Is "Psychological Self-Defense" a Solution to the Problem of Defending Battered Women Who Kill?
IS "PSYCHOLOGICAL SELF-DEFENSE" A SOLUTION TO THE PROBLEM OF DEFENDING BATTERED WOMEN WHO KILL?

A growing number of battered women face prosecution after killing their abusive spouses.1 Often the women respond to the homicide charges by pleading self-defense.2 Despite evidence of years of physical and psychological abuse, the women's claims of self-defense often are unsuccessful because the women are unable to satisfy the traditional elements of self-defense.3 In an effort to satisfy the requirements of the traditional doctrine of self-defense, battered women sometimes offer expert testimony concerning the battered woman syndrome.4 The battered woman syndrome is a cyclical pattern of physical and psychological abuse that distinguishes an abusive relationship.5 Frequently, however, expert testimony concerning the battered woman syndrome fails to help establish battered women's claims of self-defense.6 In response to the problems facing battered women defendants, one commentator has proposed an alternative to the traditional doctrine of


3. Id. Many battered women defendants have difficulty establishing claims of self-defense because of the traditional structure and interpretation of the self-defense doctrine. See Comment, The Defense of Battered Women Who Kill, 135 U. PA. L. REV. 427, 427 (1987) (discussing problems with self-defense doctrine in battered woman context). The women's claims of self-defense often are unsuccessful because the women fail to prove that, at the time of the killing, the women reasonably believed that they were in imminent danger of death or serious bodily harm. See C. EwING, supra note 2, at 47 (discussing barriers to battered women defendants' successful claims of self-defense). Additionally, battered women defendants often fail to show that deadly force was necessary to prevent the harm. Id.; see also infra notes 9-29 and accompanying text (discussing battered women defendants' ability to satisfy the elements of traditional self-defense doctrine).

4. See Note, supra note 1, at 619 (discussing use of expert testimony on battered woman syndrome to support claim of self-defense); infra notes 30-50 and accompanying text (discussing battered woman syndrome).


6. See Comment, supra note 3, at 428 (discussing instances of battered women failing to prove self-defense despite testimony concerning battered woman syndrome).
self-defense called “psychological self-defense.” Under the doctrine of psychological self-defense, a person may use deadly force to prevent serious psychological injury resulting from repeated physical and emotional abuse.8

A. TRADITIONAL DOCTRINE OF SELF-DEFENSE

Many battered women who kill their spouses after years of abuse seek to justify the act as self-defense.9 For a successful claim of self-defense, a battered woman generally must satisfy each of the doctrine’s elements.10 First, the battered woman must show that she reasonably believed that she was in imminent danger of serious bodily harm or death at the time of the killing.11 Second, the woman must show that she used only a reasonable amount of force to prevent the danger.12 Third, the woman must establish that she did not instigate the violence.13 Finally, in some jurisdictions, the woman must prove that she had no safe avenue of retreat from the danger.14

The element requiring battered women to show that they reasonably feared imminent danger or serious bodily harm [imminence requirement] poses the most difficulty for battered women defendants.15 Under the traditional doctrine of self-defense, a defendant reasonably must have believed that the aggressor posed an immediate danger.16 Although some

7. See C. Ewing, supra note 2, at 6 (proposing doctrine of psychological self-defense to defend battered women who kill their spouses); infra notes 90-118 and accompanying text (discussing theory of psychological self-defense).
8. See C. Ewing, supra note 2, at 6 (defining psychological self-defense).
9. See Frank, Driven to Kill: ‘Battered Women’ Strike Back, 70 A.B.A. J., December 1984, at 25, 26 (discussing battered women who kill their abusive spouses and claim that the spouses’ violence justified the killing).
11. See Note, supra note 1, at 624 (discussing imminence requirement of self-defense claim).
12. Id. at 623.
13. Id.
14. Id. A majority of jurisdictions hold that a person need not retreat from an aggressor who reasonably appears to pose an imminent threat of serious bodily injury or death. W. LaFAve & A. Scott, supra note 10, at § 5.7(f), at 460. A minority of jurisdictions, however, hold that before using deadly force a person must retreat if the person can retreat in complete safety. Id. at 461. In a jurisdiction requiring retreat, a person does not have to retreat from his home unless the aggressor also lives in the home. Id.
15. See Comment, supra note 3, at 438 (discussing battered woman’s difficulty in satisfying claim of self-defense).
16. W. LaFAve & A. Scott, supra note 10, § 5.7(d), at 458. Under the current interpretation of the imminence requirement, imminence does not mean inevitability. See Comment, supra note 3, at 437. If the danger will not arise until some moment in the future, the defendant may possess options for preventing the danger other than using deadly force. W. LaFAve & A. Scott, supra note 10, § 5.7(d), at 458. Accordingly, threats alone do not justify the use of deadly force. See Comment, supra note 3, at 437. The defendant must show that the danger was immediate at the specific moment when the killing occurred to satisfy the imminence requirement. Id.

Most jurisdictions require jurors to consider only the objective reasonableness of the
women who kill their spouses in the midst of battering incidents can show an imminent threat of serious injury or death, many battered women kill their spouses during a lull in the violence, perhaps even when their spouses are asleep.\(^7\) Under a strict interpretation of the imminence requirement, if the killing occurs during a lull in the violence, no threat of immediate bodily injury or death exists.\(^8\) As a result, the battered women's claims of self-defense often fail.\(^9\) Another major obstacle to a battered woman's successful claim of self-defense is the element requiring the woman to use only reasonable force to avert the danger [reasonable force requirement].\(^20\)

Under the traditional self-defense doctrine, a person may use deadly force defendant's belief that imminent danger existed. See Note, supra note 1, at 624. Therefore, under the objective test, the defendant must in fact have believed that she was in imminent danger and the belief must have been reasonable. \(\text{Id.}\) A minority of jurisdictions have applied a subjective imminence requirement test. \(\text{Id.}\) Under the subjective test, the defendant must show only that she honestly believed that danger was imminent and that defensive action was necessary to avert the danger. \(\text{Id.}\) One commentator argues that courts should use the subjective test because a person who reasonably believes that danger is imminent should not be required to stop and evaluate the situation as another person might. See Rodwan, supra note 1, at 64. According to the commentator, the inquiry should not be whether the defendant's claim was rational, but whether the claim was true. \(\text{Id.}\)

17. See Frank, supra note 9, at 25 (discussing battered women who kill their spouses during battering incidents); W. LaFAVE & A. SCOTT, supra note 10, § 5.7(d), at 459 (discussing battered women who kill their spouses during a lull in violence). The severe physical injury that battered women suffer during battering incidents would support the battered women's claim that they reasonably believed that their spouses posed imminent threats of death or serious bodily injury at the moments when the women killed their spouses. See Comment, supra note 3, at 434 (discussing battered women's perceptions of spouses' violence). The fact that the women's spouses had abused them in the past would strengthen the battered women's claims that they reasonably feared serious injury. \(\text{Id.}\) In determining the reasonableness of a defendant's belief, jurors could consider all the circumstances surrounding the killing, including the defendant's knowledge of prior abuse by the defendant's spouse. \(\text{Id.}\) However, juries have convicted many battered women who have killed their spouses during an acute battering incident. See e.g., Patri v. Percy, 530 F. Supp. 591 (E.D. Wis. 1982) (denying writ of habeas corpus of convicted battered woman defendant); Hawthorne v. State, 377 So. 2d 780 (Fla. Dist. Ct. App. 1979) (reversing conviction of battered woman defendant); Harrison v. State, 310 S.E.2d 506 (Ga. 1984) (affirming conviction of battered woman defendant for murder); see also C. EWING, supra note 2, at 48 (discussing convictions of battered women defendants who kill their spouses during battering incidents).

