 29% of the time in non-traditional self-defense cases, for example, when a woman kills her sleeping batterer. *Id.* Some states refer to this testimony as "Battered Spouse Syndrome" rather than "Battered Women's Syndrome." See, e.g., MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (stating in part that "'Battered Spouse Syndrome' means the psychological condition of a victim of repeated physical and psychological abuse by spouse, former spouse, cohabitant, or former cohabitant which is also recognized in the medical and scientific community as BWS.").

27. Dr. Walker earned a doctorate degree in psychology at Rutgers's University School of Education. Dr. Walker has testified in various trials as an expert on Battered Women's Syndrome. See LENORE E. WALKER, TERRIFYING LOVE 312 (1989) (discussing the identification, acceptance and ultimate use of BWS in the court room).

28. See UNDERSTANDING DOMESTIC VIOLENCE 22 (Barbara Corry ed., 1993) (explaining the "cycle of violence," as introduced by Dr. Walker).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. See *Kelly*, 478 A.2d at 373 (applying BWS methodology to the defendant).

a charge of murder to manslaughter.<sup>34</sup> What is more important, the defense can use BWS testimony to prove a claim of self-defense, which may exonerate the defendant.<sup>35</sup> In the alternative, the defense can argue "imperfect self-defense," which, if successful, will reduce the charges but not result in acquittal.<sup>36</sup> Due to the emergence of BWS testimony, some states have reviewed earlier cases of women who were denied the opportunity to present such evidence. As a result, some women have been pardoned.<sup>37</sup>

### *C. Federal Law and State Reaction*

On October 27, 1992, President George Bush signed into law the Battered Women's Testimony Act of 1992.<sup>38</sup> The hearings before the Act recognized that more than three million women are victims of domestic violence each year and that in some cases women are "driven to retaliate and even kill their abusive spouses."<sup>39</sup> The Act authorized a study of the admissibility of expert testimony concerning battered women and mandated the development of training materials to assist courts with BWS expert testimony.<sup>40</sup> Additionally, the Act impressed upon state officials the need to accept and adopt the use of BWS testimony in light of the increasing number of reported abuse cases.

Although not all states have enacted specific laws regarding BWS testimony,<sup>41</sup> most states allow some form of expert testimony regarding BWS.<sup>42</sup> Twelve states provide for BWS testimony by statute, but

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34. See Steffani J. Saitow, Note, *Battered Woman Syndrome: Does The "Reasonable Battered Woman" Exist?*, 19 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 329, 358-59 (1993) (identifying the Battered Women's defense). The "excuse doctrine" focuses on the defendant and her inability to prevent herself from committing the crime. *Id.* at 362. The theory of "learned helplessness," which supports the defendant's claim of having been a battered woman, is used to show that it would be unfair to blame the defendant for her act of self-preservation. *Id.*

35. *Id.* at 359 (noting that defendants can argue other BWS defenses if a complete self-defense theory fails).

36. *Id.* An imperfect self-defense claim represents the defendant's honest but unreasonable belief that an attack with deadly force was necessary. *Id.* at 360.

37. For instance, in 1990, Ohio Governor Richard Celeste commuted the sentences of 25 women who were serving prison sentences for killing or assaulting their abusive partners; likewise, Maryland Governor Donald Schaefer commuted the sentences of eight battered women. See KRAUSE, *supra* note 12, at 703-04 (noting criticism of these governors' decisions).

38. Battered Women's Testimony Act of 1992, Pub. L. No. 102-527, 106 Stat. 3459 (1992) (codified at 42 U.S.C. § 10702).

39. H. REP. NO. 102-991, at 3 (1992), *reprinted in* 1992 U.S.C.C.A.N. 3011, 3012.

40. 42 U.S.C. § 10702.2(2)(4).

41. See PARRISH *supra* note 26, at 83 (noting that 18 states have excluded expert testimony regarding BWS).

42. See PARRISH, *supra* note 26, at 83 (recognizing that all 50 states and the District of Columbia have admitted BWS testimony).

some of these statutes have limitations.<sup>43</sup> Most states allow BWS testimony in traditional self-defense cases; however, many states allow BWS testimony in non-traditional self-defense cases where the batterer is asleep or where the abused hired a third party to kill the batterer.<sup>44</sup>

### III. NEGATIVE IMPACT OF BATTERED WOMEN'S SYNDROME

Legal recognition of BWS has been an important advancement for abused women.<sup>45</sup> The use of BWS, however, has been subject to criticism. For instance, some believe that the testimony is misconstrued and used as an excuse for women to receive lighter sentences.<sup>46</sup> Furthermore, the word "syndrome" carries a negative connotation that implies impairment or pathology.<sup>47</sup>

#### *A. Gender Inequality is a Main Factor in Violence Against Women*

Society should understand BWS as a gender issue, not a psychological classification in which women are viewed as weak or needy. An examination of gender-related issues focuses on why society views men as violent and why women continue to stay with men who have repeatedly displayed acts of violence and caused physical and psychological pain.<sup>48</sup> Traditionally, men have held and maintained power over women.<sup>49</sup> Society supports "masculine" traits, including the trait of violence.<sup>50</sup> As children, many men learn these traits from their

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43. See PARRISH, *supra* note 26, at 83 (indicating that Ohio and Missouri limit the admissibility of expert testimony to cases in which self-defense is actually claimed).

