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ESCAPING A LIFE OF ABUSE: CHILDREN WHO KILL THEIR BATTERERS AND THE PROPER ROLE OF “BATTERED CHILD SYNDROME” IN THEIR DEFENSE

Julie Rowe*

Introduction

Parricide, when a child kills his or her parent, is an act that naturally receives much attention in the media. In the United States, many firmly believe that children should respect and obey their parents, regardless of the quality of their parenting.¹ The crime of parricide shocks the conscience of society, challenging the widely accepted and revered commandment of “honor your father and your mother.”² Therefore, when a child commits the gravest crime of murder against his or her own parent, society reacts in astonishment and quickly advocates for retribution.³ Yet, when a child who kills his or her parent has been physically, sexually, or psychologically abused by that parent, should society react differently?

Recently, a highly publicized and televised murder trial illustrated the ever-increasing dilemma of how to fairly treat a child who murders his or her parents, yet claims the murder was in self-defense. Cody Posey, now sixteen-years-old, killed his father, step-mother, and sister in July, 2004.⁴ At his trial, Cody’s defense attorney presented evidence of the physical and emotional abuse Cody suffered throughout his life.⁵ Witnesses testified that Cody’s father severely physically abused him with shovels, lariats, rocks, a hay hook, and other farm tools.⁶ In addition to the physical abuse, Cody’s father humiliated and isolated Cody.⁷ The night before the murder, at what was arguably Cody’s breaking point, Cody’s father tried to force Cody to have sex with his step-mother.⁸ The next day, after killing his sister and step-mother, Cody shot his father as his father walked through the door.⁹ After twelve hours of deliberation, the jury found Cody guilty of voluntary manslaughter for the murder of his father – a verdict much less severe than first-degree murder.¹⁰

Cody Posey, like others who have killed an abusive parent, may have believed that committing murder was the only way to escape a life characterized by hurt, fear and shame.¹¹ How should society and the criminal justice system treat abused children who do not receive help from other adults in their life and see no other alternative but murder? How can the court system adequately uphold the fundamental principle of retribution, yet appropriately seek rehabilitation for these psychologically damaged and distraught children?

This paper seeks to explore the intricacies of parricide when committed by a juvenile in a non-confrontational situation. Part II will focus on the characteristics of parricide, the victims, and the offenders. Part III will examine defenses and strategies available to parricide offenders, certain state statutes that allow for expert testimony regarding “Battered Child Syndrome,” and important cases dealing with this issue. Part IV will analyze an appropriate judicial response to battered children and advocate for a more unified understanding of

“Battered Child Syndrome” in the courts. Part V will conclude the discussion.

A Profile of Parricide, the Offenders, and Their Victims

Characteristics of the Typical Crime

Although it is usually highly publicized, parricide is “the rarest form of intra-family homicide,” accounting for only two percent of all homicides annually.¹² Sons killing one or both parents account for approximately 90% of all parricides, and the least frequent form of parricide involves daughters killing their mothers.¹³

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When a child commits parricide, he or she usually commits the murder in a seemingly cold and calculating manner.¹⁴ The child frequently kills in a nonconfrontational situation when the parent is sleeping, watching TV, or looking away.¹⁵ Parricide is rarely committed when the child is in the midst of a violent confrontation with the parent.¹⁶ Absent a crime scene involving a violent struggle or confrontation, prosecutors seek first-degree murder for these offenders.

Society may initially judge parricide offenders as wayward youths, depraved and devoid of morals or conscience. On the contrary, children who commit parricide usually do so in response to years of extreme physical or psychological abuse.¹⁷ In recent estimations, 90% of all parricides are committed by children who have suffered abuse at the hands of their parents over a long period of time.¹⁸ In some cases, a child feels he or she must act because of fear that his or her own death is imminent.¹⁹ Many children believe that killing one or both parents is the only way to stop the abuse and free themselves from a life lived in constant fear.²⁰

Characteristics of the Victims (a.k.a. the Abusers)

Parents who severely abuse their children and are consequently murdered by their children may not be distinguishable from other parents.²¹ They are generally hard-working without any criminal history, yet they may tend to have intimidating or controlling personalities.²² The type of parent who is killed by his or her child “doesn’t care about reforming the child’s behavior – instead he is addicted to his power over the child and the pleasure derived from exercising it.”²³ Many times, a parent such as this will couple physical abuse with severe psychological abuse. The parent may accomplish this by rejecting, isolating, exploiting, or berating the child.²⁴ This type of verbal abuse is usually accompanied by severe domination, and the child may be “controlled so strictly that the parental restraint amounts to virtual imprisonment.”²⁵

In reality, parents kill their children by abuse or neglect ten times as often as children kill their parents.²⁶ In California, 133 children died from child abuse or neglect in

2001.²⁷ Nationally, in 2003, 1,500 children were killed by their parents, and 78.7% of those children were under three years old.²⁸ Clearly, child abuse is a serious problem in the United States, causing a large number of deaths annually. Yet when children fight back against the abuse, after failed attempts to receive help from relatives or social services, they are ushered into the court system as the worst kind of criminals.

Characteristics of the Child Offenders

Most children who commit parricide have been physically harmed for extended amounts of time and are frequently psychologically damaged as well. Dr. C. Henry Kempe introduced the term “Battered Child Syndrome” in a 1962 study to describe “a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.” Battered Child Syndrome was primarily used to prosecute child abusers, and courts began to allow expert medical testimony regarding Battered Child Syndrome to prove that a child had been physically abused over long periods of time. Yet there are many psychological and emotional elements of Battered Child Syndrome that have not yet gained proper recognition in the social work arena or the court system. Unless social workers, attorneys, and courts take notice of the severe psychological trauma resulting from a lifetime of abuse, the true root of parricide will remain unexposed and these children’s acts of desperation will be seen as nothing more than random, heartless violence.

Helplessness and Self-Blame

The average parricide offender does not have a reputation of violence or aggression.³⁴ On the contrary, he or she is usually intelligent, compliant, respectful of adults, and polite.³⁵ While some prefer to be alone and isolate themselves, many appear to pose no threat to society.³⁶ Underneath the docile and somewhat fragile façade, however, are the emotional scars of abuse.³⁷ “Prolonged exposure to severe and unpredictable abuse results in feelings of powerlessness, embarrassment, constant fear, self-blame, depression, isolation, low self-esteem, and fear of reprisal by the abuser on themselves or other family members.”³⁸ Instead of responding aggressively, battered children learn to adapt to their environment and cope with the parent’s actions by avoiding situations that trigger abuse or devising techniques to endure the abuse.³⁹

Often, battered children do not trust others with information about the abuse.⁴⁰ Many times, the child’s parent will threaten him or her with death or serious injury if he or she reports the abuse to anyone.⁴¹ Sometimes, when a child does seek help, he or she fails to receive adequate support from relatives, schools, or social agencies.⁴² Social agencies are often reluctant to investigate allegations of child abuse if the child cannot show immediate signs of physical harm, such as bruises or welts.⁴³ Also, many hold to the belief that what occurs inside a family’s home is private and should not be questioned or interfered with by those on the outside.⁴⁴ Whatever the reason for their inaction, adults and social agencies should be aware that one of the main factors that lead a child to commit parricide is

the feeling of helplessness that results from a lack of outside support or help.⁴⁵ In fact, when adults know about the abuse and do nothing, the child may naturally infer that all adults condone the abusive behavior.⁴⁶ This only adds to the child’s sense of helplessness.⁴⁷

