

PROTESTS, INSURRECTION, AND THE SECOND AMENDMENT

The Role of Fantasy in the Battered Woman's Right to Bear Arms

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Introduction

When, in a pandemic mindset, I think of the right to bear arms, my three rescue dogs come to mind. I initially imagined that being home with them would usher in an era of canine calm and happiness because the family would be together. As I and many other dog parents discovered, however, quarantine would mean greater canine vigilance: ferocious barking at the mail carrier, every passing jogger, and each crowing bird who settled within 30 feet of the house. The most stressful to listen to is Chewy, a scrappy mutt with a high-pitched voice. When he is not trying to frighten away all living creatures, he spends much of his time hiding under the bed, under the treadmill, or next to the washing machine. It occurred to me recently that the intensity of his anxiety is quarantine-induced. I have come to think of him as a trigger-happy marksman.

The impact of the quarantine on my dogs' nervous systems falls within the law of unintended consequences. I have noticed canines' strange behavior in general. Other dogs will bark at me ceaselessly and angrily as I walk by their homes with Chewy or one of his brothers. It occurred to me that when humans are in the house, dogs may think of themselves as "on call." Their job is to protect their humans because we seem vulnerable by virtue of our relatively poor hearing and weak sense of smell.¹ When I used to leave the house to go to work, I was actually giving them a rest. They missed me, but they also knew that they would have a break from guarding their defenseless best friend. The middle-aged man delivering groceries could be a murderer.

On a National Public Radio show, I heard a woman tell a story about her dog. He too became extremely volatile and anxious at people delivering the many packages that his mom was ordering. One day, he got loose when she opened the door, and he bit a little girl. The woman on the radio decided to have her dog put to sleep. She said it felt very different from putting down a terminally ill pet because her dog was healthy and loved her and thought he was protecting her. He would not benefit from dying. I wish she had not killed her dog, but I do not know what her options were. I am certain that she never dreamed that being home with him in quarantine would lead to her ending his life.

The unexpected turns in our dogs' existences have many parallels. Everyone has some idea in their head about how things will work out. People decide to marry because they have a fantasy of love, commitment, safety, and care. Yet between 40 and 50 percent of marriages end in divorce.² The reality falls short of the fantasy. And yet that all seems irrelevant to two people madly in love and wanting to be together for the rest of their lives. They know about the prospect of a failed marriage, but they assume that their fantasy will prove real.

The Gun Fantasy (and Others)

People have a fantasy about guns, too. For some, it is that a would-be victim, perhaps a weaker person just living her life, could use a gun to guard against a predator. Maybe someone breaks into her home. Or perhaps a victim of domestic violence acquires a weapon to protect against an abusive spouse. She buys a gun, takes shooting lessons, practices, and conceals the weapon safely by her bedside. Then, when her husband is about to beat her to death, she surprises him with the gun and walks away unharmed.

Something like this scene happened in the 1991 movie *Sleeping with the Enemy*,³ starring Julia Roberts as an abused wife who fakes her own death to escape her abuser. The husband learns that she is still alive and visits her new home, planning either to take her back (against her will, if necessary) or to kill her. In a memorable

scene (spoiler alert), she points a gun at her husband, picks up the phone to dial 911, and tells the dispatcher that she has just shot an intruder. She then does just that.

I do not know whether Justice Antonin Scalia saw *Sleeping with the Enemy* or any of the numerous other films and television shows in which hitherto meek victims turn the tables on their attackers, but a crucial piece of his explanation for why the Constitution protects a right to the private possession of handguns invoked the Hollywood-fueled revenge/self-defense fantasy. He wrote for the Supreme Court:

There are many reasons that a citizen may prefer a handgun [to a shotgun or other long gun] for home defense: [i]t is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police.⁴

I have a different weapon experience. I was robbed at gunpoint in Los Angeles during the crime epidemic of the early 1990s. The robber had a gun, a blue steel revolver. He appeared to be terrified that I might also be armed, and he threatened to shoot if I so much as moved. As I stood next to him, I found myself hoping that the police would not show up to intervene.

