A New Age of Understanding: Allowing Self-Defense Claims for Battered Children Who Kill Their Abusers

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A NEW AGE OF UNDERSTANDING:
ALLOWING SELF-DEFENSE CLAIMS
FOR BATTERED CHILDREN
WHO KILL THEIR
ABUSERS

Abused children who commit parricide are presented as criminals, yet surely they are victims first.1

The shocking crime of parricide, the murder of a parent or close relative by a child,2 accounts for roughly 300-400 homicide cases each year in the United States.3 The notion that children could kill their parents is difficult for most people to accept.4 When children commit parricide, however, the crime often follows a lifetime of severe abuse that the children can no longer psychologically tolerate.5 Abused children view killing their parents as the only way to end the abuse.6

3. PAUL MONES, WHEN A CHILD KILLS: ABUSED CHILDREN WHO KILL THEIR PARENTS 7 (1991). About four out of every five homicide victims are related to, or acquainted with, their assailants. Id. at 27. One-fifth are murders among family members, the largest single group being wives killed by their husbands. The next most prevalent group is children killed by a parent. Parent killing is the rarest form of violence within the family. Id. Almost three-fourths of parricide cases involve boys killing their fathers. Id. at 13. Girls rarely kill their mothers. Id.
4. See id. at 8. “[P]arricide directly contravenes a universal religious and cultural principle—children must venerate their parents,” as expressed by the biblical phrase “honor thy mother and father.” Id. Parricide is also troubling because “it goes beyond religious principles and challenges the very structure of society; it is truly the definitive act of rebellion against the society’s rules and order.” Id. at 8-9.
5. Child abuse is the primary cause of parricide. Van Sambeek, supra note 1, at 104. Parricide “is also an expression of family dysfunction, . . . a crime that could not take place unless the family had created an untenable situation in which murder is a reasonable conclusion.” Shelley Post, Adolescent Parricide in Abusive Families, 61 CHILD WELFARE 445 (1982). So many children have endured such relentless abuse that some psychiatrists consider parricide “a sane reaction to an insane environment.” Lois Timnick, Fatal Means for Children to End Abuse, L.A. TIMES, Aug. 31, 1986, (Metro), at 1.
6. “The absence of a viable escape combined with long-term consistent and often escalating patterns of unprovoked assaults may lead a battered child to strike back against
Children who commit parricide often feel alienated by the courts, which they look to for justice.\(^7\) When these children assert self-defense to justify their actions, courts frequently reject the defense because it does not conform to classic self-defense theory, which encompasses only those who kill when confronted by an immediate and obvious threat to their lives.\(^8\) Children who kill their parents, however, normally strike when parents are the most vulnerable, such as when they are sleeping or when their backs are turned. Courts must recognize that in the mind of an abused child, "the imminent danger is more subtle and is only perceptible to an abused child."\(^9\) Self-defense would then be available to a child who commits parricide as an effective defense, as in any other homicide case.\(^10\)

Once a self-defense claim is allowed, expert testimony is needed to aid the jury in interpreting the reasonableness of the child's belief of imminent danger.\(^11\) Because the average juror has not been exposed personally to the physical and psychological effects of the abuse, he or she cannot understand the dynamics of the complex relationship between a batterer and a victim.\(^12\) A layman usually cannot comprehend the impact long-term abuse has upon a child's emotional and psychological responses.\(^13\) Accordingly, expert testimony gives the jury critical inform-
tion on battered children that they need to make an informed decision regarding reasonableness. Without the expert testimony, the jury is not able to evaluate properly a self-defense claim.

States are beginning to recognize the validity of the self-defense claim for battered women who kill after years of abuse, but a similar defense has not yet been extended to children who kill abusive parents. The origin of the studies relating to abuse may explain why children receive treatment different from battered women. For example, the battered women's syndrome originated by focusing on the psychological effects of abuse on women. In contrast, the battered child's syndrome originated with medical research, focusing on the physical effects of abuse. Consequently, the syndromes are not viewed as equivalent. The psychological effects upon battered children mirror those of battered women, however, and self-defense claims in parricide cases are essentially identical to those asserted when battered women kill their abusers. It is therefore logical to extend the self-defense claim to children as well as women.

Courts are slowly recognizing that women and children should be treated similarly when they murder after years, or a lifetime, of family violence. In 1991, the Texas legislature became the first in the country to pass a gender-neutral statute allowing evidence of family violence to be admitted when a woman or a child kills. In 1993, the Supreme Court of Washington, in State v. Janes, concluded that "the battered child syn-

14. See infra note 110.
15. See Hicks, supra note 6, at 105; see generally Lenore Walker, The Battered Woman (1979).
16. Hicks, supra note 6, at 105.
17. Id.
18. Id.
19. See Moreno, supra note 10, at 1284.
20. In a concurrent resolution, the Texas Senate reported that a woman is beaten every 18 seconds, and "in Texas alone more than 650,000 women are subject to abuse by their husbands on a regular basis." Tex. S. Con. Res. 26, 72d Leg., 1st Sess. 1 (1991) [hereinafter Texas Resolution 26]. In 60 percent of the homes where a woman is beaten, the children are also abused. Most markedly, of boys ages 11 to 20 who have committed homicide, 63 percent have killed a man who was abusing their mother. Id. One hundred thirteen out of more than 300 women convicted of murder or manslaughter in Texas killed someone with whom they had lived. Kimberly Garcia, Provoked to Kill: SCR26 Reexamines Family Violence, 55 Tex. B. J. 380 (1992). The concurrent resolution "was designed to reevaluate cases . . . where abuse might have been overlooked." Id. The Texas Department of Criminal Justice contacted eligible women with a letter that explained the resolution and "invited them to apply for review if they thought family violence provoked their crime." Id. Subsequently, the Texas Senate enacted Tex. Penal Code Ann. § 19.06 (West Supp. 1991).
drome is the functional and legal equivalent of the battered woman syndrome.” The court held that evidence of the battered child syndrome is admissible to prove self-defense, and expert testimony is allowed to help the trier of fact understand this “little-known psychological problem.”

This Comment argues that battered children must be afforded the same defenses that are available to battered women. The effective assertion of a claim of self-defense requires the admission at trial of evidence of abuse, including expert testimony concerning the psychological effects of abuse on a child. Section I presents a profile of battered children, exploring the background and history of child abuse and parricide, the common characteristics of battered children who kill, and why they commit this crime. Section II discusses the traditional notions of self-defense and why an objective standard of reasonableness is inappropriate in parricide cases. Section II emphasizes the importance of expert testimony to aid the trier of fact when evaluating a parricide self-defense claim. By showing how battered women won the right to introduce expert testimony and comparing battered women with battered children, this Comment demonstrates the need for uniform treatment. Section III presents both past and present statutory and judicial responses to parricide cases, focusing on recent expansions of the battered child’s defense. Section III concludes with an analysis of how these recent developments reflect a new understanding of the battered child and lend further support to the argument for uniform treatment for all abuse victims who kill. Section IV offers a solution for admitting expert testimony relating to abuse in parricide cases, concluding that all abuse victims merit equal protection under the law. State legislatures must respond in order to achieve this goal.

I. BACKGROUND OF THE ABUSED CHILD

Although the problems of child abuse and parricide have existed for centuries, they have long been hidden from the mainstream of societal

22. Id. at 503. The court recognized that “[g]iven the close relationship between the battered woman and battered child syndromes, the same reasons that justify admission of the former apply with equal force to the latter.” Id. at 502.

23. Id. at 503.

24. This comment does not advocate violence. The author does not advocate a “license to kill for victims.” See Henry J. Reske, License to Kill? Panelists Advocate Mercy, Not Violence, 79 A.B.A. J. 37 (1993). After hearing all the evidence, the factfinder still must decide whether a battered child had a reasonable fear of imminent danger when the child killed its abuser.

25. Diana J. Ensign, Links Between the Battered Woman Syndrome and the Battered Child Syndrome: An Argument for Consistent Standards in the Admissibility of Expert Tes-
violence. Because child abuse is a disturbing crime, many people would rather not affirmatively acknowledge its existence. Furthermore, because children have a traditionally subordinate legal status, and because physical discipline is emphasized in child-rearing in the United States, the misconception that parents always act in the best interests of their children is pervasive in our society.

Child abuse was first recognized as a real problem in this country in the early 1960s. Child abuse became more easily detected with the development of X-rays and the adoption of preventive programs. As a result of increased awareness, society began to challenge the presumption that timony in Family Abuse Cases, 36 WAYNE L. REV. 1619, 1625 (1990) (noting that the first reports of child abuse date as far back as the seventeenth century). For example, the case of Lizzie Borden occurred in 1892. See MONES, supra note 3, at 7. She was found not guilty for the ax murder of her parents because “the crime was simply beyond the comprehension of the community; they could not bring themselves to believe, even with very convincing evidence, that prim and proper Lizzie could have done such a thing.” Id. at 8.

26. Society has been slow to accept that parents do not always fulfill their obligation to love and care for their children. Moreno, supra note 10, at 1301. Children are also reluctant to report the abuse, and the abuse is not considered wrong in the majority of violent families. Id. at 1300. Moreover, many people think that what goes on between the walls of a family’s home is no business of anyone else. See Ensign, supra note 25, at 1625 (stating that police intervention into family matters is not always encouraged).

27. Injuries from child abuse have included head injuries, broken bones, burns, ruptured internal organs, and human bites. R.H. Brown, The Battered Child Syndrome, 21 J. FORENSIC SCI. 65, 66 (1976). Children have been confined and chained in rooms, sheds, or basements, and some have been buried alive. Id. Some children have been strangled or suffocated by pillows or plastic bags. Michael S. Orfinger, Battered Child Syndrome: Evidence of Prior Acts in Disguise, 41 FLA. L. REV. 345, 350 (1989) (citing various studies).

28. Van Sambeek, supra note 1, at 90. The prosecutor in the Lizzie Borden trial stated that parricide is “the most horrible word that the English language knows.” MONES, supra note 3, at 8.

