

# Unlocking Liberty:

## *Is California's Habeas Law the Key to Freeing Unjustly Imprisoned Battered Women?*

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### **But, Does It Matter? by Brenda Clubine<sup>1</sup>**

*A life of abuse,  
there seems no use.  
I've been beaten & choked,  
made to feel it's a joke.  
Arrested & tried,  
they say I lied.  
No expert allowed,  
no truth to be heard,  
She couldn't have been abused,  
How absurd!  
Police knew the truth,  
the photos existed.  
My physician's testimony,*

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1. Brenda Clubine, *But Does It Matter?*, in *OUR VOICES WITHIN: HEALING FROM THE INSIDE OUT 24* (California Coalition of Women Prisoners ed., 2003) [hereinafter *OUR VOICES WITHIN*]. Brenda Clubine is a prisoner at Valley State Prison for Women and founder of Convicted Women Against Abuse, a prisoner-run organization that meets twice monthly at the California Institute for Women.

*Was negated and twisted.  
15 to life,  
was all that was heard,  
my prison has changed,  
yet, not the words.  
Guilty, you've been found,  
You're on your way,  
Politics will ensure you stay.  
The Board of Prison Terms,  
they say is impartial,  
this must be a joke,  
they are all ex-police, D.A.s,  
Sheriffs & Marshals.  
How can I bring back,  
the life I took?  
A tragic life moment, can't be  
overlooked.  
Prison was called for,  
yes, I agree,  
I'm not asking for sympathy.  
Was life the answer,  
when abuse took its toll?  
Will it ever be enough  
as years come and go?  
Over twenty years later,  
imprisoned, still blamed,  
yet still unprotected,  
in this political game.  
The sunset will set in SB 799,<sup>2</sup>  
on Jan. 01, 2005.  
Can this be done, with all  
that is needed?  
No funds or resources, to have  
it completed.  
Experts & research,  
hours upon hours,  
only to depend on political powers.  
A new law, a writ, a chance.  
What does this mean  
in the political dance?*

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2. S.B. 799 refers to section 1473.5 of the California Penal Code (Deering Supp. 2003). The sunset clause has been extended by S.B. 784, 2003 Leg., Reg. Sess. (Cal. 2003) from January 1, 2005 to January 1, 2010.

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*Does this mean, there's finally hope,  
or does this mean,  
my life's still a joke?  
The system has failed miserably,  
what do you think, will I ever be free?  
Now the question,  
Could she have been battered?  
As many lives, for years have been shattered.  
Now they ask,  
But, does it matter?*

**A CHANGE, A CHANCE**

On January 1, 2002, California thrust itself to the forefront of a nationwide movement that sought to understand and recognize of the effects of domestic violence and its relevance in criminal trials. On that date, the state legislature enacted section 1473.5 of the California Penal Code, the habeas law, allowing certain battered women convicted of killing their batterers to file a writ of habeas corpus to have their cases re-examined.<sup>3</sup> Potential outcomes of re-examination are sentence reduction and conviction redaction. The prisoners, along with their family members, lawyers, law students, and volunteers, are racing to unlock their liberty, using the new statute as their key. Before they can reach the door, though, the women<sup>4</sup> and their advocates must surmount formidable barriers, such

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3. Section 1473.5 states:

(a) A writ of habeas corpus also may be prosecuted on the basis that evidence relating to battered women's syndrome, within the meaning of Section 1107 of the Evidence Code, based on abuse committed on the perpetrator of a homicide by the victim of that homicide, was not introduced at the trial relating to the prisoner's incarceration, and is of such substance that, had it been introduced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different. Sections 1260 to 1262, inclusive, apply to the prosecution of a writ of habeas corpus pursuant to this section.

(b) This section is limited to judgments of conviction for a violation of Section 187 resulting from a plea entered, or a trial commenced, before January 1, 1992.

(c) If a petitioner for habeas corpus under this section filed a petition for writ of habeas corpus prior to the effective date of this section, it is grounds for denial of the new petition if a court determined on the merits in the prior petition that the omission of evidence relating to battered woman's syndrome at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

CAL. PENAL CODE § 1473.5 (Deering Supp. 2004).

4. For the purposes of this article, I will focus on female survivors of domestic violence by intimate male partners because they represent the highest number of survivors of battering by an intimate in California prisons, and they are the subject of the majority of legal action in this area. I recognize that other forms of battering exist—in LGBT intimate partnerships, among family members, and in heterosexual partnerships in which the woman batters the

as restrictions internal to the law, time constraints, lack of cooperation by the penal system, a scarcity of funding, difficulties in identifying eligible prisoners, investigative challenges, and obstacles blocking alternate channels of release.

This article will first touch upon the history behind the statute. It will then explain the significance of "battering and its effects" with a brief overview of the current discourse among scholars on the subject. A detailed exploration of the habeas law will uncover its many shortcomings. An account of the problems with imprisoned battered women's alternative methods of release will follow. Finally, the article will address advocates' plans for combating the law's deficiencies and will conclude with a call for action and cooperation by external entities in order to achieve advocates' objectives.

Excerpts from Brenda Clubine's tragic poem<sup>5</sup> will guide the reader through the article from the insightful perspective of an imprisoned domestic violence survivor, who is skeptical yet hopeful that the habeas law will set her free. Clubine was convicted and imprisoned in 1985 for murdering her husband—the man who beat her, sexually abused her, and psychologically tormented her during the previous eighteen months.<sup>6</sup> If she were tried today, she would be entitled to introduce expert testimony on the effects his battering had on her.<sup>7</sup> This information would have given the jury a more complete understanding of what provoked her crime.<sup>8</sup> Had such evidence been presented in her actual trial, it would likely have won her an acquittal or, at the least, a shorter sentence. Because her trial preceded the passage of a state law allowing expert testimony in cases like hers, Clubine is serving a disproportionately long sentence that could last her entire life.<sup>9</sup> She is one of forty-one<sup>10</sup> identified women in the California prison system whose suffering at the hands of an intimate partner led to more suffering under undue, heavy-handed sentences. Though the group is small, the injustice is large.

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man. I acknowledge the struggles of all domestic violence survivors, commend them for their strength, and hope for their safety.

5. Clubine, *supra* note 1.
6. E-mail from Judy Freeman, Attorney for Brenda Clubine, to Jill E. Adams, Author, Berkeley Women's Law Journal (Feb. 1, 2004, 12:31 PST) (on file with author).
7. See CAL. EVID. CODE § 1107(a)-(e) (Deering Supp. 2003).
8. See Rebecca Dao Cornia, *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 UCLA WOMEN'S L.J. 99, 104 (1997).
9. *Bios of Planning Committee Members Inside*, in OUR VOICES WITHIN, *supra* note 1, at 8-9. Clubine was sentenced to fifteen years to life. *Id.*
10. E-mail from Olivia Wang, Co-Founder and Northern California Director, Habeas Project, Steering Committee Member, Free Battered Women, with attachment from Alex Lee, Intern, Habeas Project, to Jill E. Adams, Author, Berkeley Women's Law Journal (Nov. 12, 2003) (on file with author) [hereinafter Lee Attachment]. This number is the result of Habeas Project's screening process using questionnaires completed by inmates. The California Department of Corrections does not keep these statistics, nor will it allow a formal study to gather such statistics. The number does not include transgendered inmates or women on death row. Some advocates estimate that there are several hundred women currently serving sentences in California for killing their battering intimate partners. *Id.*

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**THE STORY OF THE STATUTE**

*A new law, a writ, a chance.  
What does this mean  
in the political dance?  
Does this mean, there's finally hope,  
or does this mean,  
my life's still a joke?  
The system has failed miserably,  
what do you think, will I ever be free?*

The California Legislature passed two key pieces of legislation in response to growing public awareness of domestic violence and its influence on battered women's criminal acts. The first law allows evidence of such violence to be admitted, when relevant, at trial; the second redresses the plight of convicted women who had not been allowed such evidence at trial. In 1991, the California Evidence Code was amended to allow battered women's experiences in criminal trials, including trials of defendants accused of homicide or assault of their abusers.<sup>11</sup> The amendment applied only prospectively, leaving existing convictions untouched.<sup>12</sup>

Ten years later, California passed a law to address the needs of women convicted prior to 1992, to whom the amended code had not applied.<sup>13</sup> At least forty-one<sup>14</sup> women, each of whom has already served over ten years in California prisons, qualify as prospective candidates for habeas relief under the new law, Penal Code section 1473.5. To be eligible, a woman must have been

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11. Evidence Code section 1107 states:

(a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique whose reliability is unproven.

(c) For purposes of this section, "abuse" is defined in Section 6203 of the Family Code and "domestic violence" is defined in Section 6211 of the Family Code or acts defined in Section 242, subdivision (e) of Section 243, or Section 262, 273.5, 273.6, 422, or 653m of the Penal Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

(e) This section shall be known, and may be cited as, the Expert Witness Testimony on Battered Women's Experiences Section of the Evidence Code.

CAL. EVID. CODE § 1107 (Deering Supp. 2003).

12. Press Packet, California Coalition for Women Prisoners, *Our Voices Within: Healing from the Inside Out* 24 (Oct. 12, 2003) (on file with author).

