

IN THE
District Court of Appeal of Florida
FIRST DISTRICT

No. AN-435

JOYCE BERNICE HAWTHORNE,

v.

STATE OF FLORIDA,

Appellant,

Appellee.

On Appeal from the Circuit Court for Escambia County

**BRIEF OF AMICUS CURIAE
AMERICAN PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF APPELLANT**

INTEREST OF AMICUS CURIAE

The American Psychological Association (APA) is a voluntary nonprofit, scientific, and professional organization with more than 55,000 members. It has been the major association of psychologists in the United States since 1892, and includes the vast majority of psychologists holding doctoral degrees from accredited universities in this country. The APA's purpose, as reflected in its bylaws, is to "advance psychology as a science and profession, and as a means of promoting human welfare by the encouragement of psychology in all branches"

A substantial number of the APA's members are involved in the research on spouse abuse and the battered woman syndrome, topics which, as the court below recognized, have "become increasingly the subject of study by social scientists." July 14, 1982 Order on Defendant's Suggestion of Admissibility of the Testimony of Lenore Walker, Ed. D., at 1 (hereinafter cited as Trial Court Order). Thus, this case raises questions of special concern to psychologists and to the APA, questions on which their expertise and experience can be of use to the Court.

Moreover, the APA is deeply concerned with the prevalence of spouse abuse in this country, and is supporting the study of this subject and the treatment of both batterers and their victims, with the goal of reducing the incidence of abuse. Spouse abuse has been a subject of discussion at APA conventions and conferences and in APA publications.

Amicus hopes to provide this Court with a broad-based, empirically oriented perspective in order to help the Court resolve the complex issue presented by this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In support of her claim of self-defense, appellant sought to introduce at trial the expert testimony of Dr. Lenore E. Walker, a clinical psychologist involved in the study of battered women. Dr. Walker would have explained the "battered woman syndrome" to the jury and would have expressed the opinion that, because appellant suffered from that syndrome, she reasonably believed it was necessary for her to use deadly force against her husband in order to prevent imminent death or greatly bodily harm to herself and her children.

The term "battered woman syndrome" describes a pattern of physical—and often psychological—abuse inflicted on a woman by her spouse or spouse-equivalent. An understanding of the syndrome helps to dispel popular myths about abused women, including the beliefs that such women are masochistic and enjoy the beatings and that they are physically and emotionally free to leave the abusive relationship whenever they choose.

A battered woman stays with the batterer for a variety of reasons, experts in the field believe. She often has very low self-esteem and feels powerless to alter her situation. She may be financially dependent on the batterer, she may feel partly responsible for the batterer's violence, she may believe that her children need a father, and she may fear reprisal from the batterer if she leaves. Often the woman does not reach out for help from family, friends, or the police because she is ashamed of her status as a battered woman and because she has been isolated from these sources of assistance by the batterer. Even when the woman seeks help from others, they are usually reluctant to intervene and often encourage her to return home, thereby confirming her belief that the fault is hers or that relief is not available.

Furthermore, the battered woman is encouraged to stay with the abuser by his pleas for forgiveness and loving behavior, which follow periods of abuse and which reaffirm her hopes that he will reform. This stage of reconciliation follows two prior stages in the cycle of abuse: a tension-building stage, characterized by minor abuse, and an acute battering stage, characterized by uncontrollable explosions of brutal violence. The battered woman's inability to control this cycle of violence further contributes to her feelings of helplessness. As a result of the syndrome, the battered woman lives with constant fear, coupled with a perceived inability to escape. Eventually she comes to believe that her only options are enduring the abuse, striking back, or suicide.

The trial court refused to admit expert testimony to this effect, and, following her conviction for second-degree murder, appellant appealed that ruling to this Court. The Court agreed with appellant that the subject matter of Dr. Walker's testimony was beyond the comprehension of the average jury, but remanded for a determination of the adequacy of Dr. Walker's qualifications and the extent to which the state of scientific knowledge in the field permits an expert to advance a reasonable opinion. *See* 408 So. 2d 801, 805-06 (Fla. 1st DCA), *cert. denied*, 415 So. 2d 1361 (Fla. 1982).¹

On remand, the trial court concluded that research involving battered women was "relatively new" and that "the depth of study in this field has not yet reached the point where an expert witness can give testimony with any degree of assurance that the state of the art will support an expert opinion." Trial Court Order at 1. The court also believed that the methodology used by Dr. Walker would "not permit her to draw any conclusions from the facts of this case." *Id.*

