KILLING DADDY: DEVELOPING A SELF-DEFENSE STRATEGY FOR THE ABUSED CHILD

JOËLLE ANNE MORENO†

*"All happy families resemble one another, but each unhappy family is unhappy in its own way."**

INTRODUCTION

Children[1] rarely kill their parents.[2] When a child commits parricide,[3] the killing usually follows a history of violent abuse by that parent.[4] The effect of intrafamily violence on the perceptions and behavior

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† B.A. 1984, Swarthmore College; J.D. Candidate 1989, University of Pennsylvania.

* L. TOLSTOY, ANNA KARENINA 1 (A. Maude trans. 1970).

[1] Throughout this Comment, "children" will refer to adolescents and teenagers. *See* Timnick, *Fatal Means for Children to End Abuse,* L.A. Times, Aug. 31, 1986, pt. II, at 1, col. 1, 3, col. 1 (noting that the average age of children who kill a parent is "about 15 ½ or 16").

[2] *See, e.g.,* Blodgett, *Self-Defense: Parricide Defendants Cite Sexual Abuse as Justification,* A.B.A. J., June 1, 1987, at 36, 37 ("About 400 homicides per year in this country are cases of children killing their parents or having someone else do it for them."); Berg, *Lawyer Focuses Practice on Defense Consulting on Parricide,* L.A. Daily J., July 17, 1987, § 2, at 1, col. 1, 1, col. 4 (reporting the estimate of Paul Mones, an expert in juvenile law who specializes in parricide cases, that only "3 percent of the 20,000 murders that occur each year are instances of parricide"); Chambers, *Children Citing Self-Defense in Murder of Parents,* N.Y. Times, Oct. 12, 1986, § 1, at 38, col. 3, 38, col. 3 ("Studies involving parricide . . . show that about 2 percent of all homicides in the nation, about 400 killings a year, are committed by children against their parents."); *cf.* Mones, *The Relationship Between Child Abuse and Parricide: An Overview,* in UNHAPPY FAMILIES: CLINICAL AND RESEARCH PERSPECTIVES ON FAMILY VIOLENCE 31, 38 (E. Newberger & R. Bourne eds. 1985) (describing how recent nationwide publicity of cases of matricide and patricide has been misinterpreted as evidence of an increase in violent juvenile crime).

[3] The word "parricide" will be used throughout this Comment to mean "[t]he murder of one's parent." BALLENTINE'S LAW DICTIONARY 914 (3d ed. 1969). Parricide can involve killing either one's father or mother. *See* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 954 (1979) (defining parricide to include the act of murdering one's father or mother). There is some confusion, however, about the definition of the term "parricide." *See, e.g.,* BLACK'S LAW DICTIONARY 1006 (5th ed. 1979) (defining parricide as "[t]he crime of killing one's *father*" (emphasis added)).

[4] *See, e.g.,* Blodgett, *supra* note 2, at 36 ("Well over 90 percent of the kids who kill their parents are physically, emotionally or sexually abused [by that parent]."); Mones, *supra* note 2, at 31 (describing the "alarming" fact that in almost every case of parricide the defendant was the victim of severe child abuse by the murdered parent); Post, *Adolescent Parricide in Abusive Families,* 61 CHILD WELFARE 445, 445 (1982) ("[P]arricide is often the product of the perpetrator's chaotic emotions that result, in

of its victims has already been recognized in the context of the "battered woman's syndrome."[5] This Comment will explore the judicial and public reaction to similar self-defense claims raised by battered children and argue that these defenses are equally, if not more, compelling.

Self-defense is based on the principle that a person "who is unlawfully attacked by another, and who has no opportunity to resort to the law for his defense, should be able to take reasonable steps to defend himself."[6] The factfinder in a homicide case must conclude that the

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turn, from a pattern of child abuse [by the parent who was later murdered]."); Thompson, *Battered Child Syndrome Gets No Respect,* L.A. Daily J., Apr. 26, 1985, § 1, at 3, col. 1, 3, col. 1. ("Virtually all of the 254 children who killed a parent in 1982 had suffered a long period of abuse at the hands of the parent . . . .").

[5] The "battered woman's syndrome" was developed by Dr. Lenore Walker, a psychologist who specializes in battered women, to describe the psychological characteristics of abused women and the battering relationship. Dr. Walker describes the battering relationship as composed of three distinct and recurring phases: a tension-building stage, followed by an acute battering incident, and finally a period of contrition and affection. *See* L. WALKER, THE BATTERED WOMAN 55-70 (1979). Dr. Walker's theory has been recognized as the seminal work on the psycho-social effects of battering on adult women. *See* Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering,* 9 WOMEN'S RTS. L. REP. 195, 202 (1986).

The battered woman's syndrome is a psychological profile of a woman trapped in a battering cycle. Research in this area is based on adult relationships. Certain aspects of this theory are therefore inappropriate in the context of parent-child relationships. For example, the psychological state of "learned helplessness," a term borrowed from the work of behaviorist psychologists, *see, e.g.,* M. SELIGMAN, HELPLESSNESS: ON DEPRESSION, DEVELOPMENT, AND DEATH 21-27 (1975) (describing animal experiments showing how, after mistreatment, animals develop a psychological inability to help themselves when exposed to additional pain); Hiroto, *Locus of Control and Learned Helplessness,* 102 J. EXPERIMENTAL PSYCHOLOGY 187, 187 (1974) (identifying failure to escape as the primary characteristic of learned helplessness), was discussed at length by Dr. Walker to explain why battered women do not leave battering relationships. *See* L. WALKER, *supra,* at 42-54. When child abuse begins at an early age, there is little need to explain the fact that the child did not leave the relationship, as that is practically impossible for a young child. *See* Mones, *supra* note 2, at 36-37; Thompson, *supra* note 4, § 1, at 3, col. 1.

In addition, this Comment purposely omits any discussion of "learned helplessness" because, without it, a self-defense claim for battered children is not open to the criticism that it is a quasi-insanity defense. Unfortunately, this aspect of Dr. Walker's theory has focused attention on the battered woman as passive and unable to respond reasonably, which creates "images of a psychological defense—a separate defense and/or an impaired mental state defense." Schneider, *supra,* at 199.

[6] W. LAFAVE & A. SCOTT, CRIMINAL LAW § 5.7(a), at 454 (2d student ed. 1986). Some states incorporate a "duty to retreat" into their laws of self-defense. Within these jurisdictions, the intended victim is not justified in using deadly force if she can withdraw from the encounter. *See id.* at 460-61; *see also, e.g.,* CONN. GEN. STAT. ANN. § 53a-19(b) (West 1985) (providing that an intended victim has the duty to withdraw if she can do so in complete safety); N.Y. PENAL LAW § 35.15(2)(a) (McKinney 1987) (same). This aspect of self-defense law, although it would be important in developing a self-defense claim in a "duty to retreat" jurisdiction, will not be discussed in this Comment. One reason for this is the existence of an exception when a

defendant perceived an imminent deadly or serious attack[7] and that her perception was reasonable.[8] This model is inappropriate when a parent and child are involved, because it presupposes the objective and rational observations of two strangers. Abused[9] children, like battered women, perceive the behavior of their batterer with a degree of knowledge and familiarity not accounted for in the rational observation standard of the self-defense model.[10] Because of this difference in perception, child abuse-parricide cases will always require expert analysis of the defendant's ability to assess and respond to the behavior of her batterer.[11]

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person is attacked in her own home. *See, e.g.*, CONN. GEN. STAT. ANN. § 53a-19(b)(1) (West 1985) (providing that, as long as she is not the initial aggressor, a victim has no duty to retreat in her own home); N.J. STAT. ANN. § 2C:3-4(b)(2)(b)(1) (West 1982) (same); N.Y. PENAL LAW § 35.15(2)(a)(i) (McKinney 1987) (same); 18 PA. CONS. STAT. ANN. § 505(b)(2)(ii)(A) (Purdon 1983) (same). *But see* N.J. STAT. ANN. § 2C:3-4(b)(2)(b)(i) (West 1982) (imposing a duty to retreat when the attacker and the victim occupy the home where the attack takes place).

[7] *See* Ridolfi & Arguedas, *Women's Self Defense Cases: Jurywork and Legal Strategy*, in JURYWORK: SYSTEMATIC TECHNIQUES 223, 224 (B. Bonora & E. Krauss eds. 1979) [hereinafter *Jurywork*].

[8] *See* C. EWING, BATTERED WOMEN WHO KILL 47 (1987); W. LAFAVE & A. SCOTT, *supra* note 6, at 454.

[9] "Abuse," "intrafamily abuse," and "family violence" in this Comment refer specifically to child abuse. Other forms of intrafamily violence will not be discussed. This is not meant to imply, however, that other forms of abuse are not significant or prevalent. *See, e.g.*, M. STRAUS, R. GELLES & S. STEINMETZ, BEHIND CLOSED DOORS 36 (1980) [hereinafter BEHIND CLOSED DOORS] (discussing husband abuse).