29. Hicks, supra note 6, at 108. “[I]t has only been in the last one hundred years that we have recognized through laws and social practices that children are independent beings, entitled to protection from the excesses of their parents.” MONES, supra note 3, at 32. For example, in 1874, a young girl was found starving and chained to her bed. Since there was no child protection agency at the time, the Society for the Prevention of Cruelty to Animals removed her from her home. Id.

Historically, children were viewed as their father’s property, and a father had absolute power to discipline his children as he saw fit. Hicks, supra note 6, at 108. Children had no rights in their families. Lynn Smith, What’s Best for the Children?, L.A. TIMES, Oct. 18, 1992, at E1. In ancient Rome, fathers could “legally kill their children- based on the reasoning that those who gave life could also take it away.” Id.

30. Hicks, supra note 6, at 108. There are two distinct models of abuse. Either the parents have an honest belief that abuse is the appropriate way to reform or control the child’s behavior, or the parents are addicted to the power they have over the child and derive pleasure from exercising this power. MONES, supra note 3, at 15.

31. Ensign, supra note 25, at 1625.
physical force is always a parent’s right and in the best interests of a child. Nevertheless, society still refuses today to fully acknowledge the extent and terrible reality of family violence.

The battered child syndrome is rooted in medical research. Dr. C. Henry Kempe coined the term “battered child syndrome” in a 1962 study. Kempe used the term to “characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.” Early studies of child abuse focused on the physical abuse, but eventually the psychological aspects were studied as well. Because of its medical origins, however, battered child’s syndrome has not been officially recognized as a psychological syndrome, which “may impede . . . formal acceptance by courts of the syndrome’s legitimacy as a psychological disorder.” However, because modern medicine treats battered child’s syndrome as a valid psychological syndrome, courts should recognize it in the interests of fairness when battered children are on trial for killing their abusers.

Battered children live in an environment where severe abuse is frequent and occurs randomly with or without warning. These children

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32. E.g., Moreno, supra note 10, at 1300.
33. MONES, supra note 3, at 29. Society persists in its “idealization of the family as an island of peace in a savage, chaotic world.” Id. Society, especially through the mass media, willingly acknowledges violence perpetrated by strangers, while incidents of family violence are drastically underreported by both victims and the media. Id.
34. Hicks, supra note 6, at 105.
35. Id. at 109; see C. Henry Kempe et al., The Battered Child Syndrome, 181 JAMA 17 (1962); see also Estelle v. McGuire, 112 S. Ct. 475 (1991) (holding that expert testimony and evidence related to prior injuries were admissible to prove the “battered child syndrome” in a trial where the defendant was convicted of murdering his infant daughter).
36. Hicks, supra note 6, at 109. Kempe attempted to “identify and increase physicians’ awareness of the specific set of injuries while pointing out the non-accidental nature of the injuries.” Karla O. Boresi, Comment, Syndrome Testimony in Child Abuse Prosecutions: The Wave of the Future?, 8 St. Louis U. Pub. L. Rev. 207, 210 (1989). Kempe’s study demonstrated that certain classes of injuries suffered by children were consistent solely with physical abuse by their parents, and not by defects of the children. Id. at 207. It was not until Kempe’s seminal article that physicians began to accept the reality that parents were intentionally inflicting abuse on their children. Id.

For a complete discussion on the origins of the battered child syndrome, see Orfinger, supra note 27, at 348-53.
38. Hicks, supra note 6, at 111.
39. Id. at 103. “Battered and sexually abused children live in a world that is strikingly different from the safe and nurturing home depicted by traditional values and social expectations. Instead of being protected and cared for, these children are ‘thrown into conflict, confusion, insecurity, and anguish.’” Moreno, supra note 10, at 1303.
are physically, emotionally and/or sexually abused at levels that approach torture.\(^{40}\) Even if the physical or emotional abuse is not severe, "[t]he assumption that relatively infrequent or milder forms of battering will have little or no effect on the child's development is inaccurate."\(^{41}\) On the surface, these families appear close.\(^{42}\) But parents who abuse their children often "perceive the act of conception as granting them absolute, unfettered control over the life they have created."\(^{43}\) The family often isolates itself from outsiders who could detect abuse or render emotional and financial support.\(^{44}\) Even if other family members or outsiders do know about the abuse, they most likely will not intervene.\(^{45}\)

Abuse affects all aspects of a child's life. Battered children withdraw and suppress their emotions, both in the dangerous environment of the home, and outside the home.\(^{46}\) Battered children frequently have a per-

\(^{40}\) Garry Abrams, Defender of the Indefensible, Paul Mones Sees Terrified Kids Where Others See Parent Killers, L.A. TIMES, June 7, 1989, Part 5, at 1 (quoting attorney Paul Mones); see also 60 Minutes: Parricide 4 (CBS television broadcast, Nov. 29, 1992) (transcript at Burrelle's Information Services, Livingston, New Jersey) [hereinafter 60 Minutes].

\(^{41}\) Moreno, supra note 10, at 1301. Abused children are desensitized to violence, both the violence directed at them and at the people around them. Abrams, supra note 40, at 2 (quoting attorney Paul Mones). "What we're supposed to learn as children, that violence is bad, becomes so routine in your life and it becomes the primary problem solver, it's not that hard to resort to." Id. (quoting attorney Paul Mones).

\(^{42}\) Carolyn Colwell, Defending Kids Who Kill Their Parents, NEWSDAY, Sept. 26, 1991, at 103 (quoting attorney Paul Mones). Parricide usually occurs in families that appear "normal" from the outside. Meyer, supra note 2, at W14. Because neighbors see the killings as random events, they are often shocked by the crime and unable to imagine its cause. Id.

\(^{43}\) Mones, supra note 3, at 15. The abusive parents are "successful wage earners, regarded by their peers as honest, hardworking people who have a reputation for perfectionism both on and off the job." Id. at 14. They rarely violate the law, and tend to be very private people. Id. After the murder, neighbors frequently comment that the parent was "overly strict" or a "stern disciplinarian." Meyer, supra note 2, at W14. To understand why these parents abuse their children, however, one must understand that "[e]ach [of these parents] has been abused themselves in very terrible ways." Abrams, supra note 40, at 2.

\(^{44}\) See Post, supra note 5, at 451. The parents want to keep the outside world from penetrating the family boundaries. Id. Furthermore, social patterns in the United States generally result in American nuclear families being physically and psychologically isolated. Emanuel Tanay, Reactive Parricide, 21 J. FORENSIC SCI. 76, 81 (1976). "There are no aunts, uncles, or grandparents to interfere or assist in day-to-day living." Id.

\(^{45}\) E.g., 60 Minutes, supra note 40, at 4-5.

\(^{46}\) Post, supra note 5, at 450. Most abused children suffer quietly. Anastasia Toufexis, When Kids Kill Abusive Parents, TIME, Nov. 23, 1992, at 61. Many run away, attempt suicide, or take out their repressed anger on someone else. Id.
sive sense of helplessness that results from feeling trapped in a situation from which they cannot escape. In fact, abused children often develop a "concentration camp" mentality where they feel they have no options and cannot leave home." Battered children also suffer from post-traumatic stress disorder (PTSD), "an anxiety-related disorder which occurs in response to traumatic events outside the normal range of human experience."

Another important characteristic of battered children is that of hypervigilance:

a hypervigilant child is acutely aware of his or her environment and remains on the alert for any signs of danger, events to which the unabused child may not attend. The child's history of abusive encounters with his or her battering parent leads him or her to be overly cautious and to perceive danger in subtle changes in the parent's expressions or mannerisms. Such 'hypermonitoring' behavior, as it has been termed, means the child becomes sensitized to these subtle changes and constantly 'monitors' the environment (particularly the abuser) for those signals which suggest danger is imminent.

To understand the violent response of battered children, a juror must understand hypervigilance, and that battered children may perceive subtle changes in their environment as creating a reasonable fear of imminent danger that an outsider would not detect. Furthermore, these "special perceptions" help to explain why children who have never before reacted violently to more overt stimuli kill their abusers in comparatively less

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47. Post, supra note 5, at 450. This is referred to as "learned helplessness." See infra note 113 and accompanying text for a discussion on learned helplessness.

48. Van Sambeek, supra note 1, at 104. See infra note 112 and accompanying text for a discussion on the cycle theory of abuse, which helps to explain why a victim does not leave an abusive situation.

49. Van Sambeek, supra note 1, at 104. These children "resemble a suicidal profile more closely than a homicidal profile." Id. Within six months of killing their parents, the majority of youths have attempted suicide. Nancy Blodgett, Self-Defense: Parricide Defendants Cite Sexual Abuse as Justification, A.B.A. J., June 1, 1987, at 37 (quoting attorney Paul Mones).

50. State v. Janes, 850 P.2d 495, 501 (Wash. 1993) (en banc). "The resulting psychological response to abuse-induced PTSD is often referred to as the 'battered child syndrome.'" Id.

51. Hicks, supra note 6, at 103-04. These children "develop 'a very finely tuned antenna for impending violence', ..." Janes, 850 P.2d at 502 (quoting Dr. Lenore Walker).

threatening situations.\textsuperscript{53}

Precipitating events within the family typically begin about six months before the homicide.\textsuperscript{54} Unable to perceive an alternative other than murder to solve the conflict\textsuperscript{55} or to identify anyone who can help them,\textsuperscript{56} these children frequently feel that if they do not act, they may be the murder victim at the hands of their abuser.\textsuperscript{57} Because children are more vulnerable to the effects of violence and have no independent ability to support themselves, they cannot escape.\textsuperscript{58} They do not yet have the life experiences on which to draw, and are unable psychologically to manage the abuse by putting the battering into perspective.\textsuperscript{59} Thus, by the time a court gets involved, it is usually too late to devise less extreme solutions.