An abused child also harbors feelings of self-blame.⁴⁸ Because of the nature of the parent-child relationship, children naturally bond with and connect to their parents regardless of how they are treated.⁴⁹ Even if the parent is abusive, he or she is still the primary caretaker of the child, and the child depends on the parent for his or her emotional, physical, and financial needs.⁵⁰ Extended periods of abuse can disfigure a child’s sense of self, causing him or her to blame himself for the abuse and seek to please the parent even more.⁵¹ Feelings of helplessness and self-blame can build, leading the child to believe that there is no alternative but to murder the parent.⁵²

Psychological Effects

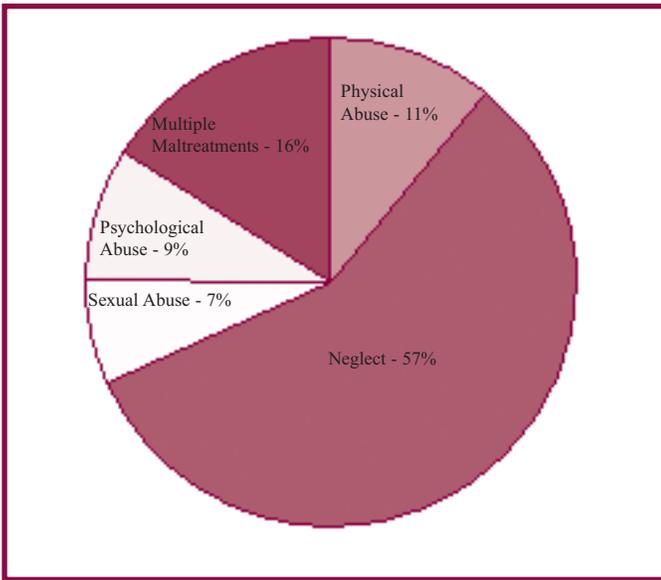
Two important psychological conditions or disorders characterize a child suffering from Battered Child Syndrome: hypervigilance and Post-Traumatic Stress Disorder (PTSD).⁵³ Both are important to consider if the child seeks to claim self-defense at his or her trial for murder.

A hyper-vigilant child is one who is “acutely aware of his or her environment and who remains on the alert for any signs of danger.”⁵⁴ They look for clues in their parent’s behavior and mannerisms and learn to judge when the parent is in a pre-aggressing state or when the threat of violence is imminent.⁵⁵ Therefore, they are constantly monitoring the situation in order to predict violence and impending abuse.⁵⁶ After this type of monitoring becomes routine, the child will learn to react to certain stimuli that might accompany certain threats, actions, or looks from the parent.⁵⁷

An understanding of hyper-vigilance aids a trier of fact in a murder trial because it illustrates why a child may feel that abuse is imminent when, in fact, the parent is not yet inflicting violence.⁵⁸ In an abusive relationship, threats of imminent danger manifest in subtle cues and are not easily perceived by others.⁵⁹ Therefore, an abused child might sense impending violence and react by killing the parent in a non-confrontational situation, when the child knows he or she will be successful and not suffer immediate harm.⁶⁰

PTSD is similar to hyper-vigilance but is defined as “an anxiety-related disorder which occurs in response to traumatic events outside the normal range of human experience.”⁶¹ A child with PTSD will likely suffer from severe anxiety, hyperactivity, episodes of terror, nightmares, and fatigue.⁶² The highest level of PTSD “involves heightened symptoms of hyperactivity, vigilance, scanning, and motor tension, fixation on somatic symptoms believed to have resulted from the traumatic event, and a secondary manifestation of depression.”⁶³ A court faced with a child accused of murdering their parent should evaluate the reasonableness of the child’s actions in light of the debilitating effects of these disorders. The court should take into account any psychological conditions from which the child suffers to lessen or mitigate the charge or sentence.

Types of Maltreatment by Parents, 2003^a



Within the Court System: Available Defenses, Pivotal Court Cases, and Relevant Statutes for Parricide Offenders

Available Defenses

Inevitably, a child who kills a parent will be prosecuted. If the child is fourteen-years-old or older, he or she will likely be tried in adult criminal court exclusively, bypassing the juvenile court altogether because of the nature of his or her crime.⁶⁴ Statutory waiver, as this process is known, creates the possibility that the child could receive any applicable adult sentence.⁶⁵ He or she could be charged with murder, and in the worst case scenario, receive life in prison without possibility of parole.⁶⁶

It is important, therefore, to effectively communicate to a jury the special circumstances under which the child committed the crime. It is difficult for a child who commits parricide in a non-confrontational situation to claim self-defense or show the existence of mitigating circumstances. Thus, expert testimony is necessary to educate the jury about the child's past history, subjective state of mind, and sense of danger at the time of the murder.⁶⁷

Insanity

A parricide offender suffering from PTSD may be able to utilize an insanity defense by using expert testimony to show he or she suffered from a mental defect that prevented him or her from either comprehending his or her act or from freely choosing that act.⁶⁸ If an expert can testify affirmatively that the child suffers from PTSD and a jury believes that the child was not acting out of his own free will at the time of the crime, the child may be able to successfully defend against the murder charge.⁶⁹

Although a successful insanity defense will save a parricide offender from prison, the child may then be committed to

a mental institution, which may be an equally undesirable outcome.⁷⁰ Depending on the child's case, considering factors such as length of abuse, psychological disorders, and incidents leading to the murder, a better defense strategy may either be self-defense or mitigation of the charge or sentence.

Self-Defense

If successful, a parricide offender's self-defense claim will result in an acquittal, making it the child's best hope for exoneration.⁷¹ Most jurisdictions will allow claims of self-defense only if the defendant reasonably believed that death or serious bodily harm was imminent.⁷² In California, juries are required to apply the objective standard of a "reasonable person" to determine if the defendant's acts were reasonable in light of the imminent threat of danger.⁷³ Yet if the child kills the parent in the absence of any violent confrontation, a jury may be reluctant to believe the killing was in self-defense without any evidence of "imminent danger."⁷⁴

The most difficult issue facing parricide offenders is how to successfully prove to a jury that the danger they faced was "imminent" and that a "reasonable person" in the battered child's situation would have acted in the same manner.⁷⁵ The objective standard of a "reasonable person" is a hard standard to reach without expert testimony regarding Battered Child Syndrome.⁷⁶ The average juror has likely never experienced the life of an abused child and therefore cannot easily comprehend the mental state of the defendant.⁷⁷ Expert testimony regarding Battered Child Syndrome seeks to prove that the child lived in an environment where the threat of abuse was persistently imminent and where he or she could sense when the next incident of abuse would occur.⁷⁸ Thus, expert testimony on the psychological elements of Battered Child Syndrome coupled with the defendant's testimony of his or her history of abuse is essential, for it explains to the jury that his or her belief of imminent danger was real.⁷⁹ Also, it is important for the jury to take into account any incident that occurred directly before the murder, causing the child to believe his or her life was in danger.⁸⁰

The court may still be reluctant to acquit a child who killed his or her parent in a non-confrontational situation because of society's policy of properly punishing those who take another's life.⁸¹ Also, courts may be reluctant to allow a defense that may encourage other battered children to kill their abusers without first attempting to seek outside help.⁸² However, in these instances, expert testimony may be relevant at trial to either lessen the charges or to encourage a lighter, more rehabilitative-based sentence.

