

SCHOOL SHOOTERS: PERPETRATORS OR VICTIMS? THE NEED FOR EXPANDING BATTERED CHILD SYNDROME TO INCLUDE PEER HARASSMENT IN SCHOOL-VIOLENCE PROSECUTIONS

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*The healthy man does not torture others—generally it is the tortured who turn into torturers.*¹

—C. G. Jung

I. INTRODUCTION

Since the Columbine school shooting in 1999,² the Virginia Tech shooting in 2007,³ and several other recent school shootings,⁴ legislators, government agencies, social experts, and psychologists have explored the factors that lead to acts of violence by stu-

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Since writing this Article, the Author has been inspired by the individuals sharing their personal stories about bullying for the It Gets Better Project, a resource for young people who are being bullied. She encourages all those who want to know more about bullying and who want to be a part of the solution to visit www.itgetsbetter.org.

1. C. G. Jung, *The Symbolic Life: Miscellaneous Writings*, in *The Collected Works of C. G. Jung* vol. 18, 587 (Herbert Read et al. eds., R. F. C. Hull trans., Princeton U. Press 1989).

2. For information on the Columbine school shooting, review *infra* notes 88–97 and accompanying text.

3. John M. Broder, *32 Shot Dead in Virginia; Worst U.S. Gun Rampage*, N.Y. Times A1 (Apr. 17, 2007).

4. For a list of school shootings, see U.S. News Staff, *Timeline of School Shootings*, <http://politics.usnews.com/news/national/articles/2008/02/15/timeline-of-school-shootings.html> (posted Feb. 15, 2008).

dents.⁵ A Secret Service study of school attacks found that 71 percent of school shooters “felt persecuted, bullied, threatened, attacked[,] or injured by others prior to the incident.”⁶ Furthermore, the study revealed that several of the attackers had suffered “long-standing and severe” bullying and that “the experience of being bullied seemed to have a significant impact on the attacker and appeared to have been a factor in his [or her] decision to mount an attack at the school.”⁷

In similar scenarios, instances of parricide, or the killing of parents, have been committed by children who suffered extensive abuse by their parents.⁸ In exploring motivations for parricide, researchers have repeatedly turned to a psychological condition called battered child syndrome.⁹ Those who suffer from battered child syndrome have been subjected to traumatic or chronic abuse by their parents or guardians.¹⁰ Similarly, victims of bullying often experience severe and chronic abuse from their peers.¹¹ The repercussions of abuse by parents and abuse by peers are comparable in that the victims of both often develop anxiety, depression, post-traumatic stress disorder, and a condition known as “learned helplessness.”¹²

This Article will discuss the similarities between abuse by parents and abuse by peers. In establishing the similar consequences suffered by the victims of each type of abuse, this Article will present an argument for expanding the definition of battered child syndrome to include peer abuse and for using expert testimony of battered child syndrome in trials concerning the

5. For a discussion of the connection between school bullying and school violence, see *infra* notes 80–93 and accompanying text.

6. Bryan Vossekuil et al., *The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States* 21 (U.S. Secret Serv. & U.S. Dep’t Educ. 2002) (available at http://www.secretservice.gov/ntac/ssi_final_report.pdf).

7. *Id.*

8. See *infra* nn. 130–139 and accompanying text (discussing the link between child abuse and parricide).

9. *Id.*

10. C. Henry Kempe et al., *The Battered-Child Syndrome*, 9 J. Child Abuse & Neglect 143, 143 (1985).

11. Cathy Swartwood Mitchell, *Like Thieves in the Night*, in Brenda High, *Bullycide in America: Moms Speak Out about the Bullying/Suicide Connection* 14, 15 (JBS Publ’g, Inc. 2007).

12. Compare *infra* nn. 55–64 (explaining the effects of school bullying on children) with *infra* nn. 118–128 (explaining the effects of child abuse on children).

perpetrators of school shootings. The purpose of expanding the definition of battered child syndrome and using such expert testimony would be to allow the introduction of evidence regarding the defendant's subjection to persistent bullying and the resulting effects bullying had on the defendant. Introduction of this evidence would assist the jury in evaluating self-defense arguments raised by the defendant. Use of such evidence would help the jury understand the nature of pervasive bullying and its psychological and physical effects on defendants, thereby determining whether the defendant had a reasonable fear of an imminent threat sufficient to satisfy a self-defense claim. Testimony of battered child syndrome related to bullying would help the jury determine the reasonableness of the use of force, as well as the reasonableness of the degree of force used by the perpetrators in these school-violence crimes.

Part II of this Article discusses the prevalence of school bullying and the different methods by which children can be bullied. Part III presents the effects bullying has on victims, including the psychological effects as well as the external ways in which bullying victims lash out at their abusers and the rest of society. Part IV discusses the emergence of battered child syndrome and its current application in courts. Part V presents the argument for expanding battered child syndrome to include the effects of peer harassment and the benefits to both the jury and bullying victims of admitting expert evidence of the broader application of battered child syndrome at trials resulting from school shootings.

II. THE MAGNITUDE OF SCHOOL BULLYING AND PEER HARASSMENT

For many students, memories of precollege school years probably include memories of time spent with friends, extracurricular activities, and the ever-present pressure of fitting in. But for too many students, memories from this time also include those of being bullied by fellow students. In fact, every seven minutes of every school day, a child is victimized by bullying.¹³ Bullying is so frequent, a survey revealed, that fifty-five percent of children ages

13. CRC Health Group, *By Parents for Parents, Articles for Parents, The Social Consequences of Being the Victim of a Bully*, <http://www.byparents-forparents.com/bullyingvictims.html> (accessed Sept. 19, 2011).

eight to eleven and sixty-eight percent of children ages twelve to fifteen picked “[t]easing and bullying” to be a “‘big problem’ for people their age.”¹⁴

When considering the magnitude of school bullying, it is important to consider not only its frequency but also its severity. Unfortunately, while some bullying has always been part of adolescence,¹⁵ experts believe that bullying has become substantially more severe in the past several years.¹⁶ According to these experts, increased violence and youth depression in the last ten years “coupled with children’s access to and use of increasingly violent and anti-social media products, certainly support the supposition that there are likely to be an increasing number of more effective bullies in school today than there were in the past.”¹⁷

Further analysis of the magnitude of bullying requires understanding the basic characteristics of bullying as well as the different forms of bullying that schoolchildren today face. Although experts differ on the exact definition of bullying, the well-accepted characteristics of bullying include: “(1) repeated acts of subjugation, physical or mental; (2) intent to cause either mental or physical harm[;] and (3) an imbalance of power between the bully and victim that can be either physical or psychological.”¹⁸ Traditionally, schoolchildren were subjected to physical, verbal, and social bullying.¹⁹ Today’s schoolchildren still face these traditional forms of bullying but also face electronic or cyberbullying.²⁰

14. Nickelodeon & Talking with Kids, *Talking with Kids about Tough Issues: A National Survey of Parents and Kids* chart 2 (Mar. 8, 2001) (available at <http://www.talkwithkids.org/nickelodeon/charts.pdf>). Perhaps even more shocking is that in the twelve- to fifteen-year-old group, “teasing and bullying” was picked as a “‘big problem’” by more students than any of the other problems presented except “[a]lcohol or drugs,” which was also picked as a “‘big problem’” by sixty-eight percent of those surveyed. *Id.*

15. Doriane Lambelet Coleman, *Fixing Columbine: The Challenge to American Liberalism* 80 (Carolina Academic Press 2002).

16. *Id.*

17. *Id.* at 81.

18. Kathleen Conn, *Bullying and Harassment: Can IDEA Protect Special Students?* 239 West’s Educ. L. Rep. 789, 789 (2009) (examining the legal remedies for students who are bullied or harassed by peers or adults in their schools).

19. Jing Wang et al., *School Bullying among Adolescents in the United States: Physical, Verbal, Relational, and Cyber*, 45 J. Adolescent Health 368, 368–369 (2009).

20. *Id.* at 369. For an article discussing the problem of cyberbullying and the legislation aimed at ending it, see Colleen Barnett, Student Author, *Cyberbullying: A New Frontier and a New Standard: A Survey of and Proposed Changes to State Cyberbullying Statutes*, 27 Quinnipiac L. Rev. 579 (2009).

Physical bullying is a direct form of bullying that includes acts such as hitting, pushing, kicking, and other physical acts.²¹ Physical bullying is not as common as verbal or social bullying,²² where the victims are teased or excluded from social activities.²³ One survey revealed that about twenty-one percent of schoolchildren will admit to physically bullying others or being physically bullied themselves at least once within the last two months.²⁴ Physical bullying can range from slight shoves to gang rapes, and the severity of each subsequent offense may increase over time.²⁵

An example of severe physical bullying is depicted in *BULLY: A True Story of High School Revenge*, a book based on true events that recounts the story of Bobby Kent, a high-school student in Ft. Lauderdale, Florida, who bullied others physically and psychologically.²⁶ In one instance, Kent was upset with his best friend Marty Puccio for leaving a loaf of bread on the kitchen counter, and he shoved Marty into his room where he beat him for half an hour.²⁷ When the two emerged from the room, “Marty’s mouth was puffy and caked with blood, and his right eye was already closing around a nasty blue bruise.”²⁸ In an example of how physical bullying can escalate and breed more violence,²⁹ a group of Kent’s peers, including Puccio, eventually beat and stabbed Kent to death.³⁰

Verbal bullying is another type of direct bullying that includes teasing and name calling.³¹ Social bullying on the other hand is an indirect form of bullying that includes social exclusion

21. Wang et al., *supra* n. 19, at 368.

22. *Id.* at 370. One reason why physical bullying may occur less frequently than emotional, psychological, or cyberbullying may be because such bullying can leave physical evidence on the victims. Bruises, cuts, and other visible wounds would make it more difficult for both the bully and the victim to deny the incidents.

23. *Id.* at 368.

24. *Id.* at 370.

25. See generally Jim Schutze, *BULLY: A True Story of High School Revenge* (Avon Books 1997) (depicting the story of a bully named Bobby Kent, who began bullying his peers through taunts and minor physical violence, but who later resorted to highly aggressive assaults and even rape).

26. *Id.*

27. *Id.* at 62.

28. *Id.*

29. *Infra* pt. III(B).