[10] The landmark case of State v. Wanrow, 88 Wash. 2d 221, 559 P.2d 548 (1977), contained the first judicial recognition of a subjective standard of self-defense for battered women on trial for killing their abusers. Twelve years have passed since the Supreme Court of Washington ruled that a battered woman defendant "is entitled to have the jury consider her actions in the light of her own perceptions of the situation." *Id.* at 240, 559 P.2d at 559. Meanwhile, other states have followed Washington's example. *See, e.g.*, State v. Hodges, 239 Kan. 63, 72, 716 P.2d 563, 569 (1986) (adopting a subjective standard of self-defense for battered women); People v. Torres, 128 Misc. 2d 129, 130-31, 488 N.Y.S.2d 358, 360 (Sup. Ct. 1985) ("The standard for the evaluation of the reasonableness of the defendant's belief and conduct is not what the ordinary prudent man would have believed . . . . [but] rather, whether the defendant's *subjective* belief as to the imminence and seriousness of the danger was reasonable.").

Even when a state declares that this "reasonable belief" imports an objective element into the determination of the reasonableness of the defendant's actions, the inquiry will still initially involve an examination of the defendant's assessment of her situation, followed by a determination whether, in light of the circumstances in which the defendant found herself, a reasonable person would have believed what she believed. *See* People v. Goetz, 68 N.Y.2d 96, 114-15, 497 N.E.2d 41, 52, 506 N.Y.S.2d 18, 29-30 (1986).

[11] *See* Jahnke v. State, 682 P.2d 991, 1043 (Wyo. 1984) (Rose, J., dissenting) (stating that the reason for introducing evidence of the history of abuse of the parricide defendant is to explain how battered people perceive and respond to the "imminence of danger"); *cf.* Thompson, *supra* note 4, § 1, at 3, col. 1 ("[J]udges can't comprehend abuse so severe as to drive an otherwise blameless youth to kill. 'Children in our society aren't considered to be people who have rights like adults.' " (quoting Robert Tiedeken, the Cheyenne, Wyoming, defense attorney who represented Deborah Jahnke)); *infra* notes 27-29 and accompanying text (discussing how a history of abuse may increase the

In cases involving battered women, the effect of violent abuse has been recognized as " 'beyond the ken' " of the average juror.[12] Thus, use of expert testimony is generally accepted in such cases in order to "describe common psychological and social characteristics of battered women."[13] This information is used to "educate the judge and jury about the common experience of battered women, [and] to explain the context in which an individual battered woman acted."[14]

Any judicial resistance to child abuse-parricide self-defense claims is puzzling, given the patterns of abuse[15] and the fact that these self-defense claims are "virtually identical to [those] used in cases where abused women kill their husbands or lovers."[16] Despite these factors, courts generally have not fully accepted self-defense claims for child abuse-parricide defendants.[17] Battered women, but not battered children, have been allowed to develop self-defense claims that use their personal history of violence to "explain why their perception of danger was reasonable."[18] Because of this distinction, battered children, unlike

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victim's ability to perceive danger from her abuser).

[12] Ibn-Tamas v. United States, 407 A.2d 626, 635 (D.C. 1979) (quoting Dyas v. United States, 376 A.2d. 827, 832 (D.C.), *cert. denied,* 434 U.S. 973 (1977)). *See generally* McCORMICK ON EVIDENCE, § 13, at 33-34 (3d ed. 1984) (discussing the admissibility of expert testimony in situations in which a jury is not "competent" to draw inferences).

[13] Schneider, *supra* note 5, at 207; *see also* Recent Developments, *The Use of Expert Testimony Concerning the "Battered Wife Syndrome,"* 8 AM. J. TRIAL ADVOC. 505, 506 (1985) (providing a list of cases that hold that expert testimony on the battered wife syndrome is admissible).

[14] Schneider, *supra* note 5, at 201.

[15] *See supra* note 4 and accompanying text; *see also* Lubenow, *When Kids Kill Their Parents,* NEWSWEEK, June 27, 1983, at 35, 35 ("Usually parent killing involves a drunken, physically abusive father killed by a son who sees himself as the protector of not only himself but also of his mother and siblings."); Mones, *supra* note 2, at 37 (asserting that child abuse destroys traditional family support systems and roles).

[16] Mones, *supra* note 2, at 37; *see also* Thompson, *supra* note 4, § 1, at 3, col. 1 (describing a self-defense claim for child abuse-parricide defendants as "arguably more compelling" than a similar claim for battered women).

[17] *See, e.g.,* Blodgett, *supra* note 2, at 37 ("The majority of children accused of killing their parents are convicted, with some serving 'very long' prison terms . . . ."); Thompson, *supra* note 4, § 1, at 3, col. 1 (reporting the statement of Paul Mones, an expert on child abuse-parricide cases, that "no judge has accepted the self-defense claim completely"); *see also* Timnick, *supra* note 1, pt. II, at 2, col. 1 (stating that legal experts familiar with child abuse-parricide cases attribute the "discrepent outcomes of essentially similar cases . . . [to] the specific circumstances surrounding each murder, the region in which the crime occurred, the sophistication of the defense, the makeup of the jury, the reaction of the judge and, perhaps most importantly, the strength of the evidence of severe child abuse"). *But see infra* notes 117-21 and accompanying text (discussing the acquittal of child abuse victim Johnny Juhanatov on charges of attempting to murder his abusive father).

[18] Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense,* 8 HARV. WOMEN'S L.J. 121, 141 (1985); *see also* Blackman, *Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill,*

their adult women counterparts, are unable to achieve significant success in the courts.

This Comment will explore the connection between child abuse and parricide in the context of developing a self-defense claim. Several recent cases will be examined in conjunction with a review of psychological and social theories of child abuse. The case studies are intended to provide perspective on the legal problems that confront child abuse-parricide defendants. This Comment will argue that the recent, well documented, "dramatic increase in society's knowledge about sexual abuse"[19] and the resultant increase in public and professional awareness of the problem of family violence[20] have paved the way for self-defense strategies in child abuse-parricide cases. It will conclude by predicting that these claims may soon achieve the same level of judicial recognition as those of battered adult women.[21]

I. SELF-DEFENSE, CHILD ABUSE, AND PARRICIDE: ESTABLISHING THE CONNECTION

When a battered child strikes back and kills her battering parent, defense attorneys today are more likely to argue that the killing was justified as self-defense;[22] self-defense for child abuse-parricide defendants "appears to be emerging as a viable defense."[23] Self-defense claims for battered children, however, as for battered women, remain problematic. A major source of difficulty is the traditional definition of self-defense, which assumes male, stranger-to-stranger assault.[24] To an out-

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9 WOMEN'S RTS. L. REP. 227, 230 (1986) (asserting that the dilemma faced by battered women reveals a unique context in which their acts of self-defense can be understood); Schneider, *supra* note 5, at 196-97 n.6 (citing 46 cases between 1980 and 1985 in which battered women were allowed to raise self-defense claims).

[19] Blodgett, *supra* note 2, at 36 (quoting Mones, *supra* note 2, at 36); *see also* Korbin, *Child Abuse and Neglect: The Cultural Context,* in THE BATTERED CHILD 23 (R. Helfer & R. Kempe 4th ed. 1987) ("Child abuse emerged . . . [as] a matter of public and professional concern in the United States in the early 1960s.").

[20] In cases involving battered women, recent efforts to heighten public awareness have exposed a history of condoning and sanctioning wife abuse. *See* BEHIND CLOSED DOORS, *supra* note 9, at 9-10; Crocker, *supra* note 18, at 129 n.35.

[21] "[N]ow that courts are routinely treating juveniles as adults in criminal cases, they will begin to realize that children have the same rights as adults, as well." Thompson, *supra* note 4, § 1, at 3, col. 2 (paraphrasing Cheyenne, Wyoming defense lawyer Robert Tiedeken, who represented Deborah Jahnke).

[22] *See* Chambers, *supra* note 2, § 1, at 38, cols. 3-4 ("[D]efense lawyers are now more likely to mount a vigorous and often highly publicized defense based on the idea that battered children, like battered wives, reach a point where their fear of being killed becomes unbearable and they kill in self-defense.").

[23] *Id.*

[24] *See supra* notes 6-8 and accompanying text (discussing traditional self-defense theory). *See generally* Stell, *Close Encounters of the Lethal Kind: The Use of Deadly*

sider, it appears that many battered persons kill at times that are less dangerous or threatening than other situations that they have survived.[25] This perception, however, which is shaped by traditional self-defense doctrine, omits an essential component of the dynamics of family violence: the victim's familiarity with her abuser.[26]

Battered children and women perceive, more acutely than strangers, the imminence and degree of danger at the hands of their abusers. Victims of continued abuse "become attuned to stages of violence . . . [and learn to] interpret certain conduct to indicate an imminent attack or a more severe attack."[27] 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.[28] Because victims of abuse know their abusers and their capacities for violence,

> they may strike back at times that seem to the outsider less dangerous than previous episodes of abuse, or that may not seem life-threatening at all. . . . [They] may reasonably believe that their lives are at risk because of changes in the abuser's routine style of assault, or because the abuser says or does something that, in the past, has signalled great danger.[29]

Traditional self-defense theory generally fails to account for familiarity and heightened awareness.[30] Critics of the standard approach

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Force in Self Defense, 49 J.L. & CONTEMP. PROBS. 113, 113-117 (1986) (describing the historical development of the law of self-defense).