44. PARRISH, *supra* note 26, at 84.

45. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 808 (1993) (finding that women comprise 95% of adult domestic violence victims and that 50% of women are battered).

46. See PARRISH, *supra* note 26, at 82-83 (noting misperceptions of BWS); see also BROWNE, *supra* note 21, at 177 (explaining that expert testimony emphasizes the victimized experience of the battered woman in an attempt to excuse the homicide).

47. See BROWNE, *supra* note 21, at 177 (asserting that the BWS defense focuses primarily on women's helplessness and victimization). Presenting the defendant as one who is suffering from a psychological disorder ignores the actual characteristics of the woman's role in the family, which is self-sacrificial. See *infra* Part II.C.1.

48. See WALKER, *supra* note 27, at 235-37. As an "oppressed group," women are on the "outskirts of power." *Id.* at 237. When a woman strikes back at a powerful oppressor, she is judged harshly and often does not have the resources to pursue legal assistance. *Id.* at 238.

49. See RON THORNE-FINCH, *ENDING THE SILENCE: THE ORIGINS AND TREATMENT OF MALE VIOLENCE AGAINST WOMEN* 53 (1992) (explaining how, given the patriarchal social construction and its perpetuation of ideas, values, and institutions, men are able to maintain power over women). "We live in a culture that is predicated upon the subjugation of women by men." *Id.* Further, society requires individuals to identify with and adopt either a male or female identity and then learn the traits and values associated with their respective biological sex. *Id.* at 55.

50. See *id.* at 57-58 (arguing that society's concept of masculinity promotes violence). Easily recognizable male traits include being interested in physical activities, being hard-working,



families. When violence is acceptable in their households, men often believe that it is acceptable in society.<sup>51</sup> Although it is often the male who causes the domestic disturbance, the family as a whole is labeled dysfunctional. This draws attention away from the male who is in need of psychological assistance.<sup>52</sup>

The media reinforces this distinction between men and women by portraying men as independent and capable of solving any problem, and women as helpless and in need of protection.<sup>53</sup> The media conveys the notion that it is acceptable for men to be violent towards others.<sup>54</sup> Along with the media, the military, peer groups, schools, and boys' clubs reinforce violence and autonomy and devalue women.<sup>55</sup>

Conversely, society prepares women for lifestyles that include homemaking and childrearing. Society often undervalues both of these skills, both in financial terms and in public opinion.<sup>56</sup> Thus, women often suffer economically and politically, earning approximately seventy percent of men's earnings and occupying positions of less power and influence.<sup>57</sup> By occupying less prestigious positions,

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maintaining control, being virile and sometimes hot-tempered, and having an active sexual life. *Id.*

51. See *id.* at 59 (stating that a child who is abused is as much as 1,000 times more likely to commit violence against a spouse or a child than one who is not raised in a violent household).

52. See *id.* at 62 (arguing that it is important to identify the male who commits violence as the problem, not the whole family as dysfunctional, and stating that other family members should not be identified as co-conspirators in the violence when the male is the source).

53. See *id.* at 64 (conveying how men are portrayed as racing cars and carrying weapons, while women are portrayed as baking and cleaning).

54. See THORNE-FINCH, *supra* note 49, at 69 (stating that the media encourages men to deal with problems by using violence, which in turn "condones violence toward women").

55. THORNE-FINCH, *supra* note 49, at 70-81. Men and women learn many characteristics from their peer groups, who often reinforce traditional male and female traits. *Id.* at 78. Further, two characteristics are commonly taught at boys' clubs: mistrust of women and valuation of male traits. *Id.* at 79. In school, boys are taught at a young age to be in control, deny their true feelings, and be aggressive. *Id.* at 80-82. Women are seen in terms of their physical attributes and treated as objects, which makes it easier for men to beat or rape women who are not seen as human. *Id.* at 84-85.

56. See Michael Lynch, *Class, Race, Gender and Criminology: Structured Choices and the Life Course*, in RACE, GENDER, AND CLASS IN CRIMINOLOGY 12 (Martin D. Schwartz & Dragan Milovanovic eds., 1996) (stating that "women's economic and occupational life course is determined by gender").