18. See Comment, supra note 3, at 438 (discussing battered woman's failure to show imminent threat of serious bodily injury or death). In many instances jurors perceive that a battered woman premeditated before committing the homicidal act. See Frank, supra note 9, at 25 (discussing battered women who kill unsuspecting spouses). One commentator has argued that the imminent danger requirement is flawed because the requirement presupposes a single violent act between the parties. See Schneider, supra note 1, at 634 (discussing weaknesses of traditional self-defense doctrine's imminence requirement). The requirement's emphasis on the immediacy of the incident places battered women defendants at a disadvantage. \(\text{Id.}\) The commentator argues that the traditional emphasis does not adequately consider past and future abuse. \(\text{Id.}\)

19. See Comment, supra note 3, at 438 (discussing battered woman's failure to show imminent threat of serious bodily injury or death).

20. See Schneider, supra note 1, at 633 (discussing reasonable force rule as applied to battered women defendants).
only if the person reasonably believes the force is necessary to avert death or serious bodily injury.\textsuperscript{21} The reasonable force requirement may preclude the use of a deadly weapon against an unarmed aggressor.\textsuperscript{22} Battered women, however, often defend themselves with weapons when their spouses are unarmed.\textsuperscript{23} Because juries often find that the battered women's use of deadly weapons was unreasonable, the women's claims of self-defense often fail.\textsuperscript{24}

In addition to the problems of establishing imminence and the use of reasonable force, a battered woman defendant may face other obstacles in asserting a claim of self-defense.\textsuperscript{25} Some jurisdictions require the battered woman to retreat, even from her home, if she can retreat safely.\textsuperscript{26} Furthermore, some jurors may feel that the battered woman acted unreasonably by choosing to remain with her spouse.\textsuperscript{27} One commentator argues that the traditional doctrine of self-defense contains a bias against women.\textsuperscript{28} The commentator also argues that sexual stereotyping inhibits jurors from appreciating the reasonableness of the battered woman's belief that deadly

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\item See W. LaFAve & A. Scott, \textit{supra} note 10, § 5.7(b), at 456 (discussing self-defense doctrine's reasonable force element requiring use of only reasonable force to prevent violent attack).
\item \textit{Id.} Although the reasonable force rule generally prohibits the use of deadly force against an unarmed aggressor, a jury may consider other factors in determining whether the use of deadly force was reasonable. \textit{Id.} at 457. The size and strength of the parties and the aggressor's past threats and violent acts are factors that the jury may consider. \textit{Id.}
\item See Schneider, \textit{supra} note 1, at 633 (discussing battered women's use of deadly force).
\item \textit{Id.} One commentator argues that, as applied to battered women defendants, the reasonable force requirement is flawed. \textit{Id.} at 632. The commentator asserts that the rule presumes that the parties are equal in size, strength, and physical training. \textit{Id.} The commentator also argues that battered women resort to using deadly weapons because past attempts to protect themselves without weapons have failed. \textit{Id.} In addition, the commentator contends that the women often correctly believe that their spouses are capable of causing serious injury or death without using a weapon. \textit{Id.}
\item See infra notes 26-29 and accompanying text (discussing various difficulties in establishing battered woman's claim of self-defense).
\item See Comment, \textit{supra} note 3, at 433 (discussing self-defense doctrine's retreat requirement). If the aggressor lives with the woman, self-defense law may require a battered woman to retreat from her own home. W. LaFAve & A. Scott, \textit{supra} note 10, § 5.7(f), at 461; see \textit{supra} note 14 and accompanying text (discussing retreat element of traditional doctrine of self-defense).
\item See Rodwan, \textit{supra} note 1, at 66 (discussing jury's perception of reasonableness of battered woman's actions).
\item See Schneider,\textit{supra} note 1, at 623. One commentator argues that society teaches women that learning to defend themselves and engaging in violence is unfeminine. \textit{Id.} at 628. Thus, according to the commentator, women are unprepared to use defensive force. \textit{Id.} The commentator concludes that sex stereotypes have caused many courts to exclude evidence that may be relevant to the women's defense. \textit{Id.} at 636. The commentator charges that courts have limited relevant evidence of past abuse and the spouses' reputation for violence by using the reasonable force and imminence requirements. \textit{Id.} The commentator argues that courts deny women a fair trial and the equal protection of the laws if the courts do not allow juries to consider all relevant factors. \textit{Id.}
\end{enumerate}
force was necessary to avert imminent death or serious bodily injury. 29

B. THE BATTERED WOMAN SYNDROME

A battered woman who kills her spouse will frequently offer expert testimony of the battered woman syndrome to support her claim of self-defense. 30 A leading authority on battered women has defined the battered woman syndrome as a cyclical pattern of physical and psychological abuse that identifies an abusive relationship. 31 The abusive relationship between a battered woman and her spouse has three distinct phases. 32 A period of building tension characterizes the first phase. 33 The second phase consists of an acute battering incident. 34 The third phase, a period of loving and

29. Id. at 629. According to one commentator, public misconceptions that a battered woman enjoys the abuse or deserves the beatings inhibit jurors from finding that the woman’s actions were reasonable. Id. at 629. The commentator further argues that society traditionally has viewed rationality and reasonableness as male characteristics. Id. at 636. Additionally, the commentator asserts that society has viewed a woman as incapable of meeting the reasonable man standard. Id.

30. See Comment, supra note 3, at 428 (discussing battered woman syndrome and self-defense).


32. Id. at 55-70 (describing stages of abusive relationship between battered woman and spouse).

33. Id. at 56. During the first phase in the cyclical pattern of abuse between a battered woman and her spouse, tension between the woman and her spouse increases as the spouse verbally assaults and engages in minor acts of violence against the woman. Id. The woman whose spouse has beaten her repeatedly in the past knows that the minor acts of violence will escalate. Id. To prevent the abuse from increasing, the woman attempts to appease her spouse and be as compliant as possible. Id. at 56. The battered woman often pretends the abuse does not exist in her desperation to avert further abuse. Id. She denies being angry and rationalizes that she may in fact deserve the abuse. Id. In addition, the woman may deny the inevitability of the second phase, believing that she has control over the situation. Id. As the minor battering incidents increase, the tension increases and the woman begins to lose control. Id. At the same time, the spouse becomes possessive and jealous, fearing that the woman might leave him. Id.