[25] "The testimony may demonstrate how repeated physical abuse can so heighten a battered woman's fear and her awareness of her husband's physical capabilities that she considers him as dangerous asleep as awake, as dangerous before an attack as during one." Crocker, *supra* note 18, at 141. For an example of a trial court's confusion of "immediate" with "imminent," see State v. Hodges, 239 Kan. 63, 74, 716 P.2d 563, 571 (1986) (discussing this confusion as a reason for reversing the conviction of a battered woman for murdering her abusing spouse); *see also* Margolick, *When Battered Wives Kill, Does the Law Treat Them Fairly?,* N.Y. Times, Dec. 11, 1983, at E8, col. 1, E8, col. 1 (quoting Elizabeth Schneider of Brooklyn Law School, an authority on the rights of battered women, as saying that "self-defense arguments are usually difficult for jurors to grasp, especially where there is no attacker with knife drawn or gun cocked").

[26] *See* Rodwan, *The Defense of Those Who Defend Themselves,* 65 MICH. B.J. 64, 64 (1986).

[27] Crocker, *supra* note 18, at 127.

[28] "Very often, the defendant will identify a threatening movement toward her by the deceased as the reason why she pulled the trigger." *Jurywork, supra* note 7, at 6; *see also* Robinson, *Defense Strategies for Battered Women Who Assault Their Mates:* State v. Curry, 4 HARV. WOMEN'S L.J. 161, 171 (1981) (explaining that "battered women become very familiar with behavioral cues from their batterer").

[29] Blackman, *supra* note 18, at 230.

[30] *See id.* at 229.

suggest that self-defense law must become more "individualized."[31] Even without a general revision of self-defense doctrine, many of the goals of individualization might be accomplished through the development of case-specific justification claims assisted by child abuse research and expert testimony.[32]

Traditionally, expert testimony will be admitted if the court determines that the evidence is relevant,[33] and the expert is capable of "draw[ing] inferences from the facts which a jury would not be competent to draw."[34] A court will reach this conclusion by using one of two standards.[35] The first standard requires that the court find the subject matter to be beyond the comprehension of the ordinary juror, that the expert be qualified to give an opinion on the subject, and that knowledge of this subject be sufficiently advanced to allow for an expert opinion.[36] Under the second standard, "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."[37] State courts have applied these standards in order to determine the admissibility of expert testimony concerning the effects of intrafamily abuse on battered

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[31] One critic explains:

> Individualization involves " 'a full consideration of individual differences and capacities' when determining whether a defendant should be held accountable for a particular crime." Rather than focusing on the hypothetical reasonable man, individualization demands that the jury inquire into the individual defendant's characteristics and culpability. . . . Individualization explicitly addresses . . . the inapplicability of stereotypic attitudes toward a particular defendant . . . .

Crocker, *supra* note 18, at 131-32 (quoting Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense,* 15 HARV. C.R.-C.L. L. REV. 623, 639 (1980) (quoting G. FLETCHER, RETHINKING CRIMINAL LAW 512 (1978))).

[32] A self-defense claim based on an understanding of the dynamics of family violence is not a request for special treatment, but is merely the defendant's assertion of her right to "equal and individualized treatment under the law." Rodwan, *supra* note 26, at 64; *see also* Jahnke v. State, 682 P.2d 991, 1036 (Wyo. 1984) (Rose, J., dissenting) (explaining that the defense's offer of information on the "battered-person syndrome" was related to her claim of self-defense and was not an attempt to establish a "special justification for patricide").

[33] *See, e.g.,* FED. R. EVID. 402 (stating that all relevant evidence is admissible unless excepted by some other law or rule); *see also* MCCORMICK ON EVIDENCE, *supra* note 12, § 185, at 541 (stating that relevant evidence, which must be material and have probative value, is generally admissible).

[34] MCCORMICK ON EVIDENCE, *supra* note 12, § 13, at 33.

[35] *See id.*

[36] *See* United States v. Dyas, 376 A.2d 827, 832 (D.C.), *cert. denied,* 434 U.S. 973 (1977).

[37] FED. R. EVID. 702.

women who kill.[38] Since 1979, expert testimony of this kind has been admitted with increasing frequency.[39]

A finding by the judge or jury that the defendant was affected by her past history of abuse does not end the inquiry. This information merely helps the jury interpret how the defendant might have perceived and responded to threats of imminent danger.[40] It remains for the jury to decide "whether or not, as a battered person, the defendant behaved reasonably in the self-defense context."[41]

Unfortunately, acceptance of the need to educate the judge and jury about the effects of a history of violence has been misperceived by some as the adoption of a moral right to kill.[42] At times, prosecutors will intentionally encourage these mistaken assumptions in order to argue that jurors who are influenced by such theories, and thus vote to acquit the defendant, encourage and support her license to kill.[43]

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[38] *See* Coffee, *A Trend Emerges: A State Survey on the Admissibility of Expert Testimony Concerning the Battered Woman's Syndrome,* 25 J. FAM. L. 373, 373-96 (1986) (discussing the approaches of seven states that have allowed expert testimony on the battered woman's syndrome); Crocker, *supra* note 18, at 138 n.77 (listing state court cases that have considered the admissibility of expert testimony on the battered woman's syndrome); Schneider, *supra* note 5, at 196-97 nn.6, 7 & 10 (listing state court cases that have considered the admissibility of expert testimony on the battered woman's syndrome).

[39] *See* Blackman, *supra* note 18, at 227; *supra* note 13 and accompanying text.

[40] *See* Jahnke v. State, 682 P.2d 991, 1043 (Wyo. 1984) (Rose, J., dissenting).

[41] *Id.* (Rose, J., dissenting).

[42] A battered person's self-defense claim "does not create a right to kill because of past mistreatment; it provides a framework for understanding why the abused [person] found it impossible to survive without killing." Rodwan, *supra* note 26, at 64; *see also* Blackman, *supra* note 18, at 230 (denouncing the equation of self-defense claims for battered persons with arguments that killing is morally justified).

[43] Prosecutors may adopt trial strategies that equate acquittal of the defendant with "the frightening idea that one person is entitled to take the life of another. [Then, a]s a practical matter, the burden of proof shifts to the defendant to prove that the killing was a necessary act of self-defense." *Jurywork, supra* note 7, at 224; *see also, e.g.,* Brief of Amicus Curiae, Center for Women's Rights, Inc., at 6, People v. Emick, 103 A.D.2d 643, 481 N.Y.S.2d 552 (1984) (No. 83-028) (describing how the prosecutor, in a homicide trial during which expert testimony on the battered woman's syndrome was introduced to support a claim of self-defense, stated to the jury that "the law is our guarantee against tyranny of individuals making their own choice").

A related argument is that our society encourages acceptance of a moral right to kill. *See* Jahnke v. State, 682 P.2d 991, 1009 (Wyo. 1984) (Brown, J., concurring).

> Many in our society are fascinated by violence. We make folk heroes out of our criminals. Ballads and odes are written about murders. The more bizarre or unusual the murder, the greater the proliferation of songs, poems and books. The public's thirst for this sort of literature will not be stilled. If a person wants to become famous and even wealthy, he just needs to commit a grotesque crime.

Id. at 1010 (Brown, J., concurring). These arguments also have been made on an academic level. *See, e.g.,* Rittenmeyer, *Of Battered Wives, Self-Defense and Double Standards of Justice,* 9 J. CRIM. JUST. 389, 390 (1981) (arguing that admitting evi-

An attorney presenting a child abuse-parricide defendant's self-defense claim must have an informed understanding of her client's history of abuse.[44] A self-defense theory that allows a judge or jury to conclude that the defendant acted reasonably must educate the decisionmaker about the defendant's state of mind and behavior at the time of the killing.[45] Because many victims of abuse kill their abusers when they are not being assaulted, experts on intrafamily violence are necessary to "illuminate the psychological bases for a sense of immediacy and life-threatening risk, even under such conditions."[46]

Unfortunately, expert testimony intended to instruct the court on the reasonableness of the battered defendant's actions is frequently misunderstood.[47] These misperceptions may begin with the initial determination of the admissibility of such testimony. Cases that have explored the admissibility of expert testimony on the battered woman's syndrome frequently demonstrate that the focus shifts from an inquiry regarding the relevance of the evidence to a determination of the ultimate issue: the reasonableness of the defendant's actions.[48] Thus, this testimony often is excluded because the court views the act as unreasonable.[49] Similar misperceptions may occur when judges instruct juries on the purpose of expert testimony.[50]

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dence regarding the battered woman's syndrome in self-defense claims is like granting a license to kill).

[44] *See* Blackman, *supra* note 18, at 231; *cf. Jurywork, supra* note 7, at 225 ("To fully understand the particular situation of a defendant who has been in a battering relationship, the attorney and members of the legal team must understand the nature of these relationships in general.").

[45] *See Jurywork, supra* note 7, at 232. Some researchers have argued that battered persons "develop a continuum along which they can 'rate' the tolerability or survivability of episodes of . . . violence. . . . [This] characteristic reflects an enhanced capacity, an affirmation of the reasonableness of the need to act." Blackman, *supra* note 18, at 229.

[46] Blackman, *supra* note 18, at 231.

[47] When the entire purpose of the admission of essential expert testimony is misunderstood, it may actually do more harm than good to both the individual defendant, *see supra* notes 42-43 (discussing the misperception of expert testimony on battering as supporting a moral right to kill), and the general level of comprehension of the role of such information, *see, e.g.,* Schneider, *supra* note 5, at 197-99 (discussing how misunderstood expert testimony on the battered woman's syndrome may actually perpetuate the stereotypes of female incapacity that it was intended to dispel).

