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Defending Women

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JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE AND THE LAW. By *Cynthia Gillespie.* Columbus: Ohio State University Press. 1989. Pp. xiii, 252. $24.95.

Justifiable Homicide, by Cynthia Gillespie, a Seattle attorney and founder of the Northwest Women's Law Center, presents a chilling portrait of the lives of women who are beaten by their husbands. Through Gillespie's case studies, we meet women such as Caroline Mae Scott, whose husband beat her with his fists, his gun, belts, broomhandles, coathangers, and extension cords, and threw her down a flight of stairs when she was pregnant.[1] We meet Delores Churchill, whose husband, a police officer, aimed a gun at her head and subjected her to forced prostitution (p. 14). We are introduced to women of all races and ages who are kidnapped by their husbands, raped by them, and threatened by them; women who see not only their own lives, but those of their children, destroyed by abusive spouses.

But Gillespie's focus is not so much on the victimization of these women by their husbands as by the legal system. Gillespie focuses on cases in which the women, ultimately, were not passive victims. Instead, these women responded not only with violence, but with greater violence. These are cases in which abused women killed their husbands, are tried for murder, and plead self-defense. And mostly, they fail.[2]

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1. P. 2. Beatings during pregnancy are, according to both Gillespie and other studies, quite common. P. 52. *See* L. OKUN, WOMEN ABUSE: FACTS REPLACING MYTHS 237 (1986) (62% of women from a shelter sample were beaten during pregnancy); Helton, McFarlane & Anderson, *Battered and Pregnant: A Prevalence Study,* 77 AM. J. PUB. HEALTH 1337, 1337-39 (1987) (finding that 23% of a random clinic sample of pregnant women had been physically battered before or during pregnancy, and that "[t]he primary predictor of battering during pregnancy was prior abuse; 87.5% of the women battered during current pregnancy were physically abused prior to pregnancy").

2. Gillespie's cases are drawn primarily from appellate decisions. While such cases obviously shed light on the attitude of the legal system toward battered women, appellate cases in the criminal justice system are only the tip of the iceberg. Gillespie does not say what percentage of the women who kill abusive husbands are arrested, charged, and indicted in the first instance; what percent plea bargain and what kinds of bargains they receive; and what percent are acquitted at trial. As a result, it is difficult to place the cases she does study in any sort of appropriate context; an outrage is surely still an outrage, but it does matter, at least to those interested in reforming the system, whether it is the exception or the rule. Moreover, when one examines the footnotes, it emerges that some of her cases date back 20 or 30 years, or more, see, *e.g.,* pp. 53

They fail, in Gillespie's view, because the law of self-defense was written by men, for men. The requirements of that law, she argues, however appropriate in cases of fights between men, are unjust when applied to women who are abused by their husbands. Her position seems to be that the rules should be abandoned for battered women, with the hoped-for result that battered women will be acquitted when they murder abusive men.

At this point, the book begins to raise serious questions in my mind. The rules which Gillespie attacks do not exist, at least in the first instance, to torment battered wives. Unlike, say, the resistance requirement in rape law, they are not born from a historic distrust of women, or a desire to keep them powerless. They exist, quite simply, to preserve human life where deadly force is not reasonably necessary.

These rules can be simply stated, even if they are not always so simply applied. As every first-year law student learns, one is justified in using deadly force in self-defense only in response to a threat of death or serious bodily harm; only if the danger is "imminent" or immediately forthcoming; and in some states, and some locations (*e.g.*, outside the home), only if there is no available path of safe retreat.[3] None of these requirements is absolute in the sense that the defendant must, in hindsight, be proved *right* to prevail on a self-defense claim; rather, each test is based on the perspective of a reasonable man (the old cases) or person (the newer ones) in the defendant's position at the time. The fact that the decedent's gun was in fact inoperative is thus beside the point if the defendant reasonably did not know that; the fact that there was an unknown, and largely unknowable, path of retreat is equally irrelevant if the defendant was unaware of this path of retreat.[4]

In Gillespie's view, in a point she repeats often, these rules were designed to define "manly behavior."[5] But that is not so, really. In many cases, the rules exist not so much to define manly behavior as to limit manly instincts — in order to preserve human life.