13. CAL. PENAL CODE § 1473.5 (Deering Supp. 2004).

14. Lee Attachment, *supra* note 10.

convicted for the homicide of her batterer before January 1, 1992,<sup>15</sup> and her petition must be filed before January 1, 2010.<sup>16</sup> A cogent petition for a writ of habeas corpus requires proof of prejudice to the defendant in the original trial.<sup>17</sup> A successful petitioner must also prove that the exclusion of expert testimony on battering and its effects negatively impacted her trial outcome.<sup>18</sup> Furthermore, there must be a reasonable probability that inclusion of such evidence would have rendered a different verdict.<sup>19</sup> If a court has already found there to be no prejudice by absence of evidence upon review of a prisoner's previous habeas petition, the court has the discretion to deny any future petitions she submits under section 1473.5.<sup>20</sup>

The crux of a successful petition for a writ of habeas corpus under section 1473.5 is that a judge understands both how the battering affected the defendant at the time of the crime and how a lack of testimony on the battering impacted the verdict of her trial.<sup>21</sup>

**BATTERING AND ITS EFFECTS:  
WHAT IT IS AND WHY ITS RECOGNITION IS IMPERATIVE FOR A FAIR TRIAL**

*A life of abuse,  
there seems no use.  
I've been beaten & choked,  
made to feel it's a joke.  
Arrested & tried,  
they say I lied.  
No expert allowed,  
no truth to be heard,  
She couldn't have been abused,  
How absurd!  
Police knew the truth,  
the photos existed.  
My physician's testimony,  
Was negated and twisted.*

A solid understanding of the effects of domestic violence is central to trials

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15. CAL. PENAL CODE § 1473.5(b) (Deering Supp. 2003).

16. *Id.* at § 1473.5(d).

17. *See id.* at § 1473.5(a).

18. *Id.*

19. *Id.*

20. *Id.* at § 1473.5(c). A prisoner could have previously filed a petition for a writ of habeas corpus under the provision of a different statute.

21. *Cf.* Interview with Johanna Hoffmann, Co-Coordinator, Free Battered Women, in San Francisco, Cal. (Nov. 19, 2003) (commenting that a domestic violence expert's report is a critical part of a habeas petition filed under section 1473.5) (on file with author).

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involving battered women defendants. Awareness of the full impact of battering on a domestic violence survivor informs the trier of fact's decisions as to whether the defendant's actions were reasonable or justifiable given the circumstances.<sup>22</sup> The California Legislature recognized the significance of battering and its effects when it passed laws promoting admittance of such evidence at trial. However, the current approach to battering and its effects in both the legislative and the judicial systems is flawed, fostering misconceptions that present challenges to survivors.

### More Than Just a Name

All fifty states have laws recognizing some form of battering and its effects,<sup>23</sup> commonly referred to as Battered Woman's Syndrome ("BWS"), as a psychological reality influencing victims of domestic violence. California courts continue to apply the meaning and theories originally assigned to the term at its conception.<sup>24</sup> Psychologist and domestic violence expert Dr. Lenore Walker was the first to define "battered woman" in her 1979 book, *The Battered Woman*. She described the battered woman as "a woman who is repeatedly subjected to any forceful physical, psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights."<sup>25</sup>

Walker later described the long-term effects of battering in her follow-up book, *The Battered Woman Syndrome*,<sup>26</sup> as a behavioral condition of Post Traumatic Stress Disorder<sup>27</sup> created by a "cycle of abuse" and resulting in "learned helplessness."<sup>28</sup> Based on hundreds of interviews and evaluations of battered women, Walker developed a model of the cycle of abuse, which consists of three stages: the tension-building stage, generally involving verbal and psychological abuse in addition to minor physical abuse; the acute incident stage in which savage, uncontrolled battering takes place; and the tranquil honeymoon

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22. ELIZABETH M. SCHNEIDER, BATTERED WOMEN and FEMINIST LAWMAKING 124 (2000).
  23. Nausheen Hassan, "Battered Women's Syndrome" Perpetuates Harmful Stereotypes of Victims, DAILY J., Aug. 19, 2003, available at <http://www.freebatteredwomen.org/dailyjournalnausheen.htm>.
  24. Nancy K.D. Lemon, *What's Wrong with the Term "Battered Woman Syndrome Defense?"*, DAILY J., Dec. 12, 2002, available at <http://freebatteredwomen.org/bwsd.htm>.
  25. LENORE WALKER, THE BATTERED WOMAN xv (1979) ("Battered women include wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship once. If it occurs a second time, and she remains in the situation she is defined as a battered woman.").
  26. LENORE WALKER, THE BATTERED WOMAN SYNDROME 116-33 (2d ed. 1984) (updating research and characterization of Battered Woman's Syndrome ("BWS")).
  27. LENORE WALKER, TERRIFYING LOVE 48-49 (1989).
  28. WALKER, THE BATTERED WOMAN SYNDROME, *supra* note 26, at 117-18. Behavioral psychologist Mark Seligman administered sporadic, random shocks to dogs in locked cages. After rounds of shocks, the dogs realized they could not escape and ceased trying. In subsequent rounds, even after the doors of the cages were opened, the dogs' "learned helplessness" kept them from making any effort to leave the cages and escape the shocks. *Id.*

stage when the batterer apologizes, and the couple attempts to sustain “the illusion of bliss.”<sup>29</sup> The intermittency of the cycle and the unpredictability of the battery may destroy a victim’s ability to forecast what effect her behavior will have on her intimate partner, thus making her more likely to choose behavioral responses that keep her in the familiar situation than to choose other actions that would force her into a situation completely unknown to her.<sup>30</sup> In this view, someone enduring BWS has been stripped of her resolve.<sup>31</sup> She is often too frightened to leave, suspecting her batterer will come after her,<sup>32</sup> or she has entirely lost her will to escape.<sup>33</sup> From this stage on, some psychologists say a battered woman exhibits “learned helplessness.”<sup>34</sup> Eventually, she may reach a level of resigned terror at which she can foresee only two possible exits from her tortured life—her own death or her abuser’s.<sup>35</sup> At this point, if the severity of the attacks escalates to the life-threatening level, she may reasonably believe she has to strike back with lethal force in order to survive.<sup>36</sup>

Domestic violence experts have long disagreed with use of the term “Battered Woman’s Syndrome” for its failure to mention men and transgendered persons, its implied monolithic application to all female victims of domestic violence, and its connotations of mental disorder.<sup>37</sup> Battering causes psychological and behavioral changes but not pathological illness.<sup>38</sup> Another major argument against the use of the term BWS is that “‘syndrome’ signals incapacity to employ reason,” thus undermining the logic of self-defense, which is based on a person’s ability to reason and react while in danger.<sup>39</sup> Sustaining the logic of self-defense is important, as battered women met with murder charges often invoke this defense.<sup>40</sup>

In 1996, the National Institute of Justice issued a report recommending the

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29. WALKER, *TERRIFYING LOVE*, *supra* note 27, at 42-45.

30. *Id.* at 50-51.

31. See DONALD ALEXANDER DOWNS, *MORE THAN VICTIMS: BATTERED WOMEN, THE SYNDROME SOCIETY, AND THE LAW* 83 (1996).

32. WALKER, *TERRIFYING LOVE*, *supra* note 27, at 256 (“Leaving the batterer is, in many cases, more dangerous than remaining . . . [S]eparation is the time of greatest volatility and peril in battering relationships.”); CALIFORNIA INSTITUTION FOR WOMEN, *CONVICTED SURVIVORS: AN OVERVIEW OF ORIGINAL RESEARCH BY ELIZABETH DERMODY LEONARD* 3 (2000) (“Women who leave are at a 75% higher risk of being killed by their abusers and remain at increased risk for at least two years.”).

33. See WALKER, *TERRIFYING LOVE*, *supra* note 27, at 267 (“In nearly every case in which a battered woman kills her abuser, there exists that psychological bond between her and the batterer . . . which renders her incapable of acting effectively to escape or to save her own life, without killing him.”).

34. DOWNS, *supra* note 31, at 81-82.

35. See WALKER, *TERRIFYING LOVE*, *supra* note 27, at 104-06.

36. *Id.*

37. Lemon, *supra* note 24.

38. Hassan, *supra* note 23; see also Minouche Kandel, *Moving Away From Victim Blaming: Challenging the Notion of “Battered Women’s Syndrome”*, *LIFELINE: SUPPORT NETWORK FOR BATTERED WOMEN’S NEWSLETTER* (Mountain View, Cal.), Summer 1997.

39. DOWNS, *supra* note 31, at 6-7.

40. Hassan, *supra* note 23.

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replacement of the counterproductive misnomer “BWS” with the more appropriate description, “battering and its effects,” in order to abate misunderstandings.<sup>41</sup> In the same year, the California Supreme Court cited problems with BWS terminology in *People v. Humphrey*.<sup>42</sup> In 2000, the state legislature responded with an amendment to the California Evidence Code, renaming section 1107 “Expert Witness Testimony on Battered Women’s Experiences.”<sup>43</sup> While the title changed, the language within the statute still refers to BWS.<sup>44</sup> As a result, the statute providing habeas corpus relief, enacted two years later, used the same language.<sup>45</sup> Judges, the Board of Prison Terms (“BPT”), and the governor have continued to refer to BWS.<sup>46</sup> Many governmental entities recognize the deficiencies of the obsolete terminology, but few are actually using the proper terminology to reflect the contemporary view of battering.<sup>47</sup> Women and their advocates must grapple with a system that relies on archaic, insufficient terminology and the misleading connotations that result when they file petitions for a writ of habeas corpus.

Beyond the terminology, some scholars in the field of domestic violence take issue with Walker’s entire framework of BWS. One major argument is that expert testimony intended to demonstrate the reasonableness of a battered woman’s actions instead “reinforces an image of women as weak, crazy, powerless ‘victims’ in need of protection.”<sup>48</sup> Rather than treating women as reasonable persons who acted sensibly in order to save their own lives,<sup>49</sup> the reinforcement of the victim stereotype suggests that women are feeble, inferior

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41. See Lemon, *supra* note 24.