[48] *See* Crocker, *supra* note 18, at 138 (stating that often "the decision to admit or exclude the testimony is based on an assessment of the reasonableness of the defendant's actions, rather than on the traditional test for admissibility of expert testimony").

[49] *See id.* at 138-39.

[50] For example,

> [t]he jury is told to evaluate the defendant's life, not the reasonableness of her act of self-defense. The debate becomes whether the defendant is *entitled* to claim she defended herself, not whether she was reasonable to do so.

The perceptions and responses of a battered person can be understood only within the context of her unique situation.[51] Self-defense claims for battered children frequently must include expert testimony to explain "why they acted in self-defense after a 'reasonable man' would have cooled off or before he would have acted."[52] When courts bar this testimony, they fail to provide an adequate forum for battered persons to develop a meaningful defense.

II. Case Studies of Child Abuse-Parricide Defendants

Several recent cases of parricide highlight the connection between family violence and homicide. In each of these cases, the child defendant had been the victim of repeated physical and/or sexual assaults. Therefore, each was extremely familiar with the behavior of the batterer and attuned to any changes in the abuse. These stories demonstrate both common patterns of violence and distinctions between families. The first three case studies, presented in chronological order, demonstrate the types of legal hurdles that confront the child abuse-parricide defendant. The final two cases represent recent partial successes in the courts. Viewed together, these cases appear to illustrate a judicial trend toward greater acceptance of a "battered-child" defense.

A. *Richard*

On the night of November 16, 1982, in Cheyenne, Wyoming, Richard Jahnke, Sr. stepped out of his car and into the range of the 12-gauge shotgun held by his sixteen-year-old son.[53] Richard, Jr. fired six times; four of his shots hit his father in the chest.[54] Inside the house, his seventeen-year-old sister Deborah waited in the living room with a semiautomatic .30 caliber M-1 carbine.[55] She did not have to shoot. One hour after the shooting,[56] Richard Jahnke, Sr. died from the gun-

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> This approach misperceives not only the purpose of [expert] testimony, but also existing legal doctrine.

Id. at 149.

[51] *See, e.g.*, Blackman, *supra* note 18, at 228 (describing how a history of abuse will heighten the battered person's ability to perceive the potential dangerousness of her abuser).

[52] Crocker, *supra* note 18, at 41.

[53] *See* G. Morris, The Kids Next Door: Sons and Daughters Who Kill Their Parents 118 (1985) [hereinafter The Kids Next Door].

[54] *See id.*

[55] *See* Jahnke v. State, 682 P.2d 991, 995 (Wyo. 1984); The Kids Next Door, *supra* note 53, at 117.

[56] *See Jahnke*, 682 P.2d at 995.

shot wounds inflicted by his son.[57]

Richard was charged with first degree murder[58] and with conspiring with his sister Deborah to commit first degree murder.[59] At trial, the children relied on the defense that they had been protecting themselves from abusive acts by their father.[60] Richard Jahnke testified about years of violent abuse. He told the jury that his father had been beating his mother and him and sexually abusing and beating his sister for as long as he could remember.[61] Richard and Deborah testified to repeated unsuccessful attempts to obtain help from local child protection agencies.[62] Richard's attorney also attempted to have a forensic psychiatrist testify to the effects of this history of abuse on Richard's perception of danger on the night of the killing.[63] The trial court, however, excluded this testimony.[64] The jury found Richard guilty of first degree manslaughter and sentenced him to five to fifteen years in prison.[65]

On appeal, Richard challenged the trial court's exclusion of the expert testimony.[66] The Supreme Court of Wyoming affirmed the trial court's ruling.[67] The court began its analysis of the self-defense issue by stating that the only admissible evidence pertaining to self-defense was " 'evidence which establishes that defendant had a bona-fide belief [he] was in imminent danger of death or great bodily harm, and that the

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[57] *See id.* at 996.

[58] *See id.* at 1008; *see also* WYO. STAT. § 6-2-101(a) (1977) ("Whoever purposely and with premeditated malice . . . kills any human being is guilty of murder in the first degree.").

[59] *See Jahnke,* 682 P.2d at 1008; *see also* WYO. STAT. § 6-1-303(a) (1977) ("A person is guilty of conspiracy to commit a crime if he agrees with one (1) or more persons that they or one (1) or more of them will commit a crime and one (1) or more of them does an overt act to effect the objective of the agreement.").

[60] *See* R. GELLES & M. STRAUS, INTIMATE VIOLENCE 127 (1988) [hereinafter INTIMATE VIOLENCE].

[61] *See* THE KIDS NEXT DOOR, *supra* note 53, at 118.

[62] *See* INTIMATE VIOLENCE, *supra* note 60, at 127.

[63] *See* Jahnke v. State, 682 P.2d 991, 1004-08 (Wyo. 1984).

[64] *See id.*

[65] *See id.* at 991.

[66] *See id.* Jahnke also claimed that voir dire had been improperly limited. *See id.* at 993. His claim that the lower court improperly excluded the testimony of the forensic psychiatrist, however, is what is relevant to this Comment.

[67] *See id.* at 991.

Richard's sister Deborah was convicted of aiding and abetting voluntary manslaughter and sentenced to three to eight years in prison. *See Jahnke Conviction Upheld: Governor Next Stop for Deborah's Attorney,* Denver Post, Dec. 13, 1984, at 1-A, col. 2, 1-A, col. 2. Five days after the Supreme Court of Wyoming upheld her conviction and sentence, however, Governor Hershler commuted her sentence. *See* Meyers, *Deborah Jahnke is Set Free,* Denver Post, Dec. 18, 1984, at 1-A, col. 1, 1-A, col. 1. He then ordered that she be placed on probation for a year following 30 days of intensive psychiatric evaluation. *See id.*

only means of escape from such danger was through the use of deadly force.' "[68] According to the majority, this standard had not been met.[69] The court concluded that

> [a]bsent 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.[70]

The court also acknowledged the trial court's concern with the sufficiency of the state of scientific knowledge regarding the "battered-child syndrome."[71]

Two justices dissented.[72] Justice Rose concluded that exclusion of the expert testimony denied the defendant an opportunity to present a defense. According to his dissent, this was not the "ordinary self-defense fact situation"[73] in which

> the lay juror is able to place him or herself at the scene and in the shoes of the accused and decide whether or not it was reasonable for the defendant to believe that he would be killed or receive serious bodily harm unless he resorted to the use of deadly force.[74]

In this case, there was a "battering and brutalizing factor . . . which

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[68] *Jahnke,* 682 P.2d at 1006 (quoting State v. Thomas, 66 Ohio St. 2d 518, 520, 423 N.E.2d 137, 139 (1981)).

[69] "This record contained no evidence that the appellant was under either actual or threatened assault by his father at the time of the shooting. Reliance upon the justification of self-defense requires a showing of an actual or threatened imminent attack by the deceased." *Id.*

[70] *Id.* at 1007.

[71] *See id.* at 1007-08.

[72] *See id.* at 1011 (Rose, J., dissenting, joined by Cardine, J.); *id.* at 1044 (Cardine, J., dissenting, joined by Rose, J.).

[73] *Id.* at 1013 (Rose, J., dissenting).

[74] *Id.* at 1014 (Rose, J., dissenting). According to Justice Rose,

> [i]t 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. The jury could, therefore, not know—or be expected to know—whether his acts, at the time and place in question here, were those of the reasonable person similarly situated for whom the law of self-defense provides comfort.

Id. at 1012 (Rose, J., dissenting).

the defense urges is causally connected with the reasonableness of Richard Jahnke's conduct . . . [and therefore] the jury was confronted with an unusual self-defense fact situation characterized by a psychiatric overlay."[75]

Richard's case is instructive because the court examined the role of expert testimony in self-defense cases involving child abuse-parricide defendants. Two justices of the Supreme Court of Wyoming believed that exclusion of the expert testimony denied the jury the opportunity to hear that the defendant's behavior was that of a "battered individual whose consequent perception of the imminence of danger is different from the perception of the nonbrutalized person and . . . how the battered person responds to danger."[76]

B. *Dawn*

When Dawn Maria Cruickshank's parents were separated, she and her sister Theresa pleaded with the lawyers to prevent their father from visiting them.[77] Despite their efforts, he was granted limited visitation rights.[78] The court recognized, however, the tension that existed between G. Alan Cruickshank and his estranged wife, and it restricted his visits with their daughters to Monday nights from 7:00 P.M. until 8:00 P.M.[79] These visits were confined to the garage of the upstate New York home that the girls shared with their mother.[80] On the evening of Monday, November 15, 1982, Mr. Cruickshank arrived for one of his visits to find only his daughter Dawn at home.[81] According to Dawn, her father told her that he "was going into the basement because he was cold."[82] This led to an argument between Dawn and her father.[83] Dawn later said that "she did not want her father to go into the basement and that she told him he was not supposed to do so."[84] Dawn's

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[75] *Id.* at 1014 (Rose, J., dissenting).

[76] *Id.* at 1017 (Rose, J., dissenting); *see also supra* notes 11-14 and accompanying text (discussing the importance of expert testimony to self-defense cases that involve a history of abuse).