Amicus maintains that the state of scientific knowledge is sufficient to permit a qualified expert to form a reasonable opinion whether a defendant was suffering from the battered woman syn-

¹ The Court further ruled that admission of expert testimony on the battered woman syndrome would not violate the Florida courts' practice of excluding testimony regarding the mental state of a defendant who had failed to plead not guilty by reason of insanity. *See Tremain v. State*, 336 So. 2d 705 (Fla. 4th DCA 1976), *cert. denied*, 348 So. 2d 954 (Fla. 1977). The Court reasoned that the purpose of expert testimony in a case such as this is to corroborate the reasonableness of the defendant's belief that deadly force was necessary to prevent death or great bodily harm to herself and her children, in support of her claim of self-defense; the testimony was not intended, as it was in *Tremain*, to support a defense based on a defective mental state. *See* 408 So. 2d at 806-07.

drome, and whether, as a result of the syndrome, she reasonably believed it was necessary to use deadly force to protect herself or her children from imminent harm. The relevant caselaw, the scientific literature, the law review commentary, and the number of researchers and scientific materials in the field all indicate that the methodology employed by those studying battered women is generally accepted by the relevant scientific community and that the field is well-developed, with a sound psychological basis. The APA concludes, therefore, that the expert testimony of a qualified psychologist should be admitted in cases such as this.

ARGUMENT

I. THE REQUIREMENT THAT THE STATE OF SCIENTIFIC KNOWLEDGE SUPPORT A REASONABLE EXPERT OPINION CALLS FOR PROOF THAT THE EXPERT'S METHODOLOGY IS GENERALLY ACCEPTED BY THE RELEVANT SCIENTIFIC COMMUNITY; IT DOES NOT REQUIRE PROOF THAT EXPERT OPINION IS UNANIMOUS OR THAT THE EXPERT'S METHODOLOGY IS INFALLIBLE

A. The General Standards for Admissibility of Expert Testimony

In this Court's previous discussion of the issue presented by this case, the Court suggested that the appropriate test governing the admissibility of Dr. Walker's testimony is set forth in *Dyas v. United States*, 376 A.2d 827 (D.C. App.), *cert. denied*, 434 U.S. 973 (1977):

"(1) the subject matter 'must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman'; (2) 'the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth'; and (3) expert testimony is inadmissible if 'the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.'" *Id.* at 832 (quoting MCCORMICK ON EVIDENCE, § 13, at 29-31 (E. McCleary 2d ed. 1972)) (emphasis deleted).

With regard to the first criterion, this Court held—properly, in *amicus* view—that the subject matter of Dr. Walker's testimony was beyond the ken of the average juror. *See* 408 So. 2d at 806. A lay person confronted with the facts of this case would instinctively wonder why appellant endured the serious abuse inflicted on her by her husband, why she did not leave him, and why she then thought it necessary to use deadly force to prevent death or great bodily

harm to herself and her children at a time when he was not actually battering them. An expert in the study of battered women could suggest answers to those questions by explaining the myriad factors influencing an abused woman not to leave home, the effects of battering on the victim's emotions and perceptions, and her reasonable fear of future violence by the batterer.

Appellant's brief argues that the evidence before the trial court sufficiently established Dr. Walker's qualifications to satisfy the second criterion outlined in *Dyas*. *Amicus* therefore does not address that issue.

This brief focuses instead on the final criterion—the state of scientific knowledge in the field. *Amicus* maintains that this criterion is satisfied and that the knowledge in this field is more than adequate to support a reasonable expert opinion on the battered woman syndrome.

B. The Standards for Evaluating the State of Scientific Knowledge

In judging the adequacy of scientific knowledge for purposes of determining whether it will support a reasonable expert opinion, the courts of this State inquire whether the "methods" or "techniques" used by the expert whose testimony is offered have received general acceptance in the relevant scientific community. As this Court noted in *Reese v. Naylor*, 222 So. 2d 487, 490 (Fla. 1st DCA 1969), "a clinical psychologist once qualified as an expert witness by reason of education, training, and experience is competent to testify as to his diagnosis of a person's mental condition based on the use of the devices and techniques ordinarily resorted to by such practitioners." See also *Jent v. State*, 408 So. 2d 1024, 1029 (Fla. 1981) (per curiam); *Coppolino v. State*, 223 So. 2d 68, 70 (Fla. 2d DCA 1968), appeal dismissed, 234 So. 2d 120 (Fla. 1969), cert. denied, 399 U.S. 927 (1970).² In determining whether an expert's techniques have