30. Schutze, *supra* n. 25, at 157–169.

31. Wang et al., *supra* n. 19, at 368.

and spreading rumors.³² Verbal and social bullying are substantially more common than physical bullying³³ and may cause significant, lasting psychological harm.³⁴ This may be because school administrators and parents are more likely to disregard signs of verbal or social bullying and categorize such incidents as a normal part of growing up.³⁵

Cyberbullying, a newer form of bullying, is defined as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices.”³⁶ It occurs “when a child, preteen[,] or teen is tormented, threatened, harassed, humiliated, embarrassed[,] or otherwise targeted by another child, preteen[,] or teen using the Internet, interactive and digital technologies[,] or mobile phones.”³⁷ Schoolchildren today have greater access to computers, the Internet, cell phones, and other technology; social networks, such as Friendster, MySpace, and Facebook; and email, instant messaging, and online chat services, all of which allow them to be in constant connection with each other.³⁸ Unfortunate-

32. *Id.*

33. *Id.* at 370. In fact, in one study, over fifty percent of students surveyed admitted to being either the victim or perpetrator of verbal or social bullying in the last two months while only about twenty-one percent admitted to being either the victim or perpetrator of physical bullying. *Id.*

34. Evelyn M. Field, *Bully Blocking, School Bullying*, <http://www.bullying.com.au/school-bullying/> (accessed Sept. 19, 2011).

35. See Coleman, *supra* n. 15, at 80 (noting “that cliques and a certain degree of teasing or bullying always have been part of the schools’ environment”); see also Laurie Bloom, Student Author, *School Bullying in Connecticut: Can the Statehouse and the Courthouse Fix the Schoolhouse? An Analysis of Connecticut’s Anti-Bullying Statute*, 7 Conn. Pub. Interest L.J. 105, 109 (2007) (noting that covert acts of “relational aggression” are often ignored by school policy makers). Additionally, with more subtle forms of emotional bullying, such as social exclusion, supervising adults may not even realize such bullying is occurring right in front of them. Jill Grim, Student Author, *Peer Harassment in Our Schools: Should Teachers and Administrators Join the Fight?* 10 Barry L. Rev. 155, 157 (2008).

36. Sameer Hinduja & Justin W. Patchin, *Cyberbullying Fact Sheet: What You Need to Know about Online Aggression* 1 (Cyberbullying Research Ctr. 2009) (available at http://www.cyberbullying.us/cyberbullying_fact_sheet.pdf).

37. Barnett, *supra* n. 20, at 580 (quoting WireKids, Inc., *Stop Cyberbullying, What Is Cyberbullying, Exactly?* http://www.stopcyberbullying.org/what_is_cyberbullying_exactly.html (accessed Sept. 19, 2011)).

38. See *id.* at 579 (noting students’ increased use of technology instead of whispers or notes to tease other students). Friendster, MySpace, and Facebook—online social networking websites—are becoming a popular way of communicating not only among young people, but also among adults and even professionals. See Xení Jardin, *Online Social Networks Go to Work: Where Personal Connections Lead to Professional Allies*, <http://www.msnbc.msn.com/id/5488683/> (accessed Sept. 19, 2011) (discussing the expanding use of social networking websites in the realm of business). Networking websites allow

ly, these technological advances also allow for additional bullying methods; bullies can now contact their victims anonymously³⁹ and can even dedicate social network forums or entire websites to tormenting their peers.⁴⁰ For example, high-school student David Knight discovered a website titled “Welcome to the Page that Makes Fun of Dave Knight.”⁴¹ The website contained his picture and anonymous posts falsely claiming that he was a pedophile who targeted young boys with date-rape drugs.⁴² Many of the offensive comments posted on the website were about David and his family and were made by David’s classmates.⁴³

Cyberbullying is increasing in prevalence.⁴⁴ A possible reason for this increase is that cyberbullying allows the bully to remain anonymous⁴⁵ and often occurs without any chance of adult intervention.⁴⁶ Cyberbullying is sometimes mistakenly considered less harmful than the traditional forms of bullying, yet it often includes a higher degree of brutality.⁴⁷ Anonymity can actually

users to post messages, pictures, and information about themselves and their interests. See e.g. Facebook, *Facebook*, <http://www.facebook.com/facebook> (accessed Sept. 19, 2011) (displaying various networking and socializing tools offered by Facebook).

39. Sophisticated cyberbullies are able to hide their identities while sending offensive content via the Internet by routing messages in a manner that is difficult to trace. Darby Dickerson, *Cyberbullies on Campus*, 37 U. Toledo L. Rev. 51, 56 (2005).

40. Denise Finkel was one of a growing number of young people subjected to cyberbullying through Facebook. See Reid J. Epstein, ‘Bullied’ Teen Sues Friends, Facebook, *Newsday* A16 (Mar. 3, 2009) (reporting that Finkel was suing four students, their parents, and Facebook for online bullying, which included posted accusations that Finkel “participated in bestiality and contracted AIDS”).

41. Cara J. Ottenweller, Student Author, *Cyberbullying: The Interactive Playground Cries for a Clarification of the Communications Decency Act*, 41 Val. U. L. Rev. 1285, 1285 (2007).

42. *Id.*

43. *Id.* David’s parents contacted the Internet service provider (ISP) to have the website removed, but by the time the ISP removed the website six months later, the damage was done and David had to complete his high school education at home. *Id.* at 1285–1286.

44. Kevin Turbert, Student Author, *Faceless Bullies: Legislative and Judicial Responses to Cyberbullying*, 33 Seton Hall Legis. J. 651, 653 (2009); see generally Hinduja & Patchin, *supra* n. 36, at 1 (discussing how the current generation of youth can use new technologies to bully and harm others in ways not available to past generations).

45. Dickerson, *supra* n. 39, at 56.

46. Although parental control and supervision may limit the amount of time spent using technology such as telephones and the Internet, it is unlikely that every aspect of such use is monitored. For example, it is unlikely that adults or other supervisors are substantively scrutinizing or censoring personal emails or instant messages. See Ottenweller, *supra* n. 41, at 1295 (noting that “parents are often not as computer savvy as their children, inhibiting parents’ abilities to fully monitor their children’s activities”).

47. Turbert, *supra* n. 44, at 654.

encourage bullying,⁴⁸ which is what occurred on the website JuicyCampus.com.⁴⁹ JuicyCampus.com was a website on which students from different college campuses could post and comment on topics and ask questions about other students, professors, fraternities, and social groups.⁵⁰ The posts were entirely anonymous, and information was not censored or monitored.⁵¹ Even a posting about a Yale student involved in pornography, including a link to the pornographic site, was permitted despite its highly offensive nature and the potential humiliation it could cause the student.⁵²

III. EFFECTS OF SCHOOL BULLYING

While scholars have only recently begun researching the effects of bullying in the U.S., studies indicate that the effects are devastating and widespread, affecting not only victims of bullying but society as a whole.⁵³

48. See Dickerson, *supra* n. 39, at 56 (noting that anonymity provided by technology emboldens bullies).

49. JuicyCampus.com shut down on February 5, 2009 and redirected all traffic to CollegeACB.com. JuicyCampus, *Official JuicyCampus Blog: A Juicy Shutdown*, <http://juicycampus.blogspot.com/> (posted Feb. 4, 2009) (The website now redirects followers to Blipdar.com, <http://blipdar.com/> (accessed Sept. 19, 2011)). CollegeACB.com attempts to distance itself from JuicyCampus.com by aspiring to “a higher level of discourse” than the “derogatory and needlessly crude” interactions on JuicyCampus.com. CollegeACB, *CollegeACB: Official Blog for CollegeACB.com: CollegeACB.com to Offer Free Anonymous College Discussion*, <http://collegeacb.blogspot.com/2009/02/collegeacb-press-release.html> (posted Feb. 5, 2009). The “ACB” in CollegeACB stands for “Anonymous Confession Board,” and the website’s stated mission is to provide students with “a place to vent, rant, and talk to college peers.” *Id.*

50. Andrew Born et al., *Business Ethics: JuicyCampus 2* (Kenan Inst. Ethics Duke U. 2009) (available at <http://www.duke.edu/web/kenanethics/CaseStudies/JuicyCampus.pdf>).

51. *Id.* at 2–3. In fact, when asked, the website’s CEO and founder, Matt Ivester, admitted that the website did no pre-screening of posts and only removed posts on “very rare occasion[s].” *Id.*

52. See Richard Morgan, *A Crash Course in Online Gossip*, N.Y. Times ST7 (Mar. 16, 2008) (available at <http://www.nytimes.com/2008/03/16/fashion/16juicy.html>) (telling the stories of several students identified by name on JuicyCampus.com).

53. U.S. Dep’t of Health & Human Servs., *CSAP’s Prevention Pathways: Online Courses, The ABCs of Bullying*, Module 1: School Bullying: What It Is and Why It Hurts, at 5, http://pathwayscourses.samhsa.gov/bully/bully_1_pg5.htm (last updated May 19, 2004) [hereinafter *The ABCs of Bullying*]. For a discussion of the personal, school-related, and overall societal effects of school bullying, see James Alan Fox et al., *Bullying Prevention Is Crime Prevention* (Fight Crime: Invest in Kids 2003) (available at <http://www.fightcrime.org/sites/default/files/reports/BullyingReport.pdf>). Although this Article will focus primarily on violent acts committed by those schoolchildren who have been bullied, it is important to note that the bullies themselves are also likely to engage in violent acts, both while still in school and once they become adults. *Id.* at 2.

A. Effects on the Victim

Victims of school bullying experience a litany of negative and long-lasting psychological effects.⁵⁴ The psychological effects of bullying on school victims include depression,⁵⁵ anxiety,⁵⁶ fear,⁵⁷ insecurity,⁵⁸ and post-traumatic stress disorder.⁵⁹ Because of these psychological effects, victims of school bullying have an increased risk of developing substance-abuse problems,⁶⁰ experiencing a deterioration in academic performance,⁶¹ having difficulty forming significant interpersonal relationships,⁶² developing social phobias in adulthood,⁶³ and committing suicide.⁶⁴

In recent years, there have been several high-profile suicides believed to be the result of severe and chronic school bullying.⁶⁵ The term “bullycide” refers to acts of suicide following years of bullying.⁶⁶ In Manchester, England, thirteen-year-old Vijay Singh

54. Family First Aid, *Family First Aid: Help for Troubled Teens, School Bullying and Teen Bullying Statistics*, <http://www.familyfirstaid.org/bullying.html> (accessed Sept. 19, 2011).

