Legal constructions of battered women: The limitations of the Battered Woman Syndrome in a sample of violent female offenders in prison.

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Legal Constructions of Battered Women:
The Limitations of the Battered Woman Syndrome in a Sample
of Violent Female Offenders in Prison

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1995

A Thesis Submitted to
the Faculty of Graduate Studies and Research
through the Department of Sociology and Anthropology
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at the University of Windsor

Windsor, Ontario, Canada

1995
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Abstract

The purpose of this research was to provide a critical examination of the Battered Woman Syndrome (BWS), with respect to its legally relevant premises and its uses in the legal defenses of women who have committed violent crimes relating to their experiences with domestic violence. This was to be accomplished through a qualitative examination of case files for fourteen women of Michigan’s Battered Women’s Clemency Project, entitled Freedom Link. The case files contain interview data and documentation of women’s experiences with domestic violence, information about their crimes, and details about their encounters with, and the handling of their cases by, the criminal justice system.

The findings of this research support the literature in the field to date which acknowledges the extensive limitations of the legal use of the BWS, based on cases of BWS expert testimony. This research, however, has moved beyond this to uncover the significant element of BWS non-use and neglect, which is paramount to any analysis which attempts to address the extent to which the BWS can help battered women when they are tried for committing violent crimes.

In the cases examined in this research, criminal justice agents failed to construct battered women in terms of their complex experiences with domestic violence. They tended to minimize, normalize, and even neglect to present or support accounts of battered women's experiences which acknowledged the diverse and severe forms of abuse they suffered at the hands of their abusers. Even women's own defense attorneys failed to demonstrate how women's experiences with domestic
violence led them to fear their abusers and act reasonably in their crimes, to preserve their lives and sometimes the safety of their children.

Finally, this research has revealed, based on a utilization of Carol Smart's work on the power of legal discourse and its resistance to feminist forms of knowledge, that cases of both BWS use and non-use must be located within the larger structure of legal discourse which alters and disqualifies the experiences of women and, particularly, the experiences of battered women.
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I must thank my family and friends for their support along the way, their encouragement to never 'settle' but to seek only my highest goals. Also to my friend Adrien Cameron, for being there from the beginning to the end with unqualified support and kindness, and always an ability to make things look bright again.

Finally, I am forever indebted to Susan Fair, of Michigan's Battered Women's Clemency Project. Without her trust, graciousness, hard-work, and commitment to battered women, this thesis would never have been possible.
This thesis is dedicated to the women of Michigan's Battered Women's Clemency Project.
This thesis grew out of the researcher's participation in the sorting and compilation of data for the purposes of Freedom Link.
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Chapter 1

Introduction

While theorizing around the issue of the feminist engagement with the state can offer a general orientation or direction for the formulation of strategies, the question remains as to whether particular reforms related to specific aspects of male violence against women will, in fact, have the desired effect.¹

The legal recognition of the Battered Woman Syndrome (BWS) has benefited numerous women by acknowledging that a woman's experience with domestic violence is key to understanding that she acted in self-defence when killing her abusive partner. In this way, the legal recognition of the Battered Woman Syndrome represents a hard-won gain for women in both Canada and the United States. However, when feminists operate within the framework of law, and work for legal reforms such as the one involving 'expert testimony' and the Battered Woman Syndrome, the question must be asked: is the reform able to serve the women for whom it was originally intended?

Scholars have pointed to the need for an extensive examination of the relationship between the Battered Woman Syndrome and the law.² The Battered Woman Syndrome, and its premise of 'learned helplessness,' was created as a descriptive tool to understand women's experiences with domestic violence. However, a great deal of concern has been raised about the effects of syndromizing women's experiences. In particular, the Battered Woman Syndrome has been criticized for its emphasis on a depiction of women as 'passive' and 'helpless.' Furthermore, the Battered Woman Syndrome is a model from which many women deviate, especially if

² Ibid.
it is rigidly and conservatively applied within a legal framework.

Critiques of the legal recognition of the Battered Woman Syndrome have, however, remained largely theoretical in scope. As the Battered Woman Syndrome continues to be utilized in women's legal defences, there is a distinct need for empirical research which addresses the legal recognition of the Battered Woman Syndrome in terms of its capacity to adequately describe women's experiences with domestic violence and how this violence can lead women to commit violent crimes, such as the killing of their abusive partners. Research must critically evaluate the BWS, in terms of its capacity to actually 'help' women when they are tried for violent crimes relating to their situation of domestic violence.

This work uses empirical research to critique the Battered Woman Syndrome in terms of a woman's right to be heard and understood on the basis of her own voice and experience. Can the Battered Woman Syndrome, as it has evolved as a legal concept, adequately describe women's diverse experiences with domestic abuse? Furthermore, can its current form account for the ways domestic violence is related to women's violent crimes? With these questions in mind, this research provides a critical examination of the Battered Woman Syndrome in terms of how legal discourse has constructed 'the battered woman.' This construction is analyzed in light of data which outlines women's own reflections, as well as the accounts of others, about the abuse women have suffered, how this abuse is related to their crimes, and details about their experiences within the criminal justice system. Thus, this analysis allows for an account of how current constructions of battered women, and understandings of
the BWS, are inadequate and need to be re-conceived in order to assist in providing battered women with adequate legal defences when they are tried for violent crimes.

Chapter II of this thesis describes the Battered Woman Syndrome and reviews existing literature on its legal use. Chapter III presents a theoretical orientation useful for understanding the problems surrounding the feminist use of law as well as the limits of legal reform with respect to the BWS. Chapter IV outlines a method for the analysis of data on battered women who have committed violent crimes. Chapter V presents an examination of the legally relevant aspects of Lenore Walker's BWS, in relation to women's lived experiences with domestic violence. Chapter VI describes women's violent crimes in terms of their forms and characteristics, and comments on the applicability of the BWS to women's acts of violence. Chapter VII provides an examination of the ways in which key criminal justice agents construct battered women, and how uses and non-uses of the BWS contribute to these constructions. Chapter VIII describes the particular ways by which legal discourse, as a system of knowledge, alters and disqualifies battered women's experiences. Finally, Chapter IX concludes with a summary of the research and provides a discussion of the findings in relation to the guiding research questions.
Chapter II

Literature Review

The Battered Woman Syndrome

The Battered Woman Syndrome was developed and described most notably by
Lenore E. Walker in her books The Battered Woman and The Battered Woman Syndrome. In fact, according to Boland, Walker is "responsible for developing the
most widely-accepted definition of a battered woman and a model of the battered
woman's relationship to her batterer." Through her extensive analysis of hundreds of
women who had been abused, as well as through interviews with women who had
killed their abusive partners, Walker developed a model which categorizes battering as
a cycle consisting of three distinct phases: (1) tension building, (2) the acute battering
incident, and (3) loving contrition.

During the first phase, there is a gradual escalation of tension displayed
by discrete acts causing increased friction such as name-calling, other
mean intentional behaviors, and/or physical abuse. The woman attempts
to placate the batterer, doing what she thinks might please him, calm
him down, or at least, what will not further aggravate him...The tension
continues to escalate and eventually she is unable to continue
controlling his angry response pattern.

The second phase is characterized by more severe physical and mental abuse:

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5 Beth Boland, "Battered Women who Act under Duress," New England Law Review 28 (1994): 608. I recognize that there have been more extensive and recent works on precisely the topic of 'battered women who kill.' See for example Angela Browne, When Battered Women Kill (New York: The Free Press, 1989) and Ann Jones, Women Who Kill (New York: Holt, Rinehart, and Winston, 1980). However, the work of Lenore Walker will remain the focus here since she is primarily responsible for the creation of the BWS and it is her framework that is specifically referred to in both American and Canadian courts.
6 Walker, The Battered Woman Syndrome, pp.95-96.
Phase two is characterized by the uncontrollable discharge of the tensions that have built up during phase one. The batterer typically unleashes a barrage of verbal and physical aggression that can leave the woman severely shaken and injured. In fact, when injuries do occur it usually happens during this second phase.  

The final phase of Walker's paradigm actually provides the woman with 'positive reinforcement' for remaining in the relationship.

In phase three which follows, the batterer may apologize profusely, try to assist his victim, show kindness and remorse, and shower her with gifts and/or promises. The batterer himself may believe at this point that he will never allow himself to be violent again. The woman wants to believe the batterer and, early in the relationship at least, may renew her hope in his ability to change.  

This 'cycle theory of violence' was initially described by Walker in her first book, The Battered Woman, and was later re-tested in her The Battered Woman Syndrome where she still found "support for the cycle theory of violence in a majority of the battering incidents described by our sample."  

Finally, Walker's model requires that a woman experience the cycle of violence at least twice in order to be considered a battered woman.

The other central component of the Battered Woman Syndrome involves the concept of 'learned helplessness.' Walker believes that battered women are in a state of learned helplessness when, after experiencing the cycle of abuse, they become psychologically unable to take action and, as such, find themselves in a state of mental paralysis. This theory was modelled after the work of psychologist Martin Seligman.

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7 Ibid., p.96.  
8 Ibid.  
9 Ibid., p.97.
who performed experiments on caged dogs to illustrate the concept of learned helpless-ness. He subjected dogs to repeated electrical shocks and found that the dogs eventually stopped trying to escape, even when given the clear opportunity to do so.

"In fact, even when the door was left open and the dogs were shown the way out, they remained passive, refused to leave, and did not avoid the shock."\textsuperscript{10}

Walker uses these experiments to illustrate why battered women remain in abusive relationships. By this widely accepted model, the battered woman comes to believe she is helpless and becomes passive and submissive in her relationship.

Once we believe we cannot control what happens to us, it is difficult to believe we can ever influence it, even if later we experience a favorable outcome. This concept is important for understanding why battered women do not attempt to free themselves from a battering relationship. Once the women are operating from a belief of helplessness, the perception becomes reality and they become passive, submissive, "helpless."\textsuperscript{11}

Under the theory of learned helplessness, repeated beatings cause battered women to become "blind to their options"\textsuperscript{12} and to believe they can have no influence over the batterer and the battering.

Thus, in applying the learned helplessness concept to battered women, the process of how the battered woman becomes victimized grows clearer. Repeated batterings, like electrical shocks, diminish the woman's motivation to respond. She becomes passive. Secondly, her cognitive ability to perceive success is changed. She does not believe her response will result in a favorable outcome, whether or not it might.\textsuperscript{13}

\textsuperscript{10} Walker, \textit{The Battered Woman}, p.46.
\textsuperscript{11} Ibid., p.47.
\textsuperscript{12} Ibid., p.48.
\textsuperscript{13} Ibid., p.50.
Finally, Walker also refers to how the escalation of violence can lead to the death of either the woman or the man. She deals with this as a consequence of learned helplessness and claims that living with continual acts of violence leads both parties to "imperviousness to the seriousness of violence and death."\(^{14}\) Walker finds in her dealings with battered women that there is a high likelihood that "as the violence escalates, they will eventually be killed by or kill their men."\(^{15}\)

**The Legal use of the Battered Woman Syndrome**

The Battered Woman Syndrome has been used in criminal trials of battered women in the United States since the mid 1970s and, albeit more recently, has been recognized in Canadian cases where women have killed their abusive partners.\(^{16}\)

Specifically, the BWS has been used by women’s defence attorneys to help eliminate the sex-bias of the traditional legal doctrine of self-defence.\(^{17}\)

In both Canada\(^{18}\) and most jurisdictions of the United States\(^{19}\) self-defence laws

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\(^{14}\) Ibid., p.52.

\(^{15}\) Ibid., p.53.

\(^{16}\) See Julie Blackman, "Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill," *Women's Rights Law Reporter* 9 (1986): 227. Blackman describes the overall 'national trend' in the United States to view expert testimony as standard at the trials of battered women who have killed. She finds that this has occurred with increasing frequency since 1979. The Canadian situation has evolved somewhat differently. Only as recently as 1990, the Supreme Court of Canada, in a landmark decision, admitted expert testimony on BWS to aid in a battered woman’s self-defence claim in killing her abusive partner.


\(^{18}\) In Canada, section 34(2) of the federal Criminal Code contains the law on self-defence. See Comack, "Feminist Engagement with the Law," p.17 for a detailed explanation.

\(^{19}\) See Beth Boland, "Battered Women Who Act under Duress," p.613, note#44 where she claims that, while the legal test for self-defence varies among American jurisdictions, most states "require both proof that the defendant both subjectively believed that she was in imminent danger of serious injury and that such belief was reasonable."

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hold that "a person is justified in using deadly force to defend oneself if they are responding to an imminent threat of death or serious bodily harm and if the actor reasonably believes that the force is necessary."\(^{20}\) The notion of an imminent threat of danger, however, was created on the basis of a male experience and relies on a conceptualization of what is reasonable for the 'ordinary man.' It depends on an understanding of violence as it occurs where the threat of harm is immediate such as in the 'bar room brawl,' or with an attack between strangers of relatively equal power and strength. This traditional doctrine of self-defence proves inadequate for battered women because they experience violence and conflict very differently than this. However, by traditional standards of self-defence, "a battered woman was required to wait until a potentially fatal attack was underway before she could defend herself."\(^{21}\)

An understanding of women's self-defence necessitates a movement away from the 'reasonable man' standard to a consideration of factors such as differences in physical training and the size between men and women.\(^{22}\) It is completely understandable that women who have suffered abuse will experience danger, threat and self-defence differently than men.\(^{23}\) However, traditional interpretations of self-

\(^{20}\) Boland, "Battered Women under Duress," p.612.


\(^{23}\) For example, many battered women kill their abusers in their sleep and, by traditional interpretations of self-defence, are convicted since the attack is not an immediate one. See R. v. Whynot (1983), 37 C.R. (3d) 198 (N.S.C.A.). However, it is interesting that even as far back as 1928, the state of Michigan on one occasion recognized that a woman could in fact be in imminent danger from her sleeping husband. See People v. Giacalone, 242 Mich 16 (1928) as explained in Gail Rodwan and Jeanice Dagher-Margosian, "The Battered Women as Criminal Defendant," Michigan Bar Journal 73 (1994): 915-916. See also, E. Schneider & M. Jordon, "Representations of Women who Defend
defence, as premised on the experiences of men, cannot account for a woman's perception of danger or threat in an abusive relationship. Under traditional notions of self-defence:

The potential size and strength differentials between male and female partners and the cumulative psychic and emotional effects of an abusive relationship were discounted, resulting in the incarceration of women who killed their partners after they had already been severely victimized within battering relationships.24

The Battered Woman Syndrome can be used to eliminate the inherent sexism of self-defence laws by shedding light on the effects and circumstances of an abusive relationship and, hence, has the potential to make the law more applicable to the experiences and realities of battered women.

Importantly, however, BWS is admitted into women's trials through the use of 'experts' who testify as to characteristics of the BWS generally or, in some cases, about the individual woman and whether or not she suffers from the Syndrome. By admitting expert testimony on BWS, jurors are supposed to be in a better position to judge if a woman's behaviour was 'reasonable' when she acted in self-defence to kill her abusive partner.25 Expert testimony on the Battered Woman Syndrome is necessary because juries are generally unaware of the psychological consequences of domestic abuse.26 Therefore, defence attorneys use expert testimony on the BWS


26 See Blackman, "Potential Uses for Expert Testimony."
hoping that juries will better understand a woman’s experiences with domestic abuse and, hence, that she will receive a fairer trial.

Martha Shaffer explains that feminist litigators originally viewed expert testimony on the BWS as useful in two ways. First, expert testimony can elucidate the ‘reasonableness’ of a woman’s actions.

The central purpose of the testimony was to counteract the assumption that the woman’s actions were unreasonable. Establishing the woman’s actions as reasonable is crucial if the woman’s plea for self-defence is to succeed...For example, experts can explain to the jury that because of the persistent pattern of abuse they have suffered, battered women are adept at reading the batterer’s behaviour and recognizing signs that violence is imminent.\(^{27}\)

Ideally then, expert testimony was supposed to help battered women show that their violent actions were justified on the basis that they acted in response to an imminent threat of suffering death or serious bodily harm. Also, since traditional doctrines of self-defence require that "the defendant must have availed herself of all proper means to avoid physical combat before resorting to the use of deadly force,“\(^{28}\) the BWS can help explain why the battered woman did not simply leave her situation instead of killing her abusive partner. "Experts can also show why leaving their batterers is not a 'reasonable' option for many battered women."\(^{29}\) This leads to the second aspect of the usefulness of expert testimony on BWS, as originally conceived of by feminist litigators:

The secondary purpose of the testimony on the BWS was to counteract

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\(^{28}\) Boland, "Battered Women Under Duress," p.613.

\(^{29}\) Shaffer, "R v. Lavallee," p.617.
prevailing misconceptions about battered women. Battered women have often been depicted as provoking and even enjoying the violence. The fact that they have not left their husbands, but have remained to suffer continued abuse, plays into the stereotype that battered women are masochistic...Experts also point out that battered women stay not because they enjoy being beaten, but because their 'learned helplessness' prevents them from leaving the relationship.\textsuperscript{10}

Therefore, expert testimony on BWS is intended to show that a battered woman's actions are reasonable once they are described and understood in the context of her situation and experience with domestic abuse.

\textbf{Critiques of the BWS as a Legal Concept}

Elizabeth Schneider is an American feminist litigator who has been instrumental in having BWS used in women's trials and who, more recently as an academic and feminist legal scholar, has written at length about the limitations of the BWS as it is currently used in the legal defences of American women. In her most frequently cited work, she explains that the BWS was originally created to realize the goal of:

recognizing women's different experiences and the different circumstances in which women kill, and by explaining those different experiences and circumstances in the trial process.\textsuperscript{11}

However, her experiences as a litigator as well as her research in the area have led her to conclude that in fact "the expert testimony cases pose troubling questions about the degree to which these goals have been realized."\textsuperscript{12}

\textsuperscript{10} Ibid.


\textsuperscript{12} Ibid.
Schneider examined numerous American cases where expert testimony on BWS was used for women's legal defences. She found that these cases "resound with the very sex-stereotypes of female incapacity which women's self-defense work has sought to overcome." The cases reveal a focus on women in terms of their passivity and victimization instead of their ability to make rational choices to save their lives. In fact, it is largely a reliance on the model of 'learned helplessness' that cause women to be depicted in stereotypical and inaccurate ways through the criminal trial.

Judicial opinions suggest that lawyers who have submitted expert testimony have had this testimony focus primarily on the passive, victimized aspects of battered women's experience, their 'learned helplessness' rather than circumstances which might explain the homicide as a woman's necessary choice to save her own life.

The significant contradiction here is that the BWS is supposed to help explain a woman's reasonableness but, in depicting women as passive and helpless, the BWS actually fails "to describe the complexity and reasonableness of why battered women

33 Ibid.
34 Ibid., p.217, note #17 and 18. Here Schneider provides an extensive overview of numerous cases where women were depicted in these ways through the use of BWS. See also Charles Ewing, Battered Women Who Kill: Psychological Self-Defense as Legal Justification (Lexington Books, 1987), pp.45-46. Ewing contradicts a model of battered women as 'passive' and 'helpless' by showing that battered women kill for a 'rational' reason, namely to protect themselves from further mental or physical suffering. See also Angela Browne, When Battered Women Kill, pp. 113-145. Browne shows that women kill as last resort to battering and usually after they have attempted a series of alternatives. Browne also shows that battered women try repeatedly to escape but they are severely beaten for it. Finally, these women honestly believe that their batterer will eventually kill them. See also Noonan, "Strategies For Survival," p.257. Noonan explains that the woman she interviewed saw their actions as directly linked to the preservation of life. She also found that women's actions, in terms of escape and their crime, are not necessarily the same. In fact, women attempt to leave in numerous ways and even the act of killing is not constant across women. For example, some women kill their abuser themselves while others arrange the murder with a third party.
35 For an excellent discussion about the problems surrounding the concept of 'learned helplessness', both in how Walker derived her findings and the concept's failure to explain the actions of the women she interviewed, see Ian Leader-Elliot, "Women Who Kill in Self-Defence," Sydney Law Review 5 (1993): 414.
act. The other important implication of this is that it constructs women as 'sick' since the term 'syndrome' and the psychological description of a battered woman "conjures up images of a psychological defense--a separate defense and/or an impaired mental state defence." Finally, the result is the creation of a 'battered woman stereotype.' Importantly, women who do not conform to the stereotype have fewer legal options than women who do.

Schneider moves beyond this to suggest that expert testimony on BWS does, however, have the potential to show a woman's conduct as 'reasonable.'

Expert testimony on the experiences of battered women can also answer specific questions that are in judges' and jurors' minds of why the battered woman didn't leave her home, why she may not have reported the battery to the police, and, most importantly, why she believed that the danger she faced on the particular occasion was life-threatening. In short, it can show that her conduct was reasonable.

The BWS has a more 'complex' meaning than it is traditionally given credit and encompasses a variety of factors in a woman's experience with abuse. However, Schneider shows that regardless of its original meaning:

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17 Ibid., p.218.  
18 Ibid., p.217. For an excellent explanation of the tendency for women criminals to be viewed as 'sick' or 'crazy' see Ann Jones, Women Who Kill.  
19 Ibid., p.218. Schneider maintains that judges are not likely to recognize the need for expert testimony in those cases where the women's actions significantly depart from both the traditional 'male' model of self-defence and the passive 'battered woman' model. Also see Noonan, "Moving Beyond the BWS," p.253. Noonan explains that "the BWS sanctions very few accounts of abuse. It requires that a woman have suffered physical abuse...a woman has to have been through the 'cycle of violence' twice to qualify."  
21 Ibid., p.226. In fact, Schneider notes that Walker identifies numerous factors in her The Battered Woman Syndrome (1984). Walker moves beyond a depiction of battered women as 'passive' and 'instead' develops a more complex view of battered women. In this work, Walker moves to a more rational depiction of battered women as 'survivors.' For example, Walker claims that battered women develop numerous coping and survival skills.
the term BWS has been heard to communicate an implicit but powerful view that battered women are all the same, that they are suffering from a psychological disability and that this disability prevents them from acting normally.\footnote{Ibid., p.226.}

Instead of attempting to understand whether the woman in question was reasonable in using violence to protect herself, the courts use the model of learned helplessness to focus on the issue of why she never left the relationship, and thus rely on a model of women as passive and helpless. Schneider believes that this may be because "the court finds it easier to focus on those aspects of the testimony which characterize the woman as passive and helpless (i.e., her inability to leave) rather than active and violent but reasonable."\footnote{Ibid., p.230.} Finally, this focus is problematic in that it relies on a concept of 'excuse' for abused women who kill in contrast to the more realistic and valued notion that a woman was 'justified' in her act of saving her life. Expert testimony on BWS serves to highlight the woman's individual weaknesses and problems rather than affirm the circumstances of her act.

Self-defense as justification focuses on the act of defending oneself; it rests on a determination that the act was right because of its circumstances. In contrast, a finding of excuse, like insanity or heat of passion, focuses on the actor; it is a finding that the act, although wrong, should be tolerated because of the actor's characteristics or state of mind.\footnote{Ibid., p.234.}

Schneider's solution involves simply a modification of how BWS is used by lawyers and experts in women's legal defences. She believes that there needs to be a shift in focus from a woman's passivity, in not being able to leave the relationship, to
a "focus on the battering experience as well as the reasonableness of the woman's actions." Her emphasis is on what the 'defence' and 'expert' should do in order that a battered woman's experiences are better described in court. The defence and expert must portray the battered woman not as a victim but as a survivor who acted reasonably in her crime. They must avoid 'stereotyping' and must look to the particular situation of the woman who is on trial, for a full explanation of her experiences and why she killed to save her life. The defence must do this while also acknowledging the common experiences of battered women.

This fuller description of battered women's experiences is both more accurate and better explains to judges and juries why a battered woman doesn't leave the house and she kills to save her own life.46

Phyllis Crocker has also been instrumental in analyzing the implications of the legal use of the BWS. Her examination of expert testimony cases on BWS yields the finding that a new legal stereotype of the 'battered woman' has been created, and that this largely serves to disadvantage battered women who go to trial for violent crimes. Like Schneider, Crocker finds that "the courts have failed to understand the purpose it [the BWS] has intended to serve."47 However, Crocker's analysis moves beyond this to suggest that the courts have begun to judge the battered woman according to one of two standards: she is either judged on the basis of the 'reasonable man' standard, or upon the new standard of the 'reasonable battered woman':

battered women now appear to be measured against a new legal

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46 Ibid.
stereotype of the 'battered woman.' Rather than reconceiving the idea of the reasonable man, courts have replaced the hysterical woman with a battered one. If a woman does not meet the battered woman stereotype, she will be, as she always has been, judged as a reasonable man.\textsuperscript{48}

Crocker finds that when a battered woman goes to trial she must conform to rigid stereotypes in order for the court to deem her a 'battered woman' and, hence, for her to receive the benefits of expert testimony on BWS. If she does not fit neatly into the mould which the legal concept of the BWS creates, she is once again judged according to the 'reasonable man' standard since she is not truly considered a 'battered woman.' The BWS is not simply used to help explain the particular battered woman's situation and actions but, instead, is put out as a standard to which all battered women must conform.

As a result, a defendant may be considered a battered woman only if she never left her husband, never sought assistance and never fought back. Unless she fits this rigidly-defined and narrowly-applied definition, she is prevented from benefiting from battered woman syndrome testimony. Simultaneously, the prosecution characterizes her actions as unreasonable under the rubric of the reasonable man. Under that standard, the defendant must explain why her act of self-defense does not resemble a man's.\textsuperscript{49}

Crocker goes on to detail numerous cases where various aggressive and non-passive actions of a battered woman are raised as 'rebuttal evidence' that the woman meets the requirements of the narrowly defined 'battered woman.'\textsuperscript{50} The result is that the battered woman is not judged on the reasonableness of her actions when she defended

\textsuperscript{48} Ibid., p.137.
\textsuperscript{49} Ibid., p.144.
\textsuperscript{50} Ibid., pp.145-148. Crocker even finds cases where a woman's employment outside of the home is used to refute the application of a 'battered woman' defence.
herself from harm, but on the basis of who she is and whether her past indicates passivity and helplessness. "The jury is told to evaluate the defendant's life, not the reasonableness of her act of self-defense."\(^{51}\)

Other useful information about BWS, as it has evolved as a legal concept for use in the trials of battered women, can be found in the Australian case. Only as recently as the Spring of 1992, expert testimony on BWS was first used in an Australian court for the defence of a battered woman who killed her husband. In an analysis of this case, Angela Budrikis points to the inadequacy of the BWS model due largely to its reliance on a 'psychological' approach to domestic violence.\(^{52}\) She finds that the BWS cannot account for the experiences of many battered women, especially those who are Aboriginal and of other ethnic backgrounds.

Budrikis is particularly critical of Walker's 'learned helplessness' model since it "does not allow for the influence of factors such as Aboriginality, paternalism, and religious beliefs."\(^{53}\) Instead, it relies on a 'psychological' model of women's behaviour and, thus, focuses on the 'psychological inadequacies' of the woman as opposed to the real physical conditions which confront her, such as poverty. Even though the BWS represents a limited view of domestic violence, it is presented as a universal explanation of why battered women stay in abusive relationships and sometimes kill their partners.

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\(^{51}\) Ibid., p.149.


\(^{53}\) Ibid., p.366.
While domestic violence occurs in families of all socio-economic groups, issues of ethnicity and class shape experience, negating the value of theories that do not accommodate cultural diversity. One example of the narrow view of domestic violence contemplated in BWS is that it focuses on women who are assaulted by a partner. Aboriginal women, for example, are often attacked by other male relatives. 

Therefore, Budrikis believes that in order for BWS to be useful for all battered women who kill, attempts must be made to outline the cultural context of domestic violence. A purely psychological explanation of battered women, based on BWS and learned helplessness, will not necessarily apply to women from different ethnic backgrounds.

Julie Stubbs has also provided a useful analysis of the BWS as it has been used in numerous jurisdictions, including the Australian case. She makes six critical observations regarding the use of expert testimony on the BWS. First, expert testimony contributes to an individualized conception of violence and denies the important sociological factors surrounding male violence. Second, a woman's own voice is not heard in the trial and this "reinforces the notion that a woman is not a reliable witness." Thirdly, her experience is reconstructed in ways specific to the requirements of legal and scientific discourse. Fourth, the use of the psychiatric profession reinforces notions of the 'pathology' or 'mental disorder' surrounding the woman as opposed to her 'reasonableness.' Fifth, 'learned helplessness' does not explain why a woman takes 'action' such as killing her abusive partner. Finally, Stubbs' last point is that "a reliance on expert testimony shifts the focus from the

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54 Ibid., p.369.
56 Ibid., p.384.
myriad of reasons why a woman may remain in a violent relationship."\textsuperscript{57}

Many Canadian legal scholars have analyzed the legal use of the BWS in response to the Canadian Supreme Court ruling on \textit{R. v. Lavallee} which allowed expert testimony on BWS.\textsuperscript{58} Marilyn MacCrimmon finds that the use of expert evidence "abstracts the individual from her context and culture by narrowly defining the factors which influence her behaviour."\textsuperscript{59} She looks at the Lavallee decision and shows that only "some of the experiences of battered women have been incorporated into the decision."\textsuperscript{60} She calls for a re-casting of the concept of 'learned helplessness' and is highly critical of expert testimony which serves to disqualify the real experiences of women. She believes that "the expected consequences of various choices open to battered women"\textsuperscript{61} must be a focus in the trial. It is here that she commends the judgement of Madame Justice Wilson in the Lavallee case since she "grants the possibility that the battered woman's belief that escape is too dangerous may be rational."\textsuperscript{62} Finally, MacCrimmon makes the insightful conclusion that the "goal should be for the woman to tell her story herself."\textsuperscript{63}

Isabel Grant takes a different, but extremely relevant, approach to understanding the legal recognition of the BWS.\textsuperscript{64} She deals directly with the problem

\textsuperscript{57} Ibid., p.385.
\textsuperscript{58} \textit{R. v. Lavallee} (1990), 76 C.R. (3d) 329 (S.C.C.).
\textsuperscript{60} Ibid., p.46.
\textsuperscript{61} Ibid., p.49.
\textsuperscript{62} Ibid.
\textsuperscript{63} Ibid., p.46.
\textsuperscript{64} See Grant in Martinson et al., "A Forum on Lavallee v. R."
of the medicalisation and syndromization of women's experiences. She believes that, in syndromizing women's experiences, the BWS transforms "the reality of this form of gender oppression into a psychiatric disorder" whereby the victim of abuse becomes the "abnormal actor." In fact, Grant sees the model of 'learned helplessness' as the means by which the BWS comes to be associated with a form of mental abnormality.

Unlike other analysts, Grant uses her model to explain how the legal recognition of the BWS ends up requiring that battered women fit a very specific mould:

Once we turn the syndrome over to psychiatry, we label it, we set limits and boundaries around it and we regularize the anticipated responses to given situations.

Grant shows that the syndromization and medicalisation of women is not new and points to an overall trend whereby diagnostic categories are applied mainly to women. Grant's final comment on the Lavallee case is particularly interesting:

In summary, while I applaud the Supreme Court of Canada's attempt to acknowledge the reality of women's experience and I recognize the effort to focus on Ms. Lavallee rather than on "battered women" as a group, I regret that the experience of Ms. Lavallee was heard through a member of the psychiatric profession as if her experience reflected some weakness or abnormality in the woman herself.

Elizabeth Sheehy has also looked at the BWS in terms of its limitations for use in women's legal defences. However, her work has focused on practical ways of

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65 Ibid., p.51.
66 Ibid., p.53.
67 Ibid., pp.56-57. Here Grant draws an interesting parallel between BWS and other syndromes (such as Premenstrual Syndrome) that are 'created' for women.
68 Ibid., p.59.
69 See Sheehy in Sheehy et al., "Defending Battered Women on Trial."
'salvaging' the BWS so as to help more women. Sheehy agrees with other analysts in terms of the serious problems surrounding the current use of the BWS. In particular, the BWS penalizes:

those defendants who exercise lethal self-help and do not fit within the psychological profile because it both fails to focus on the real issue—the lack of alternatives for battered women—and serves to obscure the fact that existing legal standards of reasonableness do not incorporate women's experiences.\(^{70}\)

She goes on, however, to state that "we should be thinking creatively about how we might make use of and radicalise the BWS."\(^{71}\) She believes that we must work to change the content and 'evidentiary standards' for the BWS in response to two central problems.

Two significant weaknesses of the BWS are the medicalisation of violence against women as the individual woman's problem, and the focus of 'learned helplessness' to understand 'why the women did not leave.'\(^{72}\)

Sheehy calls for the demedicalisation of the BWS which would necessitate removing the BWS from "the control of psychiatrists and psychologists so that women's expertise can shape the legal concepts."\(^{73}\) This implies a need for a redefinition of who are the 'experts' on BWS. For example, shelter workers or women who have been involved in violent relationships could be used to testify instead of other 'experts' with less direct experience on the subject of battered women. By demedicalising the BWS, the emphasis on 'learned helplessness' could be shifted to a focus on women in

\(^{70}\) Ibid., p.394.  
\(^{71}\) Ibid., p.389.  
\(^{72}\) Ibid., p.393.  
\(^{73}\) Ibid.
terms of their efforts to protect themselves and to seek assistance. The focus on why a woman did not leave the abusive relationship presumes that she never left when, in fact, many women do leave but are forced to return due to lack of outside help or the real threat that they will be killed if they stay away.\textsuperscript{74} Sheehy shows that the BWS needs to be re-evaluated in terms of its current use and, furthermore, feminists need to envision ways of shaping its application.