Mitigation or Partial Excuse

A child who commits parricide may offer evidence regarding the history of abuse and extent of psychological damage to prove his or her lessened moral culpability, thereby partially excusing or mitigating the crime.⁸³ A partial excuse, in general, allows the jury to consider the defendant's subjective state of mind at the time of the murder, whereas a self-defense claim employs a more objective standard.⁸⁴ A murder may be partially excused according to the doctrine of provocation,

which recognizes the objective external pressures the child faced, or the “internal pressures of a reasonably explained extreme mental or emotional disturbance.”⁸⁵

This approach of excuse or mitigation may be the most attractive to the defendant, for the jury can focus on the defendant’s specific history of abuse and subsequently lessen his or her punishment for the crime. The jury can therefore express its understanding of the defendant’s actions, yet still hold him or her accountable for the crime.⁸⁶ In most jurisdictions, a defendant offering a partial excuse is eligible to receive a conviction for voluntary manslaughter, defined as “an intentional homicide committed under extenuating circumstances which serve to mitigate the killing.”⁸⁷

According to existing U.S. Supreme Court case law, a judge and jury must consider an array of mitigating factors when determining a proper sentence for a juvenile offender. In *Lockett v. Ohio*,⁸⁸ the Court held that the Eighth and Fourteenth Amendments require that a judge consider any mitigating factors the defendant offers as reasons for a sentence less than death.⁸⁹ Similarly, in *Eddings v. Oklahoma*,⁹⁰ the Court remanded a sixteen-year-old defendant’s case to the trial court because the trial court failed to consider the defendant’s age, emotional development, and family background before deciding whether or not to impose the death sentence.⁹¹ Although these two cases dealt specifically with juveniles facing the death penalty, their main tenets remain applicable for any juvenile who offers mitigating factors to reduce his or her sentence at trial. Also, these cases are important for battered children, for the right to offer mitigating factors was declared to be a Constitutional right.

While cases such as *Lockett* and *Eddings* ensure that parricide offenders can offer mitigating evidence of their abusive histories to potentially lessen their ultimate sentences, they do not specifically allow expert testimony regarding Battered Child Syndrome at trial. If a battered child seeks to mitigate his or her charge of first-degree murder, expert testimony would be a great aid to the judge and jury to help them understand the intricacies and particular characteristics of Battered Child Syndrome. Some state courts and legislatures have begun to realize the necessity of expert testimony in this area, however this realization is not universal among jurisdictions.

Case Law Regarding Battered Child Syndrome Testimony and Self-Defense

As stated earlier, the term “Battered Child Syndrome” originated as a medical diagnosis, and expert medical testimony on the syndrome was widely used to prosecute child abusers.⁹² California was one of the first states to recognize Battered Child Syndrome as a valid medical diagnosis. In 1971, in *People v. Jackson*,⁹³ the California Court of Appeals upheld the trial court’s use of expert testimony on Battered Child Syndrome because it found that the syndrome was based on extensive studies in medical science and was useful to prove that the child’s injuries were inflicted intentionally as opposed to the result of an accident.⁹⁴

Even though case law in many states recognizes

Battered Child Syndrome as substantiated medical science, states have been reluctant to allow the use of expert testimony regarding the psychological aspects of Battered Child Syndrome in the defense of parricide offenders.⁹⁵ Because a defendant may offer evidence of mitigating factors in a murder trial, regardless of a claim of self-defense, the largest existing dispute in state courts is whether to allow expert testimony when the defendant claims self-defense to prove the child killed in response to a perceived “imminent” threat of danger.⁹⁶ Because of the child’s long history of abuse, the child’s perception of impending danger leads to the belief that he or she acted reasonably under the circumstances.⁹⁷ Expert testimony could aid the jury in its understanding of the child’s perceptions.

State v. Janes: Landmark Case

State courts have only recently begun to recognize and accept testimony regarding Battered Child Syndrome in parricide cases. The Washington Supreme Court, in *State v. Janes*,⁹⁸ wrote the first judicial decision validating expert testimony on Battered Child Syndrome in 1993.⁹⁹ Seventeen-year-old Andrew Janes killed his mother’s boyfriend, Walter Jaloveckas, in 1988.¹⁰⁰ Andrew shot Walter with a pistol as Walter walked in the door of their home after returning from work.¹⁰¹ At trial, evidence was presented that Walter physically and emotionally abused Andrew for over ten years, and Andrew witnessed Walter abuse both his mother and younger brother.¹⁰² Witnesses to Walter’s abuse of Andrew called

Child Protective Services numerous times, but no action was ever taken.¹⁰³ On the night before the murder, Walter yelled at Andrew’s mother for a long period of time, then leaned his head into Andrew’s room and spoke to him in a threatening voice.¹⁰⁴ The next day, Andrew videotaped himself and left a message including the statement: “I don’t want this life anymore. So I shall take care of the problem myself. Mom, if you find this, I hope you will forgive me. I’m doing this in your best wishes.”¹⁰⁵

At trial, Andrew’s attorney proffered a psychiatrist to testify that he suffered from PTSD which impaired his ability to premeditate.¹⁰⁶ The expert was also willing to testify that Andrew feared imminent harm on the day he shot Walter.¹⁰⁷ Yet the trial judge excluded this expert testimony and denied Andrew’s attorney’s request for a self-defense instruction.¹⁰⁸

The Washington Supreme Court heard the case to resolve whether “expert testimony regarding ‘Battered Child Syndrome’ is generally admissible to aid in the proof of self-defense.”¹⁰⁹ Holding that expert testimony could aid the jury in understanding the reasonableness of the defendant’s perceptions, the court upheld the use of Battered Child Syndrome in cases where a defendant claims self-defense.¹¹⁰

Subsequent Cases Considering Battered Child Syndrome Testimony

The Supreme Court of Ohio has issued decisions in line with *Janes*. Brian Nemeth, a sixteen-year-old Ohio resi-

dent, shot his mother five times in the head with a bow and arrow.¹¹¹ Nemeth's mother had physically and emotionally abused him for several years, and she was an excessive drinker.¹¹² At Nemeth's murder trial, the trial court judge denied his request to offer expert testimony regarding Battered Child Syndrome and denied a jury instruction on voluntary manslaughter.¹¹³ On appeal, the Supreme Court of Ohio, considered "whether Ohio recognizes Battered Child Syndrome as a valid topic for expert testimony in the defense of parricide."¹¹⁴ The Court answered in the affirmative after considering Nemeth's past history of abuse, the content of the proffered expert testimony, and the expert's ability to aid the jury's understanding of the issues of the case.¹¹⁵ Although it held that Battered Child Syndrome itself cannot be a defense, the Court recognized that expert testimony regarding the defendant's impaired psychological ability should be offered in support of a self-defense claim or as a justification for a lesser included offense.¹¹⁶