² For similar rulings from other jurisdictions, see *United States v. Brown*, 557 F.2d 541, 556-57 (6th Cir. 1977); *United States v. Alexander*, 526 F.2d 161, 164 (8th Cir. 1975); *United States v. Addison*, 498 F.2d 741, 743, 745 (D.C. Cir. 1974); *United States v. Stifel*, 433 F.2d 431, 438 (6th Cir. 1970), cert. denied, 401 U.S. 994 (1971); *United States v. Williams*, 443 F.Supp. 269, 273 (S.D.N.Y. 1977), aff'd, 583 F.2d 1194 (2d Cir. 1978), cert. denied, 439 U.S. 1117 (1979); *People v. Law*, 40 Cal. App. 3d 69, 84, 114 Cal. Rptr. 708, 718 (1974); *People v. Williams*, 164 Cal. App. 2d Supp. 858, 860, 331 P.2d 251, 253 (1958); *Ibn-Tamas v. United States*, 407 A.2d 626, 638 (D.C. App. 1979); *Moore v. United States*, 374 A.2d 299, 301 n.4 (D.C. App. 1977); *State v. Coolidge*, 109 N.H. 403, 419-20, 260 A.2d 547, 561 (1969), rev'd on other grounds, 403 U.S. 443 (1971); *Reed v. State*, 283 Md. 374, 380-82, 391 A.2d 364, 367-68 (1978); *State v. Brown*, 91 N.M. 320, 323, 573 P.2d 675, 678 (Ct. App. 1977).

been generally accepted, the courts often focus on the reliability of those techniques. Thus, the court observed in *Coppolino v. State* that the primary question to be resolved was whether “the scientific tests performed by [the expert were] so unreliable and scientifically unacceptable that their admission into evidence was error.” 223 So. 2d at 70. See also *Jent v. State*, 408 So. 2d at 1029; *Worley v. State*, 263 So. 2d 613, 614 (Fla. 4th DCA 1972) (“Florida courts have long enjoyed considerable discretion in the admittance of novel or experimental evidence, if they feel certain standards of scientific reliability have been attained.”).³ Consistent with these precedents, this Court ordered that on remand the trial court determine “the extent to which [Dr. Walker’s] methodology is generally accepted indicating that the subject matter can support a reasonable expert opinion.” 408 So. 2d at 806 (emphasis added).⁴

Courts have relied on several guidelines in determining whether an expert’s methodology has been generally accepted by the relevant scientific community. Aside from expert testimony on this question produced by the parties in the particular case, one important source of information is the number of cases in which similar expert testimony was admitted. See *Kaminski v. State*, 63 So. 2d 339, 340 (Fla. 1953) (opinion on rehearing); *Worley v. State*, 263 So. 2d at 614.⁵

³ For similar rulings from other jurisdictions, see *United States v. Brown*, 557 F.2d at 556; *United States v. Alexander*, 526 F.2d at 163; *United States v. Franks*, 511 F.2d 25, 33 & n.12 (6th Cir.), cert. denied, 422 U.S. 1042 (1975); *United States v. Hearst*, 412 F. Supp. 893, 895 (N.D. Cal. 1976), aff’d, 563 F.2d 1331 (9th Cir. 1977), cert. denied, 435 U.S. 1000 (1978); *People v. Williams*, 164 Cal. App. 2d Supp. at 862, 331 P.2d at 253-54; *Brown v. United States*, 384 A.2d 647, 650 (D.C. App. 1978); *Reed v. State*, 283 Md. at 380-82, 391 A.2d at 367-68; *State v. Durfee*, 322 N.W.2d 778, 784 (Minn. 1982); *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981); *Commonwealth v. Walzack*, 468 Pa. 210, 218-20, 360 A.2d 914, 918-19 (1976).

⁴ A few courts have focused instead—or additionally—on the general acceptance of the theory underlying the expert’s technique. See *United States v. Alexander*, 526 F.2d at 163 n.3; *United States v. Baller*, 519 F.2d 463, 465 (4th Cir.), cert. denied, 423 U.S. 1019 (1975); *United States v. Brawner*, 471 F.2d 969, 994 (D.C. Cir. 1972) (en banc); *United States v. MacDonald*, 485 F. Supp. 1087, 1095 (E.D.N.C. 1979); *Brown v. United States*, 384 A.2d at 648; *State v. Coolidge*, 109 N.H. at 419, 260 A.2d at 560; *State v. Mulder*, 29 Wash. App. 513, 629 P.2d 462, 463 (1981).

