# The Impact of Dr. Lenore Walker on the Legal History of Domestic Violence

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## I. INTRODUCTION[2]

When a member of the *Suffolk University Law Review* invited me to introduce Dr. Lenore Walker as a Donahue lecturer, I immediately accepted and rearranged any prior commitments. I am sure that my response was something to the effect of, "*Lenore Walker*? *The Lenore Walker!*" I was starstruck.

Dr. Walker's work changed our thinking and led to advancements in the law regarding abused women. She has taught graduate students in psychology, conducted numerous studies, written several books, and been cited in countless law review articles and psychology journals.[3] She has published numerous articles and given presentations all over the world.[4] She has testified before Congress and in court cases.[5] She has instructed clinicians, students, lawyers, and judges.[6] She has consulted for government agencies and non-profit organizations.[7]

The law *had* to change to allow women to participate in society. To allow me to introduce Dr. Walker and write this Article. To allow Dr. Walker to give her lecture. Perhaps the first right that women obtained was the right to contract and own property.[8] Then, after much struggle—including violence, hunger strikes, and forced feeding—women obtained the right to vote by constitutional

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2. This introduction is adapted from the introductory speech that Justice Cypher delivered at the 130th Donahue Lecture presented by the *Suffolk University Law Review*.

3. *See generally Resume*, DR. LENORE E. WALKER (Aug. 2019), https://www.drlenoreewalker.com/wp-content/uploads/2017/10/Dr-lenore-e-walker-resume.pdf [https://perma.cc/2HVQ-6CJ4] (providing Dr. Walker's educational and professional certifications, background, experiences, and research).

4. *See id.* at 12-28 (sharing Dr. Walker's extensive list of publications and speech appearances).

5. *See id.* at 5-6 (listing Dr. Walker's testimony experience before Congress and in court cases).

6. *See id.* at 3-4 (enumerating Dr. Walker's teaching experience).

7. *See Resume, supra* note 3, at 6-9 (providing Dr. Walker's consulting experience).

8. *See Women's Rights*, ANNENBERG CLASSROOM, https://www.annenbergclassroom.org/resource/womens-rights/#:~:text=1900Women%20Gain%20Property%20Rights,property%20in%20their%20own%20name [https://perma.cc/ZFT4-QUZ2] (listing women's rights movement milestones). In 1839, Mississippi became the first state to grant women the right to hold property in their own name, with their husband's permission, of course. *Id.* (noting historical advancement of women).

amendment.[9] The amendment passed by one vote, after a Tennessee congressman received a note from his mother telling him how he should vote.[10]

In more recent history, Congress added the category of "woman" to the text of the Civil Rights Act.[11] While legislators added the category in an attempt to defeat the Act,[12] women nevertheless prevailed. Without those additions, women would not be able to participate in society in the way they do today.

But women needed one more important factor to change before they could fully participate in society. Women needed protection from violence perpetuated outside of the home, and equally, if not more importantly, women needed protection from violence perpetuated inside the home. Without those protections, women could not exercise other hard-earned rights. Dr. Walker was able to break the silence, expose, and help us understand the violent cycle of abuse that women endure in their own homes.

Dr. Lenore Walker is responsible for one of the most important psychological, legal, and social changes in women's history. I do not think it is an overstatement to say that her ideas, research, writing, speaking, teaching, clinical work, and testimony have changed the world for the better, for everyone. And that was not by accident. Once the relevant communities accepted Dr. Walker's theories and techniques regarding women's responses to abuse, she expanded her research to include all intimate partner violence, regardless of the sex or gender of the people involved.[13]

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9. *See* John G. White III, *Exercise Your Right to Vote*, 82 FLA. BAR J. 6, 7 (2008) (highlighting violence women endured). The "Night of Terror" provides an example of the violence women experienced:

> The 'Night of Terror' on November 15, 1917, at the Occoquan Workhouse in Virginia, marks the dark period when members of the National Women's Party were beaten, pushed, and thrown into prison cells after picketing President Woodrow Wilson at the White House for women's right to vote. For weeks, the only water came from an open pail and their colorless slop was infested with worms. Some embarked on a hunger strike and were cruelly force-fed. [By] the time that suffrage was won by the ratification of the 19th Amendment in 1920, 168 NWP activists had served time in prison or jail.

*Id.* at 7; Kelly M. Neville, *It's About Time: Celebrating 100 Years of Women's Suffrage*, WYO. LAW. MAG., Aug. 2020, at 8 (stating Amendment ratified on August 18, 1920).

10. *See* Paula F. Casey, *Tennessee's Vote for Women Decided the Nation: The Final Battle*, 31 TENN. BAR J. 20, 26 (1995) (detailing how amendment passed). The letter contained the following language:

> Dear Son: Hurrah, and vote for suffrage! Don't keep them in doubt. I noticed some of the speeches against. They were bitter. I have been watching to see how you stood, but have not noticed anything yet. Don't forget to be a good boy and help Mrs. Catt put the "rat" in ratification. Your Mother.

*Id.* at 26 (highlighting amendment passed by one vote).

11. *See* Kristen M. Galles, *Filling the Gaps: Women, Civil Rights, and Title IX*, HUM. RTS., Summer 2004, at 16-18, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol31_2004/summer2004/irr_hr_summer04_gaps/ (last visited Mar 22, 2024) (describing repercussions after passing Act).

12. *See id.* (highlighting women employment provision added in effort to defeat Civil Rights Act).

13. *See Research*, DR. LENORE E. WALKER, https://www.drlenoreewalker.com/research/ [https://perma.cc/UE2E-3JHC] (demonstrating evolution and expansion of Dr. Walker's research).

Dr. Walker was the first person to develop methods of obtaining reliable data about abused women, as well as the first psychologist to study battered women in significant enough numbers so that their plight could not be ignored.[14] Her research has informed policymakers all over the world.[15] Dr. Walker helped put into perspective the lives of battered women who kill their batterers.[16] She taught us that:

> [I]n the total context of abusive relationships, women who kill make up a very small percentage of battered women. In fact, the homicide statistics show that more women are killed by abusive partners than commit homicide themselves. Most battered women eventually do terminate the battering relationships through separation and divorce, although the violence does not necessarily stop when they leave . . . When battered women leave the relationship it is at greater peril to their lives and their children's lives. Abusive men are likely to stalk, find and kill the women who leave them.[17]

Further, Dr. Walker helped dismiss the concern that use of Battered Woman Syndrome (BWS) as a defense would lead to an increase in women killing their male partners.[18] Instead, since 1977—when Dr. Walker first pioneered the use of the syndrome as part of a justification defense—the number of women who kill their abusers has decreased.[19]

Dr. Walker's research also revealed the extremely negative impact on children exposed to domestic violence, whether or not the children were abused themselves or witnessed the violence between their parents. She explained, "[w]hether or not they are physically abused by either parent is less important than the psychological scars they bear from watching their fathers beat their mothers."[20] When children come from homes where domestic violence exists, they experience increased rates of school dropout, delinquency, teen crime, and teen suicide.[21]

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14. *See* Sinead Flynn, *Battered Woman's Syndrome: A Tragic Reality, an Evolving Theory*, 3 TRINITY WOMEN'S REV. 39, 40-41 (2019) (crediting Dr. Walker with groundbreaking domestic violence research).

15. *See Resume*, *supra* note 3, at 7 (outlining Dr. Walker's experience).

16. *See Welcome to the Official Website of Dr. Lenore E. Walker,* DR. LENORE E. WALKER, https://www.drlenoreewalker.com/ [https://perma.cc/NHQ6-SV9X] (noting research and historical findings shaping BWS). *See generally* LENORE E. WALKER, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS (1989).

17. *See* Scott Harshbarger & Jay Winsten, *Report on Domestic Violence: A Commitment to Action*, 28 NEW ENG. L. REV. 313, 347 (1993) (highlighting facts and statistics).

18. *See id.* (indicating no increase in rate of women killing male partners).

19. *See id.* (demonstrating decrease in rate of women killing male partners). Dr. Walker said, "[t]his is explained by the fact that women will leave their abusive situations if we find some way to give them assistance and enable them to keep themselves and their children safe." *Id.*

20. LENORE E. A. WALKER, THE BATTERED WOMAN 149 (1979).

21. *See* Michele Lloyd, *Domestic Violence and Education: Examining the Impact of Domestic Violence on Young Children, Children, and Young People and the Potential Role of Schools*, 9 FRONTIERS PSYCH. 1, 3-4 (2018) (discussing impact of domestic violence on children).

Dr. Walker focused on the rise in prosecutions of battered women in two areas, noting that:

> Increasingly, women have been accused of killing their children who die after a long period of child abuse. These women are not the ones who actually strike the fatal blow; it is the men with whom they live who have been abusive to both them and their children. Their own status as battered women makes it unreasonable for them to be able to protect their children any better. The second area is in the so-called "fetal endangerment" cases . . . more women are being legally punished for the use of drugs and alcohol while they are pregnant. Most of these women are also victims of abuse.[22]

Today, approximately 86% of women in jail experience sexual violence, and 77% of women in jail experience partner violence.[23] Dr. Walker's research, and the history of violence against women, explain these statistics.

A well-published and accomplished author, Dr. Walker's most recent book focuses on the connection between health and mental health symptoms, interventions with youth in juvenile detention centers, and reforming family court and divorce presumptions.[24] She began to create the Battered Woman Syndrome Questionnaire (BWSQ)— which assessed the interrelated psychological effects of abuse—in the late 1970s.[25] Dr. Walker also used her BWSQ research to design a treatment program for battered women.[26] She continues to collect and analyze data in this area and is in the process of improving and statistically validating the BWSQ.[27]

In addition to identifying and studying the phenomena of BWS, Dr. Walker has created therapeutic interventions and techniques for the battered and the batterers.[28] She has recently brought her expertise to the area of sex trafficking.[29] Dr. Walker is also the Director of the Domestic Violence Institute, Inc., a not-

22. *See* Harshbarger & Winsten, *supra* note 17, at 349. *See generally* LENORE E. A. WALKER, THE BATTERED WOMAN SYNDROME (4th ed. 2017) (describing areas of Dr. Walker's focus).

23. *See* VERA INST. OF JUST., OVERLOOKED: WOMEN AND JAILS IN AN ERA OF REFORM 2 (2016), https://-www.vera.org/downloads/publications/overlooked-women-and-jails-fact-sheet.pdf [https://perma.cc/8WL2-N6-U7].

24. *See* WALKER, *supra* note 22, at VIII-IX, 366, 467-68.

25. *See Research, supra* note 13 (explaining goal of questionnaire).

26. *See id.* (explaining development of treatment).

27. *See id.* (showing progress of BWSQ throughout years).

28. *See, e.g.*, Tara S. Jungersen et al., *Trauma Treatment for Intimate Partner Violence in Incarcerated Populations*, 4 PRAC. INNOVATIONS 59, 63-67 (2019) (detailing twelve individual units of Survivor Therapy Empowerment Program); Lenore E. A. Walker, *Current Perspectives on Men Who Batter Women—Implications for Intervention and Treatment to Stop Violence Against Women: Comments on* Gottman et al., 9 J. FAM. PSYCH. 264, 268 (1995) (exploring treatment options).

29. *See Research, supra* note 13 (describing studies on occurrence of sex trafficking).

for-profit company with the mission of educating policymakers and communities around the world about domestic violence and other forms of gender violence.[30]

Additionally, Dr. Walker has provided insight and attention to the issue of the intimate partner relationship in times of crisis. In a webinar, she explained how partners confined to their home can recognize the unique tensions brought about by the pandemic and their subsequent response.[31] She delivered concrete recommendations to help diffuse problems, survive confinement, and address fear.

When we consider the number of lives Dr. Walker has touched through her tireless advocacy, writing, and teaching, it is no leap to conclude that her impact on the world has been monumental. Dr. Walker changed the world. Dr. Walker saved lives, and her ideas and work will continue to save lives.

This Article discusses the history of domestic violence[32] under the lens of the law. Irrevocably intertwined with that history is the profound work that Dr. Walker has accomplished to bring light to the battered woman syndrome, and her impact on the way that the legal community responds to survivors of domestic violence. Dr. Walker's work has spearheaded the answer to the question that is often asked by so many: Why won't she just leave?[33] I wrote this Article to illustrate the importance of Dr. Walker's work, and to highlight the ways in

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30. *See About Dr. Lenore E. Walker*, DR. LENORE E. WALKER., https://www.drlenoreewalker.com/about/ [https://perma.cc/RWB7-RX2F] (introducing efforts of company).