As the tension builds, any external event may trigger the second stage. Id. at 58. Aware of the tension, the woman shuts herself off from friends and family, fearing that they may upset her spouse. Id. As the woman’s attempts to placate her spouse fail and the tension becomes unbearable, the relationship moves into the second phase, the acute battering incident. Id. at 59.

34. Id. During the second phase of the cycle of abuse, the woman’s spouse acts in a blind rage, often inflicting serious injury on the woman. Id. An uncontrollable release of the phase one tensions occurs during the second phase. Id. Both the battered woman and her spouse realize that the spouse’s rage is out of control. Id. at 60. Because of the spouse’s lack of control, the woman cannot predict the extent of the violence that will occur during the battering incident. Id. The lack of predictability and lack of control surrounding the situation causes the woman to suffer severe psychological stress. Id. at 61. Before the incident, the woman often becomes anxious and depressed and may suffer from psychosomatic illnesses like fatigue, headaches, and stomachaches. Id.

The acute battering incident usually lasts from two to twenty-four hours during which
contrite behavior by the woman's spouse, immediately follows the acute battering incident. The third phase often is brief, and a new cycle begins.

Commentators assert that the cyclical nature of the abusive relationship between a battered woman and her spouse creates "learned helplessness" in the battered woman. According to the theory of learned helplessness, a woman who experiences repeated beatings by her mate eventually will see the abuse as unavoidable and will develop a feeling of helplessness. The battered woman feels unable to control the beatings or any other aspect of the relationship with her spouse. Psychologists argue that the battered time the spouse repeatedly beats the woman. Many battered women believe that only their spouses can end the second stage of abuse. Often the only option apparent to the woman is to hide or wait out the violence. The beatings may end when the spouse becomes exhausted, but at other times, the reason he stops may be unclear. During the acute battering incident, the woman often feels she is unable to escape the situation. The woman may be afraid to resist for fear that she will provoke her spouse into more severe violence. After the incident is over, both the battered woman and her spouse attempt to justify the abuse by making excuses for the incident.

35. Id. at 65. During phase three of the abusive relationship, the battered woman's spouse is very apologetic and promises to refrain from future abuse. The spouse honestly believes that he will be able to maintain control and never again will abuse the woman. The battered woman wants to believe that her spouse will change. The spouse's reasonableness and loving behavior during this phase convince the woman that her spouse will no longer abuse her. The spouse's behavior and the woman's adherence to the traditional view of the permanency of love and marriage reinforces the woman's choice to remain with her spouse. The exact duration of the third phase is unclear, but appears to be longer than phase two and shorter than phase one.

36. Id.

37. Id. at 49, see also C. Ewing, supra note 2, at 66 (discussing learned helplessness that battered women develop).

38. See Comment, supra note 3, at 432 (discussing theory of learned helplessness as applied to battered women). Experimental psychologist, Martin Seligman, subjected laboratory dogs to repeated electrical shocks. See Faigman, Discerning Justice When Battered Women Kill (Book Review), 39 Hastings L.J. 207, 214 n.26 (1987). The dogs became passive as they learned that they were incapable of controlling the situation. Even when Seligman gave the dogs an opportunity to avoid the shocks, the dogs generally failed to avoid the shocks. Similarly, a battered woman develops learned helplessness as repeated, uncontrollable beatings destroy the woman's ability to respond to the abuse. As the woman's feeling of helplessness grows, she becomes passive and submissive. The concept of learned helplessness explains why the woman remains in the abusive relationship with her spouse. A battered woman faces difficulty in leaving her spouse because of psychological, economic and social dependence, and because she may have no where else to go. The woman's helplessness reduces the woman's problem solving ability. The woman becomes unable to see options available to her. Learning that she has no control over the violence, the woman becomes apathetic. The woman believes that any response she may make to the violence will be useless even when her response might have a favorable outcome. The helplessness ultimately affects the woman's emotional well-being, causing the woman to suffer depression and anxiety.

39. See Comment, supra note 3, at 432 (discussing battered woman's learned helplessness); supra note 38 and accompanying text (discussing theory of learned helplessness).
woman's learned helplessness forces the woman to remain in the abusive relationship.\textsuperscript{40} Recognizing that battered women share similar psychological characteristics, a battered woman defendant often seeks to introduce expert testimony regarding the battered woman syndrome to convince the jury that the woman's actions were reasonable under the circumstances.\textsuperscript{41} The battered woman syndrome is not a defense.\textsuperscript{42} Rather, by presenting expert testimony on the battered woman syndrome, a battered woman attempts to show that her actions fall within the traditional doctrine of self-defense.\textsuperscript{43} When a court allows a battered woman defendant to present expert testimony concerning the battered woman syndrome, the testimony usually consists of two components.\textsuperscript{44} First, the expert explains the battered woman syndrome.\textsuperscript{45} Second, the expert shows that the defendant suffered from the syndrome and describes how the syndrome affected the defendant's behavior and perceptions at the time of the killing.\textsuperscript{46} By explaining that the battered woman defendant suffered from learned helplessness, the expert testimony concerning the battered woman syndrome explains why the defendant did not leave her spouse.\textsuperscript{47} The expert testimony also attempts to explain that because of the cyclical nature of the abuse, the battered woman fears imminent harm because the battering incident of the second stage is inevitable.\textsuperscript{48} Additionally, the expert testimony attempts to prove that, because

\textsuperscript{40} See Note, supra note 1, at 629 (discussing battered woman's learned helplessness and inability to leave abusive relationship); supra note 38 and accompanying text (discussing learned helplessness affecting battered women).

\textsuperscript{41} See Comment, supra note 3, at 428 (discussing battered woman defendant's use of expert testimony on battered woman syndrome).

\textsuperscript{42} See C. Ewing, supra note 2, at 57 (discussing purpose of battered woman defendant's use of expert testimony on battered woman syndrome).

\textsuperscript{43} See Note, supra note 1, at 626 (explaining that battered woman presents expert testimony to convince jury that her actions were reasonable).

\textsuperscript{44} See C. Ewing, supra note 2, at 53 (discussing content of expert testimony on battered woman syndrome).

\textsuperscript{45} Id.

\textsuperscript{46} Id. Courts that allow the use of expert testimony about the battered woman syndrome generally admit the testimony when the defendant shows that she was a battered woman, that the expert is qualified to testify about the syndrome, that the scientific community accepts the syndrome as legitimate, that the subject matter is beyond the common knowledge of the jury, and that the probative value of the testimony outweighs any prejudicial impact. See Thompson, Defending the Battered Wife: A Challenge for Defense Attorneys, 22 TRIAL, February 1986, at 74, 78 (discussing courts' acceptance of testimony on battered woman syndrome).

\textsuperscript{47} See C. Ewing, supra note 2, at 56 (describing battered woman defendant's use of expert testimony on battered woman syndrome to explain why defendant remained with spouse); supra notes 37-40 and accompanying text (discussing battered woman's learned helplessness).