[77] *See* THE KIDS NEXT DOOR, *supra* note 53, at 106.

[78] *See id.*

[79] *See* People v. Cruickshank, 105 A.D.2d 325, 327, 484 N.Y.S.2d 328, 331 (1985).

[80] *See id.*

[81] *See id.*

[82] *Id.* at 327, 484 N.Y.S.2d at 332.

[83] As Dawn described the argument to a police deputy: "He said he was cold and he was tired of seeing my sister and I in the garage, and he said he was going to go in the house and I told him I didn't want him in the house." THE KIDS NEXT DOOR, *supra* note 53, at 108.

[84] *Cruickshank,* 105 A.D.2d at 327, 484 N.Y.S.2d at 332.

father then grabbed her, but she "pulled away and ran back into the house. . . . She then took a .22 caliber rifle from under her bed, loaded it and returned to the garage."[85] Dawn could not recall how many times she fired the rifle, but evidence introduced during her trial established that she fired eleven times, with nine bullets striking her father in the back of the head.[86] Dawn then put down the rifle and returned to the house to call the police.[87]

Dawn was charged with second degree murder.[88] At trial, Dawn testified to numerous sexual assaults by her father.[89] She told the jury "that she feared her father would sexually abuse her on the night of the shooting."[90] Ms. Cruickshank's attorneys argued, among other things, that she had killed her father in self-defense.[91] "She had been repeatedly raped by her father, and the night she shot him she believed he was about to attack her again."[92]

The jury was charged on second degree murder.[93] It was instructed on the defense of justification in order to prevent rape and on the affirmative defense of extreme emotional disturbance, which, if established by the evidence, would reduce second degree murder to first degree manslaughter.[94] The jury accepted the affirmative defense, finding Dawn guilty of the murder, but reducing the charge to first degree manslaughter.[95] During the sentencing proceedings, the trial judge denied the defense's request that Dawn be granted youthful offender status and sentenced her to two and one-third to seven years in prison.[96]

The appellate court reversed the trial court's denial of youthful offender status.[97] In reversing, the court explicitly recognized that

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[85] *Id.*

[86] *See id.*

[87] *See id.*

[88] *See id.*

[89] *See id.* at 328, 484 N.Y.S.2d at 332. This testimony was corroborated by a police investigator. *See id.*

[90] *Id.* Under New York law, a person may use deadly physical force against another when she "reasonably believes that such other person is committing or attempting to commit a . . . forcible rape, [or] forcible sodomy." N.Y. PENAL LAW § 35.15 2(b) (McKinney 1987).

[91] *See Cruickshank,* 105 A.D.2d at 328, 484 N.Y.S.2d at 332.

[92] THE KIDS NEXT DOOR, *supra* note 53, at 114.

The prosecutor's strategy was to contend that "Dawn had ambushed her father at the garage when he came to see her that night. The motive: hate building up from the pressure of a tumultuous divorce and property settlement." *Id.*; *cf. supra* notes 42-43 and accompanying text (describing attempts by prosecutors to characterize self-defense claims raised by battered children and women as assertions of a moral right to kill).

[93] *See Cruickshank,* 105 A.D.2d at 328, 484 N.Y.S.2d at 332.

[94] *See id.*

[95] *See id.*

[96] *See id.*

[97] *See id.* at 335, 484 N.Y.S.2d at 337. Under New York law, this decision va-

Dawn's history of abuse was causally connected to her act of parricide.[98] In addition, the court noted the presence of characteristics common among sexually abused children. Presiding Judge Mahoney described Dawn's "conduct and symptoms . . . [as] classic characteristics of a sexually abused child."[99] He reasoned that, because the only proof offered in support of Dawn's self-defense claim was her knowledge, based upon her history of sexual abuse, of her father's capacity for violence, the jury must have relied upon this information when it made the determination that "she [had] acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse."[100]

Despite Dawn's conviction for the murder of her father, her case, like Richard Jahnke's, provides indications of developing judicial recognition of the link between child abuse and parricide. The appellate court recognized that much of Dawn's behavior was typical of a sexually abused child and that there was a direct causal connection between that abuse and the killing of her father.

C. *Cheryl*

On February 5, 1987, Cheryl Pierson[101] discovered her father's body lying in a pool of blood on the driveway in front of her house.[102] She realized that he had been shot and knew that Sean Pica, the high school classmate she had hired to kill her father for $1000, had done

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cates Dawn's manslaughter conviction and substitutes a youthful offender adjudication that "is not a judgment of conviction for a crime or any other offense." N.Y. CRIM. PROC. LAW § 720.35 (McKinney 1984).

The court concluded that "while we do not necessarily feel that the trial court abused its discretion in denying youthful offender treatment, we choose to exercise our discretion." *Id.* Despite this cautious language, it is clear that, by substituting its own determination of the defendant as a youthful offender, the court in fact concluded that the trial court had abused its discretion in denying the defendant youthful offender status.

[98] Presiding Judge Mahoney, writing for the majority, based the decision to reverse on the "significant mitigating circumstances that defendant is a sexually abused child and that the crime of which she was convicted arose out of that fact." *Id.* at 334, 484 N.Y.S.2d at 337.

[99] *Id.*

[100] *Id.* at 335, 484 N.Y.S.2d at 337.

[101] Cheryl Pierson was 16 years old at the time of the murder. *See* Kleiman, *Uncle Testifies that He Heard of Abuse of Girl,* N.Y. Times, Sept. 18, 1987, at B1, col. 2, B5, col. 1 [hereinafter Kleiman, *Uncle*]. This case is the subject of a new book. *See* D. KLEIMAN, A DEADLY SILENCE, THE ORDEAL OF CHERYL PIERSON: A CASE OF INCEST AND MURDER (1988).

[102] *See* Kleiman, *Girl Tells How She and Friend Planned Killing of Her Father,* N.Y. Times, Sept. 17, 1987, at B2, col. 5, B2, col. 5 [hereinafter Kleiman, *Girl*]; Kleiman, *Girl Says Hiring Father's Killer Seemed 'Like a Game' at First,* N.Y. Times, Sept. 15, 1987, at B1, col. 2, B1, col. 3 [hereinafter Kleiman, *Game*].

his job.[103]

Cheryl Pierson pled guilty to manslaughter.[104] At sentencing, Cheryl testified that she had often been forced to have sexual relations with her father. The sexual abuse began when she was twelve years old.[105] When questioned by her attorney about the frequency of her father's assaults during the two months during which Cheryl had planned her father's murder, she told the court that she and her father were having " '[s]exual intercourse. . . . [t]wo to three times a day.' "[106] Cheryl testified that, although she realized that her father's behavior towards her was wrong, she "acquiesced so he would not take his frustrations out on the rest of the family."[107] She stated that she arranged to kill her father because she believed he would start to sexually abuse her seven year old sister JoAnn.[108]

Cheryl's attorney presented the testimony of an expert witness on child abuse: Dr. Jean Goodwin, a professor of psychiatry at the Medical College of Wisconsin and a nationally recognized authority on sexual abuse.[109] Dr. Goodwin testified that Cheryl was "definitely a victim of sexual abuse and, as such, suffered from 'post traumatic stress syndrome.' "[110] When Cheryl described the planning of her father's murder with classmate Sean Pica as something that " 'didn't seem seri-

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[103] *See* Kleiman, *Game, supra* note 102, at B1, col. 3.

[104] *See* Kleiman, *Girl, supra* note 102, at B2, col. 5. The New York manslaughter provisions are codified at N.Y. PENAL LAW § 125.20 (McKinney 1987) (first degree) and *id.* § 125.15 (second degree).

[105] *See* Kleiman, *Game, supra* note 102, at B1, col. 2. Cheryl's lack of resistance appears characteristic of incest victims. *See infra* notes 155-58 and accompanying text (describing the difficulty that incest victims have in refusing to acquiesce to the sexual assaults of their parents). During the proceedings, neighbors and friends testified that they had suspected for years that James Pierson had been sexually abusing his daughter. *See* Kleiman, *Neighbors and Friends of Abused Teen-Ager Tell of Their Silence,* N.Y. Times, Sept. 14, 1987, at B7, col. 3, B7, col. 3 [hereinafter Kleiman, *Neighbors*]. None of the people who testified, however, had ever confronted Mr. Pierson or sought help from social service agencies or the police. *See id.*; *cf. infra* notes 131-142 (discussing child abuse, family privacy, and the reluctance of others to intrude upon what they see as a family matter).

[106] Kleiman, *Uncle, supra* note 101, at B5, col. 1.

[107] Kleiman, *Game, supra* note 102, at B2, col. 6. James Pierson's repeated incestuous assaults on his daughter created and perpetuated a threatening situation for his daughter Cheryl. *See infra* notes 154-58 and accompanying text (discussing the implicitly threatening nature of sexual abuse of children).

[108] *See* Kleiman, *Game, supra* note 102, at B2, col. 6.

[109] *See id.* By offering expert testimony on the effects of a history of sexual assault, Cheryl's attorney recognized the need to place Cheryl's decision to arrange for her father's killing in the context of her unique situation. *See supra* notes 11-14 (describing the importance of educating the trier of fact about the effects of battering).