I feared that if I had been armed, the robber would have soon been in possession of my gun. Police, I thought, would start shooting and might end up killing innocent people, including me. I had a strong feeling that the robber just wanted my money, and I did not wish for the police to appear on the scene and raise the stakes with their shouts and gunshots.

It was clear to me, moreover, that my robber was most nervous about the possibility that I was “packing,” and as such he was more explicit about issuing threats and keeping me from moving at all, even just to return my empty wallet to my purse.

Perhaps as a result of this experience, my fantasy of the battered woman with a gun differs as much from Julia Roberts’s character in *Sleeping with the Enemy* as my image of a prostituted woman⁵ does from Julia Roberts’s character in her 1990 film *Pretty Woman*.⁶ I suspect that a controlling man who abuses his partner until she is prepared to go out and buy a weapon will promptly learn of her new purchase. He will probably also know how much she weighs, which of her friends texted her on a given day, where she is at all times, and whether she has been neglecting her duties to him. If she keeps the weapon in a safe, her abuser has the combination (assuming he has even allowed her to keep custody of the weapon). As perpetrators of domestic violence tend to be inclined toward suspicion, a wife planning to use her gun to protect herself from her husband is unlikely to catch him off guard.⁷

Fantasies that determine policy extend well beyond the gun ownership context. Consider acquaintance rape. The common narrative is this: girls and women routinely lie about having been raped, whether they actually consented or invented the entire story out of whole cloth.

The rest of the fantasy is that when men “scorn” women — reject them, refuse to marry them, break up with them — women avenge the rejection by leveling an accusation “easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent.”⁸ We really have little reason, in the third decade of the 21st century, certainly, to believe that when a man “scorns” a woman, she will bring false

rape charges against him. Being known as a rape victim continues to be more stigmatized than being known as someone whom a man has scorned. Yet the woman-scorned fantasy persists. Why?

In the realm of policy, the goal might be to make it nearly impossible to obtain a rape conviction when the defendant and victim know each other or have dated.⁹ Some hold the view that date rape is relatively innocuous, and denying its occurrence can most effectively ensure a putatively just impunity for perpetrators. In a time when a police officer might lynch a person on the street for selling loose cigarettes,¹⁰ a conviction for date rape remains largely elusive. If just one false accusation hits the news, people believe that such occurrences are legion and that we must therefore guard against being taken in.

Even the phrase “he said/she said” — often used to describe acquaintance rape scenarios — is a product of fantasy. What will “he” likely say when accused of rape and standing trial? He will declare “I am innocent. I did not do it.” That is not a criticism of rape defendants as such. We know in the context of other cases that the least credible witness of all is the criminal defendant who claims to be innocent.¹¹ The systematic incentive to profess innocence is far too great to credit the defendant’s protestations very much. “She,” on the other hand, has little or nothing to gain from bringing charges. What “she says” is therefore credible.

Occasionally, as with any other offense, a person will invent charges. But there is no reason to think that false accusations of rape are more common than false accusations of other crimes.¹² Yet we say “he said/she said” as though the accusation and the denial are equal in weight. Imagine a witness testifying about a defendant entering a store and murdering everyone besides the witness. Imagine the defendant taking the stand at trial and saying he is innocent. Whether or not the jury convicts based on all the evidence presented, would anyone think of the two witnesses as equally credible? Would people say, “It is tough to know whom to believe because ‘he said/she said’”?

The underlying fantasy is that men accused of rape are virtually all innocent. And rather than simply relying on the ordinary presumption of innocence, the “he said/she said” framing once meant that additional requirements accompanied rape charges. Defense attorneys were able to attack the victim as a slut who was accordingly likely to have consented and to be lying on the witness stand. Judges had to issue cautionary instructions to the jury, telling them to bring a special skepticism to the process of evaluating the victim’s testimony.¹³ The fact that criminal defendant witnesses have every incentive to represent themselves as innocent, whatever the truth might be, was no part of any instruction to the jury. And though the law has changed, virgin victims are still the most likely to yield a conviction.¹⁴ Our society has internalized the “he said/she said” norm so that the law no longer needs to instruct jurors about it. They spontaneously embrace the fantasy that women frequently lie about rape.