It might be "manly" to respond to a slight or an insult with deadly force, but the requirement that the threat be one of death or serious bodily harm does not permit it.[6] Similarly, the imminence requirement is at least intended as a limit on vigilante revenge for attacks on

(1961), 54 (1954), 63 (1959), making it all that much more difficult to discern the current state of the system.

3. *See* W. LAFAVE & A. SCOTT, CRIMINAL LAW § 5.7(b) (2d ed. 1986).

4. *See generally id.* at § 5.7.

5. *See, e.g.*, p. 41.

6. Thus, the law has served not simply to celebrate manly instincts, but to limit them. My favorite example of this is the successful campaign waged by the English judiciary in the late eighteenth and nineteenth centuries against the honorable tradition of the duel. Although the "attitude of the law" was clear that killing in a duel was murder, accepting a challenge remained a matter of honor, and many juries would not convict. As one commentator put it:

> Some change in the public attitude towards duelling, coupled with the energy of judges in directing juries in strong terms, eventually brought about convictions, and it was not neces-

one's family that occurred hours or days before. And the retreat requirement is opposed by many precisely because it limits the manly instinct to stand one's ground and fight; it calls on men, and I think appropriately so, to sacrifice this aspect of manhood to the preservation of human life.

This is not to say that the automatic, unthinking application of these requirements to fights between men and women, or husbands and wives in particular, does not raise potential problems. The effect of the rule disallowing deadly response where nondeadly force is threatened may be particularly harsh for women, for their alternatives may be more limited. To expect or demand that women, who are likely to be smaller and less adept with their fists than most men, respond like schoolboys in the yard when attacked may be to leave them utterly without defenses.

A similar problem arises in rape law, where the requirement of force has been defined according to a woman's response, and where her failure to "fight back" in traditional, schoolboy terms — to use her hands or her fists to resist an unarmed man — leads some courts to conclude that there must have been no force in the first instance.[7] But the answer, it seems to me, is a great deal easier in rape law: I have argued, as others have, that a woman should not be required to fight back with her hands and fists, that it should be enough if she *says* no, and that a man who proceeds in the face of such verbal resistance may fairly be held to have used force.[8]

The hard question in self-defense cases, however, is not whether it will suffice for a woman to use *less* force than her male attacker; it is whether she is privileged to use more, to use deadly force when he may not. It is easy to characterize the current rule as one written by men and for men. But what should the rule for women be? Should a woman be privileged to respond to a fist with a gun? Cynthia Gillespie seems to say yes; indeed, she almost assumes it. But would she let a small, diminutive man do the same? Would she let a woman respond that way to the attack of her strong and aggressive sister? Should we? For me, at least, Gillespie's automatic response is not always so automatic; it requires careful consideration of the individual woman and the individual facts.[9]

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sary to hang many gentlemen of quality before the understanding became general that dueling was not required by the code of honor.

Williams, *Consent and Public Policy,* 1962 CRIM. L. REV. 74, 77.

7. *See, e.g.,* State v. Alston, 310 N.C. 399, 407-09, 312 S.E.2d 470 (1984) (holding that resistance is not required to demonstrate nonconsent, but that in the absence of resistance, or of weapons, no "force" can be shown); Commonwealth v. Mlinarich, 345 Pa. Super. 269, 498 A.2d 395 (1985) (holding that "forcible compulsion" required "physical compulsion or violence").

8. *See* S. ESTRICH, REAL RAPE 92-104 (1987).

9. In this sense, while women may kill their abusive partners "as women," *see* MacKinnon, *Towards a Feminist Jurisprudence* (Book Review), 34 STAN. L. REV. 703 (1982), they also kill as individuals. Ignoring womanhood in favor of some standard of "reasonable personhood" is

Similar problems arise with respect to the imminence requirement. Traditional self-defense doctrine allows a woman to respond with deadly force in the face of a serious beating by her husband. But traditional self-defense doctrine does not allow her to respond eight hours later, or when he is asleep, or as he is walking out of the house. Gillespie acknowledges that "many self-defense killings by battered women . . . take place when the man is sleeping, or when his back is turned, or by a shot through a door that he is threatening to break down" (p. 69). Imminence may not prove a problem when he is threatening the door, but it surely does when he is asleep. In Gillespie's view, the law — and not the woman's response — is the problem:

> The battered woman learns from her experience that there is nothing, literally nothing, she can do to stop a beating after it has begun and that struggling or fighting back will likely only make his assault more furious. Helpless, her only option is to take what measures she can to minimize the damage and endure the beating until her assailant decides to stop. It is small wonder that such a woman, knowing that another beating is inevitable and that she will be helpless to defend herself against it once it has begun, may seek, or seize, an opportunity to defend herself that will have some chance of success. [p. 69]

But shooting a man in the head after he has gone to bed (the story Gillespie uses to illustrate this point) (p. 70) is not simply a means of defense "that will have some chance of success" — it is a sure means of killing him. And women who arm themselves and succeed in killing their husbands are, by definition, hardly the "helpless" creatures of Gillespie's portrait.[10] Is it so wrong at least to ask whether alternatives were available? Is it unreasonable to expect that where death or serious bodily harm is not imminent, a woman be required to explain why she did not resort to such alternatives before she resorts to armed violence?

Gillespie reserves perhaps her most scathing criticism for the retreat requirement. In fact, a majority of American jurisdictions now hold that the defender need not retreat. Even in the minority that require retreat, however, a defender is not required to retreat when attacked in his or her home unless (in a few jurisdictions) the attacker is a co-occupant of the house.[11] According to Gillespie, for many women who have killed in self-defense

> the difference between having committed a serious crime and having committed no crime at all revolved around the absurd and totally irrele-

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plainly wrong, *see* State v. Wanrow, 88 Wash. 2d 221, 559 P.2d 548 (1977) (reversing conviction of woman convicted of murdering alleged child-abuser where instructions called for application of a reasonableness standard in masculine terms), but the judgment required is not of all women as women, but of this individual woman — of *her* state of mind and *her* circumstances. It is the absence of individualization that supports a feminist critique of self-defense standards as much, or more, as the misapplication of categorical standards.

10. *See* MacKinnon, *supra* note 9, at 729.

11. *See* W. LAFAVE & A. SCOTT, *supra* note 3, at § 5.7(f).

> vant question of who had a right to be on the premises and not whether the woman was in fact acting to defend herself. Even more absurd, there is no way in the world any one of these women could possibly have known that the law of self-defense was different for her than for other people because of the legal technicalities of her marital status or living arrangements. It is hard to imagine that any system of criminal law could really expect that a woman who is facing a homicidal assault by a violent man — desperately seeking to save herself — will stop to analyze their comparative claims to the property and then conclude — despite his knife or his gun or his hands around her throat — that she is legally obligated to try escaping from him; and thus, although there is a weapon at hand, which she *could* use to defend herself, she *should not* chose to use it. Unfortunately, however, in many states, that scenario is exactly what our law requires. [p. 87]

In fact, the rule Gillespie attacks is applied only in a minority of a minority of jurisdictions.[12] Moreover, the retreat requirement, even at its broadest, is not necessarily an "absurd and irrelevant inquiry." The question, in the minority of jurisdictions that require retreat, is a factual one: Is there an avenue available, with "complete safety," which would allow the individual to avoid the use of deadly force?[13] Obviously not, when the man's hands are around her neck, or the gun is pointed at her head — but I have never seen a court require retreat in those circumstances. Still, where there is a safe avenue of retreat available, where a life — even of a bad person — could be spared, I for one think that avenue should be taken; indeed, it seems to me that only deference to "manly instincts" supports what is considered the "less civilized" view.[14]

There is, finally, the problem of defining the reasonable person. It is not enough that a defender honestly believes that she is in imminent danger of death or seriously bodily harm, and (where applicable) that no avenue of retreat is available. These beliefs must not only be honestly held, they must be "reasonable."

The problem here, as always in the criminal law, is striking the balance between the defender's subjective perceptions and those of the hypothetical reasonable person. To apply a purely objective standard is unduly harsh because it ignores the characteristics which inevitably and justifiably shape the defender's perspective, thus holding him (or her) to a standard he simply cannot meet. If the defender is young or crippled or blind, we should not expect him to behave like a strapping,

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12. *See id.* at § 5.7(f) & n.62.

13. *See, e.g.*, State v. Abbott, 36 N.J. 63, 72, 174 A.2d 881, 885 (1961) (quoting the Model Penal Code approach that the use of deadly force is not justified when "the actor knows that he can avoid the necessity of using such force with complete safety by retreating").