[110] Kleiman, *Game, supra* note 102, at B2, col. 6. According to Dr. Goodwin, this condition sometimes made it difficult for Cheryl to distinguish reality from her fantasy world. *See id.* She described this fantasy world as a part of the process of coping with the sexual abuse. *See id.*

ous . . . [and] was more like a game,' " she was accurately depicting an event that was more a part of her fantasy life than reality.[111] The planning of the murder " 'made her feel better.' "[112] When Cheryl's attorney asked Dr. Goodwin whether Cheryl could be considered to be " 'the engineer of this crime,' "[113] her response was that accusing Cheryl of this role was to " 'misunderstand her basic sense of unreality.' "[114] On October 5, 1987, Cheryl Pierson was sentenced to six months in jail.

Because Cheryl Pierson pled guilty to manslaughter, she did not need to develop a self-defense claim.[115] At her sentencing hearing, however, her attorney introduced extensive evidence of Cheryl's long history of abuse and connected that abuse, through the use of expert testimony, to Cheryl's planning and ultimate hiring of her father's killer. This case differs from the typical parricide scenario in at least two respects. First, Cheryl did not kill her father herself. Second, the expert testimony presented in this case would have supported a diminished capacity-type defense rather than self-defense.[116] Despite these distinctions, this case illustrates a growing judicial acceptance of expert testimony that attempts to link the perceptions and behavior of the abused child to the killing of her abusing parent.

D. *Johnny and Joeri*

In each case discussed above, the child abuse-parricide defendant confronted judicial obstacles and ambivalence. Two recent cases indicate that this ambivalence may eventually develop into a greater acceptance of self-defense claims for battered children who kill their abusers. These cases, the first involving attempted murder and the second the killing of a legal guardian, demonstrate growing judicial receptivity to self-defense claims related to child abuse.

Sociz "Johnny" Junatanov tried very hard to kill his father.[117] He

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[111] *Id.* at B1, col. 2 (quoting testimony of Cheryl Pierson).

[112] *Id.* at B2, col. 6 (quoting testimony of Dr. Jean Goodwin).

[113] *Id.* (quoting Paul Gianelli, the attorney for Cheryl Pierson).

[114] *Id.* (quoting testimony of Dr. Jean Goodwin).

[115] The facts of Cheryl's case clearly negate the use of a self-defense strategy. She was not the murderer and she was not in the vicinity of the murder. *See supra* notes 6-18 and accompanying text (discussing self-defense standards).

[116] For a discussion of the diminished capacity, or partial responsibility, defense in manslaughter cases, see W. LAFAVE & A. SCOTT, *supra* note 6, § 4.7(b)(2).

[117] *See* Chambers, *supra* note 2, at 38, col. 3.

> Mr. Junatanov hired a man to kill his father, Albert, a Hollywood restaurateur, according to court testimony. The father was stabbed, but he lived. Then the girlfriend of the man hired to kill the older Mr. Junatanov dressed as a nurse and injected the father with sulfuric acid while he was

was unsuccessful and was finally arrested and charged with attempted murder.[118] During the trial, the jurors learned that, from early childhood, the defendant's father had "kept him in handcuffs and chained him . . . [and] when he was a teenager his father raped him."[119] In the spring of 1986, after six weeks of testimony, the jury found him not guilty.[120] Johnny's acquittal "might be the first not guilty verdict in which a child was found to have acted in self-defense against a brutal parent."[121]

After convicting Joeri DeBeer of manslaughter for the killing of his legal guardian, the jury asked the judge for leniency in his sentencing.[122] He was sentenced to three years probation and fined $1,000.[123] Ten of the twelve jurors who had convicted DeBeer testified on his behalf during the sentencing proceedings.[124] "They said they realized he was a 'normal' and 'obedient' young man 'already punished enough' and driven to murder by four years of nearly daily sexual abuse at the hands of his adoptive father, a convicted child molester."[125] The sentencing judge stated that he felt confident that DeBeer knew the killing was wrong and would not pose a danger to society.[126]

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in a hospital bed, the jury was told. He survived.

His son then promised $5,000 to another man, who agreed to shoot Albert Junatanov. The man hired for the job turned out to be an undercover police officer.

Id.

[118] *See id.*

[119] *Id.*

[120] *See* Blodgett, *supra* note 2, at 36; Chambers, *supra* note 2, at 38, col. 3.

[121] Chambers, *supra* note 2, at 38, col. 3.

[122] *See id.* at 38, col. 4.

The jury heard testimony that the young man's legal guardian, Philip Parsons, a convicted child molester, had been sexually abusing him four or five times a week for four years.

The jurors, without knowing others had the same idea, visited the young man in jail. All but one of the jurors wrote letters to the judge asking leniency for Mr. DeBeer. Several started a college trust fund for the young man and others gave him gifts.

Id.

[123] *See Abused Teen Gets Probation, Not Jail for Killing Father,* L.A. Daily J., June 23, 1986, at 1, col. 4, 1, col. 4.

[124] *See id.*

[125] *Id.*

[126] *See id.*

III. CHILD ABUSE

"Speak roughly to your little boy,
And beat him when he sneezes:
He only does it to annoy,
Because he knows it teases."[127]

When abused children respond to their abusers with violence, interpretation of their reactions requires a preliminary understanding of child abuse and the violent family. Familiarity with the individual situation, in light of general information regarding the dynamics of the abusive family, places the specific act within the proper perspective.[128] Although the need to understand the psychological and social effect of intrafamily abuse is increasingly recognized when battered women kill their battering mates,[129] this position has not been as widely accepted when a child murders an abusive parent.[130]

The following Sections will explore the general characteristics of child abuse and efforts to develop a profile of the abusive home. The psychological, social, and legal theories discussed in this Part should be read with the Part II case studies in mind. Researchers have achieved a sophisticated understanding of the dynamics of family violence. This information is essential to an evaluation of the reasonableness of the actions of the battered child. Excluding testimony on the effects of intrafamily violence denies the abused child a meaningful self-defense claim.

A. *Exploring the Dynamics of Child Abuse*

In the early 1960s, the term "child abuse" was developed to describe an emerging problem in American society.[131] Since that time, the use of physical punishment to discipline children has become a matter

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[127] L. CARROLL, ALICE'S ADVENTURES IN WONDERLAND 83 (Modern Library ed. 1920) (1865).

[128] *See infra* notes 160-75 and accompanying text (discussing research into child abuse and the families in which it takes place).

[129] *See* Blackman, *supra* note 18, at 227 (describing a "national trend" in favor of admission of expert testimony in cases in which battered women kill their abusers); *supra* note 5 and accompanying text (discussing the recognition of the battered woman's syndrome); *cf.* Schneider, *supra* note 5, at 197 n.10 (listing homicide cases in which expert testimony on the effect of battering on adult women defendants was admitted).

[130] *See supra* notes 16-18 and accompanying text (comparing the increased acceptance of self-defense claims based on the battered woman's syndrome with the general reluctance to accept similar claims from battered children).

[131] *See* BEHIND CLOSED DOORS, *supra* note 9, at 7. This does not mean, however, that child abuse is a new problem. *See infra* note 132 and accompanying text.

of public and professional concern and a topic of general discussion and debate. During the past 25 years, the traditional belief that physical force is not only the parents' right,[132] but is in the best interest of the child, has been challenged on both psychological[133] and legal[134] grounds. By the end of the 1960s, all fifty states had enacted child abuse statutes.[135] These laws clearly prevent a parent from inflicting severe or deadly harm. The parameters of "abuse" remain vague, however, and specific guidelines for lawful behavior have not been adequately defined.[136]

Child abuse is a hidden problem. Many cases of child abuse are not reported.[137] The underreporting of child abuse may be caused by different factors. In the majority of violent families, child abuse is not considered taboo or wrong; instead, it is "an accepted and integral part of the way the family functions."[138] Because child abuse has no precise legal or social definition,[139] many people who are concerned about a parent's behavior may not be certain that particular acts constitute abuse.[140] The abused children themselves frequently are reluctant to report the violent incidents.[141] Finally, child abuse, especially the severe

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[132] Child abuse is a longstanding tradition deeply rooted in history. *See* BEHIND CLOSED DOORS, *supra* note 9, at 7 ("The historical record demonstrates a use of extensive and often lethal forms of violence by parents. Those who have examined the history of child abuse . . . document a history of violence and infanticide dating back to biblical times."); Radbill, *Children in a World of Violence: A History of Child Abuse,* in THE BATTERED CHILD, *supra* note 19, at 3, 3-20 (documenting the cross-cultural history of child abuse). This tradition has been reinforced by traditional fables and myths. *See* BEHIND CLOSED DOORS, *supra* note 9, at 51-52 (illustrating how myths and fairy tales condone and even support adults' "corrective" violence towards children). These myths continually remind us that parents have the right to use violence against their children.

[133] *See* Kempe, Silverman, Steele, Droegemueller & Silver, *The Battered Child Syndrome,* 181 J. AM. MED. A. 17, 18-20 (1962) (describing the psychological harm caused by child abuse).

[134] *See* BEHIND CLOSED DOORS, *supra* note 9, at 9 (stating that all 50 states have laws that mandate the reporting of child abuse and neglect).

[135] *See id.* The effectiveness of such statutory provisions, however, has been questioned. *See, e.g.,* Radbill, *supra* note 132, at 13 (documenting the continued abuse of children by parents despite the fact that protective services for children have a long history, beginning in Mesopotamia six thousand years ago).