Feminists can attempt to shape the BWS through preparation of materials for use by defence lawyers, through continuing education programmes for lawyers and judges, and through the media.\textsuperscript{75}

\textbf{Critique of the Literature}

While most scholars acknowledge the limitations of the BWS, in terms of how it has evolved as a legal concept, few have dealt with the questions of: Why is it that the BWS has been applied conservatively and rigidly within a legal framework? Why has the model been shaped and constructed in a very particular way? Why has Lenore Walker's work, which eventually acknowledged a more 'complex' view of the battered woman, been used and interpreted in ways which have ultimately failed the women Walker intended to help? What has caused the overwhelming 'misuse' of the BWS? Also, by focusing nearly exclusively on cases of BWS expert testimony, the literature to date has failed to examine the many cases of BWS non-use and neglect, and what the results have been for battered women who were tried for violent crimes relating to their experiences with domestic violence.

\textsuperscript{74} See Stubbs in Sheehy et al., "Defending Battered Women on Trial," p.385.
\textsuperscript{75} See Sheehy in Sheehy et al., "Defending Battered Women on Trial," p.394.
Some scholars do refer back to Walker's work and suggest that her analysis, and specifically her model of 'learned helplessness,' is to blame for the fact that the legal recognition of the BWS has failed to bring about the end-results that feminists desired. However, it is my contention that the problem lies deeper than this and is a direct result of legal discourse which is extremely powerful and which, time and time again, has demonstrated its tendency to fail women. The BWS has been used within the legal forum to the detriment of women and this has more to do with the system of law than it does with the work of Lenore Walker.

The literature to date generally reveals an uncritical acceptance of the feminist use of 'legal reform.' Some scholars, for instance, have suggested that the solution to the problem of the legal recognition of the BWS is to simply educate lawyers and judges about battered women and the BWS. A band-aid solution like this, however, fails to deal with more fundamental issues with respect to law's treatment of women, namely its tendency to disqualify and change women's experiences and its pattern of rendering women incredible.76

The literature has also generally failed to deal with the 'differential' aspects of women's experiences with domestic abuse and their resultant violent crime. For example, women do not in all cases simply kill their abusers. In some instances battered women hire a third party to do the killing. This also raises the issue that many women have been coerced into committing ancillary crime as a result of

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76 For a thorough analysis of how women are repeatedly rendered 'incredible' by the legal system, see Jocelynne Scutt, "The Incredible Woman: A Recurring Character in Criminal Law," Women's Studies International Forum 15 (1992).
domestic violence and fear of death. Can the BWS account for these women?

Women are not all the same even though the literature has generally treated them as such. They experience abuse, and their resultant crime, in many different ways.

There is a need for research which takes a more critical approach to the BWS in terms of how it operates in a complex system of powerful discourses, namely the discourses of law and medicine. The failure of the BWS, as it has evolved as a legal concept, must be analyzed against the larger and more fundamental issue of legal reform and the tremendous problems it poses for women. Feminist legal theorists have in fact dealt directly with the limits of legal reform when it is used to combat inequality and to help women.
Chapter III

Theory

The Feminist Use of Law and the Limits of Legal Reform

The movement which has encouraged the courts to utilize expert testimony on BWS represents one of many instances where feminists have focused on the 'law' in working for reforms which will deal effectively with inequality. The work of Carol Smart is particularly relevant in attempting to understand how and why feminists encounter numerous obstacles when working within the framework of the law to achieve reforms which benefit women. In her Feminism and the Power of Law, Smart utilizes notions of discourse, language, meaning, power and knowledge, to investigate why law is often resistant to the challenge of feminism. Smart believes that "law is so deaf to core concerns of feminism that feminists should be extremely cautious of how and whether to resort to law." However, it is important to note that Smart does not advocate that feminists abandon the use of law but, rather, law should remain a focus "not in order to achieve law reforms (although some may be useful) but to challenge such an important signifier of masculine power."

Smart's analysis of law's existence as a powerful discourse, and its overwhelming tendency to disqualify women's experiences and other forms of knowledge, is particularly useful. Smart derives her conception of discourse largely from the work of Michel Foucault. Joan Scott provides a useful summary of Foucault's work on discourse and its significance for feminism. She explains that a

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77 Carol Smart, Feminism and the Power of Law, (London: Routledge, 1989).
78 Ibid., p.2.
79 Ibid.
discourse is "a historically, socially and institutionally specific structure of statements, terms, categories and beliefs." Discourses are contained and expressed in organizations, institutions, and in words, or texts. They are important to understand in that they operate to develop 'truths' and, thus, construct 'meanings.'

Foucault suggests that the elaboration of meaning involves conflict and power, that meanings are locally contested within discursive "fields of force," that (at least since the Enlightenment) the power to control a particular field resides in claim to (scientific) knowledge embodied not only in writing but also in disciplinary and professional organizations, in institutions and in social relationships (doctor/patient, teacher/student).

Scott, drawing on the work of Foucault and the postmodernists, explains that discourses overlap and appeal to 'truths' contained in one another, thereby influencing and competing with one another. Dominant discourses are legitimated largely because they are assumed to exist 'outside' of human invention and are taken as 'true' on the basis of 'scientific discovery.' Since they are assigned this status, "they seem to be beyond dispute and thus serve a powerful legitimating function."

Smart moves beyond the work of Foucault and shows that law is a particularly powerful discourse. Law, as a system of knowledge, sets itself outside the social order and translates everyday experiences into legal relevances. Law makes claims to truth and exercises its power "not simply in its material effects (judgements) but also in its

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81 Ibid., p.35.
82 Ibid., p.36. For a useful discussion of discourse theory and its relationship to feminist practice also see Chris Weedon, Feminist Practice and Poststructural Theory (Oxford: Blackwell, 1987), 107-136. An analysis of dominant discourses is necessary to "understand the intricate network of discourses, the sites where they are articulated and the institutionally legitimized forms of knowledge to which they look for their justification."
ability to disqualify other knowledges and experiences."\textsuperscript{83}

So the legal process translates everyday experience into legal relevances, it excludes a great deal that might be relevant to the parties, and it makes judgment on the scripted or tailored account. Of course parties are not always silenced, but ... how they are allowed to speak, and how their experience is turned into something the law can digest and process, is a demonstration of the power of law to disqualify alternative accounts.\textsuperscript{84}

Smart clearly shows that law, by taking women’s experiences and translating them into what is deemed to be legally relevant, excludes a great deal and makes its judgement on the basis of accounts which are 'altered.'

Importantly, law as discourse 'overlaps' with other powerful discourses which define and construct women through the creation of knowledge and 'truths' about women and their bodies. In particular, the legal discourse overlaps with medical discourses "to make women no more than their bodily functions and processes, or bits of bodies."\textsuperscript{85} Law appropriates 'medical categorizations' to describe women on the basis of their problematic and irrational bodies.\textsuperscript{86} Smart refers throughout her work to the power of the 'psy' discourses and how legal discourse relies on knowledge from the 'psy' professions, namely psychiatry and psychology, to extend its terrain and power.\textsuperscript{87} Law extends its legitimacy by embracing language and meanings of other

\textsuperscript{83} Smart, Feminism and the Power of Law, p.11.
\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid., p.96.
\textsuperscript{86} Ibid., p.103. Here, Smart uses the example of 'Pre-Menstrual Tension' and its use in court to explain women's violent behaviour in terms of their hormones and 'problematic bodies'. See also Kathy Kendall, "The Politics of Menstrual Syndrome: Implications for Feminist Justice," The Journal of Human Justice 2 (1991).
\textsuperscript{87} Ibid., p.15.
discourses including the 'psy' professions, medical and scientific discourses. Like other discourses, law gains some of its power by using knowledge from discourses which rely on scientific knowledge. Shelley Gavigan (1988) has also dealt with law's use of 'truths' and knowledge from other powerful discourses. She finds:

the judiciary often incorporates externally constructed discourses into legal decision-making, which then renders such discourse virtually incontrovertible. In this way, courtroom decisions have ideological force, often serving to reproduce and reinforce female subordination.\(^9\)

However, while law often relies on medical or scientific knowledge\(^9\) it does not as easily utilize knowledge from other discourses, which are less grounded in 'scientific' truths and threaten the current balance of power:

law is extending its terrain in every direction. Moreover, whilst we can see a symbiotic relationship developing between law and the 'psy' professions, law is hardly challenged by other discourses, (e.g. feminism).\(^9\)

The implications of Smart's analysis are fundamental when considering the usefulness of, and practical problems with, feminist engagement with the law because it remains that:

we cannot predict the outcome of any individual law reform. Indeed the main dilemma for any feminist engagement with law is the certain knowledge that, once enacted, legislation is in the hands of individuals and agencies far removed from the values and politics of the women's movement.\(^9\)

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\(^8\) Ibid., p.17.


\(9\) See Smart, Feminism and the Power of Law, p.19. Smart uses the case of parental rights, and its reliance on knowledge from the 'psy' professions, to illustrate this point.

\(91\) Ibid., p.20.

\(9\) Ibid., p.164.
Smart is not maintaining, however, that law be left unchallenged by the feminist movement. Smart believes we should change our focus from one based simply on 'legal reform' to one based on "law's power to define and disqualify."

Finally, Smart shows that legal reform does not offer the promise of a solution and, therefore, feminists must be careful about how and when to use the law to deal with inequality. While the legal forum does provide a place to engage a "process of redefinition" it is important that feminists:

resist the temptation that law offers, namely the promise of a solution. It is equally important to challenge the power of law and to insist on the legitimacy of feminist knowledge and feminism's ability to redefine the wrongs of women which law too often confines to its significance.

The Limits of Legal Reform and the Battered Woman Syndrome

Smart's theory can be useful in understanding exactly how and why legal reform poses serious problems for feminists and why it is so difficult to use the law as a forum in which to combat inequality. Legal reforms, such as the one involving the use of the BWS to help battered women who have been accused of violent crimes, do not always result in the improvements and 'solutions' which their creators and advocates intended and believed in.

Elizabeth Comack has dealt extensively with the legal recognition of the BWS and has used the notion of law as a 'powerful discourse' to demonstrate that the implications and consequences of the legal recognition of the BWS are far from

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93 ibid.
94 ibid., p.165.
95 ibid.
favorable:

the legal recognition of the BWS could be taken as an illustration of the appropriation of a particular feminist discourse. While Lenore Walker's work (especially her earlier (1979) analysis) offers the potential for a more contextualized account which challenges the broader political, economic and social conditions of American society, the 'psy' and legal professions have chosen to privilege the more psychologizing components of that work, components which are more compatible with the dominant discourse.96

When knowledge of battered women, as articulated through the BWS, is incorporated into the legal forum it is somehow altered so to correspond with the language and requirements of the legal discourse. The result is that women's experiences are changed and the intended result of the legal reform is not met.97 The legal use of the BWS necessitates that experts, as members of the 'psy' professions, speak on behalf of women. Acting as members of a medical discourse, and speaking within the legal forum, the expert alters women's experiences to fit the requirements of the legal method.98 Comack shows this through her analysis of the landmark Canadian case

96 Comack, "Feminist Engagement with the Law," p.53.
MacCrimmon describes how women's experiences are translated once brought into the legal forum. See also, Dorothy Smith, "The Social Construction of Documentary Reality," Sociological Inquiry 44 (1978): 257-268. Smith's notion that knowledge is socially organized and constructed is particularly useful here. Knowledge does not 'objectively' exist but is socially accomplished in a very complex way. She claims that 'even the separation of the knower and known as distance moments is itself socially taken to be socially mediated. In the context we are concerned with here a highly complex socially organized practice mediates the relation of knower and known" (p.257). What is important for the analysis here is the notion of the 'knower' and the 'known.' Smith shows that in the production of 'documentary realities,' such as psychiatric accounts of women's lives, the final and 'official' account of the situation is very different than the original experience that is being documented. Smith's analysis of the social construction of documentary reality in particularly interesting with respect to battered women and the extent to which 'expert' accounts, as used within the legal forum and trial, differ from battered women's real and lived experiences.

98 For an excellent elaboration of how women's experiences are changed to meet the demands of the 'legal method' see Smart, Feminism and the Power of Law, pp. 20-25.
where expert testimony on BWS was admitted.

In the *Lavallee* case, it would appear that, while the gender bias in the law on self-defence has been named, the law’s response has been to embrace a compatible discourse - one which represents women’s lives in a way that can be easily heard or recognized by the law.\textsuperscript{99}

The problem is that what can be ‘easily heard or recognized by the law’ is often too far removed from women’s real experiences. The result is an ‘altered’ and ‘narrowed’ view of women’s experiences.\textsuperscript{100} This is particularly true in the case of battered women since, through the legal recognition of the Battered Woman Syndrome, battered women are re-defined and constituted through the discourse of law. What are the implications of this for an analysis of the usefulness of the BWS? With this question in mind, Comack’s conclusion is particularly relevant when she states that:

> our strategizing around law must also include careful consideration of the law’s power to define - as well as to subordinate and disqualify - women’s experiences.\textsuperscript{101}

**Usefulness of Theory to Research Problem**

This theoretical perspective is useful in comprehending how and why the legal recognition of the BWS has resulted in unfavourable outcomes, and results that were unintended by the very women who advocated the use of BWS in the trials of women accused of committing violent crimes. Smart’s notions of power, discourse, knowledge, and meaning can assist in the development of a critique of the legal use of the BWS.

\textsuperscript{99} Ibid., p.51.

\textsuperscript{100} See MacCrimmon in Martinson et al., "A Forum on Lavallee V. R., “ p.47. MacCrimmon finds that the removal of context is a problem with respect to the social construction of battered women in court.

\textsuperscript{101} Comack, "Feminist Engagement with the Law," p.53.
Smart's theory is particularly useful in understanding how 'the battered woman' has been constructed through powerful legal, scientific and medial discourses which overlap to determine very specific 'meanings' about battered women. Even though these meanings are socially constructed, they are put forth as 'truths.' These 'truths,' however, only encompass the experiences of some women and exist at the expense of numerous other women. Thus, this theory assists in an understanding of the 'battered woman' as constructed in a way that differs markedly from the real experiences and needs of battered women. Finally, this theory also assists in an analysis of the implications of the social construction of the 'battered woman' in terms of a woman's right to a fair trial where she is heard on the basis of her real and lived experiences with abuse and her resultant crime.

Research Questions

This theory leads to the following research questions for an analysis of data on battered women who have committed crimes.

1. Given that the BWS operates and must be located within the larger structure of legal discourse a) how is the battered woman constructed by legal discourse; and, b) in what ways does legal discourse, including through the uses and non-uses of BWS testimony, ultimately serve to change and even disqualify women's experiences with domestic violence and how this violence is related to their violent crimes?

2. Given that the BWS, as it has evolved as a legal concept, is narrow in scope and
has been applied conservatively within a legal framework, what factors would need to be taken into consideration for the implementation of a model that could a) account for the complexity of women's experiences with domestic violence and the ways in which these experiences are related to their diverse violent crimes; and, b) help women who are tried for committing violent crimes relating to their experiences with abuse?
Chapter IV

Methodology

The analysis for this project derives from an American data base,\textsuperscript{102} which was created by Michigan's Battered Women's Clemency Project and takes the form of case files on 58 women. Michigan's Battered Women's Clemency Project, like similar projects of its kind in other American States and in Canada,\textsuperscript{103} collects information on battered women who are currently serving prison sentences for committing a crime such as, and most usually, the killing of their abusive partners. The data are compiled and an evaluation is made as to whether or not the case could potentially qualify for 'clemency.' On a case by case basis, workers of the project, as well as lawyers, prepare the case for presentation to the Governor of the state. The state Governor can grant clemency since she/he is equipped with 'pardon power', as spelled out in the Federal Constitution of the United States.\textsuperscript{104} Pardoning power, or clemency, is necessary due to the fact that "the courts, because they make errors and because they are bound by the laws that the legislature makes, do not always justly resolve

\textsuperscript{102} Even though this is an American data base, its use in developing a critique of the BWS, out of women's experiences with abuse and their related crimes, is directly applicable to Canada where the same issues and dilemmas surround the legal use of the BWS. As it has been demonstrated, Canadian feminist legal scholars have pointed to numerous problems regarding BWS use in Canada and the problems current constructions of the 'battered woman' pose for women who are accused of committing crimes which are a direct result of their experience with domestic violence. Finally, Lenore Walker's model of the 'Battered Woman' is utilized in both Canadian and American courts and remains the most widely accepted definition of the 'battered woman.'

\textsuperscript{103} See Noonan, "Strategies of Survival," pp.247-248. Noonan briefly describes the project of The Canadian Association of Elizabeth Fry Societies (CAEFS) aimed at securing the release of Canadian women who are currently serving sentences for the killing of their abusive partners. She also provides a useful summary of the status of various clemency projects across the United States.

cases. In order to receive a 'pardon,' an appeal must be made to the state Governor, in this case the Governor of Michigan, to 'commute' the sentence the battered woman is serving. Cathleen Ridolfi has noted the three proper areas for the exercise of pardoning power:

First, there is the situation of factual innocence, second there is the case of technical guilt where there are significant mitigating factors, and third, there is the most challenging category which I call technical guilt with moral innocence.\textsuperscript{106}

Ridolfi has worked extensively on the cases of battered women accused of violent crimes and claims that all three categories justify clemency in battered women's cases. Battered women have generally not received fair treatment in court due to the unique and traditionally unacknowledged circumstances of their lives.

**Michigan's Battered Women's Clemency Project**

In April and August of 1990, an announcement was posted in all of Michigan's women's prisons which gave women prisoners the opportunity to apply to become part of Michigan's Battered Woman's Clemency Project, entitled *Freedom Link*. Women were asked to apply to the project if they believed that their conviction was a result of a 'domestic violence situation.' A 'domestic violence situation' was defined by *Freedom Link* to be any case where the woman "committed a crime as a result of fear of a man with whom the woman had a relationship."\textsuperscript{107}

A total of sixty-nine women initially applied to the project and, after a review

\textsuperscript{105} Ibid., p.837.
\textsuperscript{106} Ibid., pp.837-838.
\textsuperscript{107} Taken from the unpublished notes of Susan Fair, director and founder of *Freedom Link*. 
of the cases, seven women were eliminated on the basis that sufficient documentation indicated that domestic violence was not at all related to the woman's crime. A further four women were later eliminated on the basis of failure to correspond with the project, severe mental illness or, in one case, positive court action which would result in the woman being released.

The remaining fifty-eight women were deemed to have suffered severe abuse by men. For these fifty-eight women, workers of the project collected data on the women themselves, their situation preceding the crime as well as information about their prison experience, their convictions and the court proceedings of their case. Freedom Link also trained volunteers to gather information on the women in terms of both the domestic violence they suffered as well as the legal aspects of their convictions. This information was generated largely through interviews with forty of the women. Project volunteers both conducted the interviews and reported on them. The interviewers found, generally, that the women all suffered a great deal of mental and/or physical abuse. In fact, "most women were able to provide at least some, and in most cases a great deal, of independent corroboration for the claim that their convictions were directly connected to their 'domestic violence situations.'"

Summary of Data Base

While the women are not uniform in terms of the particular crimes they have committed, and the length of time they are serving, they share three important

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108 Ibid.
109 Most of the women killed their abusive partners. However, in many cases the woman hired a third party to do the killing. In other cases, the woman was involved in ancillary crime and was convicted of an offense such as murder or armed robbery.
characteristics. First, all 58 of the women are serving time in a Michigan correctional facility. Second, all of the women have suffered physical and/or psychological abuse. Finally, in all cases the domestic violence they suffered was related in some way to their crime. In many of the cases the abuse was never mentioned or dealt with in court or at the time of sentencing. In some cases expert testimony on BWS was used in their legal defence. However, such testimony did not necessarily serve the women and, in some cases, was used against them. The Battered Women's Clemency Project is in existence to deal with the devastating situations of these women in hopes that these women will eventually be granted clemency so they can be free and, in many cases, return home to their children.

Access to Data

**Freedom Link** is Directed by Susan Fair who has been working with the project since its beginning and who continues to work and fight for battered women who are seeking clemency. Susan Fair has given both my colleague, and myself, access to the data as interns of **Freedom Link**, involved in the compilation and analysis of data relating to the women's experiences with domestic violence and their related crimes and convictions. To protect both the women and the integrity of the project we have guaranteed that, in all work produced, the women's names will not be used. We have also agreed to provide Susan Fair with copies of all written work derived from the use of this data. Finally, details about the women and their lives will not appear in any form that could allow a reader to piece together a woman's individual story.\(^\text{110}\)

\(^{110}\) See Appendix A for Consent Form.
Data and Analysis

The analysis for this project is based on a sub-sample of this data, which consists of case files on fourteen individual women. These cases were chosen through the technique of 'purposive' or 'judgemental' sampling. Initially, in selecting cases I relied largely on Freedom Link's Project Director, Susan Fair, who has a vast amount of knowledge about each woman and her individual circumstances and experiences. Susan Fair was able to direct me to a number of cases which contained the most relevant and interesting information in light of the specific focus and purpose of my research; particularly with respect to the specific uses of BWS and cases of BWS expert testimony. Second, my own review of the data allowed me to select a group of cases which I judged to be 'diverse' in terms of (1) the forms, characteristics, and patterns of abuse, (2) the 'types' of, and circumstances surrounding, women's violent crimes; and, (3) women's experiences within, and the handling of their cases by, the criminal justice system. The selection of a 'diverse' group of cases was deemed to be essential to a critique of the legal use of the BWS given that women's different experiences with abuse are related to their also diverse experiences with crime, and include some crimes which are not traditionally, or as commonly, deemed and referred to as 'battered women's crimes.' The selection of a 'diversity' of cases was also believed to provide relevant information with respect to the different ways by which battered women are constructed by legal discourse, and the ways in which both BWS use and non-use contributes to these constructions. Finally, a diverse group of cases was important to an understanding of the different and particular ways by which legal
discourse changes and alters women's lived experiences with abuse and their related crimes.

This sub-sample is limited in size for two interrelated reasons. First, the sheer size of the files (in some cases one woman's file fills several boxes) necessitated that the analysis focus on a small sample of women. Second, this sub-sample size allowed for a thorough and extensive understanding of these women in terms of the abuse they suffered, the relationship of that abuse to their crime, and the ways in which they experienced the criminal justice system.\footnote{Like most qualitative work in Sociology, it is not the purpose of this project to provide generalizable findings. Rather, this kind of analysis serves the purpose of giving voice to women's lived experiences, with as little distortion as possible.}

Due to the confidentiality agreements in place for the protection of the women and their cases, specific information cannot be revealed on a case by case basis. However, the following general information, about this group of cases, can be revealed.

1. The women in this sub-sample were sentenced between 1977 and 1993. Most women, however, were convicted and sentenced in the mid to late 1980s.

2. The majority of the women were convicted of first or second degree murder, for the killing of their abusive partners. However, two of the cases involve forms of ancillary crime. One woman was convicted of second degree murder, for aiding and abetting her abuser in his violent crime. In another case, a woman was convicted of armed robbery, also for assisting her abuser in his crime.

3. Some women, in addition to their most serious crime, were convicted of felony
firearm (for possession of a gun during the commission of a felony). In one case, a woman received a second conviction for conspiracy to commit second degree murder. Finally, in one case a woman received a second conviction of felony firearm and a third conviction of delivery of cocaine.

4. All of the women received lengthy sentences. The majority were given Life sentences,\(^{112}\) while others received total sentence ranges such as 10-70 years, 25-50 years, or 22.5-37.5 years.

5. Three cases involved the use of BWS evidence. Two of these contained expert testimony on BWS and involved trials that took place in the early and late 1980s. In one case BWS was raised by the prosecution, and in the other case it was raised by the defence. The remaining case involved the use of BWS at the appeal level and provided an account of the BWS in legal documents on appeal.

6. Nearly all women received state-appointed attorneys.

The researcher acknowledges the methodological issues associated with the use of this data base and, specifically, a population where:

1. all of the women have been convicted for their violent crimes; and,
2. all of the women have been judged by Freedom Link to have suffered severe abuse which was related to their violent crimes.

The researcher is only accessing data which portrays a successful prosecution and an unsuccessful defence. These cases necessarily illustrate some kind of inappropriate

\(^{112}\) In the United States, a Life sentence for murder involves a prison term for one's 'natural' life. This is different than a Life sentence in Canada which involves incarceration for 25 years.
uses/non-uses of the BWS and will provide ample data to support the researcher's conclusions. The researcher would thus not expect to find cases of successful BWS use and all of the cases, due to the population they have been drawn from, will contribute to the conclusion that the BWS has failed to benefit the women in this sample. Finally, interview data and documentation collected by Freedom Link, are for the purpose of constructing an effective 'battered woman defence' and demonstrating the ways in which women's trials were 'unfair.' Therefore, it is reasonable that information and documentation produced by Freedom Link and its members also contains data which will predominately support the notion that BWS uses/non-uses failed to benefit the women in this sample and provide little or no data to dispute a critical evaluation of the BWS.

This research is based on the utilization of documents that contain multiple layers of subjectivity and consist of different social constructions for various purposes. Therefore, the nature of this data is such that documents will provide 'competing' and, at times, 'contradictory' constructions and 'truths' depending on the source of the document, and the party's role in producing the document. Certain constructions will privilege particular kinds of information depending on the 'purpose' of the document, its author, and/or its place in an adversarial criminal justice system. The researcher acknowledges that the privileging of information is dependant, in part, on the various roles of criminal justice officials. That is, criminal justice officials are limited in what is expected of them, and appropriate for them to produce, in an adversarial legal system where the goal of each side is to 'win' the case, and where procedural rules
govern the courtroom and the production of legal correspondence and documents.

The fourteen case files are extensive and diverse in terms of the information and documents they contain. With the exception of one file, all cases contain legal and domestic violence interview data and pre-sentence investigation reports. All interview data were collected by volunteers of Freedom Link, who visited each woman in prison and talked with them about their experiences with domestic violence, their crimes, and their encounters with the criminal justice system (interview guides may be found in Appendix C). Volunteer interviewers combined legal and domestic violence interview data into one report for each woman. Each woman was later provided with the report in order to make the necessary corrections and additions. The case files also contain a broad range of materials such as legal documents, correspondence, prison records, and agency reports. For an extensive listing of the documents contained in each file see Appendix B.

Periodic collaboration with Susan Fair, Director and founder of Freedom Link, provided additional data for analysis and assisted in providing elaboration beyond my sub-sample and pertaining to the rest of the data base. Additionally, four of the women in this sub-sample were interviewed for a documentary produced by Carol Jacobsen. These taped interviews were also utilized in this research. Carol Jacobsen produces documentaries on the subject of battered women who are serving time for killing their abusive partners. The documentary used here was produced early in 1994.

113 The pre-sentence investigative report is written by the probation officer, and is designed to help the judge in the sentencing process. It contains background information on the defendant (such as education and employment), the offender's and other's descriptions of the offence, and the probation officer's views on the offender's motivations and level of dangerousness to society.
and is entitled *From One Prison*. In this documentary, Carol Jacobsen facilitates women speaking on their own behalf about their experiences with domestic violence and their resultant crimes.

Data analysis was predominately based on the extraction of data according to three levels of inquiry and corresponding research questions:

1. **Women's Experiences with Domestic Violence:**
   - In what ways do the women describe their experiences with abuse?
   - What aspects of the woman's experience do and do not epitomize Walker's 'cycle theory of violence' and her model of 'learned helplessness'?
   - How and when do the women diverge from the basic premises and stereotypes of the BWS?

2. **Women's Violent Crimes:**
   - How and in what ways do women commit their violent crimes?
   - How do women define and understand their crimes?
   - In what ways is domestic violence related to women's crimes?
   - In what ways do the legally relevant premises of the BWS explain, or fail to explain, women's crimes?

2. **Women's Experiences with the Criminal Justice System:**
   - Was any form of domestic violence considered at the trial? How was it used?
   - How and in what ways was expert testimony on BWS used in women's trials?
   - Is there any evidence that expert testimony on BWS worked to the woman's benefit or detriment?
* If expert testimony on BWS was not used, what were the justifications for this?
* To whom, by whom, and how did the woman's story get told?
* How do criminal justice agents construct the battered woman?
* In what ways do members of the 'psy' professions construct the battered woman?

Data were extracted and recorded on a case-by-case basis, and according to the above-noted themes and levels of analysis. All data were recorded with careful attention to its author and the type of document in which was found. After the initial process of extraction, the data were read and classified according to sub-categories which would assist in the interpretation of meaning, and organization of ideas. The researcher allowed the data to inform her work, and thus allowed her research questions to evolve and change (into the themes and questions stated above and summarized into two major research questions in Chapter III) through the process of data extraction and interpretation.

The researcher immersed herself in the reading and re-reading of data in search of patterns and interesting findings, as per the aims of this research and the guiding research questions explained in Chapter III. Situations or episodes which were sufficiently similar, and which occurred in a few or more cases, were used as indicators of patterns. The researcher, however, did not ignore interesting findings which may have occurred in only one case. Due to the small sample size, the diversity of cases, and the exploratory and non-generalizing nature of this research, the researcher viewed any experience or segment of data as noteworthy, when she judged it to be necessary and interesting to her evaluation of the guiding research questions.
As the researcher became more aware of the significant element of BWS non-use, which was not initially anticipated to the degree that it was found, the data were re-read and re-classified in search of apparent justifications for BWS non-use and neglect. This was judged to be necessary in light of the nature of the research and the predominance of this finding. The element of BWS non-use and neglect became a crucial aspect of the research and thus caused the research questions to evolve and change from the proposal stage of this work.

In the writing up of the analysis which follows, the researcher has, wherever possible, used direct quotations from interview data and documents. When something was found in only one case, it was stated as such. However, the researcher attempted to focus on 'patterns' both when they were 'interesting' (and may have occurred in a few cases) and/or 'central' (and may have occurred in many cases). When something was found in one or a few cases, the researcher has referred to "some" women or cases. When something has become central and common to the majority of the cases, the researcher has referred to "many" women or cases.

The reader will find that the researcher has made extensive and continual use of detailed and direct quotations. The researcher has decided that the use of such quotations is crucial to both the quality and credibility of her work. Elaborative quotations increase the transparency of the research process by allowing for greater scrutiny of the researcher's interpretations of the phenomenon being studied. With this in mind, the reader should note that some quotations will appear in two or more places when they serve to illustrate different points, based on the researcher's interpretations.
of meaning. However, the researcher has attempted to extract quotations from a range of cases and eliminate the multiple use of particular quotations wherever possible.114

Finally, the researcher has attempted to ensure a reasonable level of credibility and dependability in the analysis which follows. Given the limitations, scope, and nature of this research, the researcher has, wherever possible, re-constructed the constructions of others (the women, members of the project, and criminal justice officials) with attention to the possible effects of her personal values and already existent knowledge of the subject matter. The researcher has attempted to let the data inform her work and her guiding research questions. That is, rather than requiring data to 'fit' her research questions, the researcher has re-formulated her research questions and made substantial changes since the proposal stage of this work. The researcher immersed herself in the data through the continual and time-consuming re-reading and reviewing of interview data and documents. Periodic consultations with the Project Director, Susan Fair, as well as discussions with the researcher's colleague, Sandra MacMillan, helped the researcher to monitor her findings and ensure that they were readily observable to others familiar with the data base. The researcher has also subjected her research process to the scrutiny of her thesis committee.

114 This issue would normally be avoided by assigning case numbers or names, and by referring back to individual cases throughout the analysis. Due to requirements of confidentiality, and the protection of the women and their cases, the researcher cannot refer to whole cases and stories.
Chapter V

Domestic Violence and the Premises of the Battered Woman Syndrome

As discussed in Chapter II, the Battered Woman Syndrome (BWS) was developed and described most notably by Lenore E. Walker who is "responsible for developing the most widely-accepted definition of a battered woman and a model of the battered woman's relationship to her batterer."¹¹⁵ This model is of particular interest here in light of the fact that its premises and stereotypes are often specifically referred to and utilized, in both Canadian and American courts, when women are tried for violent crimes relating to their experiences with domestic violence. Therefore, while it is not necessary to provide an extensive critique of Lenore Walker's work in terms of her analysis and findings, it is useful to examine some of the basic premises of her model in relation to the experiences of the women in this sample before moving to a more detailed analysis of the legal recognition of the BWS and its operation in the larger structure of legal discourse.

The 'Cycle Theory of Violence'

The first premise of Walker's BWS, and one which has been specifically referred to in trials of battered women, is the 'cycle theory of violence' which categorizes battering as a cycle consisting of three distinct phases: (1) tension-building; (2) the acute battering incident; and, (3) loving contrition.

1. Tension Building

Walker argues that during the first phase of abuse there exists a "gradual

escalation of tension' which is displayed by discrete acts ranging from name-calling to other mean intentional behaviours and which may or may not involve physical abuse. According to Walker, during this stage, the woman is sometimes able to 'placate' the batterer and return him to a more 'normal' state.

Several women in the sample, when describing the qualities and characteristics of their abusive relationships, referred to tension and violence which 'built up' over time, initially took on more subtle forms, and, in the beginning, seemed more within their control to resolve. Many women identified initial incidents of abuse which appeared to be in response to their batterer's feelings of extreme jealousy. A forensic psychologist summarized, for one woman, this early stage of abuse where the batterer's jealousy lead to verbal conflicts that were, initially, resolved through her ability to 'placate' her batterer.