Even things that happen rarely do happen on occasion, of course. But that fact does not mean that we should make policy on the basis of outliers. And this principle applies to policymaking that rests on the unusual scenario in which a mother and baby at home survive because the woman has a gun. Most of the time, a woman with a baby whose house is suddenly invaded will not be able to get to her gun in time unless she constantly cradles it to her chest along with her baby. And if the person who threatens her safety or her life is her husband or other male partner, then, as discussed above, he will probably have at least as much access as she does to the weapon.

Domestic Violence: Unraveling the Fantasy

Because domestic violence and domestic homicide are such a huge problem, the belief that women are safer with a gun calls forth not one but two separate fantasies. The first is that a gun truly erases the strength

difference between most men and most women. As mentioned, it does that only in the rare case that the woman is able to get to her gun in time, which is unlikely if her partner has become violent with her.¹⁵ The second fantasy is that the safest place for a woman is in her home.

The notion that women should stay home was far more prevalent in earlier periods, but a remnant stays with us. And that is the part that tells a woman that the scary places, the places where someone could attack her, are out in the world. The safe place is at home with her husband or partner. In reality, however, a woman is far more likely to face an assault in her own home, by the partner who perhaps swore to take care of her, than outside.¹⁶ Most men do not assault their wives and girlfriends. But when a woman does face an assault, it is far more likely to come from her partner inside the home than from a stranger out on the street.¹⁷

Let us talk about the fantasy. In theory, if a woman has a loaded gun aimed at a potential assailant who is much stronger than she is, the gun equalizes the odds or tilts them in her favor. I remember when a woman at home with her baby reported that a burglar broke into the house and appeared ready to assault her.¹⁸ She had her gun ready, and she aimed and fired at the intruder. People in the faculty lounge were telling the story, and those supporting a right to bear arms were especially interested in discussing what had happened to this woman. What could be more vulnerable than a woman at home taking care of her infant child? The gun is a problem solver.

Consider the significance of the fantasy that the gun can make a solitary woman with her infant stronger than a powerful man breaking into her home. Many women who have a small child are forced by their circumstances to stay at home and care for the child. Some have other options but choose to be with the infant full time. They might have a partner who works. Or they might be on their own, raising a child by themselves. Either way, they reflect the inevitable dependencies that Martha Fineman identified in her book, *The Neutered Mother, The Sexual Family, and Other Twentieth Century Tragedies*.¹⁹ Fineman there offered a critique of our society's insistence on rendering inevitable and derivative dependencies invisible.²⁰

How does this process work? The *inevitably* dependent are those people who will always be dependent, no matter what their circumstances might be.²¹ A baby, a person with severe disabilities, a person who is very ill, whether psychologically or physically, and the very elderly are inevitably dependent. What makes them all dependent are the frailties that naturally accompany the stages of life that everyone who survives must pass through and the illnesses, disabilities, and neediness that some portion of the population endures as well.

Fineman observes that we privatize dependency by failing to offer government benefits that would enable dependent individuals and the people who care for them (the *derivatively* dependent) to have more options.²² A woman who has a baby and little money might care for her child herself and occasionally ask a neighbor to babysit. The neighbor might or might not be in a position to help out as often as necessary. That woman has needs that will often go unmet, and by privatizing her dependency, we hold her responsible for meeting any needs that she has because of her baby.