42. *People v. Humphrey*, 921 P.2d 1, 7 n.3 (Cal. 1996). Citing the amicus curiae brief submitted by the California Alliance Against Domestic Violence, the court stated:

We use the term “battered women’s syndrome” because Evidence Code Section 1107 and the cases use that term. We note, however, that according to amici curiae California Alliance Against Domestic Violence et al., “. . . the preferred term among many experts today is ‘expert testimony on battering and its effects’ or ‘expert testimony on battered women’s experiences.’ Domestic violence experts have critiqued the phrase ‘battered women’s syndrome’ because (1) it implies that there is one syndrome which all battered women develop, (2) it has pathological connotations which suggest that battered women suffer from some sort of sickness, (3) expert testimony on domestic violence refers to more than women’s psychological reactions to violence, (4) it focuses attention on the battered woman rather than on the batterer’s coercive and controlling behavior and (5) it creates an image of battered women as suffering victims rather than as active “survivors.”

*Id.*

43. CAL. EVID. CODE § 1107(e) (Deering Supp. 2004) (“This section shall be known, and may be cited as, the Expert Witness Testimony on Battered Women’s Experiences Section of the Evidence Code.”).

44. *Id.* at § 1107(a)-(e).

45. CAL. PENAL CODE § 1473.5(a)-(d) (Deering Supp. 2004).

46. Hassan, *supra* note 23; see also Lemon, *supra* note 24.

47. Hassan, *supra* note 23; see also Lemon, *supra* note 24.

48. Shelby A.D. Moore, *Battered Women Syndrome: Selling the Shadow to Support the Substance*, 38 HOW. L.J. 297, 301 (1995).

49. SCHNEIDER, *supra* note 22, at 80-81.

to men, and in need of the court's sympathy and special treatment.<sup>50</sup> Another chief criticism attacks the construct of "learned helplessness" for implying that a woman's volition is impaired solely by a belief that she is not powerful enough to leave her batterer, while ignoring economic,<sup>51</sup> social, and legal incentives for her to stay.<sup>52</sup> Further critique suggests that the image of the BWS victim stems from the traditional Anglo-American ideal of women as "pious, pure, submissive, and domestic," favoring white, middle-class, stay-at-home mothers.<sup>53</sup> The implications of this skewed, exclusive model are especially detrimental to battered women of color,<sup>54</sup> particularly African American women, who are stereotyped as strong, masculine, and angry—a discordant image that discourages judges and jurors from considering them "victims" of BWS.<sup>55</sup> Disapproving scholars want the criminal justice system to recognize battered women not as victims, but as capable, rational beings who may be required to defend themselves when overpowered mentally and physically by an abuser.<sup>56</sup>

### Evidence and Relevance

Evidence of domestic violence does not equal an automatic permission slip for any battered woman to kill her abuser.<sup>57</sup> Battering and its effects is not, in itself, a criminal defense to murder; rather, it is an evidentiary supplement to established criminal defenses, the most common being self-defense.<sup>58</sup> Some advocates reject any reference to battering and its effects as a defense and fear the resulting backlash from such misrepresentation of domestic violence as an automatic excuse for crimes against perpetrators.<sup>59</sup> Although evidence of battering and its effects may be but one component of a full defensive strategy, it is neither an optional nor a trivial one.

A history of domestic violence by the homicide victim on the perpetrator is no mere detail to disregard at trial. On the contrary, it is an essential element in contextualizing the crime by explicating emotional and mental effects of domestic violence on the defendant's perceptions; thereby illuminating the defendant's state of mind at the time of the offense.<sup>60</sup> Testimony as to the effects

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50. *Id.* at 301-02.

51. OLA W. BARNETT & ALYCE D. LAVIOLETTE, *IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY* 40 (2d ed. 2000).

52. Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L.J. 217, 297 (2003).

53. *Id.*; Moore, *supra* note 48, at 324.

54. SCHNEIDER, *supra* note 22, at 82.

55. Moore, *supra* note 48, at 302-03.

56. *Id.* at 325-26.

57. Lemon, *supra* note 24.

58. *Id.*

59. *Id.*

60. JANET PARRISH, NAT'L CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, *TREND ANALYSIS: EXPERT TESTIMONY ON BATTERING AND ITS EFFECTS IN CRIMINAL CASES* 7, 24-27 (1995).

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of battering confirms the honesty and reasonableness of the defendant's belief that the decedent presented imminent danger to her life or her safety; thus illustrating the relevance of the defendant's perception of temporal proximity of the perceived danger.<sup>61</sup> A domestic violence expert can also reveal the "defendant's diminished capacity, mental defect, or lack of intent to commit the charged crime."<sup>62</sup> Another aim is to explain why many women do not leave battering relationships and by doing so, help to bolster the defendant's credibility.<sup>63</sup> "Without expert testimony where it's relevant in cases of domestic violence, justice is not going to be served," Olivia Wang, Habeas Project co-founder and Northern California director, commented. "And, you're going to find the women . . . being committed to lengthy prison sentence[s] totally contrary to any notions of fairness or justice," she added.<sup>64</sup>

Before 1992, and in many cases since, judges and juries condemned battered women to life in prison based solely on incomplete facts drawn from the immediate time frame of the murder, without knowledge of the violent history between the perpetrator and the victim.<sup>65</sup> In these cases, the trier(s) of fact knew only that the defendant, A, killed her intimate partner, B, on C date in D place with E weapon, but this was far less than the complete story. What they did not know was how often he had threatened her life, or how many times she had been hospitalized or how she had gotten those scars, or what he made her do at gunpoint or why she had not told anyone. The criminal justice system purports to maintain the ideal of a fair trial free from unnecessary prejudice to either party. Putting battered women on trial in the absence of relevant evidence of their exposure to domestic violence or an expert's valid explanation of the consequences of this exposure hardly seems fair.<sup>66</sup> In the same vein, keeping women locked up in prison for decades beyond the time period a court would have assigned in light of the contextualized truth is equally unjust. This is one of the main problems the habeas law attempts to remedy.

Testimony on battering and its effects is also "admitted to dispel the common misconception that a normal or reasonable person would not remain in such an abusive relationship."<sup>67</sup> An explanation of the effects of battering can help a fact-finder understand how the mental and emotional states of a domestic violence victim may compel her to stay with an abusive partner instead of seeking external aid.<sup>68</sup>

A domestic violence expert's testimony can also serve to reinforce the

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61. *Id.*

62. *Id.* at 8.

63. *Id.* at 7-8, 26.

64. Telephone Interview with Olivia Wang, Co-Founder and Northern California Director, Habeas Project, Steering Committee Member, Free Battered Women (Nov. 26, 2003) (on file with author).

65. *See* PARRISH, *supra* note 60, at 2-3.

66. *Id.*

67. DOWNS, *supra* note 31, at 79.

68. PARRISH, *supra* note 60, at 7, 57.

defendant's claim of self-defense. In California, there are two parts to the self-defense doctrine.<sup>69</sup> A defendant can argue perfect self-defense when she honestly and reasonably believed in the imminence of danger.<sup>70</sup> If her belief was honest but unreasonable, she can claim imperfect self-defense.<sup>71</sup> Expert testimony helps "to substantiate . . . [the domestic violence victim's] belief that she was in imminent peril of death or serious bodily harm."<sup>72</sup>

Many instances of battered women killing their batterers do fit the traditional scheme of perfect self-defense.<sup>73</sup> A review of 223 cases, which resulted in 270 appellate opinions has shown that confrontation provoked the woman's actions in seventy-five percent of the cases, meaning that the murder victim was assaulting the perpetrator at the time of the killing.<sup>74</sup>

While most jurors naturally comprehend the notion of self-defense when a person is instantly reacting to an attack, they nonetheless need elucidation to understand how a terrorized person is also acting in self-defense when she eventually reacts after years of systemic abusive attacks, even if the immediate circumstances present no apparent danger to an outside observer.<sup>75</sup> In arguments of imperfect self-defense, expert testimony becomes especially crucial for proving the impression of imminent danger when battered women kill their abusers in nonconfrontational settings (such as while he is sleeping or otherwise incapacitated).<sup>76</sup> Domestic violence advocate and expert witness Nancy K. D. Lemon has noted that many times, in order to seize her only opportunity to physically stand up for herself, a woman must act while her batterer is not confronting her.<sup>77</sup> "Because if she waits until the moment when he's actually coming at her about to kill her, it's too late. He's going to kill her."<sup>78</sup> As author Cynthia Gillespie has written, "In a situation of domestic violence, abuse does not occur as the singular episode the law assumes, but rather as an ongoing, constant threat from which the woman cannot, or believes she cannot, escape."<sup>79</sup> Thus for the battered woman, "the danger of death or serious bodily harm is

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69. Cornia, *supra* note 8, at 109.

70. *Id.*

71. *Id.*

72. DOWNS, *supra* note 31, at 79.

73. SCHNEIDER, *supra* note 22, at 116-17; *see also* CYNTHIA K. GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW 49-69 (1989). Traditional self-defense doctrine was based on men's experiences and functions "as a guide to manly behavior in dangerous circumstances," failing to accommodate women who use self-defense fairly, but differently from men. *Id.* at 67.

74. Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 397 (1991).

75. Kimberly Edds, *Battered Women's New Day in Court*, WASH. POST, Nov. 22, 2002, at A03 (quoting Kenneth Theisin, lawyer with California Coalition for Battered Women in Prison, now called Free Battered Women).

76. *Id.*

77. Interview with Nancy K.D. Lemon, Associate Editor, Domestic Violence Report, in Berkeley, Cal. (Dec. 1, 2003) (on file with author).