Within a month ----- noticed a pattern developing of jealousy and possessiveness...It became worse to the point of his having screaming fits if he even thought she might have looked at another man. She talked him through it and in time he was under control. By now she believed she was very much in love with him and his efforts to control the extreme jealousy made her love him even more. There was a period of time where she described their relationship as 'beautiful' and 'wonderful'. Their sexual relationship was to them an almost unimaginable passion that ----- had never experienced before. This lasted only a few months but is was enough for ----- to fall deeply in love with ----- almost to a fault.

2. The Acute Battering Incident

Walker contends that battering relationships at some point move to a second phase characterized by more severe physical and mental abuse. The women in this

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sample appeared to experience an escalation of violence to this point. As Walker
finds, this second phase of violence consists of a "barrage of verbal and physical
aggression" which usually leaves the woman "shaken" and "with physical injuries."\footnote{117}
The forensic psychologist, referred to above, described this escalation of violence to
the point of the batterer's repeated "reign of terror":

----- immediately became violent with her, beginning a reign of terror.
----- used the same tactics as he did with his extreme jealousy. He
would abuse her, then cry and say he loved her, and that he did not
mean it only to turn around and do it again.

This 'barrage of verbal and physical aggression' takes on many forms for different
women. One woman provided, in a letter to the project, the following account of the
varieties of physical abuses she endured:

I went through beatings - was pulled out of bed in the middle of the
night, pregnant, and kicked in the stomach, ribs, my head smashed up
and down on the slate floor, picked up and thrown across the living
room...and have my head hit up and down again on the floor...he would
go through rages... I would be bent backwards against tables and
shaken.

Another woman described, in her letter to Freedom Link, a situation of physical abuse
which left her injured in a parking lot.

...also beat me and kicked me unconscious and left me in a parking lot
after the bar had closed, leaving me to make my own way home if I
was still alive.

Other women described numerous and diverse acts of abuse which included severe
physical beatings (often with the use of objects and weapons) resulting in serious
injury and, sometimes, hospitalization. Women described incidents where their

\footnote{117} Ibid., p.96.
batterer attempted to kill them by choking, stabbing, drowning and or burning them.

Extreme forms of psychological abuse always appeared to accompany physical abuse.

This aspect of the abuse will be dealt with shortly.

3. Loving Contrition

This third phase of Walker's cycle theory of violence provides the woman with 'positive reinforcement' for remaining in the relationship. After a battering episode the abuser will often "apologize profusely, try to assist the victim, show kindness and remorse, and shower her with gifts and/or promises."\(^ {118} \) \(^ {118} \) At this stage, "the woman wants to believe the batterer and, early in the relationship at least, may renew her hope in his ability to change."\(^ {119} \) \(^ {119} \) Many of the women in this sample identified, in interviews, such 'promises' as well as their hope that their batterer had changed his ways.

He would promise "I ain't gonna hit you no more" and then be affectionate and loving. \( ----- \) would give him another chance.

\( ----- \) consistently said he was sorry and would shower her with gifts but take them back at the next fight.

\( ----- \) would repent with sweet words and play the role of devoted husband. I would convince myself he had changed.

When one woman was asked by a police officer "Why, why did you keep hanging with him if you have problems all the time?" she responded: "Well, maybe it was just stupid of me, but I was thinking he was gonna change."

4. Escalating Violence

\(^ {118} \) \(^ {118} \) Ibid.

\(^ {119} \) \(^ {119} \) Ibid.
While it is impossible to use this data-base to create a comprehensive test of each stage of the cycle theory of violence, it is possible to suggest, from an examination of the cases in this sample, that the cycle theory of violence indeed describes some elements of the women's experiences with their batterer. Inherent in this cycle theory of violence is the fact that violence 'escalates' over time. This notion of 'escalating violence' is particularly relevant to the experiences of the women in this sample.

All of the women appeared to experience, and suffer from, a distinct change in their batterer's behaviour over time. In most cases, the batterer was initially extremely kind, compassionate, and even seemed to make an ideal mate. Women told Freedom Link interviewers that:

----- would promise unending love, undeniable trust, unending security and loyalty in our first days of our relationship.

----- put ---- on a pedestal and would do anything for her in the beginning.

---- was good-looking and fit and "he seemed to treat her very well."

In some cases, a woman's batterer actually provided her with support and safety in her difficult transition from leaving her first abusive husband.

During her divorce ---- was "understanding, compassionate and supportive, and seemed to ---- to be completely different from her first husband."

---- offered her a safe place to stay while trying to get away from her abusive husband.

While this initial phase could last for a period of a few months, and in some cases a few years, it was eventually replaced by a period of escalating violence. One woman
described this identifiable contrast in her batterer's behaviour in the following:

I had straightened up when I met ----- because at first he was so nice. But after two years he was so bitter and hateful. He told me if he couldn't have me no one else would when he got finished with me...He appeared to be so nice. I didn't believe there was any men alive like that. I didn't trust men because of two bad marriages...We talked for about five months before I moved in with him...I was scared to death of him after we'd been together for two years...instead of getting better it only got worse.

All women in the sample appeared to experience some form of 'escalation' in the violence of their batterer with respect to the intensity and frequency of attacks.

Two women explicitly stated this in letters to the project.

After he moved to --- the abuse was even worse than before. the beatings more severe and frequent.

--- was nice at times, then he'd start beating me, the beatings coming more frequently.

This escalation in violence can often mean that the batterer's apologies and displays of remorse, as described in the third phase of the cycle theory of violence, eventually cease to exist. One woman explained this in a letter which outlined her experience with domestic violence:

----- would at first apologize for beating me and be nice for awhile but more and more often he beat me, tried to drown me in the pool twice, using all of the drugs you could think of...and there were no apologies only threats..."if you ever tell anyone I ever laid a hand on you, I'll kill you" or "If you try to leave me I'll hunt you down and kill not only you but everyone you're staying with."

While Walker's cycle theory of violence seems to explain some aspects of women's experiences with domestic violence, and is particularly useful with respect to an emphasis on escalating violence, it tends to 'simplify' the abuse by categorizing it according to a small number of distinct and separate categories. An examination of
the data presented here revealed the complex and different ways by which the batterer attempted to gain and maintain control over the battered woman, and the ways in which women experienced domestic violence.

**The Complexity of Women's Experiences with Domestic Violence**

The following section will provide accounts of women's experiences with diverse and complex forms of abuse; many of which have traditionally not been focused upon but, as this research reveals, are significant elements of the abusive relationship and the means by which the abuser attempts to gain control over the battered woman. However, it must be noted at the onset that battered women are not all the same; the women in this sample experienced abuse in many ways and not all women experienced the same forms of abuse. That is, the following accounts, while showing the complexity of the abusive relationship and several patterns therein, show the 'diversity' in the kinds of abuse suffered from one woman to the next.

**Points of Escalation**

The women in this sample all experienced an escalation in their batterers' violence but identified many different points of escalation and variables influencing it. For some women, the process of escalating violence, and the 'changes' in their batterer's behaviour, occurred at identifiable times or stages in the relationship. Many linked the beginnings of escalating violence somewhere near a period of transition such as the beginning of marriage or a common-law arrangement. The following is a segment taken from a recording of police questioning:

Question: How long have you gone with ----?
Answer: About 17 years.
Question: That's a bunch [of time]. Now, you've had trouble with him continually?
Answer: Mm-uh, just started the past 5 or 6 years - since I let him move in with me. Before I let him move in I had no problems.

Other women identified a particular incident after which the abuse severely worsened and intensified. In one case, the batterer had committed a violent crime against another individual and exhibited more violent behaviours after this incident. This woman claimed that "the first two years after the killing were very violent." Another woman identified a drastic change in her batterer after he was involved in an accident and received a 220 volt charge through his head. After this "he would get mad at anything and anyone...me or his son or my daughter." Many women also found that the frequency and intensity of violence increased after their batterer had located them after a period of separation or attempted escape.

The women in this sample often revealed the various types of situations that appeared to trigger or precipitate a violent incident with their batterer. One woman explained that her batterer beat her and her children "over slight or imagined provocations." In particular, he physically abused the children for "mistakes in homework and failing to perform tasks well enough (i.e. cleaning the kitchen)." Another woman explained in a letter that her batterer would "go through rages if there was a little bit of wilt on a leaf of lettuce in the fridge." Some women also identified their desire not to have sex as a stimulus to violence.

Several women pointed to their batterer's jealousy as a precipitator of violence. Many of the women claimed that their batterer constantly accused them of having affairs and being attracted to other people, and that these kinds of accusations often
inspired a violent episode. One woman awoke one night to find her bed and body on fire and her batterer claiming that "I told you bitch, if I can't have you, nobody will." After other beatings he would claim "when I'm through with you nobody will want you." Another woman described the following in an interview with the police:

Anyway, I was living on ---- road when he first, his first attack. He called the house and he said some guy answered the phone, which wasn't true, and he came out and he broke my boy's watch. I had my boy's watch on and he blackened my eye."

Isolation and Economic Control

Another significant aspect of domestic violence, as experienced by the women in this sample, was the element of 'isolation.' The batterer often found ways to isolate the woman by preventing her from having contact with family and friends. Some women in the sample were forbidden to carry keys and obtain a drivers license. One woman described, in an interview, that her isolation caused her to feel like "a prisoner of her own home."

Isolation was also sometimes one of the end results of a "beating episode," as one woman wrote to the project:

he went on a three day beating episode and wouldn't let me or my sons out of the house all weekend. He locked me and my oldest son in the basement for an entire afternoon and part of the evening.

This same woman experienced numerous situations where her batterer isolated her, after a physical beating, partly to prevent her from receiving help. In a brief written in support of this woman's clemency position, the writer noted that:

Her husband would remove all telephones from the house until the need for medical care had passed.
Other women were simply forced to remain within the confines of their home all day and night. Repeated phone calls from, as well as other coercive measures by, their abusers would help ensure this. In one case the abuser removed all the phones from the home, took all the money from the woman's purse, and removed the alternator from the car. He then had a friend come over to guard the woman to prevent her from leaving.

In many cases the batterer also took complete control of all money, even when the woman was herself employed. One woman explained, to an interviewer, that she was too afraid of her batterer to ask for money and, as a result, she "sold bags of dog food to a neighbour and cashed in ---'s empty beer can cases" to obtain money.

Sexual Abuse

An often over-looked or under-emphasized aspect of abusive relationships regards women's experiences with sexual abuse. Many of the women in this sample experienced sexual abuse in conjunction with other forms of abuse. Some women were stripped naked, raped, sodomized, and/or sexually abused with the use of objects. One woman recalled a situation where her abuser "stuck a broom handle up her vagina to see how far it would go." This batterer, on another occasion, "grabbed her breast and threatened to tear it off if she did not open her legs." This same woman described that on many other occasions her abuser would slap and beat her for not having sex or performing fellatio. Another woman was sexually abused immediately following surgery and her loss of a pregnancy. This woman revealed:

...being forced to have sex the same night I came home from the hospital - losing a pregnancy two days before and having to have
surgery.

In some cases 'jealousy' seemed to precipitate a sexual assault. One woman, upon arriving home from work, was forced by her batterer to strip so that he could "take degrading pictures, to see if she had been with anyone else."

For many women, experiences of sexual abuse by their batterer served as a reminder of earlier experiences with sexual abuse. One woman explained this as she reflected on the night of her marriage where her batterer raped and sodomized her. The interviewer in this case claimed that that night "brought back for her memories of sexual abuse as a child."

The prevalence and tragic effects of sexual abuse, as it interacts with other forms of abuse, cannot be overstated. One woman reflected on her experience with sexual abuse and explained that it felt like her batterer was "tearing the inside of me out...I hated sex and dreaded the night time."

**Abuse of the Children**

Another element of the abusive relationship, as evidenced by the experiences of the women in this sample, was the batterer's abuse of the children. Many women referred to the fact that their batterer frequently abused the child/children by physical acts of aggression. One batterer threw a woman's infant across the room. In another case the abuser, during a violent episode, took hold of one of the children, refused to let her go, and (even with police there) bit the baby in the chest.

In other cases, abuse of the children included acts of sexual abuse. One of the women in the sample entered her home unexpectedly to find that her husband had
sodomized her daughter. The child was crying, bleeding, and in need of medical attention. The abuser's reaction to what he had done is referred to in this woman's clemency petition, which states that:

--- claimed he didn't understand what he had done wrong. He claimed that he was "preparing her for the future and she'd better get used to it."

Psychological Abuse

Both the complexity and effects of severe psychological abuse are often less emphasized than that of physical abuse. However, this is an important and intricate aspect of the abusive relationship and cannot be overlooked. All of the women in this sample appeared to experience severe psychological abuse by their batterers. What is particularly interesting is the diverse and complex forms this abuse took.

Degradation, Humiliation, and Mind Games:

The women in the sample were routinely referred to, by their batterers, in degrading terms throughout their relationships. As might be expected, name-calling included references to derogatory and sexual terms such as 'whore' 'bitch' and 'slut' and often included references to the woman's mental capacity when she was called 'dumb' and 'stupid.' However, it is important to understand that psychological abuse takes on many further and complex forms, and ones which are not as routinely recognized by others.

Some women were verbally attacked according to their perceived 'sexual inadequacies.' Their abusers often compared them to others in mean and humiliating ways. An interview summary regarding one woman's experiences uncovered the following:
--- compared --- to others sexually and said he should have stayed married to his ex-wife since she was better at x, y, and z... would say things like "a whore has better sex than you" and "your mom and sister could do better."

Another case revealed a situation where the abuser frequently had sex with other women, in the couple's bed, and purposely left the "bed sheets messed up" so that she would have knowledge of this.

The women of this sample often experienced psychological abuse through their batterers' use of complex 'mind games' which appeared to be intended to make the woman, and often others, believe she was 'crazy.' The following, taken from an interview summary, provides one account of this.

Her husband had firmly convinced her she was crazy. Mind games and a constant barrage of insults made --- second-guess her sanity. Her husband reinforced this feeling by making her appear 'crazy' to others. After beating her, her husband forced her outside, sometimes wearing nothing but panties, and would not let her return to the house. Neighbours, seeing a naked woman running outside believed that she was crazy, strengthening that belief in her mind. Furthermore, --- would confirm to the neighbours that his wife was crazy. They would believe him because they rarely saw her since --- would confine her to the house all day.

Another set of interview notes, regarding another case, revealed some of the ways by which the batterer attempted to convince the woman she was 'crazy':

--- would deliberately set out to make her think she was losing her mind. He would move things around and ask her what her clothes were doing in his closet. He would tell her something and utterly deny it later when she'd double checked. He would hide something then tell her to go get it for him. He'd then call her 'stupid' and 'blind' and he would get it and tell her he found the item "right where he told [her] it would be."

In another case, similar tactics and 'mind games' were used. A letter written on behalf
of this woman described that her batterer often "bragged to others that he was driving her crazy." In this case, the batterer would hide things and set the clocks back in order to make her think she was 'losing her mind.' The utilization of complex mind games, and forms of degradation and humiliation, are often overlooked yet crucial aspectes of the abusive relationship, and the batterer's attempts to gain control over the battered woman.

The Element of Fear

An examination of this sample of women revealed another important, yet often less focused-upon, element of domestic violence: namely the complex ways by which women develop a rational and extreme fear of their abusers.

1. Abuse of Pets

Several women in the sample experienced incidents where their batterer had physically harmed their pets for the purposes of frightening them. One woman's petition for clemency outlined the batterer's abuse of her cat. In this case, the batterer broke the cat's paws and tied it up as "lessons for her." In another case, the abuser performed 'practice surgery' on the woman's dog by cutting into its hip and hurting it very badly. Incidents of abuse against the family pet was one element which appears to contribute to a woman's fear of her abuser.

2. Abuse of Others

In several of the cases the batterer was known to have severely harmed, and even killed, others. This seemed to contribute to a woman's extreme fear of her abuser. In one case, the interviewer noted that:
reminded her constantly that he killed a man. He always carried brass knuckles in his shirt pocket and kept a set of brass knuckles under his pillow.

In another case, a woman was present when her abuser was tried for his violent crime of killing a man in a heated argument. Finally, in another case a woman's batterer had three assault charges pending and, again, made this well-known to her.

3. Death Threats

An examination of the women in this sample revealed that a woman's rational fear of her abuser can only be understood with specific reference to her batterer's 'threats.' Many women received death threats from their batterers which were very detailed and instilled incredible fear in the women. One woman revealed that her batterer repeatedly vowed that "Before 1988's out you're gonna be dead." Another woman's abuser showed her which tree he intended to hit when killing her in his truck.

In many cases the woman's batterer described where he intended to bury or hide her body. One woman's batterer "threatened to bury her in the dug-out cellar." In another woman's case, there exists court testimony that her abuser had "dug her grave in the back yard." Another woman was told by her batterer that "if he ever killed her it would be at a motel, so no one would know he did it."

In some cases the woman's abuser told other people that he intended to kill her. In one case, a woman overheard her abuser tell his mother that he intended to kill her.

--- called his mother and she heard him say "Mom you're going to have to visit me in jail cause I'm gonna blow away."

Some women described incidents of abuse that involved their batterer threatening them with a weapon. One woman recalled:

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having a switch blade struck as close to me as possible and guns
pointed at my head and the trigger pulled to make me jump.

Many of the abuser's death threats were directed at the woman when she
attempted to leave the relationship. In fact, all of the women in this sample were
somehow threatened with death when they made known to their batterer their intent to
leave. The abuser often threatened to kill not only the woman but everyone in her
presence and those who assist her. One woman claimed that her abuser explicitly
stated:

If you try to leave me I'll hunt you down and kill not only you but
everyone you're staying with.

Another woman explained that her abuser intended to kill her and her stepfather if she
left. He further claimed that he had already "talked to someone who would do it."

In many other cases, the batterer also threatened to kill the children.

Sometimes --- would smile and say "leave me again and I'll kill you and
the kids or maybe I'll hire someone to kill you, they'll never find you
because I won't allow you to leave me."

One woman found that on several occasions, when she attempted to leave the
relationship, her abuser would grab one of the children and "make her choose"
between herself and the safety of the child. Another woman revealed a situation
where her batterer threatened that he would "make her watch him kill the children" if
she attempted to leave.

4. Previous Attempts at Killing

It is important to understand that several of the women were able to recall
incidents where their abuser had attempted to kill them. This is yet another factor
which seems to reinforce a woman's extreme and rational fear of her abuser. In several cases women's abusers had tried to run them over with vehicles. One woman experienced a near-death situation with her batterer when he:

pulled her out of the car by her hair and beat her in the parking lot of her mother's apartment building. He then backed the car up and hit her with it running over her leg and wrist.

Some women's abusers attempted to kill them with weapons. One batterer attempted to kill a woman with a butcher knife but withdrew when her mother and brother intervened.

----- was extremely drunk and both threatened her and told her that he loved her. ---- told --- that if he couldn't have her no one would. He said she better do what he wanted because he had come prepared and pulled out a butcher's knife. ---- told him that he had to leave and went take a shower, bringing the phone with her. ---- forced open the bathroom door and took the phone. When ---- got close to the door ---- attempted to stab her with the knife. She grabbed his arm, screamed, and rammed him into the wall. Her mother and brother came to the rescue. Before leaving ---- threatened to have ----'s house shot at and blown up and her family killed.

5. Constant State of Fear

As a result of the extreme psychological and physical abuse outlined above, the women in this sample generally lived in constant states of fear. The women indicated that they believed their batterers would eventually kill them. The batterer had threatened killing them many times, they had stated specifically how they would kill them, and they had in many cases attempted it in the past. In some cases the batterer had proven his killing potential, in part, when he violently assaulted and killed others.

The following quotes, taken from interview data, provide additional illustrations with respect to the pervasiveness of the batterer's threats and how this is a contributing
factor to a woman's fear of him.

I was living in fear, my life was being threatened to be taken away from me on several occasions.

She was afraid to leave her house and would not do so alone. She was afraid to go to the corner store to buy necessities for her son. She was afraid to pick up the mail. She believed that, if she ran into --- he would kill her. She believed this because he had attempted to kill her twice before and she believed he would carry out his threat. She was afraid to be alone in her mother's house.

---- listened to --- because she knew that he always carried through on his threats.

The element of 'fear,' and specifically the batterer's methods of instilling a rational and extreme fear in the woman, is thus a significant element of the abusive relationship and is, like specific forms of sexual and psychological abuse, one which is not emphasized in the legally relevant 'cycle theory of violence.'

Walker's Model of 'Learned Helplessness'

The other central component of Lenore Walker's Battered Woman Syndrome is her concept of 'learned helplessness.' By this model the battered woman comes to believe she is 'helpless,' and becomes 'passive' and 'submissive' in her relationship.

Walker claims that:

This concept is very important for understanding why battered women do not attempt to free themselves from a battering relationship. Once the women are operating from a belief of helplessness, the perception becomes reality and they become passive, submissive, "helpless."\textsuperscript{120}

Under the theory of learned helplessness, repeated beatings cause battered women to

\textsuperscript{120} Ibid., p.47.
become "blind to their options" and to believe they can have no influence over the batterer and the battering.

Thus, in applying the learned helplessness concept to battered women, the process of how the battered woman becomes victimized grows clearer. Repeated beatings, like electrical shocks, diminish the woman's motivation to respond. She becomes passive. Secondly, her cognitive ability to perceive success has changed. She does not believe her response will result in a favorable outcome, whether or not it might.

The concept of learned helplessness has become the most widely criticized aspect of Walker's Battered Woman Syndrome largely due to its reliance on the battered women as simply 'passive' and 'helpless'. Perhaps ironically, the concept of learned helplessness has also become the most focused-upon element of the BWS, when it is used in the trials of battered women whose violent crimes are related to their experiences with domestic violence. Therefore, it is necessary to examine this concept in relation to the experiences of the women in this sample. In fact, a focus on the battered woman as 'passive,' 'lacking motivation to respond,' and 'blind to her options' is particularly misleading given the experiences of the women of this research.

Escape and Help-Seeking

An analysis of the cases in this sample uncovered the numerous and repeated attempts made by women to escape their batterers. Even though the concept of learned helplessness neglects this as a focus, most women made concerted efforts to leave their batterers. Some of the women in this sample left their abusive relationships and re-located themselves, and their children, to other states. One

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121 Ibid., p.48.
122 Ibid., p.50.
woman orchestrated a well-planned escape from a secluded military base in another state thousands of miles away, to the state of Michigan. Other women relocated to motels and to the homes of family members and friends. However, in order to understand why these escape attempts were often unsuccessful, one must look at both the process of attempted escape and the responses of others to the battered woman's plight.

When the women in this sample attempted to leave their batterers, or find help which would enable them to end the relationship, they were often met with insurmountable barriers. Women's experiences with escape, and seeking help, seemed to aid them in developing a very rational and realistic awareness of what the future results of their help-seeking behaviour may be.

1. Response of the Batterer

As has been extensively outlined above, the batterer was usually very resistant to a woman's attempt to leave the relationship. The batterer often made use of extreme and detailed death threats, and directed them not only at the woman but also at her children and those who may have been assisting her in her attempt to leave. In many cases the woman rationally believed that, no matter what measures she took, her abuser would eventually return (or find her) to abuse her and likely even kill her. One woman wrote the following with respect to a time when she sought the help of a family law specialist.

He asked me if I thought my husband could kill (or would) me. I said "yes." He wanted to get an injunction against him but I said "no" out of fear. If my husband was served papers he'd leave, wait for the police to leave, then come back and kill me.
2. Seeking Help: Responses of Police

Many of the women in the sample received little or no assistance from the police. Rather than helping the woman, and providing her and her children with safety, police officers tended to belittle very serious situations. They usually failed to recognize both the danger the woman was in and the help that she needed. Many of the women found that the police never even required the batterer to leave the premises. One woman wrote the following, in a letter to the project, about the police response to an incidence of violence when her batterer beat her with the telephone:

They told him to "go to bed and sleep it off, you've had too much to drink man so calm down." Then they finally looked at me, humiliated and ashamed as blood ran down. My head, face and ear were in bad shape.

In other cases, the police simply required the woman and her children to leave the premises, and never provided any follow-up.

In one case, the police responded to an incident where the woman was defending herself against an attack by her abuser. The police did nothing about the situation and merely took away the woman's hand gun. The following segment is taken from a recording of police questioning:

Question: How long have you been in the habit of keeping a knife underneath your bed?
Answer: Ever since I got my pistol took away from me and they took it back in December.
Question: Okay. Why'd they take your pistol away back in December?
Answer: Because I took some shots at -----. 
Question: Okay. Why'd you shoot at ---- back in December?
Answer: Because he had a butcher knife trying to cut me.

In fact, this woman had merely fired two shots into the ground in an attempt to ward
off her batterer. In another instance this same woman went to the prosecutor's office after a physical beating. She was not advised to go to the police but was instead told to hire a private attorney. The following is another segment from police questioning:

Question: Have you ever pressed charges against him for assaulting you?
Answer: I went to the prosecutor and they told me to get a private attorney cause the legal aid don't handle civil matters they told me.
Question: Okay. In the last three or four years have you ever tried to get a warrant for him?
Answer: Uh, you mean about the prosecutor?
Question: Yeh.
Answer: They told me to get a private attorney and I can't afford a private attorney.

Several women identified their batterer's connections to the police as a barrier to receiving police assistance. The following segment is taken from a woman's letter to the project:

People ask why didn't you keep calling the police; well as my husband's cousin -- and their uncle both worked for the ---- county sheriff's department I knew from prior calls made to the police I never received help. I knew it was useless to call the police as they would not arrest him and it would just anger my husband resulting in another beating.

In another case, a woman's batterer seemed to be protected by the military police (being a member of the military himself) and she attributed the lack of help she received to his military status. Another woman called the police for assistance and when her batterer answered the door the police recognized him as a "prominent executive" and claimed that there must have been a "wrong address." They left without inquiring as to the woman's whereabouts and simply pronounced that they would see him at the upcoming "fireman's ball."

3. Seeking Help: Responses of Others
The women in this sample often turned to others for help. However, the people they turned to were usually unwilling or unable to assist them. Some women called on family members who simply did not want to get involved. In some cases family members encouraged the woman to stay in the relationship and blamed her for the situation. One woman's mother stated "You made your bed now you lay in it." Another woman's father responded to her call for help with "We don't believe in divorce. You can take an ass beating. We've got enough divorces in this family already."

One woman worked in an alcohol rehabilitation and psychiatric unit of a hospital. However, as she explained during the following segment of court testimony, even those she worked with could not offer her help.

Question: But you never asked for any help over there [place of employment] to get out of your situation, is that correct?
Answer: They knew the situation I was going through. There was no help they could offer, not without me losing my job.

4. Women's Previous Experiences with Abuse

In some cases women had previous experiences with abuse and this provided them with unique insight regarding the general lack of support and assistance available to victims of abuse. Sometimes this abuse had been at the hands of other partners, while in other cases the abuse has occurred within women's families. The following interviewer's note illustrates this point quite clearly:

-----'s mother, ----, and her stepfather trained ----- well as a child to endure abuse. She reacted only internally and didn't do "a damn thing" to protect herself. ---- never called the police and never went to the hospital as a result of -----'s abuse. She had learned well as a child that physical and sexual injury easily explained away to the authorities and
that any call for help could only result in further abuse.

5. When the Battered Woman has 'left'

The concept of learned helplessness is intended to help answer the question of why does the battered woman remain in her abusive relationship? A focus such as this diverts attention away from the many battered women who leave their abusers, as well as the situations they confront when they do. As has been detailed above, several of the women in this sample left their batterers on numerous occasions. However, their leaving did not necessarily separate them from their batterers and life-threatening situations. In cases where women left their abusers, they were generally found and 'brought back' with the batterer's use of death threats and further abuse. In cases where the batterer was less successful in 'bringing her back', he located himself near enough to abuse and threaten her constantly. The following incident, as summarized by the interviewer, took place after a woman had left her batterer.

----- forced open the bathroom door and took the phone. When ---- got out to close the door --- attempted to stab her with a knife. She grabbed his arm, screamed, and rammed him into the wall. Her mother and brother came to the rescue. Before leaving ---- threatened to have ---'s house shot at and blown up and her family killed.

A focus on why battered women do not 'leave' fails to address the differential and complex experiences of battered women when they do seek help, do attempt escape, and what consequences they face once they have succeeded in 'leaving.' The experiences of the women in this sample do not support the fact that battered women become 'blind to their options.' Instead, these cases show that battered women become realistically and rationally aware of their true 'lack of options.'
Summary

Lenore Walker's Battered Woman Syndrome has been examined in terms of its two basic premises: 1) the cycle theory of violence; and, 2) the concept of 'learned helplessness'. It has been helpful to examine these aspects of the model, in relation to the experiences of the women in this sample, in light of the fact that the cycle theory of violence and concept of learned helplessness are the most relied upon elements of the BWS, when used in trials of battered women accused of committing violent crimes.

The 'cycle theory of violence', and its premise that violence escalates in severity and intensity over time, has been shown to describe elements of these women's experiences with domestic violence. However, the above analysis has also outlined the complex ways by which women experience abuse. While the 'legally relevant' cycle theory of violence, with its three separate and distinct phases, may imply otherwise, women experience abuse in many different forms, and ones which have traditionally not been emphasized. For example, the women here were forced to develop an intense and extreme fear of their abusers over time. Importantly, this fear appeared to be very rational and realistic in light of the abuser's extreme and detailed death threats, as well as his escalating violent and dangerous behaviour towards her and others. This analysis has also uncovered other less-emphasized aspects of domestic violence such as sexual abuse, abuse of the children, and extreme and severe forms of psychological abuse.

The more problematic area of the BWS appears to be with respect to the
concept of 'learned helplessness'. Walker's model of learned helplessness, in attempting to describe why a battered woman stays in her abusive relationship, describes the woman in terms of her mental state; the battered woman becomes passive, helpless, and 'blind to her options.' This focus is somewhat misleading given the experiences of the women in this sample. Several of the women here did seek help and make numerous attempts at escape, only to be confronted with various insurmountable barriers. This has been shown with respect to women's experiences with their batterers as well as outsiders, such as the police. However, just as women had differential experiences with abuse, they also had various experiences with escape and 'leaving.' While many women made very well-orchestrated attempts at escape, others did not, sometimes out of their previous experiences with abuse and help-seeking. Finally, in relying on a description of battered women as 'passive' and 'helpless,' this model cannot adequately account for the battered women who ultimately fight-back against their abusers. This involves the next section of analysis.
Chapter VI

Women's Violent Crimes

The Crimes and Their Variations

The women in this sample committed a diversity of crimes and were subsequently charged and convicted on grounds such as first degree murder, second degree murder, conspiracy to commit murder, felony firearms, delivery of drugs, or armed robbery. In most cases the woman herself killed her abuser, while in other cases she hired/requested a third party to execute the killing. Finally, in two of the cases, women were convicted as a result of their participation in crimes with their abusers and, thus, committed forms of ancillary crime.\footnote{Again, these cases were selected partly on the basis of the diversity of the crimes committed. While the majority of the sample consists of women who have committed violent crimes against their abusers, the use of two cases of ancillary crime (where the women participated in the violent crimes of their abusers) allows for an account of both the diversity of crimes which relate to women's experiences with domestic violence, and the subsequent applicability and legal use of the BWS.}

It is important to recognize that women's crimes, while all related to their experiences with domestic violence, took on diverse forms and characteristics. This becomes evident through an examination of the cases both in terms of the situation which immediately preceded the crime as well as the means by which the crime took place.

Women Who Kill Their Abusers

When the women of this sample themselves killed their abusers, they did so in a variety of ways. In some cases, the woman killed her abuser as he slept. The following, taken from a legal brief written in support of one woman's appeal, describes the crime as it took place immediately following a violent sexual assault.
She decided that she wanted to kill ---- for what he had done to her so she went back downstairs and got one of the guns, took it downstairs and attempted to load it with shells she found in the living room. The shells would not fit into the shotgun. Defendant went back upstairs, got the other shotgun and took it downstairs. The bullets fit into the second gun...Defendant then went upstairs with the loaded gun, go into bed next to the sleeping ---- and lay next to him for a minute. She then got up from the bed and shot ---- in the back. She covered him with a blanket and told him she loved him. She took ----'s briefcase and locked the bedroom door behind her.

In another case, the woman again killed her abuser as he slept but did so after they had argued, and the batterer had slapped her and thrown her child across the room.

The interviewer in this case summarized the incident in the following.

On the night of the murder ---- physically abused her daughter for the first time. He threw the infant across the living room onto the couch. He then went upstairs to bed... ---- checked on ---- [her daughter], then packed a small bag with diapers, bottles and baby clothes. Subsequently, ---- took one of ----'s guns and shot him.