55. Rasa Jankauskiene et al., *Associations between School Bullying and Psychosocial Factors*, 36 Soc. Behavior & Personality 145, 146 (2008); *The ABCs of Bullying*, *supra* n. 53, at 5.

56. Jankauskiene et al., *supra* n. 55, at 146.

57. Family First Aid, *supra* n. 54.

58. *Id.*

59. *The ABCs of Bullying*, *supra* n. 53, at 5.

60. *Id.*

61. Jankauskiene et al., *supra* n. 55, at 146. Bullying affects the victim’s “concentration in school[] and can lead them to avoid school in some cases.” Family First Aid, *supra* n. 54. Shockingly, bullying causes an average of 160,000 U.S. schoolchildren to skip school each day. Grim, *supra* n. 35, at 155. With suffering grades and a lack of peer support, victims may reject formal education entirely and drop out of school or be forced to complete their pre-college education independently at home. See Nat’l Crime Prevention Council, *Bullying*, <http://www.npc.org/topics/bullying> (accessed Sept. 19, 2011) (stating that bullying causes isolation and results in some students dropping out of school). Forcing students to choose between changing schools, dropping out of school, or being homeschooled puts the onus on the victims of bullying, requiring a change in their behavior rather than a change in the abuser’s behavior.

62. Field, *supra* n. 34.

63. Jankauskiene et al., *supra* n. 55, at 146.

64. *Id.*

65. Individuals can suffer at the hands of bullies for years without any intervention by the school administrators, parents, or even their peers, who are those most likely to witness the abuse firsthand. Grim, *supra* n. 35, at 155–156; *The ABCs of Bullying*, *supra* n. 53. Unfortunately, with the consequences of such inescapable abuse compounding daily and the lack of recognizable relief, bullying victims too often try to take their own lives. Grim, *supra* n. 35, at 159. In fact, it has been reported that “[forty percent] of suicide victims had been bullied at school.” Field, *supra* n. 34.

66. See generally Brenda High, *Introduction: Bullycide . . . A Warning and a Lesson! A*

hung himself from a banister, and the last entry of his personal journal depicts the daily bullying he suffered:

*I shall remember forever and will never forget
Monday: my money taken
Tuesday: names called
Wednesday: my uniform torn
Thursday: my body pouring with blood
Friday: it's ended
Saturday: freedom*⁶⁷

In 2001, fourteen-year-old Miranda Whittaker shot herself after two years of being called a “slut” and “whore” and otherwise being shunned by her peers.⁶⁸ Ryan Holligan committed suicide after being bullied by a group of girls in his school.⁶⁹ Phoebe Prince, a ninth-grade student at South Hadley High School in Massachusetts, had moved to the U.S. from Ireland.⁷⁰ After briefly dating a senior football player, Prince became the victim of extensive physical, emotional, and cyberbullying by other girls at the school.⁷¹ In January 2010, Prince committed suicide by hanging herself in a stairwell in her house.⁷²

Victims of bullying are not the only ones negatively impacted by the bullying; bullies themselves are more likely than non-bullies to demonstrate increasingly violent behavior as they age.

Parents Perspective, in *Bullycide in America: Moms Speak Out about the Bullying/Suicide Connection*, *supra* n. 11, at 9 (featuring mothers of bullying victims who have committed suicide speaking out against violence in schools).

67. CRC Health Group, *supra* n. 13.

68. *Id.* Two years before she committed suicide, Miranda claimed she was raped by an older student. “Although she had a restraining order to keep him away from her, a basketball coach took the boy’s side and made the two stand together every day in class.” *Id.*

69. *ABC News Report: Bullying Statistics*, TV Broad. (ABC News Nov. 25, 2007) (available at <http://bullyingstatistics.blogspot.com/2007/11/abc-news-report-bullying-statistics.html>).

70. Helen Kennedy, *Phoebe Prince, South Hadley High School’s ‘New Girl,’ Driven to Suicide by Teenage Cyber Bullies*, http://www.nydailynews.com/news/national/2010/03/29/2010-03-29_phoebe_prince_south_hadley_high_schools_new_girl_driven_to_suicide_by_teenage_cy.html (Mar. 29, 2010).

71. *Id.* Prince’s classmates bullied her by knocking books out of her hands, scribbling her face out of class photographs, throwing cans at her, threatening her, calling her “Irish slut” on Facebook, Craigslist, and Twitter, and sending threatening texts to her cell phone. *Id.* In fact, even after her death, her abusers continued leaving vicious comments on her Facebook memorial page. *Id.*

72. *Id.*

One study reports that “as many as [thirty] to [forty] percent of former bullies had three or more criminal convictions by age [twenty-four] compared to only ten percent of those who were not considered bullies.”⁷³ Furthermore, students directly involved in bullying, whether as a victim or a perpetrator, are more likely to experience academic failure, inter-relationship difficulties, and are also more prone to getting involved with drinking and smoking.⁷⁴ In addition, “[b]ullies are five times more likely than are their classmates to end up in juvenile court . . . and, when they become parents, to have highly aggressive children.”⁷⁵ The negative effects on the bully and his or her victim highlight bullying as a troubling social issue that must be addressed by the legal system to prevent future acts of mass violence.

B. Link between Bullying and School Violence

In the last thirty years, there have been numerous incidents of large-scale school violence and school shootings in particular.⁷⁶ In addition to the well-known tragedies of Columbine and Virginia Tech, there were the shootings by sixteen-year-old Brenda Spencer at Grover Cleveland Elementary School near San Diego, California in 1979;⁷⁷ sixteen-year-old Luke Woodham in Pearl, Mississippi in 1997;⁷⁸ and fourteen-year-old Michael Carneal in West Paducah, Kentucky, also in 1997.⁷⁹

Since the massacre at Columbine High School in 1999, there has been extensive research exploring the causes of school violence and the motivation for teenagers to commit such acts.⁸⁰

73. Jonathan W. Blodgett, *Bullying and the Violence It Causes*, 40 Prosecutor 34, 35 (2006).

74. *Id.*

75. Nancy Meyer-Adams & Bradley T. Conner, *School Violence: Bullying Behaviors and the Psychosocial School Environment in Middle Schools*, 30 Children & Schs. 211, 212 (2008) (available at 2008 WLNR 20182338).

76. Mirah A. Horowitz, *Kids Who Kill: A Critique of How the American Legal System Deals with Juveniles Who Commit Homicide*, 63 L. & Contemp. Probs. 133, 133 (2000).

77. Tamara Jones, *Echoes of a Different Schoolyard*, Wash. Post C01 (Apr. 23, 1999). Spencer, who lived across the street from the elementary school, killed the principal, a custodian, and left eight other children wounded. *Id.*

78. Horowitz, *supra* n. 76, at 133. Woodham began by killing his mother and then killed three students and wounded seven others at his school. *Id.*

79. *Id.* Carneal's shooting spree took place during a morning-prayer meeting at his school; he killed three students. *Id.*

80. E.g. James Garbarino, *Lost Boys: Why Our Sons Turn Violent and How We Can*

One recurring factor that plays into school violence is pervasive bullying.⁸¹ Bullying victims develop increasingly aggressive behavior as the bullying persists, are more likely to be involved in school fights, and are also more likely to bring weapons to school than their non-victim counterparts.⁸² Many of these students bring weapons to school as a way to protect themselves from extreme harassment by bullies.⁸³

Save Them (Anchor Books 2000) (discussing the causes of, and possible solutions for, youth violence); Horowitz, *supra* n. 76, at 135 (discussing the justice of the juvenile death penalty in the context of school shooters and analyzing what caused the shooters to become killers); Nat'l Inst. Just., *Preventing School Shootings: A Summary of a U.S. Secret Service Safe School Initiative Report*, 248 Natl. Inst. Just. J. 10, 11 (Mar. 2002) (available at http://www.justice.gov/usao/wie/justice_for_all/publications/preventing_school_shooting.pdf) (summarizing a study by the U.S. Secret Service, National Threat Assessment Center, of over thirty-seven school shootings to determine the motivation behind the attacks and how to prevent similar incidents in the future).

81. Nat'l Inst. Just., *supra* n. 80, at 14. In fact, one study revealed that more than two-thirds of school shooters were bullied while in school. Blodgett, *supra* n. 73, at 35. School violence is often carried out by students who have suffered at the hands of bullies and who have endured such extreme abuse that they see no alternative way to escape their situations. See generally Schutze, *supra* n. 25 (telling the story of how a group of teens, abused for years by one of their friends, eventually killed the abusive friend). In discussing the abuse they suffered at the hands of Bobby Kent, his best friend Marty and Marty's girlfriend Lisa Connelly came up with a solution to end the bullying:

Marty: Lisa . . . Bobby and me . . . this shit with Bobby. . . .

Lisa: What?

Marty: It goes back to when we were kids, Lisa. Little kids. Bobby has always been like this. He's always just beat the shit out of me when he felt like it and punched me out and shit. . . . There isn't a goddamned thing I can do about it. I used to beg my fucking parents to let us move someplace else. . . .

Lisa: You could move away. Yourself.

Marty: How? I'm not even a high school graduate.

Lisa: Yeah, . . . I know. Tell me about it. So there's no way to stop him? Ever?

(*Marty sat shaking his head, biting a lip[,] and looking away.*)

Marty: Yeah. There's a way to stop him. Kill him. But that's about it.

Id. at 89.

82. CBS News, *Bullies, Bullied: Armed and Dangerous*, <http://www.cbsnews.com/stories/2003/04/15/national/main549452.shtml> (accessed Sept. 19, 2011); see also Gia Elise Barboza et al., *Individual Characteristics and the Multiple Contexts of Adolescent Bullying: An Ecological Perspective*, 38 J. Youth & Adolescence 101, 103 (2009) (studying the factors that influence the development of bullies and victims and noting that those who have been bullied are more likely to become bullies themselves).

83. Field, *supra* n. 34. Some statistics report that as many as twenty percent of students come to school armed as a way to feel safer. *Id.* Abuse, in general, increases the chances that a child will be violent in the future because the child "comes to understand how the world works through the lens of his [or her] own abuse." Garbarino, *supra* n. 80, at 80.