78. *Id.*

79. GILLESPIE, *supra* note 73, at 68.

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*always imminent.*"<sup>80</sup>

In order to apply battering and its effects appropriately to relevant criminal trials and petitions, one should strongly grasp its meaning, be aware of its misuse, recognize its importance, and know its power within the legal and penal systems. The appropriate application of battering and its effects is vital to domestic violence survivors charged with the murder of their batterers.

**THE LONG, HARD ROAD TO REPAIRING JUSTICE**

*How can I bring back,  
the life I took?  
A tragic life moment, can't be  
overlooked.  
Prison was called for,  
yes, I agree,  
I'm not asking for sympathy.  
Was life the answer,  
when abuse took its toll?  
Will it ever be enough  
as years come and go?  
Over twenty years later,  
imprisoned, still blamed,  
yet still unprotected,  
in this political game.*

Battered women on trial need laws providing and protecting the use of expert testimony of battering and its effects. While the habeas statute is helpful, it falls far short of comprehensive provision and protection. The application of the law, due to its narrow framing, is excessively exclusive. As a result, fewer women's cases fit within the tight parameters than the law originally intended. The process to apply the law is excessively difficult due to lack of resources and cooperation, and the brunt of the law's execution has fallen on volunteers.

**No Shortcuts in Sight: Shortcomings of the Habeas Law**

Having the statute in effect does not mean it is fully effective.<sup>81</sup> Advocates for battered women prisoners argue that its scope needs to be broadened to comport with battering and its real-life corollaries of how survivors of domestic violence become entangled in illegal activities.<sup>82</sup> One of the major limitations of

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80. *Id.*

81. Hudson Sangree, *Habeas Law In Trouble: A Statute to Help Women Who Kill Their Abusers Sounds Good in Theory but Often That's All It Is*, DAILY J. May 27, 2003 (quoting Olivia Wang), available at <http://www.freebatteredwomen.org/dailyjournalhabeas.htm>.

82. Lee Attachment, *supra* note 10.

the law is the cut-off date, which makes it applicable only to women convicted before January 1, 1992, when the evidence code began admitting expert testimony of battering and its effects.<sup>83</sup> Johanna Hoffmann, co-coordinator of Free Battered Women, expressed her frustration with the restriction: "It's absurd to expect that suddenly because a law was put on the books that everyone knew how to use it properly and adequately."<sup>84</sup> Several factors, including ineffective counsel who fail to submit such evidence, have prevented the legitimate inclusion of expert testimony on the effects of battering in many trials and pleas occurring since 1992.<sup>85</sup> The statute's narrow application leaves all the battered women convicted in the absence of pivotal circumstantial evidence in the last twelve years without judicial recourse.

The statute confines itself to convictions of first- and second-degree murder, in violation of section 187 of the California Penal Code.<sup>86</sup> Among the three women's institutions in California,<sup>87</sup> there are approximately 425 prisoners who were convicted of first- or second-degree murder before 1992.<sup>88</sup> A 1994 study indicated that sixty percent of all women in these prisons are survivors of domestic violence by their intimate partners.<sup>89</sup> How many of these women were suffering from battering and its effects at the time they were coerced by their batterers into committing other crimes, such as robbery, drug trafficking, forgery, and prostitution, is unknown.<sup>90</sup> Section 1473.5 does not apply to them. It does not apply to battered women charged with conspiracy to murder. Nor does it apply to women who were originally tried under section 187, but who accepted plea bargains for lesser crimes, namely manslaughter.<sup>91</sup>

Application of the statute is also restricted to cases in which the homicide victim was the batterer, excluding cases in which the battered woman was forced by her abuser to participate in the murder of another person.<sup>92</sup> To date, lawyers have only invoked the statute for battered women convicted of murdering their abusive intimate partners.<sup>93</sup> However, there are several women in California prisons convicted of killing abusive family members or the battering intimate

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83. CAL. PENAL CODE § 1473.5(b) (Deering Supp. 2004).

84. Interview with Johanna Hoffmann, *supra* note 21.

85. *Id.*

86. CAL. PENAL CODE § 187(a) (Deering Supp. 2003) ("Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.").

87. The three women's institutions in California are Central California Women's Facility ("CCWF"), Valley State Prison for Women ("VSPW"), and California Institution for Women ("CIW").

88. Interview with Johanna Hoffmann, *supra* note 21.

89. Press Packet, California Coalition for Women Prisoners, *supra* note 12, at 22 (citing BARBARA BLOOM ET AL., CENTER ON JUVENILE CRIME AND CRIMINAL JUSTICE REPORT, WOMEN IN CALIFORNIA PRISONS: HIDDEN VICTIMS OF THE WAR ON DRUGS 3 (May 1994)).

90. See Interview with Johanna Hoffmann, *supra* note 21; see also SCHNEIDER, *supra* note 22, at 115.

91. Interview with Johanna Hoffmann, *supra* note 21.

92. CAL. PENAL CODE § 1473.5(a) (Deering Supp. 2004).

93. Interview with Johanna Hoffmann, *supra* note 21.

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partners of their sisters or brothers.<sup>94</sup> The vague statutory language leaves open an opportunity for broader future interpretation of the word “batterer” to include nonpartners.<sup>95</sup>

Despite the statute’s amended five-year deadline extension,<sup>96</sup> battered women prisoners and their allies insist this is not enough time to file all of the petitions, which can sometimes take more than one year to complete.<sup>97</sup> Many feel the exercise of a battered woman’s rights should have no deadline at all.<sup>98</sup>

### Additional Obstacles Impeding Progress

Battered women in prison must first know their rights to possible relief, have the ability to communicate their status and history, and have access to someone who can assist them before any dream of emancipation can become a reality. Consequently, prison facilities’ cooperation is vital to the habeas process. Unfortunately, prison officials present problems for legal teams by refusing to allow presentations to large groups and by denying lawyers access to individual prisoners.<sup>99</sup> Lawyers have reported being met with resistance at the prisons and being refused access to their incarcerated clients.<sup>100</sup>

The situation is slowly improving. Recently, Free Battered Women, a project of the California Coalition for Women Prisoners, has been able to give presentations to the support groups for survivors of domestic violence at Central California Women’s Facility (“CCWF”), to Convicted Women Against Abuse at the California Institution for Women (“CIW”), as well as to the Long Termers’ Organization (people serving life sentences) at CCWF and Valley State Prison for Women (“VSPW”).<sup>101</sup> Clubine, who founded Convicted Women Against Abuse while she was at CIW, has been transferred to VSPW where she persists in her efforts to begin a battered women’s support group.<sup>102</sup> Advocates hope the warden and officers at her facility will cooperate with her on this project. Furthermore, they encourage all three prisons to continue in the direction of greater accessibility and cooperation, as additional improvements in these areas are vital to identification of and communication with prisoners who might be entitled to relief under the habeas law.

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94. *Id.*

95. *Id.*

96. On July 29, 2003, Governor Davis signed S.B. 784 (Sen. Betty Karnette), which had been approved by both the Senate and Assembly. S.B. 784, 2003-2004 Reg. Sess. (Cal.), available at [http://www.leginfo.ca.gov/pub/bill/sen/sb\\_0751-0800/sb\\_784\\_bill\\_20030728\\_history.html](http://www.leginfo.ca.gov/pub/bill/sen/sb_0751-0800/sb_784_bill_20030728_history.html) (last visited Jan. 29, 2004). There was opposition from the California District Attorneys Association, expressing concern that the bill would further prolong the habeas process. Sangree, *supra* note 81.

97. Sangree, *supra* note 81.

98. *Id.* (quoting Tara Borelli, staff attorney with Break the Cycle).

99. *Id.*

100. Telephone Interview with Olivia Wang, *supra* note 64.

101. Interview with Johanna Hoffmann, *supra* note 21.

102. Press Packet, California Coalition for Women Prisoners, *supra* note 12, at 8-9.

Once advocates on the outside are able to circulate information, via presentations, pamphlets, or questionnaires, most of the battered women on the inside are eager and active to educate one other, build alliances, strategize for relief, and collectively work toward release.<sup>103</sup> Many<sup>104</sup> of them have strong support networks outside the prison system that are active in fundraising and public support campaigns.<sup>105</sup> Wang pointed to the family of Rosario Muñoz, a formerly incarcerated woman, as a prime example of endless optimism and relentless activism; the family promoted their cause up and down the California coast until Muñoz was freed.<sup>106</sup>

The statute provides only the opportunity to seek habeas corpus relief by filing a petition. It does not, however, provide funding to locate eligible prisoners, to perform costly investigations, to employ counsel, or to pay expert witnesses.<sup>107</sup> Evaluations and testimony of domestic violence experts are indispensable to habeas petitioners' cases. However invaluable the experts might be, their fees of several thousand dollars often thwart filing efforts. There are too few domestic violence experts<sup>108</sup> in the state to satisfy all forty-one identified prisoners' needs, let alone to complete the reports on a volunteer basis.<sup>109</sup>

With no funding provided, no legal counsel assigned, and no specific directions for the implementation of the law, volunteers have become pioneers charting the course, carrying the load, and attempting to clear the way. The only organized, collective response to the inadequate statute is the Habeas Project,<sup>110</sup> a statewide collaboration of Free Battered Women, The California Women's Law Center, USC Law School's Post Conviction Justice Project, and Legal Services for Prisoners with Children. Habeas Project has, hitherto, identified forty-one potential candidates for relief and is currently assisting thirty-five of them through legal teams consisting of lawyers, law students, family members, and advocates.<sup>111</sup> Thus far, the teams' efforts have resulted in the release of six women,<sup>112</sup> three of whom, Marva Wallace,<sup>113</sup> Susan Deering,<sup>114</sup> and Mary