In several other cases, women killed their abusers during some sort of 'struggle' or 'confrontation.' These struggles, however, were not identical. In the following case, a woman shot her abuser during a confrontation and seemingly partly in response to her belief that he was reaching for a knife to kill her with. She stated the following in a letter to the project:

I heard a car skid, I can't recall what time it was exactly. I jumped up and ran to the door and opened it and there was ----. I push the door to close it and ---- was pushing back on the door and pushed his way in. I asked him what does he want and he said "I came to holler at you." ---- was drunk and had a bag with something in it. ---- grabbed me by the hair and started pushing me down the stairs. ---- said that he wanted to make love and I said "no", then he said "you been fucking all those other niggers." Then, ---- said that I was going to fuck him and I said "no I'm not" and then he said "I'll just rape you and take it." ---- grabbed my breast and stared squeezing it real hard, I tried to remove his hand and he started squeezing it and pulling harder saying if I keep
moving that he was going to rip it off my body. I finally got his hand off me and got up, he knocked me up against the wall and said "why do you be fucking around on me bitch." He said that he was going to fuck me up, then he said "a ---- [his last name] always gets theirs." Then he said "I'm going to kill you bitch." He went for his jacket and I went to the closet and pulled the gun out, and I shot him and ran upstairs.

This crime, in fact, took place after the relationship was over and the woman had 'left.'

Another example of a physical struggle which ended in the woman killing her abuser involved the following situation, as described by the woman herself during police questioning after the incident.

Answer: ...he just turned to push me down on the bed, and I fought him back. He wanted to fight and my knife was under the bed.
Question: Okay, how did you reach for the knife?
Answer: Cause he had me.
Question: Okay, how'd he have you?
Answer: Like, back like that on the bed, see.
Question: Okay. You were laying on you back on the bed?
Answer: He pushed me down. I fought him back, but I can't whoop him.
(middle part eliminated - questioning diverges)
Question: Now where was he at?
Answer: Standing over me, you know, like almost straddling me. I reached under the bed and I got that knife. And I began to cut at him.

Other parts of police questioning indicated that the woman appeared to also believe that her abuser was reaching for a weapon, and it was at this time that she began to kill him.

In another woman's case, her killing of her abuser followed a battering incident and, again, her belief that he was intending to obtain a weapon to harm or kill her with. The following is taken from the summary notes of the interviewer in this case.

--- came home from the store and went to the bathroom. After she left the bathroom --- struck her in the back of the neck. He hit her again knocking her down and calling her crazy. --- then pulled her around
and threw beans from the stove at her. Both went for the gun on the
couch with --- grabbing it first however, it flew out of his hand and ---
picked it up. --- said ---- claimed that he was going to get another gun.
So, she followed him out of the house and shot him.

In this next case, the woman killed her abuser during a physical struggle but, as she
claims, this occurred in a somewhat 'accidental' way. The woman explained this in the
following segment from a written letter to the project.

When my husband put a gun under my neck and plastered me against
the bedroom closet doors - my hands were free and I panicked (--- was
yelling at me about killing me and getting someone else in the house to
give him children and he could get a mortgage - he had been drinking
and using drugs alot) and I pushed him back - he stumbled back on the
throw rug, dropped the gun and flopped on the edge of the waterbed.
He tried getting the gun again, swearing at me and I ran to get it away
from him. During the struggle a shot went off. ----- was dead and I
was in shock - I moved him off the bed, wrapped him in sheets and
tried to clean up. Then I called his friend and cocaine dealer ----- and
told him ----- was dead.

In one case the immediate struggle (to the crime) was in fact minimal and
involved limited action on the part of the batterer. However, the crime appeared to
have involved some kind of struggle. The killing followed a battering episode and
occurred after the abuser had gone to bed. The interviewer's summary suggested that,
after the battering episode, the batterer went to bed and the woman sat at the kitchen
table "overwhelmed by a terrible feeling that she was drowning."

She felt that she had not choice but to join her husband and pray it had
ended for the night. She took with her an iron car part, intending to use
it "to get away if he came after me again." She got into bed, his arm
swung and "she thought the abuse was beginning again." She hit him
over the head with the car part. He extended his arm to the side of the
bed where he kept a knife between the mattresses. She reached for the
knife and slashed his throat.

Finally, there exists one case in the sample where there was no physical
struggle on the day of the crime. The couple had fought verbally, and the woman's abuser left the house. When he returned, and entered the house, she shot him. This woman wrote the following in a letter to the project.

Almost being almost forced off the road, and his temper and his threats, and not knowing what to do, I feel I lost it one day and shot him. I knew after what I did. I wanted to stop the bullet. I know I shouldn't have done it.

Women Who Seek a Third Party to Kill/Harm their Abuser

Several women in this sample sought out others to kill or harm their abuser. This usually involved the assistance of others: sometimes friends, family or complete strangers. Again, the women in this sample had very different experiences with crime and the cases vary, sometimes greatly, from one to the next. One woman sought the help of a family member who actually 'pulled the trigger.' In this case, the woman was present for the killing and provided the cue for her brother-in-law to strike. The following is taken from an interview summary.

It was her brother-in-law who actually pulled the trigger, but ---- states that "I am just as guilty - I wanted him to do it."... Her brother-in-law came to the home and hid. When ---- came home they had arranged for a signal that ---- was out of range of the bullets - she was to turn on the water in the kitchen. Her brother-in-law wanted to protect her and her children and knew that ---- would eventually kill her.

Another woman sought the help of her roommate and friend. In this case, the woman had re-located to another state after her batterer began sexually assaulting one of her

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124 It should be noted that one woman claims that she only requested that the third party 'rough up' her abuser in hopes that 'he would know how it felt' and would, thus, stop abusing her. In another case a woman's adopted son killed her abuser. While she had asked him to do this in the past, and her own children testified to her direct involvement in the crime, she still maintains that she did not make the request that led to her batterer's murder.
children. The crime actually took place at a time when the woman had 'left' her abuser. The interview notes show that the woman confided in her friend about her fears and the fact that her abuser was intending to find her and her children, and take them away. The woman's friend helped her contact a third party to kill her abuser.

In one case a woman sought the assistance of a young boy, whom she had taken into her home and become a mother to. The child testified that the woman had asked him to do the shooting and that he had complied. While the woman maintained she did not make that request of him (immediately preceding the killing) she did admit to her participation in removing and concealing the body. She also admitted to having asked the child, and others, in the past to help her kill her abuser. The following is taken from a legal brief in support of this woman's appeal.

She admitted she had asked others [to kill her abuser] in the past because: "he kept on whipping on me and the kids" but she denied telling --- to shoot and kill the deceased. She paid people to assist in disposing of the body.

Other testimony, described in this brief, indicated that the woman may have "asked a man to kill him [her abuser] and gave him carpet as payment." When the young boy was questioned about why he had participated in the crime, he responded: "because he was tired of [deceased's] kicking Miss ---'-s ass." While it is unclear as to this woman's exact and specific role in the crime, it remains that she had wanted her abuser killed and had previously sought the assistance of others to accomplish this.

Ancillary Crime

Some women in this sample committed crimes with their abusers. However, an examination of these cases revealed that women's participation in these crimes,
similar to the cases described above, were related to their experiences with domestic violence.

In one case a woman aided and abetted the murder of her abuser's stepmother.

The following is taken from a legal brief in support of this woman's appeal.

----- awoke to the sound of a fight upstairs. She went upstairs and found ---- strangling his stepmother and she became paralyzed with fear. After the murder, she followed ----’s directions to help him clean the kitchen and saw him carry the body to his car; she then drove ----’s car to the shopping centre parking lot. Thereafter, they drove to the wooded area in his car and she helped to bury the body.

This next segment, taken from a legal memorandum in support of a motion for a new trial, describes the abuser's reaction when the woman became aware of the crime taking place.

She stated that she could not scream immediately, but when she did, that ---- "body slammed" her against the stove or refrigerator and said "shut the fuck up or you're next." She stated that she continued to cry and he slapped her and pushed her telling her to "shut up." Shortly thereafter he threw some rags at her and told her to clean up the blood.

The other case in this sample, which involves a form of ancillary crime, regards a woman who was found guilty of armed robbery for assisting her abuser in the robbery of a restaurant. In this case, the woman drove the getaway car and interview data states:

From the moment he woke her up on the morning of the robbery, she knew of his intentions. She objected to going with him, but he insisted...When they reached ---- she had two chances to escape: once when they went into a donut shop just a block from her mother's house, and when he left her alone in the car while performing the robbery. She feared that if she left ---- on either occasion, he would follow her to her mother's house and harm or kill her.

This next segment, taken from the Defendant's description of the offense in the pre-
sentence investigation report, further describes the way this crime took place as well as this woman's involvement in it.

He got out of the car, was gone about ten minutes, and heard a big boom, he came running back, got into the car, and said "drive the car bitch"... I was scared and nervous, and wouldn't drive fast, like he told me so I got smacked.

**Women's Different Experiences with Abuse and Crime**

An examination of these cases revealed that it is necessary to understand the different factors which appeared to precede, and affect, women's experiences with crime. This is one way of uncovering the diverse ways in which women's crimes were related to their experiences with domestic violence. While all women's domestic violence situations were related to their crimes, women's experiences with abuse, again, were not all the same; the abusive relationship is complex and differs with each woman and her particular experience.

1. Previous Experiences with Abuse

As described in earlier sections of analysis, which dealt directly with characteristics of domestic violence and the abusive relationship, some women had previous experiences with abuse. This appeared to somehow affect a woman's understanding of her situation and, thus, her experience with crime. One woman, after enduring abuse for a relatively short period of time (by comparison to other women in this sample), left the relationship and re-located to another state. She orchestrated this escape immediately after her batterer began directing his abuse at her daughter. The following segment, taken from an interview summary, suggests that this woman's previous experience with an abusive husband somehow affected her judgement and,
thus, her involvement in the subsequent crime.

-----'s verbal abuse, threats, physical and sexual abuse compounded her fear and feelings of helplessness from her first marriage. She told her friend about her fears. -----’s friend told her that she knew some people who could "take care of things." Her friend took her to meet a man who said she would kill her husband for nothing. ----- came to Michigan two days before the killing. ----- claimed that he would leave her alone. ----- called off the killing. However, -----, or someone from -----’s group killed ----- anyway. They later came for the money.

In another case, the interviewer’s notes demonstrate a link between a woman’s previous experience with abuse and her crime against her abuser. This case involved a woman’s memories of the childhood abuse she experienced at the hands of her mother and stepfather.

-----, reacting with memories of the abuse she suffered as a child, resolved that ----- [her daughter] would not be the object of such abuse. She checked on ----, then packed a small bag with diapers, bottles, and baby clothes. Subsequently, ----- took one of -----’s guns and shot him.

2. Situations of Child Abuse

It is important to note that in both of the cases described above, the women killed (or arranged to have killed) their abusers immediately after the first incident of abuse was directed at one of their children. In the most recent case described in the above section, the woman had endured psychological, physical, and sexual abuse from her abuser for a period of several years. However she did not tolerate the abuse of her child, as demonstrated by her shooting of her abuser after he had thrown the child across the room. In an interview, this woman claimed that "All I knew is I had to stop him from hurting her [her child]."

In the other case described above, the woman orchestrated an escape and,
shortly thereafter, arranged to have her abuser killed immediately after her abuser had sodomized her daughter. She too had endured her batterer's abuse for some time prior to the abuse of her child and her decision to have her abuser killed.

3. Situations of Sexual Abuse

An examination of the cases in this sample revealed that some women killed their abusers immediately following a sexual attack. In this next case, a woman was handcuffed and sodomized by her batterer. She loaded a gun and shot him almost immediately after this attack. A legal brief, written in support of her appeal, describes the events on the day of the murder. Her abuser began by "calling her names," and "told her to get into bed with him." When she refused "he grabbed her by the hair, pulled her through the hallway, and kicked her in the side." He "threw the Defendant onto the bed and told her he wanted to hurt her." He then "handcuffed and sodomized the Defendant." When he finished, she asked him to remove the handcuffs and he did. He then fell asleep. She was "upset, hurt, and angry" and at this point went to get the gun.

In other cases, a more subtle sexual assault preceded the crime. In this particular case, a woman's desire not to have sex, and her batterer's subsequent threat to rape and kill her, combined with a situation of physical abuse, preceded the crime. The woman described this incident in the following segment, taken from one of her letters to the project.

----- said he wanted to make love and I said "no," then he said "you been fuckin all those other niggers." Then ----- said that I was going to fuck him and I said "no I'm not," then he said "I'll just rape you and take it." ----- grabbed my breast and started squeezing it real hard. I
tried to remove his hand and he started squeezing and pulling harder saying if I keep moving that he was going to rip it off my body. I finally got his hand off me and got up, he knocked me up against the wall and said "why you do you be fucking around on me b*tch." He said that he was going to fuck me up, then he said "a ----- [his last name] always get theirs." Then he said "I'm going to kill you b*tch." He went for his jacket and I went to the closet and pulled the gun out, and I shot him and ran upstairs.

4. Suggestions/Assistance from Others

It is interesting to note that several of the women in this sample received suggestions by, and often assistance from, others with respect to the option and viability of killing (or having killed) their abuser. The women were sometimes given this assistance when they sought out others merely for general help, advice, and/or support. In one case the abuser's ex-girlfriend initially suggested that he be killed.

The interviewer's summary suggests this when it states:

It was the daughter of a neighbour that first suggested ----- kill ----- because of the abuse. This woman had dated ----- and knew about his violence. It was her brother-in-law that actually pulled the trigger but --- states that "I am just as guilty, I wanted him to do it."

Sometimes a family member helped the woman to plan the killing. In this next case, interview data suggests that the woman's mother aided her in developing plans for the death of her abuser.

According to -----, it was her mother who orchestrated the alleged arrangement to secure drugs and administer them to ----- in order to kill him.... ----- stated that she wanted her husband dead. Her mother was influential in fostering this idea and in planning various scenarios in which ----- would meet his demise.

Finally, in another woman's case, a friend initially suggested that the woman have her abuser killed. Interview data suggests that this "friend" put the woman in contact with
the man who killed her abuser.

5. Knowledge of the Batterer's Behaviour and Women's Ability to Predict Violence

Women in abusive relationships are often able to predict a violent attack, largely out of their past experiences with, and knowledge of, their batterers repeated behaviours. This can be a particularly relevant factor in attempting to understand how a woman's experience with domestic violence is related to her crime of killing her abusive partner. In one woman's situation immediately preceding her crime, she was able to anticipate that her abuser was going to choke her, largely because this was a method he had used in the past. This became evident in an examination of a woman's questioning by police, which took place after she had stabbed and killed her abuser.

Question: Okay. He pushed you down on the bed, then he got over you and he had his hands, he was standing over you next to the bed with his hands on your chest?.
Answer: Yep.
Question: Is that right? Did he make any attempt at all to choke you, to...
Answer: Yeh, I'm sure he was gonna choke me, cause this is usually the method that he do.
Question: But he's done it in the past and you were afraid he was going to do it then? Would that be true?
Answer: Yes. He did it many times in the past.

Therefore, at one point in the struggle the woman believed that her batterer was going to choke her, and this was based on her previous experience with his abusive behaviour. This woman ultimately killed her abuser in this same struggle, and at the moment she believed he was reaching for a weapon.

This case also illustrates the extent to which a woman's knowledge of her batterer's behaviour can affect her level of 'fear,' while in the confrontation or struggle.
that immediately precedes the crime. The following is taken from a set of notes regarding this case and its preparation for clemency consideration.\textsuperscript{125}

Based on her past experience with him and her knowledge of his physical ability and strength, if he wanted to do something, she was aware that she could not physically stop him with her strength alone... She got really scared. She was scared he was going to get the scissors or that piece of wood, and stab her or do something with one of those things... She really believed her life was in danger. She really felt it. When he reached towards the dresser, she was afraid he was going to kill her, and she wanted to get out of the room.... Part of her fear was based on her past experiences with him.

\textbf{Escalating Violence Before the Crime}

It appears that, for some of the women, a relatively severe battering episode (or some kind of escalation in the characteristics/effects of violence) occurred in the recent time before a woman commits her crime. In one case a woman claimed that one of the worst cases of physical abuse was her being "knocked down the stairs." Interview data suggests that her batterer crushed food on the floor and then "demanded she clean it up." When she refused, her abuser beat her and threw her down the stairs. It was after this incident that the woman sought out her friend, who ultimately made the arrangements to have the batterer killed.

In a case where a woman shot her husband, the interviewers found that her abuser had "beat her the night before and the day of the killing." In another case where a woman shot her abuser, the abuse appeared to have intensified to the point where, approximately one week before the killing, the batterer attempted to "force her

\textsuperscript{125} Since this case is one of the 'priority' cases for clemency consideration, members of the project have done a great deal of work on this file. This segment is taken directly from Susan Fair's notes, and reflects her reading of numerous court transcripts and all other documentation regarding this woman's case.
ven off the road."

Finally, it appeared that one woman’s situation had reached a point of escalation when she reacted to her abuse by attempting suicide, and "slitting her wrists." It is interesting that this too occurred in the week preceding her crime. Interview data suggests that this woman was in a particularly 'bad way' at the time her abuser required her to participate in his crime since "she was sick with the stomach flu and still recovering from her suicide attempt, [and] she did not persist." It is important to note that this woman's suicide attempt followed a battering incident which appeared to be as a result of her batterer's anger when he witnessed "a neighbour looking at her" as she lay in the backyard sun-tanning.

**How Women Understand their Crimes**

The Project Director of *Freedom Link* has often pointed out that these women are rarely asked (in a straightforward and non-assuming manner): Why did you kill (or aid and abet) your abuser? This section is partly in response to this issue and is key to an understanding of how women's crimes are related to their experiences with domestic violence.

While there were several differences between the women in terms of the reasons they gave for their crimes, the element of 'fear' was central to all women's experiences with crime. This often involved a woman's fear that her batterer was intending to kill her. In one case, the woman feared that her abuser was going to kill her when she perceived him to be reaching for a knife in his jacket pocket. The following was the woman's response after being asked: how was domestic violence a
part of the incidents that led to your crime?

All the time we were dating, ---- would either hit me or threaten to. ---- was an ex-boyfriend who thought he still had the right to have sex with me. On the date of the incident, he phoned and told me he was coming over, and that if he couldn't have me, no one would. When he got to my house, he pushed his way in, started beating me, and then said he would kill me. He went for a knife in his pocket, and I grabbed the gun from my closet where I kept it, and just started firing... I had no idea that I would be sent to prison for just defending myself. ---- was known to be a rough and violent man and even his own mother was scared of him.

This woman clearly identified that she was defending herself against her batterer when she perceived that he was about to harm or kill her. However, she also described her crime by first contextualizing it in terms of the physical abuse, and threats, he directed at her throughout the relationship.

Another example of a woman who believed her abuser was reaching for an object, to kill her with, involves this next case. This woman stabbed her abuser to death during a struggle, and at the moment she believed he was reaching for an object on the dresser. This woman clearly identified the fear she was feeling, at the time of the crime, in the following segments of police questioning.

Question: All right, and you reached. You were afraid?
Answer: Oh yeah. I was really afraid of him. And he, and the reason I started cuttin at him is because I thought he was gonna get something off the dresser...and the only thing on the dresser is some [object].
[questioning diverges here]
Question: Why did you go for the knife?
Answer: I was scared.
Question: All right. What were you going to do with the knife?
Answer: Try to cut, cut it in and stand off, like when I had that pistol.
Question: Okay.
Answer: I didn't mean to kill him. He just forced me to.

When the woman mentioned having a hand gun, she was referring to an incident
where her abuser went to her place of employment to choke her. She shot her hand
gun to 'ward him off.' She conceives of her crime in much the same way, since she
was again merely attempting to prevent her batterer's attack of her.

Another woman killed her abuser when she perceived that he was on his way
to obtain a gun to kill her with. As her interviewers noted, "fear for her life was
firmly established in her mind when she shot her husband." In fact, the interviewers
described several things that helped to "solidify her belief that her husband wanted her
dead." First, he told her the night before, during a battering episode, "----- I don't
play." Also relevant were the frequent beatings she endured, and ones that almost
killed her. Finally, her abuser reacted oddly to her when, just before her crime, she
returned home from the hospital (after an eight day stay) and he had not inquired
about her or told anyone she was gone, and had rearranged the furniture and changed
his style of dress. All of this, combined with her belief during their struggle that he
was on his way to obtain a gun, caused her to fear for her life and, thus, kill her
abuser before he could kill her.

Both went for the gun on the couch with ----- grabbing it first, however,
it flew out of his hand and ----- picked it up. ----- said ----- claimed he
was going to get another gun so she followed him out of the house and
shot him.

Another woman, who shot her husband during a struggle, clearly explained in court
testimony that she believed her batterer was going to kill her and, thus, feared for her
life.

I saw him grabbing toward the gun, and I just -- I -- I saw the look in
his face, and the rage in his eyes, and I knew if he got the gun, he was
going to kill me.... I scrambled up onto the waterbed and leaned over
and tried to get the gun. And I know we fought, we had a struggle.... During the struggle, the hitting, and scratching, or whatever we were doing, fighting, I heard the gun go off.

This woman further described her reasons for her crime, in the following segment of interview data, where she identified the 'physical abuse' and the 'struggle' as central to her shooting of her batterer.

Immediately before the shooting it was the physical abuse and the struggle that happened after he stuck the gun under my neck that resulted in his being shot.

An examination of the two cases of ancillary crime also revealed the extent to which a woman's 'fear' of her abuser was central to her crime. In one case, a woman participated in her abuser's crime where he killed his stepmother and required her to clean-up and help dispose of the body. This woman complied, and never went to the police, out of her fear for her own life. In testimony on cross-exam, the woman explained that "she helped clean up the kitchen after the crime not because she loved him but because of fear." She also explained that she did not contact the police because "she was terrified of ---- and just terrified, period." Interview data shows that the years after the killing were extremely violent and that the woman's abuser threatened to kill her if she ever left and if she ever went to the police. On one occasion, the abuser pulled her out of the car by her hair, beat her in the parking lot of her mother's apartment building, and then backed the car up on her thereby injuring her leg and wrist. This woman's legal memorandum in support of a new trial states that "On that same occasion he said 'you're never going to leave me' and then he brought up ---- [his stepmother]."
In another case involving a woman's participation in her abuser's crime, the interviewer noted the following.

----- believed that ---- might kill her if she did not assist in the robbery.

----- tried to get out of going but was afraid that if she didn't go ---- would seriously hurt or kill her.

In this next segment, the woman herself referred to her fear of her abuser, and linked this to her experience with the crime. She also linked her participation in the crime to her batterer's past physical abuse of her.

I was scared and nervous, and wouldn't drive fast, like he told me so I got smacked.... I know I should have just left him there, and it may be hard to understand that I could have been that afraid of him but I was and still am.... If he had ever beat you up the way he has me, you would know...

Even though all of the above cases demonstrate that a woman's fear of her abuser is key to an understanding of how her experience with domestic violence is related to her crime; there exist different kinds of fear and fear can be realized in many different ways. While the women generally feared for their lives, and implicit in the struggles described above is a woman's immediate fear for her safety and life, other women may experience less immediate kinds of fear. For example, one woman in this sample was physically separated from her abuser at the time she arranged for his death. However, her fear involved the fact that he was intent on finding her and taking her and her children away. This woman also feared for the future well-being of her daughter, whom her batterer sexually abused shortly before her escape. The interview data on this case shows that, shortly after the woman's escape, her batterer called and claimed to be coming to Michigan to retrieve the woman and her children,
and take them to another state. The woman found herself "terrified" and immediately asked herself: "How can I stop him from abusing ----- [her daughter]??" It was shortly after this that ----- met with a man who could kill her abuser "for nothing." The interviewers in this case claim that -----'s crime was based on her "fear that she would be unable to escape -----." In a sense, this woman's fear of her abuser combined with her rational decision that his death was the only way to protect herself and, especially, her daughter.

Other women understood their crimes both in terms of a fear for their life and as a means to make the abuse end. One woman, who killed her abuser with a car part and knife shortly after a battering episode, and when she had reason to believe that the battering was about to begin again, described her crime in terms of her fear for her life as well as a necessary escape from further abuse. Her interviewers noted that "Ms. ----- told us that at all times she feared for her life and that she felt she was acting in self-defence. She viewed her actions that evening as an escape route rather than a murder." In her own letter to the project she stated:

Between the all-night harassment I had at work from him - and his treatment of my sons - I was already upset and scared and trying to think about how I could get away. I was already starting to feel foggy and like I was walking on a nightmare or something.

While this woman felt an immediate fear for her life, when she hit her abuser with the car part, she also seems to conceive of her crime in terms of an escape route from further abuse, and also partly in response her abuser's harm of her children.

This raises the issue of to what extent a woman's crime against her abuser is motivated by her desire to end his abuse of her children. In some of the situations
above, women desired their batterer's death partly due to his past abuse of their children, and the fear that further abuse would be directed at their children. This next woman's situation is another example of this phenomenon. This woman had endured psychological, sexual and physical abuse from her batterer for several years. However, she committed her crime against her abuser immediately after he had thrown her child across the room. Importantly, this was the first incident where her batterer had directed his abuse at the child. This woman claimed that she did not really want to kill her abuser but, rather, wanted his abuse to stop. She claimed, in an interview, that "I didn't want to hurt him... I just wanted to make him stop."

Other women also understood their crimes as a means by which to make the abuse end. One woman believed her friend when she suggested that "if he hurt like he hurt me then he would stop." This woman claimed to want her abuser "beat up" so that he would "quit beating me and telling me I was crazy."

Some women talked to others about having their abuser killed, and this may have reflected a woman's rational decision that this was the only way to make the abuse end. This next woman seemed to link her desire to have her abuser killed, to his continued abuse of her and her son, when she stated the following at the time of sentencing:

It is not nice to tell everyone, that is including you, how he was treating me and my son. No one likes to like to talk about things like this. You can be sure God knows I wanted many times to kill him and warned him about it.

A brief in support of this woman's appeal noted that "she admitted she had asked others in the past because "he just kept on whipping on me and beating me and the
kids." Finally, the following segment of her stepson's court testimony shows that the
death of her abuser was, at one time, discussed as an option simply to make the
battering stop.

Question: What do you know about the death of your stepfather ?
Answer: For years my stepfather has been beating myself, my mother, and
my brother and I spoke with my mother about doing things to him so it
would stop.
Question: What type of things?
Answer: Such as leaving home, not coming back, or killing him.

One woman appears to have made a very rational decision to kill her abuser,
for both what he had done to her immediately preceding her crime as well as the
many other forms of abuse she endured over the years. In this segment of court
testimony, the woman described her thoughts and actions immediately after her
abuser's violent sexual attack, where he handcuffed her to the bed and sodomized her.

Answer: Then, he got through, and he got off me like nothing ever
happened. I was very upset and hurt and angry. And, as I saw those
guns, it registered in my mind that I wanted to kill him. I went
downstairs and I sat on the couch and all I could think of: I'm going to
kill that son of a bitch for what he had done to me.
Question: What was he doing?
Answer: He was laying on the bed...He was sleeping. I said:" -----, are
you awake?" And he didn't answer me. I laid down, and I had the gun
to my side, down beside the bed, but holding it still. And I knew he
was sleeping. And I laid there for maybe one minute. And I got up
and I turned the gun and I shot him in the back.

This woman understood her crime as largely in response to her batterer's sexual attack
of her on the night of the crime. However, as described in her presentence
investigative report, she also linked her crime to the abuse she experienced over the
many years of the relationship.

The Defendant states that she shot the victim shortly after he sodomized
her due to the humiliation she felt and the many injustices he had shown her over the years.

Many women had difficulty believing that their batterer was dead and, even after they have evidently killed them, they still feared their abusers. One woman, who shot her abuser, stated in her interview that "To this day I still think he was going to get up and kill me even though he was dead." In another case, a woman stabbed her abuser to death and reflected on a similar fear when she stated, in police questioning, that after the crime she "just ran, I just kept on running" and she "was scared to go back and get my clothes." Interview data for one woman suggests that even after she had hit her abuser over the head with a heavy object, she was "unable to comprehend that she had harmed her seemingly indestructible abuser" and then reached for a knife to slit his throat. This same woman has had recurring nightmares, since her crime, that "on the day of her release from prison, he will be outside waiting for her."

Finally, one woman explained, in court testimony, that she feared her abuser even after she had shot him.

Then I freaked out. I turned on the light, and I said: "Oh my God." I turned on the light and I went - I was afraid to go to him. I was afraid he'd grab me. I was afraid of him.

The fact that many women did not initially believe their batterers are dead, even though it is clear that they had killed them, is perhaps indicative of the extreme fear they had for their abusers, and their belief in his seeming indestructibility.}\footnote{For a detailed examination of how these women construct and understand their batterers, see the unpublished thesis work of Sandra MacMillan (University of Windsor, 1995). MacMillan examines this data in her work on the social construction of the 'batterer.'}

\textbf{After the Crime}
Women reacted in numerous and diverse ways after they committed their crimes. They often did not, at least for a while, remember the events of the day of the crime. When asked to refer to the details of their crimes they sometimes explained that the details were "fuzzy," and/or that they simply remember very little or nothing at all. One woman had little recollection of hiding and concealing her abuser's body, immediately after her crime. Her interviewers noted that "Ms. ---- says the details surrounding the murder and her subsequent actions remain fuzzy." Some women also referred to themselves as being in a "state of shock" for some time after the crime. Other women seemed to remember the events on the day of the crime quite clearly. Finally, some women immediately confessed to their crime. However, others initially lied to the police, largely out of fear for the consequences of their actions.

Upon reflection of their violent crimes, the women generally understood that they were 'justified' in their actions. They saw their crime as a necessary method by which to preserve their lives. As one woman claimed in a taped interview, "its human nature to protect yourself." Another woman explained her abuse as a "justifiable cause" for the crime she had committed. Understanding their actions as 'justifiable,' the women did not feel that they should have gone to prison for their crimes. As one woman explained in an interview, when asked about the "greatest injustice" of her conviction:

[The injustice is] The fact that I am being punished for defending myself from someone who had already harmed me in the past, and who everyone knew was a violent person. I thought he was going to kill me. What else could I have done?

The women also often understood their actions as 'necessary' in that no one was going
to help them. One woman stated, in an interview, that "If I had somewhere to go, I wouldn't be here [in prison] and he'd still be alive."

This is not to suggest, however, that the women saw their crimes, and the killings, as 'right.' What they saw as 'right' was their need to protect themselves, and in some cases their children. As one woman described, in a taped interview, "every battered woman [who kills] has to somehow deal with the fact that she took a life."

**Summary**

The women in this sample appear to have had very different experiences with crime. While all of the women's crimes were related to their experiences with domestic violence, and the women appeared to understand their crimes as such, not all 'battered women' are the same. They experienced and understood their abuse, and their resultant crimes, in diverse ways.

While some women appear to have made a very rational decision to kill their abuser, and may have calmly planned it with others or acted alone, others simply reacted in a physical struggle or confrontation, usually when they received some kind of sign that their batterer intended to harm or kill them. In situations involving a physical struggle, once a woman reached for an object to kill her abuser she, in essence, could not 'change her mind' and withdraw from her batterer, or (as she had reason to believe) the consequences would have been deadly.

All of the women feared their batterers, but different kinds of fear lead them to commit their crimes. In cases where there was a struggle, the women usually reacted based on an immediate fear for their lives. In other cases, usually when the murder
was planned with a third party, women acted on the basis of a fear of future abuse and their desire to protect their health and safety. For the most part, the woman was 'to kill' or 'be killed' by her abuser. As the preceding analysis has shown, the battered woman usually believed that her batterer would eventually kill her. The abuser had threatened to kill her many times, had stated specifically how he would kill her, and in many cases had attempted it in the past.

It appears from the experiences of the women in this sample that a combination of these factors may have occurred for some; that is a woman may have understood her crime as a reaction to her fear for her life, and simultaneously as a rational decision to end her abuse forever. Women's fears and decisions, whether immediate or future-oriented, or both, were based on their experiences with their batterer's abusive behaviour over time.

For some women in this sample, the abuse of their children was a central factor in the killing of their abusers. Their crimes may have been a fairly immediate reaction to the abuse of a child for instance, and/or it may have reflected a rational and future-oriented desire to protect the child from further abuse. In fact, many different situations preceded and seem to have affected women's understandings of their crimes such as previous experiences with abuse; a woman's knowledge of her batterer's behaviour; instances of sexual abuse; and/or, help and assistance from others.

Finally, women's experiences with ancillary crime put them in a somewhat different category in that their crimes were more passive than those of other women. They did not 'fight back' but instead complied with their batterers' requests. However,
even these women understood their participation in crime as deriving from their experiences with domestic violence, a rational fear of their abusers, and a desire only to preserve their safety and their lives.

The Battered Woman Syndrome and Women's Crimes

This examination has revealed that the women in this sample experienced abuse, and their resultant crimes, in diverse and complex ways. However, this has also demonstrated that in all cases women's crimes can only be understood with detailed reference to their experiences with domestic violence, and particularly with respect to their extreme and rational fears of their abusers.

When attempting to understand the ways in which these women's crimes were related to their experiences with domestic violence, it became obvious that in all cases where women arranged or themselves killed their abusers, they fought-back against their batterers and made some kind of decision which would ultimately end their abuse forever. That is, whether spontaneous or planned, the women took action to preserve their lives, and sometimes also to ensure the safety and well-being of their children.