Similarly, in *State v. Smullen*, the Maryland Court of Appeals held that although Battered Child Syndrome cannot be a complete defense, it may be offered in parricide cases to show that the defendant responded to a reasonable, honestly perceived, imminent threat of death.¹¹⁷ A few courts in various other states have handed down similar decisions, but the percentage of states that allow expert testimony on Battered Child Syndrome through judicial precedent is small.¹¹⁸ Some states have actually rejected a parricide offender's attempt to offer evidence of Battered Child Syndrome at trial; however, the majority of states have not yet considered this issue.¹¹⁹

Legislative Response

Only a few states have enacted legislation regarding the admissibility of Battered Child Syndrome in parricide cases. Louisiana and Texas are the pioneers in this area, for each state has specific legislation that defines Battered Child Syndrome and permits evidence of the effects of abuse in parricide trials where self-defense is at issue.¹²⁰ Similarly, Arizona and Ohio both have statutes in which Battered Child Syndrome is made available through court rulings; for example, Ohio's Evidence Rule 702 has case notes providing that expert testimony on Battered Child Syndrome should be admissible when it is relevant and meets the requirements of the statute.¹²¹

Considering that only a few states have addressed Battered Child Syndrome in either their courts or legislatures, it is evident that our justice system does not sufficiently recognize the long history of abuse suffered by most parricide offenders.¹²² Even if the general public would support statutes that allow expert testimony on Battered Child Syndrome, courts will be reluctant to allow it if society's sentiments are not eventually codified.

Analysis: The Proper Role of Battered Child Syndrome

A child who has endured a lifetime of abuse and sees murder as the only viable escape from that life deserves mercy in the courts and in the eyes of the public. Yet the way these children carry out their crimes affects the way they are viewed by society and how they are prosecuted. At first glance, a crime involving a child who kills his or her parent while the parent is

sleeping or engaging in a non-threatening activity is one of the worst possible crimes. Many may advocate that justice must be done and affirm the fundamental principle of retribution. But in this context, when a child is responding to years of physical and emotional abuse, how is justice properly defined and executed?

The Lesser Culpability of Battered Children Must Be Recognized

The U.S. Supreme Court recently opined that juveniles, as a class, are less morally culpable for their crimes; in two specific cases involving juveniles accused of first degree murder, the Court overturned death sentences on the basis of the defendants' lessened culpability.¹²³ In *Thompson v. Oklahoma*, the Court declared that juveniles are "less mature and responsible than adults," "less able to evaluate the consequences of [their] conduct," and "more apt to be motivated by mere emotion or peer pressure."¹²⁴ Therefore, any crime a juvenile commits cannot be as "morally reprehensible as that of an adult."¹²⁵ Likewise, in *Roper v. Simmons*, the Court stated that juveniles' "vulnerability and comparative lack of control over their immediate surroundings mean [they] have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment."¹²⁶

If the U.S. Supreme Court has determined that juveniles in general possess these characteristics, certainly courts should recognize the diminished culpability of a physically or emotionally abused child. A battered child's psychological awareness is usually heightened depending on the length and severity of abuse, and the child will usually perceive that he or she is in constant imminent danger.¹²⁷ A battered child who lives in perpetual fear and hyper-vigilance will be more likely to strike out against an abuser than a child residing in a more functional environment.¹²⁸

Another important factor to recognize is that children are unable to escape their environment.¹²⁹ Children, in general, are economically and emotionally dependent on their parents.¹³⁰ Running away is illegal, and law enforcement officials and social work agencies will simply return a run-away child to his or her home.¹³¹ No shelters exist for battered children,¹³² and children cannot support themselves apart from their parents.¹³³

The special circumstances leading to parricide must be considered by the justice system. First, the U.S. Supreme Court has declared that juveniles, even those who kill, should be held less morally responsible for their crimes. Second, battered children do not possess the characteristics of an average child. Third, abused children have no way to escape the abuse because they are dependent on their parents for support. Considering all of these characteristics, society should not hold a battered child to the same standard as others who murder in non-confrontational situations. Yet the question remains: should society excuse a crime as serious as murder?

Core Principles of the Criminal Justice System Should Be Preserved

In parricide cases, the traditional philosophies underlying homicide and self-defense may become blurry if society tries to accommodate an abused child who kills his or her par-

ent.¹³⁴ Courts may wonder how to balance society's interest in both protecting children from abuse and punishing murderers for their crimes.¹³⁵

Certain theories about the purpose of criminal law are woven throughout the common law, current case law, statutory regulations, and the general sentiment of the American public. The law serves to protect individuals from harm by discouraging self-help and prosecuting those who break the law and injure others.¹³⁶ Our society's laws indicate that life is valuable and that society as a whole should adhere to a certain standard of conduct.¹³⁷ Rightly then, the most severe sentences are imposed on those who kill other human beings. Still, American laws recognize that there may be instances where an individual must kill to save his or her own life, and these murders may be excused only in the most "narrow, societal-determined set of circumstances."¹³⁸

Many scholars argue that by allowing expert testimony on Battered Child Syndrome in parricide cases, the doctrine of self-defense will be severely compromised.¹³⁹ In most jurisdictions, self-defense is determined by the objective standard of a "reasonable person."¹⁴⁰ Yet in parricide cases, the defense often asks the jury to consider expert testimony regarding the defendant's subjective state of mind at the time of the killing.¹⁴¹ Additionally, when the child kills in a non-confrontational setting, the established requirement that the threat be "imminent" is hard to satisfy.¹⁴² Public policy demands that the requirements for self-defense be strict to prevent "pre-emptive strikes, self-help, and retaliatory killings."¹⁴³ In parricide cases, it may be hard for a jury to distinguish between a child who genuinely sensed imminent harm and a child who killed his or her parent for revenge.¹⁴⁴

Allowing expert testimony on Battered Child Syndrome in support of a self-defense claim could unnecessarily weaken the doctrine of self-defense by allowing consideration of subjective rather than objective factors and by broadening the definition of "imminence." As such, for preservation of society's fundamental notions of criminal justice and self-defense, Battered Child Syndrome should not be used as a perfect defense in parricide cases to acquit the parricide offender.¹⁴⁵

What is "Justice" in a Parricide Case?

