1993

Battered Women in Florida: Will Justice Be Served?

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HOPE KEATING

I. INTRODUCTION

In the United States, a nation internationally recognized as one of the foremost proponents of human rights, a woman is beaten by her husband or boyfriend every fifteen seconds.1 This form of domestic abuse affects as many as six million American women every year.2 The problem often persists beyond physical injury. Statistics in recent years have shown that more than thirty percent of all female murder victims were killed by their husbands or boyfriends.3

For a problem so pervasive and serious, society has been amazingly tolerant of this seemingly uncivilized behavior. The legal system likewise has been embarrassingly slow in addressing this extremely violent crime. This Comment will briefly examine the historical roots of society’s acceptance of this travesty, the traditional lack of police intervention, the ongoing failure to prosecute batterers, and the judicial system’s hesitance to become involved in interactions—no matter how dangerous—between a man and his wife or girlfriend.

This Comment will then look at the psychological makeup of those abused women who finally kill their partners as well as the judicial

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3. FBI, U.S. Dep't of Justice, Uniform Crime Rep. for the U.S. 13 (1988). In 1979 the FBI reported that the percentage of women killed by husbands or boyfriends was 40%. FBI, U.S. Dep't of Justice, Uniform Crime Rep. for the U.S. 10 (1980). A 1971 survey indicated that the figure is as high as 52% in California. Willoughby, supra note 1, at 170 n.5.
system's historical lack of sympathy for such women. In addressing this lack of sympathy, the Comment will examine sex bias in the law of self-defense and the reluctance of courts to admit expert testimony on the battered woman syndrome.

Finally, this Comment will examine the status of the law as it relates to battered women in Florida. It will look at the recent admission in Florida of expert testimony on the battered woman syndrome and will make predictions for future admission of such testimony in Florida. The Comment also will look at recent steps taken by Florida's executive branch to grant clemency to women convicted and imprisoned for killing the men who abused them.

II. HISTORICAL UNDERPINNINGS OF WIFE ABUSE

When you see your wife commit an offense, don't rush at her with insults and violent blows . . . Scold her sharply, bully and terrify her. And if this still doesn't work . . . take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body . . . Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.4

Such proclamations regarding the subservient role of women have prevailed in literature since at least biblical times,5 and illustrate the historical acceptance of wife-beating.6

As our legal system evolved, these views carried over into the laws,7 and only in relatively recent times has wife abuse been recognized as a crime. Indeed, until the nineteenth century, English and American courts permitted a husband to beat his wife, but in the spirit of the modern age, regulated the practice by allowing such beatings to be

5. See Mather, supra note 2, at 547 n.13 (citing passages from the Old Testament proclaiming man's dominion over woman).
6. See, e.g., Loraine P. Eber, The Battered Wife's Dilemma: To Kill or To Be Killed, 32 HASTINGS L.J. 895, 897 n.12 (1981). This article quotes a sentiment codified by Napoleon, "[w]omen, like walnut trees, should be beaten every day"; it also quotes an old Russian proverb: "[a] wife isn't a jug . . . she won't crack if you hit her a few times." Id.
7. Id. ("For as he [the husband] is to answer for her misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or his children." (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *444)).
performed with a stick no thicker than the husband's thumb—hence the popular saying "rule of thumb." 8

By the end of the nineteenth century, the American states began to make wife-beating illegal. 9 However, because of the deeply ingrained concepts of marital privacy 10 and of wives as property, 11 police officers often will not interfere in domestic violence. 12 The same attitudes are prevalent among prosecutors who traditionally have given domestic violence cases low priority. 13

III. CONTINUING POLICE, PROSECUTORIAL, AND JUDICIAL INSENSITIVITY TO DOMESTIC VIOLENCE

In 1990 the Florida Supreme Court Gender Bias Study Commission reported a widespread reluctance by Florida police to respond to domestic violence calls. 14 Even when police respond, they still hesitate to arrest the abuser. 15 A Commission survey found that problems of insensitivity by police to the physical injuries of domestic violence victims and the failure to arrest or report domestic violence exist in every part of the state. 16 Often, police may even arrest the female victim instead of her male attacker. 17

In the event police do arrest an abuser, the victim still faces the prosecution hurdle. The Commission found in cases involving domestic violence that prosecutors were insensitive and even hostile to the

8. See Mather, supra note 2, at 547-48.
9. Id. at 548.
11. "By marriage the husband and wife are one person in law, that is, the very being or legal existence of the woman is suspended during marriage or at least is incorporated and consolidated into that of the husband." Buda & Butler, supra note 10, at 364 n.38 (quoting Blackstone in 1768).
13. See generally Eber, supra note 6, at 910-11; Mather, supra note 2, at 556-60.
15. Id. at 111-14.
16. Id. at 112.
17. Id. at 112-13. One witness during a Commission public hearing testified that:

We got there before [the officers] and she was a mess. She was naked from the waist up and there was blood all over her face and chest. She was standing in the middle of the road, crying. The man who had battered her was standing on the side of the road when the [officer] arrived. The batterer started to harass [the woman]. She became hysterical and tried to attack him. The [officer] then arrested the woman.