57. See *id.* at 10 (explaining that although recent statistics show that women are achieving parity in terms of salary, these gains are the result of a decrease in men's wages and not an increase in women's wages). Some others argue that the reason for the difference in the wages is (1) women do not work as hard as men and they are willing to accept lower paying jobs; (2) women have less experience than men; (3) women are less educated than men; and (4) women live in households where the man is the primary bread winner. *Id.* at 11. These "apologies for gendered income" are contradicted by the fact that: (1) women have increased educational skills; (2) thirty-four percent of all families living under the poverty-line are headed by single female wage earners; (3) sixty-five percent of the female labor force is either single, widowed, divorced, separated, or married to men earning less than \$15,000 a year; and (4) women are

women lack the power to influence laws.<sup>58</sup> Additionally, they suffer from an inappropriate response to crimes that affect women, such as rape, spousal abuse and sexual harassment.<sup>59</sup>

Historically, social or legal restrictions have forced women away from participating in the creation of laws and other important political functions, which has reinforced male supremacy.<sup>60</sup> Moreover, women tend not to involve themselves in politics because politics does not address or solve issues that women feel are important.<sup>61</sup> In this regard, women's actions are at odds with those that they could take to change their circumstances.<sup>62</sup> Women often become exploited in relationships both economically and socially.<sup>63</sup> This unfortunate outcome is particularly acute in the issues surrounding domestic violence.

With domestic violence, as mentioned in Part II.A, once a woman becomes a victim of battering, the question is often, "why does she remain in that situation?"<sup>64</sup> The reasons a woman remains include fear of losing her children, fear of further violence, and fear of her future if she does leave.<sup>65</sup> Some experts classify women that remain as having "learned helplessness."<sup>66</sup> This is described as the dependency a woman may learn as a result of having a male figure dominate her life, such as her father and later her spouse. Ultimately, these women

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less likely to receive promotions than men. *Id.*

58. See *id.* at 19 (stating that women are relatively powerless economically, which may explain their lack of influence over the law and the many ways the law favors men).

59. *Id.*

60. See *id.* at 34 (explaining that men continue to be in power and thereby continue to make decisions which affect their interests and to maintain their positions of control).

61. See ANNA G. JÓNASDÓTTIR, WHY WOMEN ARE OPPRESSED 161 (1994) (stating that a woman's power is associated with the home, which is usually not an important topic in politics, which concerns other issues such as the economy). Jónasdóttir notes that women who do involve themselves in politics or attempt to involve themselves by running in political campaigns generally lose if the focus of their campaigns are women's or feminist issues. *Id.* at 158.

62. *Id.* at 171 (stating that many women remain in situations of oppression because of the risks of challenging the "rules of patriarchy"). If women choose to challenge men on issues of finances, childrearing, or pursuing a career, many women may find themselves without "partners or success." *Id.* at 172.

63. *Id.* at 194. The author notes that women are often "invalidated" by men because men, especially in sexual relations, tend to exploit women's lack of strength and power. The author states that such invalidation would not occur if men and women "shared the same status as individuals." *Id.* (citations omitted).

64. See UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14 (explaining that there are different reasons why battered women stay, including culturally promoted beliefs).

65. UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14. Some women do not want to cause further disruption for their children. Others believe that the abusing spouse will come after them if they leave and will inflict further abuse. *Id.*

66. UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14. Learned helplessness is part of the expert testimony offered for Battered Woman's Syndrome. It explains why a woman feels dependent on her spouse. *Id.*

believe they are unable to live independently.<sup>67</sup> Some women, raised to believe in traditional sex roles, believe that the wife's role is to obey the husband and make the marriage work.<sup>68</sup> Additionally, many women are financially dependent upon the male, feeling constrained in their ability to discover other financial resources.<sup>69</sup> Furthermore, some women suffer from post-traumatic stress disorder, as a result of childhood abuse, which affects their ability to leave.<sup>70</sup> Thus, women learn culturally promoted beliefs that foster and promote abuse.<sup>71</sup> Given the differences between men and women and society's reinforcement of traditional masculine and feminine roles, it is not difficult to imagine how many women are victims of violent domestic situations.

In the 1970's, activists drew public attention to the alarming number of instances of domestic violence.<sup>72</sup> At first, society placed responsibility for spousal violence on women and did not hold men accountable for their actions.<sup>73</sup> However, as pointed out by feminist researchers and activists, gender socioeconomic inequality was a significant factor in male violence against women.<sup>74</sup> Although women

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67. See UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14 (explaining that women learn how to remain passive from having been beaten into obedience).

68. UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14 (stating that women possess ideas that "[t]he man is the boss of the house" or "[g]ood wives are supposed to be able to make the marriage work").

69. UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14 (explaining that some women do not have any money of their own and are dependent on their spouse for every cent).