The murders almost always occur when the abusive parent has little opportunity to defend the attack.\textsuperscript{60} The circumstances often suggest an

\textsuperscript{53} Van Sambeek, supra note 1, at 98 (suggesting that the abused child seeks to avoid a threat suddenly introduced into the relationship).

\textsuperscript{54} Post, supra note 5, at 451. Children do not leave these situations for several reasons. Most importantly, the children assume the blame for the abuse. E.g., MONES, supra note 3, at 41. Children learn that the words of an adult are taken more seriously than their own. Id. Children learn to adapt to their environment, trying to please their parents as much as possible. Id. at 41-42. These children also do not label themselves as abused. Id. at 42. The cycle continues because if the parent shows any love or caring, the children hope that things will change for the better. Id.

\textsuperscript{55} Post, supra note 5, at 451. Battered children “internalize the abuse they see ‘over a long period of time’ until they reach a ‘breaking point.’” Patricia Callahan, When a Child Kills a Parent, Does Abuse Forgive the Act?, CHI. TRIB., June 17, 1993, at 16 (quoting Joy Byers, associate communications director for the National Committee to Prevent Child Abuse).

\textsuperscript{56} Kathleen M. Heide, Why Kids Kill Parents, PSYCHOL. TODAY, Sept./Oct. 1992, at 64. Denial by other family members places responsibility on the child to solve the problem. Post, supra note 5, at 453. This problem is compounded by a lack of intervention by other outside sources.

\textsuperscript{57} Blodgett, supra note 49, at 36 (quoting attorney Paul Mones). “[P]arricide . . . has a large element of self-preservation.” Tanay, supra note 44, at 76. The resulting situation for the child is “either murder or suicide.” MEYER, supra note 2, at W16.

\textsuperscript{58} These children cannot simply leave, because it is a crime for them to run away. Even if they do consider running away, “[s]urviving on the streets is hardly a realistic alternative for youths with meager financial resources, limited education, and few skills.” Heide, supra note 56, at 63. Furthermore, the child has always depended on the parent for survival. Darrell Sifford, Parricide: A Child Paying Back Abuse, PHILA. INQ., Jan. 30, 1992, (Magazine), at 5.

\textsuperscript{59} Hicks, supra note 6, at 124.

ambush, since the killing rarely occurs during verbal or physical abuse. This increases a child’s likelihood of success since it may be the only time the child can overpower the abuser. Another phenomenon is “overkill,” where a child shoots, clubs, or stabs the parent numerous times. Overkill has more to do with a child’s fear of its parent than an intent to inflict brutal injury.

Battered children who commit parricide are usually white middle class or upper-middle class boys between the ages of sixteen and eighteen. They generally do well in school and have no history of delinquency or violent, assaultive behavior. In many instances the children suffer “poly-abuse,” where they are physically, mentally, and often sexually abused over a period of years, and are likely to have witnessed the repeated abuse of other family members. The children’s target is most often the father, and the typical weapon is a gun kept in the home. Following the murder, family members frequently state that they understand the murder, and are relieved themselves. Furthermore, re-arrests

61. Killings typically occur when the parent is sleeping, watching television, or has his or her back turned. E.g., MONES, supra note 3, at 15.
62. Id.
63. Toufexis, supra note 46, at 61. Unfortunately, “this makes the killing appear to be cold-blooded murder.” Id.
64. MONES, supra note 3, at 15-16. For example, Donna Marie Wisener shot her abusive father six times. The first of her six bullets would probably have killed him. David Margolick, When Child Kills Parent, It’s Sometimes to Survive, N.Y. TIMES, Feb. 14, 1992, at D20.
65. In the lower classes, social service agencies and police are “omnipresent.” Colwell, supra note 42, at 103. Schools and teachers are watchful for signs of abuse. Id. Also, children from lower classes are more likely to know where to go for help. Timnick, supra note 5, at 3.
66. Adolescence is one factor for increased abuse in the family. Post, supra note 5, at 450. The adolescent’s movement towards autonomy and changes in personality may result in “remarkably negative responses.” Id. The parents feel they are losing control over their children. Id. During adolescence children do not comprehend the consequences of their actions. MONES, supra note 3, at 16. This makes a violent reaction more likely.
67. Van Sambeek, supra note 1, at 104. These children have none of the classic characteristics of juvenile delinquents. Timnick, supra note 5, at 1. They are compliant, well-mannered teenagers of whom people say, “It would never be so-and-so.” Id. (quoting attorney Paul Mones). “If they have a record, it is usually for victimless crimes such as vandalism, shoplifting, or playing hooky.” MONES, supra note 3, at 13. Lastly, at the time of the crime, almost all of the children are sane. Abrams, supra note 40, at 2. Only a fraction of them are psychotic or sociopathic. Timnick, supra note 5, at 3.
68. MONES, supra note 3, at 14. These children often become the protectors of their abused younger siblings. Post, supra note 5, at 452.
69. Toufexis, supra note 46, at 60.
70. E.g., Post, supra note 5, at 454. After the killing, horrible consequences for the family and the child usually do not develop. Id. The killing of the parent generally im-
of the children are rare;\textsuperscript{71} in fact, the children are not dangerous or violent members of society once they kill the abusive parent.\textsuperscript{72}

II. TRADITIONAL NOTIONS OF SELF-DEFENSE

Homicide is justifiable as self-defense if: (1) the defendant acted with a reasonable belief that he or she was in imminent danger of unlawful death or serious bodily harm;\textsuperscript{73} (2) the use of force was necessary to avoid the danger; and (3) the amount of force used was reasonable in relation to the threatened harm.\textsuperscript{74} Most states require that one be in fear of imminent danger at the moment of the killing.\textsuperscript{75} Since traditional notions of self-defense require that the defendant have a reasonable fear of death or substantial harm, the reasonableness of the defendant’s fear is measured against one of three standards. First, an objective standard may be used to measure the reasonableness of the defendant’s perceptions and reactions to the attack from the perspective of the ordinary person placed in similar circumstances.\textsuperscript{76} Second, a subjective standard, which is more sensitive to the particular defendant’s situation, requires only a good faith and honest belief on the part of the defendant in the need for self-de-

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\textsuperscript{71} Post, \textit{supra} note 5, at 454 (citing several studies).

\textsuperscript{72} Van Sambeek, \textit{supra} note 1, at 104. Once the abusive parent is killed, the pressure is removed from the child and he or she can now start over and become a normal member of society.

\textsuperscript{73} This presupposes that with some overt act, the victim will manifest this threat of serious harm immediately before the defendant takes action. Scobey, \textit{supra} note 8, at 183. “The law recognizes the right of a person to use force or even take life in defense of his/her person.” Gail Rodwan, \textit{The Defense of Those Who Defend Themselves}, 65 \textit{MICH. B.J.} 64 (1986).

\textsuperscript{74} Van Sambeek, \textit{supra} note 1, at 91-92 (quoting WAYNE R. LAFAVE & AUSTIN W. SCOTT, \textit{CRIMINAL LAW} § 5.7, at 454 (2d student ed. 1986)). In many states, there is also a “duty to retreat,” where the defense of self-defense cannot be raised if there is any lapse of time or any way the defendant could have escaped or avoided the conflict. Scobey, \textit{supra} note 8, at 183.

\textsuperscript{75} See Crocker, \textit{supra} note 52, at 126 (noting that in traditional analysis, imminent generally meant immediate); see, e.g., \textit{MODEL PENAL CODE} § 3.04(1) (Official Draft 1985) (stating that “the use of force upon or toward another person is justifiable when the actor believes that such force is \textit{immediately} necessary for the purpose of protecting himself against the use of unlawful force by such other person . . . ”) (emphasis added).

\textsuperscript{76} Crocker, \textit{supra} note 52, at 125. These standards are referred to as “reasonable man” standards. \textit{Id.} at 124. The objective standard ignores variations among people and applies “only one standard of conduct to protect the general welfare.” \textit{Id.} at 125 n.11.
fense. Third, a hybrid standard uses both objective and subjective analyses. The jury must consider the defendant’s perspective in evaluating what “a reasonable person” would do in similar circumstances.

A. The Inapplicability of Traditional Notions of Self-Defense in Parricide Cases

The traditional standard of self-defense is inappropriate with regard to parricide cases. First, the traditional self-defense doctrine “contemplates a man-to-man, stranger-to-stranger confrontation, which is characterized as immediately violent and physically threatening.” Children who kill their parents, however, do not fit this description. The children know the decedent and, in most cases, an outsider would not perceive the circumstances to be immediately violent or physically threatening. The children often kill in a nonconfrontational situation, where the threat does not seem immediate. Moreover, traditional self-defense is based on a one-time confrontation, whereas children who kill base their defense on a long history of abuse.

77. Id. at 125. A subjective standard is preferable in parricide cases because the defendant is only required to have an honest belief in the need for self-defense. The history of abuse and characteristics of the battered child are considered under the subjective standard. By contrast, the objective standard uses an ordinary person, or nonbattered person to determine reasonableness.


79. Attorney Kenneth J. King states that “self-defense laws, designed for street fighting men, cannot deal effectively with women who kill an abuser while he is sleeping or hours after an assault.” Reske, supra note 24, at 37. This observation applies equally to parricide cases.

80. Scobey, supra note 8, at 182. Traditional self-defense laws were created so that if a person were unlawfully attacked by another and lacked time to seek assistance from the legal system, the person could take reasonable steps to defend his or her life. See Moreno, supra note 10, at 1282; Crocker, supra note 52, at 123. The reason people have a difficult time accepting that battered children are in fear of imminent danger at all times is that something that might happen in the future is too vague and indefinite. It is much too speculative for the child to react in such a way.

81. See Developments in the Law, supra note 78, at 1577. Even if the child, acting in response to an immediate attack, responds with deadly force, an observer may not consider the attack to pose a deadly threat. See id.