Id.
female victims.\textsuperscript{18} The Commission reported widespread abuse of prosecutorial discretion in dropping domestic violence cases and an unwillingness to view domestic violence as criminal behavior.\textsuperscript{19} Testimony before the Commission revealed that state attorneys refuse to file charges in most domestic violence cases.\textsuperscript{20} In an earlier Commission survey, more than sixty percent of family law attorneys in Florida reported that prosecutors almost always decline to prosecute domestic violence cases.\textsuperscript{21}

When the state does prosecute, it is often a misdemeanor charge that prosecutors should have filed as a felony.\textsuperscript{22} The Commission reported that Florida prosecutors have "in effect ... written the domestic assault statutes off the books by refusing to enforce them."\textsuperscript{23} This type of insensitive behavior can have deadly consequences.\textsuperscript{24} Such attitudes send two clear messages to society: Wife-beating is not really a crime and will not be taken seriously, and the law provides no protection for victims of spouse abuse.

The callous attitudes of police and prosecutors are also, frighteningly enough, prevalent in the judicial community.\textsuperscript{25} The Commission reported that examples of appropriate conduct by judges in domestic violence cases are "few and far between."\textsuperscript{26} The Commission heard testimony of example after example of the indifference, lack of awareness, and hostility displayed by Florida's judges in battered women cases.\textsuperscript{27} These attitudes have a significant impact on the outcome of domestic violence cases. The personal biases of judges regarding battered women often result in gender-biased rulings.\textsuperscript{28} Sixty to seventy percent of the 370 women in prison in Florida for committing capital

\textsuperscript{18} \textit{Id.} at 115-21.
\textsuperscript{19} \textit{Id.} at 115. For related information, see Joy Hannel, \textit{Missouri Takes a Step Forward: The Status of "Battered Spouse Syndrome" in Missouri}, 56 Mo. L. Rev. 465, 470 (1991); Mather, \textit{supra} note 2, at 556-60.
\textsuperscript{20} \textit{COMMISSION REPORT}, \textit{supra} note 14, at 116.
\textsuperscript{21} \textit{Id.}
\textsuperscript{22} \textit{Id.} at 117.
\textsuperscript{23} \textit{Id.} at 118.
\textsuperscript{24} Many times, the batterer has been arrested and released before killing his wife or girlfriend. \textit{See, e.g., id.} at 116-17 (The husband was arrested for violating a restraining order by going to his wife's place of employment with a knife. He was bonded out, and, although his wife did not drop the charges, he was not prosecuted. One month later he showed up again at his wife's place of employment and stabbed her to death.).
\textsuperscript{25} \textit{Id.} at 121-27. Remarks at a Commission public hearing revealed that in one case where a man set his wife on fire, the judge began singing "[y]ou light up my wife" to the tune of \textit{You Light Up My Life}. \textit{Id.} at 121. Another judge, when confronted with the fact that the defendant tried to kill his wife asked, "Is that a crime in Florida?" \textit{Id.}
\textsuperscript{26} \textit{Id.} at 122.
\textsuperscript{27} \textit{Id.} at 121-27.
\textsuperscript{28} \textit{Id.} at 124.
crimes were victims of domestic violence. Many of the other 2309 women in Florida's prisons were convicted of crimes stemming from abuse.

IV. ADMISSION OF EXPERT TESTIMONY ON BATTERED WOMAN SYNDROME

The admission of expert testimony on battered woman syndrome is one of the most significant areas in which a judge's bias can affect a case. Battered woman syndrome is a psychological condition commonly affecting women who live in violent relationships. Expert testimony regarding the syndrome may be crucial in the defense of a woman who has killed her abusive partner.

A. Battered Woman Syndrome

A victim of battered woman syndrome does not attempt to leave the abusive relationship because she does not believe there is anything she or anyone else can do to improve her situation. Rather than escaping, these battered women respond to the situation by coping. A typical response is characterized by withdrawal, silence, and denial. Eventually, the woman becomes a victim of "learned helplessness." She becomes so demoralized and degraded that she slips into a state of psychological paralysis and becomes unable to take any action to im-

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30. Lucy Morgan, Abuse Claims May Find Kind Ear, ST. PETERSBURG TIMES, Dec. 19, 1991, at 12B. For example, Cynthia Matthews-Hamad was imprisoned for a drug conviction for interpreting communication during a drug deal for her Hispanic husband who abused her. Id. Deidre Hunt is currently on death row for shooting a man while her boyfriend videotaped the murder. She claims she was forced into committing the crime by her abusive boyfriend who burned her breasts with cigarettes and cut her with razors. Barbara Walsh, For Women on Death Row, An Agonizing Wait, FORT LAUDERDALE SUN-SENTINEL, Dec. 13, 1991, at 1A.


33. See Mather, supra note 2, at 554.

34. WALKER, supra note 31, at 43. Walker's theory of learned helplessness is based on experiments conducted by experimental psychologist Martin Seligman. The experiments consisted of giving random electrical shocks to dogs in cages. The dogs soon learned that no matter what response they made, they could not control the painful shocks. They became passive and submissive and ceased trying to escape—even when the door to their cage was left open and they were shown the way out. Id. at 46.
prove her situation. She comes to expect abuse as a way of life over which she has no control.