\textsuperscript{48} See Faigman, supra note 38, at 214 (discussing battered woman defendant's use of expert testimony on battered woman syndrome to explain why defendant feared imminent harm); supra notes 31-36 and accompanying text (describing cyclical pattern of physical and psychological abuse occurring in relationship between battered woman and spouse). A battered woman offers expert testimony on the battered woman syndrome to reconcile the traditional notions of self-defense and the particular facts of her case. Id. at 626. The battered woman
of previous beatings, the woman is aware of signs of increasing violence and can predict the extent of the violence in a particular battering incident.\textsuperscript{49} The expert testimony explains that the woman can predict whether deadly force is necessary to protect herself.\textsuperscript{50} Essentially, the battered woman uses the expert testimony to convince the jury that the woman acted reasonably under the circumstances, and that her claim falls within the framework of the traditional doctrine of self-defense.\textsuperscript{51}

Increasingly, courts have accepted the battered woman's claim of self-defense, holding that testimony about the battered woman syndrome is admissible.\textsuperscript{52} For example, in \textit{People v. Torres}\textsuperscript{53} the state charged the defendant with the second degree murder of her common-law husband.\textsuperscript{54}

syndrome testimony attempts to explain that, although the killing may have occurred during a lull in the battering, the battered woman believed that she faced inevitable harm and defended herself at the only available opportunity. \textit{Id.} By presenting the expert testimony, the battered woman attempts to convince the jury that her belief that she faced imminent death or serious bodily harm was reasonable. \textit{See C. Ewing, supra note 2, at 53.}

\textsuperscript{49} \textit{See C. Ewing, supra note 2, at 53 (discussing use of expert testimony on battered woman syndrome to explain why battered woman defendant believed use of deadly force was necessary).}

\textsuperscript{50} \textit{Id.}

\textsuperscript{51} \textit{See Note, supra note 1, at 621 (discussing battered woman's use of battered woman syndrome testimony).}

\textsuperscript{52} \textit{See Rodwan, supra note 1, at 66 (discussing court acceptance of battered woman syndrome testimony); see, e.g., Terry v. State, 467 So. 2d 761, 764 (Fla. Dist. Ct. App. 1985) (holding that expert testimony of battered woman syndrome is admissible for purpose of showing reasonableness of defendant's actions where defendant pleaded self-defense); Smith v. State, 247 Ga. 612, __, 277 S.E.2d 678, 683 (1981) (holding that expert testimony on battered woman syndrome is admissible because expert's conclusions about reasonableness of defendant's actions and perceptions are conclusions that jurors could not make themselves); State v. Hodges, 239 Kan. 63, __, 716 P.2d 563, 564 (1986) (holding that trial court improperly excluded expert testimony on battered woman syndrome because abusive relationship is subject outside jury's understanding and is relevant to proving reasonableness of defendant's belief that she was in imminent danger); Commonwealth v. Rose, 725 S.W.2d 388, 591 (Ky. 1987) (upholding trial court's limitations on expert testimony concerning battered woman syndrome); State v. Kelly, 97 N.J. 178, __, 478 A.2d 364, 368 (1984) (holding that expert testimony about battered woman syndrome is admissible and relevant to honesty and reasonableness of defendant's fear of imminent danger); People v. Torres, 128 Misc. 2d 129, __, 488 N.Y.S.2d 358, 362 (N.Y. Sup. Ct. 1985) (holding that expert testimony concerning battered woman syndrome is admissible as relevant to defendant's self-defense claim); State v. Gallegos, 104 N.M. 247, __, 719 P.2d 1268, 1270 (N.M. Ct. App. 1986) (holding that trial court improperly excluded term "battered woman syndrome" from testimony of expert on psychological effects of abusive relationship); State v. Hill, 287 S.C. 398, __, 339 S.E.2d 121, 122 (1986) (holding that trial court erroneously excluded expert testimony on battered woman syndrome because testimony is critical to defendant's self-defense claim); State v. Allery, 101 Wash. 2d 591, __, 682 P.2d 312, 313 (1984) (holding that testimony on battered woman syndrome is admissible to prove that defendant feared imminent danger).}


\textsuperscript{54} \textit{People v. Torres, 128 Misc. 2d 129, __, 488 N.Y.S.2d 358, 359 (N.Y. Sup. Ct. 1985).} The defendant, Lydia Torres shot and killed her common-law husband, Ruperto Rosado, as he sat in a chair in the living room of the couple's apartment. \textit{Id.} The defendant testified that on the night of the killing, Rosado had flown into a rage and accused the defendant of
The defendant claimed that she killed her husband in self-defense and offered expert testimony on the battered woman syndrome to support her claim. In considering the issue of whether to admit the expert testimony, the New York Supreme Court, Criminal Term stated that the standard for evaluating the defendant's conduct was whether the defendant's subjective belief of the imminence and seriousness of the danger was reasonable. The Torres court held that the expert testimony was relevant to the jury's determination of reasonableness because the testimony had a substantial bearing on the defendant's state of mind at the time of the killing. The court further held that the expert testimony was admissible because the testimony's subject matter was outside the common knowledge of the jury and had gained acceptance in the scientific community.

Some commentators argue that the battered woman syndrome is legally and empirically flawed, and that courts, therefore, should not allow testimony concerning the syndrome. One commentator asserts that research concerning the battered woman syndrome contains methodological, theoretical, and interpretative flaws. The commentator argues that the research...
has not shown sufficiently that the repeated abuse causes a single distinctive behavior pattern.\footnote{Id. at 644.} Furthermore, commentators claim that testimony concerning the battered woman syndrome often does not support the woman’s claim of self-defense.\footnote{See C. Ewing, supra note 2, at 52 (discussing battered woman syndrome testimony’s failure to support self-defense claim); Note, supra note 1, at 640 (discussing inapplicability of battered woman syndrome testimony to claim of self-defense). One commentator asserts that battered woman syndrome testimony does not adequately provide the jury with an understanding of the danger the woman felt at the time she killed her spouse. See Note, supra note 1, at 640. For example, the commentator argues that the battered woman syndrome theory provides no insight into whether the defendant used a reasonable amount of force to prevent the perceived harm. Id. In addition, the commentator argues that the battered woman syndrome does not sufficiently address the problem of establishing imminence, but attempts instead to stretch the imminence requirement to include fear of future harm. Id. at 631. Another commentator argues that the expert testimony on the battered woman syndrome provides no support for the battered woman’s assertion that she acted reasonably under the circumstances. See C. Ewing, supra note 2, at 55. The commentator further argues that by asserting that the woman was helpless, an expert’s testimony may contradict the woman’s claim of self-defense. Id. at 56. The commentator claims that the jury may question why the woman took action if supposedly she was passive and helpless. Id. Finally, the commentator argues that instead of convincing the jury that the defendant acted reasonably, expert testimony simply explains why the defendant acted unreasonably. Id. at 59.} Because of the battered woman syndrome’s flaws, expert testimony about the battered woman syndrome frequently fails to help establish a battered woman’s claim of self-defense.\footnote{See Comment, supra note 3, at 428 (discussing battered woman’s failure to prove self-defense despite testimony on battered woman syndrome).} Some courts simply have held that testimony concerning the syndrome is inadmissible.\footnote{See, e.g., State v. Edwards, 420 So. 2d 663, 677-78 (La. 1982) (holding that expert testimony concerning the battered woman syndrome is inadmissible because expert testimony can apply only to claim of mental disease or defect); State v. Thomas, 66 Ohio St. 2d 518, 423 N.E.2d 137, 140 (1981) (holding that expert testimony on battered woman syndrome is inadmissible because testimony is irrelevant to self-defense claim, is within ken of jury, is not accepted by scientific community, and is overly prejudicial); Buhler v. State, 627 P.2d 1374, 1378 (Wyo. 1981) (excluding battered woman syndrome testimony under requirements for admissibility of expert testimony).} For example, in \textit{State v. Necaise}\footnote{466 So. 2d 660 (La. Ct. App. 1985).} the state indicted the defendant for manslaughter in the shooting
death of her husband.\textsuperscript{66} Shortly after the defendant’s husband allegedly beat the defendant, the defendant shot her husband in the back and in the back of his head as he lay in bed.\textsuperscript{67} Despite the defendant’s plea of self-defense, the trial court convicted the defendant of manslaughter.\textsuperscript{68} The defendant appealed, arguing that the trial court erroneously excluded expert testimony concerning the battered woman syndrome.\textsuperscript{69} The defendant argued that the testimony was necessary to show the defendant’s state of mind at the time of the killing and to convince the jury that the defendant’s perception of the danger that her husband posed was reasonable.\textsuperscript{70}