[136] *See* BEHIND CLOSED DOORS, *supra* note 9, at 52.

[137] *See* R. KEMPE & C. KEMPE, THE COMMON SECRET: SEXUAL ABUSE OF CHILDREN AND ADOLESCENTS 14 (1984) [hereinafter THE COMMON SECRET].

[138] *Id.* at 4; *see also* INTIMATE VIOLENCE, *supra* note 60, at 53 ("[S]panking children is about as common, and viewed as equally normal, as Pampers.").

[139] *See* INTIMATE VIOLENCE, *supra* note 60, at 57.

[140] *See* BEHIND CLOSED DOORS, *supra* note 9, at 14-15; *see also* Kleiman, *Neighbors, supra* note 105, at B7, col. 2. (describing how Cheryl Pierson's friends and neighbors had long suspected that she was being sexually assaulted by her father, but had not reported the abuse).

[141] The Supreme Court recently recognized how difficult it is for battered children

or sexual abuse of children, creates social dissonance because it conflicts with basic standards and values that define parents' obligations to love and care for their children.[142]

Children may be abused in many different ways.[143] Although the frequency and severity of physical attacks may vary, the psychological and emotional abuse is often constant.[144] The assumption that relatively infrequent or milder forms of battering will have little or no effect on the child's development is inaccurate.[145] Even in those homes in which the physical battering is less severe, family violence has some effect on the child.[146]

The most secret form of intrafamily violence is the sexual abuse of children.[147] Sexual abuse has always been the least frequently reported form of child abuse.[148] There are indications, however, that a recent

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to seek outside support. *See* Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987) ("A child's feelings of vulnerability and guilt, and his or her unwillingness to come forward are particularly acute when the abuser is a parent.").

[142] *See* Korbin, *supra* note 19, at 23 (asserting that evidence of child abuse in the United States, while abundant, runs counter to the basic societal premise that "human nature compels parents to rear their young with solicitousness and concern, good intentions, and tender loving care").

[143] *See* Radbill, *supra* note 132, at 3.

[144] *See* Steele, *Psychodynamic Factors in Child Abuse,* in THE BATTERED CHILD, *supra* note 19, at 81, 89; *see also* INTIMATE VIOLENCE, *supra* note 60, at 68 (discussing examples of emotional abuse of children).

[145] Child abuse need not involve excessive violence or sexual assault to affect the emotional and psychological development of the child. Parents' actions against their children have a strong influence because of the nature of the parent-child relationship. "Children are dependent upon adults: first, for their survival; then for affection, and attention, and an understanding of what the world in which they live is all about." Bass, *In the Truth Itself, There is Healing, Introduction* to I NEVER TOLD ANYONE: WRITINGS BY WOMEN SURVIVORS OF CHILD SEXUAL ABUSE 23, 26-27 (E. Bass & L. Thornton eds. 1983) [hereinafter I NEVER TOLD ANYONE].

[146] *See* INTIMATE VIOLENCE, *supra* note 60, at 121-23; *see also id.* at 56 (describing how parents can inflict "cruel and harsh treatment on their children without necessarily producing a diagnosable clinical condition"). Furthermore, violence against children tends to perpetuate itself. *See* BEHIND CLOSED DOORS, *supra* note 9, at 101-02 (describing how children from violent homes tend to perpetuate the violent behavior when they themselves raise families); Goleman, *Sad Legacy of Child Abuse: The Search For Remedies,* N.Y. Times, Jan. 24, 1989, at C1, col. 4, C1, col. 4 (citing recent studies that indicate one-third of the people abused during childhood will become abusers); *cf.* INTIMATE VIOLENCE, *supra* note 60, at 124 (describing research that indicates that "growing up in a violent home compromises the intellectual development of abused children").

[147] *See* INTIMATE VIOLENCE, *supra* note 60, at 64-65.

[148] "[S]exual abuse of children . . . has been more concealed, less reported, and has attracted relatively little concern. . . . A taboo of dealing with the common phenomenon of incest seems to have been as strong or stronger than the taboo of incest itself." Steele, *supra* note 144, at 102; *see also* Bass, *supra* note 145, at 24-25 (discussing the extent of sexual abuse of children and the infrequency with which it is reported); Comment, *The Admissibility of Expert Testimony in Intrafamily Child Sexual Abuse Cases,* 34 UCLA L. REV. 175, 185, 187 (1986) [hereinafter Comment, *The*

increase in public awareness has made child sexual abuse a matter of growing public concern.[149] Sexual abuse cases, particularly incest cases,[150] are now being reported almost as often as other types of abuse.[151] Despite the frequency with which it occurs,[152] sexual abuse of children often remains secret because it is more difficult to detect than other forms of physical abuse. The overt signs of sexual abuse may be more easily concealed from other family members, teachers, and medical professionals.[153]

The sexual abuse of children may appear less aggressive or violent than other forms of abuse. Sexual assaults may involve little or no physical battering, but they invariably include psychological force in the form of emotional manipulation or coercion of the child.[154] A sexually abused child may appear to submit to the abusive parent. However, this is not a voluntary act. This behavior can usually be explained by one or more of the following reasons:

> [S]he is afraid that if she resists, the man will hurt her or someone else; she is afraid that if she resists the man may say that she started it and get her in trouble; she is taken by

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Admissibility of Expert Testimony] (discussing reasons why sexual abuse is not reported).

[149] *See* Comment, *The Admissibility of Expert Testimony, supra* note 148, at 175.

[150] Although the terms "child sexual abuse" and "incest" are often used interchangeably, they do not have the same meaning. The National Center on Child Abuse and Neglect clarifies this distinction through its definition of "child sexual abuse" as " '[c]ontacts or interactions between a child and an adult when the child is being used for the sexual stimulation of that adult or another person.' " *Id.* at 177 (quoting THE COMMON SECRET, *supra* note 137, at 10). "Incest, on the other hand, refers to sexual relations between persons so closely related that marriage is legally forbidden." *Id.* at 177-78.

[151] *See* Steele, *supra* note 144, at 102.

[152] The statistics on the frequency of sexual abuse of children vary. *See, e.g.*, Bass, *supra* note 145, at 24 ("[O]ne out of four girls and one out of seven boys will be sexually abused."); Comment, *The Admissibility of Expert Testimony, supra* note 148, at 175 ("[S]tudies estimate that one of every five females and one of every eleven males are sexually assaulted as children."); Kleiman, *Neighbors, supra* note 105, at B7, col. 4 (reporting the statement of Dr. Judith L. Herman, psychiatric director of the Women's Mental Health Collective in Sommerville, Mass., that "1 to 4 percent of all women have been sexually abused by their fathers or stepfathers"); *cf.* THE COMMON SECRET, *supra* note 137, at 13 ("It is presently impossible to give accurate estimates of the total incidence of sexual abuse in the United States . . . .").

[153] *See* Comment, *The Admissibility of Expert Testimony, supra* note 148, at 175 ("There often is no physical or medical evidence of the abuse."); Kleiman, *Neighbors, supra* note 105, at B7, col. 6 (reporting the acknowledgement of Karla Digirolamo, executive director of the Governor's Commission on Domestic Violence in New York, that "with sexual abuse—unlike other forms of physical abuse—the signs are not always clear").

[154] *See* Bass, *supra* note 145, at 27; Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177, 182-83 (1983).

> surprise and has no idea what to do; the man tells her it's okay, the man says he's teaching her, the man says everybody does it; she has been taught to obey adults; she thinks she has no choice."[155]

Autobiographical reports of childhood sexual abuse inflicted by parents often include repeated references by the parent to a shared secret and parental indications that something worse than the present sexual abuse will happen to the child if she refuses to comply or "tells" on the sexually abusive parent.[156] In some cases, the threats are made explicit: the child is told clearly that she will suffer if she refuses to allow the abusive behavior.[157] Therefore, even seemingly nonviolent sexual abuse often leaves its victims feeling hopeless and afraid, because it incorporates a threat of imminent further and more severe abuse if the child refuses to comply with the parent's demands.[158]

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."[159] This is the backdrop against which parricide often occurs. Over the past 25 years, efforts to understand the dynamics of intrafamily abuse have led to attempts to identify common characteris-

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[155] Bass, *supra* note 145, at 27.

Dr. Ronald Summit has developed the "Child Sexual Abuse Accommodation Syndrome," which classifies the typical responses of sexually abused children into five stages: secrecy; helplessness; entrapment and accommodation; delayed, conflicted and unconvincing disclosure; and retraction. *See* Summit, *supra* note 154, at 181. This description of the typical reactions of sexually abused children is similar in many ways to the battered woman's syndrome. *See supra* note 5.

[156] *See, e.g.,* Monroe, *From California Daughter/1950,* in I NEVER TOLD ANYONE, *supra* note 145, at 91, 93 ("His [my father's] eyes are boring into my bare breasts. . . . 'Don't ever tell anyone, baby. They wouldn't understand, this is strictly between us, okay?' ") This type of secrecy is described by Dr. Summit as a distinct phase of the "Child Sexual Abuse Accommodation Syndrome." *See* Summit, *supra* note 154, at 181. To the sexually abused child, the "secrecy is both the source of fear and the promise of safety: 'Everything will be all right if you just don't tell.' " *Id.*

Although programs to help teach children how to refuse "sexual advances, unwanted touching, and other invasions of their persons" have been developed, they reach only a limited audience and do not solve the essential problem of "the basic inequality of power, understanding, or freedom between a child and an adult." Bass, *supra* note 145, at 28.