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103. See Interview with Johanna Hoffmann, *supra* note 21. Hoffmann acknowledged that a few battered women prisoners are more apprehensive than they are responsive. "The potential for being let down again can be a lot stronger than the sense of hope," she said. *Id.*

104. *Id.* While relatives and friends of most prisoners remain hopeful and enthusiastic in efforts to free their loved ones, there are many who have lost the desire to assist a new effort that they fear will end in yet another devastating disappointment. *Id.*

105. See Telephone Interview with Olivia Wang, *supra* note 64.

106. *Id.*

107. See Lee Attachment, *supra* note 10.

108. Interview with Nancy K.D. Lemon, *supra* note 77. Lemon estimates that there are fifteen domestic violence experts who testify in trials in California. *Id.*

109. Interview with Johanna Hoffmann, *supra* note 21.

110. Lee Attachment, *supra* note 10.

111. *Id.*

112. E-mail from Olivia Wang, Co-Founder and Northern California Director, Habeas Project, Steering Committee Member, Free Battered Women, to Jill E. Adams, Author, Berkeley Women's Law Journal (Jan. 30, 2004) (on file with author) [hereinafter E-mail from Olivia Wang, Jan. 30, 2004]. Three of the women were freed on other grounds, such as

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Ramp,<sup>115</sup> were released by way of the habeas statute.<sup>116</sup> The remaining clients' petitions are at various stages of the filing process.<sup>117</sup>

Identifying eligible battered women prisoners has been difficult, and some advocates suspect there may be hundreds more, currently serving sentences in California for killing their battering intimate partners, who have not been recognized as eligible for a habeas petition.<sup>118</sup> There are some prisoners who feel they have strong cases for habeas relief but are unable to complete the questionnaires that require them to recall painful memories of abuse in the presence of hostile cellmates.<sup>119</sup> Habeas Project encourages those women to set up a meeting at the prison when they can complete the forms along with an advocate, who can then assign those who qualify to legal teams.<sup>120</sup>

The legal teams encounter numerous aggravating blocks and barriers in filing habeas petitions for their clients. For example, the costs of investigating ten to twenty-year-old cases are exorbitant.<sup>121</sup> The investigative hardships are not just financial. Lawyers struggle in vain to hunt down forgotten case files and trial transcripts, destroyed police and medical records, and family members who have died, moved away, or no longer wish to participate.<sup>122</sup> The searches tend to be not only fruitless, but also duplicative, since many times the BPT has already spent 200 to 300 hours per case investigating a woman who is eligible for parole.<sup>123</sup> The Board keeps the investigation record in a confidential section of each prisoner's central file to which even she is denied access.<sup>124</sup> Once lawyers have filed a habeas petition for their clients, they can gain access to the data by a

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compassionate release. *Id.*

113. Press Packet, California Coalition for Women Prisoners, *supra* note 12, at 11. Wallace was released in October 2002 after serving over seventeen years in prison. *Id.*

114. *Id.* Deering was released in December 2002 after serving twenty-three years in prison. *Id.*

115. E-mail from Olivia Wang, Co-Founder and Northern California Director, Habeas Project, Steering Committee Member, Free Battered Women, to Jill E. Adams, Author, Berkeley Women's Law Journal (Apr. 7, 2004) (on file with author). Ramp was released in April 2004 after serving over twenty years in prison. *Id.*

116. E-mail from Olivia Wang, Jan. 30, 2004, *supra* note 112.

117. *Id.*

118. Press Packet, California Coalition for Women Prisoners, *supra* note 12, at 22; Interview with Johanna Hoffmann, *supra* note 21. Hoffmann said:

If you just look at the number of women who we know are incarcerated prior to 1992 for murder one and two, for there to be 425 women who were convicted of murder one and two and then to know that sixty percent of those women statistically were in abusive relationships in their adult lives, it is impossible for me to believe that there are [forty-one] of them who are in for killing their abusers. There have to be significantly more.

Interview with Johanna Hoffmann, *supra* note 21.

119. *Id.*

120. *Id.*

121. Sangree, *supra* note 81 (quoting Olivia Wang); E-mail from Olivia Wang, Jan. 30, 2004, *supra* note 112 (stating that the costs of filing a petition, which are absorbed by volunteer attorneys, could easily exceed \$10,000).

122. See Interview with Johanna Hoffmann, *supra* note 21.

123. Sangree, *supra* note 81 (quoting Olivia Wang).

124. Interview with Johanna Hoffmann, *supra* note 21.

court-ordered subpoena.<sup>125</sup> However, legal teams need the information much earlier in the process. The information is essential to build an initial, legitimate claim to present to the court in order to reach the point of subpoenaing records.<sup>126</sup> Prisoners who have been investigated by the BPT do receive brief summaries of the lengthy reports, which they can share with their counsel.<sup>127</sup> Some advocates and domestic violence experts say the summaries are not nearly sufficient material with which to file a habeas petition, and they urge the BPT to share the full reports with the prisoners and their lawyers, redacted if necessary to protect witnesses from retaliation.<sup>128</sup>

This strict new law, with its narrow application and overly complex process, leaves battered women prisoners and their advocates looking for another way out.

### **BLOCKED PATHWAYS TO ALTERNATE EXITS**

*15 to life,  
was all that was heard,  
my prison has changed,  
yet, not the words.  
Guilty, you've been found,  
You're on your way,  
Politics will ensure you stay.  
The Board of Prison Terms,  
they say is impartial,  
this must be a joke,  
they are all ex-police, D.A.s,  
Sheriffs & Marshals.*

Although the habeas process is flawed, the other options may not be any more attractive. The habeas law is one of four potential routes in California that can carry a battered woman to her freedom. The others are parole, clemency, and resentencing, none of which are easy to come by for a woman convicted of killing her intimate partner.

### **Parole**

A second avenue leading to liberty is parole, but it presents its own

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125. *Id.*

126. *Id.*

127. Sangree, *supra* note 81 (quoting Bill Sessa, the legislative representative for the BPT). Sessa said the BPT did not share the complete investigative reports because of confidential information therein contained. He insisted the information provided in the shortened reports offered an adequate basis for a habeas petition. *Id.*

128. See Interview with Nancy K.D. Lemon, *supra* note 77.

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challenges. The BPT recommends parole for only two percent<sup>129</sup> of the 4000 lifers<sup>130</sup> up for review each year, and even fewer are actually released.<sup>131</sup> At least half of the habeas candidates are either not suitable for parole at this time or have had unfavorable evaluations.<sup>132</sup> The Board bases its decisions on an insufficient definition of the unsuitable term “BWS.”<sup>133</sup> This chosen terminology and characterization fail their designated purposes because they essentialize the domestic violence survivor’s experience and pathologize her, and by doing so, reinforce the stereotype of battered women as irrational, illogical, and unreasonable.<sup>134</sup> In addition, the BPT often considers an abusive relationship to be an indicator of an unstable social history, which counts *against* a woman up for parole.<sup>135</sup> The difficulty and sometimes impossibility of recovering records for twenty-year-old cases leads the board to find claims of battering and its effects either only partially substantiated or totally unsubstantiated.<sup>136</sup>

Politics play an especially large role in the California parole system. A 1988 voter-approved initiative<sup>137</sup> made California one of only three<sup>138</sup> states in which the governor has nearly exclusive power to overturn BPT decisions. Former Governor Gray Davis did so with robot-like regularity, building a record

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129. FREE BATTERED WOMEN, STATISTICS ON PAROLE AND BATTERED WOMEN, *available at* <http://www.freebatteredwomen.org/stats.htm> (last visited Jan. 29, 2004).

130. Harriet Chiang, *Governor Paroles Killer—Apparent New Policy: Schwarzenegger, Unlike Davis, Heeds Judgment of Board*, S.F. CHRON., Nov. 22, 2003, at A1.

131. FREE BATTERED WOMEN, SUMMARIES OF SURVIVORS DENIED PAROLE, *available at* <http://www.freebatteredwomen.org/parolesummaries.htm> (last visited Jan. 29, 2004). Davis reversed parole for all but seven lifers. Schwarzenegger reversed parole for eleven lifers as of January 19, 2004. *Id.*

132. E-mail from Johanna Hoffmann, Co-Coordinator, Free Battered Women, to Jill E. Adams, Author, Berkeley Women’s Law Journal (Feb. 18, 2004) (on file with author).

133. *Id.*; CAL. CODE REGS. tit. 15, § 2000(b)(8) (2004), Cal. Code of Regulations (“Battered Woman Syndrome. Evidence of the effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.”); *see also* Cornia, *supra* note 8, at 99.

134. *See supra* text accompanying notes 37-56.

135. Interview with Johanna Hoffmann, *supra* note 21.

136. *Id.*; Lee Attachment, *supra* note 10. A finding by the BPT of a “substantiated” BWS claim is not necessary to receive habeas relief, but having it on a woman’s record can strengthen her petition. *Id.*

137. CAL. CONST. art. V, § 8.

Governor’s Parole Review provides that no decision of the parole authority which grants, denies, revokes or suspends the parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days. Permits governor to review the decision during this period subject to statutory procedures. States that the governor may only affirm, modify or reverse a parole authority decision on the basis of the same factors which the parole authority may consider. Requires governor to report to the Legislature the pertinent facts and reasons for each parole action.