70. See UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14 (stating that some women may adopt a "hostage mentality," bonding with their captors and adopting the abuser's way of thinking to survive).

71. UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 15. According to the author, these beliefs include: "[t]he woman should make her man's needs and wishes more important than her own," i.e., women are taught to sacrifice themselves for the relationship's sake; "[a] woman is nothing without a man; . . . [i]t is a woman's nature to enjoy and encourage physical domination by an aggressive man." *Id.* See also William C. Bailey & Ruth D. Peterson, *Gender Inequality and Violence Against Women: The Case of Murder*, in CRIME AND INEQUALITY 175, 179 (John Hagan & Ruth D. Peterson eds., 1995) (discussing rape statistics which support the argument that rape and other forms of violence "stem at least in part from economic deprivation" and gender inequality). The statistics revealed a correlation between women who had been raped and who had low-income levels. *Id.* A second set of statistics was gathered regarding women who had been raped and the level of education they had obtained. *Id.* The purpose of this test was to disprove feminists' arguments that gender inequality and violence against women were linked. *Id.* at 180. Although some of the tests resulted in mixed findings, one test reflected that "higher levels of gender equality are associated with lower rape rates." *Id.* (emphasis added). The researchers concluded that the larger gender gap was based on income and the attainment of wealth and not educational attainment. *Id.*

72. See THORNE-FINCH, *supra* note 49, at 121 (explaining that the frequency of domestic violence became known slowly as women came in contact with others who were abused and with whom they could share their experiences).

73. THORNE-FINCH, *supra* note 49, at 122.

74. See Bailey & Peterson, *supra* note 71, at 201. Most of the statistics analyzing the types of crime perpetrated on women are limited. Further, the statistics have not been fully analyzed.

began seeking counseling and treatment, most feminists made it clear that social factors needed to change if violence against women was going to end.<sup>75</sup>

### *B. Alternatives to BWS Testimony*

#### *1. Testimony of Gender-Inequality*

The use of BWS in permitting expert testimony on the patterns of abuse and the psychological state of mind of the defendant has benefited abused women. However, courts should not limit this testimony to showing that each defendant suffered from a "pathology" that constituted a "syndrome."<sup>76</sup> This characterization carries a negative connotation that would be unnecessary if courts would simply allow testimony regarding the victim's relationship with the abuser. The court should permit the defendant to present lay testimony regarding her abuse or her physical condition following the abuse. Courts, however, are unwilling to hear testimony regarding the complexity of a woman's relationship with her family unless the testimony will show that the woman's behavior rose to a "pathology, constituting a syndrome."<sup>77</sup> Furthermore, courts should permit testimony from lay witnesses that relates to any statements that the defendant made regarding the attacks by the abuser.<sup>78</sup>

For instance, consider the facts of the following case.<sup>79</sup> The defendant had been married to her abuser for twenty-five years. He was an

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They fail to consider all of the factors that may be involved in determining why certain crimes are perpetrated on women. The studies conducted regarding rape, however, have shown that gender socioeconomic inequality is a contributor to the crime of forcible rape. *Id.*

75. See THORNE-FINCH, *supra* note 49, at 125 (explaining that the movement shifted the focus from blaming women to holding the abusers responsible for their actions). Although many therapists began treating abusive men, it was obvious that state initiatives were needed to support counseling services for victims and offenders. *Id.* In a study assessing male batterers, the typical batterer (which comprises an estimated 50% or more of all batterers) is one who uses violence to assert power and control over others. This type of batterer is said to be "fueled by stereotypical sex-role expectations" of "their" women. AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY, VIOLENCE AND THE FAMILY, INTERVENING EFFECTIVELY WITH PERPETRATORS 82 (1996) [hereinafter VIOLENCE AND THE FAMILY]. Other batterers fall into categories of those who have a mental disorder or those who have violent dispositions and commit violence outside of the family. *Id.*

76. See Jane Harris Aiken, *Intimate Violence And The Problems Of Consent: An Essay*, 48 S.C. L. REV. 615 (1997). Courts must understand the family structure under which women live. Women sacrifice for the family. Women have learned that they must stay with the family despite abuse, otherwise, in some cases, they will suffer physical punishment. *Id.*

77. *Id.* at 615.

78. See FED. R. EVID. 701, Opinion Testimony by Lay Witnesses. Testimony of lay witnesses is limited to opinions which are rationally based and helpful to the determination of a fact in issue. *Id.*

79. See North Carolina v. Norman, 366 S.E.2d 586 (N.C. 1988). This case was appealed for

alcoholic who rarely worked. Witnesses testified that they knew of only one day when the abuser had worked. The couple had five children together. During the pregnancy with the youngest child, the abuser beat the defendant and pushed her down a flight of stairs. To obtain money, the abuser forced the defendant to prostitute herself every day. Her husband would beat her when she failed to earn a minimum of one hundred dollars in a day. He would use anything available to beat her, including a bottle, his fist, a baseball bat, and his shoe. The defendant exhibited her scars to the jury. The abuser often made the defendant sleep on a concrete floor and forced her to eat dog and cat food. Additionally, the abuser often threatened to kill the defendant. On the day of the killing, the abuser threatened to cut off the defendant's breast, and then he put a cigarette out on her chest. Later in the day, while the abuser was sleeping, the defendant found a gun and shot him.