The cycle theory of violence explains how women become victims of abuse and fall into learned helplessness. There are three distinct phases of the battering cycle: (1) the tension-building phase, (2) the acute battering phase, and (3) the loving phase. During the tension-building phase, the male partner engages in minor battering incidents, verbal abuse, and intentionally mean behavior. The woman goes to great lengths to placate her partner, and while she is sometimes successful, her success is only temporary.

The second phase, the acute battering phase, may last anywhere from two to twenty-four hours. During this phase, the batterer, in most instances, inflicts serious physical injury on his partner. The battered woman usually does not resist the batterer because she believes the violence will escalate if she tries to do so.

During the third phase, the loving phase, the batterer becomes remorseful and sorrowful for his actions. His behavior is extremely loving and kind, and he may be generous with gifts and affection. He promises never to repeat his behavior. Phase three reinforces whatever hopes the woman has for her partner’s reform and keeps her bound to the relationship. Before long, however, phase three lapses into phase one, reinforcing the woman’s feelings of helplessness. The frequency of the cycle and the degree of violence escalate over time.

As the violence escalates, passiveness, submissiveness, and helplessness have a debilitating effect on the woman’s ability to solve prob-

35. Id.
36. Id.
37. Id. at 43.
38. Id. at 55-70.
39. Id. at 56-59. This phase may last for as long as 10 years. Id. at 58.
40. Id. at 56-59.
41. Id. at 60.
42. Id. at 59-65.
43. Id. at 62.
44. Id. at 65-66. This stage varies in length but can persist for several months. Id. at 69. Walker indicates that the third phase of the cycle does not exist at all in some battering relationships; in others, it disappears over time. Kinports, supra note 2, at 397 n.17 (citing Lenore E. Walker, The Battered Woman Syndrome Study, in Dark Side of Families: Current Family Violence Research 31, 44 (D. Finkelhart & R. Gelles eds., 1983)).
46. Id. at 65.
47. Id. at 67.
48. Id. at 69.
lems, and even if options exist for escape, she does not perceive them. In addition, the woman often believes that the batterer will kill her even if she leaves. In this situation, the battered woman feels permanently trapped in a world of violence and pain.

In her mind, two alternatives often emerge during or after a violent attack: kill or be killed.

B. Why Battered Woman Syndrome Testimony Is Important

Battered woman syndrome is not by itself a defense to homicide. Defendants use expert testimony on the syndrome because it is relevant to a claim of self-defense. In Florida a person is justified in the use of deadly force only if reasonable belief exists that the use of such force is necessary to prevent imminent death or great bodily harm. Traditional justifiable homicides occur when a person perceives an immediate attack. However, a battered woman typically kills her batterer not during the attack but after the battering incident has occurred.

Expert testimony on battered woman syndrome is especially critical given the inherent sex bias in the law of self-defense. Historically, standards of justifiable force have been based on male behavior and expectations. In addition, the legal rules, which developed over time to determine what is reasonable when one uses deadly force and what is a reasonable belief of imminent danger, evolved from a "reasonable man" standard. The reasonable man standard purports to be a gender-neutral standard, but in the area of self-defense, this is arguably not the case.

50. Hudnut, supra note 49, at 981; Schroeder, supra note 32, at 559; see also supra note 34.
51. Walker, supra note 31, at 75; Eber, supra note 6, at 928-29; Hudnut, supra note 49, at 983. A battered woman typically believes that no matter where she goes or what she does, her batterer will track her down, and because of repeated threats, will eventually kill her. Eber, supra note 6, at 929. This perception is often a valid one. Indeed, the risk of homicide is 75% greater if the woman leaves. Schroeder, supra note 32, at 557 n.33 (citing IOWA COUNTY ATTORNEY'S ASS'N, PROSECUTING DOMESTIC ABUSE IN IOWA: A PROSECUTION MANUAL § 1.4(b), at 1-9 (1989)).
52. Buda & Butler, supra note 10, at 369.
53. Id.
56. See, e.g., Brown, supra note 2, at 668; Willoughby, supra note 1, at 175.
57. Hannel, supra note 19, at 472; Mather, supra note 2, at 566-68; Elizabeth M. Schneider, course material for Florida State University College of Law's Gender, Race and Law Course 1676 (1992) (on file with author).
58. See Schneider, supra note 57, at 1674. Schneider notes that the legal system has historically been more sympathetic toward a man for killing his wife's lover or for killing another male to prevent forcible sodomy than toward a woman for killing to prevent her rape. Id.
59. Id. at 1676; see 16 FLA. JUR. 2d Criminal Law § 1086 (1979).
60. Mather, supra note 2, at 571.
Two rules of self-defense have developed under this standard: the equal force rule and the imminent danger rule. Under the equal force rule, one may use deadly force only to combat deadly force. In a case of battery, the man most often strikes the woman with his hands, fists, or feet. Because of disparities in size and strength, as well as lack of experience in physical combat, when a woman defends herself against an attack by an unarmed man, she usually resorts to a gun, knife, or other item, rather than using her hands and fists. Under the traditional interpretation of the deadly force rule, this use of a deadly weapon is unreasonable. Jury instructions usually state that a defendant justifiably uses deadly force only when she reasonably believes she is in danger of death or great bodily harm. "Great bodily harm" is generally defined as an injury of greater magnitude than that caused by hitting with hands and fists. Nevertheless, injuries sustained by a man fighting with another man differ from injuries inflicted on a passive woman beaten by a man in a violent rage.