Any family member who has cared for a loved one alone knows the frustration of having to take on both the needs of the loved one and one's own needs without any assistance. A woman who would like to pursue an education and become a professional must instead take care of her baby at home because her husband's salary is not sufficient to enable her to hire someone to care for the child. Were the government to provide support and assistance for the inevitably and derivatively dependent, people suffering a setback or simply caring for a child or other loved one could cross off their list "where will I get the money to do what needs to be done?" Like other advanced countries do, the U.S. government could provide a true safety net for its population.²³

The perception of gun ownership as a means of empowering the powerless seems in one important way to undercut the notion that the government needs to be caring for its vulnerable. Yet it rests on a fantasy. The vulnerability to violence that women experience requires something far more ambitious than a personal right to bear arms. The women need actual safety. Neighborhoods that offer little in the way of police protection host more violence against women.²⁴ No study finds that women who own guns experience less domestic violence than women who do not.²⁵ It is conceivable, of course, that women who purchase guns are a self-selecting group that would predictably experience greater domestic violence. Nonetheless, if data existed to show a precipitous drop in such violence after a woman buys a gun, we could expect to hear from the National Rifle Association and its allies about the data.

In reality, women who fall victim to domestic violence and fear homicide can go to prison for taking matters into their own hands. As of 1989, women who killed their abusers received longer sentences than men who killed their partners.²⁶ The reason juries convict victims is that in order to qualify as self-defense, a victim's violence must typically have repelled an imminent threat of death or substantial bodily harm.

Women who kill their batterers might wait until the latter are sleeping.²⁷ The reason is straightforward. The imminence of grievous bodily harm or death from a male batterer is unlikely to allow for effective female self-defense. Men are usually stronger than women, and reaching for a firearm or for another weapon during an attack would be challenging. This reality explains why many feminist legal theorists have argued that the law should relax the imminence requirement of self-defense in such contexts,²⁸ while others have pressed for a battered women's defense.²⁹

Gun enthusiasts might attribute the battery victim's dilemma to the fact that she is unarmed. But again, unless one is armed with a loaded gun at all times and in all places, the gun may do little good. And carrying a gun generates its own risks.³⁰ Among other things, a violent partner — or indeed any violent perpetrator — can disarm his victim and turn the gun on her. She needs a government that stands prepared to intervene in a violent relationship.

People sometimes ask why the abused woman does not simply leave her abuser. Those who ask this question are operating within the same fantasy as those who think a gun would protect her from abuse. They believe exiting an abusive relationship is safe, though in fact it is the most dangerous time — the most lethal time — in a violent relationship.³¹ Some also believe that the woman could protect herself from further harm simply by buying a gun. With a quick fix like that, we need not bother with building a more durable and protective social safety net.

Every fantasy serves a purpose. In *Useful Delusions*, Bill Mesler and Shankar Vedantam describe the ways in which lying to ourselves and others is often useful.³² For example, believing that your children are the most special and extraordinary people who have ever lived will lead you to tend to their needs.³³ Likewise, when your friend calls you at 3 in the morning and asks, "Did I wake you?" you might lie and say, "No, I was already up," in order to maintain your relationship.³⁴

As with fantasies, however, not all delusions and lies are created equal. Inaccurately telling the pediatrician that bruises on your child's body resulted from falling off the monkey bars when your partner in fact administered a beating is wrong. So is imagining that guns can protect women from the most common sort of violence against them — that coming from their own partners.³⁵ This lie is wrong because it prevents society from doing what it needs to do to protect women from violence and to provide safe and comfortable places for women to go when

they leave their abusers. It would behoove those who sing the praises of firearms to modify their familiar adage in the following way: guns don't protect people — people do.

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Endnotes

¹ See STANLEY COREN, HOW DOGS THINK: WHAT THE WORLD LOOKS LIKE TO THEM AND WHY THEY ACT THE WAY THEY DO 37–48 (2004); Peter Tyson, *Dogs' Dazzling Sense of Smell*, PBS (Oct. 3, 2021), <https://www.pbs.org/wqhb/nova/article/dogs-sense-of-smell>.

² *Marriage & Divorce*, AM. PSYCH. ASSOC., <https://www.apa.org/topics/divorce-child-custody#:~:text=They%20are%20also%20good%20for,subsequent%20marriages%20is%20even%20higher> (last visited May 26, 2021).

³ SLEEPING WITH THE ENEMY (20th Century Fox 1991).

⁴ *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008).

⁵ See JULIE BINDEL, *THE PIMPING OF PROSTITUTION: ABOLISHING THE SEX WORK MYTH* (2019).