In this case, the defendant took the stand and testified that she could not leave the abuser because he had threatened to kill her in the past.<sup>80</sup> She had made previous attempts to leave but her husband always found her and beat her severely.<sup>81</sup> She also testified that she did not report the abuse to the police because the abuser told her that if he were put in jail, he would kill her when he was released.<sup>82</sup>

The type of testimony offered in the above case included expert testimony on "abused spouse syndrome."<sup>83</sup> However, such testimony should not be necessary to portray the defendant as suffering from psychological illness. The testimony from lay witnesses and the defendant's own statements should provide sufficient evidence to mitigate the defendant's actions. If expert testimony is offered, it should be offered on gender inequality and its effect on limiting the defendant's choices in leaving her abuser.<sup>84</sup> Testimony on this ground would shift the focus from describing the woman as helpless or lack-

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failure of the trial court to give an instruction on perfect self defense. The next textual paragraph includes facts from this case. *Id.* at 587-88.

80. *Id.* at 589.

81. *Id.*

82. *Id.*

83. *Id.* The court in this case noted that the "abused spouse syndrome" refers to cases where one spouse had complete control over the other spouse. *Id.* Further, the court stated that it is "usually seen in the females who do not have a strong sense of their own adequacy who do not have a lot of personal or occupational resources." *Id.*

84. See MARY P. KOSS, LISA A. GOODMAN, ANGELA BROWNE, LOUISE F. FITZGERALD, GWENDOLYN PURYEAR KEITA & NANCY FELIPE RUSSO, NO SAFE HAVEN, MALE VIOLENCE AGAINST WOMEN AT HOME, AT WORK, AND IN THE COMMUNITY 6 (1994). The authors explain that understanding violence against women requires a study of the inequalities between genders. Further, the authors note that scholars have suggested that violence by males is a mechanism of social control over women which maintains female subordination. *Id.*

ing self esteem, to describing the gender inequality to which she was subject.

Expert testimony on gender inequality should be used to establish that, given the defendant's circumstances, her actions were reasonable. This testimony should also include a description of the batterer that places equal emphasis on his role in this tragedy.<sup>85</sup> The expert testimony should build upon the social context in which the abused has been raised and has been subject to for her entire life.<sup>86</sup> Instead of offering testimony to show that the defendant was suffering from a psychological disorder,<sup>87</sup> the defense should offer testimony to demonstrate the complexity of such relationships and the roles that women and men assume in these relationships.<sup>88</sup> Attempts by the prosecution to present general stereotypes about women should be addressed by expert testimony.<sup>89</sup> Use of expert testimony on gender inequality that also emphasizes the characteristics of the batterer may prove more effective, since testimony on BWS has not always resulted in an acquittal or a lesser sentence.<sup>90</sup>

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85. See Steven I. Platt, *Women Accused of Homicide: The Use of Expert Testimony on the Effect of Battering on Women—A Trial Judge's Perspective*, 25 U. BALT. L. REV. 33, 45 (1995). In this commentary, Judge Platt provides facts of two cases that he presided over in which the abused women were accused of killing their abusers. *Id.* at 34. Judge Platt suggests that expert testimony should be extremely broad, including descriptions of the experience of being a battered woman and being a batterer. *Id.* at 45. He also argues that the testimony should include what the relationship and experiences between the two individuals does to "change the nature of their social conduct." *Id.*

86. See *supra* Part II.B.1. This testimony would discuss the typical BWS defendant's belief in keeping the family together, her lack of educational and job opportunities, and subsequent inability to maintain an independent lifestyle.

87. See Aiken, *supra* note 76, at 627 (stating that, legally, BWS is viewed as an illness or psychological disorder).

88. See Aiken, *supra* note 76, at 616 (arguing that confusion and conflict results when a victim experiences abuse because, often, her abuser believes his conduct is based on consent). Courts must understand that women are expected to sacrifice for the family. Usually, a woman does not leave an abusive relationship because leaving has a high price. This is known as the "double bind: women sacrifice financial security by providing unpaid labor within the home; they render themselves dependent upon their batterers." *Id.* at 629.