The Court of Appeals of Louisiana held that absent a plea of “not guilty and not guilty by reason of insanity,” testimony attempting to prove that the defendant suffered from battered woman syndrome was inadmissible.\textsuperscript{71} The \textit{Necaise} court explained that admitting the testimony would condone improperly the concept of partial responsibility, allowing proof of mental incapacity short of insanity to show the defendant’s lack of specific intent.\textsuperscript{72} The court further held that the evidence that the defendant shot her husband in the back and the back of the head while he was in bed was sufficient to show that the defendant did not act in self-defense.\textsuperscript{73} The court stated that the evidence sufficiently supported the jury’s finding that the defendant’s fear of imminent death or serious bodily injury was unreasonable.\textsuperscript{74}

The court’s opinion in \textit{State v. Necaise} illustrates some of the obstacles a battered woman defendant must overcome to succeed on a claim of self

\begin{footnotes}
\item[67.] Id. at 663.
\item[68.] Id. at 622. At trial the defendant in \textit{State v. Necaise} claimed that during the evening on which she killed her husband, her husband had slapped her, kicked her, and verbally abused her. \textit{Id.} The defendant further testified that her husband had forced her at knife point to engage in sexual relations and had held the knife to her throat, threatening to kill her. \textit{Id.} at 663. The defendant testified that she believed her husband would kill her and, therefore, she got out of bed and pulled a gun from under the mattress. \textit{Id.} The defendant claimed that upon hearing her husband begin to get out of the bed, she turned and saw him raise his clenched fist. \textit{Id.} at this point, she shot her husband. \textit{Id.} The defendant’s husband died from three bullet wounds to the left back and two bullet wounds to the back left side of his head. \textit{Id.} at 662. The defendant admitted shooting her husband, but asserted that her action was justified because she acted in self-defense. \textit{Id.} at 663. Nevertheless, the jury found the defendant guilty of manslaughter and sentenced her to 12 years of hard labor. \textit{Id.} at 662.
\item[69.] Id. at 663.
\item[70.] Id. at 664.
\item[71.] Id. at 665.
\item[72.] Id.
\item[73.] Id. At trial in \textit{State v. Necaise}, the state showed that the defendant had no bruises or other indication of violence to support her claim that her husband had beaten her on the night of the killing. \textit{Id.} at 669. Additionally, the police found the victim lying in bed, apparently asleep when the defendant fired the shots. \textit{Id.} Finally, the state showed that the knife with which the defendant claimed the victim had threatened her contained no fingerprints and was found covered with a handkerchief underneath the victim’s armpit. \textit{Id.}
\item[74.] Id. at 670.
\end{footnotes}
defense. The *Necaise* court appeared hesitant to find that expert testimony concerning the battered woman syndrome was relevant to the defendant’s self-defense claim. In addition, the court indicated that the expert testimony, even if admitted, would fail to establish a reasonable fear of imminent harm justifying the defendant’s use of deadly force.

In addition to courts that have excluded expert testimony on the battered woman syndrome, some courts have upheld convictions of battered women defendants after having allowed the testimony. For example, in *State v. Nunn* the defendant appealed from a jury finding that the defendant was guilty of second-degree murder in the stabbing death of her live-in boyfriend. Before the killing the defendant’s boyfriend had been throwing objects at the defendant during a heated argument. The boyfriend had retreated to another room, and the defendant followed him a few minutes later and stabbed him. The trial court sentenced the defendant to imprisonment for up to fifty years. The Iowa Court of Appeals held that the evidence was sufficient to support the jury finding that there was a cooling-off period prior to the stabbing and that the defendant therefore had acted with malice aforethought. At trial, the defendant presented expert testimony about the battered woman syndrome to explain why the defendant believed deadly force was necessary to avert imminent death or serious bodily harm. The *Nunn* court held that the jury was not obliged to accept as conclusive the expert testimony. Furthermore, the court held that even if the jury had accepted the expert testimony, the other evidence presented could support a jury finding that the defendant’s fear of danger was unreasonable. The court explained that the fact that the argument ended a few minutes before the killing and that the victim was unarmed at the

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75. *See id.* at 665 (excluding testimony on battered woman syndrome presented to support claim of self-defense).
76. *See id.* (stating that expert testimony on battered woman syndrome is admissible only in support of insanity claim).
77. *See id.* at 670 (stating that evidence was sufficient to support jury finding that battered woman defendant acted unreasonably).
81. *Id.* at 604.
82. *Id.* The trial court record in *State v. Nunn* revealed that the defendant stabbed her boyfriend during a lull in a heated argument during which both the defendant and the boyfriend had brandished knives. *Id.* at 603-04.
83. *Id.*
84. *Id.* at 604.
85. *Id.*
86. *Id.*
87. *Id.*
time of the killing supported the jury finding that the defendant's actions and perceptions were unreasonable.\textsuperscript{88} Generally, testimony on the battered woman syndrome fails to support a defendant's claim of self-defense because the testimony does not convince juries that the defendant's actions were reasonable.\textsuperscript{89}

C. THEORY OF "PSYCHOLOGICAL SELF-DEFENSE"

Attempting to provide a solution to the problems facing battered women defendants, clinical psychologist, attorney, and professor Charles Ewing has proposed a theory of "psychological self-defense" to justify battered women's actions.\textsuperscript{90} The theory of psychological self-defense justifies the use of deadly force to avert extremely serious psychological injury caused by repeated physical and emotional abuse.\textsuperscript{91} Ewing argues that the claim of a battered woman who kills in self-defense often does not fit within the narrow limits of the traditional self-defense doctrine.\textsuperscript{92} Even when a court admits testimony concerning the battered woman syndrome, Ewing argues that the testimony often does not support a battered woman's self-defense claim.\textsuperscript{93} Ewing asserts that women who face repeated physical abuse should be justified in using deadly force even during non-violent periods to repel extremely serious psychological injury caused by the abuse.\textsuperscript{94}