82. Rodwan, supra note 73, at 64. The law presumed that the person who was doing the perceiving in a self-defense situation was a healthy adult male. Margot Slade, Justice is Stretched to Allow Wider Self-Defense, N.Y. TIMES, Nov. 11, 1988, at B5.
Second, and more importantly, the determination of "reasonableness" in parricide cases is extremely difficult.\textsuperscript{83} In applying an objective standard of reasonableness, the critical questions are whether the average person in the child's position would believe that he or she was in imminent danger at the moment of the murder, and whether deadly force was necessary.\textsuperscript{84} This is problematic because "victims of domestic violence have a special feeling of imminence—they have to live with the victim."\textsuperscript{85} These children constantly fear for their lives. Therefore, the factfinder must have knowledge of the abuse element to understand the child's perceptions of danger and his or her need to use self-defense.\textsuperscript{86}

No person who honestly believes herself/himself to be in danger should be required to stop and assess the situation as others might see it. And no jury that finds a defendant actually believed in the necessity of his/her actions should be required to convict because a reasonable person might have believed otherwise.\textsuperscript{87}

Because an abuse victim's perceptions cannot be judged against what an ordinary person would do in the same situation, "[t]he standard of reasonableness for a self-defense defense must be what is reasonable to an abuse victim."\textsuperscript{88} A subjective or hybrid standard must be used, and it is critical that the factfinder understand the effects of the abuse.

\textbf{B. Expert Testimony as an Aid to Traditional Notions of Self-Defense in Parricide Cases}

In the traditional\textsuperscript{89} self-defense scenario, it is not necessary to rely on expert testimony to explain the perception of the accused at the moment of crisis when he or she resorts to the use of deadly force.\textsuperscript{90} The jurors

\textsuperscript{83} Van Sambeek, supra note 1, at 92.

\textsuperscript{84} Id. Some decisions recognize a cumulative effect theory, which shows that cumulative provocation that lasts over a substantial period of time may culminate in the killing of the batterer. Rodwan, supra note 73, at 65. This theory shows how a battered person "honestly or reasonably perceives herself or himself in almost constant danger of immediate bodily harm." Id.

\textsuperscript{85} Blodgett, supra note 49, at 37 (quoting attorney Paul Gianelli).

\textsuperscript{86} Van Sambeek, supra note 1, at 92. The evidence of the abusive relationship shows the reasonableness of the child's deadly attack on the abuser. For this reason, Van Sambeek argues that it is "vital that jurors are informed of the child's experiences as an abuse victim" in order to determine reasonableness. Id.

\textsuperscript{87} Rodwan, supra note 73, at 64.

\textsuperscript{88} Van Sambeek, supra note 1, at 98-99.

\textsuperscript{89} In a traditional situation, a victim uses self-defense during an actual physical attack. See Crocker, supra note 52, at 142.

can put themselves in the shoes of the defendant and place themselves at the murder scene to decide from their own experiences whether or not the use of deadly force was reasonable.\textsuperscript{91} In a nontraditional situation,\textsuperscript{92} however, the life experiences of the average juror are usually inadequate to support an informed evaluation of reasonableness,\textsuperscript{93} especially when the facts of the case involve an area in which an average juror has no knowledge. In such cases, the jury requires assistance from an expert witness.\textsuperscript{94} In almost every parricide case, the expert is needed to educate the judge and jury of the dynamics at work in a battering relationship.\textsuperscript{95}

Two elements are required for the admission of expert testimony.\textsuperscript{96} First, the factual issues must be "beyond the ken of laymen."\textsuperscript{97} Second,

\begin{itemize}
  \item \textsuperscript{91} \textit{Id.} at 1014 (Rose, J., dissenting).
  \item \textsuperscript{92} In nontraditional situations the physical violence may stop, but the defendant continues to have fear and kills at a time when the danger would not appear imminent to an outsider. \textit{See} Crocker, \textit{supra} note 52, at 139. An example is when a woman kills her batterer when he is sleeping, or when his back is turned.
  \item \textsuperscript{93} \textit{See}, e.g., Jahnke, 682 P.2d at 1014.
  \item \textsuperscript{94} \textit{Id.} In these unusual situations, it is equally important to inform the jury of the psychological factors that impact the defendant's behavior. \textit{Id.} at 1016.
  \item \textsuperscript{95} Ensign, \textit{supra} note 25, at 1629-30. Expert testimony should be used with a hybrid standard of reasonableness. The expert helps to explain why a child's unreasonably unreasonable behavior is reasonable, and "how ordinary lay perceptions of how a 'normal' reaction to a battering spouse [or parent] are at variance with the actual behavior and mentality of battered women [and children]". \textit{Developments in the Law, supra} note 78, at 1580 (discussing expert testimony in the context of the battered woman syndrome).
  \item \textsuperscript{96} Every jurisdiction has its own rules governing the admissibility of expert testimony. \textit{See} McCORMICK ON EVIDENCE § 203, at 362 (4th ed. 1992) (stating that many courts apply special rules of admissibility when an expert is called to testify about scientific findings). The notion of a special rule originated in \textit{Frye} v. United States, 293 F. 1013 (D.C. 1923). Under the \textit{Frye} test, the proponent of the evidence must establish its relevance and show "general acceptance of the principle in the scientific community." \textit{McCORMICK ON EVIDENCE} § 203, at 362.
  
  Other states have adopted a much more liberal standard, which is modeled after FED. R. EVID. 702. Under FED. R. EVID. 702, the expert testifying must have scientific knowledge that will assist the trier of fact in understanding the evidence or determining a fact in issue. \textit{See} Daubert v. Merrell Dow Pharmaceuticals, 113 S. Ct. 2786, 2794 (1993).
  
  In \textit{Daubert}, the Supreme Court held that the Federal Rules of Evidence, not \textit{Frye}, provide the standard for admitting expert testimony for trials in federal courts. \textit{Id.} The \textit{Frye} test was superseded by the adoption of the Federal Rules of Evidence. Some states, however, still apply the \textit{Frye} test. \textit{See}, e.g., State v. Janes, 850 P.2d 450, 501 (Wash. 1993) (en banc) (analyzing the admissibility of the battered child syndrome under both the \textit{Frye} test and WASH. R. EVID. 702, which adopts the Federal Rule in its entirety).
  
  \textsuperscript{97} McCORMICK ON EVIDENCE § 13, at 21 (4th ed. 1992). "An intelligent evaluation of facts is often difficult or impossible without the application of some scientific, technical, or other specialized knowledge. The most common source of this knowledge is the expert witness . . . ." FED. R. EVID. 702 advisory committee's note.
\end{itemize}
the testimony must aid the trier of fact "in the search for truth." Even if both of these requirements are met, to be admitted at trial the expert testimony must be relevant and its probative value must outweigh the unfair prejudicial effect to the opposing party.

Expert testimony is vital in the parricide case because the expert is able to explain to the jury all of the relevant considerations they must weigh when evaluating the circumstances under the traditional notions of self-defense. Because battered children perceive danger differently from other children, expert testimony aids the jury in understanding the unusual situation that battered children face. The jurors, comprised of ordinary laymen, are unlikely to comprehend the reasonableness of the child's fear if they have never been in such an abusive situation. Expert testimony aids the jury in evaluating "the manner in which a battered child perceives the imminence of danger and his or her tendency to use deadly force to repel that danger." This is especially crucial in the absence of a confrontation when an average juror would not see any threat or impending danger.

Furthermore, expert testimony shows how the fear of imminent bodily harm was constantly present rather than appearing only during beatings. An expert explains the reasons for the child's feelings of powerlessness, learned helplessness, being trapped, and theorizes why the child did not fight back even after repeated assaults. The expert also helps the jury understand critical factors in the child's background. There are many psychological reasons why a child stays and endures the abuse. Understanding why an abused child remains in a relationship and does not get any help from outside sources is beyond the

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98. MCCORMICK ON EVIDENCE § 13, at 21.
99. Boresi, supra note 36, at 209. "Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Id.; see FED. R. EVID. 401, 403.
100. Hicks, supra note 6, at 104. "Effective expert testimony goes to the heart of the self-defense issue by explaining how repeated physical and psychological abuse leads a battered spouse to perceive herself/himself in imminent danger and to believe she/he must respond with deadly force." Rodwan, supra note 73, at 66.
101. Scobey, supra note 8, at 191.
102. Id. at 188. Expert testimony shows the reasonableness of a child's belief that he or she was in imminent danger of death or serious injury, even when the killing occurred in "a seemingly nonconfrontational setting." Developments in the Law, supra note 78, at 1580.
103. E.g., Scobey, supra note 8, at 188.
104. When a child grows up abused, he or she perceives the violence as normal and does not realize it is something from which he or she should escape. Van Sambeek, supra note 1, at 98-99. The child sees the abuser as omnipotent, not to mention the fact that the size and strength of the abuser makes retaliation during an attack unlikely. There are also various social and economic factors. Id.
common knowledge of the jury and therefore must be explained.105

C. The Admissibility of Expert Testimony in Trials of Battered Women and the Need for Uniform Treatment of Battered Women and Battered Children

Expert testimony on the effects of abuse has been admitted in cases involving battered women who kill their abusers.106 Cases of battered women successfully asserting self-defense claims has altered the understanding of self-defense.107 Battered women's syndrome is defined as "a constellation of common characteristics which are manifested by women who have been abused physically and psychologically over a prolonged period of time by the dominant male in their lives."108 Courts are divided over the admission of expert testimony concerning the battered women's syndrome when the testimony is used as an affirmative defense by women who have killed their abusers.109 The general trend, however, is to recognize the relevance of the expert testimony.110 Experts attempt to de-

105. Hicks, supra note 6, at 127. The dynamics of child abuse are so foreign to the average person that an expert explanation is required. Boresi, supra note 36, at 208-09. Outsiders are not able to put themselves in the same situation and feel confident that they would be able to leave or retaliate.