89. See Platt, *supra* note 85, at 41-42 (describing one case where the prosecutor argued that the defendant had been a "jealous wife" and ended his closing arguments by stating "hell hath no fury like a woman scorned"). The defendant was found guilty of murder and Judge Platt believed that it was the lack of expert testimony directed at either misconceptions about the term Battered Women's Syndrome or general stereotypes of women that was critical to the defendant's case. *Id.* at 42-43. Judge Platt states that the jury found it easier to rely on the prosecutor's "soap opera" theory of the case because the defense offered no testimony to refute the image of the defendant portrayed by the prosecutor. *Id.* at 43.

90. See Platt, *supra* note 85, at 41 (illustrating how the prosecutor was able to persuade the jury that the defendant was a jealous wife despite the defense's expert testimony describing her years of abuse by the deceased and that the defendant was suffering from the effects of the abuse at the time she killed her husband). The jury convicted the defendant of second degree murder, having rejected her allegation of impaired psychological state at the time she stabbed her husband. *Id.* at 42.

## 2. *Development of a Domestic Violence Evidence Rule*

Another suggestion for moving away from the use of BWS is the development of a separate evidence rule that would permit disclosure of evidence of past abuse to finders of fact. Often in criminal cases, evidence of past abuse is excluded because of its prejudicial effects.<sup>91</sup> The discretion exercised by courts either to admit or exclude such evidence results in a variety of approaches, thus having a devastating effect on cases of domestic violence when past instances of abuse are not admitted into evidence.<sup>92</sup>

In recent years, three new federal evidence rules were adopted in cases of sex offenses, mainly due to the confusion and inequity in the law resulting from inconsistent decisions to admit or exclude uncharged misconduct evidence.<sup>93</sup> Proponents argue that the new rules were necessary for a number of reasons. First, sex crimes often occur in private, with no witnesses or physical evidence to support the victim's claim.<sup>94</sup> Second, the victims endure greater physical and emotional trauma than in other types of crimes.<sup>95</sup> Third, the perpetrator most likely has a propensity to repeat the violent behavior and exhibit control over the victim.<sup>96</sup> The same types of arguments that were made for the adoption of new federal rules for sex offense cases can also be made for domestic violence cases. These cases involve defendants who most likely have a propensity to repeat the violent behavior and exhibit control over their victims. Furthermore, domestic violence is a crime that occurs in private with no witnesses and, like sex offenses, there may be no physical evidence.

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91. See Karen M. Fingar, *And Justice for All: The Admissibility of Uncharged Sexual Misconduct Evidence Under the Recent Amendment to the Federal Rules of Evidence*, 5 S. CAL. REV. L. & WOMEN'S STUD. 501, 537-38 (1996) (explaining that under Rule 404(b), there is a general presumption in our criminal justice system against admitting uncharged misconduct evidence to show that a defendant acted in conformity with prior acts).

92. See Myrna S. Raeder, *The Admissibility of Prior Acts of Domestic Violence: Simpson and Beyond*, 69 S. CAL. L. REV. 1463, 1505-06 (1996) (proposing changes in evidence rules in order to correct gender biases that have been a part of society for too long).

93. See Fingar, *supra* note 91, at 514. These new evidentiary rules in sex offense cases are as follows: (1) Rule 413, providing that uncharged misconduct evidence is admissible in sexual assault cases and jurors may consider this evidence in cases where it is probative; (2) Rule 414, providing for the same provision in cases involving child molestation; and (3) Rule 415, providing for the same type of admission in civil cases involving sexual assault or child molestation. FED. R. EVID. 413-415.

94. See Fingar, *supra* note 91, at 537 (arguing that the most compelling reason for the exception is the "truly unique nature of sex crimes").

95. See Fingar, *supra* note 91, at 537 (arguing that such an exception will ensure justice for the victim).

96. See Fingar, *supra* note 91, at 537 (arguing that repetitive behavior is probative of sex crimes).

Since many states look to the Federal Rules of Evidence as models, adoption of a federal rule that specifically handles domestic violence cases would be appropriate. The rule could be included in a new section and would admit evidence as follows:

**Domestic Abuse Cases**

Evidence of other acts of domestic abuse [shall be admitted] in a criminal case in which the accused is charged with a crime arising out of an intimate relationship with the victim, or in a civil case in which the plaintiff's claim is based upon the defendant's commission of a crime arising out of an intimate relationship with the plaintiff.

An intimate relationship is defined as a relationship between the defendant and a spouse, former spouse, person with whom the defendant presently resides or has resided with in the past, person with whom the defendant has had a sexual relationship lasting at least two months, or any person with whom the defendant has a child in common.