31. *See* Nova Southeastern University, *How to Stay Safe at Home Ft. Lenore Walker, Ed.D.*, YOUTUBE (May 8, 2020), https://www.youtube.com/watch?v=i7rX6KH6kb4&t=24s [https://perma.cc/9MA8-CUJQ] (explaining increased problems with domestic violence during pandemic).

32. I use the phrase "domestic violence" throughout this article to maintain gender neutrality. I think it is important, however, to recognize that this problem has had a historically disproportionate impact on women, which continues today. "Women and men are dissimilarly situated with regard to domestic violence for three primary reasons: the historical acceptance of men's violence against women; women's lesser access to material resources relative to men; and women's grossly disproportionate risk of violence from male partners." Molly Dragiewicz & Yvonne Lindgren, *The Gendered Nature of Domestic Violence: Statistical Data for Lawyers Considering Equal Protection Analysis*, 17 AM. U. J. GENDER SOC. POL'Y & L. 229, 243 (2009) (noting reasons for gender differences). "From 1994 to 2010, approximately 4 in 5 victims of intimate partner violence were female." *Domestic Violence Statistics*, NAT'L DOMESTIC VIOLENCE HOTLINE, https://www.thehotline.org/stakeholders/domestic-violence-statistics/ [https://perma.cc/4CLM-PQBJ]. "The percentage of females murdered by an intimate partner was 5 times higher than for males." ERICA L. SMITH, BUREAU JUST. STATS., FEMALE MURDER VICTIMS AND VICTIM-OFFENDER RELATIONSHIP, 2021 1 (Dec. 2022), https://bjs.ojp.gov/sites/g/files/xyckuh236-/files/media/document/fmvvor21.pdf [https://perma.cc/45XW-GTFD].

33. *See* WALKER, *supra* note 22, at 12 (explaining learned helplessness). The theory suggests that women give up the belief that they can escape from their batterer and develop sophisticated coping strategies:

> Judges' persistence in asking, "Why doesn't she leave?" reveals the societal expectation that there is an easy answer to violence: just leave. This seemingly simple solution masks the multiple oppressions domestic violence survivors face, external and internal constraints to leaving, and the complexities of relationships and violence.

Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 333 (2011). "Parents experiencing domestic violence are caught in a double bind: civil and criminal court systems place immense pressure on survivors to leave abusive relationships, yet leaving in a manner that is not state sanctioned may jeopardize their safety, liberty, and relationships with their children." Courtney Cross, *Criminalizing Battered Mothers*, 2018 UTAH L. REV. 259, 305 (2018).

which her work continues to evolve the world's response to domestic violence. And to say, "thank you, Dr. Walker!"

## II. EARLY HISTORY OF DOMESTIC VIOLENCE

Domestic violence is an enduring issue dating back to the Roman Empire.[34] Early views of domestic violence in the United States were shaped by English common law, which operated on a patriarchal structure in which women were deemed to be the property of their husbands.[35] As such, a man was free "to discipline his wife as he wished, so long as he did not cause permanent physical damage."[36] This discipline "often seemed to be condoned by the existence of explicit legal protections."[37] For example, the "rule of thumb" permitted a man to physically abuse his wife so long as he used a switch smaller than his thumb.[38]

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34. *See* Ricki Lewis Tannen, *Setting the Agenda for the 1990s: The Historical Foundations of Gender Bias in the Law: A Context for Reconstruction*, 42 FLA. L. REV. 163, 169-171 (1990) (describing treatment of women under Babylonian laws); *see also* Kathryn E. Litchman, *Punishing the Protectors: The Illinois Domestic Violence Act Remedy for Victims of Domestic Violence Against Police Misconduct*, 38 LOY. U. CHI. L.J. 765, 770 (2007) (footnote omitted) (noting domestic violence traces back to Roman Empire). The Code of Hammurabi—a collection of Babylonian laws developed during the reign of Hammurabi (1792-1750 B.C.E.)—reveals that women were essentially treated as property and valued only for their reproductive purposes. *See* Lewis Tannen, *supra*, at 169-71. (emphasizing treatment of women as property under Code of Hammurabi); Editors of Encyclopaedia Brittanica, *Code of Hammurabi*, ENCYC. BRITANNICA, https://www.britannica.com/topic/Code-of-Hammurabi [https://perma.cc/S7WG-Y8UQ] (outlining reign of Hammurabi).

> Further evidence of a woman's legal nonexistence except in her reproductive capacity is the Code's relative lack of provisions for redress of injury to a woman except in her reproductive capacity. And even then, redress was made not to the women but to the men who had legally recognized interests.

Lewis Tannen*, supra,* at 170 (footnote omitted). In fact, "it is unlikely that women had any judicial relief before [the First Century BC]," when the Romans established the court *de vi*, the "criminal court [that] addressed violence resulting in extreme injury or death." *See* Michelle J. Nolder, *The Domestic Violence Dilemma: Private Action in Ancient Rome and America*, 81 B.U. L. REV. 1119, 1123 (2001) (describing legal treatment of domestic violence during Roman Empire).

35. *See* Thomas L. Hafemeister, *If All You Have Is a Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 CATH. U. L. REV. 919, 926 (2011) (stating modern intimate partner violence developed from 1800s laws); Edward S. Snyder, *Remedies for Domestic Violence: A Continuing Challenge*, 12 J. AM. ACAD. MATRIM. LAWS. 335, 337 (1994) (explaining derivative of trend).

36. *See* Hafemeister, *supra* note 35, at 926 (footnote omitted) (describing history of patriarchal structure). This was an improvement from the Romans, whose "early laws of Romulus (Eighth and Seventh Centuries BC) authorized a husband to put his wife to death if she drank wine or committed adultery." *See* Nolder, *supra* note 34, at 1124 (footnote omitted) (noting early laws authorizing abuse).

37. *See* Snyder, *supra* note 35, at 337 (noting history of treating women like property).

38. *See* Hafemeister, *supra* note 35, at 926 n.31 (citing DONALD G. DUTTON, THE DOMESTIC ASSAULT OF WOMEN: PSYCHOLOGICAL AND CRIMINAL JUSTICE PERSPECTIVES 21 (2001)) (examining argument for "rule of thumb" theory). In *State v. Oliver*, the court held that the "old doctrine, that a husband had a right to whip his wife, provided he used a switch no larger than his thumb" is no longer law in North Carolina. *See* 70 N.C. 60, 61 (1876) (holding no more legal rights for husbands to chastise their wives). "There is some dispute over whether the term 'rule of thumb' had its origins in the context of wife-beating . . . . However, it is clear that the concept was utilized in several legal cases involving domestic violence in the nineteenth century." Marina Angel, *Criminal Law and Women: Giving the Abused Woman Who Kills a Jury of Her Peers Who Appreciate Trifles*, 33 AM. CRIM. L. REV. 229, 256 n.205 (1996); *see also* Phyllis Goldfarb, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582, 598

Interspousal tort immunity, which also originated under English common law, legally prohibited wives from seeking damages against their abusive husbands.[39] William Blackstone further limited an abused woman's access to courts by arguing that family relations were not subject to legal supervision or legislation, therefore endorsing the view that "private acts are subject only to moral, rather than legal, disapproval."[40]

Although heavily influenced by these common law principles, American colonists were nevertheless more progressive than their British counterparts. In the seventeenth century, the Massachusetts Bay and Plymouth Colonies criminalized wife beating and permitted women to "petition for divorce upon grounds of cruelty," at least where other grounds for divorce were also cited.[41] Progress was slow, however, and women were often unsuccessful in their attempts to seek legal redress against their husbands.[42] Early American society thus tacitly endorsed a husband's right to beat his wife,[43] thereby failing to practically differentiate its legal treatment of battered women from that of Britain's.[44]

In the 1800s, activists slowly began making progress against society's patriarchal views of domestic violence.[45] Despite their concerns over domestic abuse, however, the leaders of the first feminist movement did not focus on stopping

n.83 (1996) (discussing instutionalization of physical rights of men over wives); Henry Ansgar Kelley, *Rule of Thumb and the Folklore of the Husband's Stick*, 44 J. LEGAL EDUC. 341, 342-44 (1994) (explaining history behind definition of wife-beating).

39. *See* Jill Lebowitz, Comment, Giovine v. Giovine*: Pursuit of Tort Claims for Domestic Violence in New Jersey and the Creation of a New Tort Cause of Action for "Battered Woman's Syndrome*,*"* 17 WOMEN'S RTS. L. REP. 259, 260 (1996) (explaining American courts followed British common law recognizing husband's right to abuse wife). "The doctrine reached a climax in 1910 with *Thompson v. Thompson*." David E. Poplar, *Tolling the Statute of Limitations for Battered Women After* Giovine v. Giovine*: Creating Equitable Exceptions for Victims of Domestic Abuse*, 101 DICK. L. REV. 161, 165 (1996) (citing Thompson v. Thompson, 218 U.S. 611 (1910)). "In *Thompson*, the United States Supreme Court narrowly interpreted a Married Woman's Act and prevented a wife from recovering against her husband in tort for assault and battery." *Id.* (describing decision). Shortly thereafter, courts began interpreting married women's acts more liberally to encompass interspousal tort actions. *See id.*

40. *See* Hafemeister, *supra* note 35, at 926 (discussing Blackstone's view of private acts among family relations subject only to moral disapproval).

41. *See* Aparna Polavarapu, *Global Carceral Feminism and Domestic Violence: What the West Can Learn from Reconciliation in Uganda*, 42 HARV. J.L. & GENDER 123, 129 (2019) (tracing history of domestic violence legislation in United States).

42. *See id.* (discussing marginal progress in domestic violence laws by 1800s).

43. *See* Hafemeister, *supra* note 35, at 926-27 (attributing "right" to society's patriarchal structure). In Mississippi, the state supreme court held that "the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehaviour, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned." *See* Bradley v. State, 1 Miss. (1 Walker) 156, 158 (1824).

44. *See* Nolder, *supra* note 34 at 1132 (footnote omitted) (discussing how English adoption of patriarchal culture influenced America).

45. *See* Hafemeister, *supra* note 35, at 926-27 (discussing actions of early activists working to combat wife battering). "In 1876, Lucy Stone, who published the Women's Journal in Boston, began reporting on crimes against women; she noted that horses and dogs received more protection than abused wives and called for protective legislation." Nolder, *supra* note 34, at 1134-35 (footnote omitted). By 1870, many states broadened their divorce laws, allowing women to bring divorce actions based on cruelty or misconduct. *See id.* at 1135 (footnote omitted) (discussing evolution of divorce laws in nineteenth century America).

the violence; they instead focused on "preserving the family unit"[46] and advocated for reforms, such as temperance, which was believed "to decrease *excessive* wife battering."[47] Consequently, "for hundreds of years the legal system focused on merely limiting the *amount* of harm a husband inflicted on his wife, rather than prohibiting or imposing sanctions for such behavior," and this focus would not shift until the turn of the century.[48]

The supreme courts of Alabama and Massachusetts were confronted with cases that challenged a husband's right to physically abuse his wife in the same year.[49] In June 1871, the Alabama Supreme Court ruled that although a husband may exercise "gentle restraint" over his wife, he has no legal right to beat her, and remarked that a wife "is not to be considered as the husband's slave."[50] In November 1871, the Massachusetts Supreme Judicial Court affirmed a husband's indictment for manslaughter after he killed his wife during a beating.[51] According to the court, "[b]eating or striking a wife violently with the open hand is not one of the rights conferred on a husband by the marriage, even if the wife be drunk or insolent."[52]

A shift formed among the states in 1883 when Maryland became the first state to criminalize wife beating, with punishment constituting of "forty lashes or a year in jail."[53] Most states followed suit throughout the late nineteenth century

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46. Snyder, *supra* note 35, at 337.

47. *See* Hafemeister, *supra* note 35, at 926.

48. *See id.* at 926-27.

49. *See* Fulgham v. State, 46 Ala. 143, 145 (1871) (holding husband not justified or allowed to use weapons to correct wife's behavior); Commonwealth v. McAfee, 108 Mass. 458, 461 (1871) (holding husband has no right to beat his wife).

50. *See Fulgham*, 46 Ala. at 146-47 (citation omitted). The court rejected the defendant's argument that Blackstone supported a man's right to beat his wife to "secure her obedience," observing that Blackstone instead "confine[d] this brutal and unchristian 'privilege' wholly to the 'lower rank of the people.'" *See id.* at 145-46 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES *44445). In addition to finding that Blackstone cited no case to support a man's right to abuse their wife, the court also stated that Blackstone's commentaries are over 100 years old with outdated customs and cultural norms. *See id.* at 146 (considering Blackstone's old commentary on spousal abuse).