*Id.*

138. Chiang, *supra* note 130. Maryland and Oklahoma are the only other states with similar laws. *Id.*

to reflect his alleged no-parole policy against murderers.<sup>139</sup> During his almost six years in office, Davis granted parole to only seven of 261 homicide convicts recommended by the Board.<sup>140</sup> Three of the grantees, Rose Ann Parker,<sup>141</sup> Cheryl Sellers,<sup>142</sup> and Maria Suarez,<sup>143</sup> were women convicted of killing or conspiring to kill their batterers.<sup>144</sup> Several other women who were first-time offenders with perfect prison records had been recommended two times by the board, only to be denied by the governor.<sup>145</sup> Wang has filed a petition challenging Davis's second parole reversal for her client, Flozelle Woodmore, and plans to file another petition under section 1473.5.<sup>146</sup> In 2002, the court released Marva Wallace on a habeas petition just two weeks after Davis had denied her parole.<sup>147</sup> Judge David S. Wesley overturned Wallace's murder conviction, stating that she had been convicted at a time when courts knew very little about the effects of domestic violence and that her original trial probably would have had a different outcome had such evidence been allowed.<sup>148</sup> Davis responded to criticism for having previously denied Wallace's parole by saying the judiciary is in a better position than he to decide such cases.<sup>149</sup>

While some critics believe that the governor's right of review is a legitimate power but feel that former governors Wilson and Davis abused their discretion in using it, others have contended that the power of review is itself unconstitutional.<sup>150</sup> However, the California Supreme Court upheld the

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139. See FAMA ET AL., THE CALIFORNIA STATE PRISONERS HANDBOOK: A COMPREHENSIVE PRACTICE GUIDE TO PRISON & PAROLE LAW 171 (3d ed. 2001) ("In 1999, Governor Gray Davis stated he would not allow anyone convicted of murder to be paroled."); Pamela Burke, *Governor-in-Limbo Decides Battered Woman's Fate*, WOMEN'S E-NEWS (Sept. 8, 2003), at <http://womensenews.org/article.cfm/dyn/aid/1517/context/archive>; FREE BATTERED WOMEN, SUMMARY OF CALIFORNIA SUPREME COURT DECISION ON PAROLE, available at <http://www.freebatteredwomen.org/rosenkrantzdecision.htm> (last visited Feb. 19, 2004). [hereinafter FREE BATTERED WOMEN, SUPREME COURT DECISION]. The California Supreme Court held that Governor Davis did not have a blanket no-parole policy, based on his "individual analysis" of each case and his approval of parole for two murderers (up until that time). FREE BATTERED WOMEN, SUPREME COURT DECISION, *supra*.
140. Press Packet, California Coalition for Women Prisoners, *supra* note 12, at 22.
141. *Id.* at 12. Parker was released in December 2000 after serving fourteen years. *Id.*
142. *Id.* Sellers was released in June 2003 after serving eighteen years. *Id.*
143. *Id.* at 11-12. Davis scheduled Suarez's release for March 2004. However, Schwarzenegger freed her in December 2003, after she had served twenty-two years in prison.
144. Interview with Johanna Hoffmann, *supra* note 21.
145. Press Packet, California Coalition for Women Prisoners, *supra* note 12, at 9-10.
146. E-mail from Olivia Wang, Jan. 30, 2004, *supra* note 112.
147. Anna Gorman, *Wife Who Killed Husband Free After 17 Years: New Law on Battered Women's Syndrome Brings Release After Davis Denied Parole*, L.A. TIMES, Oct. 6, 2002, at A1.
148. *Id.*
149. Elizabeth Fernandez & Harriet Chiang, *1st Killer Freed Under Battered-Woman Law: New Trial for Wife Who Shot Husband in '84*, S.F. CHRON., Oct. 26, 2002, at A1.
150. *Tilting Toward Davis on Parole: Justices Are Wary of Second-guessing Governor Over Freeing a Killer Described as a Model Prisoner*, L.A. TIMES, Oct. 9, 2002, at B7. Five California superior court judges ruled that Davis acted illegally by overturning various parole decisions. One court of appeal ruled in favor of Davis and one ruled against him. *Id.*

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constitutionality of the power in *In re Rosenkrantz*, where the Court held, in a 5-2 decision, that the governor can deny releases approved by the BPT as long as there is evidence to support a nondiscriminatory, individualized consideration of the facts of the case and a rational basis for his decision.<sup>151</sup> Those critical of the gubernatorial license recognize that it is better to spend energy on influencing governors' use of the power through public education and media campaigns about specific parole candidates than it is to spend energy on efforts to amend the state constitution.<sup>152</sup>

### Clemency

A third, albeit narrow, road to deliverance is clemency, though clemency does not necessarily denote release.<sup>153</sup> In 1992, Free Battered Women, then the California Coalition for Battered Women in Prison, submitted to former governor Pete Wilson a mass clemency petition for thirty-four battered women prisoners convicted of killing their abusers.<sup>154</sup> Wilson granted clemency to three, denied it to seven, and made no decision on twenty-four of the petitions.<sup>155</sup> Of the three women granted clemency, he released only one and reduced the sentences for the other two.<sup>156</sup>

No California law requires the governor to make a decision on any clemency request. Wilson's successor, Davis, dealt with clemency petitions by sending them back to the BPT.<sup>157</sup> But if the BPT had not yet investigated a woman's case, and if her plea first crossed the board's desk as a clemency request, it could negatively affect her individual parole investigation.<sup>158</sup> Therefore, Davis's hasty abdication could have damaged more than one petitioner's chances of being recommended for parole.

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151. *In re Rosenkrantz*, 59 P.3d 174 (Cal. 2002), *cert. denied*, 538 U.S. 980 (2003).

152. Lee Attachment, *supra* note 10.

153. Scott Gregory Baker, *Deaf Justice?: Battered Women Unjustly Imprisoned Prior to the Enactment of Evidence Code 1107*, 24 GOLDEN GATE U. L. REV. 99, 117 (1994); *see also* CAL. CONST. art. V, § 8; FREE BATTERED WOMEN, HISTORY OF THE CLEMENCY MOVEMENT IN CALIFORNIA, at <http://www.freebatteredwomen.org/history.htm> (last visited Jan. 29, 2004). The governor may grant clemency to a prisoner when circumstances require an act of leniency or mercy to render justice. In doing so, the governor may grant a commutation (reduced sentence), a pardon (augmented rights of citizenship), or a reprieve (stay of execution). Thus, every clemency grantee is not automatically released.

154. FREE BATTERED WOMEN, HISTORY OF THE CLEMENCY MOVEMENT IN CALIFORNIA, *supra* note 153.

155. FREE BATTERED WOMEN, STILL BEHIND BARS: CLEMENCY STATUS OF 34 BATTERED WOMEN PRISONERS, at <http://www.freebatteredwomen.org/whereare.htm> (last visited Jan. 29, 2004). Clubine was among the seven women denied clemency. *Id.*

156. *Id.* Wilson reduced the sentences of Jeanette Crawford, who remains in prison, and Brenda Aris, who was later released through parole. Frances Caccavale was immediately released. *Id.*

157. Discussion at meeting of Free Battered Women (Nov. 19, 2003) (notes on file with author).

158. *Id.*

### Resentencing

Resentencing is a fourth passageway to exit the system. In 1977,<sup>159</sup> California switched from indeterminate sentencing laws (ISL) to determinate sentencing laws (DSL).<sup>160</sup> Under the former system, courts had little control in assigning sentence lengths, especially to felons.<sup>161</sup> A court merely sentenced a defendant to prison “for the term prescribed by law.”<sup>162</sup> Within the first few years of the court’s primary sentencing, the parole board would fix a “term” at a length between the statutory minimum and maximum, which often spanned from one year to life.<sup>163</sup> The BPT derived the actual term length for nearly all prisoners from the manner in which they committed the crimes.<sup>164</sup> The parole board would later determine, based on prison conduct and efforts toward rehabilitation, if it could release the prisoner on parole before the end of that term.<sup>165</sup>

Because ISL had produced a wide range of sentence lengths for the same crime at the near-total discretion of the BPT,<sup>166</sup> DSL placed the responsibility of actual term resolution in the state penal code<sup>167</sup> and gave the court an expanded role in the process.<sup>168</sup> DSL created fixed sentences for most prison terms and changed the California Department of Corrections’s matrices for resolving sentence length.<sup>169</sup> DSL allows judges to choose among three terms of varying lengths for each felony offense.<sup>170</sup> Convicts are automatically assigned the

159. FAMA ET AL., *supra* note 139, at 170.

160. *Id.* at 130 (“The DSL consists of a large number of statutes—most of which are located in the California Penal Code, Health and Safety Code or Vehicle Code—and a series of court rules. The statutes and rules, and the numerous court decisions interpreting them, create an extremely complicated sentencing system. To further complicate matters, the laws which make up the DSL have been amended dozens of times since 1977.”).

161. April Kestell Cassou & Brian Taugher, *Determinate Sentencing in California: The New Numbers Game*, 9 PAC. L.J. 5, 8 (1978) (“[T]he parole board became the actual sentencing agency for all felons who went to prison, with full control over the felon’s term and release on parole.”).

162. *Id.*

163. *Id.*; Telephone Interview with Keith Wattlely, Staff Attorney, Prison Law Office (Feb. 16, 2004), confirmed by e-mail from Wattlely to Jill Adams, Author, Berkeley Women’s Law Journal (Feb. 24, 2004) (on file with author) [hereinafter Interview with Keith Wattlely].

164. Interview with Keith Wattlely, *supra* note 163.

165. *Id.* For example, the BPT could set a term for eighteen years and decide, at year fifteen, that the prisoner was suitable for parole. The prisoner would then serve the remainder of the sentence on parole. *Id.*

166. FAMA ET AL., *supra* note 139, at 172. Soon after the DSL became effective, Proposition 7 (Briggs’ Death Penalty Initiative) passed on November 8, 1978 and became California Penal Code section 190(a), which created a distinction between first- and second-degree murder, raised the minimum number of years a murderer must serve from seven to fifteen for second-degree murder, and set the minimum term at twenty-five years for first-degree murder. *Id.*

167. Cassou & Taugher, *supra* note 161, at 29 (citing CAL. PENAL CODE § 1170(a)(2)).

168. *Id.* at 24.