14. *See* W. LAFAVE & A. SCOTT, *supra* note 3, at § 5.7(f) (terming the retreat requirement "a more civilized view"); 2 P. ROBINSON, CRIMINAL LAW DEFENSES § 131(c)(4) (1984) ("It merely states the obvious conclusion that, if the actor may retreat in complete safety, then the use of defensive force is not necessary.").

sighted adult. On the other hand, if the reasonable person has all of the defender's characteristics, the standard loses any normative component and becomes entirely subjective. Applying a purely subjective standard in all cases would give free rein to the short-tempered, the pugnacious, and the foolhardy who see threats of harm where the rest of us would not and who blind themselves to opportunities for escape that seem plainly available. These unreasonable people may not be as wicked as (although perhaps more dangerous than) cold-blooded murderers — imperfect self-defense generally reduces murder to manslaughter — but neither are they, in practical or legal terms, justified in causing death.

As applied to the cases Gillespie presents, the question is whether the reasonable person is a woman of a certain age and height and weight — or a battered woman. In recent years, defense attorneys have enjoyed some success in arguing for the admission of expert evidence of the "battered woman's syndrome,"[15] a syndrome in which women are repeatedly abused by the dominant man in their lives, generally in cycles of three phases: the tension-building stage, the acute battering incident, and the contrition phase.[16] The cycles explain why some women don't leave: the loving behavior of the third phase may affirm their hopes and strip them of their will. For many others, the cycles result in a state of passivity and paralysis which, coupled with economic dependence and the absence of external supports, traps them inside the relationship; indeed, the battering may itself be understood as a means of preventing separation,[17] and may even increase if and when the woman does leave her partner.[18]

At a minimum, such evidence is relevant to the woman's credibility as a witness: it provides corroboration for a story which many jurors might otherwise find, literally, incredible. In *State v. Kelly,*[19]

15. *See* Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense,* 8 HARV. WOMEN'S L.J. 121 (1985); Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense,* 15 HARV. C.R.-C.L. L. REV. 623 (1980); Schneider & Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault,* 4 WOMEN'S RTS. L. REP. 149 (1978).

In addition to the relevance question discussed in the text that follows, controversy also exists as to the scientific reliability of evidence of a battered women's syndrome. *Compare, e.g.,* State v. Kelly, 97 N.J. 178, 478 A.2d 364 (1984) (accepting such evidence as reliable) *with* Ibn-Tamas v. United States, 455 A.2d 893 (D.C. App. 1983) (upholding the exclusion of such evidence).

16. *See generally* R. LANGLEY & R. LEVY, WIFE BEATING: THE SILENT CRISIS 112-14 (1977); M. PAGELOW, WOMAN-BATTERING (1981); L. WALKER, THE BATTERED WOMAN 55-70 (1979); L. WALKER, THE BATTERED WOMAN SYNDROME (1984).

17. *See* Mahoney, *Law and Racial Geography: Public Housing and the Economy in New Orleans,* 42 STAN. L. REV. 1251 (forthcoming 1990).

18. *See* U.S. DEPT. OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE 21 (1983) (finding that three quarters of domestic assaults occur while victims are separated or divorced from their assailants). These women may also be among those most willing to report instances of domestic assault.

19. 97 N.J. 178, 478 A.2d 364 (1984).

for example, the New Jersey Supreme Court concluded that such expert testimony should be admissible at least to aid the jury in understanding the threshold question of why the woman did not leave, a question which — while not an element of the self-defense claim — would vitally affect her credibility as a witness. Such testimony is also clearly relevant to the question of what this woman did in fact believe: Did *she* believe that she was in imminent danger of death or serious bodily harm? Is she, in other words, not simply telling the truth in general, but telling the truth about that? The hard, and far more significant, question is whether such evidence is also relevant to and probative of the determination of the "reasonableness" of that belief.[20]

In this context, "reasonableness" can have two possible meanings. First, a woman's choice may be "reasonable," even if it conflicts with our own (or a mythical other's) assessment of the situation, if the woman is indeed right, or probably right, or at least more likely right than us, in her assessment. To the extent that her experience as a battered woman, and the syndrome from which she suffers, makes her a better judge than us of the seriousness of the situation she actually faces, there should be no question that such evidence is not only relevant, but also highly probative.