As described in earlier sections, the Battered Woman Syndrome relies on a model of 'learned helplessness' to explain why women 'stay' in abusive relationships. In accounting for why women do not leave their abusive relationships, the BWS and its premise of learned helplessness, describes women as 'passive,' 'blind to their options,' and 'lacking in motivation to respond' after enduring a repeated cycle of abuse. This focus is particularly problematic with respect to the experiences of the women in this sample: especially those who took action and fought-back against their
batterers to prevent future occurrences of abuse and to preserve their lives.127

127 It is important to note that the two cases of ancillary crime can be viewed differently than the other crimes, with respect to this point. These two women did not take action to end their abuse forever but, rather, were coerced into participating in the crimes of their batterers. These women's particular crimes are somewhat less problematic, with respect to a focus on learned helplessness, since these crimes can be viewed as more 'passive' than those involving violent action on the part of a woman against her abuser.
Chapter VII

Women's Experiences with the Criminal Justice System:
Legal Constructions of Battered Women

While it has been useful to examine the experiences of the women in this sample in terms of the abuse they endured and their resultant crimes, and in terms of the 'legally relevant' premises of the Battered Woman Syndrome, it is necessary to move to an analysis of women’s experiences within the criminal justice system. This will allow for a detailed account of women's treatment therein, particularly with respect to how key criminal justice agents constructed battered women and how uses and non-uses of the BWS contributed to these constructions.

Criminal Justice Agent's Constructions of Battered Women who Commit Violent Crimes

An understanding of women's treatment within the criminal justice system necessitates an examination of the specific ways by which agents of the criminal justice system\(^\text{128}\) constructed battered women who have committed violent crimes. Implicit in this is an understanding of how key agents interpret and report a woman's experience with domestic violence, and its relationship to her crime.

The Probation Officer

An examination of thirteen 'pre-sentence investigation reports' revealed that probation officers failed to construct women with reference to their experiences with domestic violence and its relationship to their violent crimes. Even though the probation officer is given the task of interviewing the woman in each case, and has an

\(^{128}\) The researcher will refer to judges, prosecutors, and defence attorneys as male. This is due to the fact that all of these agents of the criminal justice system were in fact male, for these cases. If these agents had been female, there may or may not have been differences.
opportunity to reflect her experiences in segments of the report.\textsuperscript{129} he/she usually failed to include a woman's experience with abuse. Furthermore, when an account of domestic violence was presented, it served to normalize the experience and minimize the abuse.

In one pre-sentence investigation report, a woman's experience with domestic violence was referred to in terms of her less than ideal experience as a 'military wife'.

\textit{--- went to live with \textit{---} in [another state], for a short period of time, but found that the life of a military wife was not all that she expected it to be and she returned to the Oakland County area.}

In several cases, domestic violence was referred to as if it were part of a normal marital relationship, where the two participants had 'problems' or 'differences.' One report stated, for instance, that "apparently the relationship between the Defendant and her husband was rather hostile." In another pre-sentence investigation report, the probation officer stated that:

Mrs. \textit{---}'s involvement in the instant offense is solely attributable to continuing marital differences. As a result of this long-run problem, Mrs \textit{---} apparently killed her husband in the heat of passion. However, \textit{---} has clearly indicated and well understands, that she cannot take the law into her own hands.

The above quote also illustrates how the probation officer may have acknowledged a woman's experience with domestic violence but attached particular significance to her actual crime. This can be seen with respect to the probation

\textsuperscript{129} The pre-sentence investigation report contains a section entitled 'The Defendant's Description of the Offence' and the probation officer is given a great deal of 'discretion' in terms of his/her writing of the report. In fact, the pre-sentence report can contain information about a Defendant that would not be admissible in court (i.e. hearsay and character evidence), and, thus, leaves the probation officer with ample opportunity to comment on the woman's experience with domestic violence and its possible relationship to her crime.
officer's sentencing recommendations. In this next case the probation officer acknowledged a woman's fear of her abuser when s/he stated "the Defendant indicates that she never told anybody due to fear of -----." Having written this, the probation officer went on to recommend incarceration stating:

...considering the fact that the Defendant was convicted of second degree murder, the Defendant's denial of guilt and the prolonged pain and anguish suffered by the victim's family, this writer has no alternative but to recommend incarceration.

In another case, the probation officer again briefly acknowledged a woman's experience with abuse but attached particular significance to her 'brutal' offence.

It does appear that the Defendant was often physically abused. However, the fact remains that this was an extremely brutal offense, where the victim was killed during his sleep. The victim's body was concealed by the Defendant.

In one case, the probation officer referred briefly to a woman's fear of her abuser, but recommended lengthy incarceration, when he/she wrote the following.

Although the Respondent's fear of the victim was not unfounded, the serious nature of this offense warrants incarceration...Although I do not view the Respondent as the most dangerous individual that I have encountered in recent years and this victim may have posed a greater threat to the community at large, anyone who takes the life of another with the abuse of a lethal weapon, warrants a double-digit term.

This probation officer assigned significant relevance to the woman's crime, even while suggesting that the woman was not necessarily a danger to society. Furthermore, and as in all of the above cases, the probation officer failed to construct the battered woman in terms of her complex experience with domestic violence, and its relationship to her crime.

In some cases, the probation officer constructed the woman as seeking the
death of her abuser for financial gain. One probation officer wrote that "----- became aware of the $80,000 insurance policy and paid to have him [her abuser] killed." The probation officer constructed the battered woman as if the principal and or sole motivation for her crime was 'financial gain,' ignoring the severity and length of the abuse she had been subjected to. In another case, the probation officer minimized a woman's experience with domestic violence partly by constructing her as seeking money to correct her problem of "financial irresponsibility."

For some time prior to this offense, there had been marital problems between the ----- [their last name]. Apparently these problems centered on financial irresponsibility on the part of the Defendant. She apparently had taken out many credit cards in the victim's name and had run up some charges on them which were not paid. As a result, the credit rating of the victim was severely damaged.... Ms. ----- indicated no financial assets at all.... It should be noted that the victim in this offense had $100,000 in life insurance.

When probation officers made notes under the 'Employment and Economic Situation' of the pre-sentence investigation report, they never referred to a woman's financial situation in terms relating to her abuser's economic control. In one case, the probation officer wrote about a woman's lack of financial assets as if it were her deficiency (earlier in the report referring to her "financial irresponsibility") and failed to put this in the context of her abuser's economic control throughout all of her married life. The probation officer stated that "----- indicated no financial assets at all. She stated that she owes ----- Hospital approximately $2,000 for eye surgery."

In the writing of pre-sentence investigation reports, probation officers did not construct battered women in terms of their extreme fears of their batterers, and the effects of their batterers' power and control. In this next case, the probation officer
did not account for the pervasiveness of a woman's extreme fear of her abuser, which may not have transcended physical distances.

The Defendant indicates that she never told anybody due to fear of ----- However, this writer is concerned that during the last six years there were numerous times when she and ----- were separated when she could have quite easily have contacted the authorities.

The probation officer is given a great deal of discretion in writing the presentence investigation report. S/he is not limited to statements that can be corroborated, but can rely on hearsay and other evidence that would normally be inadmissible in court. The effects of this discretion were sometimes reflected in women's comments about the inaccuracies in their reports. One woman wrote the following in a letter to the project.

In my pre-sentence investigation report there are many false and damaging statements made by the probation officer, which my attorney reviews in his sentencing memorandum.... I was not given a copy of my pre-sentence investigation report until I came to prison and as I read it I was horrified, it was filled with lies, innuendos, and opinion, NOT facts...but it was too late to contest what the report contained.

Another woman, when asked if domestic violence was considered in the sentencing process, responded with the following.

Yes, it [domestic violence] was taken into consideration, but because there are so many things reported in the pre-sentence investigation report that are not true, and that I never said, I doubt that the judge or the prosecutor believed me.

Probation officers did not construct battered women in terms of their complex experiences with domestic violence. They also failed to link women's experiences with abuse to their violent crimes. When domestic violence was briefly referred to, it was done in a way which minimized the abuse and normalized it as part of a regular...
marital relationship that was simply fraught with 'difficulties.' The probation officer also tended to view things other than the abuse, such as 'financial gain,' as the principal or sole motivation for the crime, thus ignoring details about the severity of the domestic violence, and the woman's extreme and rational fear of her abuser.

**The Prosecution**

An examination of the cases in this sample revealed that the prosecution\(^{130}\) usually constructed the battered woman as a cold-blooded murderer, who pre-mediated and planned the death of her abuser, for reasons other than the abuse she experienced and her resultant extreme fear of her abuser.

The prosecution sometimes explained the women's crime as if it had been planned out of anger for her abuser's actions with other women. One prosecutor stated the following in his opening remarks.

She intended to kill him. She was angry and she made threats to people who she thought might know where he was. She found him in a bar...he was there with another white woman...they went to several places and then to a party. ----- produced a knife at the party from a plastic bag and showed it to people. She told people she was going to kill the victim with it because he was with a white woman. She was mad and jealous. This will prove pre-meditation.

The prosecution thus attempted to show that the woman planned and pre-meditated the murder of her abuser from the time prior to finding him in a bar, and ignored the notion that she acted out of fear during the physical struggle immediately preceded the crime.

\(^{130}\) As discussed in Chapter IV, the researcher acknowledges that certain constructions will privilege particular kinds of information depending on the roles of criminal justice officials, and their 'function' in an adversarial criminal justice system. It should thus be noted that the prosecution is attempting to build a strong case for the State and, in these cases, is attempting to secure convictions.
Prosecutors also often used the notion that women had told others in the past that they wanted their abusers dead, as evidence of pre-meditation and planning. The following was taken from a legal brief rejecting a woman’s appeal.

The prosecution also presented testimony that prior to killing her husband, Defendant stated that she wanted her husband killed and on two occasions had talked to friends about trying to find her a hit man to kill her husband, a task for which she was willing to pay $500 and finally, $1,000.

Many of the women in this sample talked to others about wanting to kill their abusers. This was used to construct the battered woman as having pre-meditated and planned her crime. This ignores an alternative construction, namely that the battered woman’s telling others that she wants her abuser dead is an isolated incident reflecting her desire to have the battering end.

While in some cases the woman appeared to pre-meditate and plan the death of her abuser, the analysis presented in Chapter VI has shown that she did so as a result of severe abuse and an extreme fear of her abuser. However, the prosecution did not construct the battered woman in this way; they instead attempted to show that she arranged for the killing of her abuser for reasons other than the abuse, such as that of financial gain. For example, in one woman’s application for appeal, her attorney noted that in the original trial:

The theory was that the murder had been pre-meditated by the Defendant-Appellant and that her motive was that she would be the beneficiary of a $100,000.00 life insurance policy on her husband’s life.

The prosecution also constructed the battered woman as having pre-meditated and planned her crime, in this next case of ancillary crime. This is a case where the
woman described being forced into helping 'cover-up' her abuser's violent crime, largely out of her extreme fear of her abuser. However, a legal memorandum written on her behalf stated that the prosecutor "proceeded against the Defendant on the theory that she had aided and abetted the killing by planning and encouraging it." In this case, the prosecutor failed to construct the woman in terms of her extreme fear of her abuser and instead viewed her as an equal and free participant in her abuser's crime.

In constructing the battered woman as a cold-blooded pre-meditating killer, the prosecution also utilized a male model of self-defence,\textsuperscript{131} which assumes that unless the attack and threat of harm is immediate, it is not necessary for the reasonable 'man' to take action to preserve his life. This also assumes that the two parties are of relatively equal size and strength. This is problematic for women, and especially battered women, who experience threat and danger quite differently than this. However, the prosecution often used a lack of immediate danger, inherent in many of these cases, as evidence that the woman did not act in self-defence, and for the preservation of her life. The following provides a clear example, and is taken from the prosecution's closing arguments.

[There is] certainly no showing that the Defendant was acting in self-defence or defence of others because under the circumstances that were presented, the deceased was in fact sleeping at the time so certainly nobody was in any imminent fear of death or great bodily harm.

In another case where a woman killed her abuser in his sleep, the prosecution again relied on a model of confrontation and fear, based largely on the experiences of men.

\textsuperscript{131} The notion of a male model of self-defence, based on the 'reasonable man' standard and the notion of 'imminent threat of harm,' was described in Chapter II.
and traditional notions of self-defence, to portray the woman as a pre-meditating 
murderer. The prosecutor stated the following in his closing arguments.

... there was no provocation, no provocation to reduce this to any lesser 
crime than which is charged, first degree murder... We don't have a 
fight where somebody pulls out a gun and shoots someone... We do not 
have that kind of offense here. Ladies and gentlemen of the jury, what 
we do have is a cold blooded, cool, calculated murder.

The prosecution also sometimes required the battered woman to conform to a 
notion of 'fear' which does not acknowledge the pervasiveness of the batterer's power 
and control, and the woman's resultant extreme fear of her abuser. In one case, for 
example, the prosecutor failed to portray a woman's extreme fear of her abuser, when 
suggesting that times of physical separation would serve to eliminate her fears. A 
legal memorandum, written on behalf of a woman who committed a crime with her 
abuser, revealed this.

Throughout the trial, the prosecutor emphasized Defendant's failure to 
report the crime, even during two periods of vast physical separation 
between the two where Defendant ostensibly could have reported the 
killing without fear of immediate reprisal.

The prosecution also often referred to the battered woman in terms of her 
failure to leave or end her abusive relationships. In this way, the prosecution failed to 
portray the woman's experience with domestic violence as one that closed all options 
to her. However, by constructing the woman as having ample opportunity to leave, 
and as 'choosing' not to, the prosecution minimized the woman's experience with abuse 
and, as has been demonstrated in the preceding analysis, failed to link the woman's 
crime to her experience with domestic violence. This segment of a prosecutor's 
closing arguments, reflects this construction of the battered woman:
She -- in fact one of her own witnesses says this person even after these beatings would move back and forth. This was like a regular routine, move out for a couple of days, move back. Certainly she was aware the police could be called. In addition [there were] alternative means she was aware of in these circumstances.

When the prosecution recognized a woman's experience with domestic violence, and its possible relationship to her crime, he often constructed the battered woman as artificially 'playing up' the role of victim as simply a convenient excuse for her crime. This can be seen in a prosecutor's closing remarks:

As jurors you should be careful not to allow a Defendant to maneuver herself into the role of a helpless victim. I believe the Defendant had troubles with ----. I believe he hit her. But the fact that she might have had troubles and the fact that she might have been beaten several times by ---- does not excuse her involvement in this crime. It is no excuse for murder.

In some cases, the prosecutor even urged the jury not to view the woman with any kind of sympathy. In one case, interview data indicates that the prosecutor, in his opening and closing remarks, made "a plea to the jury not to let sympathy for ----, due to her history, to guide them in their deliberations."

The prosecution constructed the battered woman in a variety of ways. Inherent in each construction, however, was a failure to link women's crimes to their experiences with domestic violence. In fact, in most cases the prosecution omitted any reference to the abuse and constructed the battered woman as a 'cold-blooded' and 'calculating' murderer. To this end, the prosecution sometimes made use of a male model of self-defence and a notion of 'fear' which fails to account for the batterer's power and control. In other cases, the prosecution attempted to show that battered women kill their abusers for financial gain. Even in cases of ancillary crime, the
prosecution failed to construct women in terms of their extreme fears of their abusers, and instead viewed them as equal and free participants in their abusers' crimes. Finally, when the prosecution did address a woman's experience with domestic violence, they sometimes constructed the woman as 'playing up' the artificial role of 'victim,' and urged the court to not view the woman with 'sympathy.'

The Trial Judge

From an examination of the cases in this sample it is clear that, similar to the prosecution, the trial judge\(^{132}\) constructed the battered woman primarily as a cold-blooded calculating murderer, and thus failed to recognize that a battered woman's experience with domestic violence was central to her violent crime. When the judge acknowledged a woman's experience with abuse, he minimized the role that abuse played in her crime by assigning priority to the woman's violent crime; by using her as an 'example' by which to deter others; by claiming that she should have left the relationship; by blaming her for her abuse; and by departing from sentencing guidelines such to construct her as a pre-meditating murderer.

Some women found that the judge was most interested in the actual act of their crime, and that this came at the expense of having their abuse recognized and considered as a mitigating factor. That is, even when the abuse was made a part of the trial, women found that it was often not very significant to the judge at the time of sentencing. One woman claimed that:

\(^{132}\) The researcher recognizes that the trial judge is constrained by their role in the courtroom, however, and as this research has revealed, the trial judge is also equipped with discretionary powers. For example, the judge can depart significantly from sentencing guidelines.
The Court did not wish to hear about the mitigating facts surrounding the actual events, but only whether or not an event (such as premeditated murder or manslaughter) did in fact transpire.... While some issues concerning domestic violence were raised, those issues failed to attract the attention of the judge and further failed to gain his acknowledgement.

In some cases the trial judge made an 'example' of the battered woman, in an attempt to deter similar violence in other women. One judge, in determining a woman's sentence, stated: "I must also consider the matter of general deterrence so that others will not choose options that violate the laws of society." In another case, the judge initially acknowledged a woman's experience with abuse but then went on to explain the importance of deterrence.

There is a fourth factor that is of equal importance... and that is the factor of deterrence. The example that is set so that others do not feel that they can afford to commit these types of crimes. And its a very significant factor in this Court's decision in its sentence.

By applying the notion of deterrence to battered women, the judge demonstrated a fundamental lack of understanding of domestic violence, and failed completely to acknowledge its relationship to a woman's crime. As one woman so clearly stated, "had the judge been sensitive to the plight of battered women, he would have realized that one cannot deter by example in domestic violence situations."

In some cases the judge, like the prosecutor, relied on male models of 'self-defence' and 'fear' to construct the battered woman as cold and calculating murderer.

...this is not the type of second degree murder that is raised on a matter of instantaneous or spontaneous emotion or heat. There was, in this Court's opinion, evidence that it [the murder] was contemplated by the Victim — or by the Defendant. She went downstairs, had to take this huge piece of iron... the record will show that...it had to be carried upstairs. It was with thought of, and considered before the actual act.
was committed. And the further, after committing the bludgeoning, a knife was procured to make sure that there was an absolute death...

The judge constructed this woman as a pre-meditating murderer on the basis that she did not kill her abuser in an immediate situation of confrontation and struggle. The judge thus failed to present a construction that demonstrated that battered women experience fear and retaliation differently than men.

In several cases, the trial judge required the battered woman to have 'left' her relationship. In one case, the judge advised the woman that "the proper option in the situation that you found yourself in would have been to seek a separation or divorce."

In another case, the judge remarked with the following:

----- was caught up in a lifestyle, which she remained in by her own choosing as opposed to breaking off from or leaving the Descendent, as was an option, which was available to her.

The judge's explanation of the battered woman as 'choosing' to remain in her abusive relationship, and as if there exist numerous options for 'leaving,' assisted in a construction of the battered woman as a pre-meditating killer, whose abuse was unrelated to her crime.

When the trial judge acknowledged a woman's experience with abuse, he often appeared to hold her responsible for her situation of domestic violence. In one case a trial judge implied this when he stated that "she [the woman] feeds his personality."

In another case a judge, while initially acknowledging the abuse as an 'extenuating circumstance,' went on to explain that the woman was less deserving of a lighter sentence due to the fact that she had once attempted to leave her abusive relationship.

The Court realizes that there are certainly extreme extenuating
circumstances. Also, in light of the life that this woman was forced to endure with this man. Yet, I saw that at one time in her life she did something about it when she left California and left him and came to [another state].

In effect, the judge blamed the woman for her situation of domestic violence.

Finally, an aspect of the trial judge's construction of the battered woman involved his, at times, departure from the sentencing guidelines of manslaughter. That is, in some cases, the judge sentenced the woman according to first degree murder sentencing guidelines, even when she had only been convicted of second-degree murder. In one case the judge made an 800% departure from the sentencing guidelines when he sentenced a woman according to a first-degree murder conviction.

In sentencing Defendant for manslaughter the trial court's reasons for the 800% departure from the minimum sentence established by the Supreme Court's guidelines and the reasons stated show that the trial court believed Defendant was guilty of first-degree murder.

Sentencing transcripts indicate that the judge made this decision after explaining that the woman pre-meditated the murder since she was un-handcuffed, and free to leave, after her abuser had finished sodomizing her. In another case, the judge overrode the jury's decision that there was insufficient pre-meditation to warrant a first-degree murder conviction, and sentenced the woman according to first-degree murder sentencing guidelines.

...while the jury, I respect their determination that there was insufficient pre-meditation and deliberation to warrant a first-degree murder conviction in this case that was presented to them, I nevertheless feel in hearing the testimony myself and sitting through the entire trial, that there is no question in my mind that this is not the type of second-degree murder that is raised on a matter of instantaneous or spontaneous emotion or heat...
Sentencing transcripts revealed that the judge believed there was sufficient pre-meditation since, after a battering episode, the woman waited until her abuser had gone to bed in order to commit her crime. This trial judge, like the others, failed to construct the battered woman in terms of her complex experience with domestic violence, her resultant fear of her abuser, and her crime as it was the necessary method by which to preserve her life.

Trial judges predominately constructed the battered woman as a cold and calculating murderer. In some cases domestic violence was not made an issue for the judge, partly because the abuse was not raised by the defence. However, when the trial judge was made aware of a woman’s experience with domestic violence, he tended to minimize or simply ignore the role of abuse in a woman’s violent crime. That is, the trial judge often recognized the abuse in his statements, but went on to claim that it was no excuse or justification for murder; that his acknowledging of the abuse would fail to deter other women from committing similar crimes; and, that the battered woman was at least partially responsible and to blame for her abuse due to her ‘choice’ to remain in the relationship. Finally, the trial judge often relied on a male model of self-defence, and thus a model of confrontation, fear and retaliation based on the experiences of men, to construct the battered woman as a pre-meditating killer.

The Defence

An examination of the cases in this sample revealed that the defence attorney’s construction of the battered woman is often as problematic as that of other key
criminal justice agents. Even though it would be reasonable to expect that a woman's own attorney would use her experience with domestic violence as a central component in the construction of her crime, thus establishing a clear link between a woman's fear of her abuser and her violent crime, this was not usually the case. In fact, the defence tended to minimize or neglect the role of abuse in a woman's crime, and constructed the battered woman primarily in terms of her mental state; as having killed her abuser accidentally; or, in some cases as having the 'perfect' marriage. In several cases, the defence attorney utilized methods and strategies in the courtroom that enabled him to construct the woman with absolutely no reference to her experiences with domestic violence.  

The defence sometimes recognized a woman's situation of domestic violence, but ultimately chose to construct her in terms of her mental state. In one case, the defence acknowledged a woman's experience with domestic violence but explained that the abuse she had suffered led her to become 'temporarily insane' at the time of the murder. That is, the defence chose to by-pass the notion that the woman killed her abuser out of a rational fear of him, and instead explained her crime in terms of her mental state at one moment in time. This can be seen in a segment of the defence attorney's opening comments:

I believe that the defense will show that as a result of this abuse that she suffered, that she was temporarily insane at the time that this act was committed. And I'm going to also return to you after my closing arguments and ask that you return a verdict of not guilty by reason of

133 In some cases an aspect of the defence's construction of the battered woman involved the use of BWS testimony. However, the uses and non-uses of the BWS will be specifically and separately addressed in the following section.
insanity.

In another case where the defence acknowledged a woman's experience with domestic violence, but went on to construct her in terms of her mental capacity at the time of the crime, the defence attorney utilized the notion of a 'panic reaction.' In this case, the defence attorney presented a great deal of evidence regarding the woman's experience with domestic violence over a period of several years. However, instead of linking her experience with abuse, to her knowledge and rational fear of her abuser, and her crime as it occurred out of her need and desire to preserve her life, the attorney claimed that her crime was largely a result of a 'panic reaction'; the implication being that she did not act rationally or as a 'reasonable' person would in her situation. This testimony relied on a psychologist's finding that:

while the Defendant was not suffering from any mental illness, she was particularly vulnerable to a panic reaction based on the prior history of her relationship with the deceased.

In another case, the defence chose to present a woman's killing of her abuser largely as an 'accident,' and thus minimized the extent to which the woman's fear of her abuser led her to kill him during his violent attack on her, and out of her rational desire to preserve her life. In fact, several documents written in support of this woman's appeal pointed to the fact that the strategy of suggesting that the killing was partly an accident, was likely detrimental to her case.\(^{135}\)

\(^{134}\) The defence in this case also utilized BWS testimony as an element of his trial strategy. Again, this aspect of the construction will be dealt with shortly.

\(^{135}\) The defence attorney in this case attempted to explain this woman's crime both as an 'accident' and as an act of 'self-defence'. In his presentation of the defence of self-defence, he made use of BWS testimony. For this section, however, it is most significant that the defence utilized the notion of an 'accident' to construct this woman's crime. Furthermore, this strategy contradicted the fact that she acted
One woman's attorney required her to lie about her marriage by claiming that it was a 'happy' one. The defence thus failed to construct this woman in terms of her experience with domestic violence, as well as the sexual molestation of one of her children, both of which preceded and were key to an understanding of her violent crime. The following segments of interview data illustrate this quite clearly.

The trial attorney forbid ----- to testify as to the molestation or to any of -----'s other abusive behaviours.... This left ----- without a defense, in contravention of due process. ...the trial attorney advised ----- to testify that her marriage was happy and problem-free....

In some cases no evidence of battering was presented at the trial and few if any witnesses were called on the woman's behalf. That is, the defence attorney at times constructed the battered woman without any reference to her experience with domestic violence and the ways in which that experience related to her violent crime. In one case, the defence attorney chose to employ a legal strategy which relied completely on the prosecution's burden to prove that the woman had committed the crime beyond any reasonable doubt. In this case, the defence attorney presented no evidence of abuse and instead:

focused on elements that must be established beyond a reasonable doubt before a Defendant may be convicted of any crime and in this case the crime for first-degree precipitated murder.

In another case, the defence attorney employed a strategy that again failed to use a woman's experience with domestic violence. In this situation, however, the defence constructed the woman as a victim of child-abuse and as having had a 'tragic' life as a

out of a rational desire to preserve her life, and appeared to be damaging to her case. Documentation indicates that this strategy confused and angered the judge.
juvenile. This construction, as with many of the others, completely failed to link her experiences with her abuser to her violent crime. The following remarks of the defence attorney, taken from sentencing transcripts, are illustrative of his entire defence strategy and demonstrate his neglect of the woman's experience with abuse, in favour of a limited view of her experiences as a juvenile to serve as an excuse for her crime against her batterer.

Indeed, she has experienced considerable problems as a juvenile. She had considerable trouble with her family, specifically her mother, which resulted in that anti-social type conduct as a juvenile and later erupted into this human tragedy that we were before the court on.

The defence attorney, like other agents in the criminal justice system, often failed to construct the battered woman in terms of her experiences with domestic violence and how these experiences led her to commit her violent crime. That is, the defence often neglected to provide an account of abuse which presented the battered woman as having acted out of a rational fear of her abuser, in order to prevent another violent attack and to preserve her life.

Implicit in this is the fact that the woman's defence attorney often failed to utilize expert testimony on the Battered Woman Syndrome. That is, the defence sometimes chose not to construct the battered woman according to legally relevant and admissible testimony on the BWS. The justifications for this are particularly significant, as is a detailed analysis of the constructions of battered women where BWS is utilized.

Constructions of Battered Women and the 'Battered Woman Syndrome'

The Battered Woman Syndrome has been utilized in the criminal trials of
battered women in the United States since the late-1970s. However, even though the
BWS has been 'legally recognized' in Michigan for some time,\textsuperscript{136} and was available
during the time in which the majority of these cases were tried, many of the battered
women in this sample did not receive the 'benefit' of BWS expert testimony. This
must be held as suspect considering both 1) the purposes of BWS expert testimony as
explained in Part I; and, 2) the fact that all of the women in this sample experienced
severe abuse that was directly related to their violent crimes. This distinct element of
BWS 'non-use' raises important questions about the legal recognition of the BWS, and
the extent to which it can help women whose violent crimes are related to their
experiences with domestic violence.

\textbf{Battered Woman Syndrome Non-Use}

An examination of the cases in this sample has revealed that women's defence
attorney's often chose not to construct the battered woman with reference to expert
testimony on the Battered Woman Syndrome.\textsuperscript{137} It appears that numerous factors and
circumstances surrounding the defence attorney's neglect and non-use of the BWS.

1. The Trial Strategy and Battering as 'Motive'

Defence attorneys sometimes chose trial strategies that omitted the use of the

\textsuperscript{136} The Michigan Court of Appeals ruled in 1992 that expert testimony regarding BWS was
admissible in homicide cases where the defendant claimed self-defence (see \textit{People vs. Wilson}, 194
Mich App at 603). Before this, the decision was left to trial courts as to whether or not to allow expert
opinion testimony on BWS.

\textsuperscript{137} The women in this sample were sentenced between 1977 and 1993, with most women being
tried in the mid to late 1980s. During this time, and largely beginning with the Francine Hughes
"Burning Bed" case in 1977, expert testimony on spousal abuse and Battered Woman Syndrome
evidence, were widely publicized and used in the trials of battered women throughout several American
states, including Michigan.
BWS. The reasons for this were sometimes unclear, and not explicitly stated by the attorney. However, a close examination of this group of cases revealed that BWS expert testimony is sometimes not used for reasons relating to the attorney's judgement of the case, and the fact that BWS evidence was deemed not to fit every trial strategy.

One defence attorney may have felt that BWS testimony would show 'motive' and would thus work against a woman in her plea of 'not guilty'. In fact, interview data states that the "state-appointed attorney told her not to testify about -----'s abuse since it would show motive." Other interview data suggests that this attorney's strategy relied on "letting the entire case ride on a chance that the prosecution would be unable to bear their burden of proof." Instead of constructing the woman according to an account of domestic abuse, and possibly utilizing expert testimony on the BWS, the attorney's strategy involved entering the woman's plea as 'not guilty,' omitting a presentation of abuse for fear that it would show motive, and relying on the prosecution's lack of evidence and inability to prove her crime beyond a reasonable doubt. Therefore, the attorney failed to provide the woman with an honest and comprehensive defence. Implicit in this was the non-use of BWS testimony, and a failure to provide an account of domestic violence. The attorney's 'strategy' ultimately worked to the woman's detriment since, in the end, the judge decided that the evidence against her was "overwhelming" and went on to give her a Life sentence.

In another case, the defence attorney appeared to base his trial strategy largely on the "inadmissibility" of a woman's confession. In his closing arguments, the defence attorney focused on the legal technicalities associated with the methods by
which the police had obtained the woman's confession. He also referred to the burden of the prosecution to "prove beyond a reasonable doubt" that this woman had committed the crime. Finally, the attorney also briefly alluded to the woman's "juvenile experiences" with child abuse and rape. His entire strategy thus neglected to focus on her experience with domestic violence and its relationship to her crime. The defence attempted to convince the Court that the woman may not have committed the crime, and that the confession was obtained illegally. Implicit in this strategy is the decision not to present an account of abuse, or any kind of testimony regarding the BWS.

In one case the defence actually explained his non-use of BWS expert testimony. It appears that he judged BWS testimony to be insufficiently credible at the time of the woman's trial, and thus not conducive to her successful defence. In a sworn affidavit, where the attorney was forced to respond to his neglect of BWS testimony, he explained some of his reasons for an omission of BWS evidence.

During the preparation of this case for trial, Mrs. ---- and I discussed the possibility of using the concept of BWS as part of our trial strategy. However, I rejected this defense because in my opinion it was not viable at that time, even though I could see that this was a fruitful and meritorious defense. Today, it seems that this defense's time has come, and would seriously consider this. It is my hope that this Affidavit will succeed in granting Ms. ---- a new trial so that this truthful claim may be asserted.

Interview data also suggested that this attorney believed that BWS testimony would have showed 'motive,' and that this did not conform to his strategy of constructing the woman as having had a 'happy' marriage and without motivation for killing her husband.
2. The Battered Woman as 'Insane'

In some cases the defence attorney failed to utilize BWS testimony in favour of a defence which focused on a psychological profile of the woman in terms of her 'irrational' state of mind at the moment in which she committed her crime. This strategy neglected to confront the woman's rational fear of her abuser, as located within her complex experiences with domestic violence. The following segment of interview data appears to link the non-use of BWS evidence to the attorney's general neglect of the woman's experience with abuse and, particularly, her extreme fear of her abuser.

The defense attorney did not raise BWS as a defense. In general, Mrs. -----'s attorney downplayed the role of abuse in this case. While Mrs. — — herself testified that — — had threatened to kill her, her attorney never developed the idea that — — both threatened and abused Mrs. ----- 's sons such that she was continually fearful for their safety as well as her own.

A psychiatrist testified on this woman's behalf, and as an expert on 'temporary insanity.' The psychiatrist determined that the woman's experience with abuse was only one factor leading to her state of 'insanity' at the time of the crime. Other factors contributing to her irrational state of mind were the "welfare of her children" and "financial difficulties," which were as a result of her "husband not working regularly."

The psychiatrist also testified that the batterer's abusive behaviour constituted a "stressor" in her life and that:

at the time of the alleged crime...that there was a substantial disorder of mood followed by failure to use judgement and her [the woman's] behaviour was significantly impaired, her judgement was impaired, particularly during that state of depersonalization when she was not aware of her own self.
In this case, the defence attorney favoured a construction of the battered woman as irrational and 'temporarily insane' at the time of her crime; implicit in which was a neglect to utilize BWS testimony, which might have helped explain her crime in terms of her experience with abuse, and her rational fear of her abuser.