⁶ PRETTY WOMAN (Touchstone Pictures 1990).

⁷ Though my focus here is on male-on-female violence, it is important to note that part of the narrative renders male victims of violence, including rape, invisible. Joshua Dressler and Stephen P. Garvey highlight the fact that “[f]rom 1995 to 2010, approximately 9% of rape or sexual assault victimizations recorded in [National Crime Victimization Surveys] involved male victims.” JOSHUA DRESSLER & STEPHEN P. GARVEY, *CRIMINAL LAW: CASES AND MATERIALS* 408 (2019) (citations omitted). See also Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259, 1261–62, 1266–77, 1308 (2011) (discussing data showing that “while rape is often done by men, it is also done to men”).

⁸ MATTHEW HALE, 1 HISTORIA PLACITORUM CORONAE 635 (1736) (language modernized).

⁹ WHAT PERCENTAGE OF RAPE CASES GET PROSECUTED? WHAT ARE THE RATES OF CONVICTION?, UNIV. KY. CTR. RES. VIOLENCE AGAINST WOMEN 1 (2011), https://opsvaw.as.uky.edu/sites/default/files/07_Rape_Prosecution.pdf (finding that only 18 percent of rape reports end in conviction, compared to 37 percent of reported cases resulting in prosecution, which works out to around a 48.6 percent success rate); and Angela N. Torres & Angela van der Walt, *Sexual Offenders and Their Victims*, in FORENSIC VICTIMOLOGY: EXAMINING VIOLENT CRIMES IN INVESTIGATIVE AND LEGAL CONTEXTS 489, 504 (Brent E. Turvey ed., Academic Press 2d ed. 2014) (noting that partner rape is hard to prosecute because of difficulties proving, beyond a reasonable doubt, that the sex was not consensual). See also Wendy Larcombe, *Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law*, 19 FEMINIST LEGAL STUD. 27, 32 (2011) (finding a 38 percent jury conviction rate in Australia).

¹⁰ See Josh Sanburn, *Behind the Video of Eric Garner's Deadly Confrontation with New York Police*, TIME (July 23, 2014), <https://time.com/3016326/eric-garner-video-police-chokehold-death>.

¹¹ Roselle L. Wissler & Michael J. Saks, *On the Inefficacy of Limiting Instructions: When Jurors Use Prior Conviction Evidence to Decide Guilt*, 9 L. & HUM. BEHAV. 37, 43 (1985) (“[C]redibility judgments were unaffected by prior conviction condition. . . . The defendant’s credibility is already so much lower than that of the other witnesses (because it obviously is in the defendant’s self-interest to give testimony which favors his or her position) that the admission of prior convictions does not reduce the credibility of the defendant further.”) (citations omitted).

¹² Katie Heaney, *Almost No One Is Falsely Accused of Rape*, NEW YORK MAG. (Oct. 4, 2018), <https://www.thecut.com/article/false-rape-accusations.html>.

¹³ SUSAN ESTRICH, *REAL RAPE: HOW THE LEGAL SYSTEM VICTIMIZES WOMEN WHO SAY NO* 54 (1987) (“[i]n rape cases, since the nineteenth century [juries] have [] been told . . . that they must be especially suspicious of the woman victim. In a fairly typical version of the instruction, the jury is told ‘to evaluate the testimony of a victim or complaining witness with special care in view of the *emotional involvement* of the witness and the *difficulty of determining the truth* with respect to alleged sexual activities carried out in private.”).

¹⁴ David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194, 1355 (1997) (finding that the conviction rate in England when the victim was a virgin is 94 percent, while it was only 48 percent when the victim was not). See also Katie Ewing, *Attitudes and Responses to Rape in Light of the Low Conviction Rate*, 1 PLYMOUTH L. REV. 48, 66 (2009) (noting that the media has historically focused on rapes with sensational elements, such as a virgin victim).