Under the imminent danger rule, a person must believe she is in immediate danger when using force. This rule does not take into account previous abuse or the threat of future abuse. Women who kill their batterers usually do so after one battering incident and before another one occurs. Therefore, under the traditional interpretation of the imminent danger rule, the immediacy element is not met unless the batterer is attacking the woman when she kills him.

Expert testimony on the battered woman syndrome is relevant to prove a battered woman perceived she was in imminent danger and believed deadly force was necessary to prevent the batterer from seri-

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61. Schneider, supra note 57, at 1675. See also Kinports, supra note 2, at 428-34.
62. See generally WALKER, supra note 31, at 79.
63. Schneider, supra note 57, at 1675.
64. Id.; e.g., Jones v. State, 286 So. 2d 29 (Fla. 3d DCA 1973) (once the aggressor has been disarmed, the pursued cannot inflict bodily injury and claim self-defense). In Jones the victim pulled a knife on the defendant. Id. The defendant managed to take the knife away from her attacker whom she then stabbed. See also Teague v. State, 390 So. 2d 405 (Fla. 5th DCA 1980). In Teague the decedent forced his way into defendant's motel room and began beating her. Id. at 406. She fired one shot into a mirror to try to get him to stop. Id. After repeated violence, she shot and killed her attacker. Id. Despite defendant's claim of self-defense, the court found the evidence did not support the justification of using deadly force against an unarmed person and defendant was convicted of manslaughter. Id. at 406-07.
65. Schneider, supra note 57, at 1675.
66. Id.
67. Id.
68. Id.; see Kinports, supra note 2, at 422-26.
69. Schneider, supra note 57, at 1676.
70. Hannel, supra note 19, at 472; Mather, supra note 2, at 566-68.
71. Schneider, supra note 57, at 1676. But see Teague v. State, 390 So. 2d 405 (Fla. 5th DCA 1980). In Teague even when the batterer was killed during an attack, the court found the immediacy element was still not met. Id. at 406-07.
ously injuring or killing her. It is critical for the battered woman claiming self-defense to show the jury she feared imminent danger, and perhaps death, whereas ordinary persons, especially men, might not. From the perspective of the battered woman, danger is perpetually imminent. In her view, in her constant state of fear, the battered woman is faced with a dilemma of waiting for her abuser to kill her or striking out first.

Without expert testimony on the battered woman syndrome, jurors may not understand the special circumstances involved in the way a battered woman reacts to her situation. Many people, including jurors, have difficulty understanding why an adult woman does not leave an abusive relationship or seek help from police or friends. If the many myths about battered women are not addressed, the judge and jurors cannot properly gauge whether a battered woman had a reasonable belief that deadly force was necessary to prevent the perceived danger. Therefore, expert testimony on the battered woman syndrome should be admitted to help the jury understand why a battered woman did not behave like a "reasonable man."

C. Admissibility of Battered Woman Syndrome Expert Testimony in Florida Courts

Expert testimony may be admissible in Florida if a "disputed issue is beyond the ordinary understanding of the jury." The witness must

72. A battered woman's intimate knowledge of her batterer may make her more aware of impending violence and the degree of that violence than an objective observer would be. See Willoughby, supra note 1, at 183-84. Consequently, her reasonable belief would likely differ from the reasonable belief of a person who has not been battered. Id.

73. Eber, supra note 6, at 929.

74. Id. at 928; see also supra note 51.

75. Sometimes there are reasons in addition to the battered woman syndrome that help explain why a woman does not leave her abuser. Financial dependence is a major reason; often the woman may have no money, no job skills, and no place to go. When children are involved, these problems are magnified because the woman may be too afraid to leave the children with the batterer for fear of their safety or for fear of losing custody. Mather, supra note 2, at 552; see also Eber, supra note 6, at 902.

76. Many women are too humiliated to tell anyone of their circumstances. See Kinports, supra note 2, at 402-03; Mather, supra note 2, at 552. The typical reaction is to try to hide the abuse and make excuses for their injuries to friends, family, and doctors. Schroeder, supra note 32, at 559-60.