As long as bullying persists, schools are likely to be vulnerable to student violence.⁸⁴ Although most schools are fortunate enough not to experience school shootings like those at Columbine and Virginia Tech, the possibility of such shootings exists wherever there is a severely bullied victim. Most students who are bullied suffer in silence, some consider or attempt suicide, and “[a] handful—and [it is] going to be more than a handful in the next few years—lash out at their fellow students almost randomly.”⁸⁵ The one factor common to seventy-one percent of school shootings is that the perpetrator had been the victim of chronic bullying.⁸⁶ Additionally, “[i]n some of these cases[,] the experience of being bullied seemed to have a significant impact on the attacker and appeared to have been a factor in his [or her] decision to mount an attack at the school.”⁸⁷

The school shooting that occurred on April 20, 1999, at Columbine High School in Littleton, Colorado⁸⁸ is arguably the most well-known school shooting in the United States.⁸⁹ The two shooters, nineteen-year-old Eric Harris and seventeen-year-old Dylan Klebold, gathered up a slew of weapons consisting of “a sawed-off double-barrel shotgun, a TEC 9 semiautomatic handgun, a sawed-off pump shotgun, [] a 9-mm semiautomatic rifle,” a twenty-pound propane tank, and approximately thirty homemade pipe bombs, then drove to their high school.⁹⁰ Once there, Eric and Dylan made their way through the school hallways, cafeteria, and classrooms, shooting at students, teachers, and administra-

84. See Fox et al., *supra* n. 53, ch. 2 at 9 (discussing how bullying causes an increase in bullying and violence).

85. Coleman, *supra* n. 15, at 79 (quoting Elliot Aronson).

86. Vossekul et al., *supra* n. 6, at 21.

87. *Id.*

88. Coleman, *supra* n. 15, at 17.

89. Despite being the most well-known incident, Columbine is not the only—nor was it the first—incident of such severe school violence. See Nat’l Inst. Just., *supra* n. 80, at 11 (stating that “[s]chool shootings are not a new phenomenon”). In 1974, in Olean High School in New York, eighteen-year-old honor student Anthony Barbaro “brought guns and a homemade bomb to school.” *Id.* He pulled the fire alarm and fired at janitors and firefighters who responded. *Id.* In total, three people were killed that day and six were injured. Timothy J. Madden, *Honor Student Charged With Sniper Shooting In New York*, Kingman Daily Miner (Dec. 31, 1974) (available at <http://news.google.com/newspapers?id=HIMLAAAAIIBAJ&sjid=kFIDAAAIAIBAJ&pg=6780,3601179&dq=sniper>). There was no evidence that Barbaro was bullied, but the significance of this incident is that school violence itself is not a new phenomenon; rather, the motivations for the violence may be different and may be evolving.

90. Coleman, *supra* n. 15, at 17.

tors.⁹¹ In total, thirteen were killed, twelve students and one teacher.⁹² Eric and Dylan concluded the rampage with a double suicide, killing themselves in the school library.⁹³

Accounts from Columbine students describe how Eric and Dylan were “school outcasts” and belonged to a group called the “Trenchcoat Mafia.”⁹⁴ The pair was described as “discarded, unwanted ‘stereotype geeks’” who were picked on by teachers as well as students and who were routinely taunted with terms like “faggots” and “inbreeds.”⁹⁵ They were harassed by other students who went as far as to throw bottles and rocks at Eric and Dylan from moving cars.⁹⁶ This bullying is considered by some as the fundamental motivator in the Columbine shooting.⁹⁷

In one study, eighty-seven percent of students felt that school shootings were motivated by a desire to “get back at” bullies, and eighty-six percent felt that teenagers turned to lethal violence in school because of “other kids picking on them, making fun of them[,] or bullying them.”⁹⁸ Although she never acted on her emotions, Jodee Blanco, a victim and survivor of extreme physical, emotional, and psychological bullying from junior high through high school, described her feelings in a poem titled “Revenge.”⁹⁹

91. The Denver Post, *How the Rampage Unfolded*, <http://extras.denverpost.com/news/detail.htm> (accessed Sept. 19, 2011).

92. Coleman, *supra* n. 15, at 17.

93. *Id.*; Denver Post, *supra* n. 91.

94. Coleman, *supra* n. 15, at 18.

95. *Id.*

96. *Id.*

97. *Id.* at 79; see Lorraine Adams & Dale Russakoff, *Dissecting Columbine's Cult of the Athlete; In Search for Answers, Community Examines One Source of Killers' Rage*, Wash. Post A01 (June 12, 1999) (noting that despite widespread knowledge of bullying at Columbine, “almost no one—not teachers, not administrators, not coaches, not most students, not parents—took the problem seriously”); *contra* Greg Toppo, *10 Years Later, the Real Story Behind Columbine*, http://www.usatoday.com/news/nation/2009-04-13-columbine-myths_N.htm (updated Apr. 14, 2009) (reporting that “Eric Harris and Dylan Klebold hadn’t been bullied—in fact, they had bragged in diaries about picking on freshmen and ‘fags’”).

98. How to Stop Bullying, *Bullying Statistics/Cyber Bullying Statistics/School Bullying Statistics*, <http://www.how-to-stop-bullying.com/bullyingstatistics.html> (accessed Sept. 19, 2011).

99. Jodee Blanco, *Please Stop Laughing at Me . . . One Woman's Inspirational Story* 85–86 (Adams Media 2003).

*You all think you're cool, stabbing my heart—
Bloodsucking vulchers [sic], ripping my life apart—
Thought you'd take a loser, feed on her pain—
But you're gonna pay—
I'm not running again.*

Jodee's vindictive feelings are clear throughout the poem and are reflective of the vindictive feelings most bullying victims feel toward their abusers.

C. Anti-Bullying Statutes: The Potential and Problems with States' Peer Abuse Laws

Recognizing the magnitude of peer harassment in schools, as well as the social, psychological, and physical repercussions of school bullying, thirty-four states passed anti-bullying legislation by 2008.¹⁰⁰ These laws provide penalties for carrying weapons to school or school functions, and they require character-building programs in schools and mandatory reporting of bullying incidents.¹⁰¹ It is unclear whether these efforts by school boards and state legislatures to address the school bullying problem actually reduce the prevalence of peer harassment. These efforts also fail to address the link between peer abuse and school violence perpetrated by those students who are persistently bullied. The anti-bullying policies and statutes provide guidelines for ways to prevent bullying, but they do not address the negative consequences a victim faces when he or she has been bullied.

For example, Delaware's anti-bullying statute requires schools to prohibit all bullying, whether physical, verbal, written, or electronic.¹⁰² The statute defines bullying as "any intentional

*Revenge—how sweet is the word
Revenge—seems so absurd
But justice will find you
She's just biding time
So suffer and bleed
Pay for your crime
Victims are running—
Frightened and blind—
Lost in a world that's sadly unkind—
The vicious and cruel have fed on their souls—
Left them shells—
Empty and cold—
Their eyes are full of hate—
They're vowed to get vengeance—
To defy their fate.*

Id.

100. Grim, *supra* n. 35, at 169.

101. *Id.*

102. Del. Code Ann. tit. 14, § 4112D(a)–(b) (West 2007).

written, electronic, verbal[,] or physical act or actions against another student, school volunteer[,] or school employee” that has the effect of, *inter alia*, “[p]lacing a student . . . in reasonable fear of substantial harm to his or her emotional or physical well-being”; “[c]reating a hostile, threatening, humiliating[,] or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target”; “[i]nterfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities[,] or benefits”; or “[p]erpetuating bullying by inciting, soliciting[,] or coercing an individual or group to demean, dehumanize, embarrass[,] or cause emotional, psychological[,] or physical harm to another student. . . .”¹⁰³ Additionally, the statute provides individual immunity to school employees, volunteers, students, parents, legal guardians, or relative caregivers from a cause of action that arises from reporting bullying in good faith and in accordance to school policies.¹⁰⁴ By providing such immunity, the statute arguably increases the likelihood that instances of bullying will be recognized and increases the chances of quashing such abuse and preventing future violence.¹⁰⁵

Even if these measures were effective in reducing the prevalence of peer abuse, it is likely that they do not address the connection between the effects of bullying and the cause of, or explanation for, such violent outbursts. Despite the advances in anti-bullying policies since 2008, school violence continues, and although much of the anti-bullying legislation provides helpful guidelines through which bullying can be reduced, not enough time has passed to comprehensively evaluate the effectiveness of such statutes.¹⁰⁶

One possible issue with these statutes is that often the legislation provides school administrators with the tools necessary to combat bullying, yet the legislation does not always mandate how, when, or to what extent the schools should implement all these tools. For example, the Jeffrey Johnston Stand Up for All Students Act (Jeff’s Law), codified in the Florida Statutes, allows Florida school districts to define different protected classes, such

103. *Id.* at § 4112D(a)(1)–(4).

104. *Id.* at § 4112D(e).

105. See Grim, *supra* n. 35, at 170–171 (discussing the Delaware anti-bullying statute).

106. *Id.* at 171.

as a lesbian, gay, bisexual, and transgender class.¹⁰⁷ However, despite the high prevalence of bullying targeted at sexual minorities,¹⁰⁸ Jeff's Law does not *require* schools to establish such a protected class.¹⁰⁹ The broad potential of Jeff's Law earned the legislation an "A++" rating from the Bully Police USA, despite the fact that it is not implemented to its full potential.¹¹⁰ Ultimately, although states are taking steps to address the bullying problem in schools, these steps fall short of making significant changes in the safety of students because school violence continues to be prevalent. Not only do the statutes fail to mandate full protection, but they also do not address the consequences faced by the bullied victims.

In most situations where victims of bullies resort to school violence, the victims' need to escape ongoing harassment and oppression has culminated in horrific violence directed at those involved in the harassment—and even those who are not.¹¹¹ As with Eric Klebold and Dylan Harris, the perpetrators of school shootings often end the rampage by suicide.¹¹² Those that are arrested and charged with crimes sometimes commit suicide while awaiting trial.

Of those that proceed to stand trial, self-defense is one potential claim that may be raised if the defendant is charged with homicide. Self-defense justifies homicide if: "(1) the defendant acted with a reasonable belief that he or she was in imminent danger of unlawful death or serious bodily harm; (2) the use of force was necessary to avoid the danger; and (3) the amount of force used was reasonable in relation to the threatened harm."¹¹³

107. Fla. Stat. § 1006.147(4) (2008).

108. Joseph G. Kosciw & Elizabeth M. Diaz, *The 2005 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* 28–30 (GLSEN 2006).