51. *See McAfee*, 108 Mass. at 461 (affirming husband's indictment for beating wife).

52. *Id.* The Massachusetts Supreme Judicial Court cited *Perry v. Perry* as standing for the proposition that wife beating was unlawful in New York. *See id.* (citing Perry v. Perry, 2 Paige Ch. 501, 503 (N.Y. Ch. 1831)). In *Perry*, an 1831 case concerning the chancery court's jurisdiction over divorce decrees following the husband's cruel treatment of the wife, the court stated:

> Whatever may be the common law, the moral sense of this community, in our present state of civilization, will not permit the husband to inflict personal chastisement on his wife, even for the grossest outrage. And no man of feeling would ever think of resorting to such a remedy, except in the heat of passion, if it were expressly given to him by a public statute.

*Perry*, 2 Paige Ch. at 503. The court overruled the demurrer and required the wife to file an answer to her husband's complaint for divorce. *Id.* at 508.

53. *See* Pat Campbell, *Adult Abuse in Missouri: The Beating Continues*, 58 UMKC L. REV. 257, 259 (1990). Unfortunately, in a North Carolina Supreme Court decision from 1886, the court held that the judiciary should not interfere in "family government . . . 'unless in cases where *permanent or malicious injury is inflicted or threatened, or the condition of the party is intolerable*.'" *See* State v. Jones, 95 N.C. 588, 592 (1886) (quoting State v. Rhodes, 61 N.C. 453, 453 (1868)).

and, by 1920, every state criminalized wife beating.[54] Despite these legislative advancements, "the legal system remained largely unwilling to become involved in domestic disputes,"[55] as evidenced by the North Carolina Supreme Court in *State v. Oliver*.[56] Although the *Oliver* court reasoned that the defendant's whipping his wife constituted the requisite "malice and cruelty," the court's dicta indicate that such holdings were exceptions rather than rules.[57] Thus, while the turn of the century saw an initial departure from the historical perception of domestic violence, reform efforts mostly stagnated until the 1960s and 1970s,[58] when the zeitgeist of second-wave feminism brought sweeping change to women's rights.[59]

## III. DOMESTIC VIOLENCE IN THE 1950S-1970S

### *A. The 1950s-1960s*

Although the last state criminalized wife beating in 1920, by 1960 there was little change with respect to the public perception of domestic violence.[60] The first wave of the women's rights movement principally focused on securing

54. *See* Hafemeister, *supra* note 35, at 927 (footnote omitted) (noting most states criminalized wife beating by end of nineteenth century); *see also* Polavarapu, *supra* note 41, at 129-30 (noting states made spousal abuse illegal by 1920); Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1857 (1996) (comparing illegality of wife beating with lack of police response).

55. *See* Kathleen K. Curtis, Comment, *The Supreme Court's Attack on Domestic Violence Legislation – Discretion, Entitlement, and Due Process in* Town of Castle Rock v. Gonzales, 32 WM. MITCHELL L. REV. 1181, 1185 (2006) (describing private nature of domestic disputes and legal system's hesitant involvement despite widespread criminalization).

56. 70 N.C. 60, 61-62 (1874) (espousing belief that non-permanent injury from domestic disputes no matter for court's concern). "If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive." *See id.* Buffalo, New York created the first family court in 1911 in accordance with the mindset that it was better to solve family problems in a setting of discussion with a focus on reconciliation. *See* LESLYE E. ORLOFF & PAIGE FELDMAN, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, DOMESTIC VIOLENCE AND SEXUAL ASSAULT PUBLIC POLICY TIMELINE HIGHLIGHTING ACCOMPLISHMENTS ON BEHALF OF IMMIGRANTS AND WOMEN OF COLOR 1, https://niwaplibrary.wcl.american.edu/wp-content/uploads/Herstory-2016-1.pdf [https://perma.cc/8K26-6DK3] (identifying first family court in Buffalo with goal of reconciliation).

57. *See Oliver,* 70 N.C. at 62 (identifying case's details as warranting special verdict). In the *Oliver* court's view, a determination of assault and battery cases could not be decided by the application of a general rule, but instead after an analysis of the facts and circumstances—an approach still used today. *See id.* (declining to offer general rule for assault and battery cases).

58. *See* Polavarapu, *supra* note 41, at 130 (footnote omitted) (noting emphasis on family maintenance in domestic violence context during early twentieth century). Legal approaches to domestic violence also questioned the role of women in causing violence within the family unit. *See id.* (discussing legal environment before 1970s reform).

59. *See* Hafemeister, *supra* note 35, at 928 (ascribing shift in domestic violence discourse to feminist movement); Snyder, *supra* note 35, at 337-38 (describing second-wave feminism's ability to shift national focus to domestic violence).

60. *See* SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 15 (1982). Schechter writes: "In the 1950s and 1960s, cases of women being killed by abusive husbands were rarely recognized for what they were. Headlines such as 'Husband Goes Berserk and Shoots Estranged Wife' masked the reality, and we will never know how many battered women died." *Id.*

economic and political rights for women[61] and it was not until 1969 that the index of the *Journal of Marriage and the Family* contained any reference to "violence."[62] A 1964 study titled *The Wifebeater's Wife: A Study of Family Interaction*, published in the *Archives of General Psychiatry*, a journal of the American Medical Association (AMA), reported that battered women "were generally 'aggressive, efficient, masculine, and sexually frigid.'"[63] Meanwhile, police did not typically respond to domestic violence complaints, and judges and legislators followed the ideology of "preservation of the family" by discouraging divorce and "emphasizing their concern for the well-being of children raised without both parents."[64]

Notably, the first major shift in the American legal system's treatment of domestic violence began with civil rights advocates because "[a]s women saw others define the solutions to their life problems as political, they were inspired to act,"[65] and, alternatively, because the men who pioneered the Civil Rights Movement disregarded women's concerns and ideas.[66] The women's liberation movement bloomed and feminist advocates began arguing for a shift from the historically private view of family violence to one that was more public and politically

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61. *See* Hafemeister, *supra* note 35, at 928 n.53. Such rights included voting and working outside the home. *See* U.S. CONST. amend. XIX, §1 (protecting women's right to vote); *see also* Janet L. Yellen, *The History of Women's Work and Wages and How It Has Created Success for Us All*, BROOKINGS (May 2020), https://www./-brookings.edu/articles/the-history-of-womens-work-and-wages-and-how-it-has-created-success-for-us-all/ [https://perma.cc/G4EP-28YZ] (discussing increase in number of women working outside home).

62. *See* SCHECHTER, *supra* note 60, at 20.

63. *See id.* at 20-21 (footnotes omitted). Victim-blaming was common and observed across a variety of academic disciplines during this period. *See id.* at 22-24.

64. *See* Hafemeister, *supra* note 35, at 928 (footnote omitted). Specifically, judges either encouraged women to "resolve the matter privately, or referred her complaint to agencies that provided social services to help the woman solve *her* problem." *Id.* (emphasis added) (footnote omitted).

65. *See* SCHECHTER, *supra* note 60, at 30 (footnote omitted).

66. *See Women in the Civil Rights Movement*, LIBR. OF CONG., https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/women-in-the-civil-rights-movement/ [https://perma.cc/67AN-CSRT] (discussing apparency of gender discrimination and sexual harassment within Civil Rights Movement). In fact,

> [M]any women played important roles in the Civil Rights Movement, from leading local civil rights organizations to serving as lawyers on school segregation lawsuits. Their efforts to lead the movement were often overshadowed by men, who still get more attention and credit for its successes in popular historical narratives and commemorations. Many women experienced gender discrimination and sexual harassment within the movement and later turned towards the feminist movement in the 1970s.

*Id.* Gwendolyn Zoharah Simmons explained how gender equality during the movement was something that:

> [H]ad to be fought for: 'I often had to struggle around issues related to a woman being a project director. We had to fight for the resources, you know. We had to fight to get a good car because the guys would get first dibs on everything, and that wasn't fair . . . it was a struggle to be taken seriously by the leadership, as well as by your male colleagues.'

*Id*. She also described sexual harassment that was perpetrated against women working on the project. *See id*.

relevant.[67] The 1960s thus increased public recognition of the "vast and costly consequences of domestic violence," and inspired legal reform to combat existing jurisprudence that perpetuated inadequate victim protections and services.[68] Progress, however, remained slow: In Washington, D.C., "prosecutors issued only 200 arrest warrants to the 7,500 women who requested them [in 1966]"[69] and an early-1970s study highlighted the courts' leniency when sentencing battering men.[70] These studies and statistics highlight a culture sur-rounding domestic violence that began rapidly changing in the 1970s and continued through present day.[71]

### *B. The 1970s*

In the early 1970s, many cities inadvertently barred battered women from receiving welfare until they divorced their abusers.[72] Inspired in part by shelters operated by Alcoholics Anonymous, groups such as the Chicago Abused Women's Coalition established battered women's shelters to provide respite for women deemed ineligible for public assistance.[73] In Boston, Casa Myrna Vazquez was founded in late 1974 to provide specialized services to Latina women in crisis, and in 1976, two women opened up their own five-room apartment as a shelter—known as Transition House—and supported the shelter, themselves, and two children "'on their welfare checks and small contributions from friends.'"[74]

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67. *See* SCHECHTER, *supra* note 60, at 31 (highlighting women's liberation movement shed light on shared experiences of domestic abuse); Polavarapu, *supra* note 41, at 130 (stating women's liberation movement aimed to change society's view of domestic violence).

68. *See* Litchman, *supra* note 34, at 778. Such reforms included "mandatory arrest laws, criminal sanctions for acts of partner abuse, and increased civil remedies." *Id.* (footnotes omitted).

69. *See* SCHECHTER, *supra* note 60, at 54 (footnote omitted).

70. *See* Hafemeister, *supra* note 35, at 929 (noting leniency in sentencing men for battery in 1970s). "[T]he criminal justice system widely embraced the view that women provoked abuse by creating marital stress or through incendiary behavior. One study noted that only nine out of twenty-three men arrested for severely beating their wives received jail time as a sanction." *Id.*; *see also* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237, 255 (2005) (discussing study of twenty-three cases where men were arrested for abuse). In 1962, domestic violence cases in New York were transferred from criminal to family court where only civil procedures applied, resulting in more lenient penalties for a husband beating his wife than assaulting a stranger. *See Timeline of the Battered Womens Movement, Womens History Month 2008*, AFR. AM. PLAN. COMM'N, INC., https://aapci.org/-pdf/women_movement.pdf [https://perma.cc/847N-HK74] (providing timeline of battered women's movement).

71. *See* SCHECHTER, *supra* note 60, at 56 (discussing new response to domestic violence beginning in 1970s). This new response came from "feminists, community activists, and former battered women" providing emotional support and refuge. *See id.*; *see also* Hafemeister, *supra* note 35 at 929 (attributing changed response to rebirth of feminism).

72. *See* SCHECHTER, *supra* note 60, at 55 (noting paradox where married women fleeing abusive husbands could not rent apartments or receive assistance).

73. *See id.* at 69 (discussing various efforts of Chicago Abused Women's Coalition); *see also* Polavarapu, *supra* note 41, at 308 (highlighting feminist push for shelters for abused women); Hafemeister, *supra* note 35 at 929 n.57 (noting Alcoholics Anonymous's connection to domestic violence shelters).

74. *See* SCHECHTER, *supra* note 60, at 56 (footnote omitted). Like many of the early activists, one of Transition House's founders, Cherie Jimenez, was a former battered woman whose stay in a similar Toronto program

Advocates also began to pressure the federal and state governments "to acknowledge, address, and intervene in cases of domestic violence, though what that intervention should look like was still uncertain."[75] Despite this uncertainty, interspousal tort immunity eroded as a majority rule,[76] batterer intervention programs developed,[77] and states began enacting civil protection order legislation.[78] In response, the American Bar Association (ABA) suggested that domestic violence would be better addressed without routine reliance on criminal law except as a last resort—reasoning that civil suits better preserve survivor autonomy and ensure the abuser's continued financial support for the household.[79] The "discernable hesitation" of legislators and judges to earmark state resources towards domestic violence limited the movement's "anticipated substantive effects."[80]

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inspired Transition House's opening. *See id.* at 56. Transition House "was the first domestic violence shelter on the East Coast of the United States and the second in the entire country." *See About Transition House*, TRANSITION HOUSE, https://www.transitionhouse.org/mission-history [https://perma.cc/5LAA-3NQ4]. Both organizations continue to operate today, with Casa Myrna serving as "Boston's largest provider of domestic violence awareness efforts and of shelter and supportive services to survivors." *See About Us*, CASA MYRNA, https://casamyrna.org/about/ [https://perma.cc/6B3E-WLH4].