⁵ See also *United States v. Bowers*, 660 F.2d 527, 529 (5th Cir. 1981); *United States v. Brown*, 557 F.2d at 557; *United States v. Baller*, 519 F.2d at 465-66; *United States v. Franks*, 511 F.2d at 33; *United States v. Stifel*, 433 F.2d at 438; *United States v. MacDonald*, 485 F. Supp. at 1095; *United States v. Williams*, 443 F. Supp. at 270-71; *United States v. Hearst*, 412 F. Supp. at 895; *Brown v. United States*, 384 A.2d at 650; *State v. Williams*, 388 A.2d 500, 502

Additional indicators useful in determining whether an expert's methodology has received general acceptance are scientific journals and other materials written by authorities in the field,⁶ law review commentary,⁷ the number of people involved in the field,⁸ the number of scientific papers and articles written on the subject,⁹ any relevant legislation,¹⁰ and the use of the expert's methodology in other areas.¹¹

Courts have looked to these guidelines only for proof that the expert's methodology is generally accepted by the relevant scientific community. A proponent of expert testimony need not show unanimity of expert opinion on the reliability of the expert's techniques.¹²

Similarly, proof that the results of the expert's tests are certain or infallible is not a prerequisite to admission of the expert's testimony. As the court explained in *Holland v. State*, 359 So. 2d 28, 29 (Fla. 3d DCA 1978), *cert. denied*, 367 So. 2d 1124 (Fla. 1979), "an opinion of a medical expert usually involves probability to some degree. To be admissible, a medical expert's opinion . . . may be so based, and is not required to be expressed as a certainty."¹³

(Me. 1978); *State v. Wilkerson*, 295 N.C. 559, 570-71, 247 S.E.2d 905, 912 (1978); *Commonwealth v. Walzack*, 468 Pa. at 212, 360 A.2d at 915; *Commonwealth v. Jones*, 459 Pa. 62, 68-69, 327 A.2d 10, 14 (1974); *Commonwealth v. McCusker*, 448 Pa. 382, 384, 292 A.2d 286, 287 (1972); *State v. Best*, 89 S.D. 227, 245-46, 232 N.W.2d 447, 458 (1975).

⁶ See *United States v. Brown*, 557 F.2d at 557; *United States v. MacDonald*, 485 F. Supp. at 1095; *People v. Palmer*, 80 Cal. App. 3d 239, 254, 245 Cal. Rptr. 466, 473 (1978); *Reed v. State*, 283 Md. at 380, 391 A.2d at 367.

⁷ See *Reed v. State*, 283 Md. at 380, 391 A.2d at 367; *Commonwealth v. McCusker*, 448 Pa. at 384, 292 A.2d at 287; Giannelli, *The Admissibility of Novel Scientific Evidence: Frye v. United States, A Half-Century Later*, 80 COLUM. L. REV. 1197, 1217 (1980).

⁸ See *United States v. Stifel*, 433 F.2d at 440.

⁹ See *United States v. Stifel*, 433 F.2d at 440.

¹⁰ See *People v. Williams*, 164 Cal. App. 2d Supp. at 862, 331 P.2d at 254; *State v. Loss*, 295 Minn. 271, 279, 204 N.W.2d 404, 408 (1973); *State v. Best*, 89 S.D. at 245-46, 232 N.W.2d at 458.

¹¹ See *United States v. Stifel*, 433 F.2d at 441; *Medley v. United States*, 155 F.2d 857, 860 (D.C. Cir.), *cert. denied*, 328 U.S. 873 (1946).

¹² See *United States v. Brown*, 557 F.2d at 556; *United States v. Baller*, 519 F.2d at 466; *United States v. Franks*, 511 F.2d at 33; *United States v. Stifel*, 433 F.2d at 438; *State v. Olivas*, 77 Ariz. 118, 119, 267 P.2d 893, 894 (1954); *People v. Bobczyk*, 343 Ill. App. 504, 509-10, 99 N.E.2d 567, 570 (1951); *State v. Coolidge*, 109 N.H. at 422-23, 260 A.2d at 561.

