

January 1982

Book Review: Women's Self-Defense Cases: Theory and Practice

Charlotte Fishman

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>

 Part of the [Law Commons](#)

Recommended Citation

Charlotte Fishman, *Book Review: Women's Self-Defense Cases: Theory and Practice*, 12 Golden Gate U. L. Rev. (1982).
<http://digitalcommons.law.ggu.edu/ggulrev/vol12/iss3/7>

This Note is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

BOOK REVIEW

WOMEN'S SELF-DEFENSE CASES: THEORY AND PRACTICE By Elizabeth Bochnak, Editor. Michie Co., 1981. \$27.50

*Reviewed by Charlotte Fishman**

It is not often that a court decision on the language of jury instructions vindicates a social movement as well as a legal theory, but in the case of Yvonne Wanrow it happened. For years, feminists have criticized the use of male gender expressions when referring both to men and women. Initially, the complaint that this practice reflected a deep cultural bias against women was met with incredulity and ridicule. More recently, as the *Wanrow*¹ case illustrates, the idea has gained grudging acceptance.

If anyone still doubts that the use of phrases such as "the reasonable man" in jury instructions has serious adverse consequences for women, I heartily recommend *Women's Self-Defense Cases: Theory and Practice* as an antidote. This valuable book describes, analyzes, and suggests strategies to combat the effect of sex stereotyping on the defense of women on trial for murder of a previously abusive spouse or lover.

Yvonne Wanrow is a 5' 4" tall woman who shot and killed a visibly intoxicated but unarmed 6' 2" man. The shooting took place at 5 a.m. after she and three others spent a sleepless night watching over premises he was suspected of having attempted to enter several days earlier. At the time of the shooting, Wanrow wore a cast on her leg and walked with the aid of a crutch. The victim had a reputation for sexually assaulting young children and had unsuccessfully attempted to drag Wanrow's son into his home the day before.

Wanrow was convicted of second degree murder and first

* Visiting Assistant Professor of Law, Golden Gate University School of Law; B.A. 1968, Barnard College; J.D. 1979, Harvard Law School.

1. *State v. Wanrow*, 88 Wash. 2d 221, 559 P.2d 548 (1977).

degree assault with a deadly weapon. The judgment was reversed on appeal, in part because the trial court used the following language to instruct the jury on the law of self-defense:

However, when there is no reasonable ground for the person attacked to believe that *his* person is in imminent danger of death or great bodily harm, and it appears to *him* that only an ordinary battery is all that is intended . . . *he* has no right to repel a threatened assault with naked hands, by the use of a deadly weapon in a deadly manner, unless, *he* believes, *and has reasonable grounds* to believe, that *he* is in imminent danger of death or great bodily harm.²

The Washington Supreme Court rejected this ostensibly objective reasonable man standard and held that the defendant's actions were properly to be judged against her own subjective impressions, not those which a detached jury might later determine to have been objectively reasonable. It further found that the use of the masculine gender constituted a separate, distinct error of law in that it left the jury with the impression that the objective standard to be applied was one that would be applicable to an altercation between two men. Taking judicial notice of the long history of sex discrimination, the Court found that until the effects of that history were eradicated, "care must be taken to assure that our self-defense instructions afford women the right to have their conduct judged in light of the individual physical handicaps which are the products of sex discrimination."³

Until recently, the typical "sympathetic" response to a woman who killed her spouse or lover was that she must have been acting irrationally when she did it. In light of this cultural history, most criminal defense counsel proceeded to trial on a theory of impaired mental state. Lately, however, public attention has focused on the fact that spousal abuse is a significant social problem and some of the women who fight back are asserting a right to do so. As a result, the authors argue, acquittal on a theory of self-defense is an alternative that must be considered seriously.

2. *Id.* at 239, 559 P.2d at 558 (1977) (emphasis in original).

3. *Id.* at 239, 559 P.2d at 559.

Contrary to popular belief, there is no "battered woman's defense" to homicide. A history of past abuse will not, in and of itself, justify a killing. The use of deadly force is justified only in self-defense as a response to a reasonably perceived threat of imminent death or great bodily harm.

Unhappily, many battered women who use weapons do so in situations that may not at first blush appear to be life threatening. The book's central thesis is that while a history of prior spousal abuse does not constitute legal justification for homicide, in some cases it explains why the defendant believed herself to be in a life-threatening situation. However, because the woman who kills her spouse fits neither the traditional female stereotype of the submissive woman nor the traditional male stereotype of one man fending off an attacker of roughly comparable size and strength, demonstrating the reasonableness of her belief is not a simple matter.

By publishing this book, the Women's Self-Defense Law Project has provided a valuable service to attorneys who wish to present effectively the battered woman's case for self-defense. The book contains sample *voir dire* questions, evidence memoranda, tips on the use of lay and expert witnesses, and model jury instructions. In addition to providing basic practice materials, the book excels in presenting the "flavor" of such a case. Most, if not all, of the authors have previously worked with the National Jury Project or the Center for Constitutional Rights. They are no strangers to the difficulty of conducting the groundbreaking work they so ably describe.

They are equally impressive in their ability to recognize and convey its limitations. The authors caution counsel that evidence about the incidence and severity of rape, wife assault, child abuse, and the lack of societal alternatives for battered women is only relevant to the extent that it explains the individual defendant's conduct. If her conduct can be explained without reference to such evidence, overreliance on a theme of battering may backfire, distracting the jury's attention from an otherwise strong self-defense claim.

Through the use of detailed case studies, they guide the reader from initial client interview through post-trial juror de-

720 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 12:717

briefing. Drawing on strategies that failed as well as those that worked, they suggest approaches for dealing with recurring problems. Among the many issues that receive thoughtful, intelligent treatment are the defendant's conflicting emotions toward the victim, the prosecutor's objection to the proffer of expert testimony on domestic violence, and the juror's prejudice against women who drink or live out of wedlock or who break any one of a myriad of social taboos.

Throughout the book counsel are warned to be alert to the possibility that the "reasonable man" standard may be operating to the client's detriment. In the absence of specific curative instructions, the language of the typical self-defense instruction invites the jury to ignore relevant differences between men and women.

The *Wanrow* decision was a landmark in that it recognized that failure to consider a woman's perception of danger denied her equal protection of the laws. *Women's Self Defense Cases: Theory and Practice* is likewise a landmark in that it provides defense attorneys with the tools to implement *Wanrow*. If the criminal justice system is finally ready to face the fact that appreciation of relevant sex differences is central to preserving a female defendant's right to a fair trial, this little book will undoubtedly help it take a giant step in the right direction.

Women's Law Forum