75. *See* Polavarapu, *supra* note 41, at 130 (acknowledging uncertainty around domestic violence intervention). "We will not be beaten" became the mantra of advocates speaking out against domestic violence. *See Herstory of Domestic Violence: A Timeline of the Battered Women's Movement*, MINN. CTR. AGAINST VIOLENCE & ABUSE (Sept. 1999), https://people.uvawise.edu/pww8y/Supplement/-ConceptsSup/Gender/HerstoryDomV-.html [https://perma.cc/44M6-JT4E]. In 1977, women around the country participated in "Take Back the Night" marches, aiming to gain strength by "turning individual fear into mass anger." *See Domestic Violence Timeline*, PA. CHILD WELFARE RES. CTR., http://www.pacwrc.pitt.edu/Curriculum/310DomesticViolenceIssuesAnIntroductionforChildWelfareProfessionals/Handouts/HO3DomesticViolenceTimeline.pdf [https://perm-a.cc/S845-JJ3U].

76. *See* Lebowitz, *supra* note 39, at 260-61 (discussing New Jersey Supreme Court cases rejecting interspousal immunity). For example, in *Windauer v. O'Connor*, the Arizona Supreme Court held "that a spouse may, after a divorce from the offending spouse, sue to recover damages for an intentional tort." *See* 485 P.2d 1157, 1158 (Ariz. 1971); *see also* Tevis v. Tevis, 400 A.2d 1189, 1193-94 (N.J. 1978) (recognizing right to recover damages in tort actions resulting from domestic violence during marriage). Some jurisdictions reached this determination even prior to the 1970s. *See, e.g.*, Apitz v. Dames, 287 P.2d 585, 598 (Or. 1955) (holding wives can sue husbands because home's peace and harmony already damaged).

77. *See* Hafemeister, *supra* note 35, at 995 (discussing program development in 1970s).

78. *See* Emily J. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders*, 98 NW. U. L. REV. 827, 833 (2004) (describing state laws authorizing protection orders distinct from divorce). Until 1976, battered women protective orders were unavailable except for in two jurisdictions. *See id.* By 1982, thirty-three states and the District of Columbia had enacted similar legislation. *See id.* By 1992, all fifty states had enacted such legislation. *See* Hafemeister, *supra* note 35, at 985-86 (explaining legislatures acted because concerns over an insufficient justice system).

79. *See* Hafemeister, *supra* note 35, at 994 (discussing pro-civil remedies position taken by ABA in 1970s). For context, "domestic-violence calls comprised fifteen to forty percent of all calls requesting police assistance during the 1970s." *Id.* at 929; *see also* Campbell, *supra* note 53, at 260 (highlighting 1978 FBI crime report attributing 12.5% of murders to spousal abuse). In the late 1970s, New York and Illinois practiced the position of the ABA by maintaining anti-arrest policies. *See* Litchman, *supra* note 34 at 780 n.118 (reviewing policy-influenced law enforcement approach to domestic violence).

80. *See* Snyder, *supra* note 35, at 338 (footnotes omitted) (noting those in power hesitant to encroach on sanctity of man's home). For example, in *Bruno v. Codd*, twelve survivors of domestic violence unsuccessfully sought declaratory and injunctive relief against the New York Police Department, Family Court, and Department of Probation on access-to-justice grounds. *See* 393 N.E.2d 976, 977 (N.Y. 1979) (setting forth case brought by twelve "battered wives"). In essence, the survivors asserted that the state employees designed their conduct to deter and block battered wives from pursuing civil remedies. *See id.* (setting forth survivors' principal

While these reforms were somewhat ineffective, they nevertheless led to two major victories: President Jimmy Carter's establishment of the Office of Domestic Violence in the Department of Justice,[81] and Dr. Lenore Walker's advancement of the battered woman's syndrome (BWS), which forever changed the legal treatment and public perception of domestic violence.[82]

## IV. DOMESTIC VIOLENCE IN THE 1980S-1990S

### *A. The 1980s*

The 1980s brought increased pressure on public officials by domestic violence advocates, aided by the founding of the National Coalition Against Domestic Violence (NCADV) in 1978.[83] For example, while batterers' intervention programs were developed in the 1970s, they became widely used in the mid-1980s once advocates lobbied for an increase in batterer arrests and prosecutions.[84] In 1985, a Boston-based batterer intervention program—EMERGE—placed Massachusetts at the forefront of domestic violence reform.[85] Additionally, same-sex domestic violence received public attention for the first time during the early 1980s.[86] Although local feminists were still driving much of the American efforts, the 1980s human rights paradigm created space for international women's rights activists to join the crusade and "gain greater attention from the

complaints). The Court of Appeals affirmed the order of the Appellate Division, holding that the court was "less than convinced that any sufficiently useful purpose would be served by a plenary trial," where the relevant parties previously implemented measures to address the problems the survivors raised. *See id.* at 980-81 (discussing action taken to remedy survivors' complaints). Similarly, by 1979, only fourteen states provided funds for shelters. *See Domestic Violence Timeline*, *supra* note 75 (noting few states funded shelters in 1979).

81. *See* Hafemeister, *supra* note 35, at 929 (noting establishment of Office of Domestic Violence).

82. *See* Hafemeister, *supra* note 35, at 940 (noting Dr. Walker's findings promote more proactive societal responses to intimate partner violence). *See generally* LENORE E. A. WALKER, THE BATTERED WOMAN (1979) [hereinafter WALKER 1979].

83. *See* Adele M. Morrison, *Queering Domestic Violence to "Straighten Out" Criminal Law: What Might Happen When Queer Theory and Practice Meets Criminal Law's Conventional Responses to Domestic Violence*, 13 REV. L. & WOMEN'S STUD. 81, 111 (2003) (noting NCADV began with testimonies to U.S. Commission of Civil Rights Hearings on Woman Abuse).

84. *See* Hafemeister, *supra* note 35, at 995 (noting increased support for batterer intervention programs).

85. *See id*. at 995 n.522 (highlighting first court referral of EMERGE program); *see also* David Adams, *Treatment Programs for Batterers*, 5 CLINICS FAM. PRAC. 159, 160-61 (2003) (discussing relationship between courts and EMERGE program). This program is still in operation today. *See Abuse Education*, EMERGE, https://www.emergedv.com/abuser-education.html [https://perma.cc/NA7C-QA2P] (offering current training and educational programs).

86. *See* Pamela M. Jablow, *Victims of Abuse and Discrimination: Protecting Battered Homosexuals Under Domestic Violence Legislation*, 28 HOFSTRA L. REV. 1095, 1101 (2000). "In 1981, the Seattle Counseling Service for Sexual Minorities began providing services to gay male domestic violence victims and batterers. In 1986, three other programs were founded . . . all of which [were] still in operation [in 2003]." *See* Morrison, *supra* note 83, at 111 (footnote omitted) (detailing increased representation of same-sex couples in domestic violence advocacy).

international community" with respect to violence against women.[87] These initiatives would contribute to further federal reform in the United States.[88]

State-level action led much of domestic violence reform in the 1980s. Some states focused on initiatives to improve police responses to domestic violence calls,[89] and Minnesota became the first jurisdiction to implement a mandatory arrest policy following "a concerted campaign by feminist activists."[90] By the end of the 1980s, forty-nine jurisdictions enacted statutes that implemented revised standards for police interactions during instances of domestic violence.[91] The inadequate police response to violence within the home[92] led to lawsuits such as *Thurman v. Torrington*,[93] a 1984 case in which a domestic violence survivor brought suit against the city of Torrington, Connecticut, after its court and police failed to intervene on her behalf.[94]

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87. *See* Polavarapu, *supra* note 41, at 131 (discussing international growth for domestic violence advocacy).

88. *See id.* at 132-33 (discussing 1989 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)). The CEDAW Committee implored states to "act to protect women from violence, including family violence," and culminated in a 1992 recommendation on violence against women. *See id.* Two years later, Congress passed the first Violence Against Women Act. *See* David M. Heger, *The Violence Against Women Act of 1994*, MED. UNIV. OF S.C., https://mainweb-v.musc.edu/vawprevention/policy/vawa.shtml [https://perma.cc/ND9J-NSUZ] (providing historical background on statutes addressing violence against women).

89. *See* Hafemeister, *supra* note 35, at 978 (noting state action prompted by 1984 study). A 1984 study sought to compare "the deterrent effects of three different police approaches," including arrest, mediation, and "requiring the batterer to leave the house for at least eight hours," which caught the attention of the U.S. Attorney General's office. *See id.* The study found that arrest made for the best deterrent against future violence, which led the U.S. Attorney General to recommend states "arrest as the standard police response to domestic assault." *See Developments in the Law – Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1536 (1993) [hereinafter *Developments in the Law*] (footnote omitted) (describing policy impact of 1984 study).

90. *See* Marta B. Varela, *Protection of Domestic Violence Victims Under the New York City Human Rights Law's Provisions Prohibiting Discrimination on the Basis of Disability*, 27 FORDHAM URB. L.J. 1231, 1231 (2000) (describing historical context for police responses and domestic violence).

91. *See* Litchman, *supra* note 34, at 778 (noting growing number of jurisdictions implementing police protocols for domestic violence events). According to scholars:

> Before advocates and legislators actively sought to change policies regarding the policing of domestic disturbances, arrest statistics demonstrated that police officers generally left domestic disputes to be worked out on their own, employing arrest only as a last resort . . . The under-enforcement of domestic violence laws is often blamed upon findings that show that some police officers simply feel that responding to disputes within the home is not a legitimate responsibility of law enforcement personnel.

*Id.* at 780-81 (footnotes omitted).

92. *See* Curtis, *supra* note 55, at 1185 (addressing police response to domestic violence reports). Domestic violence was socially tolerated through the late twentieth century—despite being criminalized—with police generally failing to respond to reports of domestic abuse, and rarely arresting abusers when they did. *See id.* (explaining police response to domestic abuse reports through twentieth century).

93. 595 F. Supp. 1521 (D. Conn. 1984).

94. *See id.* at 1524-26 (providing facts of case). In *Thurman*, the plaintiff "notified the defendant City through the defendant police officers of the City of repeated threats upon her life and the life of her child . . . made by her estranged husband" from October 1982 through June 1983. *Id.* at 1524. On June 10, 1983, the husband arrived at the plaintiff's location in violation of his probation, and when police failed to timely report to her call, she "went outside to speak to her husband in an effort to persuade him not to take or hurt [their son]." *See id.* at 1525. The husband began repeatedly stabbing her in the chest, neck, and throat; while a single police officer arrived twenty-five minutes after the original call, he failed to arrest the husband until much later, despite multiple kicks to plaintiff's head in front of police. *See id.* at 1525-26. The U.S. District Court for the District

In addition to targeting police response, states started removing marital rape exceptions from their criminal laws.[95] Some states also drafted legislation that specifically addressed domestic violence and its effects. For example, Illinois enacted the comprehensive Illinois Domestic Violence Act of 1986 (IDVA),[96] and Texas amended sections of its penal code in 1989 to provide "harsher punishment for defendants guilty of repeated acts of domestic assault."[97]

At the federal level, Congress passed the Family Violence Prevention and Services Act (FVPSA) in 1984, which was the first federal statute "to provide direct services to victims of domestic violence," and later incorporated it into the 2010 reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA).[98] The FVPSA "authorized the expenditure of $65 million to help states provide shelters for victims of domestic violence and to coordinate research, training, and clearing-house activities."[99] That same year, the U.S. Attorney General convened the Task Force on Family Violence, which "approached family violence from a criminal-justice perspective and promoted initiatives that treated [domestic violence] like other forms of interpersonal violence."[100]

The courts also addressed increasing domestic violence issues, with many cases presenting novel questions of law. In *DeShaney v. Winnebago County*

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of Connecticut denied the defendant City's motion to dismiss the plaintiff's 42 U.S.C. § 1983 claim and other claims of constitutional violations. *See id.* at 1524, 1531 (ruling on constitutional claims).

95. *See* Hafemeister, *supra* note 35, at 975 (noting states began to remove statutory marital rape exceptions during 1980s).