106. See generally James O. Pearson, Jr., Annotation, Admissibility of Expert or Opinion Testimony on Battered Wife or Battered Woman Syndrome, 18 A.L.R.4TH 1153 (1982). Prior to the mid-1970s, when expert testimony on the battered woman syndrome was not admitted at trial, women who killed their abusers in nontraditional situations often pleaded guilty or claimed one of the various impaired mental state defenses, such as insanity, temporary insanity, or diminished capacity. Developments in the Law, supra note 78, at 1577-78. "It wasn’t until the early 1980s that lawyers began introducing expert evidence about the syndrome, based on a book by psychologist Lenore Walker, to bolster self-defense theories." Reske, supra note 24, at 37.

107. Slade, supra note 82, at B5.

108. Hicks, supra note 6, at 112; see State v. Kelly, 478 A.2d 364, 371-72 (N.J. 1984) (stating that battered women “become so demoralized and degraded by the fact that they cannot predict or control the violence that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation”); see also WALKER, supra note 15, at 75.

109. Hicks, supra note 6, at 113.

110. Id.; see Chapman v. State, 367 S.E.2d 541, 543 (Ga. 1988) (finding the evidence
scribe the common social and psychological characteristics of battered women.111 “Expert testimony on the battered woman syndrome largely consists of a description of the syndrome itself, particularly its two main components—the ‘cycle theory of violence’112 and the ‘theory of learned


There has also been a statutory trend by states to allow expert testimony for battered women. See Cal. Evid. Code § 1107(a) (West Supp. 1993) (“[E]xpert testimony is admissible . . . regarding battered women’s syndrome, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence . . . .’); La. Code Evid. Ann. art. 404(2)(a) (West Supp. 1992) (“[W]hen the accused pleads self-defense and there is a history of assaultive behavior . . . it shall not be necessary to first show a hostile demonstration or overt act on the part of the victim . . . and further provided that an expert’s opinion as to the effects of the prior assaultive acts on the accused’s state of mind is admissible . . .’); Md. Cts. & Jud. Proc. Code Ann. § 10-916(b) (1991) (“[W]hen the defendant raises the issue that the defendant was, at the time of the alleged offense, suffering from the Battered Spouse Syndrome . . . the court may admit . . . [e]vidence of repeated physical and psychological abuse . . . and [e]xpert testimony on the Battered Spouse Syndrome . . .’); Mo. Ann. Stat. § 563.033(1) (Vernon Supp. 1993) (“Evidence that the actor was suffering from the battered spouse syndrome shall be admissible upon the issue of whether the actor lawfully acted in self-defense or defense of another.’); Ohio Rev. Code Ann. § 2901.06(B) (Anderson 1991) (“the person may introduce expert testimony of the “battered woman syndrome” and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary . . . to justify the person’s use of the force in question.’).

111. Moreno, supra note 10, at 1284. A growing number of courts have held that expert testimony on the battered woman syndrome is admissible to assist the jury’s fact-finding functions. See supra note 110. But “[a]lthough the present trend is to allow expert testimony regarding the battered woman syndrome, even in those jurisdictions permitting this testimony the courts have given inconsistent reasoning and have failed to define clear standards for admissibility.” Ensign, supra note 25, at 1637.

112. Psychologist Lenore Walker developed a cycle theory of abuse. There are three stages: (1) the tension building phase, where minor incidents of abuse occur; (2) the acute battering incident with severe and uncontrolled abuse; and (3) the contrition stage where the batterer acts with loving behavior, apologies, and promises of reform. Ensign, supra note 25, at 1623-24; see Walker, supra note 15, at 16, 42-55. “The third phase often re-vives and reinforces a battered woman’s hopes that her mate may reform and thus keeps her emotionally attached to the relationship.” Developments in the Law, supra note 78, at
helplessness."" This information educates the judge and the jury about the common experiences of battered women, and explains the context in which they act.\footnote{113} In State v. Kelly,\footnote{115} the New Jersey Supreme Court held that the defendant, convicted of murdering her husband, could introduce expert testimony on the subject of the battered women's syndrome.\footnote{116} The court found that expert testimony was admissible because the testimony related to the issue of whether the defendant honestly and reasonably believed she was in imminent danger of death or serious bodily harm at the time of the incident.\footnote{117} Moreover, the conclusions of the expert were found reliable despite the novelty of the scientific research in the area.\footnote{118} The court reasoned that the battered women's syndrome was not within the knowledge of the average juror, and an expert witness would clear up any myths and misconceptions the jurors might have.\footnote{119} \textit{Kelly} stands for the proposition that battered women can establish self-defense as a legal defense when they kill their spouse or lover after being abused.

Battered children deserve the same protection as battered women, if not more.\footnote{120} Strong parallels exist between abused women who kill their

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\footnote{113}{Walker defines someone as a battered person if this cycle of abuse occurs two or more times. Ensign, \textit{supra} note 25, at 1624.}\
\footnote{115}{\textit{State v. Kelly}, 478 A.2d 364, 377 (N.J. 1984).}\
\footnote{116}{\textit{Id.} at 373-78; see Ensign, \textit{supra} note 25, at 1638.}\
\footnote{117}{\textit{Kelly}, 478 A.2d at 373-78.}\
\footnote{118}{\textit{Id.} at 379-81; see Hicks, \textit{supra} note 6, at 114.}\
\footnote{119}{\textit{Kelly}, 478 A.2d at 377. Such misconceptions include the belief that battered women are masochistic and enjoy the beatings, or that they are free to leave at any time.}\
\footnote{120}{Because of their physical, emotional, and experiential weakness, battered children}
tormentors and abused children who commit parricide. Battered women who kill usually do not have criminal records, are rarely arrested after they kill their abuser, and are not otherwise threatening to society. They suffer continual abuse, without outside help from society and have little chance of improving their circumstances. As with battered children, battered women feel that murdering their spouse or lover is the only logical way out of the situation, and both reasonably fear their abusers at times when an outsider would not see cause for such fear. An outsider does not know of the behavior patterns of the abuser. As a consequence, battered women and children are in essentially the same position when they lash out at their abuser, and both should be treated under a uniform and fair standard.

III. STATUTORY AND JUDICIAL RESPONSE TO PARRICIDE CASES

A. An Example of Classic Self-Defense at Work

In Whipple v. Duckworth, the Seventh Circuit affirmed an Indiana Supreme Court ruling that refused to allow a self-defense claim in a parricide case. Dale and Penny Whipple had been subjected to physical and mental abuse by their parents throughout their lives. On January 1, 1985, Dale lured his mother into their garage where he killed her with several blows of an ax. Dale then proceeded to his parents' bedroom

121. Van Sambeek, supra note 1, at 92-93. The differences between battered woman syndrome and battered child syndrome are "negligible." Hicks, supra note 6, at 106. Therefore, since the overall psychological profile of battered persons is uniform, courts should accept a "battered person" syndrome instead of trying to distinguish arbitrarily between abused women and children. Id.
122. Van Sambeek, supra note 1, at 93.
123. Id. Many women are not in the financial situation to leave their husbands. They are not able to provide for themselves or their children. Furthermore, they oftentimes do not have anyone else to turn to and confide in for help.
125. Scobey, supra note 8, at 185. Since children are potentially more vulnerable than battered women to the effects of the abuse, battered children sense danger more quickly and are more likely to overestimate that danger. Hicks, supra note 6, at 126.
126. 957 F.2d 418 (7th Cir. 1992), cert. denied, 113 S. Ct. 218 (1992).
127. Id. at 419.
128. Id.
where he killed his father with the same ax.129

The abuse in this family was severe. Dale and his sister were beaten almost every day with a board their father called the "two-by-four."130 Dale sought outside help to no avail.131 At trial, he testified that he experienced extreme pain every day.132 Even with evidence of severe abuse, however, the trial court refused to instruct the jury on the defense of self-defense.133 The court held that self-defense could only be considered if Dale's parents were actually beating him at the time he killed them.134 Dale was found "guilty but mentally ill" on two counts of murder and was sentenced to concurrent terms of thirty years for the murder of his father and forty years for the murder of his mother.135 The Indiana Supreme Court affirmed, agreeing that the "threat of harm to Dale or his sister was too temporally remote to be 'imminent' for the purpose of self-defense or defense of others as a matter of Indiana law."136

The Seventh Circuit also affirmed the convictions, stating that Dale did not give any evidence "from which an objectively reasonable juror could have found he acted in self-defense."137 The court pointed out that, as a court of limited jurisdiction, a federal court lacks authority to tell the Indiana Supreme Court how to construe state statutes.138 Thus, the Seventh Circuit's ruling affirmed the Indiana Supreme Court's interpretation of the statutory term imminent as meaning "immediate."139 Because this interpretation was not novel or unnatural, Dale did not have a constitu-

130. Abrams, supra note 40, at 1. Dale stated that his father took pride in cutting, sanding and making a nice handle on this two-by-four. Id.
131. Id. at 2. Dale stated that the neighbors, other family members, and teachers all knew about the abuse, but no one wanted to get involved. 60 Minutes, supra note 40, at 6. "[T]hey turned around and faced the other way." Id.
132. Whipple, 957 F.2d at 419.
133. Id.
134. 60 Minutes, supra note 40, at 7-8.
135. Whipple, 957 F.2d at 419.
136. Id. Because the father was asleep and the mother was not threatening her son at the time of the killing, the Indiana Supreme Court held that the period of time between the murders and the last physical assault inflicted on the children was too remote to be considered imminent for the purposes of self-defense. Id. at 419 n.1; see Whipple v. State, 523 N.E.2d 1363, 1365 (Ind. 1988).
137. Whipple, 957 F.2d at 424.
138. Id. at 422.
139. Id.; see IND. CODE §§ 35-41-1-25 and 35-41-3-2 (1985).
tional right to present his defense to the jury.\textsuperscript{140} \textit{Whipple v. Duckworth} exemplifies how traditional notions of self-defense do not work in parricide cases. Because imminent was construed by the court to mean immediate, the jury was not able to evaluate the reasonableness of Dale's fear of his parents through a self-defense claim.