¹⁵ See Kellie R. Lynch, *Female Firepower: Gun Ownership for Self-Protection Among Female Intimate Partner Violence Victims*, 7 VIOLENCE & GENDER 19, 24 (2020) (noting that only two percent of justifiable homicides between 2006 and 2010 involved the death of a male intimate partner); and Garen J. Wintemute et al., *Increased Risk of Intimate Partner Homicide Among California Women Who Purchased Handguns*, 41 ANNALS OF EMERGENCY MED. 281, 282 (2003) (finding that women in California who brought a handgun into the home for self-defense were more likely to be killed by an intimate partner than those who did not, and that those with a handgun had a 50 percent higher risk of homicide overall).

¹⁶ See U.S. DEP’T OF JUST., *FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994–2010* 4 (2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> (finding that 55 percent of sexual assaults against women occurred at or near the victim’s home); U.S. DEP’T OF JUST., *FULL REPORT OF THE*

PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 45 (2000) [hereinafter REPORT ON VIOLENCE AGAINST WOMEN] (finding that intimate partners perpetrated 72.1 percent of physical assaults against women, while strangers only perpetrated 10.6 percent of attacks); and Susan B. Sorenson & Rebecca A. Schut, *Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature*, 19 TRAUMA, VIOLENCE, & ABUSE 431, 437 (2018) (finding that around 4.8 million women in the United States have been threatened by their partner with a gun).

¹⁷ REPORT ON VIOLENCE AGAINST WOMEN, *supra* note 16, at 45; and U.S. DEP'T OF JUST., THE 2018 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT 21 (2018), <https://www.justice.gov/ovw/page/file/1292636/download> (finding that a woman was 14 times more likely to be killed by a partner than by a stranger); cf. Jeffery S. Jones et al., *Comparison of Sexual Assaults by Strangers Versus Known Assailants in a Community-Based Population*, 22 AM. J. EMERGENCY MED. 454, 545 (2004) (finding that sexual assault victims knew their assailant in 76 percent of cases).

¹⁸ See Kevin Dolak & Ryan Owens, *Okla. Woman Shoots, Kills Intruder: 911 Operators Say It's OK to Shoot*, ABC NEWS (Jan. 4, 2012), <https://abcnews.go.com/US/okla-woman-shoots-kills-intruder911-operators-shoot/story?id=15285605>.

¹⁹ Martha Albertson Fineman, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995).

²⁰ *Id.* at 161–62 (“Not to recognize [inevitable and derivative dependencies] as ‘burdens’ is to ignore the costs to women and to continue to make women’s labor invisible.”).

²¹ *Id.* at 162.

²² See *id.* at 191–92 (“Accommodation of single mother families requires radical transformation on ideological and institutional levels.”).

²³ See, e.g., Sven Bremberg, *A Perfect 10: Why Sweden Comes Out on Top in Early Child Development Programming*, 12 PAEDIATRICS & CHILD HEALTH 677, 678 (2009) (citing Sweden’s universal preschool as a reason for its success at providing parents with child care); and Linda A. White, *Explaining Differences in Child Care Policy Development in France and the USA: Norms, Frames, Programmatic Ideas*, 30 INT’L POL. SCI. R. 385, 386 (2009) (noting that France provides extensive public child care, which is government-subsidized and open for long hours, thus allowing parents to better enter the workforce).

²⁴ See Rod K. Brunson, *Protests Focus on Over-Policing. But Under-Policing Is Also Deadly*, WASH. POST (June 12, 2020), https://www.washingtonpost.com/outlook/underpolicing-cities-violent-crime/2020/06/12/b5d1fd26-ac0c-11ea-9063-e69bd6520940_story.html (“Residents of distressed urban neighborhoods have complained about ineffective policing for centuries. . . . Some residents of high-crime neighborhoods have long concluded that police are either incapable of keeping them safe or unwilling to do so. . . . The result is that many black and brown communities now suffer from the worst of all worlds: over-aggressive police behavior in frequent encounters with residents, coupled with the inability of law enforcement to effectively protect public safety.”).

²⁵ See Deborah Azrael & David Hemenway, *“In the Safety of Your Own Home”: Results from a National Survey on Gun Use at Home*, 50 SOC. SCI. & MED. 285, 289–90 (2000) (finding that a gun in the home is much more likely to be used to threaten a family member than to defend oneself).