In proposing the theory of psychological self-defense, Ewing argues that courts should expand the interpretation of "self" under self-defense law to include both emotional and physical well-being.\textsuperscript{95} Ewing attempts to eliminate the problems that the imminence and reasonable force requirements of the traditional self-defense doctrine pose for a battered woman who claims self-defense.\textsuperscript{96} Ewing seeks to show that a battered woman constantly fears destruction of her emotional stability, thus satisfying the imminence require-
Ewing asserts that at some point in a relationship between a battered woman and her spouse, the battered woman suddenly perceives the continuing abuse as a basic threat, not only to her physical safety, but also to her psychological health. At this point, the woman begins to experience a constant fear of harm that affects all aspects of her life. The woman perceives that her spouse poses an imminent threat of danger and believes that she must take action to stop the abuse. Ewing rejects the traditional self-defense doctrine's reasonable force requirement, which permits the battered woman to use deadly force only if the woman reasonably believes her spouse poses a threat of death or serious bodily injury. Ewing's proposal would justify the use of deadly force if the woman reasonably believed that the force was necessary to prevent extremely serious psychological injury.

According to Ewing, a jury must answer two questions in resolving a claim of psychological self-defense: whether the defendant honestly believed that the victim was threatening the defendant with extremely serious psychological injury, and whether the defendant's belief was reasonable under the circumstances. Ewing contends that the abusive relationship has both severe physical and psychological consequences for the battered woman.

Ewing contends therefore that many battered women who kill their spouses, including women who kill during a lull in the violence, do so in self-defense, although not necessarily in the traditional

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98. Id. at 65.
99. Id.
100. Id.
101. See Faigman, supra note 38, at 218 (discussing Ewing's repudiation of reasonable force requirement in traditional self-defense doctrine).
102. See C. Ewing, supra note 2, at 79. In developing his doctrine of psychological self-defense, Ewing relies on principles from the fields of self-psychology, psychopathology, victimology, and the psychology of terrorism. Id. at 63-75. Ewing emphasizes the discipline of self-psychology to support his proposition that battered women fear the destruction of their psychological well-being. Id. at 66. Ewing asserts that the abuse battered women suffer causes the women to lose self-esteem and to view their lives as meaningless. Id. Ewing claims that battered women live their lives "without feeling alive." Id.

Relaying on the disciplines of victimology and the psychology of terrorism, Ewing compares battered women with victims of crime and victims of terrorism. Id. at 70-73. Ewing contends that, as victims of violent crime, battered women suffer from fear, depression, anxiety, and hopelessness as do other victims of violent crime. Id. at 72. Ewing also contends that spousal abuse is a form of terrorism. Id. at 73. Finally, Ewing relies on the discipline of psychopathology to support his claim that repeated beatings cause battered women to become depressed, and, at times, suicidal. Id. at 69.
103. Id. at 92.
104. Id.
105. Id. at 62. Ewing argues that the psychological effects of the abuse often are more significant than the physical injuries because the psychological effects may prevent the woman from leaving her spouse or seeking help. Id.
Ewing asserts that the battered women constantly fear destruction of their psychological well-being. Accordingly, Ewing argues that the battered women kill to defend against the loss of their psychological stability.

Ewing contends that the theory of psychological self-defense is consistent with and a necessary extension of the traditional doctrine of self-defense. Ewing recognizes that the doctrine of psychological self-defense justifies the taking of human life to preserve a battered woman's mental stability as well as her life. Ewing contends that current law already allows the taking of human life in other non-life threatening situations. Ewing states that current self-defense law does not always require a reasonable fear of imminent death or serious bodily injury to justify a killing. In support of this argument, Ewing discusses several criminal law doctrines that justify the use of deadly force when clearly only psychological interests are at stake. Ewing asserts that the doctrines of retreat, defense of habitation, and the use of deadly force to avert rape or kidnapping indicate that the law may protect purely psychological interests. According to Ewing, the fact that many jurisdictions do not require a person to retreat from an attack places a higher value on the psychological interest of avoiding humiliation and the appearance of cowardice than on the aggressor's life. Ewing further argues that the doctrine which allows a person to use deadly force to prevent unlawful entry into the person's home is concerned with protecting the person's psychological interest of feeling secure in his home. Finally, Ewing claims that the doctrines allowing a person to use deadly force to prevent a rape or kidnapping also places greater weight on preserving psychological interests of bodily integrity and autonomy than on preserving the aggressor's life. Accordingly, Ewing argues that the protection of a battered woman's psychological well-being should outweigh the spouse's interest in remaining alive.

106. Id.
107. Id.
108. Id. Ewing argues that battered women defendants kill to defend against the destruction of important psychological attributes. Id. According to Ewing, a person's psychological functions, processes, and experiences give meaning and value to life. Id. Ewing contends that constant abuse causes extremely serious psychological injury resulting in what amounts to "psychological death." Id. at 79; see also supra note 91 (defining extremely serious psychological injury).
109. C. Ewing, supra note 2, at 78.
110. Id. at 80.
111. Id.
112. Id.
113. Id.
114. Id.
115. Id. at 81. Ewing notes that although a strong interest against the taking of another person's life exists, a policy against requiring a person to act in a cowardly manner also exists. Id.
116. Id.
117. Id. at 82.
118. Id. at 80.
D. CRITICISM OF THE THEORY OF PSYCHOLOGICAL SELF-DEFENSE

Ewing proposes the theory of psychological self-defense to provide battered woman defendants with an alternative to traditional self-defense.\(^\text{119}\) State v. Necaise and State v. Nunn illustrate some of the obstacles that a battered woman defendant must overcome to succeed on a claim of self-defense.\(^\text{120}\) In Necaise the court held that testimony concerning the battered woman syndrome is inadmissible because the testimony improperly would condone the concept of partial responsibility.\(^\text{121}\) The court explained that the expert testimony would attempt to prove that the defendant suffered from a mental defect short of insanity, which the state has rejected as evidence of lack of intent.\(^\text{122}\) For the same reasons, the Necaise court likely would be unwilling to admit expert testimony in support of a claim of psychological self-defense.\(^\text{123}\) The Necaise court rationale would defeat a battered woman defendant’s claim in a case in which the defendant would need to present expert testimony to explain why the defendant believed that her spouse was destroying the defendant psychologically.\(^\text{124}\)

Ewing asserts that under the doctrine of traditional self-defense and the theory of psychological self-defense, the jury must assess the defendant’s alleged fear by considering the circumstances surrounding the killing.\(^\text{125}\) The mental state required in a claim of psychological self-defense, reasonable fear of extremely serious psychological injury, is different from the traditional self-defense doctrine’s requirement of reasonable fear of imminent death or serious bodily injury.\(^\text{126}\) However, Ewing explains that the process of determining the reasonableness of the fear is the same under both doctrines.\(^\text{127}\) Under either doctrine, the jury would assess whether, under the circumstances, a reasonable person would have perceived the situation as did the defendant.\(^\text{128}\)