\textbf{B. A Plea to Allow Expert Testimony in Parricide Cases}

In \textit{Jahnke v. State},\textsuperscript{141} the Supreme Court of Wyoming affirmed the trial court ruling that disallowed expert testimony from a forensic psychiatrist to explain a battered child's perceptions of danger.\textsuperscript{142} Richard Jahnke was beaten beginning at the age of two.\textsuperscript{143} On the night of November 16, 1982, he ended that abuse by shooting his father four times outside their home in Cheyenne, Wyoming.\textsuperscript{144} Richard was convicted of voluntary manslaughter and sentenced to five to fifteen years in the Wyoming State Penitentiary.\textsuperscript{145} Richard appealed, arguing that the trial court committed reversible error by refusing to admit expert testimony on the psychology of battered children as part of his self-defense claim.\textsuperscript{146} The Supreme Court of Wyoming affirmed his conviction, rejecting that argument and holding that expert testimony was inadmissible and that "self-defense is circumscribed by circumstances involving a confrontation, usually encompassing some overt attack by the deceased."\textsuperscript{147}

\begin{itemize}
\item \textsuperscript{140} \textit{Whipple}, 957 F.2d at 423. The Seventh Circuit pointed out that Dale did not offer any evidence to support the showing required under Indiana law: that he "reasonably believed that his mother and father posed a present threat to himself or his sister at the time of the killings." \textit{Id.} at 423-24.
\item \textsuperscript{141} 682 P.2d 991 (Wyo. 1984). For a full discussion of the \textit{Jahnke} case, see Hicks, \textit{supra} note 6, at 131-41.
\item \textsuperscript{142} \textit{Jahnke}, 682 P.2d at 1004.
\item \textsuperscript{143} \textit{Id.} at 1018 (Rose, J., dissenting).
\item \textsuperscript{144} \textit{Id.} at 995. On the night of the murder, Richard's parents went out to dinner. Before they left, his father told Richard, "I don't want you to be here when I get back," and "I don't care what I have to do. I'm going to get rid of you." \textit{Id.} at 1015 (Rose, J., dissenting). These two statements precipitated Richard's fear of imminent danger for his life. Furthermore, when his parents returned, his father "stomped" up the driveway. Richard knew from past experience that "when his father 'stomped' after him that he was in for a beating." \textit{Id.}
\item \textsuperscript{145} \textit{Id.} at 993. Voluntary manslaughter was a lesser included offense of first-degree murder. \textit{Id.}
\item \textsuperscript{146} \textit{Id.} at 995. The court allowed an instruction regarding self-defense to the jury. This instruction, however, was useless because the jury was not able to understand why Richard feared he was in imminent danger on the night of the murder. Expert testimony was critical to explain how Richard's perceptions fit the self-defense model, namely that he was in constant fear for his own life.
\item \textsuperscript{147} \textit{Id.} at 997.
\end{itemize}
Justice Rose's dissent in *Jahnke* argued that the expert's testimony should have been admitted. Justice Rose stated:

It is my position that, since the issue of self-defense in the unusual behavioral circumstances of this case is a subject which is cloaked in the abstract mysteries of professional knowledge, the jury, deprived of an expert's explanation of how battered people perceive and respond to the imminence of danger, could not be expected to and did not understand and quantify the impact and residuals of the years and years of battering which had been the lifelong fate of Richard Jahnke.\(^\text{148}\)

The dissent took into account the severe abuse that Richard and his family had endured, a factor that the majority disregarded. In Justice Rose's view, additional facts regarding the abuse were critical to the jury's ability to evaluate adequately Richard's claim of self-defense.\(^\text{149}\) According to Justice Rose, without this evidence, the jury was unable to fully understand Richard's actions.

#### C. A New Understanding of the Battered Child

1. **Texas: Statutory Response to Battered Children Who Kill**

   In 1991, Texas became the first state to pass a law permitting a person accused of killing a family member to offer evidence of prior abuse inflicted by his or her victim.\(^\text{150}\) Expert testimony on the distinctive psy-

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Absence a showing of the circumstances involving an actual or threatened assault by the deceased upon the appellant, the reasonableness of appellant's conduct at the time was not an issue in the case, and the trial court, at the time it made its ruling, properly excluded the hearsay testimony sought to be elicited from the forensic psychiatrist.

*Id.* at 1007.

148. *Id.* at 1012 (Rose, J., dissenting). Justice Rose stated further that there was no way the jury could know whether Richard's acts at the time of the murder "were those of the reasonable person similarly situated for whom the law of self-defense provides comfort."

*Id.*

149. *Id.* at 1016 (Rose, J., dissenting).


A movement by battered women's groups in California resulted in the enacting of CAL. EVID. CODE § 1107 (West Supp. 1993), which allows the admission of expert testimony on battered women's syndrome at trial. In August of 1992, children's organizations rallied to have the statute expanded to children, but the bill never made it out of committee. Telephone Interview with Paul Mones, Attorney for Children who Commit Parricide (Oct. 9, 1992).

Furthermore, in Maryland, which has a statute regarding battered women, the legislature failed to enact similar protections for battered children when a bill was under debate in the
Self-Defense Claims for Battered Children

...ology of the victims of battering can be introduced by both women and children. The statute states:

In a prosecution for murder or manslaughter, if a defendant raises as a defense a justification\textsuperscript{151} ... the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, shall be permitted to offer: (1) relevant evidence that the defendant had been the victim of acts of family violence\textsuperscript{152} committed by the deceased ...; and (2) relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense ... \textsuperscript{153}

The legislature noted that "most battered women who kill their abusers have previously attempted, without success, to protect themselves or their children in other ways from battery and later are held to an unreasonable standard of justification when they try to assert their right to self-defense in court ..."\textsuperscript{154} With this statute, they will be able to prove that their fears were subjectively reasonable.\textsuperscript{155}

In a concurrent resolution, the Texas Senate reported that even if the homicide occurred after years of severe, well-documented abuse, battered women were held to an unreasonable standard of justification in

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  \item \textsuperscript{152} Family Violence is defined as:
    \begin{itemize}
      \item an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, or assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault ...
    \end{itemize}
  \item \textsuperscript{153} Tex. Fam. Code Ann. § 71.01(b)(2) (West 1993).
  \item \textsuperscript{154} Texas Resolution 26, supra note 20, at 1. The Legislature recognized that the "victims are not common criminals who killed for profit or vengeance; rather, they are people like ourselves, ... who were driven by an unthinkable set of circumstances to perform this last desperate act of self-preservation." Id. at 2.
  \item \textsuperscript{155} Margolick, supra note 64, at 1. One hundred sixteen female inmates meet the criteria outlined in the Texas Resolution "that calls for re-examining cases where family violence may have provoked an individual into committing manslaughter or murder." García, supra note 20, at 380.
\end{itemize}
asserting self-defense. Therefore, women were victimized twice; once by their abusers and later by the legal system’s failure to recognize the validity of their defense.

The first use of the Texas statute in a parricide case involved Donna Marie Wisener, a seventeen year old girl who claimed that she killed her father in self-defense. She endured her father’s explosive rage and severe abuse until May 24, 1991, when she shot him six times with his revolver at their home. Donna’s father physically and sexually abused her from the time she was two or three years old, and Donna knew that he abused her mother as well. She was acquitted under the new Texas statute after the jury was allowed to hear not only testimony about the abuse from Donna and her mother, but also expert testimony regarding the effects of the abuse. If she had killed him a year earlier, it would have been within the trial judge’s discretion to admit the evidence of abuse and the expert testimony. The outcome of this case under the new law shows how evidence of family violence influences a jury in deciding whether or not an abused child who kills acts in self-defense.

2. Appellate Recognition of the Importance of the Battered Child’s Defense

In State v. Janes, the Supreme Court of Washington “became the first high court in the nation to recognize battered-child syndrome, ruling it could be admissible in appropriate cases to aid in proving self-defense.” The court held that expert testimony regarding the battered child syndrome is “generally admissible in appropriate cases to aid in the proof of self-defense.” Moreover, the court concluded that “the bat-

156. Texas Resolution 26, supra note 20, at 1.
157. Id. at 2.
159. Id.
160. Hansen, supra note 129, at 28. Her father “handcuffed her to a chair for his amusement or, when her report card was unsatisfactory, beat her into unconsciousness.” Margolick, supra note 64, at 1. He used to beat her with branches from a backyard tree. 60 Minutes, supra note 40, at 3. She was never taken to the hospital or treated by a doctor. Id. at 4. He also gave her “rub downs” and sent her sexually suggestive Valentines.” Margolick, supra note 64, at 1.
161. 60 Minutes, supra note 40, at 5. There is a good chance that the evidence would have been excluded if the issue had been left to the trial judge’s discretion.
162. 850 P.2d 495 (Wash. 1993) (en banc).
164. Janes, 850 P.2d at 496.
tered child syndrome is the functional and legal equivalent of the battered woman syndrome."  

On August 30, 1988, Andy Janes shot and killed his stepfather, Walter Jaloveckas, as he returned home from work. Andy reacted to many years of severe abuse to himself, his brother, and his mother. The abuse included severe physical and mental abuse, including threats to torture, kill or send the children away from their mother. Andy’s stepfather frequently hit him over the head with firewood, beat him unconscious, and threatened to kill him if he called the police. Despite evidence of 500 incidents of abuse, the trial judge rejected proffered evidence that Andy constantly felt himself to be in imminent danger from his stepfather, that is, that he suffered from battered child syndrome. The trial court ruled that Andy failed to show that he was in imminent danger at the time he shot his stepfather. Consequently, there was an insufficient factual basis to justify instructing the jury about the law of self-defense. Andy was found guilty of second-degree murder and sentenced.