3. Time and Money

It is possible to suggest, from a detailed examination of the cases in this sample, that BWS expert testimony was sometimes neglected out of very practical constraints involving both finances and preparation time for the trial. Many of the women in this sample were represented by state-appointed attorneys, who may have lacked the funds and preparation time necessary for the utilization of BWS evidence. In one case, for example, a memorandum written in support of a woman's request for a new trial explains that "trial counsel could have and should have presented expert testimony on the BWS." The attorney had apparently inquired from a local battered woman's shelter as to "a list of qualified experts," but failed to follow through on obtaining and utilizing an expert in the woman's defence. Even though it was impossible to determine the exact cause of this, it is reasonable to suggest that the attorney may have experienced time-constraints and/or a lack of funds necessary to compensate the expert for her/his testimony.\(^{13}\)

The defence's possible lack of 'resources' must be understood through comparison to the vast resources of the prosecutor and his/her office. While the

\(^{13}\) An expert can cost large amounts of money and thus is not always within the defence attorney's budget.
defence often struggles to pull together a defence for the woman, in a short period of
time and with an extremely limited budget, the prosecutor, by comparison, has a much
larger budget and is in a position to utilize the full support and resources of her/his
office, especially for high-profile murder trials like the ones here.\footnote{This is a specific insight of the President of \textit{Freedom Link}.} One defence
attorney may have been alluding to this when, during one woman's trial, he stated that
"It has been mighty lonesome sitting over here with my client. The State has many
facilities to put on this case." In this case, and as in many others, the defence attorney
called no witnesses on the woman's behalf and thus had no witnesses testify to the
woman's abuse. This attorney's comments may suggest that a lack of resources was a
significant factor in her ultimately inadequate and unsuccessful defence.

4. Rejection of Walker's Work and Expert Testimony on BWS

An aspect of BWS non-use regarded the State's response to a woman's appeal
which sought a new trial on the basis that BWS evidence was not made a part of her
original defence. In this case, a woman's appeal was based on the fact that "evidence
of abuse failed her, since it did not help her defense due to a lack of an expert." The
memorandum written in support of the woman's right to a new trial, explained that
"the outcome of her trial would have been different" if her attorney had utilized expert
testimony on BWS which would have "supported and explained" the fact that the
woman remained with her abuser and failed to contact the police, about the violent
crime her abuser had committed, out of fear of her abuser. However, the State
rejected this woman's appeal, largely on the basis that Lenore Walker's work was
"suspect" and had the potential to "unfairly prejudice the jury." In the plaintiff's brief which denied the woman her appeal, the State explained that Walker's work on the BWS was questionable partly because Walker had never been challenged on the basis of her methodology, and the possible "biases" of her data. The State then criticized the legal recognition of the BWS, as well as the role of the 'expert' generally. The State refuted the claim that the 'expert' can explain things that others may be unable or ill-equipped to understand. They explained that the "ordinary juror" is and was in a position to understand this woman's fear of her abuser, since such fear is "not truly unique to battered women."

The failure of the defence to construct the battered woman according to the BWS must sometimes be seen as in response to the State's failure to recognize BWS expert testimony as legitimate for use in the courtroom. This case of BWS non-use must also be seen in the context of the State's possible refusal to accept the need for 'experts.' This is particularly problematic for battered women since expert testimony on the battering relationship is intended to help jurors make decisions on the basis of a better understanding of the woman's experience with domestic violence, and thus help the woman to receive a fairer trial.

5. The State's Conservative Application of BWS

The State sometimes decides that BWS testimony is not applicable to certain kinds of cases. That is, the State at times restricts BWS use to 'typical' cases of self-
defence.¹²⁰ This is a problem in that many battered women commit crimes, as a result of their experiences with abuse, that are very different than most cases of self-defence. Furthermore, battered women's crimes, as has been seen in the preceding analysis, cannot necessarily be understood in terms of a notion of self-defence that is premised on the experiences of men.

In one case, a woman's appeal was denied on the basis that her case was deemed not to be a 'classic' BWS case. The following is taken from the Plaintiff's brief in rejection of her appeal.

Defendant's case thus does not present the classic BWS case. In such a case, the BWS is offered in support of a Defendant's claim of self-defense. The Defendant has been subjected to physical and psychological abuse for years and finally reacts by killing her abuser.

The State also decided that the woman's case did not warrant the use of BWS expert testimony on the basis that she did not kill her abuser but, rather, she had aided and abetted him in his violent crime. This is indicated in the same brief which states that the "Defendant was charged with participating in the murder of a third party - not the person by whom she was allegedly being abused." This conservative reading of the legal recognition of the BWS is particularly problematic for women, like this one, who become involved in ancillary crime as a result of their experiences with domestic violence. Finally, this case also illustrates that the State has the discretionary power to allow only a narrow application of the BWS. The State can reject a woman's appeal, which seeks a new trial to allow for BWS expert testimony, on the basis that only

¹²⁰ A 'typical' case of self-defence would involve a struggle between two people where there exists a threat of immediate harm.
certain kinds of cases, which rely on certain kinds of defences, warrant BWS use. The plaintiff’s brief, in this woman’s case, illustrates this quite clearly when it states that:

... the presentation of an expert on BWS in the instant case would have expanded the parameters of the claim to that far beyond what has herefore been accepted by the courts. It would have, in effect, created a rule by which BWS could be used to justify any action or inaction of the battered woman.

6. Ineffective Counsel

In many cases, a failure to utilize BWS testimony can be attributed in part to a woman’s lack of effective counsel. The women in this sample often had state-appointed attorneys who were simply ill-equipped to handle murder cases of this magnitude. In one case, a woman’s attorney chose a bench trial which lasted only two and a half hours in total. While the attorney required the woman to testify as to a history of domestic violence, he failed to present witnesses on her behalf and provided absolutely no information to substantiate her claims. The woman herself pointed to her ineffective counsel when she explained, during an interview, that her attorney did not adequately prepare for the trial and never seemed to "believe" in her account of her abuse and how it related to her crime.

In several cases, women’s appeals were launched on the basis that they received ‘ineffective counsel.’ For example, one woman’s brief in support of her appeal explained that her trial counsel was "defective" and deprived her of her right to an adequate defence and a fair trial. It explicitly stated that: "Defendant asserts that trial counsel was defective in his representation of her case to the extent that it deprived her of effective assistance and requires reversal." With several of the women, this
appeal was denied. The overwhelming number of cases of apparent 'ineffective counsel' raises questions about the usefulness of the BWS, especially considering the skill required to utilize the BWS in a woman's comprehensive and effective defence. 141

7. No Apparent Reason

In some cases it was simply impossible to determine exactly why the defence attorney failed to construct the battered woman according to the BWS. This is an issue particularly with respect to the cases where evidence of domestic violence was presented, but without any utilization of BWS testimony. It may be that the defence attorney opted out of utilizing BWS testimony because of the challenges associated with its correct and beneficial use, the complexity of tying it to battered women's crimes and a comprehensive trial strategy, and finally, the notion that BWS testimony may not necessarily guarantee and create the desired effect. These issues, and others associated with BWS use, are the next topics for analysis.

Battered Woman Syndrome Use

While it has become evident that only some attorneys constructed the woman on trial with the use of BWS testimony, an examination of the few cases of BWS use uncovered several complex and important issues; issues that are fundamental to an understanding of the legal use of the BWS and the extent to which it can actually help battered women charged with committing violent crimes.

1. The Attorney's Misuse of BWS

141 The Project Director of Freedom Link has explained on several occasions that effective BWS use requires a highly competent and skilled defence attorney. Many battered women simply do not have the benefit of such a defence.
In some cases a woman's defence attorney utilized BWS testimony but failed to present it in a way which benefited the woman. In fact, in the judgement of the Project Director of Freedom Link, many defence attorneys were unfamiliar with the BWS, as it should and can be used in women's defences. In one case, a woman's defence attorney failed to utilize BWS testimony effectively and, as indicated in a brief written in support of the woman's appeal, this was largely attributed to his lack of familiarity and understanding about the BWS and its uses for a woman's defence.

The trial counsel was entirely unfamiliar with the area of the BWS and how it applied or could be applicable to a claim of self-defense.... If the BWS defense was going to be a part of a valid self-defense claim, then trial counsel failed to give that theory any credibility by failing to present a complete picture of the BWS and how it applied to this particular Defendant.

From this case it is apparent that providing testimony about BWS can be irrelevant and not necessarily beneficial to a woman's defence, if that testimony is not carefully handled and if BWS evidence is not fully presented. It was argued in this woman's brief in support of modification of judgement that correct and careful use of the BWS would have made a "compelling" difference to her trial.

2. A Failure to Link BWS to a Woman's Crime

In some cases attorneys have a great deal of difficulty linking a woman's experience with abuse, and the components of the BWS, to the crime that the battered woman has committed. An examination of the cases in this sample revealed that the BWS can only be effective when carefully tied to a woman's crime and, in some cases, her claim of self-defence.

In one case, a woman's attorney utilized BWS testimony but failed to link that
testimony to the facts of the case and, ultimately, to the woman's crime. The interviewer's summary suggests that the woman's attorney was aware of the BWS but "did not apply the Syndrome to the facts of the case he was trying." He failed to present BWS testimony in a way that would assist him in explaining how the woman's experience with abuse over time, and her extreme fear of her abuser, led her to act in self-defence to preserve her life. As indicated in the woman's appeal brief, her attorney "interspersed information about the BWS although never tying it into the defense of the instant case." This involves the case, discussed earlier, where the attorney interspersed BWS evidence among and between the two opposing and inconsistent defences of 'self-defence' and 'accident.' The confusion which resulted was reflected in comments made by the judge:

Let me tell you though what bothered me about the defense that I think might justify a hearing. Throughout the trial they screamed BWS, BWS etc. until they came down to the moment of truth when she had to take the stand and testify about why she shot her husband and she denied shooting him. Now, if she had testified that he was beating her and she was operating — she was trying to defend herself, or if she had testified that she was so psychologically beaten that she was going to, that she thought she was going to get beaten again, that she had to fire the shot, then this would make some sense, but this whole BWS and her explanation of how the shooting took place, she did admit to shooting him, excuse me, she said the gun went off accidentally, didn't she? Isn't that her testimony?

Battered Woman Syndrome testimony appears to have been unsuccessful largely because of the defence attorney's failure to utilize BWS to link the woman's experience with abuse to her killing of her abuser, where she acted in self-defence to preserve her life. Evidence of abuse, and BWS use, thus fails to benefit the battered woman if not carefully tied to her act of crime.
3. The Prosecution’s Use of Battered Woman Syndrome

An examination of cases of BWS use revealed that it was not only the defence that had access to BWS testimony. The prosecution was also in a position to utilize BWS expert testimony and make use of BWS evidence to develop a case ‘against’ the battered woman.

In one case, the prosecution obtained a forensic psychologist who testified about the BWS and concluded that the woman in this case was not a typical ‘battered woman.’ The expert did this by describing a stereotype of the battered woman according to select, and somewhat inaccurate, aspects of the BWS. In his testimony, the psychologist maintained that the woman was not representative of battered women partly since she was employed outside of the home.

She remained in it [the abusive relationship] and this is one characteristic of the Syndrome – is that even when there is an apparent opportunity to terminate the relationship – women, because of whatever needs they have sometimes stay...in her case its a little different because she was employed outside of the home, had opportunities to seek counsel and feedback from others, which many battered women do not, they are relatively easily ruled.

He went on to suggest that her past behaviour was not typical of a ‘battered woman,’ as described in the BWS, since she at one time fired shots into the ground in an attempt to ward off her abuser as he chased her with a knife.

----- in the past has shown in her behaviour that she is quite capable of doing some battering of her own and this is also atypical for the BWS because these women tend to be very meek... .

The psychologist also claimed that she was not a battered woman since “she is quite capable of doing some battering on her own” and is “more assertive than this group
tends to be."

The prosecution utilized this testimony to suggest this was not a typical 'battered woman case,' and that the woman was indeed not a 'battered woman.' The prosecutor claimed that, unlike a typical battered woman case, the woman "wasn't trapped in her relationship" partly because "she had a job." Finally, in closing arguments, the prosecution simply stated that "The issue in this case...is not of a battered woman."

4. The Expert's Knowledge of BWS

Even though one would expect the 'expert' to indeed have expertise regarding the matter she/he testifies about, this does not always appear to be the case. That is, the supposed 'expert' on BWS may have little knowledge about the BWS and, thus, not be qualified to testify about it. This appears to have occurred in one of the cases in this sample. In fact, the expert in this case was initially not admitted for the purpose of testifying on the BWS, but was enabled by the court to do so anyway. As a result, and as explained in interview data, he offered "inaccurate and misleading testimony" which damaged both the "credibility" and "self-defence claim" of the battered woman. Furthermore, the expert's testimony on BWS was "contrary to accepted theories of the time as well as those of today" and, ultimately, "the importance of accurate and qualified testimony was overlooked." In this case the expert was a certified psychiatrist and, although he had little knowledge of the BWS, he was likely viewed as credible due to his 'scientific' background and his designation as 'expert.'
5. The Battered Woman Syndrome as a 'Profile'

An examination of these cases has revealed that BWS expert testimony at times creates a 'standard' to which a woman must conform if she is to be deemed a 'battered woman,' and have her crime understood in the context of her experience with domestic violence. The BWS may thus serve as a 'standard' instead of an 'explanation.' In one case, the expert testified for the prosecution and claimed that the woman did not 'fit' the profile of the BWS. This next segment, from the case where the prosecution utilized BWS expert testimony, shows that the expert contributed to the notion of the BWS as a 'profile' that the woman must fit, in order to be deemed a 'battered woman.'

Question: And apparently you feel that she does not fall in a, what has typically been called a BWS or a Battered Woman's Profile?
Answer: No, I don't think she is representative of that group in general.

6. The Battered Woman Syndrome: A Focus on Helplessness

Expert testimony tended to construct the battered woman as 'helpless' and 'passive,' when utilizing the BWS to describe the abusive relationship. In the same case as last described, the 'expert' characterized the BWS in the following manner.

The circumstances usually have to do with a woman who is rather meek and passive and totally dominated and physically abused on multiple and continuing occasions by the man with whom she lives....

In another case, a doctor testified about the characteristics of the BWS. The following is taken from a legal brief and summarizes his testimony.

--- indicated that battered spouses who stay with their abuser often have a strong belief in marriage, and wish not to harm their husband's career by admitting to the abuse. They often have a desire to avoid the embarrassment of admitting to physical and sexual abuse, as well as a feeling of helplessness and an inability to make decisions. The battered spouse often harbors fears of reprisal, and a strong desire not to admit
failure in her marriage.

This characterization of the BWS constructed the battered woman as 'helpless' and 'passive,' in part by describing her as accepting her situation of abuse. This testimony also constructed the woman in this way largely on the basis that she failed to tell anyone about the abuse, and chose to remain in the relationship out of a belief in 'marriage' and a deep sense of loyalty to her abuser. This explanation is problematic because it cannot account for the many battered women who, like the ones in this sample, made numerous and repeated attempts at escape. It also cannot account for the deadly consequences they faced when they attempted or succeeded in leaving. Also contrary to the above construction is the fact that the women in this sample often told others about the abuse, but received little or no assistance in return.

The notion that the battered woman was "helpless" and "unable to make decisions" constructed her in terms of her 'psyche,' instead of in terms of the extreme abuse she suffered at the hands of her abuser, and the 'rational' fear that she developed as a result. Finally, this characterization of the battered woman cannot account for the actions of the women in this sample; especially those who fought back against their abusers to preserve their lives.

7. The Battered Woman Syndrome and 'Fighting Back'

As demonstrated in the above analysis, the legal construction of the battered

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The Project Director of Freedom Link takes particular issue with the BWS's focus on the battered woman as 'helpless.' One of the results of this focus is that the BWS can ultimately be used 'against' the woman, if she does not appear as the 'perfect victim.' Furthermore, she objects to a focus on the battered woman's 'psyche,' and believes that attention must be turned to the batterer's pathology and his abusive acts.
woman, through the use of the BWS, characterizes the battered woman as 'passive' and, thus, has difficulty accounting for battered women who at times take 'action' and fight back against their abusers. This was clearly demonstrated in the case where the prosecutor used BWS testimony against the defendant. This prosecutor stated that "in a BWS case its a woman who is both physically and mentally abused and who cannot fight back." He then went on to explain that the BWS did not apply to the woman in this particular case, because on some occasions "she did fight back." This prosecutor also claimed, in his closing statements, that "somebody who is permissive, somebody as [the expert] surmises would fall in a BWS, would not have the capacity to pick up a gun and fire it." Finally, the expert in this case stated that "it is not typical for a person suffering from BWS to have been physically aggressive themselves against the person who had been abusing them in the past." Just as the legal recognition of the BWS has difficulty accounting for 'non-passive' past actions of the battered woman, its focus is problematic with respect to battered women's violent and non-passive crimes.

Summary

The above analysis has demonstrated that legal constructions of battered women failed to account for a women's complex experiences with domestic violence, and how these relate to their violent crimes. This conclusion has resulted from an examination of each case in terms of the accounts of criminal justice agents such as the probation officer, the prosecutor, the trial judge, and even the woman's own defence attorney. This has also been the outcome of an analysis of all cases in terms of both their uses and non-uses of BWS testimony.
In many cases a woman’s defence attorney failed to utilize BWS evidence to help explain a woman’s experience with abuse, and how this led her to commit her violent crime. Even in cases where BWS evidence was used, the woman’s experience was no more positive; BWS testimony was simply not used to effectively construct the woman as ‘reasonable’ in her crime, and as it resulted from her experience with abuse. In one case, the ‘expert’ on BWS was even obtained and used by the prosecution, to help build a case ‘against’ the battered woman.

It thus appeared that the legal recognition of the BWS, based on the experiences of the women in this sample, failed to benefit the women for whom it was originally intended. That is, this analysis has raised many questions about, and criticisms of, the BWS in terms of its capacity to help women whose violent crimes are a result of their experiences with domestic violence. It is my contention that, in order to better discover why this has occurred, the legal recognition of the BWS must be understood as located within the larger structure of ‘legal discourse.’
Chapter VIII

Legal Discourse and the Feminist Challenge

As described in Chapter III, the work of Carol Smart\textsuperscript{144} is particularly relevant in attempting to understand how and why feminists encounter obstacles when working within the framework of law to achieve reforms which benefit women. Feminist uses of legal reform, such as the one involving the legal recognition of the BWS, simply do not guarantee the desired effects because:

we cannot predict the outcome of any individual law reform. Indeed the main dilemma for any feminist engagement with law is the certain knowledge that, once enacted, legislation is in the hands of individuals and agencies far removed from the values and politics of the women’s movement.\textsuperscript{144}

Smart’s analysis of law’s existence as a powerful discourse, with a tendency to disqualify women’s experiences and other forms of knowledge, is particularly relevant here. Law, as a system of knowledge, sets itself outside the social order by translating everyday experiences into legal relevances. Law makes claims to truth and exercises its power “not simply in its material effects (judgements) but also in its ability to disqualify other knowledges and experiences.”\textsuperscript{145}

So the legal process translates everyday experiences into legal relevances, it excludes a great deal that might be relevant to the parties, and it makes judgement on the scripted or tailored account. Of course parties are not always silenced, but ... how they are allowed to speak, and how their experience is turned into something that law can digest and process, is a demonstration of the power of law to disqualify alternative accounts.\textsuperscript{146}

\textsuperscript{143} Smart, \textit{Feminism and the Power of Law}.
\textsuperscript{144} Ibid., p.164.
\textsuperscript{145} Ibid., p.11.
\textsuperscript{146} Ibid.
Smart clearly shows that legal discourse, by taking women's experiences and translating them into what is deemed to be 'legally relevant,' excludes a great deal and makes its judgment on accounts which are 'altered.' Importantly, law as discourse overlaps with other powerful and 'select' discourses, to define and construct women. In particular, legal discourse relies heavily on 'knowledge' from the 'psy' discourses, namely the professions of psychiatry and psychology, to extend its terrain and power.

Smart does not maintain that law be left unchallenged by feminism. Rather, Smart believes that we should change our focus from one based simply on 'legal reform' to one based on "law's power to define and disqualify." While the legal forum does provide a place to engage in a "process of redefinition" it is important that feminists:

resist the temptation that law offers, namely the promise of a solution. It is equally important to challenge the power of law and to insist on the legitimacy of feminist knowledge and feminism's ability to redefine the wrongs of women which law too often confines to its significance.

The Power of Law to Define, Alter, and Disqualify Battered Women's Experiences

The analysis in Chapter VII has shown that legal constructions of battered women, based on the accounts of criminal justice agents and cases of both BWS use and non-use, are far removed from battered women's lived experiences with domestic violence and their violent crimes. In order to better understand how and why this occurs, it is necessary to examine the particular ways by which legal discourse silences

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147 Ibid., p. 164.
148 Ibid., p. 165.
149 Ibid.
women, through the altering and disqualification of their experiences.

A Woman's Role in her Defence

An examination of the cases in this sample revealed that once a battered woman became a subject of legal discourse, she lost control over her case, and how, and if, her story got told. That is, the woman's attorney was given responsibility for her defence and she had few, if any, opportunities for input. She could do little to affect the direction and strategy of her defence. This is not to say that the women never tried. However, when a woman attempted to provide input, and find a way for her story to be told, she appeared to be silenced. This could be seen in one woman's letter to the project, which stated:

I would write questions for my lawyer, Mr. -----, to ask certain witnesses - he ignored me - even dismissed people without asking if I had anything I thought was important to ask them.

In another case a woman provided her attorney with a thirty-two page account of her life, and the abuse she had suffered, only to find that the attorney "never followed up on what it contained."

Several of the women in this sample expressed their anguish over the notion that their attorneys never provided them with an opportunity to tell their stories. One woman explained this in a letter to the project.

You will also see where there are several things that were detrimental to my case. Most of which I was never allowed to counteract by my attorney...By the time I went to trial there was no denial of having committed the crime, only that there was justifiable cause for what happened. My attorney never gave me a chance to explain any of these things on the stand, only lightly touched on some of the issues.

Women were also silenced on the basis of their attorney's trial strategy.
Women's attorneys at times required them to lie and claim that they had a 'happy' marriage, in keeping with the chosen legal strategy. They often did not have the woman testify about the abuse, and claimed that this was necessary because evidence of battering would "show motive." In many cases, the attorney prevented the woman from testifying about the abuse, and this was deemed to be in keeping with the strategy of relying on the prosecutor's burden of proof. Interview data shows that in one woman's case:

The trial attorney did not call any witnesses on behalf of ---- besides her mother. ---- was not given an opportunity to present her side of the story, so that the prosecutor's version was the only one available to the judge. The defence attorney, instead of relying on a strong defence, relied on the prosecutor's burden of proof.

In each of these cases, the attorney's 'strategy' for the woman's defence took precedence over her experience, and in many cases silenced her with respect to a description of the abuse.

Battered women also appeared to have little control over their cases at the time of sentencing. Some women believed that their attorneys made "side-deals" without consulting with them. In one case, interview data stated:

Ms. ---- believes that her attorney had made some type of deal with the prosecutor, because when the judge announced the harsh sentence, Ms. ----'s attorney turned angrily to the prosecutor, and said "that's not what you promised." Subsequently Ms. ----'s attorney frequently expressed his dismay with her sentence.

In another case, a woman was provided with only a brief opportunity to view her pre-sentence investigation report on the night before her sentencing "when her attorney arrived just fifteen minutes before lock-down." To the woman's surprise, the
document contained inaccuracies which were taken into consideration when the judge sentenced her. In fact, interview data states that "Defence counsel could have avoided the situation if he had given her enough time to read her pre-sentence investigation report."

Battered women thus often had little or no control over the ways in which their cases were presented, and 'how' their stories got heard, both at the trial and the time of sentencing.

**Legal Relevancies**

In most cases, that which was deemed to be 'legally relevant' was far removed from the experiences of battered women. As Smart suggests, law has a tendency to deal with human experience in only small "bits," since this is what it can most easily "digest." The resulting removal of context is particularly problematic for battered women, whose crimes must be carefully located as part of, and arising from, their complex and on-going experiences with domestic violence.

In most cases, the 'act' of crime was treated as the most legally relevant aspect of the case. The battered woman's violent act was abstracted from its context, both in terms of her experience immediately preceding the crime, as well as the many years of abuse which were fundamental to an understanding of her fear of her abuser, and her resultant need to preserve her life. This was illustrated in the case presented earlier where the probation officer acknowledged that the woman was not a danger to society, and appeared to have some knowledge of the 'victim's abuse,' but claimed greatest and overriding relevance for the woman's act of 'murder' and her use of a 'weapon.' In
another case, the trial judge abstracted a woman’s murder of her abuser from its context and implied that, regardless of the abuse, her act of murder was "inexcusable" and simply "unlawful."

The intentional taking of Mr. -----’s life, as was done here, is inexcusable. The unlawful taking of a life is still murder, whether the life taken be that of a good person or an evil person...Mrs. -----, by her own admissions, acknowledged that she decided to take the life of the Descendant at a time when she was angry and upset...she had the capability to leave the home when she was unhanded, and when she first left the bedroom and went downstairs, instead of...returning upstairs and shooting the descendent.

In another case, it was evident from a woman’s comments during an interview that she felt the judge was not interested in her experience with abuse, even though it formed the context of her crime. The interviewer summarized the woman’s feelings as follows:

----- thought that the judge was not interested in the battering, even though it was her defense. The judge’s attitude seemed to be that she killed him, and she was guilty of murder.

One woman provided the project with her court transcripts and her handwritten additions and corrections to the judge’s comments, thus adding some elements of the context in which her crime occurred. These clearly demonstrate how the judge, in describing her crime, took her actions out of context and constructed the crime in a very different way than it had actually occurred.

She went downstairs {woman added: 'to get away from -----'} had to take this huge piece of iron that was extremely heavy...it had to be carried upstairs. It was thought of and considered before the actual act was committed {woman added: 'for protection'} and then further, after committing the bludgeoning, a knife was procured to make sure that there was an absolute death {woman added: 'no knife was procured - it was already between the mattresses on ----- [her batterer's] side of the
The battered woman's act of crime was not only abstracted from its context of
domestic violence. A woman's crime was also abstracted from the many other
experiences she may have had with abuse, even though these experiences may have
affected her perception of her situation, her fear of her abuser, and ultimately her
crime. In this next case, for example, the prosecutor instructed the court to consider
only the act of crime, and not let the woman's experiences with childhood abuse and
rape affect their decision-making.

Ladies and Gentlemen of the jury. I suggest to you that this is not an
issue as to the upbringing of or the sufferings that may have befell the
Defendant ---- during her upbringing...This is not the issue. The only
issue is we are concerned with today is whether or not Defendant ----
killed her husband....

Finally, the jury was also instructed to consider the woman's crime, independent of
what her penalty might have been. That is, the jury was not supposed to consider
what consequences the woman would face as a result of their judgement, even though
one would expect this might be a reasonable factor for the jury to consider in a case
where domestic violence was related to a woman's crime. However, the judge stated
the following in his instructions to the jury.

Remember, you are sworn to deliberate and decide this case justly.
Sympathy and prejudice must not influence your decision...It is your
duty as jurors to determine the facts...Do not concern yourself with what
the penalty might be if you should find the Defendant guilty.

The jury was instructed to think only of the 'facts' of the case, and not let 'sympathy'
for the woman, (and thus knowledge of her past experiences with abuse), affect their
judgement.
Legal discourse thus appeared to observe human experience only in small 'bits.' and also required decision-making to be based solely on these same 'bits.' The results of this are particularly problematic for the battered woman who indeed must have her crime understood with 'sympathy,' and as located in the context of her experience with domestic violence.

**Battered Women as Not Credible and as 'Liars'**

An examination of the cases in this sample revealed that legal discourse had a tendency to abstract a particular 'act' or 'experience' of the battered woman from its context, and use it to attack her credibility. Her experience with domestic violence was also often used against her, when she was called a 'liar' for claiming experiences of abuse.

In several cases, a battered woman's act of seeking help was 'turned around' and used against her to contradict her claim of abuse. For example, in one case a woman had shot at the ground in an effort to 'ward off' her abuser as he chased her with a knife. In Court, this act was used by the prosecution to discredit her claim to being a battered woman since she had "done some battering herself." In this same case, the prosecution used the fact that the woman had gone to the police for help, to help build a case against her.

The People called, as rebuttal witnesses, four police officers who said that on several occasions, arrest warrants had been procured at the prosecutor's office, with the Defendant subsequently refusing to sign those complaints and warrants.

By taking the notion that the battered woman had not followed through on her arrest warrants, and abstracting it from its larger context, the prosecution attempted to harm
the woman's credibility and shed doubt on the notion that she was abused, and in need of help. If these actions had been placed in the context of her experience with domestic violence, it would have become obvious that following through on the complaints and warrants may have resulted in only another, and perhaps more severe and deadly beating. In a similar instance in another case, the fact that a woman had once left her abuser, was removed from its context and used against her.

The judge specifically mentioned that Ms. ---- was less deserving of a lighter sentence because she had found the strength to leave ---- when they were living in [another state].

This rationale completely neglected to account for the consequences of what her leaving had been, and her resultant belief that leaving again would be "futile" since her abuser would simply follow her again. This woman also claimed, in an interview, that she simply "had nowhere to go while trying to take care of three sons." However, her act of having left once before was used against her in order to attack her credibility, cast doubt on the severity of her situation of domestic violence and its link to the crime, and to rationalize the need for a heavy sentence.

In some cases, a woman's experience with abuse was used against her and to attack her credibility when the prosecution suggested that the woman was only describing her situation of abuse to portray herself as a victim, and receive a lighter sentence. The prosecutor claimed, in his closing remarks, that the abuse was merely:

a frantic attempt by the Defendant to maneuver herself into the role of a victim...as jurors you should be careful not to allow the Defendant to maneuver herself into the role of a helpless victim.

In many cases, the notion that a battered woman was a 'liar' and was merely
portraying herself as a 'victim' for some sort of gain, was implied during various moments in the trial. For example, this segment of questioning took place on cross-examination by the prosecutor and after a doctor had testified as to the woman's experience with abuse.

Question: Have you ever been fooled before Doctor?
Answer: Oh, lots of times.
Question: Thank-you, no further questions.

In some cases, the notion that the battered woman is a liar is not just implied but is directly stated. One judge, for example, called the battered woman a "liar" (when she was merely objecting to an inaccurate statement in her pre-sentence report) when he sentenced her and ultimately held her responsible for her abuser's crime. The judge stated that:

...I'm beginning to have some questions by all the lies that you're starting to tell me. You participated in this and you are just as bad as he is. And, now you're starting to lie to me besides that. He can't tell the truth from a lie. And now you're starting to pull the same thing on me.

In another case, the prosecution referred to the battered woman as a liar for claiming that she had once had a miscarriage as a result of a battering episode, since there appeared to be no documents to support her claim. The woman had apparently experienced a miscarriage, but her attorney failed to approach the correct hospital to obtain the report.

The Normalization of Abuse

An examination of the cases in this sample revealed that a woman's experience with domestic violence tended to be normalized in legal discourse, making it ill-
equipped to acknowledge the relationship of domestic violence to a woman's crime.

The process of normalization took place in numerous ways. In many cases, domestic abuse was portrayed as part of the normal marital or familial relationship. This was seen in the comments of various criminal justice agents who referred to the abuse as an aspect of a couple's "marital difficulties." In one case, a woman's experience with domestic violence was normalized by the judge when, after acknowledging that the woman had suffered extreme abuse at the hands of her batterer, he simply reprimanded her for having "deprived her two children of their natural father."

In many cases, the abuse was recognized but simply demonstrated to be irrelevant to, and no excuse for, murder. That is, a woman's experience with domestic violence was acknowledged but was not viewed as a unique and special circumstance, which led her to commit her crime. The implication is that abuse was 'normal' and, as in a normal relationship, it could be dealt with in various ways. In one case, which in fact contained a great deal of testimony about the extensive abuse a woman had endured, the prosecutor's comments to the jury served to normalize the abuse by using an analogy to the experience of obtaining a divorce. The prosecutor claimed that:

Because you hate somebody, because you love somebody, and hate that person does that make you incapable of planning a murder, of planning to kill him? In an analogy, ---- and ---- weren't married but in a sense they were, and in a sense an alternative is a divorce, and some of you may have been divorced; maybe not but a divorce is very painful. A separation from someone you've been with can be a very emotional process. No matter how much you have grown to love a person, or hate a person separating is not an easy process. It can be painful, but

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because its painful doesn't mean we loose the capacity to reason.\(^{150}\)

In another case, the prosecution normalized a woman's experience with abuse when he stated:

I believe that the Defendant had troubles with ------. I believe he hit her. But the fact that she might have had troubles and the fact that she may have been beaten several times by ------ does not excuse her involvement in this crime. It is no excuse for murder.

By referring to the abuse in the context of a marriage with "troubles," and minimizing the extent of the abuse, the prosecution normalized a woman's experience with domestic violence and thus failed to link it to her crime.

**Legal Discourse as Impervious to the Feminist Knowledge**

Smart maintains that legal discourse disqualifies women's experiences largely on the basis that it appropriates only certain forms of knowledge, and negates alternate forms of knowledge, such as that of feminism and that of the women's movement. An examination of the cases in this sample revealed that law is indeed resistant to feminist knowledge, implicit in which is a recognition of fundamental and systemic inequality, and uneven power relations between women and men.