\(^{119}\) Id. at 6.
\(^{120}\) See supra notes 65-88 and accompanying text (discussing State v. Necaise and State v. Nunn).
\(^{121}\) State v. Necaise, 466 So. 2d 660, 665 (La. Ct. App. 1985). In Necaise the court held that testimony regarding the battered woman syndrome is inadmissible unless the defendant pleads “not guilty and not guilty by reason of insanity.” Id.
\(^{122}\) Id.
\(^{123}\) See id. at 665 (discussing inadmissibility of expert testimony on battered woman syndrome).
\(^{124}\) See C. Ewing, supra note 2, at 94 (discussing battered woman defendant’s use of testimony on battered woman syndrome to support claim of psychological self-defense). Ewing states that expert testimony would be relevant in assessing claims of psychological self-defense. Id. The defendant would use the testimony to show that she shared psychological characteristics with other battered women. Id.
\(^{125}\) Id. at 93.
\(^{126}\) Id.
\(^{127}\) Id.
\(^{128}\) Id. Ewing contends that the jury must use common-sense and everyday experience in considering a claim of psychological self-defense just as they would in considering claims of traditional self-defense. Id. at 94. Ewing argues that most people would understand what fear of extremely serious psychological injury would be like. Id.
the defendant would have had little chance of success, even if the doctrine of psychological self-defense had been available.\textsuperscript{129} According to the \textit{Nunn} court, the jury is free to decide which evidence to accept and which evidence to reject.\textsuperscript{130} Under \textit{Nunn}, therefore, the jury still could reject evidence supporting the defendant's claim of psychological self-defense and find that the defendant's fear was unreasonable.\textsuperscript{131}

Although Ewing proposes the theory of psychological self-defense to justify the actions of battered women defendants, the theory fails to prove adequately that the defendant's actions were reasonable.\textsuperscript{132} Ewing recognizes that expert testimony concerning the battered woman syndrome might elicit an unfavorable response from a jury because the jury might believe that the testimony attempted to establish a separate "battered woman defense."\textsuperscript{133} Ewing argues that a jury might misunderstand the expert testimony, believing that the testimony attempts to show that battered women have a license to kill.\textsuperscript{134} Ewing does not acknowledge, however, that pleading psychological self-defense might create a similar reaction in a jury.\textsuperscript{135} Additionally, because the theory of psychological self-defense is such a radical extension of the current doctrine of self-defense, courts likely will be unwilling to accept the theory as a legitimate justification of a battered woman's actions.\textsuperscript{136} For example, Ewing advocates a broader interpretation of the imminence requirement that courts already have appeared reluctant to accept in battered women cases.\textsuperscript{137} Also Ewing's proposal allowing the use of deadly force to prevent extremely serious psychological injury is a drastic change from current self-defense law.\textsuperscript{138} As a result, establishing the doctrine of psychological self-defense as a legitimate defense under the law likely will require legislative action.\textsuperscript{139}

\begin{itemize}
\item \textsuperscript{130} See id. (discussing jury consideration of evidence).
\item \textsuperscript{131} See id. (holding that evidence was sufficient to support jury conclusion that defendant's fear of danger was unreasonable); see also supra notes 80-83 and accompanying text (discussing evidence and testimony in \textit{State v. Nunn}).
\item \textsuperscript{132} See infra notes 133-145 and accompanying text (discussing flaws in psychological self-defense doctrine).
\item \textsuperscript{133} See C. Ewing, \textit{supra} note 2, at 57 (discussing problems created by use of expert testimony on battered woman syndrome).
\item \textsuperscript{134} \textit{Id}.
\item \textsuperscript{135} See \textit{id.} (failing to discuss whether jury might view claim of psychological self-defense as attempt to establish "battered woman defense").
\item \textsuperscript{136} See Faigman, supra note 38, at 212 (stating that courts are more willing to accept exemptions from traditional self-defense doctrine than direct attacks on doctrine).
\item \textsuperscript{137} See C. Ewing, \textit{supra} note 2, at 62 (discussing theory of psychological self-defense and imminence requirement of traditional self-defense).
\item \textsuperscript{138} See \textit{infra} notes 20-22 and accompanying text (discussing reasonable force requirement of traditional self-defense).
\item \textsuperscript{139} Compare \textit{supra} notes 10-14 and accompanying text (discussing elements of claim of traditional self-defense) with \textit{supra} notes 90-108 (discussing requirements of claim of psychological self-defense). A legislative codification of the doctrine of psychological self-defense
\end{itemize}
Furthermore, one commentator argues that Ewing’s theory of psychological self-defense contains several flaws.\textsuperscript{140} First, the commentator asserts that instead of arguing that the battered woman’s actions were reasonable based on notions of justice, Ewing creates an abstraction in which the woman kills to prevent her spouse from destroying her psychological well-being.\textsuperscript{141} According to the commentator, Ewing argues that the traditional doctrine of self-defense is inadequate because it does not fit within the common sense notion that a woman who has faced repeated abuse may be justified in resorting to deadly force.\textsuperscript{142} The commentator claims that instead of providing a solution that would recognize the common sense notion that the use of deadly force was reasonable, Ewing replaces the technical and ritualistic doctrine of traditional self-defense with yet another formalistic and complicated doctrine.\textsuperscript{143} The commentator further argues that Ewing fails to provide any guidelines for determining whether the battered woman killed her spouse justly or unjustly.\textsuperscript{144} Finally, the commentator asserts that Ewing provides no insight into how the doctrine of psychological self-defense might apply in some cases and not in others.\textsuperscript{145}

**E. Suggestions for Defending Battered Women Who Kill**

Ewing fails to provide a workable solution to the problems of defending battered women who kill their spouses.\textsuperscript{146} Ewing’s theory, however, does illustrate that battered woman defendants need solutions to allow them to

\textsuperscript{140} See Faigman, \textit{supra} note 38, at 221-26 (discussing flaws in Ewing’s doctrine of psychological self-defense).

\textsuperscript{141} \textit{Id.} at 224.

\textsuperscript{142} \textit{Id.} at 220.

\textsuperscript{143} \textit{Id.} at 220-21. Faigman notes that Ewing conducted no research to support his contention that battered women defendants actually feared psychological injury when they killed their spouses. \textit{Id.} at 224.

\textsuperscript{144} \textit{Id.}

\textsuperscript{145} \textit{Id.} Faigman argues that the psychological principles that Ewing uses to support his doctrine are not readily accepted in the mainstream of either clinical or research circles of psychology. \textit{Id.} at 221. Furthermore, Faigman contends that Ewing provides no suggestions for what form expert testimony should take, nor does Ewing provide any basis for his assertion that physical abuse causes severe psychological disabilities. \textit{Id.} at 222-23.