165. *Id.* at 503.
166. *Id.* at 497. Andy then triggered the alarm system at his house to summon the police, the fire department, and the rescue squad. Andy fired at the police, parked cars, and the telephone in his home. A police officer and a bystander were slightly injured. *Id.*
167. *Id.* at 499. Walter Jaloveckas moved in with Andy's family in November of 1978 when Andy was seven years old. *Id.* at 496. When the family moved into their own home in 1980, Jaloveckas “became increasingly abusive and subject to unpredictable and sometimes physically violent outbursts of anger.” *State v. Janes*, 822 P.2d 1238, 1240 (Wash. Ct. App. 1992), rev’d, 850 P.2d 495 (Wash. 1993) (en banc).
168. D.M. Osborne, *Solo Wins Right to Battered-Child Defense*, *Am. L.Aw.*, Apr. 1992, at 119. Other examples of abuse include being beaten with a belt or wire hanger, a plastic piggy bank, or a map. *Janes*, 850 P.2d at 499. Jaloveckas smashed Andy's stereo with a sledgehammer. Jaloveckas also threatened to nail Andy's hands to a tree, brand his forehead, place his fingers on a hot stove, break his fingers with a hammer, and wrap a crowbar around his head. Andy feared that Jaloveckas would kill his mother, his brother and himself. The abuse was reported to Child Protective Services (CPS) on at least three occasions, but no follow-up occurred. *Id.* At least twice, Ms. Janes or Andy asked CPS not to follow up for fear of provoking more severe abuse from Jaloveckas. *Janes*, 822 P.2d at 1240.
170. Andy offered the defense of self-defense based on the history of abuse by Jaloveckas. *Janes*, 850 P.2d at 498. He hoped to show that he was in fear of imminent danger on the evening of the shooting. Andy also offered the defense of diminished capacity, arguing that "his capacity to premeditate and to form intent was diminished by the abuse he had suffered and from his use of drugs and alcohol." *Id.*
171. *Id.* at 498. The trial judge found that "Walter's confrontation with Gale [Andy's mother] the night before, his unknown comment to Andrew that same night, and Gale's statement the next morning that Walter was still mad were insufficient to establish imminent danger." *Id.* The trial judge stated that these events were "too remote and insuffi-
to ten years in prison. Andy appealed, assigning error "to the trial court's failure to allow an instruction on self-defense and to various evidentiary rulings excluding expert testimony regarding the battered child syndrome that he contends would have been relevant to establishing that defense." The Court of Appeals reversed Andy's conviction, holding that the expert testimony about the battered child syndrome should have been admitted to develop the defense of self-defense. The court stated that if the defendant produces any evidence which tends to show self-defense, then the issue of self-defense is properly raised. When the trial court questions whether there is sufficient evidence to raise a claim of self-defense, a subjective standard is used, requiring that "the jury . . . evaluate the reasonableness of the defendant's perception of the imminence of that danger in light of all the facts and circumstances known to the defendant at the time he acted." Furthermore, expert testimony is needed to aid in the establishment of a defense of self-defense. The court concluded that the "battered child syndrome is the functional and legal equivalent of the battered woman syndrome, and . . . that scientific understanding of the battered child syndrome is sufficiently developed to make testimony concerning that syndrome admissible in appropriate cases."

The Washington Supreme Court reversed and remanded to the trial court. Washington's highest court stated that there was nothing in the record that indicated that "the trial court considered the [self-]defense
ciently aggressive to justify a self-defense instruction." Id. at 498-99. The trial court did instruct the jury on diminished capacity. Id. at 499.

172. Appeals Panel: Battered-Child Defense Is OK in Court, SEATTLE TIMES, Feb. 4, 1992, at B2. "Andy was charged by information with one count of murder in the first degree (premeditated), and two counts of assault in the second degree." Janes, 822 P.2d at 1240. The standard sentence for his conviction was 13 to 18 years. Id. at n.2.


174. Id. at 1241. There does not need to be evidence of an actual physical assault when the jury considers the immediacy of the danger. Id.

175. Id. at 1242 (quoting State v. Wanrow, 559 P.2d 548 (Wash. Ct. App. 1977)).

176. Washington courts have held that expert testimony is admissible regarding the battered women's syndrome. See State v. Walker, 700 P.2d 1168 (Wash. 1985) (holding that the purpose of expert testimony is "to assist the trier of fact in evaluating the reasonableness of both the use of force and the degree of force used . . . .") The perceived imminence of danger supplies the justification to use deadly force under a claim of self-defense).

177. Janes, 822 P.2d at 1243. "There is a sufficient scientific basis to justify extending the battered woman syndrome to analogous situations affecting children." Id. at 1242. The rationale that underlies the admission of expert testimony of the battered woman syndrome is "at least compelling, if not more so, when applied to children." Id. at 1243.
Self-Defense Claims for Battered Children

evidence in light of Andrew's subjective knowledge and perceptions."178 Therefore, the consideration of the motion for a self-defense instruction by the trial court was incomplete, and the trial court was instructed to reconsider its ruling in light of the supreme court's opinion.179

State v. Janes is a landmark case for children's rights. The court made a series of findings that are crucial in giving battered children the protection they deserve. First, the court recognized that the battered child syndrome is a psychological, as well as a physical syndrome.180 Victims of chronic abuse suffer from post-traumatic stress disorder (PTSD), which occurs "in response to traumatic events outside the normal range of human experience."181 These victims share a common characteristic called hypervigilance.182 The court acknowledged that children who suffer from prolonged abuse develop "a very finely tuned antenna for impending violence [which]... picks up low-level cues that people who have not been traumatized would not see."183 The court also recognized that another key characteristic of battered children is learned helplessness, which causes abused children not to seek outside help.184 To abused children, "all doors of escape appear closed."185

Second, the supreme court saw no reason to treat battered women and battered children differently:

If anything, for battered children, the effects of PTSD are amplified. Children are entirely dependent on the parent for financial and emotional support. They are extremely vulnerable and tend to place great trust in their parents. It is not as easy for a child as it is for an adult to leave a troubled home. . . . Moreover, unlike the battered adult, a child has no outside context with

179. Id. The Washington Supreme Court directed that "[i]f the trial court determines that some evidence existed to justify a self-defense instruction, then it should order a new trial. Otherwise, Andrew's conviction stands, subject to a continuation of the normal appeals process.” Id.
180. Id. at 502. The court recognized that the battered child syndrome was originally developed as a physical diagnosis for describing child abuse, but has grown to include psychological effects as well. Id. at 501.
181. Id. "The resulting psychological response to abuse-induced PTSD is often referred to as the 'battered child syndrome.'” Id.
182. See supra note 51 and accompanying text for a discussion of hypervigilance.
184. Id.
185. Id. The court recognized that battered children often seek help from outside sources, but to no avail. Id. Furthermore, family members are unable to help because they are often being abused too. Id.
which to compare the abusive reality.\textsuperscript{186}

The court further reasoned that the same reasons that made evidence of the battered woman syndrome helpful in self-defense cases apply equally to the battered child cases.\textsuperscript{187}

Third, the court stated that in determining the reasonableness of a child's perceptions, a hybrid, or a mixed objective and subjective standard, is used.\textsuperscript{188} The jury must consider all of the facts and circumstances known to the child at the time of the killing, including those that precede the killing.\textsuperscript{189} "The self-defense evaluation is objective in that the jury is to use this information in determining what a reasonably prudent [person] similarly situated would have done."\textsuperscript{190} In addition, the subjective standard allows the jury to inquire "whether the defendant acted reasonably, given the defendant's experience of abuse."\textsuperscript{191}

Fourth, the supreme court recognized that the jury cannot subjectively evaluate the reasonableness of a battered child's fear of imminent danger without the help of expert testimony.\textsuperscript{192} "Expert testimony on the battered person syndromes is critical because it informs the jury of matters outside common experience."\textsuperscript{193} An expert explanation of the battered child syndrome assists the jury in understanding the circumstances that surrounded the homicide, because battered child syndrome is "a phenomenon [that is] not within the competence of an ordinary lay person."\textsuperscript{194}

Lastly, the court distinguished imminent harm from immediate harm when evaluating self-defense.\textsuperscript{195} The self-defense statute in Washington only requires \textit{imminent} fear, and "imminence does not require an actual

\textsuperscript{186} \textit{Id.} at 502-03. "Given the close relationships between the battered woman and battered child syndromes, the same reasons that justify admission of the former apply with equal force to the latter." \textit{Id.}

\textsuperscript{187} \textit{Id.} at 503.

\textsuperscript{188} \textit{Id.} at 504. "This approach to self-defense provides balance to our jurisprudence. The subjective aspects ensure that the jury fully understands the totality of the defendant's actions from the defendant's own perspective." \textit{Id.} at 505; see \textit{supra} note 78 and accompanying text for a discussion on the hybrid standard to determine reasonableness.

\textsuperscript{189} \textit{Janes}, 850 P.2d at 504.

\textsuperscript{190} \textit{Id.} (quoting \textit{State v. Wanrow}, 559 P.2d 548 (Wash. Ct. App. 1977)).

\textsuperscript{191} \textit{Janes}, 850 P.2d at 505. This standard helps the jury to understand the totality of the defendant's actions from that defendant's own perspective, not the perspective of the reasonable person. \textit{Id.} at 504-05 (emphasis added).

\textsuperscript{192} \textit{Id.} at 503. The court analyzed the admission of expert testimony under both the \textit{Frye} test and \textit{WASH. R. EVID.} 702 (adopting \textit{FED. R. EVID.} 702 in its entirety). \textit{Id.} at 501. Expert testimony on the battered child syndrome satisfied both tests. \textit{Id.} at 503.

\textsuperscript{193} \textit{Id.} at 505.

\textsuperscript{194} \textit{Id.} (quoting \textit{State v. Allery}, 682 P.2d 312, 316 (Wash. Ct. App. 1984)).

\textsuperscript{195} \textit{Id.} at 506.
physical assault." A threat, or its equivalent, could establish sufficient imminent fear when there is a reasonable belief that the threat could be carried out. The court noted:

That the triggering behavior and the abusive episode are divided by time does not necessarily negate the reasonableness of the defendant's perception of imminent harm. Even an otherwise innocuous comment which occurred days before the homicide could be highly relevant when the evidence shows that such a comment inevitably signaled the beginning of an abusive episode.