In one case, a psychiatrist provided detailed and comprehensive testimony about black women and their experiences with abusive relationships. However, she was attacked in cross-examination largely on the basis of her feminist ideals. Implicit in the prosecution's comments was the notion that she was somehow 'anti-men' or a 'man-hater,' for discussing the plight of the battered black woman and her systemic

\(^{150}\) The researcher is aware that this quote is confusing. However, a close reading of the entire closing statement revealed that the prosecutor was indeed making an analogy between the abusive relationship to the experience of obtaining a divorce from a 'normal' relationship.
lack of protection. The following took place on cross-exam by the prosecution.

**Question:** You seem to have predisposed thoughts in terms of men.
**Answer:** That's not true sir.

**Question:** Are you hostile towards men?
**Answer:** Oh no, I love them.

**Question:** Okay
**Answer:** In their place.

**Question:** Where is their rightful place?
**Answer:** Right beside me but never in front of me.

The prosecution, and the judge, also rejected her testimony when she claimed that the legal system "has not provided protection over the years to females as it has to the male, [and] that's because of history." Once the woman referred to the legal system as affording less protection to women, in comparison to men, her statement was objected to by the prosecution. Furthermore, the objection was sustained by the judge who deemed her account to be 'irrelevant.' The judge's comments, at this point in the trial, illustrated the tendency of legal discourse to resist accounts of women's experiences, as they are located in a societal context fraught with systemic and fundamental inequalities between men and women.

Now, this witness has made reference the last couple of times, in rather unflattering terms to the quote law structure, end of quote, I assume I'm part of that law structure. I submit that it is not what she's here for today, is to give her reaction to the adequacy of the laws that may or may not be protection, that is not for the jurors to be here for.

Another incident that illustrated law's tendency to neglect feminist forms of knowledge, and provided support for the notion that actors within legal discourse are far removed from the basic aims and politics of the women's movement, regarded one prosecutor's question of "It is possible that a battered woman or a battered man could kill somebody?" Implied in this is the notion that men and women experience
domestic violence and fear equally, and in the same ways. This is particularly problematic for battered women who are forced to depend on a legal system that would appear to negate fundamental knowledge about domestic violence, the core concerns of feminism, and basic notions of inequality.

Law and 'Individualization'

Legal discourse altered and disqualified women's experiences largely through its reliance on a process of 'individualization,' whereby legal actors focused on the individual, and notions of 'free will' and 'choice,' at the expense of providing and supporting accounts which demonstrated how women's experiences are located within, and stem from, larger societal issues involving inequality.

The experiences of the women in this sample provided support for the notion that battered women, once a part of legal discourse, are viewed as an individuals who act on the basis of complete 'free will' and freedom of choice. The following comments of one prosecutor, in his closing statements to the jury, illustrate his understanding of the battered woman as having control over her own fate, regardless of her experience with abuse.

--- is a nineteen year old woman starting with ---, they have a child... They've lived together for five years, the last five years. No woman wants to get beaten, no woman wants to be abused, because a woman may have been abused in some sense physically or emotionally, does that mean that she no longer has control over her own fate?

By suggesting that the battered woman had "control over her own fate," the prosecutor implied that she acted as an individual who was in no way constrained by her on-going experiences with abuse, as they arose out of social conditions which surround
and create domestic violence. She was constructed as having simply made free and 
individual choices to remain with her abuser, and commit her crime against him.

Legal discourse also has a tendency to transform social issues into issues 
between individuals. The following comments of a prosecutor demonstrate how the 
social issue of domestic violence was transformed into an account of the problems and 
conflicts that occured between two individuals.

I’m not going to stand her and tell you she’s never been battered, but 
she’s done these same things herself. She’s in a relationship. Was she 
an economically dependant person? No, she was economically 
independent. And was ----- a big boy, could he act on his own? ----- is 
both physically a big girl and also thirty-six years old, she had a free 
will. ----- chose to stay in her situation.

The implication of this account is that domestic violence is about individuals who 'act 
on their own' and freely choose their situations. These next comments, made by the 
trial judge in another case, further illustrate this point.

The pre-sentence report suggests the findings that he Defendant, -----, 
was caught up in a lifestyle by her own choosing as opposed to 
breaking it off or leaving the Descendent, as was an option, which was 
available to her. Ms. -----, by her own admissions, acknowledged that 
she decided to take the life of the Descendent at a time when she was 
angry and upset. It also appears that she had at the time, the capability 
to leave the home when she was unhandcuffed...

By focusing on the 'individual,' legal discourse understands the battered 
woman's plight not in terms of the social conditions which produce and support 
domestic violence, but in terms of her 'psyche' and individual deficiencies. A clear 
example of this can be found in the following comments of a defence attorney.

The precipitating causes of this case, your Honor, and its something in 
which my judgement is not likely to occur, given the fact that it resulted 
from a relationship of longstanding. I think about the handcuffing. I
think about the nature of the attack. I think about the dragging by the
hair of her head from one bedroom to another. I think about her
leaving there angry and upset. I think about a person who never
demonstrated an ability to cope that well, ever. The crime was
horrible...horribly perpetrated, and it really was the combination of
series of problems that ---- she's never done well, in terms of coping
with.

The defence attorney explained the woman's experience with abuse, and her crime, in
terms of "her[in]ability to cope" instead of as located within the larger issue of male
violence against women.

Finally, when a legal actor did attempt to contextualize a battered woman's
crime in terms of the larger 'social issue' of domestic violence, the account was
ultimately rejected and claimed to be irrelevant to the case. The following
prosecutor's comments demonstrate law's resistance to an account of a battered
woman's actions, in terms of the social conditions which provided her with little or no
protection from the violent attacks of her abuser.

Mr. ---- [the defence attorney] tries to place the blame of the murder
upon the police, on the prosecutors in this case. I'll not take any of the
blame, I didn't hold the knife and I didn't plunge it into the chest of ----.

The focus was again on the battered woman as she operated as an 'individual,' as
opposed to how she acted within, and as a result of, the social conditions which create
and maintain male violence against women.

Categories of Male Experience

An examination of the cases in this sample revealed that legal discourse relied
largely on categories of male experience and, in doing so, altered and disqualified the
experiences of battered women. In particular, the actions of the battered women in
this sample were often held to standards that appear to have been derived from male experiences of conflict, struggle, and fear. The women were often judged according to a notion of self-defence that is premised on the experiences of men and simply cannot account for the experiences of battered women.

One woman was considered not to have acted in self-defence since she killed her abuser in his sleep, shortly following his vicious sexual assault of her. Her own defence attorney, in his comments to the jury, stated the following.

Recognizing what was done cannot be tolerated in our societal structure... no one has the right, in the absence of self-defence, to take the life of another, but the circumstances here are so compelling... I'm talking just about the facts of the case, your Honor....

The woman's attorney addressed the woman's experience in comparison to a traditional model of self-defence, which would have allowed her to act to preserve her life only if her abuser's attack was immediate.

Criminal justice agents often compared the battered woman's crime to the notion of a 'struggle,' as it is premised on the experiences of men. Just as traditional forms of self-defence require a struggle similar to that which occurs in a 'bar-room brawl,' and between two people of relatively equal size and strength, battered women are often only viewed as justified in their attack of their batterer if it is done in the midst of a physical struggle. In one case, a probation officer's comments illustrate this quite clearly.

Although the Respondent's fear of the victim was not unfounded, the serious nature of this offense warrants incarceration. By the Respondent's own admission, there was no physical altercation with the victim at the [immediate] time of the shooting. He was, instead, sitting on her mattress when she fired six rounds into him.
In another case, the notion that a battered woman did not kill her abuser in an immediate confrontation was used against her when the State claimed, in an appeal, that the woman should have simply left after her batterer's attack, instead of having waited for him to fall asleep to kill him.

Defendant claims that the Court did not consider the mitigating factors of the victim's past abuse of Defendant and the brutal sexual attack which preceded the murder. Our review of the record reveals that the Court did consider all of the mitigating factors and concluded that Defendant was able to leave the situation without the necessity of committing the murder, but had chosen to remain.

Even though 'necessity' is experienced differently for battered women than for men, the woman was held to a standard of 'confrontation' which is premised on the experiences of men.

The prosecution in this next case, which also involved a battered woman who killed her abuser in his sleep, contrasted the woman's crime to a male conception of a fight or a struggle and suggested that only in the latter case would self-defence be applicable.

We don't have a fight where somebody pulls out a gun and shoots somebody while they are in the heat of passion. We do not have that kind of offence here. Ladies and Gentlemen of the jury, what we do have is a cold-blooded, cool, calculated murder.

One woman's appeal, which sought a new trial on the basis that BWS evidence was never utilized, was rejected largely on the basis that her claim was not one of self-defence. Therefore, the battered woman must at times conform to a male model of self-defence in order that BWS evidence be applicable to her self-defence claim. In fact, the State, in its response to this woman's appeal, criticized cases where
BWS was used in support of self-defence claims as "hardly self-defence situations."

That is, the State did not view these cases to be 'self-defence situations' on the basis of a comparison of battered women's actions to a traditional model of self-defence, as premised on the experiences of men.

Legal discourse, in essence, relied on concepts and categories based on the experiences of men. Law's reliance on male experiences of struggle, confrontation, and self-defence is particularly problematic for battered women who experience threat, fear and self-defence differently than men, and often indeed require their batterer to be asleep or otherwise, in order to be in a position to adequately defend themselves.\textsuperscript{151}

**The Power of Law**

Smart's work is useful in helping to understand the ways by which women's experiences are altered and disqualified, specifically with respect to law's claims to truth, its existence as a powerful discourse, and the assumption that it is neutral and exists outside of human invention. The preceding analysis has shown that battered women's experiences are not easily understood or recognized by law, and that law's claims to 'truth' cannot account for battered women in terms of their experiences with abuse and their resultant crimes.

It appears that when judges, and other criminal justice agents, applied the law

\textsuperscript{151} Just as the battered woman must often wait for her batterer to fall asleep in order to adequately defend herself, she also may need to hire a third party to perform the killing, to achieve the same end and preserve her life. This is due to numerous factors such as the differences in the strength and size of, and self-defence training for, men and women. As has been shown through much of the preceding analysis, the battered woman's experience with fear and self-defence must also be seen in the context of the emotional effects of the abuse, her immense knowledge of her partner's abusive behaviour and capabilities, his persistent death threats, and the woman's rational belief that he has the capacity and desire to kill her.
to battered women they did so by claiming that law was 'supreme.' The most
important issue for the court revolved around what law the woman broke, and not the
context of tragedy and suffering that forced her to do so. Law was also presumed to
be incontrovertible and neutral. In this next case, for example, the judge instructed the
jury to simply apply the law and not let 'sympathy,' and anything other than the 'facts
of the case,' guide their deliberations.

Remember, you are sworn to deliberate and decide this case justly.
Sympathy or prejudice must not influence your decision. It is my duty
as judge to instruct you on the law that you are to apply to the case,
and it's your duty to follow the law as it is given to you. It is your
duty as jurors to determine the facts. You are the sole and exclusive
judge of the facts.

The implication here was that the law is 'neutral' since it is simply 'applied' to the facts
of the case, and is not be tainted by human feelings of 'prejudice' and 'sympathy.'

As Smart maintains, law "takes on a life of its own" and "sets itself outside of
the social order."152 It is taken to pre-exist human invention, and the battered woman's
experiences must be made to fit its requirements, even if those experiences must be
altered or disqualified. That is, law exists as previous to, and outside of, the needs of
battered women. This next case illustrates this point quite clearly. A woman's
original defence attorney was asked, by her new attorney, to provide justification for
why he had not utilized BWS evidence in a comprehensive defence for the woman.
His response, in a sworn affidavit, was as follows.

During the preparation of this case for trial, Mrs. ----- and I discussed
the possibility of using the concept of BWS as part of our trial strategy.

152 Smart, Feminism and the Power of Law, p.11.
However, I rejected this defense because in my opinion it was not viable at that time, even though I could see that this was a fruitful and meritorious defense. Today, it seems that this defense's time has come, and I would seriously consider this. It is my hope that this Affidavit will succeed in granting Mrs. ----- a new trial so that this truthful claim may be asserted.

The implication of the attorney's statement was that law is a system of knowledge which exists outside of human invention. Even though this woman's experience with abuse had not changed, her attorney claimed that her abuse was now legally relevant because the BWS's "time has come." Even though her experience necessitated such a defence before, it was not accessible to the attorney at that time and, thus, her defence was largely out of his control. That is, even those criminal justice agents who desire to help the battered woman are constrained by legal discourse which disqualifies select forms of knowledge, and the battered woman's experiences that do not meet its requirements.

**Legal Rules**

Legal discourse altered and disqualified the experiences of battered women partly through its reliance on legal rules. In several cases, women failed to have her experiences 'heard' by law on the basis that they required too much time to remember aspects of their experiences and crimes. Many women in this sample had trouble remembering the events on the day of their crime. When they were eventually able to put all of the 'missing pieces' together, legal rules sometimes prevented them from launching a successful appeal. In one woman's case, for example, her options were limited by the lateness of her appeal. A letter from the woman's attorney stated that "as you may know by now, Ms. ----- had her appeal denied. She had originally not
requested an appeal, and as a result her remedies were limited.” Time limitations such as this are particularly problematic for battered women who, at times, recognize their abuse as such much later than their encounter with the legal system, and only after counselling and self-reflection in a correctional facility.

Legal discourse also excluded elements of battered women's experiences with their abusers on the basis of rules governing the admissibility of evidence. An example of this was found in a case where the court refused to admit evidence of the abuser's violent actions against his mother, on the basis that those actions had occurred several years before and thus did not take place within an appropriate time frame. A legal brief written on behalf of the woman's appeal noted that, on this basis, "The court barred testimony by Defendant witness —— concerning violent acts by the deceased against his own mother." Even though the abuser's violent actions against his mother were one significant factor in the woman's fear of her abuser, her knowledge of his capabilities, and her perceived need to take action against her batterer in order to preserve her life, the experience was disqualified on the basis of a legal requirement.

Finally, legal discourse's reliance on rules constrained criminal justice officials who might have wished to be lenient with the battered woman. A case in point regards the ruling of a judge who provided a relatively detailed account of a woman's crime, which included a contextualized explanation of how social institutions had failed the battered woman, and had thus contributed to her crime.

I realize that this is a difficult moment for you. It is not easy for me. I can't approve, either, of what some other people did during the
transaction in this matter. When they should have been giving you other types of advice, and counsel, they were doing just the opposite of what was to your advantage. There is no question but that of what you have been through in your life has been very difficult. I guess that is where some of the institutions which we have developed - hopefully to assist people - have failed. I would hope that we can do better in the future. I suppose that is no solace for you.

However, the judge went on to give the woman a Life sentence, explaining that legal rules governing the sentencing process allowed him no discretion.

As Mr. ----- has indicated, I have no discretion. The statute provides no alternative as far as sentence. It is, therefore, the sentence of this Court that you be committed to the Michigan Corrections Commission for Life. You are given a credit of 215 days. I would hope that within an appropriate amount of time that the Governor would commute your sentence. I have nothing further.

Even though the judge recognized the woman’s experience with abuse, and even located it within a social system that had failed her, he was constrained by legal discourse where legal rules appear to exist at the expense of a recognition of a woman’s experience with abuse and its relationship to her crime.

**Legal Proof**

Legal discourse also altered and disqualified the experiences of battered women on the basis of its requirements for particular kinds of ‘proof.’ That is, law requires substantive proof in order to concede that an event, or set of events, has indeed occurred. An examination of the experiences of the women in this sample revealed that this was problematic for battered women, who often had little substantive ‘proof’ of her years of abuse. Many of the women in this sample did not seek medical attention for the injuries which resulted from their abuse and, as a result, there was often little documentation of physical battering.
This examination has also revealed that medical reports and other
documentation of the abuse a woman has suffered, are difficult to locate and often
never found. In fact, several of the women in this sample identified their batterer,
and/or their batterer's family and friends, as having been in positions of power, which
ultimately allowed them to bury important documents. In one case, for example, a
woman sought medical attention for her daughter after her abuser had sexually
assaulted the child. The woman, by the time of her trial, could not locate the relevant
medical reports and attributes their disappearance to the connections of her batterer to
military personnel. In another case, a woman attributed her 'missing documents' to her
batterer's familial power within, and connections to, the police force.

In several cases, the fact that reports of abuse were not presented at a woman's
trial can be attributed to her attorney's neglect, as well as possibly the woman's lack of
control over her own defence. Interview data in one case suggests that, even though
the woman had called the police after six or seven past abusive incidents:

  she was not sure if these reports were presented in court. In fact, the
  prosecutor argued in her closing argument that although ---- claimed
  that she had been beaten previously, there was no evidence supporting
  it.

In another case, a woman claimed in an interview that "You asked if there were any
police or hospital reports, yes there were, but were never introduced as evidence."

Legal discourse, in relying on certain kinds of 'proof' in order to acknowledge
that an experience or event has occurred, disqualified battered women's experiences
with domestic violence. The battered woman was, again, simply not in a position to
satisfy the particular requirement of legal discourse and her experience was, thus,
altered or disqualified.

**Law and Scientific 'Knowledge'**

In attempting to understand the power of law in terms of its ability to define and disqualify the experiences of battered women, it is important to understand how legal discourse overlaps with other powerful and 'select' discourses to construct women. Smart's work derives from a postmodern framework which theorizes that dominant discourses construct reality largely by appealing to the 'truths' contained in one another. These 'truths,' however, must often be based on 'scientific discovery' to be understood as legitimate and 'true' forms of knowledge.

Smart maintains that law gains its power partly by appropriating knowledge from scientific discourse which "make[s] women no more than their bodily functions and processes, or bits of bodies."\(^{153}\) Legal discourse overlaps with scientific discourses, and utilizes 'medical categorizations' to describe and construct women. To this end, law relies greatly on knowledge from the 'psy' professions, namely psychiatry and psychology, to extend its terrain and power. Finally, while law embraces knowledge from the 'psy' professions, it does not as easily utilize knowledge from other discourses since "whilst we see a symbiotic relationship developing between law and the 'psy' professions, law is hardly challenged by other discourses, (e.g. feminism)."\(^{154}\)

An examination of the cases in this sample revealed that an aspect of law's

\(^{153}\) Ibid., p.96.

\(^{154}\) Ibid., p.20.
tendency to alter and disqualify the experiences of battered women involves its utilization of knowledge from the ‘psy’ professions. Legal discourse overlapped with scientific discourses, and particularly the ‘psy’ professions, to construct battered women in terms of their ‘psyches.’ Importantly, this construction often came at the expense of an explanation of the woman in terms of her complex experience with domestic violence, and how this violence led her to commit her violent crime. Law, by relying on knowledge from the ‘psy’ professions to construct battered women, minimized, changed and often disqualified a woman’s experience with abuse. This was accomplished, and took place, in a variety of ways.

1. The Battered Woman as 'Sick' and 'Irrational'

When legal discourse utilized the findings and testimony of psychiatrists and psychologists to describe battered women, they were not necessarily defined in terms of the complexities and characteristics of the abuse they suffered at the hands of their batterers. That is, battered women were not constructed by the psychiatrist to have committed their crimes due to their experiences with abuse but, rather, out of their own ‘psychoses’ and ‘mental deficiencies.’ In one case, the psychiatrist who testified on behalf of the battered woman described her crime as the result of her state of ‘brief reactive psychosis.’\(^{155}\) Importantly, the woman’s experience with abuse was understood as only one ‘factor’ which led her to her ‘psychotic’ state on the night of the murder. The abuse was seen as only one “stress or a stressor in her life.” The psychiatrist claimed that the woman’s crime was the result of her “experience with

\(^{155}\) The term ‘brief reactive psychosis’ is otherwise known as a form of ‘temporary insanity.’
depersonalization" and a "temporary loss of self-identify." The psychiatrist further testified that her crime could be understood in terms of her "disorder of mood" and failure to utilize good "judgement."

At the time of the alleged crime, I believe that's -----, that there was a substantial disorder of mood followed by a failure to use judgement and her behavior was significantly impaired, her judgement was impaired, particularly during that state of depersonalization when she was not aware of her own self.

Thus this melding of psychiatric and legal discourse constructs the woman as committing her crime not as a rational act of self-defence or a rational fear of her abuser, based on the years of physical, mental, and sexual abuse, but out of her own mental deficiency, and state of 'psychosis.'

In another case, a psychiatrist found that a woman had committed her crime against her abuser due to her experiencing a 'panic reaction' on the night of the murder. The psychiatrist testified that:

So at the time of the panic in an extreme situation that ability to choose is abrogated and we fall back into a most primitive, like a preconscious way of defending ourselves, or finding a way our of the situation. The panic reaction is characterized by behavior which is not based on reason, it is not rational, not planned out, it can't be planned out in fact.

The psychiatrist again constructed the woman as having committed her crime due to her irrational state of mind, instead of her very rational fear of her abuser and her desire to preserve her life, based on her complex experience with domestic violence.

2. The 'Psy' Professions and 'Individualization'

Just as legal discourse disqualified the experiences of battered women through a process of 'individualization,' whereby the battered woman was viewed as an
individual who freely chose her situation, members of the 'psy' professions relied on an individualized conception of the battered woman. That is, battered women's experiences with abuse and their resultant crimes were viewed largely in terms of, and as deriving from, characteristics of their 'personalities.' One psychiatrist in testifying about how a woman's 'panic reaction' led her to commit her crime, stated that her "personality is of the sort where she can behave in a very upset and hysterical way under certain kinds of stress without it being technically a panic reaction."

In another case, a psychiatrist was asked to explain what he viewed as the "psychological work-up" on the battered woman. His ensuing explanation contained a description of the battered woman largely in terms of her individual weaknesses and personality characteristics.

They describe very mixed up feelings about their husbands, they sense that sometimes they are really nice and sometimes are really horrid. And in the really nice times, sort of getting lulled by that, and minimizing the really hard times, hoping they won't have to assert themselves to get out of the relationship...They tend to be women who have a great deal of trouble recognizing their own anger, very rarely, and Ms. ----- also had a great deal of difficulty saying she was angry, acknowledging that the things he did were hurtful...in addition to having a problem with not recognizing the anger are also overcontrolling, just never letting any of it out...They tend to be women who...have long-standing problems in living that keep them to some extent, unwilling to leave their marriage when its obvious that's probably the best....

The psychiatrist thus relied on an individualized conception of the battered woman, whose difficulties stemmed largely from her own deficiencies including her problem of not "recognizing her own anger." This psychiatric account also implied that the battered woman chose her situation of domestic violence, since she was simply "unwilling" to leave the abusive relationship.
3. Scientific 'Criteria'

When legal discourse overlapped with scientific discourse to construct battered women, it required that they conform to diagnostic categories inherent in most medical and psychological models of human behavior. That is, psychiatric accounts appeared to create a mould for the battered woman to 'fit,' at the expense of providing a contextualized account of the characteristics of the abuse she suffered, and how this led her to develop a rational fear of her abuser and a desire to protect her life.

When law relies on scientific 'knowledge,' the woman's experience must be altered to fit medical categories and characteristics. In one case, for example, the prosecution held the battered woman to the scientific criteria specifically outlined in the DSM-III manual, on the topic of 'brief reactive psychosis.' The following segment of the psychiatrist's testimony illustrates how a woman's experiences may or may not fit the very specific scientific criteria of scientific and medical diagnoses.

Question: ...if a psychotic episode lasted two hours versus only three hours, you would then say, hey, this cannot be a brief reactive psychosis because it didn't last three hours and instead, it lasted only two? Answer: I suppose, technically speaking, that's correct. I would not make that diagnosis if it doesn't conform strictly to the requirements...if we look at the defined criteria, of a brief reactive psychosis as laid out in the official nomenclature of manual of health [the DSM-III], those symptoms simply are not present.

Scientific criteria can thus be applied to battered women, to support or refute their claims. Law, when utilizing science, required that battered women's experiences be deemed 'consistent' or 'inconsistent' with prevailing medical models and psychological profiles. In one case, for example, the psychiatrist determined that "it is quite consistent with the irrational behavior in the panic situation to have incomplete and
sometimes no recall at all." Therefore, the battered woman was viewed largely according to what aspects of her experiences 'fit' or 'did not fit' pre-determined scientific criteria.

The preceding analysis has shown that the Battered Woman Syndrome has been utilized by the psychiatric profession in a similar way. That is, when law has overlapped with the 'psy' professions, through the use of expert testimony on the BWS, the BWS has been viewed largely as a psychological profile of the battered woman. Battered women must thus conform to its specific criteria if they are to be deemed a 'battered woman,' and receive the benefits of expert testimony on the BWS. An example of the BWS, as it has come to be considered a psychological profile, can be seen in a woman's comment regarding her examination by a forensic psychiatrist: "He came to the --- women's facility and after talking with me, said I met every criteria for the BWS there was."

4. The 'Expert'

Legal discourse relies on scientific 'knowledge' largely through the use of 'experts.' The expert is called upon to testify about matters which are not readily understood by the lay person and juror. By providing 'expertise' in a given topic area, the juror is supposed to be in a position to make an informed and fair decision.

An examination of the cases in this sample has revealed that 'experts' are often called upon to testify on behalf of, as well as against, the battered woman. In speaking for the battered woman, the 'expert' alters and changes the battered woman's experiences to fit diagnostic categories that are accepted by law.
Even though expert testimony on BWS has been available since the mid-1970s, expert testimony in this sample of cases took on many different forms and did not necessarily work to the benefit of battered women. In fact, experts were often called upon to describe the battered woman as 'temporarily insane' and 'irrational' at the time of her crime. In this sample, some experts were called upon to testify on the topic of the BWS but their testimony rarely appeared to benefit the battered woman and, at times, directly helped the prosecution to build a case against her.

The preceding analysis has also shown that the 'expert' does not necessarily have expertise in the realm of subject matter she/he testifies about. However, the 'expert' is taken as such due to her/his 'scientific background' and membership in the 'psy' profession. In one case, for example, a psychiatrist testified about the BWS even though he was not initially called to testify for that purpose, and simply did not have the necessary expertise to do so. In another case, a doctor testified about the BWS and demonstrated his lack of experience with battered women and the BWS, when he presented a summary of the BWS which was stereotypical, inaccurate, and countered the prevalent theories about battered women, at that time.

In some cases, several experts were utilized in the battered woman's trial. However, which expert was 'believed,' and viewed as most credible, was particularly relevant for the battered woman and the outcome of her trial. Most 'experts' in the cases in this sample were members of the 'psy' profession who provided individualized accounts of battered women and, like most actors in legal discourse, failed to provide a contextualized account of battered women's experiences with abuse which stemmed
from a feminist understanding of unequal power relations, male violence against women, and systemic inequality. In the one case where a psychiatrist provided a contextualized feminist account about women in abusive relationships, she was easily discredited due to the fact that the 'knowledge' she was bringing to the courtroom was simply not viewed as 'truth.' Believed above and beyond her was another psychiatrist who testified for the prosecution and claimed that the woman did not fit the criteria of the BWS, and hence was not a battered woman.

Law's utilization of 'expert' testimony proved to be another means by which battered women's experiences were altered and disqualified through legal discourse. The 'expert,' in speaking on behalf of the battered woman, in utilizing pre-determined diagnostic criteria, and perpetrating inaccurate and misleading stereotypes of the battered woman, altered the battered woman's experiences and failed to provide an account of her experience with domestic violence which would help others to understand how and why she committed her crime.

Legal discourse thus embraced knowledge from scientific discourse to construct battered women primarily in terms of their 'psyches:' their individual weaknesses and choices; medical criteria based on pre-determined diagnostic categories; and, through the use of the 'expert' who altered their experiences by speaking on their behalf and in a way which is easily 'heard' and 'recognized' by law.

Summary

The analysis presented in Chapter VII showed that legal constructions of the battered woman, based on the accounts of criminal justice agents and cases of both
BWS use and non-use, were far removed from battered women's real experiences with domestic violence and their violent crimes. In order to better understand why this occurred, it was necessary to use this most recent Chapter to examine and describe the actual and particular ways by which legal discourse silenced battered women. An examination of the cases revealed the numerous and particular ways by which battered women's experiences were altered and disqualified by legal discourse.

Once a battered woman engaged in legal discourse she lost control over her case, and how and if her story gets told. What legal discourse deemed to be 'legally relevant' was far removed from her real and lived experiences. Legal discourse abstracted tiny 'bits' of her experience (such as her 'act' of crime) from its social context, and the result was that her crime was not carefully located as part of, and arising from, her complex experiences with domestic violence. Legal discourse also demonstrated its tendency to abstract a particular act or experience of the battered woman from its context and use it to attack her credibility. Her experience with domestic violence was often used against her when she was constructed as a 'liar' for claiming experiences of abuse.

Legal discourse 'normalized' a woman's experience with abuse and appeared ill-equipped to account the relationship of domestic violence to a woman's crime. An examination of the cases in this sample revealed that law is resistant to feminist forms of knowledge which recognize fundamental and systemic inequality, and uneven power relations between men and women.

Battered women's experiences were altered and disqualified through legal
discourse, largely through its reliance on a process of 'individualization.' Legal actors focused on the individual, and notions of 'free will' and 'choice,' at the expense of providing and supporting accounts which showed women's experiences as located within, and stemming from, larger social issues involving inequality. The focus was on the battered woman as she operateed as an 'individual' and makes 'free choices,' as opposed to how she acted within, and as a result of, the social conditions which create and maintain male violence against women.

Battered women's experiences were disqualified through law's reliance on categories of 'male experience.' Battered women were judged according to standards derived from male experiences of conflict, struggle, and fear. The women in this sample were thus often judged according to a notion of self-defence that is premised on the experiences of men and simply cannot account for the experiences of battered women.

Legal rules and standards of 'proof' also served to alter and disqualify battered women's experiences. In particular, law's reliance on certain kinds of proof, to acknowledge that an experience or event had occurred, disqualified battered women's experiences with abuse. Battered women were often not in a position to satisfy particular requirements of legal discourse, and the result was that their experiences were not 'heard' or 'recognized' by law.

Finally, in order to understand the power of law in terms of its ability to define and disqualify women's experiences, it was important to examine the ways in which legal discourse relied on scientific discourse to define and construct battered women.
An examination of the cases in this sample revealed that law overlaped with the 'psy' professions to construct battered women in terms of their 'psyches.' Law, by utilizing knowledge from the 'psy' professions, minimized and changed women's experiences with abuse. This was accomplished in a variety of ways including through (1) the portrayal of the battered woman as 'sick' and 'irrational;' (2) a process of 'individualization' whereby a woman's crime is understood as a result of her individual personality and particular weaknesses; (3) the application of diagnostic criteria; and, (4) the use of the scientific 'expert.'
Chapter IX

Conclusions

Summary of Research

A. Domestic Violence and the Premises of the BWS

Lenore Walker’s BWS was first examined in terms of its two basic premises: (1) the ‘cycle theory of violence;’ and, (2) the concept of ‘learned helplessness.’ The cycle theory of violence, and its premise that violence escalates in severity and intensity over time, was shown to describe elements of the women’s experiences with domestic violence. However, the above analysis has also suggested that women experience abuse in many different and severe forms, and ones which are not emphasized, and sometimes neglected, through Walker’s cycle theory of violence. In particular, this research has uncovered the various means by which the batterer attempted to control the battered woman and cause her to develop an intense and extreme fear of him over time. This fear appeared to be very rational and realistic in light of the abuser’s extreme and detailed death threats, as well as his escalating violent and dangerous behaviour toward the woman, and often others. This analysis has also uncovered other less-emphasized, but crucial, aspects of domestic violence such as sexual abuse, abuse of the children, and extreme forms of psychological abuse. Women were found to experience abuse in various ways. That is, battered women are not all the same and they experience abuse in many different ways, and in many different combinations.

The more problematic area of the BWS, and that which happens to be the most ‘legally relevant’ aspect of the BWS, was the concept of ‘learned helplessness.’
Walker's model of learned helplessness, in attempting to describe why a battered woman 'stays' in her abusive relationship, describes the battered woman in terms of her mental state; by Walker's model of learned helplessness the battered woman, after enduring the cycle of violence, becomes passive, helpless, and 'blind to her options.' This focus was found to be extremely misleading, given the experiences of the women in this sample. Nearly all of the women here did seek help and make numerous attempts at escape, only to be confronted with various insurmountable barriers including a lack of assistance from outsiders, such as the police, and the batterer's dangerous and deadly responses to the woman's 'leaving.' A focus on why battered women do not 'leave,' fails to address the experiences of women who do attempt escape and what consequences and lack of support they face once they have succeeded in 'leaving.' The experiences of the women in this sample did not support the notion that battered women become 'blind to their options.' Instead, these cases showed that battered women become rationally and realistically aware of their true 'lack of options.'

Just as women had different experiences with abuse, they also had various experiences with escape and 'leaving.' While many women made well-orchestrated attempts at escape, others did not, sometimes out of their previous and other experiences with abuse and help-seeking.

Finally, in relying on a description of the battered woman as passive and helpless, the model of learned helplessness cannot adequately account for the battered women who ultimately fight-back against their abusers, in the form of violent action, to save their lives.
B. Women's Violent Crimes

An examination of the cases in this sample revealed that battered women have very different experiences with crime. While all of the women's crimes were related to their experiences with domestic violence, and the women appeared to understand their crimes as such, not all battered women are the same; they experienced and understood their abuse, and their resultant crimes, in diverse ways.