While courts have a duty to preserve the narrow doctrine of self-defense, they also must uphold society's duty to protect children from the abuse of their parents.¹⁴⁶ Society should bestow compassion upon abused children who kill by allowing them to offer expert testimony regarding Battered Child Syndrome at trial to mitigate or lessen their sentences.¹⁴⁷ The history of abuse, the severity of the abuse, the child's psychological makeup, and the child's perceptions at the time of the murder should all be taken into account by a judge and jury when considering how to charge and sentence the juvenile. Whereas the child should not be able to escape responsibility for murder, his or her unique circumstances must be taken into account to bring about true justice.¹⁴⁸ True justice for these

children can be achieved through creative and rehabilitative-based sentences to both appease society's need for retribution and the child's need for counseling and restoration.¹⁴⁹

If a parricide offender can prove, through expert and other testimony, that he had an honest yet unreasonable belief of imminent danger, he may receive a lesser charge than first-degree murder.¹⁵⁰ In many cases, if a defendant shows that his actions were affected by extenuating circumstances, his charge may be lessened to voluntary manslaughter.¹⁵¹ Charging a parricide offender with voluntary manslaughter, and sentencing him accordingly, would uphold society's interest in preserving the self-defense doctrine while at the same time saving the child from long and harsh prison terms reserved for those who commit first-degree murder.¹⁵²

For example, in the Cody Posey case, the judge could have convicted the child of first degree murder with a sentence of life in prison without possibility of parole but instead chose to convict him only of voluntary manslaughter for killing his father. If testimony regarding Battered Child Syndrome had not been admitted in order to show the extensive abuse Cody endured throughout his life, the court system would have failed him by not pursuing true justice.

Many states have not yet codified any specific provision for battered children who commit parricide, but the admissibility of Battered Child Syndrome should be considered by legislatures nationwide. A child who commits parricide in one state may experience "justice" differently depending solely on the jurisdiction in which he or she lives. Therefore it is imperative that all states allow abused children to present evidence of their subjective state of mind at trial.

The concept of rehabilitating wayward youth is a foundational principle of the juvenile justice system.¹⁵³ As such, it would be proper to prescribe more rehabilitative sentences for juveniles who can affirmatively show that they have the ability to be rehabilitated.¹⁵⁴ Abused children who kill their batterers pose little threat to society – in reality, they are not violent by nature.¹⁵⁵ What these children need primarily is intensive therapy and placement in an environment that will encourage them to begin their lives as contributing members of society.¹⁵⁶

A few judges have recognized the needs of these children and have creatively sentenced abused parricide offenders. A Maryland judge sentenced a parricide offender convicted of voluntary manslaughter to eight years in prison, which was suspended, probation, and participation in a program for emotionally disturbed children for two years.¹⁵⁷ Similarly, a judge considering the case of another parricide offender sentenced the juvenile to probation and ordered him to perform eight hundred hours of community service, teaching reading, writing, and arithmetic to prisoners in jail.¹⁵⁸ In the case of Cody Posey, to the shock of many in the legal community, the judge sentenced Cody to six years in a juvenile detention facility, until his 21st birthday.¹⁵⁹ Contributing to the judge's decision was the expert testimony establishing that Cody suffered from PTSD and was able to be rehabilitated.¹⁶⁰

As shown in these cases, judges play pivotal roles in the trials and sentencing of juvenile parricide offenders. They

Those who knew, but were afraid to act; those who knew, but decided it was none of their business ... all share with the abused child and his or her parents some moral responsibility for the ultimate tragedy.

must first allow expert testimony on Battered Child Syndrome to demonstrate the offender's lessened culpability, and then they must creatively sentence these juveniles to rehabilitative treatment. Only then will true justice for these abused children be achieved.

Conclusion

Paul Mones, a defender of children who commit parricide, has insightfully stated: “[t]hose who knew, but were afraid to act; those who knew, but decided it was none of their business; and even those who tried in some small way to help, but then gave up: all share with the abused child and his or her parents some moral responsibility for the ultimate tragedy.”¹⁶¹ It is true that murder under any circumstances is a tragedy. But when a child has been severely physically and mentally abused throughout his or her lifetime, receives no help from the outside world, and ultimately kills his or her parent to escape the nightmare of abuse, society struggles to respond appropriately.

Parricide offenders most often suffer from psychological and social disorders as a result of the abuse, and if state legislatures and courts do not recognize Battered Child Syndrome, these children may receive unnecessarily harsh sentences in prison. Justice requires that expert testimony regarding Battered Child Syndrome be admitted at trial, not to acquit the juvenile but to lessen or mitigate the charge or sentence. Only then will the juvenile have the chance to become a healthy, contributing member of society.

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¹ P. Mones, *Parricide: Opening a Window Through the Defense of Teens Who Kill*, 7 STAN. L. & POL’Y REV. 61, 64 (1996) [hereinafter Mones, *Parricide*] (“In our culture, people feel that children should respect their parents through childhood and into adulthood, extolling upon their parents and kind of eternal gratitude.”); see also R. Hegadorn, *Clemency: Doing Justice to Incarcerated Battered Children*, 55 J. MO. B. 70, 70 (1999).

² Exodus 20:12 (New American Standard); see also Deuteronomy 27:16 (“Cursed is he who dishonors his father or mother.”) (New American Standard).

³ L. Goldman, *Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of the Subjective Self-Defense and the Merits of Partial Excuse*, 45 CASE W. RES. L. REV. 185, 186 (1994).

⁴ Emanuella Grinberg, *Teen Cody Posey Convicted of Murder; Manslaughter for Killing His Family*, COURT TV NEWS, Feb. 8, 2006, http://www.courtstv.com/trials/posey/020706_verdict_ctv.html [hereinafter Grinberg, *Teen Cody Posey*].

⁵ *Id.*

⁶ *Id.*

⁷ Emanuella Grinberg, *Psychologist: A Lifetime of Abuse, Depression Led Teen Shooter to Despair*, COURT TV NEWS, Jan. 27, 2006, http://www.courtstv.com/trials/posey/012606_ctv.html [hereinafter Grinberg, *Psychologist*].

⁸ Grinberg, *Teen Cody Posey*, *supra* note 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Grinberg, *Psychologist*, *supra* note 7.

¹² Mones, *Parricide*, *supra* note 1, at 61.

¹³ PAUL MONES, WHEN A CHILD KILLS: ABUSED CHILDREN WHO KILL THEIR PARENTS at 25 (Pocket Books 1992) [hereinafter MONES, *When a Child Kills*].

¹⁴ MONES, *When a Child Kills*, *supra* note 13, at 14.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Jennifer L. Layton, *The Abused Child Fatally Says “No More!”: Can Parricide Be Self-Defense in Ohio?*, 18 U. DAYTON L. REV. 447, 447 (1993) (“These children are often victims of physical, sexual, and psychological abuse inflicted upon them by one parent or by both parents.”); Mones, *Parricide*, *supra* note 2, at 61 (“Parricide occurs after years of the most brutal, extreme abuse.”).

¹⁸ S. Smith, *Abused Children Who Kill Abusive Parents: Moving Toward An Appropriate Legal Response*, 42 CATH. U. L. REV. 141, 141 (1992).

¹⁹ Beth Bjerregaard & Anita Neuberger Blowers, *Chartering a New Frontier for Self-Defense Claims: The Applicability of The Battered Person Syndrome as a Defense for Parricide Offenders*, 33 U. LOUISVILLE J. FAM. L. 843, 865 (1995) (citing CYNTHIA K. GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW 129 (1989)) (“Abused persons know that the abuse often increases in both frequency and severity over time. Thus, the battered person may very reasonably believe that subsequent encounters will be more life-threatening.”); Jamie Heather Sacks, *A New Age of Understanding: Allowing Self-Defense Claims for Battered Children Who Kill Their Abusers*, 10 J. CONTEMP. HEALTH L. & POL’Y 349, 357 (1993).