Based on these factors, the court remanded the case to the trial court to determine whether a jury instruction about self-defense should have been allowed. The court set out a very specific framework, marking a victory for battered children in Washington. The state now allows children to introduce both evidence of severe abuse and expert testimony about the complex psychological processes that can affect the battered child.

D. Analysis of the Statutory and Judicial Treatment of Parricide Cases

The Texas statute and the decision in Janes represent a new understanding of the plight of battered persons. "[U]ntil very recently these [parricide] cases never saw the light of day. Kids pleaded guilty to long prison terms or went into mental hospitals." Texas and Washington, however, now recognize that these children are not taking the lives of their parents in random acts of violence, but are defending themselves because they genuinely fear for their lives.

The majority decision in Jahnke illustrates the common misconceptions surrounding the admission of expert testimony. The majority stated that "the essential questions presented in this case arise out of a notion that a victim of abuse has some special justification for patricide." The court did not allow the expert testimony because it felt that there had to be some overt act on the part of the decedent "which would induce a reason-

196. Id.
197. Id. "Especially in abusive relationships, patterns of behavior become apparent which can signal the next abusive episode." Id.
198. Id.
199. Abrams, supra note 40, at 1 (quoting attorney Paul Mones).
200. "[N]obody takes the life of the person who's given them life unless there's some real serious reasons for it." Colwell, supra note 42, at 103 (quoting attorney Paul Mones). When a parent is killed, a child's physical and psychological survival is at stake. Id.
able person to fear that his life was in danger or that at least he was threatened with great bodily harm.\textsuperscript{202} The Jahnke court, however, failed to understand the purpose of the expert testimony. Richard Jahnke offered the expert testimony to explain why, even though there may not have been an overt act by the decedent, he reasonably feared for his life. In order for the jury to adequately evaluate his claim of self-defense, the specific facts and circumstances surrounding the killing were essential to understanding Richard's fear of imminent danger.

The Texas statute is an excellent example of the protection battered children need. The statute not only admits evidence of the abuse that occurred throughout the child's life, but also admits expert testimony to explain how the abuse affects the child's perceptions. As a result of this law, all children in Texas are afforded this protection, without interference on a case-by-case basis by a particular trial judge. Similarly, in Janes, the Supreme Court of Washington understood that battered children perceive danger differently from nonbattered children. The court recognized that expert testimony is helpful to aid the jury when evaluating the reasonableness of a child's perception of imminent danger of death or serious bodily harm at the time of the killing.\textsuperscript{203} This decision marks the legal direction necessary to give battered children equal protection under the law. The decision recognizes the complex dynamics of a battering relationship and affords critical expert testimony so the average juror may make an informed decision on the evidence presented.\textsuperscript{204}

In contrast, the Whipple court misunderstood the complexity of the battering relationship and refused to allow the defense of self-defense, much less expert testimony on the psychology of the battered child.\textsuperscript{205} Indiana's narrow reading of imminent as immediate ignores the real reason why battered children kill when their abuser is defenseless. Expert testimony on behalf of Dale Whipple would have enabled the jury to understand how factors such as hypervigilance made his fear of imminent

\textsuperscript{202} Id. at 997. The court stated that "to permit capital punishment to be imposed upon the subjective conclusion of the individual that prior acts and conduct of the deceased justified the killing would amount to a leap into the abyss of anarchy." \textit{Id.} But a look at the subjective perceptions of the battered child is critical. Battered children do not perceive danger in the same way that normal children do. They have a very finely attuned sense of danger, and often feel as if their life is in danger at times when a nonbattered person would not understand.

\textsuperscript{203} State v. Janes, 850 P.2d 495, 503 (Wash. 1993) (en banc).

\textsuperscript{204} \textit{Id.}

danger a constant one.  

Both Texas and Washington recognize that battered children should be accorded the same rights as battered women, and that consistent standards are essential to ensure that battered women and battered children receive fair adjudication. Texas extends its statute to battered children as well as women. The *Janes* court recognizes that the "battered child syndrome is the functional and legal equivalent of the battered women syndrome." This analogy is crucial because battered children essentially are in the same situation as battered women. Consequently, the two problems must be approached in conjunction with one another. "Slowly, as with battered women cases, we're seeing a trend towards more understanding" of the circumstances of battered children. 

As with battered women cases, misconceptions pervade jurors’ minds during trials of children who have killed their parents. These misconceptions, if not identified and corrected, cause jurors to draw improper conclusions upon which to base their verdicts. Jurors who believe that the child possessed a less drastic option may not understand why the child felt that he or she had to kill the parent to end the abuse. Jurors must understand that an abused child lives in constant fear of being killed by his abuser and thinks the outside world is unable to help. Furthermore,

206. For a discussion of hypervigilance, see *supra* note 51 and accompanying text. 
207. For states that have enacted statutes or admitted evidence on the battered women syndrome, it is a step in the right direction. Nevertheless, it is not far enough because children who are victims of family violence are deprived of a valid defense when they strike back at their abusers. Paul A. Mones, *Battle Cry for Battered Children*, 12 CAL. LAW. 58 (May 1992). Mones notes that “teenagers who have killed abusive parents have been specifically excluded from gubernatorial review in those states who have granted pardons to women.” *Id.* He also notes that he has found “attorneys and judges to be naive, at times even brutally insensitive to the fact that the attacks visited on the child are qualitatively different from the violence one adult perpetrates on another.” *Id.* 
208. There is no uniformity in state law or among judges. Some judges acquit the children or reduce murder charges to manslaughter, while others do not allow evidence on the battered child syndrome and give stiff sentences. Ron Sonenshine, *Mother Wants Son Tried as a Juvenile*, S.F. CHRON., Mar. 3, 1993, at A16. 
211. Colwell, *supra* note 42, at 103. Children always play “catch-up” in every area of the law. Margolick, *supra* note 64, at 1. But “we are now seeing the incipient stages of a movement, one that recognizes an abused child’s right to act in self-defense, just as battered women do.” *Id.* 
212. For battered women, jurors often wonder why she did not leave, believe she asked for it, or believe that wife beating is acceptable. Jurors may also believe that the woman enjoyed the abuse. Jurors do not take into account the economic hardships for the woman if she does leave, or a fear for her safety or the safety of her children. See Ensign, *supra* note 25, at 1633.
an abused child often fears that leaving would prompt a violent and perhaps deadly assault on other family members. In the interests of fairness, such misconceptions cannot be left to the jury when deciding the fate of a child. Therefore, it is critical that the jury have all relevant evidence in order to render an informed verdict.

Opponents of self-defense claims in parricide cases argue that imposing more lenient sentences on children who kill or allowing a defense of self-defense will be “tantamount to declaring open season on parents.”

Creating a defense for children who kill, however, does not create a right to kill because of past mistreatment; it merely provides a framework for people to understand why the battered person could not survive without killing. “It does not call for special treatment, but for equal and individualized treatment under the law.”

Allowing claims of self-defense to succeed will not result in children randomly committing parricide. Defendants will still have to meet the traditional requirements of self-defense, and “the history of abuse is simply to show the reasonableness of the abuse victim’s beliefs.”

IV. Conclusion

The actions of the Texas legislature and the holding of the Supreme Court of Washington in Janes should be a model for other legislatures and jurisdictions. Both measures recognize the importance of allowing a self-defense claim and admitting expert testimony at trial. Not only must the history of abuse be explained to the jury, but expert testimony must be allowed to explain the effects of the abuse on the child’s perceptions. These complex psychological principles are outside the understanding of the average juror. With similar changes in all states, all children will receive the rights currently afforded to children in Texas and Washington. States must respond if the legal system is to eliminate the inequalities that exist under the current system. Statutory response takes case-by-case discretion away from the trial judge and gives all children with the same claims equal protection under the law.

As a matter of law, people have the right to protect themselves from

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213. See, e.g., Timnick, supra note 5, at 2.
214. Rodwan, supra note 73, at 64.
215. Van Sambeek, supra note 1, at 105.
216. Id. “The defense is not a general license to kill parents for one time incidents; an ongoing abusive relation must be shown and the traditional self-defense elements must be met.” Id.
unlawful harm inflicted by others. The traditional notions of self-defense, however, are an inadequate defense for children protecting themselves from a lifetime of severe and unthinkable abuse. These children are turning to the courts for justice, only to be turned away. An increased understanding of parricide within the legal community is crucial. Moreover, states must achieve uniformity of law for all children. Women have largely won the right to present expert testimony at trial if they murder their husbands or lovers. Giving children the legal protection they desperately need is the next logical step in the process. In all parricide cases, the jury must consider whether the defendant acted in self-defense, which is only accomplished if the history of the abuse is admitted at trial. Furthermore, since the principles involving the abuse are beyond the common knowledge of the average juror, an expert must explain what effects the abuse has on the child's perceptions. Only when all children in all states are accorded these rights will justice be served.

Jamie Heather Sacks

217. Rodwan, supra note 73, at 64.
218. In a typical criminal case, the relevant evidence relates only to the one specific incident that led to the murder. When abused children kill their parents, however, incidents from the moment of birth are not only relevant, but critical in enabling the jury to understand why the children acted as they did. “The heart of a parricide defense is the child abuse prosecution of the dead parent. The parent must be held accountable in death for the abuse [he or] she visited against [a] child in life.” MONES, supra note 3, at 12. The attorney in these cases must “reconstruct in painstaking detail the relationship between child and parent.” Id. It has been suggested that when a child under 18 years has killed a parent, the district attorney’s office should immediately conduct a parallel child abuse investigation. The prosecutor should be required to put down in writing the reasons for deciding to prosecute or not. This would provide a standard for “determining the prosecution of parricide cases.” Colwell, supra note 42, at 103 (quoting attorney Paul Mones).
219. See supra note 110 and accompanying text.