Domestic abuse includes any assault, battery, threats, stalking and harassment of the victim, or any other offense included with a State's domestic or family violence statute.<sup>97</sup>

*C. Implementing Preventive Measures to End Domestic Violence*

The tragedy of an abused woman killing her spouse should not have to occur. Yet, these killings are a part of our culture and continue to occur each day.<sup>98</sup> Community groups and law enforcement officials are working together to educate the public on domestic violence prevention.<sup>99</sup> One goal has been to change public attitudes to-

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97. Raeder, *supra* note 92, at 1505. This sample rule is modeled after a similar proposal for a new federal rule. See *id.* (stating that the rule, if enacted, would become Rule 404(a)(4)).

98. See *Smile, Girls—and Weep; 'Snapshot' of Area Women Shows Progress, Challenges*, Houston Harris County Women Statistics, HOUS. CHRON., Dec. 3, 1997, at 1 (explaining that researchers predict one-third of women will be battered by a spouse or partner). For example, data released in 1992 by the Georgia Department of Corrections show that of the 235 women in prison for murder or manslaughter, 44% killed a husband or lover. See also NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, STATISTICS PACKET 9 (3d ed. 1994) (citing J.O. Hansen, *Is Justice Taking a Beating?*, ATLANTA CONST., Apr. 26, 1992, at A1). Almost half of these women claimed to have been repeated victims of domestic abuse, and 38 of these women had repeatedly reported the beatings to the police. *Id.* at 9-10 (citing Kathleen O'Shea, *Women on Death Row*, in WOMEN PRISONERS: A FORGOTTEN POPULATION 85 (Beverly Fletcher, Lynda Dixon Shaver, & Dreama Moon eds., 1993)).

99. See UNITED NATIONS, STRATEGIES FOR CONFRONTING DOMESTIC VIOLENCE: A RESOURCE MANUAL 85-86 (1993) [hereinafter STRATEGIES]. Public education is a basic way to challenge stereotypes and attitudes that condone or accept domestic violence. *Id.* at 87. Public campaigns promoting human rights seek to challenge gender-based stereotypes and the glamorous portrayal of violence. *Id.* at 88. Additionally, other educational programs are offered to teach men and women how to live without violence. *Id.*



wards domestic violence.<sup>100</sup> Secondary education programs are being taught that discuss the importance of autonomy and relationships based on mutual respect.<sup>101</sup> The question to be asked in cases of domestic violence should shift from "why doesn't she leave?" to "why does he batter?," thus, placing the focus on the perpetrator rather than the victim.<sup>102</sup>

Recently, law enforcement agencies have played a more proactive role in the arrest of perpetrators of domestic violence.<sup>103</sup> However, to address the issue successfully, society must work on reforming the areas of law enforcement and prosecution of offenders. Women who kill their batterers are subject to lengthy prison sentences while male batterers receive lenient sentences, if convicted at all.<sup>104</sup> States should develop policies to prosecute cases of domestic violence in the same way that other criminal cases are prosecuted.<sup>105</sup> A sentencing scheme similar to the three strikes felony law could also be developed in which the batterer could receive counseling, a fine, or probation for the first two arrests and convictions. If the batterer commits a third offense and is convicted, a substantial prison sentence would be imposed. Changes in the prosecution of domestic violence cases would

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100. See *id.* at 88 (discussing campaigns which have addressed victim-blaming ideologies, the role of alcohol in domestic relationships, ideas about family and male privilege, and the exploitation of women); see also VIOLENCE AND THE FAMILY, *supra* note 75, at 93. In providing treatment to male batterers, it is important to identify the male batterer by category (e.g., whether he is the typical batterer or suffers from a mental disorder or is violent in general) in order to respond with appropriate treatment. *Id.* Studies have found that a variety of methods must be used in treating batterers and that no one approach has proven effective. *Id.* However, since misuse of power, control and authority are the most common traits found in batterers, any treatment program would have to address behavior as well as batterers' attitudes and perceptions. *Id.*

101. See STRATEGIES, *supra* note 99, at 94. In New Jersey, teachers learn about domestic violence so that they may be able to identify children from violent homes in order to respond to their needs. *Id.* at 95.

102. See Linda G. Mills, *On the Other Side of Silence: Affective Lawyering for Intimate Abuse*, 81 CORNELL L. REV. 1225, 1258-59 (1996) (explaining that by shifting the question away from the victim, those who counsel battered women will begin to better understand violence by exploring the ways in which all persons have tolerated some form of violence in his or her own life).

103. See *supra* notes 11-16 and accompanying text. See also Susan L. Miller, *Arrest Policies for Domestic Violence and Their Implications for Battered Women*, in IT'S A CRIME: WOMEN AND JUSTICE 334, 337 (Roslyn Muraskin & Ted Alleman eds., 1993) (indicating that arresting batterers establishes an official policy that domestic violence will not be tolerated).