77. These myths include (1) battered women are masochistic; (2) battered women are crazy; (3) battered women are uneducated and are restricted to the lower socio-economic segments of society; (4) proper religious beliefs on the part of both parties will stop the battering; (5) abuse is caused by consuming alcohol; (6) the police and the legal system will protect the battered woman; (7) battered women have done something to deserve their beatings; (8) battered women can do something to make the relationship better; and (9) battered women can always leave their abusers. Walker, supra note 31, at 18-31.

have such knowledge or experience in the field in question so that it appears his or her opinion will probably aid the trier of fact.\textsuperscript{79} Admission of expert testimony on psychological syndromes has become a standard practice in Florida.\textsuperscript{80} Under Florida law, however, the trial judge has discretion over the admission of expert testimony.\textsuperscript{81}

The Florida Supreme Court Gender Bias Study Commission found such discretion is all too often abused because of the biases of the trial judges.\textsuperscript{82} The Commission reported that the "personal whims" of the court, rather than expert testimony case law, is the determining factor in whether the jury will hear battered woman syndrome testimony.\textsuperscript{83} The Commission reported instances in which courts routinely excluded battered woman syndrome testimony without first considering the merits or the relevancy of the testimony.\textsuperscript{84}

Three appellate courts in Florida have remanded cases where trial judges refused expert testimony on the battered woman syndrome.\textsuperscript{85} In \textit{Hawthorne v. State}\textsuperscript{86} the trial court did not allow testimony of a clinical psychologist about the battered woman syndrome. The defendant was convicted of first-degree murder for killing her husband, who had consistently beaten her and her children and who had threatened to "make the rounds" on the night of his death.\textsuperscript{87} On appeal, the First District Court of Appeal remanded the case, stating that the lower court should admit the testimony to aid the jury in determining the reasonableness of the defendant’s belief that deadly force was necessary to prevent imminent death or great bodily harm to herself or her children.\textsuperscript{88} The appellate court held, however, that admission of the testimony would be subject to the trial court’s determination of

\begin{footnotesize}
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\item \textsuperscript{79} FLA. STAT. § 90.702 (1991); see also United States v. Johnson, 575 F.2d 1347 (5th Cir. 1978), cert. denied, 440 U.S. 907 (1979).
\item \textsuperscript{80} Lindabury v. Lindabury, 552 So. 2d 1117, 1119 (Fla. 3d DCA 1989); Kruse v. State, 483 So. 2d 1383 (Fla. 4th DCA 1986) (discussing the evolution of expert syndrome testimony in Florida).
\item \textsuperscript{81} Hall v. State, 568 So. 2d 882 (Fla. 1990); Stano v. State, 473 So. 2d 1282 (Fla. 1985), cert. denied, 474 U.S. 1093 (1986).
\item \textsuperscript{82} COMMISSION REPORT, supra note 14, at 121-27.
\item \textsuperscript{83} Id. at 124; see also Margo Harakas, \textit{Survival or Murder?}, FORT LAUDERDALE SUN-SENTINEL, Dec. 15, 1991, at 4E.
\item \textsuperscript{84} COMMISSION REPORT, supra note 14, at 124-25.
\item \textsuperscript{85} Hawthorne v. State, 408 So. 2d 801 (Fla. 1st DCA 1982); Terry v. State, 467 So. 2d 761 (Fla. 4th DCA 1985); Borders v. State, 433 So. 2d 1325 (Fla. 3d DCA 1983).
\item \textsuperscript{86} 408 So. 2d 801. In the initial trial, the trial court would not allow testimony about the decedent’s threats of violence toward the defendant and her children. Id. at 804. The first conviction was reversed and remanded. Hawthorne v. State, 377 So. 2d 780 (Fla. 1st DCA 1979). Upon remand, the defendant sought the introduction of testimony on the battered woman syndrome. \textit{Hawthorne}, 408 So. 2d at 805.
\item \textsuperscript{87} \textit{Hawthorne}, 408 So. 2d at 804.
\item \textsuperscript{88} Id. at 806-07.
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whether the expert was sufficiently qualified and whether the subject area was sufficiently developed to support an expert opinion. On remand, the trial court held that the "state of the art" about battered woman syndrome would not support an expert opinion with any degree of confidence. On appeal, the First District Court of Appeal held that refusing to admit the testimony on the battered woman syndrome was not an abuse of the trial court's discretion.

In *Terry v. State* the defendant shot and killed her boyfriend, who had repeatedly broken into her apartment, beaten her, and threatened to kill her. The shooting took place during a battering incident. As in *Hawthorne*, the trial court refused to allow testimony on the battered woman syndrome. The defendant was found guilty of manslaughter and sentenced to twenty years in prison. On appeal, the Fourth District Court of Appeal held that expert testimony on the battered woman syndrome was relevant to the defendant's claim of self-defense, and that it should have been admitted to aid the jury in interpreting the surrounding circumstances affecting the reasonableness of her belief of imminent danger and the necessity of deadly force. The appellate court remanded the case with instructions to admit the testimony subject to the trial judge's determination that the expert was qualified and that the subject area was sufficiently developed to support expert testimony.

Finally, in *Borders v. State* the defendant killed her husband, who had beaten her regularly with his fists and sometimes with household items such as a frying pan. During an argument, the defendant, attempting to fend off an attack, stabbed her husband once and killed him. The trial court excluded the testimony of an expert on the battered woman syndrome, and the defendant was convicted of second-degree murder. The Third District Court of Appeal remanded the case and ordered the admission of expert testimony subject to satisfying the two-prong test in *Hawthorne*.