169. Interview with Johanna Hoffmann, *supra* note 21.

170. FAMA ET AL., *supra* note 139, at 130 (“The sentence that is selected is known as the ‘base term.’ Enhancements can add time to the base term.”); Cassou & Taugher, *supra* note 161, at 23.

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middle term, unless there is evidence of mitigation or aggravation to prompt assignment of the shorter or longer term.<sup>171</sup> Today, the BPT does not set the term until *after* it has found a prisoner suitable for parole.<sup>172</sup> Under the current system, the appropriate term might have already expired by the time the prisoner is released.<sup>173</sup>

Critics complain that the strict DSL guidelines, while giving courts a more substantial role in sentencing than did ISL, still leave judges without discretion in assigning punishment to individuals with varying levels of culpability.<sup>174</sup> Wang avowed, “Sentencing guidelines need to change . . . . There are draconian laws out there that result in really heavy-handed penalties for people.”<sup>175</sup> Until system-wide change takes place, advocates’ only option is to vie for each eligible prisoner’s resentencing separately. Resentencing on a case-by-case basis is disappointingly difficult to accomplish.<sup>176</sup> More than 120 days after original sentencing, resentencing is only possible with a referral to the court and a recommendation for resentencing by the BPT, which grants one or two each year.<sup>177</sup> Resentencing is a fairly uncharted territory for incarcerated survivors of domestic violence and their lawyers. Wang and her colleagues believe their clients have better chances of being released through one of the more conventional methods of parole and/or clemency, or by habeas corpus petitions.<sup>178</sup>

For battered women and their advocates, the long road to freedom is full of struggles, whichever of the four routes they choose. But they must forge ahead or be left behind.

**REMAINING BUMPS IN THE ROAD AND HOPES FOR A SMOOTHER RIDE AHEAD**

*The sunset will set in SB 799,  
on Jan. 01, 2005.  
Can this be done, with all  
that is needed?  
No funds or resources, to have  
it completed.*

*Experts & research,*

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171. FAMA ET AL., *supra* note 139, at 130.

172. *Id.*

173. Interview with Keith Wattley, *supra* note 163. For example, the BPT could determine parole suitability at year eighteen, but the prisoner should have only served fifteen years based on the individual crime. *Id.*

174. Cassou & Taugher, *supra* note 161, at 104 (“[C]ourts are given no real discretion to set terms based on the widely varying culpability involved in the human conduct we denote as criminal.”).

175. Telephone Interview with Olivia Wang, *supra* note 64.

176. *Id.*

177. *Id.*

178. *Id.*

*hours upon hours,  
only to depend on political powers.*

California has the potential to lead the nation in freeing battered women serving excessively long sentences for killing the men who threatened, brutalized, and tortured them. Other states are watching California closely to monitor the success of the habeas statute.<sup>179</sup> In the next year, Habeas Project plans to distribute formal reports with cost studies, efficacy studies, and problem summaries to colleagues in other states.<sup>180</sup> The intent is to provide advocates with tangible statistics to present to their own state legislators in order to demonstrate the positive effects and financial savings accomplished by the California statute with the hope that they will pass similar legislation.<sup>181</sup> At the very least, by dispensing the reports, Habeas Project coordinators aim to call attention to the oft-overlooked issue of domestic violence and its effects on battered women's criminal behavior.<sup>182</sup>

In order to be effective as a nationwide catalyst, California must seize the full potential of the statute. Advocates are doing what they can with the inadequate law, but insist that much is needed for the intent behind it to become completely operational. They need funding to conduct the investigations and pay expert witnesses.<sup>183</sup> They need increased cooperation from the prison facilities and the BPT.<sup>184</sup> They need a governor who is fair and compassionate to these women's struggles. They need public awareness to fuel social change. They need the statute to grow beyond its current handicapped status, expanding rights to all battered women who legitimately deserve relief. Few years remain until this window of opportunity slams shut and locks them behind prison doors forever.

In the meantime, the goal of utilizing the existing evidence and penal code provisions to the fullest extent requires mandatory education and training of legal professionals who regularly handle these cases.<sup>185</sup> Judges, district attorneys, and public defenders must be trained to uncover the full scope of the circumstances involved in battered women's murder cases.<sup>186</sup> To achieve fair

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179. Advocates in Oregon, Texas, New York, and Philadelphia have contacted Wang to inquire about section 1473.5 and Habeas Project. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Interview with Nancy K.D. Lemon, *supra* note 77.

184. *Id.*

185. *Id.*

186. *Id.* Lemon remarked that the state requires police officers to have eight hours of domestic violence training, as part of their initial academy training, and an additional two hours every two years as part of advanced officer training. She questions why the same requirements are not imposed on judges, district attorneys, and public defenders, all of whom deal with large numbers of domestic violence-related cases. Lemon recommends frequent mandatory seminars specific to each profession at the introductory and continuing legal education stages. *Id.*

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trials with full disclosure of relevant evidence, lawyers must understand battering and its effects and know why, when, and how to use expert testimony on the topic in a criminal trial. Judges must learn how to interpret the effects of domestic violence on a survivor's psychology and behavior so that they can instruct juries accordingly.<sup>187</sup>

On May 8, 2003, Assemblywoman Rebecca Cohn, along with the Select Committee on Domestic Violence, sponsored a legislative hearing to discuss the implementation of the habeas statute.<sup>188</sup> Among those who offered testimony were released prisoners, CIW warden John Dovey and the BPT's Battered Women's Investigative Unit.<sup>189</sup> Family members of various battered women still incarcerated spoke during the public comment period.<sup>190</sup> Three legislators attended, in addition to Cohn, who shared her personal experience of growing up in a household where domestic violence occurred.<sup>191</sup> Habeas Project members felt the hearing was an important event for gaining public and legislative awareness of the issue.<sup>192</sup> Another positive outcome of the hearing was Dovey's promise to talk with the wardens of the two other women's prisons about being more supportive of battered women's groups on the inside and working more cooperatively with the efforts to free them taking place on the outside.<sup>193</sup> Wang reports dramatic changes in responsiveness by the wardens of the other facilities after the hearing.<sup>194</sup>

Habeas Project coordinators are consulting with Assemblyman Mark Leno, chair of California's Public Safety Committee. They seek his support "to sponsor a bill to amend and expand the statute."<sup>195</sup> The group is also speaking with other members of the Assembly and the Senate to try to garner bipartisan support.<sup>196</sup> New awareness among the Legislature, propelled by the May 8th

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187. Jim Schultz, *Judge Drops Charge: Anderson Woman Cleared in Slaying of her Husband*, RECORD SEARCHLIGHT, Feb. 11, 2004, at A1. Domestic violence survivors and their advocates recently celebrated an example of growing judicial awareness when a Shasta County judge listened to expert testimony, ruled that the battered woman defendant had acted in self-defense against her brutal husband, and dropped the murder charges against her. *Great news—charges dropped against battered woman in Shasta County*, posting of Andrea Bible, abible@sbcglobal.net, to news@freebatteredwomen.org (Feb. 11, 2004) (copy on file with author).

188. FREE BATTERED WOMEN, MAY 8TH LEGISLATIVE HEARING ON HABEAS LAW, at <http://www.freebatteredwomen.org/hearing.php> (last visited Jan. 29, 2004).

189. *Id.*

190. Interview with Johanna Hoffmann, *supra* note 21.

191. *Id.*

192. Telephone Interview with Olivia Wang, *supra* note 64.

193. *Id.*

194. *Id.* Following the hearing, the wardens of VSPW and CCWF contacted Wang to ask how they could help Habeas Project's efforts and made it clear that they wanted to cooperate. *See* Interview with Johanna Hoffmann, *supra* note 21. These same facilities have recently allowed members of Free Battered Women to enter the facilities to conduct interviews or group presentations with the prisoners. *Id.*

195. Lee Attachment, *supra* note 10.

196. Posting of Johanna Hoffmann, [jdh@freebatteredwomen.org](mailto:jdh@freebatteredwomen.org), to [news@freebatteredwomen.org](mailto:news@freebatteredwomen.org) (Dec. 2, 2003) (copy on file with author).

hearing, will be indispensable in gaining support for future proposed legislation. Coordinators are planning another hearing to take place in the spring in front of the Women's Caucus or the Public Safety Committee.<sup>197</sup> At the hearing, they will present in-depth reports of data on battered women who do not qualify for habeas under the current provisions of the statute in an effort to persuade legislators of the need for statutory expansion.<sup>198</sup> The group will also speak to the governor's administration about their findings within the next year.<sup>199</sup>

Beyond their work with the Legislature, Habeas Project and Free Battered Women stage events to educate the community at large about all incarcerated survivors of domestic violence, including those who are not eligible for relief under the current habeas law.<sup>200</sup> They aim to build a mass movement to free battered women who were unjustly convicted and to ultimately end all violence against women.<sup>201</sup>

Politics may propel the charge toward freedom. Members of Convicted Women Against Abuse are optimistic about Governor Schwarzenegger's attitude and approach to battered woman seeking release.<sup>202</sup> They hope he will support broadened legislation, as well as approve clemency and/or parole for these women, in an effort to reduce prison expenditures, to fix mistakes of his recalled predecessor, and to mend his damaged public image among Californians who are appalled by his disrespectful behavior toward certain women in the past.<sup>203</sup> Even if he does so for self-serving reasons, battered women in prison and the people who care about them anticipate that Schwarzenegger's administration will be more responsive to their pleas.