104. See Shelley A. Bannister, *Battered Women Who Kill Their Abusers: Their Courtroom Battles*, in IT'S A CRIME, WOMEN AND JUSTICE 316, 326-28 (Roslyn Muraskin & Ted Alleman eds., 1993) (commenting that lighter sentences for male batterers included a \$25 fine for a man who caused brain damage and strangulation to his victim, and a sentence of unsupervised probation for a man who cut his wife's face). The woman who kills her abuser is ultimately punished because of all the beatings she sustained that did not result in her death. *Id.* at 330.

105. See STRATEGIES, *supra* note 99, at 39 (including goals such as prosecuting cases regardless of the victim's consent, using specialized prosecution units in domestic violence cases and providing support for the victims and witnesses to assure cooperation throughout the process).

send a message to abusers that violence will not be tolerated and give victims of abuse some assurance that they are protected.<sup>106</sup> More importantly, judges, who have the power to affect an abuser's thinking, should be required to attend domestic violence seminars so that they can hand down appropriate punishments for such acts.<sup>107</sup>

In addition to law enforcement and prosecutorial changes, state governments need to enact reforms in social services. For instance, Maryland enacted welfare reform that allows a recipient to be exempt from a work mandate if she has been a victim of domestic violence.<sup>108</sup> These types of changes promote independence for women and assist in removing the need to depend on the male abuser for income.

#### IV. CONCLUSION

The focus of this Comment was to illustrate the negative effects of expert testimony about BWS. The fact that family violence has become an important issue demanding change in state and community policies can be attributed somewhat to the frequency of expert testimony on BWS. The number of cases in which battered women kill their abusers is overwhelming, and the media attention given to these cases has spread public awareness of this serious issue. However, the focus of this attention should not be that women of domestic violence are suffering from an illness. Rather, the focus should be that, given the unequal opportunities afforded women as compared to

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106. While working for the U.S. Parole Commission, the author has reviewed several cases in which the offender had violated federal parole by abusing his wife or girlfriend. In these cases, state prosecution is not pursued, but the U.S. Parole Commission holds a parole revocation hearing because the arrest is a potential violation of federal parole even without a state conviction. 28 C.F.R. § 2.19 (1996). More often than not, the victim of the abuse appears at the parole hearing and denies that the abuse occurred. The Parole Commission, then, relies upon the police report, which contains the victim's statements of abuse to the police immediately following the incident, to make a finding. In many cases that the author reviewed, the Parole Commission concluded that the parolee abused the victim. If the state had pursued prosecution of the abuser resulting in a conviction, the victim would not have to appear at the parole hearing and would not have to testify against the parolee. It is most likely that the victim changes her version of the offense to prevent the incarceration of the parolee out of fear of the parolee or out of need for financial support. See, e.g., UNDERSTANDING DOMESTIC VIOLENCE, *supra* note 28, at 14 (explaining learned helplessness).

107. See CAPTAIN ROBERT L. SNOW, FAMILY ABUSE, TOUGH SOLUTIONS TO STOP THE VIOLENCE 264-65 (1997) (citing an article written on domestic violence describing judges as "uneducated gods who will make unthinking remarks and jokes that undermine the victims and reinforce batterers" (citation omitted)). The author notes that in 1993, the Nevada Supreme Court closed the court for two days and required every judge to attend a domestic violence seminar. *Id.* at 265.

108. See Martin G. Madden, *Welfare-to-Work Help for Battered Women*, WASH. POST, July 13, 1997, at C8. Maryland is one of 15 states to adopt the Family Violence Option of the Federal Welfare Reform Act. The Option recognizes that women of abuse may be unable to keep a job. The goal of the provision is to help abused women eventually become self-sufficient. To achieve its objective, the Option includes provisions for temporary shelter and legal assistance. *Id.*

men, many women become financially and emotionally dependent on their abusers.<sup>109</sup> In this context, it is not difficult to imagine why women are the victims of domestic assaults.

Although many state and community programs have been initiated to combat domestic violence, the success of these programs has not been overwhelming.<sup>110</sup> The changes need to begin with the social structure and the opportunities available to women. Since arresting and convicting batterers and providing them with treatment does not appear to end the violence, encouraging women to obtain financial independence should be the priority. In domestic abuse cases where the woman kills her abuser, the testimony of witnesses should focus on the gender inequality that is prevalent in our culture and an understanding of its effect on a woman's life. Women should not continue to be characterized as ill or suffering from a psychosis when the true nature of most domestic abuse is simply an ongoing cycle of the subordination of women in the family structure. It is only by directing training and community resources towards the areas of promoting female autonomy and expanding the roles of women in economics and political decision-making that a change in the traditional family structure will occur. These are the types of changes necessary if there is ever going to be an end to domestic violence.

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109. See *supra* notes 56-57 and accompanying text.

110. See SNOW, *supra* note 107, at 249-52 (noting that current research in the area of treatment for batterers shows that "not much" works in preventing the continuation of violence in the family unit).