Thus, the man's past history of abusive violence against this woman is highly relevant, and that is so under the black letter of the criminal law, without regard to battered woman's syndrome.[21] The special knowledge — of the expert and of the woman herself — of the cycles of domestic violence can be understood as casting additional and needed light on this rather well-established form of inquiry. Does the woman know something we don't about the risk she faces? Does she, and her expert, foresee that a serious beating is imminent where you and I would simply not recognize the danger? If the answer is yes, then the jury should know it as well, and take it into account; reasonableness is not an invitation to blind ourselves to particular realities of the situation in favor of normative standards that simply are not applicable. The law does not apply an absolute necessity standard because to do so would be too harsh, not too lenient. Surely if we can be convinced that the woman is right, or even probably right, then how can her belief not be reasonable?

And one need go no further than this to resolve many of the cases which Gillespie poses. Where the woman is indeed in a better position

20. *See* Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195, 211-20 (1986) (arguing that "[t]he jury needs expert testimony on reasonableness precisely because the jury may not understand that the battered woman's prediction of the likely extent and imminence of violence is particularly acute and accurate").

21. *See e.g.*, State v. Dunning, 8 Wash. App. 340, 342, 506 P.2d 321, 322 (1973) ("seeing what he sees and knowing what he knows"); State v. Leidholm, 334 N.W.2d 811, 817-18 (N.D. 1983).

to know, where her belief is grounded in the reality of the situation, nothing in the law even as currently written requires or supports a judge's or jury's decision to ignore that reality in favor of a gentler one of its own choosing. One need not abandon imminence or threat or even retreat to understand that such cases are indeed traditional cases of self-defense, subject to the same requirements as any other self-defense case, properly applied to these individual facts.

But what of the woman who shoots her husband while he is sound asleep, and not, by anyone's account, about to do anything? What of the woman who faces a beating, but not — even within her own or her expert's description of the cycles of violence — serious bodily harm? Put aside the woman who has tried to escape in the past and been beaten for it, or who has called the police and been rebuffed, or who would be leaving her young children defenseless if she left. In these cases, properly applied, the retreat requirement cannot be met with the necessary "complete safety." But what of the woman who has never tried any of these alternatives? What of the woman who could walk out the back door and into a neighbor's house?

In such cases, the "reasonableness" inquiry, and the evidence of battered woman's syndrome, does not really go to the rightness of the woman's belief in the need for deadly force. It is, instead, a request to abandon the limits on self-defense out of empathy for the circumstances of the defender and disgust for the acts of her abuser. We can find her belief in the imminence of danger "reasonable" only by deciding that these standards mean less in the home than outside it, mean less when applied to cruel husbands who torment defenseless wives than to others.

On its face, that is a very uncomfortable request — at least for those of us who see in the rules of self-defense a laudable recognition of the value of human life and a desirable effort to articulate a normative standard which protects even aggressors and wrongdoers from instant execution or vigilante justice. The unfairness, as I see it, is not that such women may be punished for "overreacting," but that Bernhard Goetz — a white, male New York subway rider — does so much worse, ignores the rules so much more blatantly, and is exculpated for it.[22] In theory, vigilante men are not acting in self-defense; yet in practice, they seem to fare much better before juries and grand juries.

Recently, Todd Alan Broom used deadly force after seeing another man kill a woman in a Texas shopping mall parking lot. There was no evidence that Broom, who became known as "the shopping mall vigi-

22. Sullivan, *Goetz is Given One-Year Term on Gun Charge*, N.Y. Times, Jan. 14, 1989, at 1, col. 1; Gross, *Public's Response to the Jury's Decision: Divided and Deep-Seated Opinions*, N.Y. Times, June 18, 1987, at B6, col. 1. *See generally* G. FLETCHER, A CRIME OF SELF DEFENSE: BERNHARD GOETZ AND THE LAW ON TRIAL (1988); L. RUBIN, QUIET RAGE: BERNIE GOETZ IN A TIME OF MADNESS (1986); Carter, *When Victims Happen to Be Black*, 97 YALE L.J. 420 (1988).

lante," was in any imminent danger; but plainly, he was moved by what he had seen and the man he killed was himself a murderer (or at least an alleged murderer). I am certain that some of the women in Cynthia Gillespie's book feel even greater anger after they have been beaten themselves, or after they see their husbands beat not a stranger, but their own children. And I have no doubt that some of these husbands and fathers are far more worthy of our hatred and disgust even than the killer who shot his ex-girlfriend in the Texas parking lot, let alone the black teenagers whom Goetz shot on the subway.