109. Fla. Stat. § 1006.147(4) ("The school district *may* establish separate discrimination policies that include categories of students.") (emphasis added).

110. Bully Police USA, *Florida*, http://www.bullypolice.org/fl_law.html (accessed Sept. 19, 2011).

111. Eyes on Bullying, Educ. Dev. Ctr., Inc., *What Can You Do?* <http://www.eyesonbullying.org/victim.html> (accessed Sept. 19, 2011).

112. Coleman, *supra* n. 15, at 17; University of Michigan, *School Violence*, http://sitemaker.umich.edu/356.dolan/list_of_school_shooters (accessed Sept. 19, 2011) (naming Anthony Barbaro, Nathan Faris, Nicholas Atkinson, John Sirola, and Toby Sincino, among others, as school shooters who either killed themselves after the school shooting or killed themselves while awaiting trial).

113. Jamie Heather Sacks, *A New Age of Understanding: Allowing Self-Defense Claims*

Currently, if a school shooter were brought to trial, it is unlikely that the shooter would be able to successfully raise a self-defense claim because proving that he or she acted with a reasonable belief of imminent danger of unlawful death or serious bodily harm would be problematic. As in the Columbine shooting, the Virginia Tech incident, and several others,¹¹⁴ the threats that arguably exist do not fit the traditional notions of imminent threats typically raised in self-defense claims. An understanding of the psychological and physiological effects of battered child syndrome on bullying victims, however, helps explain how such victims can feel imminent threats where others may not.

IV. BATTERED CHILD SYNDROME

In 1962, Dr. C. Henry Kempe and his team coined the phrase “battered child syndrome” in an article published in response to the frequent misdiagnosis or inadequate handling of child abuse by treating physicians.¹¹⁵ Although Dr. Kempe’s research focused only on diagnosing a child suffering from battered child syndrome, others have taken his work and continued evaluating the psychological effects on children who suffer from the syndrome. Now the term “battered child syndrome” is used to describe both the physical and psychological effects of chronic child abuse.¹¹⁶ In the decades since Dr. Kempe’s initial research, courts have legally recognized battered child syndrome and have allowed evidence of battered child syndrome to prove the intent of the parents or guardians to cause harm to the child.¹¹⁷ Despite the mounting ev-

for *Battered Children Who Kill Their Abusers*, 10 J. Contemp. Health L. & Policy 349, 352, 359 (1994) (advocating for the use of expert testimony regarding the current definition of battered child syndrome in parricide trials) (footnotes omitted).

114. See generally University of Michigan, *supra* n. 112 (describing school shootings and other occurrences of school violence when the perpetrators of the violence were often reacting to prior occurrences of bullying or other provocations).

115. Kempe et al., *supra* n. 10, at 143. The article sets out clinical characteristics indicating the presence of the syndrome, including: trauma (either mild or severe) to a child under the age of three (although the syndrome can occur at any age); the caretaker’s explanations about the child’s illness or injury are inconsistent with medical findings; no new trauma appears on the child while he or she is in the hospital or other protected environment; subdural hematoma; distribution of injuries; and lesions in different stages of healing. *Id.* at 144.

116. *State v. MacLennan*, 702 N.W.2d 219, 227 (Minn. 2005).

117. *E.g. Estelle v. McGuire*, 502 U.S. 62 (1991). In *Estelle*, the United States Supreme Court considered the scenario in which Tori, a six-month-old infant, was brought to a

idence of the devastating psychological effects of chronic abuse on children,¹¹⁸ courts rarely allow use of the syndrome as a justification defense.¹¹⁹

Since the 1990s, a series of studies in neuroscience have shown that child abuse “dramatically affects both the structure and chemistry of the developing brain, thus causing . . . behavioral” problems in the victims.¹²⁰ The studies show that “brain structures such as the cortex, which is associated with rational thinking, . . . the hippocampus, which helps process memories and emotions,” and the amygdalae, which “[enable] us to respond quickly to danger,” are damaged by such abuse.¹²¹ Researchers have also found that the severity of damage done to the brain is directly related to the severity of the abuse inflicted on the child.¹²² In addition to physical changes to the brain structure, chronic child abuse also causes biochemical imbalances in the brain; one hormone often affected by child abuse is serotonin, and “[child] abuse typically lowers serotonin levels, leading to depression and impulsive aggression.”¹²³

As a result of these changes to the brain structure and hormone levels, children who suffer from battered child syndrome tend to be hypervigilant¹²⁴ and suffer from learned helplessness¹²⁵

California hospital, where she died soon after. *Id.* at 64–65. Numerous injuries were found during her autopsy, including twenty-nine abdominal contusions, a lacerated large intestine, rectal tearing, heart and lung damage, and seventeen chest contusions. *Id.* at 65. The Court held that the evidence presented at trial of prior injuries, “whether it was directly linked to McGuire or not, was probative on the question of the intent with which the person who caused the injuries acted.” *Id.* at 69.

118. *Supra* nn. 114–117 and accompanying text; *infra* nn. 119–133 and accompanying text.

119. *See State v. Nemeth*, 694 N.E.2d 1332, 1335 (Ohio 1998) (emphasizing the reluctance of courts in allowing evidence of the psychological effects of battered child syndrome). Initial reluctance to use the syndrome as evidence of psychological consequences of chronic abuse arose because the syndrome emerged as a means to medically diagnose children who have been subjected to physical abuse by parents or guardians. *Id.* Using the syndrome to articulate the psychological repercussions faced by those same children is a more recent development. *Id.* In recent years, courts have been more accepting of using the syndrome to explain the different psychological symptoms resulting from repeated abuse. *E.g. State v. Janes*, 850 P.2d 495, 502 (Wash. 1993).

120. Josh Kendall, *How Abuse, Neglect Damage the Brain*, Boston Globe C1 (Sept. 24, 2002).

121. *Id.*

122. *Id.*

123. *Id.*

124. Kristi Baldwin, Student Author, *Battered Child Syndrome as a Sword and a Shield*, 29 Am. J. Crim. L. 59, 63–64 (2001). It seems likely that this could, if excessive,

and post-traumatic stress disorder.¹²⁶ Hypervigilance, or hyper-awareness, could be considered a positive characteristic because this makes children more capable of recognizing dangerous or harmful situations than their non-abused peers;¹²⁷ learned helplessness can negate the benefits of hypervigilance because it creates an inability for battered children to realize the effects that their actions have on their safety.¹²⁸

The psychological symptom of most legal relevance, however, is post-traumatic stress disorder.¹²⁹ The disorder is anxiety-related and usually occurs as a response to a psychologically distressing occurrence.¹³⁰ It can result from being chronically and systematically abused.¹³¹ This psychological condition results in increased psychological arousal and retraumatization.¹³² Battered children who suffer these effects consequently react to certain stimuli differently than “average,” non-abused individuals.¹³³

As demonstrated by the psychological characteristics of those suffering from battered child syndrome, the possibility of children with battered child syndrome lashing out violently toward their

turn into inappropriate paranoia, which would place the children at a disadvantage because they would likely be stressed and unable to experience carefree living.

125. *Id.* at 64. Learned helplessness also emerges in women who suffer abuse by their husbands. See generally Lenore E.A. Walker, *Battered Woman Syndrome and Self-Defense*, 6 Notre Dame J.L. Ethics & Pub. Policy 321, 326–330 (1992) (describing the symptoms of battered woman syndrome, including: powerlessness, depression, post-traumatic stress disorder, anxiety, and “learned helplessness”).

126. *Nemeth*, 694 N.E.2d at 1339 n. 2 (“Many other medical sources recognize that [post-traumatic stress disorder] can manifest in children as a result of child abuse.”).

127. Baldwin, *supra* n. 124, at 63–64. Being hyperaware of one’s surroundings could also be detrimental, as those who suffer from hypervigilance are the same individuals who sometimes feel threatened in situations in which there are no actual imminent threats. Lauren E. Goldman, *Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of Subjective Self-Defense and the Merits of Partial Excuse*, 45 Case W. Res. L. Rev. 185, 193–194 (1994).

128. Baldwin, *supra* n. 124, at 64.

129. See Goldman, *supra* n. 127, at 192–193 (stating that “expert testimony concerning battered child syndrome has focused almost entirely on the way in which abuse impacts . . . the child’s perceptions, as manifested through a general psychological disorder known as post-traumatic stress disorder (PTSD)”).

130. *Id.* at 193. The disturbing occurrence is usually something that happens outside of normal experiences. Soldiers returning from war often suffer from post-traumatic stress disorder if they were involved in armed battle or witnessed tragedies. MSNBC, *1 in 8 Returning Soldiers Suffers from PTSD*, <http://www.msnbc.msn.com/id/5334479/> (updated June 30, 2004).

131. Goldman, *supra* n. 127, at 193.

132. *Id.*

133. *Id.* at 193–194; Baldwin, *supra* n. 124, at 64.

parents or caregivers certainly exists. Of parricide cases, which represent a small percentage of all homicides, an overwhelming majority are committed by children who have endured years of ongoing abuse by the parent.¹³⁴ In one case, seventeen-year-old Donna Marie Wisener killed her forty-nine-year-old father Glenn Wisener by shooting him repeatedly in the head, back, side, and hip.¹³⁵ Donna Marie had suffered extensive abuse from her father: she recalled him breaking two switches on her buttocks as he lashed at her; handcuffing her to a chair for his own amusement; beating her unconscious; and sexually abusing her by giving her “rub downs” when he was feeling affectionate.¹³⁶ In another case, seventeen-year-old Andrew Janes killed his stepfather Walter by shooting him.¹³⁷ Substantial evidence that Walter had abused Andrew throughout his childhood emerged at trial, including accounts of incidents of Walter beating Andrew with wire hangers, hitting him in the mouth with a mop, punching him in the face (for not finishing a homework assignment), and knocking him unconscious by beating him in the head with firewood.¹³⁸ Despite neighbors witnessing the abuse and reporting the situation to Child Protective Services, no action was taken and the abuse continued for years, ending only when Andrew killed Walter.¹³⁹

Children who commit parricide sometimes try to offer expert testimony regarding the symptoms of battered child syndrome to explain why they act out violently toward their abusive parents or guardians.¹⁴⁰ In *Jahnke v. State*,¹⁴¹ the Supreme Court of Wyo-

134. Susan C. Smith, Student Author, *Abused Children Who Kill Abusive Parents: Moving toward an Appropriate Legal Response*, 42 Cath. U. L. Rev. 141, 152–153 (1992).