A member of the governor's transition team, Tammy Bruce, was the former president of the Los Angeles chapter of the National Organization for Women.<sup>204</sup> Some claim she was voted out of her position because of her singular dedication to domestic violence as the primary issue the organization needed to tackle.<sup>205</sup> With such people in the Governor's administration, advocates are hopeful that positive attention will be directed toward the struggles

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197. Telephone Interview with Olivia Wang, *supra* note 64.

198. *Id.*

199. *Id.*

200. Lee Attachment, *supra* note 10.

201. *Id.*

202. Interview with Johanna Hoffmann, *supra* note 21.

203. *See id.*; Telephone Interview with Olivia Wang, *supra* note 64; Katherine Seligman, *After Apology, Outrage Remains: Many Women Remain Upset with Actor*, S.F. CHRON., Oct. 3, 2003, at A13.

204. Rachel Allen, Press Advisory, California National Organization for Women, CA NOW Responds to Gov. Elect Schwarzenegger's Appointment of Tammy Bruce to Transition Team, Press Advisory (October 2003), at [http://www.canow.org/news/arnold\\_oped.html](http://www.canow.org/news/arnold_oped.html).

205. *See* Interview with Johanna Hoffmann, *supra* note 21. The National Organization for Women ("NOW") avers a different motive for Bruce's termination. The National NOW Board claims to have voted to censure Bruce for her refusal to apologize for making allegedly racist comments following O.J. Simpson's trial. NOW claims Bruce's actions and lack of remorse negatively affected the reputation of the organization. Allen, *supra* note 204.

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of incarcerated battered women.

Some women feel they have a more personal connection to Governor Schwarzenegger. In the early 1990s, Schwarzenegger sat on the Governor's Commission for Physical Fitness.<sup>206</sup> He visited CIW once a month and taught the women there how to lift weights.<sup>207</sup> During one such visit, Schwarzenegger declared that he would some day be governor of the state and vowed not to forget the women he had met at the institution.<sup>208</sup> Prisoners have been writing him letters reminding him of his visits and holding him to his word.<sup>209</sup>

Convicted Women Against Abuse members think it would be advantageous to tap into the governor's acknowledged history of mistreating women and hope that he will view his role in their release as an opportunity to weaken that public perception.<sup>210</sup>

As governor, Schwarzenegger will have the opportunity to select a new BPT,<sup>211</sup> which could significantly improve battered women's chances of parole and increase the Board's willingness to share important investigative reports with prisoners' lawyers. A more compassionate, cooperative BPT could improve battered women's chances of successfully obtaining release through parole or through the habeas process.

In his first week in office, Schwarzenegger's administration agreed to make sweeping improvements to the state's outdated parole system.<sup>212</sup> "Governor Schwarzenegger intends to let the Board of Prison Terms do its job," said Vincent Sollitto, a spokesperson for the new governor. "Only when he has a strong conviction that a clear error has been made does he intend to review the granting or denial of parole."<sup>213</sup> Just days later, the governor made a promising move by letting stand the BPT parole recommendation for a convicted murderer.<sup>214</sup> Survivors of domestic violence and their advocates celebrated a giant victory during Schwarzenegger's second week as governor, when he approved parole for Rosario Muñoz, who served sixteen years for second-degree murder.<sup>215</sup> Muñoz was a battered woman at the time she shot at her abusive husband, missed him, and killed his girlfriend by accident.<sup>216</sup> Davis had reversed her parole just one year prior to his successor's approval.<sup>217</sup>

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206. Interview with Johanna Hoffmann, *supra* note 21.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. Chiang, *supra* note 130.

213. *Id.*

214. *Id.*

215. Press Release, Free Rosario Muñoz Committee, Rosario is Freed From State Prison Now Faces Deportation! (Dec. 3, 2003), available at <http://www.freerosariomunoz.org/pressrelease.html>.

216. Stefanie Frith, *Rally Urges Parole for Battered Woman*, PRESS-ENTERPRISE, July 3, 2003, available at <http://freebatteredwomen.org/munozarticle.1.htm>.

217. Press Release, Free Rosario Muñoz Committee, *supra* note 215; NBC 4-TV,

Schwarzenegger also released Maria Suarez,<sup>218</sup> who was convicted twenty-two years ago for first-degree murder after a neighbor killed her husband who had sexually and physically abused her for five years.<sup>219</sup> At the end of two months in office, Schwarzenegger had approved parole for six prisoners serving life sentences, two of whom were battered women convicted for domestic violence-related crimes<sup>220</sup>—a record that his predecessor only narrowly surpassed over the course of fifty-nine months in office.<sup>221</sup>

Free Battered Women, with the help of Habeas Project, is considering the submission of a mass clemency petition to the new Governor.<sup>222</sup> Along with the names of the fourteen<sup>223</sup> battered women prisoners listed in the 1992 clemency petition to whom Wilson gave no response, the new petition would add the names of the additional candidates for habeas relief.<sup>224</sup> They hope to capitalize on the new administration's apparent desire for progress.<sup>225</sup>

In the fight to free battered women imprisoned for killing their abusers, advocates in California request alliance from many groups, including a newly elected BPT that will be more responsive to battered women's pleas and more cooperative with lawyers' case investigations, as well as prison officials who will allow legal teams greater access to prisoners.<sup>226</sup> Those campaigning for the rights of incarcerated domestic violence survivors beseech the Legislature to

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SCHWARZENEGGER PAROLEE ORDERED DEPORTED TO MEXICO: WOMAN PAROLED AFTER SERVING 15 YEARS FOR KILLING HUSBAND'S LOVER, at <http://www.nbc4.tv/news/2910351/detail.html> (last visited Mar. 11, 2004). Muñoz is in the custody of the U.S. Citizenship and Immigration Services (formerly known as the Immigration and Naturalization Service), where she awaits appeal on a ruling to deport her to Mexico. Muñoz was not a United States citizen when she entered prison, and she cannot attain citizenship with a felony conviction on her record. Schwarzenegger denied her request for a pardon. *Id.*

218. FREE BATTERED WOMEN, SUMMARIES OF SURVIVORS DENIED PAROLE, *supra* note 131; E-mail from Olivia Wang, Jan. 30, 2004, *supra* note 112. Suarez faces proceedings to determine possible deportation to Mexico and is currently in the custody of the the U.S. Citizenship and Immigration Services (formerly known as the Immigration and Naturalization Service). Approximately twenty-six state legislators and seventeen members of Congress signed a letter urging Schwarzenegger to grant Suarez a full and unconditional pardon, which would not erase her conviction, but would rather restore privileges and allow her to stay in the United States. E-mail from Olivia Wang, Jan. 30, 2004, *supra* note 112.
219. E-mail from Olivia Wang, Jan. 30, 2004, *supra* note 112.
220. See Press Release, Free Rosario Muñoz Committee, *supra* note 215; FREE BATTERED WOMEN, SUMMARIES OF SURVIVORS DENIED PAROLE, *supra* note 131.
221. FREE BATTERED WOMEN, SUMMARIES OF SURVIVORS DENIED PAROLE, *supra* note 131. Schwarzenegger has also reversed parole recommendations for eleven lifers, including one battered woman convicted of murdering her batterer. *Id.*
222. Posting of Johanna Hoffman, *supra* note 196.
223. FREE BATTERED WOMEN, STILL BEHIND BARS: CLEMENCY STATUS OF 34 BATTERED WOMEN PRISONERS, *supra* note 155. Of the original twenty-four untreated clemency petitioners, two women died in prison, four were released, two were paroled, and two were freed on a writ of habeas corpus since 1992. *Id.*
224. Posting of Johanna Hoffman, *supra* note 196.
225. *Id.*
226. See Interview with Nancy K.D. Lemon, *supra* note 77; Interview with Johanna Hoffmann, *supra* note 21; Telephone Interview with Olivia Wang, *supra* note 64.

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promote and pass legislation furthering opportunities under the habeas law.<sup>227</sup> In addition, allies of battered women in prison implore the new administration to sign important bills into law, to allow BPT parole recommendations for these women to stand, and to grant clemency to deserving parties.<sup>228</sup> They look beyond the state borders to other states that will follow California's lead in recognizing the importance of battering and its effects in the defense of domestic violence survivors.<sup>229</sup>

## CONCLUSION

*Now the question,  
Could she have been battered?  
As many lives, for years have been  
shattered.  
Now they ask,  
But, does it matter?*

For the habeas law to matter to more than just the handful of battered women prisoners whose circumstances fit its narrow scope and whose great fortune provides them resources with which to take advantage of the law, change must take place. The law itself must be expanded to accommodate the needs of all women for whom it was passed. Everyone with a role in the process—attorneys, judges, prison officials, parole board officials, legislators, and the governor—must learn about battering and its effects, use the knowledge properly, and assume their respective roles in the process to free battered women who were unfairly condemned to disproportionately long sentences for killing their abusers. The doors of prison are heavy and strong. It takes more than just a law on the books to pry them open; it requires the dedication and participation of many people at many levels working together to unlock the doors and release the battered women into the freedom they so rightfully deserve.

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227. See Interview with Nancy K.D. Lemon, *supra* note 77; Interview with Johanna Hoffmann, *supra* note 21; Telephone Interview with Olivia Wang, *supra* note 64.

228. See Interview with Nancy K.D. Lemon, *supra* note 77; Interview with Johanna Hoffmann, *supra* note 21; Telephone Interview with Olivia Wang, *supra* note 64.

229. See Interview with Nancy K.D. Lemon, *supra* note 77; Interview with Johanna Hoffmann, *supra* note 21; Telephone Interview with Olivia Wang, *supra* note 64.