The grand jury in Texas decided not to indict, and the chief prosecutor, while saying that as a law enforcement officer, he believed charges should be levied, emphasized that as a person, he certainly understood why the man had acted as he did, and why the grand jury did not indict. Broom's attorney was quoted as saying: "We feel that equity prevailed in this case, and sometimes you have to temper the law with equity in order to arrive at the just result."[23]

One can of course argue that the grand jury in Texas and the Goetz jury in New York were simply "wrong" — and even that the cases might have come out differently in the end had they been handled differently in the beginning (and certainly, in New York, had racism not entered into it). Ultimately, however, the empathy component of the criminal law is, for better or worse, both essential and inevitable. The criminal law *is* after all an expression of community standards — sometimes for better and sometimes for worse. It can be enforced only where the community — at least as expressed by prosecutors who are politically accountable to it, and jurors who are in theory representative of it — is willing to stand behind it.

The question, then, is not whether there will be empathy, but who will benefit from it. The usual answer is "people like us" — people with whom we identify, people whose shoes we can imagine wearing, people whose frustrations we share, people like Bernhard Goetz or even Todd Alan Broom.

The irony is that, statistically at least, battered women are more "like us" than most of us would care to acknowledge. If you believe the studies, as many as a third of the relationships between men and women involve violence of some kind.[24] To be sure, in the overwhelming majority of these, the women do not kill; battered women who kill

23. *See Texas Grand Jury Refuses to Indict Man Who Killed Fleeing Murderer,* L.A. Times, Mar. 29, 1990, at A24, col. 1.

24. Constructing an accurate statistical picture is difficult given the reluctance of both batterers and victims to admit the problem. The National Center on Women and Family Law estimates that battery occurs in 24-30% of marriages. *See* NATIONAL CENTER ON WOMEN AND FAMILY LAW, WOMAN BATTERING: THE FACTS 3 (1989). In 1975 and 1985 surveys, Murray Straus and Richard Gelles found that 11-12% of American men were physically violent toward female partners. *See id.* at 20; R. GELLES & M. STRAUS, INTIMATE VIOLENCE (1988); M. STRAUS, R. GELLES & S. STEINMETZ, BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY (1980). A federal study in San Francisco of women who had been previously married

are the exception among battered women, the ones whose aggression, or desperation, or instability[25] leads them to reject or abandon the passivity which is itself the hallmark of the syndrome. Of course, the same is true of subway riders, and mall shoppers; most of us put up with the thugs, accept the muggings, surrender when faced with a demand for money. When Bernhard Goetz shoots his muggers, we applaud (or at least acquit) him; when Todd Alan Broom shoots a woman-abuser, we exonerate him; but when Caroline Scott or Delores Churchill kill their abusive husbands, we condemn them. Whatever the statistics tell us about actual experience, more of us seem ready to identify and empathize actively as subway riders and mugging victims than as "battered women," just as more of us are willing to admit that we have been robbed than that we have been raped.

I am not ready to abandon the requirements of self-defense because empathy is not always evenly applied; if I cannot always control juries with "the law," that is for me all the more reason to try to guide them with it. But I am not averse to trying to even the scales of injustice a bit. Admitting evidence of past batterings and expert testimony of battered woman's syndrome may not move us to try walking in that woman's shoes, but at least it tells us more about the person we are judging. It does not enforce empathy, but it may help us climb the barriers and traverse the distance that *we place* between ourselves and the victims of domestic and sexual abuse.

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found that 21% had experienced physical violence. *See* D. RUSSELL, RAPE IN MARRIAGE 89 (1982).

25. *See* Comment, *Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony and the Law of Self-Defense,* 62 IND. L.J. 1253, 1276-77 (1987) (arguing that battered wives "tend to be 'generally more maladjusted, with higher scores on psychosis, personality disorder, and neurosis factors' . . . . The danger is that what mental health experts define as a 'reasonable' survival skill developed by the battered woman is not 'reasonable' in the legal sense.").