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89. *Id.* at 805-06.
91. *Id.* at 774.
92. 467 So. 2d 761 (Fla. 4th DCA 1985).
93. *Id.* at 763.
94. *Id.*; see *Hawthorne v. State*, 408 So. 2d 801 (Fla. 1st DCA 1982).
95. *Terry*, 467 So. 2d at 762.
96. *Id.* at 763-65.
97. *Id.*
98. 433 So. 2d 1325 (Fla. 3d DCA 1983).
99. *Id.* at 1326.
100. *Id.*
101. *Id.*
102. *Id.* at 1327.
As illustrated by these cases, the tendency of the Florida appellate courts seems to be toward a conditional admissibility of expert testimony on the battered woman syndrome. The appellate courts favor the admissibility of the testimony but condition it on the trial court’s determination that the expert is sufficiently qualified and that the subject matter of the testimony is sufficiently developed to support the expert’s opinion. Nonetheless, because on other occasions Florida appellate courts have declined to address the issue of battered woman syndrome expert testimony, and because only three appellate cases have addressed this issue in the last nine years, if a trend is emerging to admit testimony on the battered woman syndrome, it is developing at an extremely slow pace.

Judging from decisions in other states, however, the national trend appears to be heading toward some degree of admissibility of battered woman syndrome expert testimony. Although the opinions are not unanimous in the principles applied by the courts and in the rationalizations for admitting the testimony, courts nationwide appear to be increasingly allowing such expert testimony. Given this tendency and given the forcefulness of the opinions in the Florida cases, one may expect that Florida appellate courts will continue in the direction of admitting such testimony. The major concern of admissibility remains at the trial court level. Among trial judges, there is no uniformity in the way they determine admissibility of the evidence. Given the findings by the Florida Supreme Court Gender Bias Study Commission of hostility, insensitivity, and lack of awareness on the part of trial judges, only with frequent and persistent overrulings by appel-

103. See Coffee, supra note 54.
104. Id. at 383.
105. See Ward v. State, 470 So. 2d 100 (Fla. 1st DCA 1985) (trial court did not erroneously preclude expert testimony regarding the battered woman syndrome); see also Williams v. State, 547 So. 2d 1276, 1278 n.1 (Fla. 1st DCA 1989).

Of the three Florida appellate courts that have recognized the admissibility of expert testimony on the battered woman syndrome, only two have actually overturned a trial court’s decision to exclude the testimony. The First District Court of Appeal upheld the trial court’s decision to exclude testimony in Hawthorne v. State, 470 So. 2d 770, 774 (Fla. 1st DCA 1985). This is particularly distressing given that this is the most recent district court case involving the battered woman syndrome to be heard in a district court. See also Ward, 470 So. 2d 100.

106. One other Florida appellate case briefly mentions the battered woman syndrome. Trombly v. State, 541 So. 2d 798 (Fla. 4th DCA 1989) (affirming admissibility of battered woman syndrome evidence).
107. See Coffee, supra note 54, at 396.
108. Id.
109. See COMMISSION REPORT, supra note 14, at 121-27; see also supra text accompanying notes 80-97.
110. COMMISSION REPORT, supra note 14, at 131.
111. Id. at 121-27.
late courts\textsuperscript{112} will these judges begin to recognize the special circum-
stances of the battered woman and allow expert testimony to aid in
understanding her plight.

V. CLEMENCY IN FLORIDA FOR BATTERED WOMEN WHO KILL

If you are a woman currently imprisoned in Florida for the murder
of a husband, ex-husband, boyfriend, live-in lover or a family
member related by blood or marriage, and you are claiming abuse by
the victim, you may apply for clemency and have your case
considered under the Battered Woman Syndrome procedures by
requesting a waiver of the Rules of Executive Clemency.\textsuperscript{113}

In Florida executive clemency is a power vested in the Governor by
the \textit{Florida Constitution}.\textsuperscript{114} The Governor and members of the Cab-
inet collectively constitute the Clemency Board.\textsuperscript{115} The Governor, with
the approval of three Cabinet members, may, for any reason, grant a
full pardon, a conditional pardon, or a commutation of sentence.\textsuperscript{116}

In December 1991 Governor Lawton Chiles and the Cabinet took a
very progressive step and allowed battered woman syndrome to be-
come a basis for petitioning for clemency.\textsuperscript{117} Any woman incarcerated
for killing her abuser may now use the syndrome to request a waiver
of the Rules of Executive Clemency.\textsuperscript{118} This action came after the
Florida Coalition Against Domestic Violence petitioned the Governor
and Cabinet to establish an Executive Clemency Review Commission
to review cases of women who were forced to choose between risking

\textsuperscript{112} Such rulings would be unlike the ruling by the First District Court of Appeal in Haw-
thorne \textit{v. State}, 470 So. 2d 770 (Fla. 1st DCA 1985). \textit{See also} Ward \textit{v. State}, 470 So. 2d 100 (Fla.
1st DCA 1985).

\textsuperscript{113} OFFICE OF EXECUTIVE CLEMENCY, WAIVER INSTRUCTIONS FOR BATTERED WOMAN SYN-
DROME CASES (1992) [hereinafter INSTRUCTIONS].

\textsuperscript{114} FLA. CONST. art. IV, § 8(a).

\textsuperscript{115} OFFICE OF EXECUTIVE CLEMENCY, RULES OF EXECUTIVE CLEMENCY OF FLORIDA 1 (1992)
[hereinafter RULEs].