\textsuperscript{146} See \textit{supra} notes 119-45 (discussing flaws of theory of psychological self-defense).
show that their actions were reasonable and that the killings were justifiable under the circumstances.\textsuperscript{147} The formalistic and narrow interpretation of self-defense does not address fairly or adequately the circumstances surrounding battered women's actions.\textsuperscript{148} A partial solution to the problem of defending battered women who kill would be for courts to interpret more broadly the imminence requirement of the traditional doctrine of self-defense.\textsuperscript{149} Under a broader interpretation of imminence, a battered woman defendant could show that although her spouse may not have posed an immediate threat, she reasonably feared that death or serious bodily injury was inevitable.\textsuperscript{150} Not only would a broader interpretation of the imminence requirement assist a battered woman defendant, the broader requirement might apply in other criminal law situations.\textsuperscript{151} For example, the broader interpretation would allow an abused child defendant to assert that inevitable injury justified the use of deadly force against his parent.\textsuperscript{152} Courts also could allow a battered woman to show the cumulative effect of the abuse upon the woman.\textsuperscript{153} The cumulative effect theory would show that because of the repeated abuse, the battered woman honestly and reasonably perceived constant danger.\textsuperscript{154}

To further assist battered women defendants, courts should apply a subjective test of reasonableness in assessing the defendant's actions.\textsuperscript{155} The court should allow the jury to consider all the relevant circumstances leading to the killing to determine whether the defendant honestly believed that deadly force was necessary to avert death or serious bodily injury.\textsuperscript{156} Evidence of the circumstances surrounding the defendant's action would explain the reasonableness of the defendant's perceptions and actions.\textsuperscript{157} The evidence should include testimony concerning the defendant's inability to leave her spouse and the defendant's belief that alternatives to the use

\textsuperscript{147} See Faigman, supra note 38, at 227 (discussing need for solution to problems facing battered women defendants).

\textsuperscript{148} See Note, supra note 1, at 643 (discussing unfairness of traditional doctrine of self-defense in battered woman context).

\textsuperscript{149} See infra notes 150-51 and accompanying text (discussing possibility of courts applying broader interpretation of imminence to self-defense claims).

\textsuperscript{150} See supra notes 15-19 and accompanying text (discussing imminence requirement of traditional doctrine of self-defense); supra note 48 and accompanying text (discussing battered woman's fear of inevitable harm).

\textsuperscript{151} See C. Eyng, supra note 2, at 80 (discussing applicability of modified doctrine of self-defense to various criminal law situations).

\textsuperscript{152} See id. (discussing similarity between battered women defendants and abused children defendants).

\textsuperscript{153} See Rodwan, supra note 1, at 65 (discussing cumulative effect of repeated abuse).

\textsuperscript{154} Id. One commentator argues that courts should allow the defendant to introduce evidence of the spouse's prior violent behavior. Id. The commentator states that evidence of abuse during prior moments, days, or weeks would be relevant to the defendant's argument that her spouse provoked the killing. Id.

\textsuperscript{155} See Note, supra note 1, at 643.

\textsuperscript{156} Id.

\textsuperscript{157} Id.
of deadly force did not exist. Additionally, courts should allow evidence of subtle threats and actions by the defendant's spouse that might cause the battered woman honestly to believe that the spouse posed an imminent threat of serious harm. Courts also should admit evidence of violence occurring days or weeks prior to the killing to show that the spouse provoked the defendant's actions. Courts also could consider previous patterns of the spouse's violent behavior. Studies indicate that a battered woman is aware of signals of increasing violence and may change her behavior in attempts to placate her spouse. Testimony about past patterns of violence might explain the woman's fear of danger, her choice to remain with her spouse, the lack of apparent alternatives, and the reasonableness of her use of deadly force. Furthermore, courts should allow evidence of the spouse's reputation for violence to support the defendant's subjective belief that she was in imminent danger.

To further explain the woman's actions, courts should allow evidence that would allow the jury to understand why the perception of imminent harm and allowable degree of force might be different for women than for men. For example, courts should permit the jury to consider the relative size and strength of the defendant and her spouse in determining whether the defendant used a reasonable amount of force. In addition, courts should instruct the jury that although use of a weapon may be unreasonable in a fist fight between two men, use of a weapon may be necessary for a woman to protect herself from her unarmed spouse. By admitting evidence concerning the unique characteristics of an abusive relationship, courts

158. Id. at 646. In addition to the theory of learned helplessness, researchers have suggested that other factors may prevent a battered woman from leaving her spouse. Id. at 645. The factors include lack of economic resources and friends and family to provide economic and emotional support. Id. One commentator argues that it might be sufficient simply to inform the jury that the woman honestly believed that she had no other choice but to remain with her spouse. Id.

159. See Schneider, supra note 1, at 634 (stating that battered women are attentive to signs of escalating violence provided by abusive spouse).

160. See Rodwan, supra note 1, at 65 (stating that prior acts of violence are relevant to establishing battered woman defendant's state of mind). Courts should allow juries to consider all the facts known to the defendant, including those occurring long before the killing. See Note, supra note 1, at 644 (stating that jury should consider all relevant circumstances occurring prior to killing).

161. See Schneider, supra note 1, at 634 (discussing patterns of violence in abusive relationship).

162. Id.

163. See Note, supra note 1, at 644 (discussing battered woman defendant's use of testimony about past incidents of violence).

164. Id.

165. See Faigman, supra note 38, at 226 (proposing flexible application of traditional doctrine of self-defense).

166. See Rodwan, supra note 1, at 64 (stating that defendant may use amount of force that appears necessary to prevent imminent injury).

167. See Schneider, supra note 1, at 633 (noting that ordinary injury man inflicts on another man is different than injury spouse inflicts on battered woman).
would allow a battered woman an opportunity to convince the jury that her actions were reasonable and justified. Finally, when instructing the jury, courts should emphasize the relevance of the unique situation and perspectives of the battered woman defendant.

F. Conclusion

Many battered women facing homicide charges after killing their abusive spouses plead self-defense. Although years of physical and psychological abuse would appear to justify the women’s use of deadly force, the women often fail to satisfy the strict requirements of traditional self-defense. Many battered women defendants present expert testimony on the battered woman syndrome in support of their claims of self-defense. Often, however, the expert testimony fails to assist in establishing the battered women’s claims. Psychologist and attorney Charles Ewing has attempted to address the problem of defending battered women who kill their spouses by proposing his theory of psychological self-defense. Although Ewing’s theory points out the great need for solutions to the dilemma faced by battered women defendants, it fails to provide a viable solution. In proposing his theory, however, Ewing emphasizes the plight of battered women and highlights the need for courts to recognize that, in many instances, the battered women’s actions are reasonable and justifiable.

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168. Id.
169. See id. (discussing importance of proper jury instructions in battered woman context).
170. See C. Ewmo, supra note 2, at 6 (discussing defense of battered women who kill their spouses).
171. See supra notes 9-29 and accompanying text (discussing battered women defendants’ inability to satisfy elements of traditional self-defense).
172. See Note, supra note 1, at 619 (discussing use of expert testimony on battered woman syndrome to support claim of self-defense); supra notes 30-50 and accompanying text (discussing battered woman syndrome).
173. See supra notes 63-88 (discussing battered women’s failure to prove self-defense despite testimony on battered woman syndrome).
175. See supra notes 119-45 (criticizing theory of psychological self-defense).