²⁰ Sacks, *supra* note 19, at 349.

²¹ Mones, *Parricide*, *supra* note 1, at 62.

²² MONES, *When a Child Kills*, *supra* note 13, at 13.

²³ *Id.* at 14.

²⁴ Mones, *Parricide*, *supra* note 1, at 64.

²⁵ *Id.*

²⁶ *Id.* at 61.

²⁷ STATE CHILD DEATH REVIEW COUNCIL, CALIFORNIA ATTORNEY GENERAL’S OFFICE, CHILD DEATHS IN CALIFORNIA 1999-2001 (2005), http://ican-ncfr.org/library/CDR_CA_1999-2001.pdf.

²⁸ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD MALTREATMENT 2003 (2005), http://ican-ncfr.org/library/Child_Maltreatment_2003.pdf.

²⁹ Layton, *supra* note 17, at 447.

³⁰ MONES, *When a Child Kills*, *supra* note 13, at 30.

³¹ C. Henry Kempe et al., *The Battered Child Syndrome*, 181 JAMA 17 (1962).

³² Hegadorn, *supra* note 1, at 71.

³³ See Joelle Anne Moreno, *Killing Daddy: Developing a Self-Defense Strategy for the Abused Child*, 137 U. PA. L. REV. 1281, 1301 (1989) (“Although the frequency and severity of physical attacks may vary, the psychological and emotional abuse is often constant.”).

³⁴ Smith, *supra* note 18, at 142.

- ³⁵ *Id.*
- ³⁶ *Id.*; Mones, *Parricide*, *supra* note 1, at 62.
- ³⁷ Mones, *Parricide*, *supra* note 1, at 62.
- ³⁸ Layton, *supra* note 18, at 452; *see also* JAMES LEEHAN & LAURA PISTONE-WILSON, *GROWN-UP ABUSED CHILDREN* 3 (1985) (identifying five main characteristics of parricide offenders: 1) mistrust of others; 2) low self-esteem, shame, and feelings of incompetence; 3) inability to form relationships; 4) helplessness; and 5) difficulty in acknowledging and disclosing feelings).
- ³⁹ Layton, *supra* note 17, at 453 (“[A]n abused child generally becomes sensitized to his abuser, and develops a strategy for monitoring his environment.”); MONES, *When a Child Kills*, *supra* note 13, at 37.
- ⁴⁰ Bjerregaard & Blowers, *supra* note 28, at 869.
- ⁴¹ MONES, *When a Child Kills*, *supra* note 13, at 37.
- ⁴² For example, in 1996, seventeen-year-old Will Snyder killed his father with a baseball bat. It was not until after the crime had occurred that people in the community came forward to testify that Will had been a severely abused child. By the end of the trial, over 70 people including friends, neighbors, other parents, and ex-girlfriends admitted that they had seen acts of violence and signs of abuse, and heard Will tell them of the abuse. Regina Brett, *Defense of Abused Teen in His Father’s Slaying Made Ohio Court History*, THE BUFFALO NEWS, Apr. 21, 1997, available at 1997 WLNR 1251737.
- ⁴³ Mones, *Parricide*, *supra* note 1, at 62.
- ⁴⁴ *Id.* at 62-63.
- ⁴⁵ KATHLEEN M HEIDE, *WHY KIDS KILL PARENTS: CHILD ABUSE AND ADOLESCENT HOMICIDE* (Sage Publications, Inc. 1992).
- ⁴⁶ Jane Eisner, *Karo Ought to Get Kind Treatment*, PHILADELPHIA INQUIRER, May 18, 2003, available at 2003 WLNR 14774679.
- ⁴⁷ Bjerregaard & Blowers, *supra* note 18, at 868 (“[C]hildren who experience prolonged abuse are more likely to perceive their situation as hopeless and see themselves as lacking ability to see alternative remedies.”); Sacks, *supra* note 20, at 355-56 (citing Mavis J. Van Sambeek, *Parricide as Self-Defense*, 7 LAW & INEQ. J. 87, 104 (1988)) (“Battered children frequently have a pervasive sense of helplessness that results from feeling trapped in a situation from which they cannot escape.”).
- ⁴⁸ Layton, *supra* note 17, at 452; MONES, *When a Child Kills*, *supra* note 13, at 34.
- ⁴⁹ MONES, *When a Child Kills*, *supra* note 13, at 33-34.
- ⁵⁰ *Id.* at 34; Bjerregaard & Blowers, *supra* note 19, at 869.
- ⁵¹ Layton, *supra* note 17, at 452.
- ⁵² Heide, *Why Kids Kill Parents*, *supra* note 45 at (“[T]hose who are classified as ‘severely abused children’ kill the abusive parent for either or both of two reasons: they are desperate and see no other way to end the abuse; and/or are terrified that they or other family members will be killed or will continue to suffer from serious abuse.”).
- ⁵³ *See* Sacks, *supra* note 20, at 356. Other possible psychological effects could be “inability to empathize with fellow human beings, low self-esteem, depression, masochistic and self-destructive behavior, as well as lack of trust, social isolation, and generalized hostility and aggression.” Goldman, *supra* note 3, at 236.
- ⁵⁴ Sacks, *supra* note 19, at 356.
- ⁵⁵ Mones, *Parricide*, *supra* note 1, at 63; Sacks, *supra* note 19, at 356.
- ⁵⁶ Mones, *Parricide*, *supra* note 1, at 63.
- ⁵⁷ Sacks, *supra* note 19, at 356.
- ⁵⁸ Bjerregaard & Blowers, *supra* note 19, at 866 (“[A]n abused or battered person comprehends the situation differently than a person outside the predicament. Behaviors that a jury may deem as innocuous may be perceived by the child as a precursor to impending violence.”).
- ⁵⁹ Moreno, *supra* note 33, at 1286 (“Battered children and women perceive, more acutely than strangers, the imminence and degree of danger at the hands of their abusers. To a battered person, subtle changes, like a new method of abuse, may create a reasonable fear of imminent severe or deadly violence that might be imperceptible to an outsider.”).
- ⁶⁰ Bjerregaard & Blowers, *supra* note 19, at 864-65 (“In this type of situation, defendants will often defend themselves at the only time they perceive themselves as having the opportunity.”).
- ⁶¹ Sacks, *supra* note 19, at 356 (quoting *State v. Janes*, 850 P.2d 495, 501 (Wash. 1993)).
- ⁶² Goldman, *supra* note 3, at 236-37.
- ⁶³ C.B. SCRIGNAR, M.D., *POST-TRAUMATIC STRESS DISORDER: DIAGNOSIS, TREATMENT, AND LEGAL ISSUES* 69-72 (Prager Publishers 1984).
- ⁶⁴ Eric J. Fritsch & Craig Hemmens, *An Assessment of Legislative Approaches to the Problem of Serious Juvenile Crime: A Case Study of Texas 1973-1995*, 23 AM. J. CRIM. L. 563, 579 (1996); *see also* CAL. WELF. & INST. CODE § 707(b) (West 1998); NEV. REV. STAT. § 62B.390 (2005).
- ⁶⁵ David O. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (Not) to Punish Minors for Major Crimes*, 82 TEX. L. REV. 1555, 1555 (2004).
- ⁶⁶ *See id.*; Before March 2005, juveniles between the ages of sixteen and eighteen could also receive the death penalty if transferred to adult criminal court. The United States Supreme Court recently ruled this practice unconstitutional under the Eighth Amendment. *See Roper v. Simmons*, 543 U.S. 551 (2005).
- ⁶⁷ Sacks, *supra* note 19, at 362-63.
- ⁶⁸ Goldman, *supra* note 3, at 218. If the child re-lives a previous episode of abuse or torture through a flashback or hallucination and, believes he or she is presently in danger from the abuser, he or she could also raise an insanity defense. *Id.* at 219.
- ⁶⁹ *Id.* at 218.
- ⁷⁰ *Id.* at 221.
- ⁷¹ Smith, *supra* note 18, at 157.
- ⁷² Bjerregaard & Blowers, *supra* note 19, at 850-51; *see also* Goldman, *supra* note 4, at 198-99 (“[T]he analysis of self-defense must focus on the presence of external circumstances which can be identified neutrally and applied to all claims rather than on the presence of factors specific to the individual actor.”).
- ⁷³ Carin C. Azarcon, *Battered Child Defendants in California: The Admissibility of Evidence Regarding the Effects of Abuse on a Child’s Honest and Reasonable Belief of*