96. The IDVA is a four-article statute that "defines the class of individuals who are protected," "lays out the remedies and support services provided to protected parties," "creates the duties required of law enforcement departments and officers," and finally "discusses the role of health care providers in the treatment of victims of domestic violence." *See* Litchman, *supra* note 34, at 790-91. The Illinois legislature originally enacted the statute in 1982, "but [it] was heavily revised to create the law in its current form," and "[a]side from certain sections of the criminal code, it is the principal law in Illinois addressing domestic violence." *See id.* at 788 (footnotes omitted). The Supreme Court of Illinois has permitted a plaintiff to sue a police department under the IDVA for its willful and wanton failure to protect a survivor of domestic violence against her husband's abuse. *See* Calloway v. Kinkelaar, 659 N.E.2d 1322, 1330-31 (Ill. 1995) (holding plaintiff adequately plead cause of action). This holding has been twice affirmed in 1999 and 2006. *See* Sneed v. Howell, 716 N.E.2d 336, 344 (Ill. App. Ct. 1999) (holding police's action willful and wanton because of IDVA and *Calloway*); Moore v. Green, 848 N.E.2d 1015, 1020 (Ill. 2006) (finding IDVA to import duty to protect victim).

97. *See* State v. Eakins, 71 S.W.3d 443, 444 (Tex. Ct. App. 2002) (listing amendments to Texas's penal code sections dealing with domestic assault).

98. *See* Karen Oehme et al., *Unheard Voices of Domestic Violence Victims: A Call to Remedy Physician Neglect*, 15 GEO. J. GENDER & L. 613, 626 (2014) (noting intersection between feminist movement and victim rights movement). Even though CAPTA focused on the mistreatment ofchildren, "the relationship between domestic violence and child welfare issues was not lost on legislators." *See id.* CAPTA's provisions included, among other things, "training of law enforcement, social services professionals, and mental health professionals on domestic violence issues; collection of data on the intersection of domestic violence and child abuse and neglect; [and] collaboration of domestic violence and child protection service providers." *Id.* (footnotes omitted).

99. *Developments in the Law*, *supra* note 89, at 1543.

100. *See* Hafemeister, *supra* note 35, at 941 (suggesting solutions included arrest, prosecution, and incarceration of perpetrators). In 1988, Congress amended the Victims of Crime Act (VOCA) to mandate that in order for a state program to be eligible under the VOCA, it must, "prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender." 34 U.S.C. § 201(b)(7).

*Department of Social Services*,[101] the Supreme Court held that the failure of state social workers to intervene in a case of severe child abuse did not violate the Fourteenth Amendment's Due Process Clause.[102] The Massachusetts Supreme Judicial Court held that civil protection orders are applicable and effective against defendants subject to federal jurisdiction so long as "the State does not interfere with the primary jurisdiction of the [f]ederal government."[103] The Georgia Court of Appeals upheld a jury verdict awarding punitive damages against a batterer,[104] and a county court in Pennsylvania held that "a juvenile may be named as a respondent in a Protection From Abuse Act case."[105] Several jurisdictions also held that res judicata did not preclude interspousal tort claims even where the underlying issues were previously presented to the court during the parties' divorce proceedings, or, alternatively, did not require the party suing in tort to raise the relevant claim in divorce proceedings.[106]

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101. 489 U.S. 189, 191 (1989).

102. DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 191 (1989) (stating Court's conclusion). In *DeShaney*, the Winnebago County Department of Social Services was notified of ongoing child abuse beginning in January 1982. *See id.* at 192. Following three emergency room visits in which the child reportedly had "suspicious injuries," the county still failed to remove the child from his father's home, and in March 1984, the father beat the four-year-old child so severely that he suffered brain damage and was "expected to spend the rest of his life confined to an institution for the profoundly retarded." *Id.* at 192-93. The district court and Court of Appeals for the Seventh Circuit both held that the child and his mother had not presented an actionable due process claim for deprivation of his liberty, and the Supreme Court affirmed. *See id.* at 193-94; *see also* Edward S. Snyder & Laura W. Morgan, *Domestic Violence Ten Years Later*, 19 J. AM. ACAD. MATRIM. LAWS. 33, 41-42 (2004) (noting *DeShaney* restricted domestic violence victims' lawsuits against state actors with limited exceptions). For example, *DeShaney*

> severely restricted the ability of plaintiffs to sue police and municipal officers for their failure to protect women who were victims of domestic violence . . . [but] created two exceptions: when the victim is in the state's custody, and when the state has itself created the danger, such as by actively discouraging intercession and arrest in domestic violence cases.

Snyder & Morgan, *supra*, at 41-42. "Prior to the *Deshaney* decision, courts in a number of jurisdictions had recognized causes of action against the police for failure to protect domestic violence victims." Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1016 (1993).

103. *See* Cobb v. Cobb, 545 N.E.2d 1161, 1163 (Mass. 1989) (holding judges may issue abuse prevention orders in areas states ceded to federal government). The federal jurisdiction in question was a military base. *See id.* at 1162.

104. *See* Catlett v. Catlett, 388 S.E.2d 14, 15 (Ga. Ct. App. 1989) (holding jury's compensatory award not inconsistent with punitive damages). In *Catlett*, the jury's award of compensatory damages was, "in an amount less than the special medical expenses sought," and the court held that it was not inconsistent with the jury's award of punitive damages, rejecting the premise that the jury found justification for appellant's behavior. *See id.* (discussing discrepancy between award amounts).

105. *See* Diehl v. Drummond, 2 Pa. D. & C.4th 376, 379 (1989) (holding juvenile named respondent). In *Diehl*, the respondent was the sixteen-year-old former boyfriend of the minor petitioner. *See id.* at 379 (Smith, J., dissenting) (acknowledging age of parties).

106. *See, e.g.*, Heacock v. Heacock, 520 N.E.2d 151, 152 (Mass. 1988) (reversing lower court since issue not yet litigated); R.A.P. v. B.J.P., 428 N.W.2d 103, 105 (Minn. Ct. App. 1988) (holding claims not barred because not litigated in divorce proceedings); Simmons v. Simmons, 773 P.2d 602, 604-05 (Colo. App. 1988) (rejecting assertion interspousal tort claims must join with dissolution of marriage proceedings).

### *B. Dr. Lenore Walker's Debut*

Notwithstanding *DeShaney v. Winnebago County Department of Social Services*, a marked shift occurred sometime between the 1960s and 1980s concerning judicial attitudes towards domestic violence. BWS contributed to this appreciation of the survivor's experience at home and in the courts.[107] In her 1979 book *The Battered Woman*, Dr. Lenore Walker was the first to identify and describe the debilitating "cycle of violence" abused women experience.[108] She also advanced the application of the related theory of "learned helplessness" to abused women, wherein "the constant physical and emotional abuse leaves women psychologically paralyzed" in a manner related to "Stockholm Syndrome."[109] These theories answered the question of "why won't she leave?" and can explain why women sometimes kill their abusers.[110]

Following publication of *The Battered Woman*, an influx of survivor-defendants sought to introduce expert testimony on BWS to explain the psychological nuances behind victimization and the defendant's seemingly disproportionate response.[111] The most highly publicized of the early cases was *Ibn-Tamas v.*

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107. *See* Nolder, *supra* note 34, at 1141-42 (analyzing BWS in early cases). *State v. Hossack* hints at an instance of BWS and underscores the development and importance of the legal community's acceptance of Dr. Walker's research as applied to survivor-defendants:

> *State v. Hossack* provides an early example of a case that may have involved a woman suffering from battered woman syndrome . . . The facts of the case follow the general three-phase cycle in domestic violence cases . . . [But] [t]he court found that motive was the most important factor in deciding whether the farm wife was guilty of murder, and thus the presence of abuse would only hurt the wife's case by providing the necessary motive.

*See id.* (citing State v. Hossack, 89 N.W. 1077 (Iowa 1902)) (discussing BWS harming cases of battered women)).

108. *See* WALKER 1979, *supra* note 82, at 55 (identifying three phases of cycle theory of violence); Snyder, *supra* note 35, at 340 (noting Dr. Walker's pioneering of cycle of violence). Dr. Walker "characterized the battering relationship as taking place in three distinct phases," including the tension-building phase, the explosion phase, and the honeymoon phase. *Id.* at 340-41 (listing three phases of battering relationship). In the tension-building phase, "the batterer begins his psychological assault on his spouse" by "finding fault with his wife's most benign actions." *Id.* at 340 (characterizing tension-building phase). "Routine tasks, never before an issue, will suddenly rouse his ire," which leads the abused party to "always be on guard and . . . constantly 'walk[] on eggshells' whenever her husband is around." *Id.* In the explosion phase, "the batterer crosses the threshold from verbal to physical abuse" and "channels his frustrations and feelings of inadequacy and failure into violence against his spouse." *Id.* at 341. Finally, during the honeymoon phase, "the abuser apologizes for his assaults and promises to change his ways," leading his partner to "be thankful for the respite or convinced that she can now control his anger." *Id.* (characterizing honeymoon phase). Because "the batterer cannot be so easily reformed," the honeymoon phase inevitably fades, leading the couple back to the tension phase and repeating the cycle. *See id.*

109. *See* Snyder, *supra* note 35, at 341-42 (describing phenomenon of learned helplessness in battering relationships).

110. *See id.* at 341 (explaining why women do not leave abusers). The battered woman experiences "a sense of such utter hopelessness, that survival in any form is a challenge," and she feels as though "there is nothing [she] can do to stop the insanity." *Id.* at 342. Consequently, the battered woman "accept[s] the violence and may even provoke physical attacks just to get them over with." *Id.*

111. *See, e.g.*, Smith v. State, 277 S.E.2d 678, 683 (Ga. 1981) (holding expert testimony about BWS necessary for jury's consideration); Buhrle v. State, 627 P.2d 1374, 1378 (Wyo. 1981) (concluding lower court correctly rejected Dr. Walker's expert testimony); People v. Powell, 424 N.Y.S.2d 626, 629 (1980) (introducing Dr. Walker's expert testimony).

*United States*,[112] a 1983 District of Columbia Court of Appeals' case that the court previously remanded in 1979 for a determination of Dr. Walker's credibility as an expert witness.[113] In the 1983 appeal, the court concluded the lower court did not err in excluding Dr. Walker's testimony, reasoning that it did not satisfy the *Frye* test due to insufficient general acceptance within the field.[114] Other cases also affirmed the exclusion of Dr. Walker's expert testimony on various grounds.[115] But *State v. Kelly*,[116] a 1984 case from New Jersey, held the opposite: Not only was BWS "an appropriate subject for expert testimony," but "the experts' conclusions, despite the relative newness of the field, [were] sufficiently reliable."[117]

### *C. The 1990s*

The 1990s saw more movement with respect to BWS, as an increasing number of survivor-defendants were utilizing a BWS defense in cases where an abused woman killed her abuser,[118] in addition to substantial movement towards

112. 455 A.2d 893 (D.C. 1983). There were several other early cases ruling on the admissibility of expert witness testimony concerning BWS. *See, e.g.*, *Smith*, 277 S.E.2d at 682-83 (finding error where court excluded Walker's testimony because juror's could not ordinarily draw such conclusions); *Buhrle*, 627 P.2d at 1378 (affirming trial court's exclusion of Dr. Walker's testimony due to inadequate foundation); *Powell*, 424 N.Y.S.2d at 631 (finding Walker's testimony does not add to defense because defendant already gave jury history.").

113. *See Ibn-Tamas*, 407 A.2d at 640 (remanding for trial determination because considered Walker's testimony central to defense). The court explained its holding as follows:

> Because Dr. Walker's testimony was central to the defense theory of the case, we cannot conclude, as a matter of law, that the trial court's exclusion of this testimony, if ultimately in error, was harmless . . . because the record does not establish as a matter of law that the . . . criteria for admissibility have been met, we cannot say that the conviction should be reversed. Accordingly, we must remand the case for a trial court determination of admissibility consistent with this opinion.