²⁶ *Words from Prison — Did You Know . . . ?*, ACLU, <https://www.aclu.org/other/words-prison-did-you-know> (last visited May 26, 2021). A more recent study conducted in Ireland in 2017 indicated that this trend persists, with men receiving on average 2.8 less years for killing their partner than women. WOMEN’S AID, IMPACT REPORT 2017: AGAINST THE ODDS 2 (2017), https://www.womensaid.ie/assets/files/pdf/womens_aid_impact_report_2017.pdf. More studies are needed specific to the United States to determine if this trend is true today.

²⁷ One study from 1991 surveyed appellate court opinions since 1902 and determined that 20 percent of the murders were nonconfrontational, 8 percent of which involved a sleeping spouse. Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 397 (1991). See also Charles P. Ewing, *BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION* 34 (1987) (estimating that 33 percent of killings are nonconfrontational). Obviously, only surveying appellate opinions excludes many cases: cases that were not prosecuted, cases that were plead out, and cases that were not appealed. But this figure demonstrates that these cases are not uncommon, and while this statistic could use a modern study, there is no reason to doubt that this trend has continued into the present day.

²⁸ See, e.g., Sharon Angella Allard, Note, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 UCLA WOMEN’S L.J. 191, 206 (1991) (arguing for a broad approach to battered woman’s syndrome to allow for a defense that explains battered women’s actions); John W. Roberts, Note, *Between the Heat of Passion and Cold Blood: Battered Woman’s Syndrome as an Excuse for Self-Defense in Non-Confrontational Homicides*, 27 L. & PSYCH. REV. 135, 152 (2003) (arguing that battered woman’s syndrome should allow for nontraditional self-defense claims by altering the definition of a reasonable person).

²⁹ See Elizabeth M. Schneider, *Resistance to Equality*, 57 U. PITT. L. REV. 477, 509–10 nn.128–31 (1996) (collecting sources from various lawyers, legislators, judges, and scholars that have proposed an independent battered woman’s defense).

³⁰ See Lynch, *supra* note 15, at 24 (“[I]ndividuals such as children, other family members, and bystanders could be placed at an increased risk if firearms are added to an abusive situation. . . . [V]ictims would need to access a firearm quickly to use in self-defense against an

abuser, which means the gun would be easily armed and loaded.”); and David Hemenway, *Risks and Benefits of a Gun in the Home*, 5 AM. J. LIFESTYLE MED. 502, 508 (2011) (“For every self-defense homicide involving a firearm kept in the home, there were 1.3 accidental deaths, 4.6 criminal homicides, and 37 firearm suicides.”).

³¹ Lauren Pelley, *Leaving Relationship Is “Most Dangerous Time” for Domestic Violence Victims, Experts Say*, CBC, <https://www.cbc.ca/news/canada/toronto/domestic-violence-victims-1.3885381> (Dec. 8, 2016) (“When a woman finally says she’s leaving the relationship . . . abusers may try to escalate their power and control tactics to force the woman to stay.”). See also *Why Do Victims Stay?*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/why-do-victims-stay> (last visited May 26, 2021) (dispelling question about why victims remain with their abusers).

³² See Shankar Vedantam & Bill Mesler, *USEFUL DELUSIONS: THE POWER & PARADOX OF THE SELF-DECEIVING BRAIN* xxiii–xxiv (2021) (“Our minds are not designed to see the truth, but to show us selective slices of reality, and to prompt us toward predetermined goals.”).

³³ See *id.* at 18.

³⁴ Cf. *id.* at 21 (“We tell our partners they look gorgeous when they don’t.”).

³⁵ *Issue Note: Violence Against Women and Girls*, UNITED NATIONS ECON. AND SOC. COUNCIL (Feb. 22, 2010), https://www.un.org/en/ecosoc/phlntrpy/docs/issuenote2_fin.pdf (“The most common form of violence experienced by women globally is physical violence inflicted by an intimate partner).