[157] *See* Hoyal, *These Are the Things I Remember,* in I NEVER TOLD ANYONE, *supra* note 145, at 70, 77 (" 'Don't you say anything to your mother ever. If you do, you'll be sorrier than you've ever been in your life.' ").

[158] *See* Comment, *The Admissibility of Expert Testimony, supra* note 148, at 185; *see also* Bass, *supra* note 145, at 27-28 (describing how children generally are unable to say no to sexual abuse even when they "desperately" want to refuse).

[159] Bass, *supra* note 145, at 27.

tics of both the violent family and the abused child. These findings provide essential background information in an area that often is difficult to understand. Research in this area now enables experts to offer the uninitiated a glimpse into the world of the abused child.

B. *Developing a Profile of the Violent Home and the Battered Child*

Child abuse has been identified as "an extremely complex problem . . . [that] has many ramifications in the fields of medicine, social work, law, psychology, child development, psychiatry, and anthropology."[160] The physical abuse of children has been documented cross-culturally[161] and throughout world history.[162] Therefore, a profile of the "typical" violent family would likely be both over- and underinclusive. There are common characteristics of abuse, but there is no complete profile of a "typical" violent family. Recent research, however, has disclosed identifiable patterns of cause and effect for child abuse that provide a context for interpreting the perceptions and actions of child abuse victims. Expert witnesses capable of relating these theories of abuse to individual family histories can help establish the essential link between the abused child's actions and her perceptions.[163]

Different families experience different levels and types of stress. By focusing on those experiences and responses common to violent families, however, certain characteristic patterns begin to emerge.[164] Recent efforts to understand family violence include the theory of the "symbiotic" relationship of abuse[165] and the identification of patterns based on

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[160] Steele, *supra* note 144, at 82.

[161] *See* Korbin, *supra* note 19, at 23-41.

[162] *See* Radbill, *supra* note 132, at 3-20.

[163] *See* Comment, *The Admissibility of Expert Testimony, supra* note 148, at 180-81. In cases of sexual abuse, expert witnesses can be used to establish characteristics common to children who are victims of sexual abuse. *See id.* at 176-77. Expert testimony educates the judge and the jury about the "characteristics and dynamics of child sexual abuse." *Id.* at 177. Increasingly, there has been a "trend toward admitting expert testimony that describes the behavior and symptoms typically exhibited by sexually abused children." *Id.*

[164] Researchers have demonstrated a statistically significant correlation between stress and child abuse. *See* BEHIND CLOSED DOORS, *supra* note 9, at 183; Straus & Kantor, *Stress and Child Abuse,* in THE BATTERED CHILD, *supra* note 19, at 42, 50-51.

[165] Forensic psychologist Dennis Harrison, who has studied child abuse-parricide, uses

> "symbiotic" to describe a relationship in which the parent sees the child as a mere extension, a kind of human robot directed and controlled by the parent. . . . Symbiotic relationships . . . begin when a child is . . . "3, 4, 5 on up. . . ." A tight bond, like that between master and slave, develops. And that closeness also involves a great deal of hostility by the child for

"critical stresses," which are social or economic factors or significant events that affect the family and may increase the likelihood of child abuse.[166] "[I]t can be shown with statistical significance that abusive, neglecting behavior can be precipitated or escalated by such things as poverty, bad housing, unemployment, marital strife, alcoholism, drug abuse . . . and a host of other things."[167] By identifying the "critical stresses" that frequently precede or accompany family violence, researchers are developing a method of isolating and understanding certain common characteristics of the abusive family.

In the same way that abusive families may share certain characteristics, battered children often share similar perceptions of themselves and their situation. Children who suffer from a history of physical abuse frequently feel that no one cares about them and that their situation is hopeless.[168] This feeling is reinforced when, as is often the case, a nonabusing parent refuses to intervene to protect the child during or after beatings by the abusive parent[169] or when victims of sexual abuse complain to a nonabusing parent and are told that they are "lying or else 'making it up' to cause trouble, or that it was all their fault anyway."[170] The children are left "feeling hopeless and uncared for."[171] These problems are compounded in cases of sexual abuse, which by its

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the parent.

Meyer, *Kids Who Kill Parents,* Wash. Post, May 13, 1984, Magazine, at 14, 15-16 (quoting Dennis Harrison). According to Harrison, the symbiotic relationship also usually involves hostility from the parent.

> The parent in a symbiotic relationship views the child with hatred . . . . "The parents are these very angry people down deep. It's an angry thing to do, to create dependency, control someone to that extent, take away their individuality and never let it develop. That's an effect of their own rage. These are rage filled people."

Id. at 16 (quoting Dennis Harrison).

[166] *See* Steele, *supra* note 144, at 82 (describing critical stresses as any of a number of factors that precipitate a crisis that ends in abuse).

[167] *Id.*; *see also* BEHIND CLOSED DOORS, *supra* note 9, at 181 (proposing to explain research findings with the theory "that stress is a major contributor to family violence"); *id.* at 189 ("Couples who encounter greater than average stress are somewhat more likely to use abusive violence toward their children . . . ."); Steele, *supra* note 144, at 89-94 (describing in four case studies child abuse under circumstances including stress-producing crises).

[168] *See supra* notes 154-58 and accompanying text (discussing the way sexual abuse creates feelings of hopelessness in children); *cf.* Kleiman, *Neighbors, supra* note 105, at B7, col. 4 ("[R]esearchers say they are convinced that there is a link between the high suicide rate among teen-agers today and child abuse . . . .").

[169] *See* Steele, *supra* note 144, at 84.

[170] *Id.*; *see also* Summit, *supra* note 154, at 181-82 ("Any attempt by the child to illuminate the secret [the sexual abuse] will be countered by an adult conspiracy of silence and disbelief. . . . [A]dult expectation dominates the judgment applied to disclosures of sexual abuse.").

[171] Steele, *supra* note 144, at 84.

nature is often "carried out amid such fear, secrecy and shame that a victim is unable to speak out and ask for help."[172]

When family violence is concealed and not reported, it is far more difficult to aid the family or to research the abusive behavior.[173] Despite the problems of obtaining accurate quantative data on child abuse, research does continue.[174] This data helps professionals to locate and lessen or prevent incidents of abuse,[175] increases our general understanding of family aggression, and, in conjunction with expert analysis, enables lawyers, judges, and jurors to evaluate the self-defense claims of child abuse-parricide defendants.

CONCLUSION

Self-defense claims raised by child abuse-parricide defendants require the defendant to establish a connection between her history of abuse and her violent response. Traditional self-defense law is premised on isolated encounters between strangers. Therefore, labels applied in traditional self-defense cases are not readily transferable to self defense-parricide cases. The only way to explore the reasonableness of the defendant's action when homicide is committed within the context of a battering relationship is through an understanding of the common characteristics of intrafamily violence. Although child abuse research and acceptance of the battered woman's syndrome have paved the way for this inquiry, widespread recognition of this connection in the child abuse-parricide context has not yet been achieved.

Child abuse research and studies of battered women provide information on the perceptions and responses characteristic of victims of family violence. The diagnostic value of this data becomes apparent when it is applied to individual case studies. The similarities that emerge from studies of battered children demonstrate that an educated understanding of the effects of abuse is essential to interpreting the homicidal act of a battered person. In addition, these cases show recog-

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[172] Kleiman, *Neighbors, supra* note 105, at B7, col. 5.

[173] *See id.* at B7, cols. 4-5.

[174] *See, e.g.*, D. FINKELHOR, CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH 69-220 (1984) (discussing recent research on sexual abuse of children); BEHIND CLOSED DOORS, *supra* note 9, at 60-74 (discussing a survey conducted by the authors and results obtained by other researchers); *see also* THE COMMON SECRET, *supra* note 137, at 4 ("In the past ten years, the plight of sexually abused children is receiving a rather complete reevaluation."); *cf.* Helfer, *The Developmental Basis of Child Abuse and Neglect: An Epidemiological Approach*, in THE BATTERED CHILD, *supra* note 19, at 60, 60-66 (discussing classification, compilation, and application of accurate data on child abuse in the context of an epidemiological approach to the problem).

[175] *See* Steele, *supra* note 144, at 89.

nition by both the courts[176] and the general public[177] of the complex issues raised by the abused child who kills her battering parent and claims self-defense.

To recognize the common characteristics of abused children and violent homes is to begin to comprehend a complex and unique pattern of behavior. Adequate representation of child abuse-parricide defendants requires that this behavior be examined in the proper context. Allowing these defendants to develop their claims of self-defense merely affirms their right to fair legal treatment. It does not grant them additional privileges, nor does it, or can it, compensate them for what they have already lost.

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[176] *See supra* notes 105-15 and accompanying text (discussing the use of testimony on child abuse at the sentencing hearing of Cheryl Pierson, which resulted in only a six-month prison sentence following her plea of guilty to manslaughter); *supra* notes 97-100 and accompanying text (discussing a New York appellate court's reversal of the trial court's denial of youthful offender status to Dawn Cruickshank).

[177] *See supra* note 67 (noting Wyoming Governor Ed Hershler's decision to commute Deborah Jahnke's prison sentence).