*Id.*

114. *See id.* at 893-94 (providing reasoning). Specifically, the court upheld the trial court's determination that the defendant failed to establish the expert's colleagues generally accepted the methodology used in the expert's battered women studies. *See id.*

115. *See, e.g.*, Hawthorne v. State, 470 So. 2d 770, 773-74 (Fla. Dist. Ct. App. 1985) (holding trial court correctly excluded Dr. Walker's testimony); State v. Martin, 666 S.W.2d 895, 899 (Mo. Ct. App. 1984) (holding no error where trial court excluded Dr. Walker's testimony). The court reasoned in *Hawthorne* that "the 'depth of study in this field has not yet reached the point where an expert witness can give testimony with any degree of assurance that the state of the art will support an expert opinion,' and . . . 'Dr. Walker's research will not permit her to draw any conclusions from the facts of this case.'" *Hawthorne*, 470 So. 2d at 773-74. Similarly, in *Martin*, the court reasoned the evidence fell "woefully short of establishing an issue of justifiable self-defense[,]" . . . thus, "the court did not err in refusing to admit the expert testimony offered for the purpose of corroborating such a defense." *Martin*, 666 S.W.2d at 899.

116. 478 A.2d 364 (N.J. 1984).

117. 478 A.2d 364, 368 (N.J. 1984). "Widespread misconceptions about the prevalence and circumstances of domestic violence mean that expert testimony . . . would indeed assist the jury." Erica Beecher-Monas, *Domestic Violence: Competing Conceptions of Equality in the Law of Evidence*, 47 LOY. L. REV. 81, 85 (2001) (footnote omitted).

118. *See* Beecher-Monas, *supra* note 117, at 97-112 (discussing necessity of expert BWS testimony to support survivor-defendant's claim of self-defense); Poplar, *supra* note 39, at 178 (footnotes omitted) (reasoning BWS not defense, but used to show reasonableness of survivor-defendant's actions ); *see also* Emma Lathan &

domestic violence advocacy more generally.[119] Washington enacted a statute that per-mitted "judges to give more lenient sentences" to survivor-defendants where "the killers or their children were continually abused by their abuser/victim,"[120] and state governors began granting clemency to battered women who killed their abusers.[121] For example, in Massachusetts, former Governor William Weld commuted the sentences of seven women who were unable to introduce evidence of their BWS at trial,[122] and in response, the Massachusetts legislature enacted a law that permits the introduction of expert testimony concerning BWS during trials.[123]

Another highly-publicized BWS case of the early 1990s was *Bechtel v. State*.[124] In *Bechtel*, the Oklahoma Court of Criminal Appeals held that the trial court erred in excluding Dr. Walker's testimony because it would have aided the trier of fact in assessing how the violence impacted the defendant's state of mind

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Jennifer Langhinrichsen-Rohling, *Battered Woman Syndrome*, in ESSAYS IN DEVELOPMENTAL PSYCH. 5, (R. Summers, C. Golden, L. Lashley, & E. Ailes eds. 2020), https://www.assessmentpsychologyboard.org/edp/pdf/-Battered_Woman_Syndrome.pdf [https://perma.cc/6CDL-T2BQ] (detailing rise public awareness of BWS due to use in criminal defense cases).

119. *See Domestic Violence Timeline*, *supra* note 75 (discussing examples of progress in domestic violence movement during 1990s). For example, "[p]rior to 1991, in Maryland, a woman being tried for killing her batterer was often unable to tell her story at trial." Jane C. Murphy, *Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform*, 21 HOFSTRA L. REV. 1243, 1276 (1993). A Maryland coalition sought to change Maryland laws which disallowed expert testimony on BWS and excluded evidence of domestic violence from the record. *See id.* at 1277 (stating broad goals of coalition). They did so by developing a story-telling video, featuring Dr. Walker, that ultimately influenced not only the governor to commute the sentences of eight women convicted of killing their abusers, but also the legislature to pass the Battered Spouse Syndrome Bill, which permitted the introduction of BWS testimony at trial. *See id.* at 1278-79, 1289 n.221 (discussing creative strategies employed by coalition which led to reform).

120. *See* Elisabeth Ayyildiz, Note, *When Battered Woman's Syndrome Does Not Go Far Enough: The Battered Woman as Vigilante*, 4 AM. U. J. GENDER & L. 141, 161 (1995); *see also* WASH. REV. CODE ANN. § 9.95.045(1)(a) (West 2023).

121. *See* Ayyildiz, *supra* note 120, at 162 (noting Ohio and Maryland governors first to grant battered women clemency). Between 1990-1991, Governor Richard Celeste of Ohio "granted clemency to twenty-six women, and Maryland's Governor William Schaefer . . . commuted the sentences of ten women." *Id.* at 162 n.171. Governor Jim Edgar of Illinois "pardoned four women who were convicted of killing their abusers" a few years later, but California's then-Governor Pete Wilson denied clemency to ninety-nine women, stating "that a history of abuse cannot excuse 'coldblooded, premediated murder.'" *Id.* (footnotes omitted).

122. *See* Denise Lavoie, *Experts Say Battered Woman Defense Rarely Results in Acquittals*, SOUTHCOAST TODAY (June 3, 2007), https://www.southcoasttoday.com/story/news/state/2007/06/03/experts-say-battered-woman-defense/52882721007/ [https://perma.cc/G9NM-LHJF] (noting BWS gained acceptance in early 1990s); *see also* Commonwealth v. Rodriquez, 633 N.E.2d 1039, 1041-42 (Mass. 1994) (allowing introduction of BWS as evidence). The seven women were defendants in the "Framingham Eight" case of the early 1990s, wherein eight female inmates "challenged their convictions, arguing they should have been allowed to present evidence of battered woman syndrome during their trials." Lavoie, *supra*.

123. *See* Michael Kunzelman, *Time for Healing: Struggle of the Framingham Eight Recalled After 10 Years of Freedom*, MILFORD DAILY NEWS (Dec. 19, 2004), https://www.milforddailynews.com/story/news/2004/12/-19-/time-for-healing-struggle-framingham/41179483007/ [https://perma.cc/EZ64-FTPY] (implying legislature passed law in response to governor's commutations); MASS. GEN. LAWS ch. 233, § 23F(b) (West 2023) (allowing introduction of expert testimony on patterns in abusive relationships).

124. *See* 840 P.2d 1, 6 (Okla. Crim. App. 1992) (dealing with relevance of battered widow syndrome evidence).

at the time of the killing.[125] Moreover, in 1993, the Connecticut Supreme Court ruled that BWS evidence "is relevant to the determination of custody."[126] The 1990s also saw BWS cases that highlighted the interplay between expert BWS testimony and claims of ineffective assistance of counsel.[127] Dr. Walker also personally testified in a wide variety of cases during this time, including *Hodgson v. Minnesota*.[128]

The 1990s also promulgated an increase in research concerning the survivor experience, criminal justice alternatives, and international awareness. Research conducted through "focus groups of battered women and individual interviews with victims to explore their interaction with medical professionals in both emergency and routine care settings"[129] likely contributed to the AMA's 1992 recommendation that physicians screen their patients for domestic violence, emphasizing that "[p]hysical and sexual violence against women is a public health problem that has reached epidemic proportions."[130] Restorative justice became a criminal justice alternative in cases of gender-based violence during the 1990s,[131] and the National Council of Juvenile and Family Court Judges published *Model Code on Domestic and Family Violence* in 1994.[132] Moreover, the1995 Beijing Platform—unanimously adopted at the Fourth World Conference on Women— included violence against women as one of twelve areas of

125. *See id.* at 24-25 (holding woman's BWS experience relevant and necessary to prove self-defense); *see also* Nolan Clay, *Retrial Turns on New Players*, OKLAHOMAN (Apr. 17, 1988), https://www.oklahoman.com/-story/news/1988/04/17/retrial-turns-on-new-players/62655149007/ [https://perma.cc/A3CX-PLX8] (detailing Bechtel's retrial following accusations of murdering her husband for his money).

126. *See* Knock v. Knock, 621 A.2d 267, 272 (Conn. 1993) (holding BWS testimony relevant for custody determination).

127. *See, e.g.*, State v. Swavola, 840 P.2d 1238, 1240 (N.M. Ct. App. 1992) (holding no error where defense counsel presented BWS defense including expert testimony from Dr. Walker); Neelley v. State, 642 So. 2d 494, 505-07 (Ala. Crim. App. 1993) (holding no error where defendant's attorneys raised BWS defense despite not using specific term BWS).

128. 497 U.S. 417, 470 (1990) (relaying Dr. Walker's testimony regarding forced parental notification of minor's abortion). Dr. Walker testified before the Supreme Court about the effect of forced parental notification of a minor's abortion on dysfunctional families, thereby contributing to the holding that a statutory scheme requiring two-parent notice of a minor's abortion was unconstitutional. *See id.*; *see also* United States v. July, No. 90-10457, 1992 U.S. App. LEXIS 6394, at *4 (9th Cir. Mar. 25, 1992) (providing opinion on defendant based on psychological testing and personal interview); Nixon v. United States, 728 A.2d 582, 589 (D.C. 1999) (noting reliance on Dr. Walker's work has received general acceptance among community members); State v. Hess, 828 P.2d 382, 386 (Mont. 1992) (testifying on BWS); State v. VanSickle, No. 94APA12-1728, 1995 Ohio App. LEXIS 3085, at *7 (Ohio Ct. App. July 20, 1995) (opining defendant's BWS form of PTSD leading to reasonable belief of great bodily harm).

129. Oehme et al., *supra* note 98, at 622.

130. *See id.* at 613 (stating AMA recommendation); *see also American Medical Association Diagnostic and Treatment Guideline on Domestic Violence*, 1 ARCHIVES FAM. MED. 39, 39 (1992) (stating "women are more likely than men to be seriously injured by their partners"). In 1992, according to the Surgeon General, the leading cause of injuries to women ages fifteen to forty-four was abuse by their husbands. *See Domestic Violence Timeline*, *supra* note 75 (noting laws on domestic violence over time); Steve Gerstel, *Violence Remains Leading Cause of Injuries to Women*, UNITED PRESS INT'L (Oct. 2, 1992), https://www.upi.com/Archives/1992/10/02/Violence-remains-leading-cause-of-injuries-to-women/7036717998400/ [https://perma.cc/4HBD-NK8X] (reporting abuse more common to women "than automobile accidents, muggings and cancer deaths combined").

131. *See* Polavarapu, *supra* note 41, at 138 (examining restorative justice in different areas of criminal law).

132. *See* Hafemeister, *supra* note 35, at 944 (analyzing approaches to combat intimate partner violence).

concern.[133] While speaking at that conference, then First Lady Hillary Rodham Clinton pointedly stated: "If there is one message that echoes forth from this conference, let it be that human rights are women's rights and women's rights are human rights, once and for all."[134]

State and federal statutory reforms continued to evolve during this period, in part due to the considerable media attention given late-twentieth-century celebrity stalking cases, anti-stalking legislation emerged in many jurisdictions.[135] California adopted the first anti-stalking statute in 1990, and by 1994, thirty-one states had anti-stalking statutes criminalizing stalking behavior.[136] Mandatory arrest laws also gained increasing traction—seven states had enacted them by 1992[137] and New York City implemented its own policy in 1996.[138]

New Jersey's reforms were particularly noteworthy. The state enacted the Prevention of Domestic Violence Act (PDVA) in 1982, [139] which the court in *State v. Kelly* heavily relied on in its decision.[140] Just ten years later,[141] based on the PDVA, the New Jersey court permitted the plaintiff to recover tort damages for BWS in *Cusseaux v. Pickett*.[142] The court ultimately devised four elements to establish a BWS cause of action,[143] which required the plaintiff to show:

> 1) involvement in a marital or marital-like intimate relationship; and 2) physical or psychological abuse perpetrated by the dominant partner to the relationship

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133. *See* Polavarapu, *supra* note 41, at 133 (noting Beijing Platform considered "watershed in the global women's rights movement").

134. Hillary Rodham Clinton, First Lady, Keynote Address at the Fourth World Conference on Women (Sept. 5, 1995) (describing reception of Clinton's conference remarks).

135. *See* Hafemeister, *supra* note 35, at 976-77 (noting increased media attention and legislative momentum in 1980s and 1990s).

136. *See id.* at 945, 977 (noting all fifty states enacted some form of anti-stalking legislation by 1999).

137. *See id.* at 978 (noting many states did not pass mandatory arrest laws until 1994).

138. *See* Varela, *supra* note 90, at 1231.

139. *See* Prevention of Domestic Violence Act of 1982, ch. 426, 1982 N.J. Laws 496 (detailing original legislation's provisions); *see also* N.J. STAT. ANN. §§ 2C:25-1 – 2C:25-35 (West 2023) (detailing current statutory provisions). The New Jersey legislature amended the PDVA in 1991. *See* Prevention of Domestic Violence Act of 1991, ch. 261, § 20 N.J. Laws 1722. The PDVA is "the strongest [domestic violence law] in the country." N.J. STATE BAR FOUND., DOMESTIC VIOLENCE: THE LAW AND YOU, at Acknowledgments (4th ed. 2021), https://njsbf.org/wp-content/uploads/2022/03/DomesticViolenceBook2021-no-crops.pdf [https://perma.cc/VE-W4-8TAZ].