Imminent Danger, 26 PAC. L.J. 831, 844-45 (1994-1995); *People v. Lucas*, 160 Cal. App. 2d 305, 310 (1958), *People v. Williams*, 75 Cal. App. 3d 731, 739 (1977); see also CAL. PENAL CODE §§197-98 (Deering 2006).

⁷⁴ Goldman, *supra* note 3, at 205 (“In a nonconfrontational situation . . . no external evidence of imminent danger supports the requisite reasonableness of the defendant’s belief in impending harm.”).

⁷⁵ Bjerregaard & Blowers, *supra* note 19, at 851 (“Specifically, these cases challenge traditional methods of determining reasonableness, appropriateness of expert testimony, and interpretations of ‘imminent’ harm.”).

⁷⁶ Goldman, *supra* note 3, at 193-94; Sacks, *supra* note 20, at 362 (“In almost every parricide case, the expert is needed to educate the judge and jury of the dynamics at work in a battering relationship.”).

⁷⁷ Sacks, *supra* note 19, at 362 (“[T]he life experiences of the average juror are usually inadequate to support an informed evaluation of reasonableness, especially when the facts of the case involve an area in which an average juror has no knowledge.”).

⁷⁸ Bjerregaard & Blowers, *supra* note 19, at 866 (“Defendants must convince the court that the homicide was not only a necessary response, but that it was a reasonable response under the circumstances.”).

⁷⁹ *Id.* at 864; Sacks, *supra* note 19, at 363 (“Because battered children perceive danger differently from other children, expert testimony aids the jury in understanding the unusual situation that battered children face.”); Moreno, *supra* note 34, at 1289.

⁸⁰ Mones, *Parricide*, *supra* note 1, at 63 (“[T]he child’s hyper-vigilance also explains why the last act of abuse prior to the homicide would provide a fear response in the child which seems out of proportion to the actual abusive event.”)

⁸¹ Bjerregaard & Blowers, *supra* note 19, at 844 (“[P]ublic sentiment is reluctant to favor legal responses that permit defendants of serious violent offenses to escape criminal responsibility.”).

⁸² See Goldman, *supra* note 3, at 209-10.

⁸³ *Id.* at 213.

⁸⁴ Kathleen M. Heide et. al., *Battered Child Syndrome: An Overview of Case Law and Legislation*, 41 No. 3 CRIM. L. BULL. 1 (2005) [hereinafter Heide, *Battered Child Syndrome*].

⁸⁵ Goldman, *supra* note 3, at 231.

⁸⁶ See *id.* at 213; Hegadorn, *supra* note 2, at 76.

⁸⁷ Goldman, *supra* note 3, at 224.

⁸⁸ 438 U.S. 586 (1978).

⁸⁹ *Id.* at 604.

⁹⁰ 455 U.S. 104 (1982).

⁹¹ *Id.* at 113-14.

⁹² See *supra* Part II.C.

⁹³ 18 Cal. App. 3d 504 (1971).

⁹⁴ *Id.* at 507; see also Estelle v. McGuire, 502 U.S. 62, 68 (1991) (“California law allows the prosecution to introduce expert testimony and evidence related to prior injuries in order to prove ‘battered child syndrome.’”).

⁹⁵ See Heide, *Battered Child Syndrome*, *supra* note 85.

⁹⁶ See Gail Rodwan, *The Defense of Those Who Defend Themselves*, 65 MICH. B.J. 64, 66 (1986).

⁹⁷ See Heide, *Battered Child Syndrome*, *supra* note 84.

⁹⁸ 121 Wash. 2d 220 (1993).

⁹⁹ Heide, *Battered Child Syndrome*, *supra* note 85.

¹⁰⁰ *Janes*, 121 Wash. 2d at 223.

¹⁰¹ *Id.* at 225.

¹⁰² *Id.* at 223.

¹⁰³ *Id.* at 228-29.

¹⁰⁴ *Id.* at 223.

¹⁰⁵ *Id.* at 224-25.

¹⁰⁶ *Id.* at 226-27.

¹⁰⁷ *Id.* at 227.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 232.

¹¹⁰ *Id.* at 236. The Court went on to state that “the jury can then use such knowledge to determine whether the defendant’s belief that he was in imminent danger of serious bodily injury or loss of life was reasonable under the circumstances.” *Id.*

¹¹¹ *State v. Nemeth*, 82 Ohio St. 3d 202, 202 (1998).

¹¹² *Id.*

¹¹³ *Id.* at 204.

¹¹⁴ *Id.* at 205.

¹¹⁵ *Id.* at 205-08.

¹¹⁶ *Id.* at 205. The Court stated that evidence that the defendant suffered from battered child syndrome was relevant in determining whether Nemeth: 1) acted with prior calculation and design, 2) had acted with purpose, 3) had created the confrontation or initiated the aggression, and 3) had an honest belief that he was in imminent danger. *Id.* at 207. It also stated that “expert testimony is necessary to dispel the misconception that a non-confrontational killing cannot satisfy the elements of self-defense.” *Id.* at 209.

¹¹⁷ *State v. Smullen*, 380 Md. 233, 250-51 (2004). The Court made observations about the role that Battered Child Syndrome can play in the defense of a parricide offender and stated that introduction of Battered Child Syndrome demands “a more careful and sophisticated look at the notion of imminent threat and what constitutes ‘aggression,’ of understanding that certain conduct that might not be regarded as imminently dangerous by the public at large can cause someone who has been repeatedly subjected to and hurt by that conduct before to honestly, even if unreasonably, regard it as imminently threatening.” *Id.* at 250.