\textsuperscript{116} FLA. Const. art. IV, § 8(a); RULEs, supra note 115, at 1-2. A conditional pardon means
that if a violation of the conditions of the pardon occurs, a person returns to his previous status
of conviction. RULEs, supra note 115, at 2. A commutation of sentence may adjust a person's
sentence to one that is less severe. \textit{Id}.

\textsuperscript{117} Fla. Exec. Order No. 92-80 (March 30, 1992) [hereinafter Exec. Order].

\textsuperscript{118} INSTRUCTIONS, supra note 113. Under the Rules of Executive Clemency, an incarcerated
person may not apply for a commutation of sentence unless he or she receives a waiver of the
clemency rules. RULEs, supra note 115, at 2. The Parole Commission reviews waiver requests and
refers them, along with recommendations, to the Clemency Board. \textit{Id}. With the approval of two
Cabinet members, the Governor may grant a waiver of the rules. \textit{Id}. The cases or applicants
receiving waivers are placed on the agenda of the Clemency Board. \textit{Id}.
their own lives or killing their abusers. Florida now joins four other states—Ohio, Maryland, Massachusetts, and Texas—that have adopted new clemency policies giving consideration to the battered woman syndrome.

In Florida an applicant requesting consideration for clemency because of the battered woman syndrome must be incarcerated in a Florida prison; must be convicted of murdering a spouse, former spouse, person related by blood or marriage, or a person residing with the applicant in a spousal relationship; and must allege abuse by the murder victim. All applicants who claim to meet these conditions will be referred to the Florida Parole Commission as a case for consideration for a waiver of the clemency rules.

In reviewing each battered woman syndrome case, the Parole Commission will first verify all aspects of the request and determine if the above conditions are met. The Commission may conduct an investigation to ascertain the circumstances of the offense, the legal courses involved, and all other matters "germane" to the offense.

As part of its investigation, the Parole Commission may refer the request to one of three panels created by the Clemency Board. These panels consist of persons with knowledge and experience regarding the battered woman syndrome. The Clemency Board selects members of each panel from the following groups: a judicial member or other officer of the court; a medical doctor or other medical or psychological expert; and an individual with special knowledge on the issue of battered women. The Governor and Cabinet appoint the panel members. The current panel members received appointments in March 1992; of the nine appointees, six are women and three are men. The panels review cases referred to them by the Parole Com-

119. See, e.g., Donna O'Neal, Battered Women Who Killed Men May Soon Go Free, ORLANDO SENTINEL, Dec. 19, 1991, at B1. The decision by the Governor and the Cabinet came after a barrage of press conferences in which a group of formerly battered women "educated" these officials about the correlation between women in prison and domestic violence. Telephone Interview with Candace Slaughter, Chair, Women in Prison Committee, Florida Coalition Against Domestic Violence (July 30, 1992).

120. See Kennedy, supra note 29, at 1A.

121. OFFICE OF EXECUTIVE CLEMENCY, WAIVER PROCEDURES FOR BATTERED WOMAN SYNDROME CASES 1 (1992) [hereinafter PROCEDURES].

122. Id.; see supra note 118.

123. PROCEDURES, supra note 121.

124. Id.

125. Id.

126. Id.

127. Id.

128. Id.

129. Exec. Order, supra note 117. The current panels consist of the following members:
mission to determine whether the applicant suffered from the battered woman syndrome at the time she committed the crime in question.\textsuperscript{130} The panels then submit their final reports to the Parole Commission, which may review any information provided by the panel and report it to the Clemency Board.\textsuperscript{131}

The person requesting clemency has the burden of presenting to the Parole Commission and panel evidence of the abuse as well as evidence the abuse was directly related to the crime.\textsuperscript{132} Pursuant to the adopted procedures, the evidence presented should at a minimum address the following: (1) the defense used at trial, i.e., self-defense, accident, or diminished capacity; (2) police reports, prosecution reports, or depositions; (3) witness reports, e.g., if a neighbor, relative, police officer, or friend knew of the situation; (4) personal statement of the abuse; (5) contacts made with a domestic violence hotline or domestic violence shelter or any other assistance sought; (6) medical or counseling reports relating to the abuse; (7) child abuse reports from the Department of Health and Rehabilitative Services; (8) criminal record or lack thereof of the victim; (9) applicant’s current psychological condition and her perception of the batterer’s psychological functioning during the relationship; (10) history of alcohol or drug abuse by the victim; and (11) any instance, circumstance, or evidence of abuse by the victim.\textsuperscript{133} Once the Parole Commission completes its investigation, it submits a report to the Clemency Board.\textsuperscript{134} This report must contain all reports made by the panel as well as any other information that will assist the Clemency Board in its waiver decision.\textsuperscript{135}