140. *See* State v. Kelly, 478 A.2d 364, 383 (N.J. 1984) (recognizing correlation between spouse abuse and child abuse); Lebowitz, *supra* note 39, at 261 (noting *Kelly* first case to recognize availability of BWS element of self-defense).

141. *See* Snyder, *supra* note 35, at 363 (discussing novel approach by New Jersey trial court). Similarly, the Washington Superior Court acknowledged domestic violence as a tort cause of action. *See* Jewitt v. Jewitt, No. 93-2-01846-5 (Wash. Super. Ct. Spokane Cnty. Apr. 21, 1994); *see also Domestic Violence*, 21 GEO. J. GENDER & L. (ANNUAL REVIEW) 253, 288 (2020) (listing *Jewitt* elements required for domestic violence tort).

142. *See* 652 A.2d 789, 793 (N.J. Super. Ct. App. Div. 1994) (allowing BWS cause of action in New Jersey). The court sought more ambitious remedies to address the "'plague' of domestic violence" than the state legislature previously provided. *See id.* at 793; *see also* Snyder, *supra* note 35, at 363 (explaining the importance of *Cusseaux*); Lebowitz, *supra* note 39 at 261 (describing evolution of BWS legal remedies).

143. *See Cusseax*, 652 A.2d at 793-94 (listing elements of BWS cause of action); *see also* Lebowitz, *supra* note 39, at 261.

> over an extended period of time; and 3) the aforestated abuse has caused recurring physical or psychological injury over the course of the relationship; and 4) a past or present inability to take any action to improve or alter the situation unilaterally.[144]

In *Giovine v. Giovine*,[145] the New Jersey Appellate Division endorsed the *Cusseaux* four-part test, so long as each element was supported by expert testimony, in order for plaintiffs to recover on a BWS cause of action.[146] In *Giovine*, the court also reached a new holding: A plaintiff who establishes prior to trial, "by medical, psychiatric or psychological evidence, that she suffers from battered woman's syndrome, which caused an inability to take any action to improve or alter the circumstances in her marriage unilaterally" is entitled to a tolling of the statute of limitations applicable to her interspousal tort claims for domestic violence.[147] The *Giovine* court's landmark 1995 decision illustrates the progress made with respect to BWS in the twelve years since the District of Columbia decided *Ibn-Tamas*.[148]

Finally, excluding BWS, the most significant evolution in domestic violence occurred in the 1990s through federal statutory reform. Congress enacted the first Violence Against Women Act (VAWA) as part of The Violence Crime Control and Law Enforcement Act of 1994.[149] Perhaps a testament to the ongoing attitudes surrounding domestic violence as described in this Article, the bill had been tabled since its original drafting in 1990 but passed in a mere two months following the high-profile murder of Nicole Brown Simpson.[150] VAWA earmarked federal funds towards addressing sexual assault and gender-based violence, created the National Domestic Violence Hotline, increased federal criminal penalties, and was repeatedly deemed constitutional despite an influx of

144. *Cusseaux*, 652 A.2d at 793-94 (footnotes omitted).

145. 663 A.2d 109 (N.J. Super. Ct. App. Div. 1995).

146. *See* Giovine v. Giovine, 663 A.2d 109, 114 (N.J. Super. Ct. App. Div. 1995) (primary source first); *see also* Lebowitz, *supra* note 39, at 264 (adopting *Cusseaux's* four-part test).

147. *Giovine*, 663 A.2d at 117. This decision was based on the legislative record of the PDVA, including its overall intent to strengthen the law's protection and remedies available for victims from domestic abuse. *See id.* at 115-16 (comparing rationale for BWS tolling of statute of limitations to insanity exception); *see also* Lebowitz, *supra* note 39, at 264 (discussing influence of legislative history on case outcome).

148. *Compare Giovine*, 663 A.2d at 114 (recognizing BWS cause of action in tort) *with* Ibn-Tamas v. United States, 455 A.2d 893, 895 (D.C. 1983) (affirming trial court's refusal to admit expert testimony of BWS because no expert "general acceptance").

149. *See* Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1902; *see also* Ayyildiz, *supra* note 120, at 161 (showing congressional support for battered women).

150. *See* Hafemeister, *supra* note 35, at 933 (footnote omitted) (describing congressional response to Simpson's murder). Health and Human Services Secretary Donna Shalala called "domestic violence an "unacknowledged epidemic," and said that "the Clinton Administration would fight the problem as 'terrorism in the home.'" *See* Oehme et al., *supra* note 98, at 615. Despite this claim, then-President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act, which imposed new requirements imposed upon welfare recipients that were difficult for battered women to meet. *See* Polavarapu, *supra* note 41, at 135. As a result, the Act was amended sometime later to include the Family Violence Option, "which offered a waiver of the new welfare requirements if domestic violence prevented compliance." *Id.* (footnote omitted).

challenges in the late 1990s.[151] Following its enactment, non-fatal domestic violence incidents "have declined by sixty-three percent in the United States, and the reporting of domestic violence has increased by fifty-one percent."[152] Additionally, "forty-three states have enacted protections against insurance discrimination for domestic violence victims" since 1994,[153] and in 2000, New York City adopted a local version of VAWA, becoming the first jurisdiction to do so, which gave those injured from domestic violence the right to sue abusers for civil damages.[154]

In 1996, Congress enacted the Lautenberg Amendment to the Gun Control Act.[155] The Amendment prohibits the possession of firearms by anyone who is convicted of a misdemeanor crime of domestic violence.[156] As a notably strong omission, the Amendment contains no exception for law enforcement personnel, and thus, all citizens of the United States are held to the same standard under the statute.[157] This Amendment has repeatedly withstood constitutional challenge on Second Amendment, due process, and equal protection grounds.[158] The

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151. *See* Heger, *supra* note 88 (explaining VAWA). More specifically, the Act:

> [I]mpos[ed] double prison sentences on repeat sex offenders and mandat[ed] restitution of victims' losses by defendants. . . . [made] it a federal crime for anyone to cross state lines or enter or leave Indian country in violation of a protective order or to intentionally cause bodily harm to his or her partner. . . . [declared that] a protection order issued by one state must be accorded 'full faith and credit' by the court of another state. . . . [made] inadmissible with some exceptions evidence to prove the victim's 'other sexual behavior' or sexual predisposition in a criminal case. . . . and establish[ed] the right of victims of gender-motivated violence to sue their offenders in federal court."

*Id.* In the late 1990s, circuit courts started to address the constitutionality of VAWA. *See, e.g.*, United States v. Bailey, 112 F.3d 758, 766 (4th Cir. 1997) (determining 18 U.S.C. § 2261 constitutional under Commerce Clause); United States v. Wright, 128 F.3d 1274, 1276 (8th Cir. 1997) (holding 18 U.S.C. § 2262 constitutional under both Commerce Clause and Tenth Amendment); United States v. Von Foelkel, 136 F.3d 339, 341 (2d Cir. 1998) (holding 18 U.S.C. § 2262 constitutional under Commerce Clause). For reference, 18 U.S.C. § 2262(a)(1) "criminalizes crossing a state line with the intent to violate a protection order and then violating it." § 2262(a)(1). Section 2261 criminalizes the crossing of "a state line with the intent to injure, harass, or intimidate his or her spouse or intimate partner, and that travel actually results in the intentional commission of a crime of violence that causes bodily injury to such spouse or intimate partner." United States v. Gluzman, 953 F. Supp. 84, 91 (S.D.N.Y. 1997).

152. Hafemeister, *supra* note 35, at 934 (footnote omitted).

153. Oehme et al., *supra* note 98, at 615 n.11.

154. *See* Snyder & Morgan, *supra* note 102, at 46-47 (discussing New York version of VAWA).

155. *See* U.S. DEP'T OF JUST., CRIMINAL RESOURCE MANUAL § 1117 (2013) [hereinafter CRIMINAL RESOURCE MANUAL 1117] (providing Lautenberg Amendment text).

156. *See* Liz Washam, *Diffusing Deadly Situations: How Missouri Could Effectively Remove Firearms from the Hands of Domestic Abusers*, 59 ST. LOUIS U. L.J. 1221, 1230 (2015) (explaining Lautenberg Amendment). The Amendment, however, does not contain a provision mandating surrender of firearms on a conviction. *See* Kate E. Britt, *Domestic Violence Convictions and Firearms Possession: The Law as It Stands and as It Moves*, 98 MICH. BAR J. 66, 67 (2019) (noting federal law restricts firearm purchases without requiring surrender of firearms upon conviction). Notably, New Jersey's Prevention of Domestic Violence Act, as amended in 1991, includes a provision for weapon seizures by police at the scene of a domestic violence crime. *See* N.J. STAT. ANN. § 2C:25-21(d) (West 1991); *see also* Melanie L. Mecka, *Seizing the Ammunition from Domestic Violence: Prohibiting the Ownership of Firearms by Abusers*, 29 RUTGERS L.J. 607, 610 (1998).

157. *See* CRIMINAL RESOURCE MANUAL 1117, *supra* note 155.

158. *See, e.g.*, United States v. Beavers, 206 F.3d 706, 709 (6th Cir. 2000) (arguing violation of due process); United States v. Bostic, 168 F.3d 718, 722 (4th Cir. 1999) (denying violation of due process); Fraternal Ord. of

Supreme Court also "closed a dangerous gun control loophole" when it later held that reckless assaults are subject to the Amendment's prohibition.[159]

## V. DOMESTIC VIOLENCE IN THIS MILLENNIUM

The start of the millennium brought many significant changes with respect to VAWA. One provision, providing victims of gender-motivated violence a federal civil remedy, was struck down as unconstitutional under both the Commerce Clause and Section 5 of the Fourteenth Amendment in 2000.[160] This holding did not stop Congress from reauthorizing VAWA that same year, albeit "on the eve of its expiration," and again in 2005, 2013, and 2022.[161] But in another Supreme Court case, *Town of Castle Rock v. Gonzales*,[162] the Court held that no property interest exists in police enforcement of restraining orders under the Due Process Clause for an individual who has obtained a state law restraining order.[163] *Gonzales* presented a significant setback for the domestic violence community.[164] On the other hand, two more jurisdictions, California and Illinois, joined New York City in adopting "local versions" of VAWA in 2002 and 2004,

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Police v. United States, 173 F.3d 898, 903-04 (D.C. Cir. 1999) (arguing violation of equal protection); s*ee also Domestic Violence*, *supra* note 141, at 266-67 (collecting cases).

159. *See* Voisine v. United States, 579 U.S. 686, 692 (2016) (concluding reckless assaults misdemeanors for purposes of Amendment); *see also Domestic Violence*, *supra* note 141, at 268.

160. *See* United States v. Morrison, 529 U.S. 598, 601-02, 627 (2000) (striking down 42 U.S.C. § 13981).

161. *See Violence Against Women Act*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, https://nnedv.org/-content/violence-against-women-act/ [https://perma.cc/9Y9H-5CVL] (noting VAWA reauthorization). "Each version of VAWA has concentrated on improving both prevention of and response to domestic violence amongst communities that have traditionally been underserved: immigrant women, LGBTQ individuals, and Native Americans." *Domestic Violence*, *supra* note 141, at 257-58 (footnotes omitted). A review of the contents of each VAWA reauthorization is beyond the scope of this Article.

162. 545 U.S. 748 (2005).

163. *See id.* at 768-69 (2005). As aptly stated by Justice Scalia, who authored the majority opinion, the facts of the case were "horrible." *See id.* at 750. In violation of a permanent restraining order, Gonzales's husband kidnapped the former couple's three children, who were playing outside their home. *See id.* at 753-54. Despite Gonzales's four separate calls to police, independently going to her husband's apartment in an attempt to locate them, and, as a last-ditch effort, submitting an incident report at the police station, Castle Rock police failed to help Gonzales locate her children or enforce the restraining order in any way. *See id.* at 753-54. Roughly ten hours after the kidnapping, the husband "arrived at the police station and opened fire with a semiautomatic handgun," and, after the police shot and killed him, the childrens' bodies were found in the cab of his truck; he had already murdered them. *See id.* at 754.