135. David Margolick, *When Child Kills Parent, It's Sometimes to Survive*, N.Y. Times A1 (Feb. 14, 1992) (available at <http://www.nytimes.com/1992/02/14/news/when-child-kills-parent-it-s-sometimes-to-survive.html?pagewanted=1>).

136. *Id.* Donna Marie's brother and mother were also victims of Glenn Wisener's abuse, as he would physically abuse them by beating them and throwing oak logs at them. *Id.*

137. *Janes*, 850 P.2d at 496.

138. *Id.* at 499. The court in *Janes* accepted evidence of battered child syndrome. *Id.* at 503; Reginald M. Parker, Student Author, *When No One Hears Their Cries: Battered Child Syndrome as a Defense*: State v. Janes, 19 Thurgood Marshall L. Rev. 431, 440 (1994). The court first analyzed the evidence and determined that it satisfied the *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) standard, which required that expert evidence regarding scientific information be well-established within the halls of the relevant scientific community before it is accepted by a court. *Janes*, 850 P.2d at 501, 503.

139. *Id.* at 499 (chronicling a defendant's experience of child abuse since he was nine-years-old).

140. Baldwin, *supra* n. 124, at 64.

141. 682 P.2d 991 (Wyo. 1984), *overruled on other grounds*, *Vaughn v. State*, 962 P.2d

ming refused to admit expert testimony regarding the effects of battered child syndrome on the defendant, Richard Jahnke, who was abused by his father since the age of two and eventually retaliated by killing him.¹⁴² In Andrew Janes' case, the Washington Supreme Court ruled that the trial court should have allowed evidence of battered child syndrome to explain Andrew's state of mind to the jury.¹⁴³ Such testimony is especially pertinent when the child used deadly force in a nonconfrontational situation.¹⁴⁴ While courts have frequently used battered child syndrome to prove intent to commit child abuse,¹⁴⁵ courts are split as to whether evidence of the syndrome should be allowed to prove justification when the child kills a caretaker in a nonconfrontational setting.¹⁴⁶

In deciding the applicability of battered child syndrome as a justification defense, some courts have evaluated the history and application of a similar condition called "battered woman syndrome."¹⁴⁷ Courts consider battered woman syndrome a type of post-traumatic stress disorder that describes the effect that sustained and chronic abuse by a partner in an intimate relationship has on the person suffering the abuse.¹⁴⁸ Since completion of the

149 (Wyo. 1998).

142. *Id.* at 1005 (holding that the trial court did not abuse its discretion in refusing to admit the expert testimony). The court held that the expert testimony was inadmissible because the deceased did not overtly attack the defendant; thus, the defendant could not raise a self-defense claim. *Id.*

143. *Janes*, 850 P.2d at 496 (remanding the case to determine whether the defendant could offer sufficient evidence that he was in imminent danger of grievous bodily harm).

144. Goldman, *supra* n. 127, at 193–194. Even though a situation may not be a particularly threatening one, a child who has been significantly abused could be hypervigilant and may perceive the situation as one involving imminent threat. Horowitz, *supra* n. 76, at 158–159.

145. See e.g. *Estelle*, 502 U.S. at 68 (“Thus, evidence demonstrating battered child syndrome helps to prove that the child died at the hands of another and not by falling off a couch, for example; it also tends to establish that [an alleged abuser] inflicted the injuries intentionally.”); *State v. Durfee*, 322 N.W.2d 778, 783 (Minn. 1982) (explaining that evidence as to battered child syndrome is probative as to whether a child was injured accidentally); *State v. Harper*, 325 S.E.2d 30, 32 (N.C. App. 1985) (admitting evidence of battered child syndrome to show intent).

146. See e.g. *Whipple v. State*, 523 N.E.2d 1363, 1367 (Ind. 1988) (denying a jury instruction on self-defense to a child accused of shooting his abusive parents in a nonconfrontational setting); *State v. Crabtree*, 805 P.2d 1, 6 (Kan. 1991) (declining to adopt the battered child syndrome as a justification for murder); *Jahnke*, 682 P.2d at 1006 (refusing to allow a defendant to plead self-defense based on battered child syndrome).

147. E.g. *MacLennan*, 702 N.W.2d at 227; *Janes*, 850 P.2d at 502.

148. *Witt v. State*, 892 P.2d 132, 137 (Wyo. 1995).

original research in 1982, battered woman syndrome has been the subject of much research,¹⁴⁹ has received media attention,¹⁵⁰ and has also been used widely in courts to provide explanations (and sometimes justifications) for why some abused women commit violent acts against their abusers.¹⁵¹ In addition to establishing her theory of a “cycle of violence” for chronically abusive relationships,¹⁵² Lenore Walker, an expert on battered woman syndrome,¹⁵³ uncovered evidence of a variety of psychological conditions existing in women who suffer from the syndrome.¹⁵⁴ Many of these psychological conditions are the same as those suffered by bullying victims and individuals diagnosed with battered child syndrome, including increased anxiety, depression, symptoms of post-traumatic stress disorder, and “learned helplessness.”¹⁵⁵ Learned helplessness in the battered woman syndrome context helps explain why women caught in an abusive relationship find themselves unable to escape from their abusers.¹⁵⁶ The theory is that through the constant, ongoing abuse, the women lose the ability to believe they can successfully escape the situation.¹⁵⁷

Courts have increasingly allowed evidence to support an independent defense based on battered woman syndrome.¹⁵⁸

149. Lenore E.A. Walker, *The Battered Woman Syndrome* 5 (2d ed., Springer Publ'g Co. 2000).

150. *E.g. Provoked: A True Story*, Motion Picture (Sunanda Murali Manohar 2007) (depicting the story of a South Asian woman, chronically abused by her husband, who then used battered woman syndrome as a defense after she killed him).

151. *E.g. Buhrlé v. State*, 627 P.2d 1374, 1378 (Wyo. 1981).

152. Walker, *supra* n. 149, at ch. 10.

153. *State v. Kelly*, 478 A.2d 364, 371 (N.J. 1984).

154. *See generally* Walker, *supra* n. 149 (describing the different psychological effects of repeated spousal abuse).

155. *See id.* at 39–41, 104 (explaining the psychological effects of repeated spousal abuse on women).

156. *Id.* at 117. Essentially, this concept helps answer the often-asked question, “Why doesn’t she just leave?”

157. *Id.* Admittedly, there may be numerous reasons for an individual to remain in an abusive relationship that are not the result of a psychological syndrome. These reasons may include a fear of being alone, a financial inability to separate, or even unwillingness to leave if leaving means giving up custody of children. This Part of this Article focuses on the woman’s inability to leave based on the effects of battered woman syndrome but still recognizes the variety of factors that may result in participation in an ongoing abusive relationship.

158. *E.g. State v. Smullen*, 844 A.2d 429, 449 (Md. 2003) (“Clearly, [battered woman syndrome] has become well-accepted in both the medical and legal communit[ies].”); *State v. Townsend*, 897 A.2d 316, 327 (N.J. 2006) (“It is beyond debate that ‘battered women’s syndrome has gained general acceptance as a scientific doctrine within the professional community.’”) (quoting *State v. Kelly*, 478 A.2d 364, 388 (1984)).

Courts have also permitted expert testimony that explains the syndrome when such evidence is relevant and will help the jury to understand and evaluate the violent act for reasonableness of the use of force and the reasonableness of the degree of force used.¹⁵⁹ In several cases, courts have allowed evidence of battered woman syndrome to justify violent actions taken in self-defense toward an individual who could be shown to have repeatedly abused the defendant.¹⁶⁰ When determining whether to admit such evidence at trial as a defense for homicide, the crucial factor courts look to is whether the defendant can properly assert a self-defense claim when there was no objective threat of imminent danger.¹⁶¹ Given the psychological factors associated with the syndrome, however, and the tendency of women who are severely abused to believe they are facing imminent danger even though, realistically, there is no imminent danger, courts have begun to accept evidence of battered women syndrome in nonconfrontational killings as well.¹⁶²

The lasting psychological effects for those who are victims of chronic bullying, those who are diagnosed with battered child syndrome, and those diagnosed with battered woman syndrome are extremely similar, as is the nature and extent of the abuse under all three scenarios.¹⁶³ An expanded definition of battered child syndrome, which includes individuals bullied by their peers,

159. *E.g. Thomas v. State*, 131 P.3d 348, 355 (Wyo. 2006). Courts allow such testimony only when there is a sufficient factual basis to determine that the woman suffered from battered woman syndrome. *E.g. Fennell v. Goolsby*, 630 F. Supp. 451, 456 (E.D. Pa. 1985). During the testimony, however, the expert may not testify as to whether the defendant suffers from the diagnosis. *E.g. State v. Grecinger*, 569 N.W.2d 189, 197 (Minn. 1997). The purposes of allowing evidence regarding battered woman syndrome are to assist the jury in analyzing a claim of self-defense, for which the evidence may be used to determine: (1) "issue[s] of credibility," (2) "the issue of the defendant's subjective belief in the need to defend herself," (3) "the objective reasonableness of that belief," and (4) "the issue of imperfect self-defense." Erin M. Masson, *Admissibility of Expert or Opinion Evidence of Battered-Woman Syndrome on Issue of Self-Defense*, 58 A.L.R.5th 749, 749 (1998).

160. *E.g. State v. Hundley*, 693 P.2d 475, 478–480 (Kan. 1985); *State v. Osbey*, 710 P.2d 676, 677–681 (Kan. 1985).

161. *State v. Stewart*, 763 P.2d 572, 577 (Kan. 1988).

162. Goldman, *supra* n. 127, at 185 n. 4. The evidence regarding battered woman syndrome helps the jury in understanding the defendant's state of mind. *Id.*

163. Compare *supra* pt. III(A) (discussing the psychological and physical effects of bullying on its victims) with *supra* pt. IV (discussing the effects of parental abuse of children); *supra* nn. 147–157 and accompanying text (discussing the effects of spousal abuse). Battered women and battered children face comparable abuse and resulting repercussions. Sacks, *supra* n. 113, at 366–367.

should be used similarly in cases where a student accused of school violence has been the target of bullying and chooses to raise a claim of self-defense at trial.