If the Clemency Board grants a waiver request, the case goes on the board’s hearing agenda.\textsuperscript{136} A favorable decision by the Clemency

\begin{itemize}
\item \textbf{Panel #1:} Judge Lynn Tepper, Sixth Circuit, Florida; Dr. Doris B. Stiles-Glazer, psychologist and expert on domestic abuse, Coral Gables; and Dr. Wallace A. Kennedy, professor of psychology, Florida State University.
\item \textbf{Panel #2:} Margaret Ann Rosenbaum, assistant state attorney, Dade Co. (Chief, Domestic Crime Unit); Dr. Mary Ann Dutton, associate professor of clinical psychology, Nova University; and Larry S. Davis, attorney and former social worker, Broward County.
\item \textbf{Panel #3:} Roberta Fulton Fox, former state legislator, Miami; Dr. Cecelia Yoakum, psychologist and consultant to domestic violence shelters, Tampa; and Christine E. Rasche, associate professor of sociology, University of North Florida, and authority on women in crime.
\end{itemize}

Telephone Interview with Janet Keels, Coordinator, Office of Executive Clemency (Aug. 3, 1992).

\begin{itemize}
\item \textsuperscript{130} \textit{PROCEDURES, supra} note 121, at 1-2.
\item \textsuperscript{131} \textit{Id.} at 3.
\item \textsuperscript{132} \textit{Id.} at 2.
\item \textsuperscript{133} \textit{Id.} at 2-3.
\item \textsuperscript{134} \textit{Id.} at 3.
\item \textsuperscript{135} \textit{Id.}
\item \textsuperscript{136} \textit{RULES, supra} note 115, at 4.
\end{itemize}
Board could mean freedom or a reduced sentence for the imprisoned woman. Currently, the Parole Commission has several cases under review. \(^{137}\) Kimberly Soubielle, who shot and killed her abusive husband in 1987, became the first woman to receive clemency under the new rules when the Governor and five Cabinet members voted in March 1993 to reduce Soubielle’s fifteen-year sentence for second-degree murder to time served.\(^{138}\)

The recent acceptance by the Clemency Board of the battered woman syndrome as a factor in deciding clemency represents a significant development for battered women who have killed their abusers. The new policy adds another level of appeal beyond the courts for such women, a level that in these instances is badly needed. \(^{139}\) Because of male-oriented legal values, the law takes self-defense into account for a person in a bar fight but not for a person in an intimate relationship who is too afraid to leave and resorts to shooting her sleeping partner. In addition, as discussed above, the court system continues to vary widely in the handling of murder trials with a defense based on abuse. Many judges belittle expert testimony on the battered woman syndrome and refuse to admit such testimony. \(^{140}\) Too often the juries for women who have killed their abusers in Florida are not allowed to consider the history of abuse. \(^{141}\)

With its decision to review battered woman syndrome cases, the Clemency Board has acknowledged that women who kill their abusers usually have no previous criminal record, kill only after repeated and systematic abuse, and are unlikely to commit any other crimes of violence if released from prison. \(^{142}\) Perhaps the enlightened policy of the Clemency Board will bring about a change of attitude in Florida’s legal system overall as it relates to battered women. If anything, it may make the courts more aware of the special circumstances involving battered women. Conceivably, the new policy will prompt more judges to allow expert testimony on the battered woman syndrome in trials and perhaps open the door to allow the battered woman syndrome as a defense. At the very least, these new rules will send a mes-

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\(^{137}\) Telephone Interview with Janet Keels, Coordinator, Office of Executive Clemency (Sept. 29, 1992).

\(^{138}\) Debbie Salamone & Diane Sears, Woman Who Killed Husband Released from Prison on “Battered-Wife” Claim, TALLAHASSEE DEMOCRAT, Mar. 11, 1993, at B1. Soubielle's conviction will remain on her record and she still must serve fifteen years of probation. Id.

\(^{139}\) Quality of Mercy? Yes!, MIAMI HERALD, Dec. 29, 1991, at 2L.

\(^{140}\) Id.

\(^{141}\) See Kennedy, supra note 29; O’Neal, supra note 119. See also Hawthorne v. State, 408 So. 2d 801 (Fla. 1st DCA 1982).

\(^{142}\) Mercy for Battered Women, ST. PETERSBURG TIMES, Dec. 20, 1991, at 20A.
sage to the Florida legal system that it is time for a change in the old system that perpetuates indifference to battered women.

VI. Conclusion

The problem of abused women pervades and seriously flaws American society. Because the problem is so far-reaching and involves so many people, it has not gone unnoticed, but rather unacknowledged and treated with an astonishing degree of indifference by society and the legal system. The police, state prosecutors, and the judicial system have persisted in upholding beliefs about male justifications for domestic violence. The legal system, consequently, has historically not been very sympathetic to an abused woman who, for many reasons, does not leave her abuser.

Because of the national trend to admit expert testimony on the battered woman syndrome as relevant to a claim of self-defense, and because of the enlightened approach taken by a few appellate courts in Florida in allowing such testimony, the trend in Florida is moving, however slowly, in the direction of recognition of the special circumstances surrounding a battered woman who strikes out against her abuser.

In addition, the executive branch of Florida’s government has followed the lead of a few other states in recognizing the legal and social biases that prevent juries and judges who punish battered women from understanding why a battered woman may eventually act in non-traditional self-defense. By giving battered women who have killed their abusers a chance for clemency, an important sidestep has been taken around a judicial system entrenched in traditional notions about domestic violence. It is hoped that Florida’s new clemency policy will spur the state’s judicial system to become more aware of battered women and to take their plight more seriously.