164. *See* Curtis, *supra* note 55, at 1207-08 (noting "decision . . . resulted in several local decisions that undermine years of advocacy designed to combat domestic abuse."). *But see* Hudson v. Hudson, No. 04-2662-DP, 2005 U.S. Dist. LEXIS 51006, at *9 (W.D. Tenn. Sept. 14, 2005) (citation omitted) (distinguishing *Gonzales*). The *Hudson* court held that a Tennessee statute "requires that a police officer arrest someone when there is reasonable cause to believe that he has violated a protective order, [that] the arrest is operational, not discretionary, and, therefore, [that] immunity is removed." *Id.* As an additional threat to victims of domestic violence, a pending California Assembly bill would remove the requirement that a health practitioner report to law enforcement when he or she suspects that a patient has suffered a physical injury caused by assaultive or abusive conduct, limiting the reporting requirement to those situations where a patient suffers an injury by means of a firearm, child abuse, or elder abuse. ASSEMB B. 1028, 2023 GEN. ASSEMB., REG. SESS. (Cal. 2023) (proposing removal of mandatory reporting to police in cases of sexual abuse).

respectively.[165] California also codified a domestic violence tort—reminiscent of *Cusseaux*—in 2002.[166]

In addition to VAWA, Congress has sought to enact employment protections for survivors of domestic violence three times, but each bill failed.[167] Some states, however, have passed their own versions, which vary from leave provisions, protections against discrimination and retaliation, and reasonable workplace accommodations.[168] Moreover, "[b]y 2002, every state had enacted legislation criminalizing violations of civil protection orders;"[169] by 2004, forty-eight states had "child custody statutes that consider domestic violence in the awarding of custody,"[170] and every state had criminalized marital rape.[171] Another ongoing trend involves the modification of stalking statutes to accommodate the growing use of technology, and the enactment of "revenge porn" laws, which criminalize the distribution of sexual images without a person's knowledge or consent.[172]

Advocates have continued to seek visibility and resources for survivors of domestic violence. In 2009, the AMA renewed its call for domestic violence screening of all patients because of the "chronic failure" of doctors to do so since its original request in 1992.[173] Social media has provided a platform to increase awareness, such as when the hashtag #WhyIStayed was used over 100,000 times on Twitter in a span of two days in 2014.[174] In addition to social media,

165. *See* Snyder & Morgan, *supra* note 102, at 47 (discussing state versions of VAWA).

166. *See* CAL. CIV. CODE § 1708.6 (West 2023).

167. *See* Cameron M. Brown Britt, *Invisible Inequality & Economic Empowerment: Domestic Violence, Discrimination, and the Creation of a New Protected Class*, 2 BUS. ENTREPRENEURSHIP & TAX L. REV. 451, 456 (2018) (explaining lack of legal protection for domestic abuse survivors). These bills include the Security and Financial Empowerment Act (SAFE), which sought to provide survivors "with up to 30 days emergency unpaid leave" to address the consequences of the abuse, the Victims Economic Security and Safety Act, and the Survivors Empowerment and Economic Security Act. *See id.*

168. *See id.* at 466 (noting some states have greater protection for domestic abuse survivors). These jurisdictions include Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Kansas, Maine, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, and Washington. *See id.* at 466-67.

169. *See* Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1667 (2004).

170. *See* Snyder & Morgan, *supra* note 102, at 50-51 (footnote omitted). Notably, some courts had long considered domestic violence in this context: "[J]oint custody or shared responsibility is an invitation to continued warfare and conflict [where there is a history of domestic violence between the parties]." *See* Rolde v. Rolde, 425 N.E.2d 388, 405 (Mass. App. Ct. 1981) (affirming award of sole custody to mother despite father's request for joint custody).

171. *See* Hafemeister, *supra* note 35, at 975 (discussing evolution of marital rape laws).

172. *See Domestic Violence*, *supra* note 141, at 295-96 (reviewing impact of technology on stalking and nonconsensual pornography laws).

173. *See* Oehme et al., *supra* note 98, at 619 (highlighting AMA's advocacy for improvements in screening processes).

174. *See* Jolie Lee, *#WhyIStayed: Powerful Stories of Domestic Violence*, USA TODAY (Sept. 10, 2014), https://www.usatoday.com/story/news/nation-now/2014/09/10/why-i-stayed-hashtag-twitter-ray-rice/1538502-7/ [https://perma.cc/A474-ZKXS] (reporting on viral Twitter movement of women sharing experiences of domestic violence). This was a precursor to 2017's #MeToo movement, which brought awareness to survivors of

advocates are developing other innovative technologies designed to educate, assist, and advocate for survivors of domestic violence.[175] When I search "battered woman syndrome" on Google, the first result to appear is a message that "[h]elp is available" with the telephone number of the National Domestic Violence Hotline.[176]

Despite these improvements, recent Supreme Court rulings have presented a heightened threat to survivors. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen,*[177] the Supreme Court held that the Second and Fourteenth Amendments "protect an individual's right to carry a handgun for self-defense outside the home," invalidating much of New York's gun licensing regime which required a citizen to show a special need for self-defense to carry a firearm in public.[178] Concerningly, Justice Breyer noted women are more likely to be killed in domestic violence situations if their abusive partner owns a gun.[179] After *Bruen*, lower courts across the country began reconsidering firearm safety rules and regulations.[180] In response, the Fifth Circuit held that a Texas statute prohibiting the possession of firearms by someone subject to a domestic violence restraining order is unconstitutional in *United States v. Rahimi*.[181]

From December 2020 to January 2021, Rahimi was involved in five shootings in Texas: He fired multiple shots into an individual's residence after selling narcotics to that individual; the next day, after a car accident, he shot at the driver in the other car, fled the scene, returned in another car, and shot at the driver again; he shot at a constable's car; and he fired multiple shots into the air after a friend's credit card was declined at a restaurant.[182] At this time, a civil protective order entered against him—because he assaulted an ex-girlfriend—prohibited him from possessing a firearm.[183] The Fifth Circuit vacated Rahimi's conviction for possessing a firearm while under a domestic violence restraining order, holding that the statute violated the Second Amendment on its face and that Rahimi

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sexual abuse and harassment. *See Domestic Violence*, *supra* note 141, at 292 (showing social media movements increase credibility and "social consciousness" of abuse).

175. *See Domestic Violence*, *supra* note 141, at 293-95 (analyzing technology's role in advancing and curbing domestic violence). These include Robin McGraw's Aspire News, an app that masquerades as a news app while also providing secret resources for survivors like shelter locations, audio/visual recording, and the National Network to End Domestic Violence's Safety Net Project, which "works with communities, agencies, and technology companies to address the impact technology has on a survivor's safety and privacy," among other initiatives. *See id.* at 293-95 (highlighting technology designed to provide support to survivors).

176. *See* Definition of Battered Womens Syndrome, GOOGLE, www.google.com (type "Battered Woman Syndrome" in search bar; then click magnifying glass).

177. 142 S. Ct. 2111 (2022).

178. *See id.* at 2122 (holding New York's "proper cause" licensing requirement unconstitutional).

179. *See id*. at 2166 (Breyer, J., dissenting) (explaining danger of *Bruen* decision).

180. *See* Ariane de Vogue, *Texas Man Urges Supreme Court to Stay Out of Major Second Amendment Case*, CNN (May 31, 2023), https://www.cnn.com/2023/05/31/politics/texas-man-second-amendment-case/index.html [https://perma.cc/8479-6JWK] (detailing ways *Bruen* caused lower courts to reconsider gun safety laws).

181. *See* 61 F.4th 443, 448 (5th Cir. 2023) (holding domestic violence restrictions on gun rights as unconstitutional).

182. *See id.* at 448-449.

183. *See id*. at 449.

was not technically a convicted felon at the time he was charged.[184] The Supreme Court granted review of Rahimi's case, and will hear oral argument next fall.[185]

Ending on a more positive note, BWS has been adopted outside the Western world[186] in the new millennium, with courts in Eastern countries, such as the Philippines[187] and India,[188] recognizing it for the first time. More locally, Dr. Walker's work remains important, as BWS has been widely used and accepted by American courts since the mid-1980s, and a defendant's *Daubert* challenge of the admission of Dr. Walker's testimony was unsuccessful in an unpublished decision from the United States District Court for the Eastern District of Texas in 2000.[189] But in the United States District Court for the Northern District of Georgia in 2007, a *Daubert* challenge against Dr. Walker was successful where she did not personally interview the victims: The government sought to proffer the testimony as applied to a group (as opposed to an individual), and the testimony was deemed both irrelevant and unduly prejudicial.[190] The court nonetheless recognized that Dr. Walker "is eminently qualified to testify on these subjects" and "is considered a pioneer in the field of BWS."[191] The Court of Appeals of Maryland recognized the work of Dr. Walker regarding BWS in holding that "the battered spouse syndrome . . . applies as well to battered children," where there is evidence to support it.[192] Courts have become increasingly receptive to the introduction of BWS testimony by Dr. Walker,[193] and one court has even held

184. *See id*. at 452, 460-61 (holding statute unconstitutional under *Bruen*).

185. *See* Amy Howe, *Justices Take Up Major Second Amendment Dispute*, SCOTUSBLOG, https://www.scotusblog.com/2023/06/justices-take-up-major-second-amendment-dispute/ [https://perma.cc/NAP4-UVZC] (reporting SCOTUS's decision to grant review of *Rahimi*).

186. *See* Shalu Nigam, Battered Woman Syndrome: Applying this Legal Doctrine in the Indian Context 10-11 (Aug. 6, 2016) (unpublished manuscript), https://ssrn.com/abstract=2819322 [https://perma.cc/RKA4-WBFV] (analyzing India's High Court's invocation of BWS). BWS had been previously recognized in the United States, Australia, Canada, New Zealand, and the United Kingdom since at least the 1990s. *See id.* at 6-7 (summarizing global recognition of BWS in these countries' courts).

187. *See* People of the Philippines v. Marivic Genosa, G.R. No. 135981 (Jan. 15, 2004) (Phil.). In that case, the appellant shot her husband following repeated and severe beatings. *See id.* The court referenced Dr. Walker's research in its opinion, and although it did not completely exonerate the defendant based on BWS, it did permit parole based on two mitigating circumstances arising from the defendant's BWS. *See id.*

188. *See* Nigam, *supra* note 186, at 10-11. As recently as 2016, India did not recognize BWS as part of a self-defense claim; instead, it has been used "to understand the situation of a woman [suffering domestic violence] in her matrimonial home." *See id.* at 10-11. In *State v. Hari Prashad*, an Indian court acknowledged BWS for the first time after, after a woman committed suicide because "[s]he was physically and mentally tortured by [her husband]." *Id.* at 10. Applying BWS to illuminate the victim's state of mind, the High Court found her husband guilty of abetting suicide. *Id.*

189. *See* Morse v. Henson, No. 2:00CV09, 2000 U.S. Dist. LEXIS 22910, at *4 (E.D. Tex. Nov. 2, 2000) (concluding challenges to expert testimony relevant to weight of evidence standard and not admissibility).

190. *See* United States v. Norris, No. 1:05-CR-479-JTC, 2007 U.S. Dist. LEXIS 104440, at *43, *58-59 (N.D. Ga. May 7, 2007) (recounting reasons court denied Dr. Walker's expert testimony).

191. *See id*. at *12.

192. *See* State v. Smullen, 844 A.2d 429, 449 (Md. 2004) (concluding elements of BWS apply equally to battered children).

193. *See, e.g.*, McLuckie v. Abbott, 337 F.3d 1193, 1195 (10th Cir. 2003) (denying habeas relief recognizing potential usefulness of Dr. Walker's testimony); People v. Coffman, 96 P.3d 30, 83 (Cal. 2004) (holding admission of Dr. Walker's testimony regarding one defendant's BWS not bad character evidence).

that the failure of trial counsel to introduce expert testimony concerning BWS substantially prejudiced the defense.[194]

## VI. CONCLUSION

Dr. Walker has advanced, and continues to advance, the way the world's court systems, law enforcement, and doctors have treated survivors of domestic violence. Although the journey has been slow moving and arduous, resources continue to expand for survivors, and courts are slowly acknowledging BWS as a sound methodology to explain the actions of abused persons. Notwithstanding her "retirement," Dr. Walker continues to pioneer efforts to assist the world in discerning how to better understand and aid survivors.[195] I am thankful to Dr. Walker for making an impact, saving lives, and changing the outlook of the world on the historic and prolific problem of domestic violence.

194. *See In re* Walker, 54 Cal. Rptr. 3d 411, 426-27 (Cal. Ct. App. 2007) (vacating judgment of conviction).
195. *See About Dr. Lenore Walker*, *supra* note 30.