In *State v. Janes*,¹⁶⁴ the Washington Supreme Court recognized the current definition of battered child syndrome and ruled that it could be admitted as evidence at trial in relation to assertions of self-defense.¹⁶⁵ Regarding the requirement for a self-defense assertion that the defendant acted with a reasonable belief that he or she was faced with imminent danger, the court in *Janes* found that a hybrid standard—one that combines the subjective and objective standards—should be used to evaluate the defendant's perceptions.¹⁶⁶ As the court explained, the “self-defense evaluation is objective in that the jury is to use this information in determining what a reasonably prudent [person] similarly situated would have done,”¹⁶⁷ yet the subjective standard allows the jury to determine whether the defendant's actions were reasonable “given [his or her] experience of abuse.”¹⁶⁸ Essentially, the explanation offered to justify the use of deadly force is that at the time of the violent act, the child—due to the multitude of psychological effects of chronic abuse—had an honest, but factually incorrect, belief that he or she was facing imminent death or serious bodily harm.¹⁶⁹ At the core of the argument for using evidence of battered child syndrome at trial is the contention that the abuse experienced by the child throughout his or her life, or a significant portion of it, legitimately made the child feel he or she was in extreme danger at the time he or she committed the violent act; thus, use of deadly force against that source of danger was reasonable.¹⁷⁰

164. 850 P.2d 495.

165. *Id.* at 496.

166. *Id.* at 503–506.

167. *Id.* at 504.

168. *Id.* at 505.

169. Goldman, *supra* n. 127, at 192–194. The defendants offer this argument in situations in which the child used deadly force against a parent or guardian who was unarmed or asleep. *See e.g. Janes*, 850 P.2d at 498 (reciting expert testimony offered to explain how an abused child felt threatened by an unarmed abuser in a nonconfrontational setting).

170. Goldman, *supra* n. 127, at 192–194. Goldman argues, however, that allowing testimony of battered child syndrome at trial threatens the traditional principle of self-defense. *Id.* at 208–209. She argues that self-defense is structured to be a limited, narrow circumstance under which taking a human life will not result in criminal liability. *Id.* Goldman emphasizes that this narrow application should not be broadened to encompass nonconfrontational killings, because “given the strong value society places on human life,

One argument in support of denying or limiting battered child syndrome as a defense to parricide is based on the traditional doctrine of self-defense.¹⁷¹ Primarily, the doctrine of self-defense allows a person, who is unlawfully attacked by another and who cannot escape or in some other way avoid harm, to take steps necessary to defend him- or herself.¹⁷² Particular circumstances, however, must exist to justify deadly force, specifically the threat of imminent danger or risk of losing one's life.¹⁷³ A majority of states use an objective standard to evaluate the reasonableness of a person's use of force when exercising self-defense.¹⁷⁴ A jury may consider certain traits of the defendant, but these are usually limited to factors such as physical characteristics and prior acts of the assailant of which the person claiming self-defense is aware.¹⁷⁵ In applying this objective standard, also known as the "reasonableness standard," a jury evaluates actions based on their appropriateness according to a "reasonable person" or "an average member of society."¹⁷⁶ The argument against using evidence of battered child syndrome at trial is that "[a]s a psychological disorder, battered child syndrome is an inherently subjective phenomenon[,] which cannot be included in an objective analysis of the necessity of action and imminence of harm required to support a claim of self-defense."¹⁷⁷

In *State v. MacLennan*,¹⁷⁸ to determine the applicability of expert testimony regarding the effects of battered child syndrome, the Supreme Court of Minnesota analogized to its treatment of battered woman syndrome and held that the two should

... psychological factors should not expand imminence to when [the] parent is sleeping, even if he or she has threatened to beat the child upon awakening." *Id.* at 207. Her concern is that the necessity or reasonableness of such nonconfrontational killings would be based on the credibility of the defendant's testimony regarding his personal perceptions. *Id.*

171. *E.g. id.* at 186 (arguing that allowing battered child syndrome as a defense to parricide undermines the "important societal policies served by a narrow self-defense doctrine").

172. *Id.* at 187.

173. *Id.* at 187-188.

174. John F. Wagner, Jr., *Standard for Determination of Reasonableness of Criminal Defendant's Belief, for Purposes of Self-Defense Claim, That Physical Force is Necessary—Modern Cases*, 73 A.L.R.4th 993, 997-1006 (1989).

175. *Id.* at 1002-1003.

176. Goldman, *supra* n. 127, at 199.

177. *Id.*

178. 702 N.W.2d 219.

receive equal treatment.¹⁷⁹ Thus, it declared that when evidence establishes the relevance of battered child syndrome testimony, the trial court should admit expert testimony regarding battered child syndrome as a justification defense even when the crime was committed in a nonconfrontational setting.¹⁸⁰ The court stated that the testimony's purpose is to provide the jury with a general description of the syndrome and its effects in order to "explain a phenomenon not within the understanding of an ordinary lay person."¹⁸¹ Further, as with battered woman syndrome, it specifically prohibited the experts from "testify[ing] to the ultimate fact that the particular defendant suffers from battered child syndrome."¹⁸²

On the other hand, many courts have refused to allow evidence of battered child syndrome in situations where there is no evidence of actual or threatened harm at the time of the attack.¹⁸³ For example in *Jahnke v. State*, the Supreme Court of Wyoming stated 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."¹⁸⁴ These courts take the view that any self-defense is only an available defense when an "ordinary, intelligent, and prudent person" in the same situation would have reacted in the same manner as the defendant.¹⁸⁵

179. *Id.* at 234.

180. *Id.* at 234–235.

181. *Id.* at 234. The court found, however, that MacLennan had not presented sufficient evidence to establish the relevance required and therefore held that the district court had not erred when it excluded the expert testimony on battered child syndrome. *Id.* at 235.

182. *Id.* at 234. "MacLennan's offer of proof demonstrated a tense relationship between him and his father, but there was little demonstrable evidence of the type of relationship described by MacLennan's own expert that would give rise to battered child syndrome." *Id.* at 235.

183. *E.g. Whipple*, 523 N.E.2d at 1367; *Crabtree*, 805 P.2d at 6; *Jahnke*, 682 P.2d at 997.

184. 682 P.2d at 1007.

185. Baldwin, *supra* n. 124, at 76.

V. PROPOSAL: ALLOWING THE USE OF BATTERED CHILD SYNDROME EVIDENCE AT TRIAL AS APPLIED TO BULLYING VICTIMS WHO LASH OUT IN VIOLENCE

Children suffering from battered child syndrome and victims of chronic bullying experience comparable abuse to that suffered by women diagnosed with battered woman syndrome.¹⁸⁶ With battered child syndrome, the abuse is from parents or guardians; with bullying victims, the abuse is from peers.¹⁸⁷ Despite the difference in the source of the abuse, the nature of the abuse is the same: incessant intentional harm through physical, emotional, and psychological means. Victims of peer harassment and victims of parental abuse also experience similar psychological consequences that affect the way they function in society and react to external stimuli.¹⁸⁸ Battered child syndrome should thus apply to those children who are, essentially, battered by their peers.

Though battered child syndrome initially emerged “as a . . . diagnosis for describing [physical] abuse, the term has come to refer to both the physiological and psychological effects of prolonged child abuse.”¹⁸⁹ Applying the syndrome to victims of bullying is logical and appropriate because these victims present signs of psychological (and often physical) trauma similar to those who have experienced parental, guardian, or spousal abuse.¹⁹⁰ As a consequence of chronic abuse by parents or guardians, victims experience hypervigilance, post-traumatic stress disorder, increased anxiety, and learned helplessness.¹⁹¹ Victims of peer abuse exhibit these same symptoms.¹⁹² Although the abuse comes from different sources, the similarities in the physical and psycho-

186. Compare *supra* pt. III(A) (discussing the psychological and physical effects of bullying on its victims) with *supra* pt. IV (discussing the effects of parental abuse of children); *supra* nn. 147–157 and accompanying text (discussing the effects of spousal abuse).

187. There are situations, however, in which school teachers bully students or when teachers do nothing to prevent or eliminate ongoing bullying. CRC Health Group, *supra* n. 13.

188. *Supra* pt. III(A) (discussing the psychological and physical effects of bullying on its victims); *supra* pt. IV (discussing the effects of parental abuse of children).

189. Baldwin, *supra* n. 124, at 63.

190. See *The ABCs of Bullying*, *supra* n. 53, at 2 (“Some experts believe that bullying should be considered a special form of child abuse—sometimes called ‘peer abuse,’ the cruelty of children to each other.”).

191. Baldwin, *supra* n. 124, at 63–64; Goldman, *supra* n. 127, at 190, 192–193.

192. Horowitz, *supra* n. 76, at 158–159; Jankauskiene et al., *supra* n. 55, at 145–146.

logical consequences of the abuse are significant because they offer justification for expanding battered child syndrome to include peer abuse. The nature and persistence of the abuse, coupled with the victims' inability to escape or avoid it, puts the victims of peer abuse in the same position as victims of abuse by parents or guardians.

In addition to the comparable psychological consequences of parent and peer abuse, victims of both types of abuse at times react in the same way: violent or deadly outbursts. Although parricide constitutes a small minority of homicides, the overwhelming majority of parricides are committed by children who were abused by the very parents they killed.¹⁹³ Similarly, students who have been bullied and harassed in school commit the majority of school shootings.¹⁹⁴ In both situations, the perpetrators of the crimes are children who are seeking to escape abuse from those individuals who have traumatized them, individuals who arguably tortured them for years.

A trial court should admit evidence relating to battered child syndrome in the event that a bully-victim-turned-school-shooter appears as a defendant and asserts a self-defense claim because such evidence can assist the jury in understanding the psychological state of the victim-shooter¹⁹⁵ and also in determining whether the defendant had a reasonable fear of an imminent threat sufficient to satisfy a claim of self-defense. Jurors can benefit from expert testimony regarding the effects of battered child syndrome because not all individuals have necessarily been in situations as abusive as the ones that bullying victims face. By presenting testimony about the effect bullying has on individuals, as well as the

193. Goldman, *supra* n. 127, at 185. Only about two percent of all homicides are the result of parricide. *Id.*

194. *Supra* pt. III(B) (discussing the link between school violence and bullying); Meyer-Adams & Conner, *supra* n. 75, at 212.