¹¹⁸ See, e.g., *State v. Gachot*, 609 So. 2d 269 (La. Ct. App. 1992); *People v. Cruickshank*, 484 N.Y.S.2d 328 (N.Y. App. Div. 1988); *Freeman v. State*, 269 Ga. 337 (1998).

¹¹⁹ *Azarcon*, *supra* note 73, at 862; see *Jahnke v. State*, 682 P.2d 991 (Wyo. 1984) (holding that the jury could not consider defendant’s subjective state of mind at the time of the killing or history of abuse thereby affirming defendant’s conviction of first-degree murder); *State v. Crabtree*, 805 P.2d 1 (Kan. 1991) (holding that the trial court was correct in refusing to give jury instructions on self-defense and in refusing to allow the jury to consider the effects of abuse on defendant’s state of mind).

¹²⁰ Heide, *Battered Child Syndrome*, *supra* note 84; Sacks, *supra* note 20, at 370; see LA. CODE EVID. ANN. art. 404(a) (2005); TEX. CODE CRIM. PROC. ANN. art. 38.36 (Vernon 2004) (“[I]n order to establish the defendant’s reasonable belief that use of force or deadly force was immediately necessary, [the defendant] shall be permitted to offer: 1) relevant evidence

that the defendant had been the victim of acts of family violence committed by the deceased and 2) relevant expert testimony regarding the condition of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence that are the basis of the expert's opinion.”).

¹²¹ Heide, *Battered Child Syndrome*, *supra* note 84; *see* ARIZ. REV. STAT. ANN. § 13-1103(A)(1) (2001); OHIO REV. CODE ANN. § 702 (2004).

¹²² *See* Heide, *Battered Child Syndrome*, *supra* note 84 (“Our review of the literature, state statutes, and case law for all fifty states reveals that the concept of battered child syndrome in cases of adolescent parricide offenders remains open to judicial interpretation amid often vague legislation.”).

¹²³ *See* *Thompson v. Oklahoma*, 487 U.S. 815 (1988); *Roper*, 543 U.S. 551.

¹²⁴ *Thompson*, 487 U.S. at 835.

¹²⁵ *Id.*

¹²⁶ *Roper*, 543 U.S. at 570.

¹²⁷ *Rodwan*, *supra* note 96, at 66; *Janes*, 121 Wash. 2d at 234.

¹²⁸ *Moreno*, *supra* note 33, at 1286.

¹²⁹ *Janes*, 121 Wash. 2d at 234.

¹³⁰ Bjerregaard & Blowers, *supra* note 19, at 869; Hegadorn, *supra* note 1, at 71 (“Escaping a violent household is all but impossible for most abused children, as they rarely have access to the resources that would permit them to survive away from home or simply cannot break the emotional bonds that still remain between themselves and their abusive parent.”).

¹³¹ Brett, *supra* note 42.

¹³² *Id.*

¹³³ Bjerregaard & Blowers, *supra* note 19, at 869 (“Children are even more economically dependent upon their parents and are almost always incapable of surviving independently.”).

¹³⁴ *Moreno*, *supra* note 33, at 1306.

¹³⁵ Smith, *supra* note 18, at 173.

¹³⁶ Goldman, *supra* note 3, at 198.

¹³⁷ *Id.*

¹³⁸ *Id.* at 203.

¹³⁹ *See id.* at 196-97 (“There are powerful policy reasons for precluding the introduction of battered child syndrome testimony and denying a self-defense instruction when a child kills an abusive parent in a patently non-confrontational situation.”).

¹⁴⁰ Azarcon, *supra* note 74, at 844.

¹⁴¹ *See* Bjerregaard & Blowers, *supra* note 19, at 865-66.

¹⁴² *Id.* at 851.

¹⁴³ Goldman, *supra* note 3, at 208.

¹⁴⁴ *Id.* at 211.

¹⁴⁵ *See id.* at 208 (“Only by excluding battered child syndrome testimony and maintaining the integrity of an objective standard of imminence can society be sure that self-defense claims in non-confrontational situations are rooted in necessity rather than retribution.”); Donald L. Creash, *Partially-Determined Imperfect Self-Defense: The Battered Wife Kills and Tells Why*, 34 STAN. L. REV. 615, 627 (1982) (“Society has a powerful interest in carefully circumscribing the situations in which citizens are permitted to protect themselves.

The American criminal justice system must delicately balance the citizen's right to safety with the system's commitment to maintaining a stable, predictable society that punishes only after due process, thus preventing vigilante law enforcement.”).

¹⁴⁶ *See* Smith, *supra* note 18, at 173.

¹⁴⁷ *See* Azarcon, *supra* note 73, at 874 (“Allowing evidence regarding the state of mind of an abused child defendant in a parricide case will provide the trier of fact with essential information surrounding the circumstances of the killing. Without this information, the trier of fact will not be able to adequately assess the culpability of the child defendant.”).

¹⁴⁸ *See* Smith, *supra* note 18, at 176-77 (“[E]vidence demonstrates that neither convictions of first-degree murder with lengthy prison terms nor acquittals by self-defense are likely to succeed in meeting the interests of the individual, society, or criminal justice system. Therefore, a balance is necessary.”).

¹⁴⁹ *See* Hegadorn, *supra* note 1, at 77.

¹⁵⁰ Bjerregaard & Blowers, *supra* note 19, at 872.

¹⁵¹ Smith, *supra* note 18, at 177.

¹⁵² Hegadorn, *supra* note 1, at 76; Smith, *supra* note 18, at 160-61.

¹⁵³ *See* *In Re Gault*, 387 U.S. 1, 15-16 (1967) (“The idea of crime and punishment was to be abandoned. The child was to be ‘treated’ and ‘rehabilitated’ and the procedures, from apprehension through institutionalization, were to be ‘clinical’ rather than punitive”); *Lanes v. State*, 767 S.W.2d 789, 791 (1989) (“The philosophical basis of this separation was to create a system wherein juveniles were rehabilitated rather than incarcerated, protected rather than punished – the very antithesis of the adult criminal system.”); Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 144 (1997) (citing Julian Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 109-10 (1909)) (“[T]he belief was that the delinquent youth was on a path to a criminal career, from which he could be diverted, through rehabilitation, or toward which he would proceed without appropriate intervention.”).

¹⁵⁴ Goldman, *supra* note 3, at 232.

¹⁵⁵ *Id.* at 237.

¹⁵⁶ *Id.* at 246 (“[E]vidence suggests that most battered child defendants are amenable to treatment and are able to adjust well to become productive, law-abiding members of society.”).

¹⁵⁷ Smith, *supra* note 18, at 174-75.

¹⁵⁸ *Id.* at 175-76.

¹⁵⁹ *Posey Sentenced as a Child*, KOBTV.com, February 23, 2006, <http://www.kobtv.com/index.cfm?viewer=storeyviewer&id=24434&cat=NMTOPSTORIES>.

¹⁶⁰ *Id.*

¹⁶¹ Mones, *Parricide*, *supra* note 1, at 64.

Endnotes for Charts and Graphs

^a U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD MALTREATMENT 2003 (2005), http://ican-ncfr.org/library/Child_Maltreatment_2003.pdf.