Many different factors were found to precede and affect women's experiences with crime including their previous experiences with abuse; situations of child abuse; forms of sexual abuse; suggestions and assistance from others; a woman's ability to predict violence out of her knowledge of her batterer's behaviour; and/or, a brief period of escalating violence.

While some women appeared to have made a very rational decision to kill their abuser, and may have calmly planned it with others or have acted alone, others simply reacted in a physical struggle or confrontation, usually when they received some kind of sign that their batterer intended to harm or kill them. While most women killed, or hired someone to kill, their abusers, some women committed forms of ancillary crime when they took part in the violent crimes of their abusers.

While the women thus had very different experiences with crime, and several factors appeared to have preceded their crimes, the element of 'fear' was central to all women's violent crimes. In cases where there was a struggle, the woman usually reacted based on an immediate fear for her life. In other cases, usually when the murder was planned with a third party, women reacted on the basis of their fear of
future abuse and, ultimately, their desire to protect their health and safety. While women's experiences with ancillary crime put them in a somewhat different category, they too understood their participation in crime as deriving from a fear of their abusers, and a desire to preserve their lives.

It also appeared from the experiences of the women in this sample, that a battered woman may understand her crime as an immediate reaction to her fear for her life and/or as a rational decision to end her abuse forever. Women's fears, whether immediate or future-oriented or both, were found to be based on, and can only be understood in terms of, their experiences with their batterer's behaviour over time.

Based on an analysis of these cases, the BWS was found to be particularly problematic in terms of its capacity to account for a battered woman's 'act' of crime. The exception to this involved the cases of ancillary crime. In these cases, the women did not take 'action' to end their abuse, but rather were coerced into participating in the crimes of their abusers. These women's cases are thus less problematic, with respect to a focus on learned helplessness, since these crimes can be viewed as more passive than those involving violent action on the part of the woman, against her abuser. However, in all cases where women arranged or themselves killed their abusers, they fought-back against their batterers and made some kind of decision which would ultimately end their abuse forever. That is, whether spontaneous or planned, the battered woman usually took action to preserve her life, and sometimes to ensure the safety and well-being of the children. The BWS, in relying on a model of learned helplessness that depicts the battered woman as 'passive' and 'lacking in motivation to
respond,' cannot truly account for the women in this sample in terms of their violent 'acts' of crime.

C. Women's Experiences with the Criminal Justice System: Legal Constructions of Battered Women

In order to better understand the battered woman’s experiences with the criminal justice system, and the influence and implications of the legal recognition of the BWS, it was necessary to examine the specific ways by which agents of the criminal justice system constructed battered women who committed violent crimes. Implicit in this was an examination of the ways in which key criminal justice agents interpreted and reported women's experiences with domestic violence, and its relationship to their crimes.

Probation officers failed to construct battered women with reference to domestic violence and its relationship to their crimes. When an account of abuse was presented, it served to minimize and normalize the woman's experience with abuse.

The prosecution usually constructed battered women as cold-blooded calculating murderers, who pre-meditated their 'act' and committed their crime for reasons other than the abuse they suffered and their resultant extreme fear of their abuser. To this end, the prosecution sometimes made use of a 'male model' of self-defence and fear. In other cases, the prosecution attempted to show that the battered woman killed her abuser for financial gain. In cases of ancillary crime, the prosecution constructed battered women as equal and free participants in their abusers' crimes. Inherent in each of the prosecution's constructions of the battered woman, was a failure to link the woman's crime to her complex experience with domestic violence.

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In most cases, the prosecution completely failed to recognize a woman's experience with abuse. Finally, when the prosecution did recognize a woman's experience with abuse, they often constructed the battered woman as artificially 'playing up' the role of 'victim,' as a convenient excuse for her crime.

The judge also constructed battered women as cold and calculating murderers. When abuse was made an issue for the judge, he tended to minimize or ignore the role of abuse in a woman's violent crime. That is, the judge often recognized the abuse but went on to claim that it was simply no excuse or justification for murder; that acknowledging the abuse would fail to deter other women from committing similar crimes; and, that the battered woman was responsible and to blame for her situation of domestic violence. The judge, like the prosecution, relied on a model of confrontation, fear, and retaliation based on the experiences of men, to construct the battered woman as a pre-meditating killer.

In the cases considered, even defence attorneys tended to minimize or neglect the role of abuse in women's crimes, and constructed the battered woman primarily in terms of her mental state; as having killed her abuser accidentally; or in some cases as having the 'perfect' marriage. In several of the cases, the defence attorney utilized methods and strategies in the courtroom that enabled him to construct battered women with absolutely no reference to their experiences with domestic violence, and how these experiences specifically led them to commit violent crimes. That is, the defence often neglected to provide an account of abuse which presented the battered woman as having acted out of a rational fear of her abuser, in order to prevent another or a
continuing violent attack, and to preserve her life. Implicit in this was the finding that
the defence attorney often failed to utilize expert testimony on the BWS, even though
BWS expert testimony was at that time well-utilized in the criminal trials of battered
women across the United States.

The justifications and apparent reasons for the neglect and non-use of the BWS
are particularly relevant with respect to the legal recognition of the BWS, and an
understanding of the extent to which it can actually help women whose violent crimes
are related to their experiences with domestic violence. In fact, numerous factors and
circumstances were found to surround the defence attorney's neglect of the BWS
including (1) the defence's chosen trial strategy and his view that evidence of battering
would show motive; (2) the defence's choice to construct the battered woman as
'insane;' (3) issues involving preparation time and the cost of an 'expert;' (4) ineffective
counsel; (5) the State's rejection of Lenore Walker's work and the need for expert
testimony on the BWS; and, (6) a narrow application of BWS testimony to only cases
deemed to be 'battered woman cases' as well as cases of 'strict' self-defence, as
premised on the experiences of men.

In cases of BWS use, several issues arose which also raise questions about the
extent to which BWS testimony can be of benefit to battered women, when they are
tried for violent crimes. These involved, namely: (1) the defence attorney's misuse of
BWS; (2) the challenge and difficulty of linking BWS testimony to women's violent
'acts' of crime; (3) the prosecution's appropriation of BWS testimony in building a case
against the battered woman; (4) the presence of inaccurate and unqualified 'expert'

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testimony; (5) the use and shaping of the BWS as a 'profile' of the battered woman; (6) the focus on BWS evidence on the 'helplessness' of the battered woman; and, (7) the use of the BWS to depict the battered woman as 'passive' and unable to 'fight-back' against her abuser.

It thus appeared that the legal recognition of the BWS, based on the experiences of the women in this sample, failed to benefit the women for whom it was originally intended. That is, this analysis raised many criticisms of the BWS in terms of its capacity to help women whose violent crimes were a result of their experiences with domestic violence. In order to better discover why this occurred, and namely why the feminist legal reform involving the use of the BWS failed to bring about the desired results, it was necessary utilize the work of Carol Smart\textsuperscript{156} in an examination of the experiences of battered women as they are located within the larger structure of legal discourse.

D. Legal Discourse and the Feminist Challenge

An examination of the cases in this sample revealed the numerous and particular ways by which legal discourse altered and disqualified a woman's experience with domestic violence, and the important ways in which her experience with abuse was related to her violent crime. In these cases, battered women's experiences were not 'heard' or 'recognized' by law due to: (1) the battered woman's lack of control over

\footnotetext{156}{As described in earlier sections, the work and theory of Carol Smart, and her understanding of law's existence as a powerful discourse which alters and disqualifies women's experiences, is particularly useful in the examination of the legal recognition of the BWS. Her work is also useful for attempting to understand why feminist legal reforms, such as the legal recognition of the BWS, do not always create the desired effects and, thus, do not necessarily help the women whom the reform was intended to serve.}
her defence, and thus how and if her story was told; (2) the appropriation of tiny 'bits' of the woman's experience according to 'legal relevancies;' (3) the abstracting of her real and lived experiences from their social context and, thus, her experience with domestic violence over time; (4) the construction of the battered woman as not credible and as a 'liar' through the abstracting and 'turning around' of her experiences; (5) law's normalization of domestic violence; (6) the resistance of law to feminist forms of knowledge, and thus basic notions of inequality, uneven power relations, and particularly male violence against women; (7) law's process of 'individualization;' (8) the tendency of legal discourse to rely on categories of human behaviour derived from men's experiences with conflict, struggle and fear; (9) the use of legal rules and standards of proof; and, (10) law's reliance on scientific discourse and the 'psy' professions to construct the battered woman according to her 'psyche,' her individual deficiencies, diagnostic criteria, and what the scientific 'expert' deems as 'truth' about, and for, her.

Discussion and Implications

The purpose of this research was to provide a critical evaluation of the Battered Woman Syndrome, as it has evolved as a legal concept, in terms of its capacity to (1) describe women's experiences with abuse and how these are related to their violent crimes; and, (2) help women who are tried for violent crimes related to their experiences with domestic violence. This was to be accomplished through an examination of case files for fourteen women of Michigan's Battered Women's Clemency Project, entitled Freedom Link.
Data were extracted from each case file according to three levels of inquiry, and corresponding research questions. Information was specifically sought about each woman in terms of her experience with domestic violence, her resultant and violent crime, and her experience with the criminal justice system. From this, data analysis was undertaken with the purpose of understanding the complexities of women’s experiences with abuse, and the ways in which this abuse was related to their diverse crimes. This allowed for an evaluation of the legally relevant aspects of the BWS, namely the 'cycle theory of violence' and, predominately, the model of 'learned helplessness.'

While it was useful to examine the cases in terms of the 'legally relevant' aspects of the BWS, it was necessary to move to a detailed analysis of battered women's experiences within the criminal justice system, in order to understand their treatment therein, and the BWS as it operates in the larger structure of legal discourse.

An understanding of battered women's experiences with the criminal justice system, and the uses of the BWS, necessitated an examination of the specific ways in which key criminal justice agents constructed battered women; implicit in which was an examination of how and if key agents interpreted and reported women's experiences with domestic violence and its relationship to their crimes, and how battered women were constructed through both the use and non-use of BWS testimony.

Situations of both BWS use and non-use were examined such to raise important questions and criticisms about the legal recognition of the BWS, and its potential to benefit women whose violent crimes were related to their experiences with
domestic violence.

Finally, the work of Carol Smart was applied to the fourteen cases in an attempt to understand why the feminist legal reform, involving the use of BWS expert testimony in the criminal trials of battered women, has not always created the intended and desired results.

The findings of this project support the research in the field to date, which acknowledges the limitations of the legal recognition of the BWS in terms of actual cases of expert testimony on the BWS. That is, this research supports the findings of others, including Elizabeth Schneider who shows that BWS expert testimony cases "resound with the very sex-stereotypes of female incapacity which women’s self-defense work has sought to overcome"\textsuperscript{157} and focus on the 'passivity' and 'victimization' of battered women, instead of their ability to make "rational choices to save their lives."\textsuperscript{158} This research also supports the work of Phyllis Crocker who, again based on an examination of BWS expert testimony cases, finds that a new legal stereotype of the 'battered woman' has been created. If the battered woman does not fit neatly into the mould which the BWS creates, she is judged according to 'reasonable man' standards since she is not truly considered a 'battered woman.'\textsuperscript{159}

Finally, the findings of this research also support the work of numerous others in this field, including that of Isabel Grant who believes that BWS use transforms "the reality of this form of gender oppression into a psychiatric disorder" whereby the victim of

\textsuperscript{157} Schneider, "Describing and Changing," p.11.
\textsuperscript{158} Ibid.
\textsuperscript{159} Crocker, "The Meaning of Equality for Battered Women."
abuse becomes the "abnormal actor."[61]

The literature to date was found to provide a useful start in acknowledging the limitations of the BWS, for women who were tried for committing violent crimes. However, while most scholars acknowledge the practical limitations of the BWS, based solely on cases of BWS use and examinations of actual expert testimony on the BWS, few had dealt with the larger question of: Why has the BWS been shaped and constructed in a very particular way? Furthermore, what has caused the overwhelming misuse of the BWS?

This research is useful in that it begins to answer some of these questions by locating the BWS in the larger structure of legal discourse which tends to alter and disqualify the experiences of women and particularly, as this research has found, the experiences of battered women. This research, unlike others, also attempts to deal with the significant element of BWS non-use and neglect, which is paramount to any analysis which attempts to address the limitations of the BWS, and the extent to which the BWS can actually help women when they are tried for committing violent crimes.

Two research questions guided this research:

1) Given that the BWS operates and must be located within the larger structure of legal discourse a) how is the battered woman constructed by legal discourse; and b) in what ways does legal discourse, including through the uses and non-uses of BWS testimony, ultimately serve to change and even disqualify women's experiences with domestic violence and how this violence is related to their violent crimes?

This research has revealed that criminal justice agents failed to construct battered women in terms of their complex experiences with abuse. They tended to minimize, normalize, and even neglect to present or support an account of the battered woman's experiences which acknowledged the diverse and severe forms of abuse she suffered at the hands of her abuser. Criminal justice agents also failed to link women's experiences with abuse to how they acted 'reasonably' in their violent crimes. That is, agents failed to demonstrate how extreme abuse led the battered woman to develop an intense fear of her abuser, and caused her to act to preserve her life, and sometimes the safety of her children.

Implicit in this was the very significant finding that the defence attorney often neglected to construct the battered woman through the use of expert testimony on the BWS even though, at the time in which these cases were tried, expert testimony on the BWS was well-utilized in the criminal trials of battered women across the United States.

This research has found that an understanding of the legal recognition of the BWS, in terms of its capacity to help women who commit violent crimes, is only possible once it is located within the larger structure of legal discourse. To this end, this inquiry has found that legal discourse altered and disqualified the experiences of battered women, in a variety of ways, both in cases where BWS was used and was not used.

When the defence neglected to construct the battered woman in terms of her abuse, and thus not in terms of legally relevant expert testimony on the BWS, he
appeared to do so on the basis of a variety of justifications. Factors and circumstances found to surround the defence attorney's neglect of the BWS included the chosen trial strategy; a construction of the battered woman as 'insane;' preparation time and the cost of 'expert testimony;' a woman's lack of access to effective counsel; the State's rejection of the basic need for expert testimony on the BWS; and/or a narrow application of BWS testimony to cases deemed to be 'battered women cases.'

Legal discourse was also found to alter and disqualify battered women's experiences in and through cases of BWS use. Several issues emerged in this research, which raised questions about the extent to which BWS testimony can benefit battered women when they are tried for committing violent crimes. These issues involved, namely, the defence attorney's misuse of the BWS; the apparent difficulty of linking BWS testimony to a woman's violent 'act' of crime; the prosecution's use of BWS testimony in a case against the woman; the use of inaccurate and unqualified expert testimony; the use of the BWS as a 'profile' of the battered woman; and/or, the use of BWS testimony to focus on the 'helplessness' of the battered woman.

These findings casted considerable doubt on the notion that the legal recognition of the BWS benefits women who are tried for committing violent crimes as a result of their experience with domestic violence. That is, through both BWS use and non-use, battered women's experiences were largely disqualified and BWS testimony did not appear to help women who sought to have their crimes understood as arising from their complex experiences with domestic violence.

This research has also found that an evaluation of the legal recognition of the
BWS must be informed by an account of how legal discourse, with and without BWS testimony, is resistant to the feminist challenge and, as Carol Smart maintains, has the "power to define and disqualify"\(^{161}\) women's experiences. This inquiry has uncovered the numerous and particular ways that legal discourse altered and disqualified the experiences of battered women. It appeared that legal discourse was extremely resistant, and did not have the capacity, to acknowledge women's complex experiences with domestic violence, and the important ways in which these experiences were related to their violent crimes. Therefore, the legal recognition of the BWS must be seen as operating not in isolation but within the structure of powerful legal discourse which, in all cases of BWS use and non-use, demonstrated its tendency to ultimately change and disregard the real and lived experiences of battered women.

(2) Given that the BWS, as it has evolved as a legal concept, is narrow in scope and has been applied conservatively within a legal framework, what factors would need to be taken into consideration for the implementation of a model that could a) account for the complexity of women's experiences with domestic violence and the ways in which these experiences are related to their diverse violent crimes; and, b) help women who are tried for committing violent crimes as a result of their experiences with abuse?

A new framework, or revised model for legal recognition in the trials of battered women who commit violent crimes, would need to account for many factors regarding women's experiences with abuse, and how these experiences lead them to

\(^{161}\) Smart, *Feminism and the Power of Law*, p.164.
commit violent crimes. That is, a re-focused legally recognized BWS, or a new model altogether, would have to take into account the complex experiences battered women have with actual forms of abuse, and the behaviours of their batterers.\textsuperscript{102}

This research has revealed that women experience abuse in a multitude of forms. A woman's experience with abuse can only be understood with detailed reference to her account of the forms of abuse she has suffered. A new model must account for the prevalence and effects of women's particular experiences with her batterers, and particular forms of abuse, including sexual abuse; the batterer's detailed and believable death threats and methods of intimidation; the batterer's previous attempts at killing the woman; a woman's awareness of her batterer's abuse of others; the batterer's use and abuse of the children; and/or the batterer's extreme and complex forms of psychological abuse. Accounts must also focus on the effects and forms of the batterer's isolation of the woman, and his need and tactics for his immense control over her. That is, a model must focus on women's real and lived experiences with domestic violence, with specific and particular reference to the diverse and dangerous acts of the abuser over time. Importantly, however, a new model must not simplify a woman's experience with abuse into narrow categories and patterns. It must acknowledge that battered women experience abuse in a multitude of ways and, simply, not always in the same ways.

This analysis has also shown that the most problematic aspect of the BWS, and

\textsuperscript{102} Susan Fair, Project Director of Freedom Link, believes that BWS testimony should focus on the pathology of the batterer, and his acts of abuse.
that which must be drastically revised or simply eliminated, in the concept of 'learned helplessness.' The focus must be moved away from the battered woman's 'psyche,' state of mind, and her reasons for remaining in the abusive relationship, to the actual and deadly consequences she faces when she attempts to, or succeeds in, leaving. This necessitates a focus on the batterer's actual acts of physical violence, and forms of psychological abuse, that are directed at the woman when she attempts to leave, or even when she makes her intent to leave known to her batterer.164

Combined with a focus on the batterer’s deadly response to the woman’s 'leaving' must be a focus on the insurmountable barriers that a woman faces if she succeeds in leaving. That is, the focus must be turned to the real conditions that the battered woman faces if she leaves, such as a lack of social support, and the protection and resources necessary for both her and her children's re-location and safety. A new or revised model must, then, acknowledge the real social conditions that present a range of insurmountable barriers for battered women. A new and better model would focus not on the battered woman's inability to recognize her options, but on her rational and realistic assessment of her true 'lack of options.'

A new or revised model must also specifically link women's experiences with abuse to the range of violent crimes that they may commit as a result. This involves, again, a detailed account of the forms of abuse a woman suffered and, importantly, how this led her to rationally fear her abuser and to act in some way to preserve her

164 Again, however, a model must not assume that all battered women are the same. Some battered women do not attempt to 'leave' for a variety of 'rational' reasons. For example, this research has shown that women's prior experiences with abuse may have taught them that leaving simply serves no purpose, and that remaining in the relationship is in their best interests.
A revised model must specifically link a woman's experience with abuse to how she acted 'reasonably,' and as any 'normal' person would, in her crime. It must also account for the notion that the battered woman has a keen interest in protecting her children, and may also act on their behalf, to protect them from further abuse.

All of this necessitates a movement away from any pre-determined 'male' category of human experience. A new and revised model would acknowledge that women experience struggle, threat and fear differently than men. Therefore, any pre-disposed notion of struggle, confrontation and fear must be eliminated from the process of understanding the battered woman's experience with abuse and her resultant crime. The battered woman must be judged according to her specific experience with abuse, and never in relation to a conception of human action based on the experiences of men.

Importantly, a new or revised legally recognized model must account for the notion that not all battered women commit the same crimes in the same ways. That is, just as battered women experience abuse in diverse ways, they commit their crimes in a variety of ways. This research has shown that battered women sometimes kill their abusers in a struggle, and at other times may calmly plan their abuser's death by seeking the help and assistance of others. In other cases, women become involved in ancillary crime where they participate in their abuser's violent crime as a result of their experience with domestic violence. A new model, legally recognized in the trials of battered women, must acknowledge and be applicable to women's diverse experiences with crime, and the ways in which domestic violence is related to each crime. The
notion of a 'battered woman's crime,' as this research has revealed, is misleading and problematic for battered women. This inquiry has shown that battered women's crimes are a result of their experiences with domestic violence, even though their crimes may take on any one of several different forms.

A model that would potentially help women who are tried for committing violent crimes as a result of their experiences with abuse must account for the above identified factors and, perhaps most importantly on the basis of what this research has revealed, must account for the numerous and particular ways legal discourse, in and of itself, alters and disqualifies the experiences of battered women. That is, this research has revealed that a new legally relevant model, or a revised BWS, does not offer, as Smart maintains of most feminist legal reforms, "the promise of a solution" for battered women who are tried for committing violent crimes. Any new or revised model becomes a part of legal discourse when it is utilized in the trials of battered women. Therefore, a model for use in the criminal trials of battered women must acknowledge at the onset, and find creative ways to remedy, the notion that legal discourse changes and disqualifies battered women's experiences through the abstracting of their experiences into legal relevancies and, ultimately, into a form which it can "digest."165

A crucial implication of this research is the notion that any new or improved 'model' will likely not have its desired effect and will fail to help the women it is

164 Smart, *Feminism and the Power of Law*, p.165.
165 Ibid., p.11.
intended to serve. That is, this inquiry causes one to be skeptical of any 'model' that becomes a part of legal discourse, even when it is designed to help women such as battered women who commit violent crimes. Perhaps a radically altered form of legal discourse, which is premised on the experiences and needs of women, and which accounts for inequality and uneven power relations, must precede any implementation of a new 'model,' if it is to ultimately help battered women when they are tried for committing violent crimes.
Appendix A

Consent Form

The purpose of this study is to explore the limitations of the Battered Woman Syndrome utilizing, in part, the case files of a sub-sample of women from Michigan's Battered Woman's Clemency Project (entitled Freedom Link).

In this research it is understood that Susan Fair, director and founder of Freedom Link, is providing Kristie Pagniello with access to case files relevant to the specific nature of this research.

It is also understood that Kristie Pagniello is viewing case files as a worker/helper of Freedom Link, thereby upholding the confidentiality agreement already in place between Susan Fair and the women prisoners of her project. In order to further maintain this confidentiality, Kristie Pagniello agrees that the names of the women will never be used and that details about the women and their lives will not appear in any manner which allows the women to be identified.

Finally, Kristie Pagniello also agrees to provide Susan Fair with copies of all written work derived from the use of this data.

____________________________       ________________________
Susan Fair                        Date
Director
Freedom Link

____________________________       ________________________
Kristie Pagniello                 Date
M.A. Student

____________________________       ________________________
Dr. Mary Lou Dietz                Date
Academic Chair
Thesis Committee

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### Appendix B

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Appendix C

Domestic Violence Interview #1

General Questions:

1. Name:
2. Assailant's name:
3. Assailant's status (alive/dead; where he's living, etc.):
4. Criminal charge:
5. Sentence:

THE FOLLOWING ARE GENERAL QUESTIONS ABOUT THE RELATIONSHIP BETWEEN THE HISTORY OF VIOLENCE BY HER ASSAILANT AND THE CRIME FOR WHICH SHE WAS INCARCERATED. LATER WE WILL ASK HER SOME SPECIFIC QUESTIONS ABOUT THE BATTERING.

6. What was happening in your life at the time you committed for the crime that you are now in prison for?

7. Why do you feel that you committed this crime? (If she says she feels she committed the crime due to being battered, ask her to explain what she means by that - get as much information in her own words as possible).

TELL THE WOMAN WHO YOU ARE INTERVIEWING THAT YOU WOULD LIKE TO TALK WITH HER ABOUT THE RELATIONSHIP BETWEEN HER AND THE PERSON SHE NAMES AS HER ASSAILANT.

Dating (for women whose assailants were their intimate partners):

8. When did you first meet your partner?

9. In the beginning what was the relationship like?
   a. Describe your partner's behaviour towards you.
   b. If you had a disagreement how was it handled?
   c. How did your partner feel about you and the relationship?
   d. How soon was a commitment made? (living together, going "steady," marriage, etc.)

10. At what time did you begin to have concerns about the relationship?
    a. Describe specific situations.
    b. Describe things that your partner said or did to you.
    c. What was a typical argument like?
d. What did your partner say and do when your partner was angry at you?

IF ASSAILANT WAS NOT AN INTIMATE PARTNER ASK ABOUT WHAT RELATIONSHIP SHE HAD WITH THE ASSAILANT AND WHEN SHE BEGAN TO HAVE CONCERNS ABOUT THE RELATIONSHIP. ASK QUESTIONS 10 a-d.

Intimidation:

Did your partner ever...

11. destroy your personal possessions?
12. rip or tear your clothing?
13. rip the phone out of the wall?
14. smash or throw items in the house?
15. bang or punch walls?
16. put fear in you by using looks, actions, voices?
17. How often were you afraid of your partner?
18. How did this feel?
19. What effect did this have on you?

Isolation:

Did your partner ever...

27. call you names? Which names? How often?
28. try to make you think you were crazy?
29. force you to take drugs, pills, or alcohol?
30. tell you that you couldn’t do anything right?
31. criticize you for everything you did or didn’t do?
32. play with your mind? In what ways?
33. How did this feel? (the behaviours your partner did to emotionally abuse you)
34. What effect did this have on you?

Economic Abuse:

Did your partner ever...

35. tell you that you couldn’t work?
36. disturb you at work?
37. make you ask for money?
38. take you money?
39. How did this feel? (the behaviours he did to economically abuse you)
40. What effect did this have on you?
Using the Children:

Did your partner ever...

41. criticize your parenting skills?
42. use children to give you messages or threats?
43. force children to watch the abuse?
44. use visitation as a way to harass you?
45. direct the children to disobey you?
46. allow the children to do something that you don't allow?
47. direct the children to physically or verbally attack you?
48. threaten to take the children and prevent you from having custody or seeing them again?
49. How did this feel? (the ways he used the children)
50. What effect did this have on you?

Threats:

Did your partner ever accuse you of...

51. having affairs?
52. not being where you said you would be?
53. being attracted to different people?
54. being a lesbian? (for lesbian women - not being a true lesbian or not femme or butch enough)
55. How did this feel? (your partner's accusations)
56. What effect did this have on you?
57. Did your partner ever treat you like a servant?
58. What was your partner's idea of what male/female roles should be?
59. What were your partner's ideas of a man's/woman's role in marriage?
60. What did your partner expect from you?
61. Did he assume that "his way" was right?
62. Did he/she not ask for your opinion or permission?
63. how did this feel? (your partner's use of privilege)
64. What effect did this have on you?

Sexual Abuse:

Did your partner ever...

75. force or coerce you to have sex or do particular sex acts?
76. force or coerce you to have sex with another person or animal?
77. rape you with an object?
78. threaten to give you a sexually transmitted disease?
79. call you sexually derogatory names? (whore, slut, etc.)
80. How did this feel?
81. What effect did this have on you?

Physical Abuse:

82. Describe the first physical assault.
83. How did you feel after this first assault?
84. Describe a typical assault.
85. What was the worst assault?
86. How did you react?
87. What did you do to protect yourself?
88. Did you seek medical treatment because of that assault? How many times?
89. What happened when you called the police?
90. How many times did you call the police?
91. What happened when you called the police?
92. Did they arrest? How many times?
93. Did you have a restraining order?
94. (If restraining order) did the police enforce injunctions?
95. Did the police give you information on services like shelter?
96. (If arrest or complaint made) did the prosecutor authorize you complaint?
97. Do you have medical and police records?
98. How often did you try to separate yourself from your partner?
99. How often did you leave?
100. Where did your partner go when you left?
101. Did your ever go to a battered women’s shelter?
102. Did you ever go to someone for counseling/support when you were being battered?
103. What else did you do to try to and protect yourself and get help?
104. After your partner assaulted you, what did he do and say?
105. Did your partner ever talk about he assault?
106. Describe the fear your felt toward your partner.

Alcohol and Other Drugs:

107. How often did you use alcohol or other drugs during the time you were with your partner?
108. How often did your partner use alcohol or other drugs?
109. At what time of the incident, were you and/or your partner under the influence of alcohol or other drugs?
110. Describe the incident/crime. (if she didn't describe it in questions #6 or #7)

Family/Other Response:
111. What was your childhood like?
112. If you were abused, what happened?
113. How did your religious values affect your views and expectations of the relationship?
114. Did you approach the religious/spiritual community for help? What was the response?
115. What were your views of marriage? Roles of men and women?
116. Did you disclose the abuse to your family? How did they respond?
117. Do you have children? If so, where are they? When was the last time you saw them? What kind of relationship would you like with them if you were to get released?
118. Do you have any medical problems? What are they? How have they been treated?
119. If you were to get released, what kind of plans would you make for re-entering the community? (job, family, support systems, where she'd live, etc.)
120. Do you know people who may be willing to write a letter supporting your request for clemency?

**Domestic Violence Interview #2**

1. During arguments did the man often threaten someone, break things, punch walls or hurt animals or children?
2. Did he have mood swings, where one minute he was loving and affectionate, and the next minute angry and threatening?
3. Did he ever hit, bite, burn, choke, kick, slap, grab, or shove you?
4. Were you afraid to talk to him about your feelings, hopes, your fears?
5. Did he tend to blame others for his behaviour, especially you?
6. Was he jealous to the point where you changed you behaviour or appearance to avoid his jealousy?
7. Did he try to control how you thought, dressed, who you saw, how you spent your time, how you spent your money?
8. Did he try to discourage you from seeing your family or friends?
9. Did he get angry or resentful when your were successful in a job or hobby?
10. Did he ever threaten to harm you, himself, your children or others if you talked about leaving?
11. Did he do or say things that were designed to make you feel crazy or stupid?
12. Did he blame alcohol, drugs or other life events for his behaviour?
13. Did he ever say or make you believe that if he couldn't have you no one would or anything similar?
14. Did he ever force you to have sex or hurt you, or threaten you if you refused sex?
15. Did he make you account for every minute of your time, check up on your whereabouts or make you give him your daily schedule?
17. Did he ever withhold food or money from you or your children?
18. Did he stop you from seeing family or friends, getting a job, going to school or using the car?
19. Did he make or carry out threats against you or your family, hurt your pets or destroy your property?

Legal Interview

1. Did you plead guilty or go to trial? Did you file for an appeal? At what point are you in the appellate process -- request for an attorney, Court of Appeals, Supreme Court (request) for review, request granted, brief filed, Circuit Court post-judgment motions, request for habeas relief, habeas filed, or are all avenues for relief exhausted?
2. How was domestic violence a part of the incidents that led to conviction in your case?
3. What is your major concern about the trial level proceedings? (i.e. trial attorney was not available or did not follow up information, effect of plea and/or conviction not explained properly, explanation of how domestic violence played into the criminal incident not presented, etc.) If applicable, was this dealt with on appeal?
4. If your trial lawyer did take the abuse into account, how was it brought up at trial? If you remember, did the judge tell the jury members (give jury instructions) that they should consider abuse when making its decision?
5. Was domestic violence considered in the sentencing process? Did your lawyer bring it up? Did the probation agent and you about it and/or include it in the pre-sentence report? Did the judge take it into account at sentencing?
6. Was there a psychological report? If so, was this your request, the prosecutor's or ordered by the court? Did you sign a release (s) to give the psychological evaluation to the court? To your lawyer? To the probation agent? Did your attorney see it before the judge did? Did you see it before the judge did?
7. Are the facts of your case on record? If not, what non-record facts are important to the case? (e.g., things your attorney knew that were not brought up, off-record discussion with the judge, discussions with your lawyer that were not made a part of the record). Is there supporting evidence such as police and hospital records, letters etc.?
8. What is the current state of your health? Do you have a history of physical health problems? If so, what kind?
9. What is the current state of your mental health? Do you have a history of mental health problems? If so, what kind?
10. How old are you? Do you have mental or physical problems which stem from your age?
11. What do you feel is the greatest injustice of your conviction and/or sentence?
12. What are your plans upon release? Do you have a job, a place to live, a place to parole out to?
References


Vita Auctoris

Kristie Marie Pagniello was born on the 30th of October, 1970 in Toronto, Ontario. She grew up in Oakville, Ontario and graduated as an Ontario Scholar from St. Ignatius of Loyola High School in 1989. She enrolled at Wilfrid Laurier University with a Laurier entrance scholarship in 1989. During her time at Wilfrid Laurier University she completed an internship in Political Science at the Department of External Affairs and International Trade in Ottawa, Ontario. She graduated from Wilfrid Laurier University in 1993 with an Honours Bachelor of Arts Degree in Political Science and Sociology, and having obtained the Alumni Gold Medal in Sociology. In 1993, she entered the Master of Arts program at the University of Windsor with a Graduate tuition scholarship. While completing her thesis she worked concurrently for the Windsor Women's Incentive Centre as a researcher/brief writer for the Windsor Coalition on Social Security Reform. She completed her Masters of Arts Degree in the summer of 1995, having been granted the University of Windsor Summer Research Scholarship. She has accepted admission to the Faculty of Law at the University of Windsor for the fall of 1995, and intends on obtaining and using a law degree for further work towards legal and social justice equality for women.