195. Perpetrators of school shootings, if they survive the actual shooting, are likely to face sentences as serious as the death penalty if they are convicted at trial. Horowitz, *supra* n. 76, at 134. In one instance after two teenagers were arrested after a school shooting, a national poll revealed that over half of the adult American population believed the shooters deserved the death penalty. *Id.* This Article does not suggest that such a penalty is never appropriate; rather, this Article proposes that the individuals in the jury—those deciding the culpability of each charged individual—should have all relevant information made available to them at trial. Using battered child syndrome evidence at trial is not an excuse for violent behavior but is a syndrome that the jury must consider when judging the reasonableness of a crime and the aggressor's actions during the commission of that crime.

litany of psychological damage from which victims of battered child syndrome suffer, jurors will have all the relevant information they need to make a determination about a self-defense claim that the defendant raises. Specifically, expert testimony will aid the jury in determining whether the defendant was reasonable in apprehending an imminent threat and whether the degree of force used by the defendant was reasonable given that apprehension.¹⁹⁶ Expanding the definition of battered child syndrome to include peer harassment and then using expert evidence of the syndrome at school-violence trials clarifies the connection between bullying and its effects on bullied victims. Current state legislation and anti-bullying policies are ineffective in bridging these gaps.

A possible argument discouraging the use of battered child syndrome evidence at trial is that the lack of specific target victims in school shootings should negate the availability of a self-defense argument for the shooters, because the shooters would, at most, be defending themselves from those specific individuals who abused them but not the general school public as a whole. In school shootings, there do not always appear to be specific targets.¹⁹⁷ Although there is a specific target in parricides, where self-defense is currently an available defense, and there is no specific target in school shootings, the Author contends that the violence carried out by the shooters could still be deemed self-defense based on analysis of the unique nature of the bullying environment. When students are bullied at school—often with numerous witnesses composed of other students, teachers, and administrators—the bullied students may feel targeted or bullied by the whole school rather than specific students.¹⁹⁸ Lashing out

196. Sacks, *supra* n. 113, at 361–364. Sacks argues for allowing expert testimony about the current definition of battered child syndrome at parricide trials. *Id.* Sacks posits that juries are not necessarily qualified to make fully-informed determinations regarding self-defense claims by abused children in parricide trial because jurors may not be able to comprehend the defendant's position. *Id.* Taking Sacks' argument a step further, this Article argues for an extension of the definition of battered child syndrome to include abuse by peers. Expert testimony regarding the expanded definition should then be admitted at the trials of school shooters who choose to raise self-defense claims. This Article does not advocate for specific rulings by juries, but rather, that juries be armed with all relevant information before making a decision.

197. In the Columbine shooting, Klebold and Harris seemed to shoot at students and teachers indiscriminately. Coleman, *supra* n. 15, at 18.

198. Grim, *supra* n. 35, at 157. Students, teachers, or administrators' failure to inter-

at the whole school would mean that the school itself is the specific target. Therefore, defendants could be able to claim self-defense because they were defending themselves against the imminent threat they felt from the school itself.

Despite the concerns regarding use of battered child syndrome as evidence for self-defense at trial, courts have been using the current definition of the syndrome to explain to the jury the psychological repercussions of chronic abuse by parents or guardians and the tendency of children¹⁹⁹ to actually feel a threat of imminent danger when one does not really exist.²⁰⁰ Like evidence of battered woman syndrome, such evidence regarding battered child syndrome is not a self-defense claim,²⁰¹ but it is an aid to the jury in evaluating the reasonableness of the use of force and the extent of force used against abusive parents or guardians.²⁰² If applied to victims of bullying, courts should use this evidence in the same way at trial. This would assist the jury in considering a defendant's self-defense claim by judging the reasonableness of the use of force and the extent of force that the victim-defendant used against the school. The admissibility and availability of such evidence at trial would help the jury to understand the psychological effects of bullying on the victim and the legitimate feelings of incessant oppression from the bullies.²⁰³ Without this information,

vene and stop the bullying could likely aggravate this feeling that the whole school is bullying the student.

199. Sacks, *supra* n. 113, at 372–377 (discussing the significance of cases like *State v. Janes* and the progression of courts' use of battered child syndrome as evidence at trials). Such evidence is also used at trial to explain why battered women commit violent acts against their abusers. Goldman, *supra* n. 127, at 188–189.

200. Sacks, *supra* n. 113, at 372–377; Goldman, *supra* n. 127, at 190.

201. Goldman's concerns regarding the inappropriate expansion of self-defense are addressed by limiting the use of battered child syndrome evidence so as not to support claims of self-defense. Although the jury may still deny or accept the evidence based on the credibility of the expert and the defendant, the evidence simply works to provide mitigating factors for the crime, not a complete exoneration based on self-defense.

202. Goldman, *supra* n. 127, at 190.

203. In the killing of bully Bobby Kent, Martin Puccio and six other defendants were charged with murder and conspiracy to commit murder. *Puccio v. State*, 701 So. 2d 858, 859–860 (Fla. 1997). In *BULLY: A True Story of High School Revenge*, Schutze spends most of the book's second half relaying information about the defendants' trials, without referring back to the extensive abuse these defendants suffered at the hands of Bobby Kent. Schutze, *supra* n. 25. The last paragraph explains how after the trials, the defendants' relatives "shrieked that the sentences were unfair," and at no time did they ever say, "[m]y child is a murderer. I am sick with shame. When I think of what my child did to another human being, I want to die myself." *Id.* at 304. Schutze writes, "[n]o one said that. Not one person." *Id.* Missing from Schutze's account is any consideration of the effects of

the defendants are likely to be characterized solely as school shooters, and the jury may not have the opportunity to understand the extent of the abuse they have endured or the significance of the physical and psychological effects resulting from that abuse. This information will also help the jury see the connection between the actions of the bullies and the reactions of the bullied. This would not categorically create a self-defense claim for defendants, but may create mitigating circumstances for their actions. Furthermore, such testimony could create some accountability for the bullies, which current legislation does not provide.

There is arguably a difference between children being abused by their parents and children being abused by their peers because children are, in most circumstances, unable to avoid or escape interaction with their parents. Nevertheless, considering the number of hours students are required to be in school each day, as well as the often-confining parameters of educational buildings, it is unreasonable to assume students can avoid those who choose to bully them.²⁰⁴ Furthermore, unlike abuse by parents or guardians that usually consists of abuse by one or two individuals, students bullied at school can be targeted by individuals and by groups, and at times become lone outsiders in the school community.²⁰⁵ Teachers and administrators can also fall into the “abusers” group, as they have also been known to ridicule and harass stu-

the years of bullying and abuse the defendants endured. Missing is any recognition that the defendants, although they undoubtedly committed a crime, may have been victims themselves.

204. Students are required to attend school, and homeschooling is not usually a viable option for most parents. Moreover, at schools, the secured environment makes it difficult for victims to escape bullies. See Allison Arieff, Opinionator, *The Class Isn't Always Greener (But It Could Be)*, <http://opinionator.blogs.nytimes.com/2008/05/12/the-class-isnt-always-greener-but-it-could-be/> (May 12, 2008, 9:33 p.m.) (“Throughout the United States, students are installed in institutional, even citadel-like environments early on: they arrive at school in cars or buses ([when] once they might have walked) and step directly into buildings, where they spend [eight] hours in classrooms, interacting with the outdoors only in prescribed spaces and only for allotted amounts of time.”). It would also be unreasonable to expect parents to remove their child(ren) from a school due to bullying; the onus should not be on the victim to make a change, especially one as substantial as changing schools. In addition to suggesting that students avoid bullies, rather than focusing on decreasing the violent tendencies of the bullies themselves, this option sends the message to bullied victims that the abuse will not stop unless they remove themselves from the situation. Similarly, women who are chronically abused by their spouses may be unable to escape, or may not have a safer alternative than their home situation.

205. Blanco, *supra* n. 99, at 157; Grim, *supra* n. 35, at 157.

dents.²⁰⁶ Thus, if everyone appears to be a bully, there is likely no option for avoidance unless the student decides not to go to school.

Allowing expert testimony about battered child syndrome at trials where school shooters are defendants also prevents the defendant's further victimization. Without expanding the applicability of battered child syndrome to bullying victims, and without allowing evidence of such a syndrome at trial, the victim-defendant would be forced to elaborately recount the nature and extent of his experience being bullied. As most bullying cases entail humiliation and traumatic responses in victims, forcing them to re-live their experiences would be detrimental and would likely amplify the bullying's negative psychological effects. Admitting expert testimony does not eliminate the need for evidence establishing extensive bullying, but it does eliminate the need for the defense to argue and establish each psychological consequence individually. Finally, just as applying battered woman syndrome gives legal credibility to the psychological plight of women who suffer spousal abuse, expanding battered child syndrome to apply to bullying victims will give credibility to the identified consequences of condoned or pervasive bullying.

VI. CONCLUSION

Tragedies such as the shooting at Columbine High School and the increasing trend in school violence justify a closer look at how the law addresses school bullying. Despite attempts by state legislatures to combat the bullying epidemic with anti-bullying laws and programs, these measures are ineffective and do not protect against the more severe forms of bullying emerging from the higher capabilities of technology. As society learns to battle the dangers of school bullying, courts should prepare to adequately deal with defendants, such as children who have taken matters into their own hands and acted out in violence. Rather than looking at these school shooters as nothing more than perpetrators of crimes, courts should consider the totality of the circumstances.

206. Blanco relates an incident in which she attempted to confront a high school teacher who referred to the room for mentally disabled students as "the rubber room" and "where the mentals are." Blanco, *supra* n. 99, at 156. In response to her disapproval, the teacher remarked, "No wonder you're such a loser. . . . Maybe Ms. Blanco should consider going to another school. You obviously don't want to fit in at Samuels." *Id.* at 157.

In aiding a jury to understand the repercussions of bullying and the effects that such abuse can have on its victims, courts should allow evidence of battered child syndrome in trials where defendants who are the victims of bullying assert a self-defense claim. Expanding the definition of battered child syndrome to include peer harassment and allowing expert testimony at trial clarifies the connection between bullying and its effects on bullied victims. Expanding the definition also ensures that the jury will hear all relevant evidence to aid it in evaluating the defendant's self-defense claim. Without such evidence, which will often include a deeper story of psychological and physical abuse, a jury may not be able to adequately consider a self-defense claim. This renders the defendant not only a victim of bullying, but also a victim of a restrictive legal system.