¹³ See also *Land v. State*, 156 So. 2d 8, 11 (Fla. 1963), *cert. denied*, 377 U.S. 959 (1964); *Jent v. State*, 408 So. 2d 1024, 1029 (Fla. 1981) (per curiam); *United States v. Brown*, 557 F.2d at 556; *United States v. Alexander*, 526 F.2d

Finally, expert opinion is admissible even if the subject matter of the expert's testimony, or the techniques used, are relatively new. As the Sixth Circuit observed in *United States v. Stifel*, "neither newness nor lack of absolute certainty in a test suffices to render it inadmissible in court. Every useful new development must have its first day in court. And court records are full of the conflicting opinions of doctors, engineers and accountants, to name just a few of the legions of expert witnesses." 433 F.2d 431, 438 (6th Cir. 1970), *cert. denied*, 401 U.S. 994 (1971). Thus, in *Coppolino v. State*, the court concluded that the results of medical tests to determine the presence of succinylcholine chloride in the body of a suspected murder victim were sufficiently reliable to be admitted as expert testimony—even though those tests were "novel and devised specifically for th[at] case," 223 So. 2d at 75 (Mann, J., concurring specially), and there was "a dearth of literature and specific case law to guide trial and appellate courts," 223 So. 2d at 70. Similarly, in *Worley v. State*, see 263 So. 2d at 614, the court admitted expert testimony on the results of voiceprints, over the objection of the dissenting judge that the "technique is still in its infancy and . . . experiments are still in progress" *Id.* at 618 (White, J., dissenting).

Although the nonunanimity of expert opinion on the reliability of the expert's methodology, the fallibility of the expert's tests, and the newness of the expert's techniques do not foreclose the admission of that expert's testimony, these considerations do affect the weight of the witness' testimony.¹⁴ Similarly, disagreements about the specific procedures used by the expert witness,¹⁵ the accuracy of the ex-

at 163 n.3; *United States v. Baller*, 519 F.2d at 466; *United States v. Stifel*, 433 F.2d at 438; *United States v. Williams*, 443 F. Supp. at 272; *State v. Coolidge*, 109 N.H. at 419-20, 422-23, 260 A.2d at 559, 561; *People v. McNeely*, 77 A.D.2d 205, 211, 433 N.Y.S.2d 293, 298 (1980).

¹⁴ See *Holland v. State*, 359 So. 2d 28, 29 (Fla. 3d DCA 1978), *cert. denied*, 367 So. 2d 1124 (Fla. 1979); *Coppolino v. State*, 223 So. 2d 68, 75 (Fla. 2d DCA 1968) (Mann, J., concurring specially), *appeal dismissed*, 234 So. 2d 120 (Fla. 1969), *cert. denied*, 399 U.S. 927 (1970); *United States v. Baller*, 519 F.2d at 466-67; *Worthington v. State*, — Ind. App. —, —, 409 N.E.2d 1261, 1275 (1980); *State v. Williams*, 338 A.2d at 505.

¹⁵ See *Vaillancourt v. State*, 288 So. 2d 216, 218 (Fla. 1974) (per curiam); *Land v. State*, 156 So. 2d at 11; *Eierle v. State*, 358 So. 2d 1160, 1161 (Fla. 3d DCA 1978); *United States v. Taylor*, 562 F.2d 572, 575 (8th Cir.), *cert. denied*, 434 U.S. 988 (1977); *United States v. Stifel*, 433 F.2d at 438; *People v. Platter*, 89 Ill. App. 3d 803, 818, 412 N.E.2d 181, 192 (1980); *Worthington v. State*, — Ind. App. at —, 409 N.E.2d at 1275; *State v. Coolidge*, 109 N.H. at 417-20, 422-23, 260 A.2d at 558-59, 561.

pert's conclusions or results,¹⁶ and the witness' potential bias¹⁷ affect the weight to be accorded the expert's testimony. Resolution of such disputes is left to the adversary process: the opposing party is given an opportunity to challenge and rebut the expert's testimony by cross-examining the expert and presenting its own expert or other testimony, and the jury is instructed that it is not bound by the expert's testimony but is to give it only the weight to which the jury feels that testimony is entitled.

C. The Traditional Acceptance of Expert Psychological Testimony

The practice of admitting an expert's testimony and leaving disputes about the precise reliability and infallibility of the expert's techniques and results to the jury is a sensible one. In any field of science, disagreements among experts are expected, research never yields absolutely certain results, questions are left unanswered, and additional research remains to be done. These traits are equally characteristic of the mental health field. As the United States Supreme Court observed in *Addington v. Texas*, 441 U.S. 418, 430 (1979), "[t]he subtleties and nuances of psychiatric diagnosis render certainties virtually beyond reach in most situations. . . . Psychiatric diagnosis . . . is to a large extent based on medical 'impressions' drawn from subjective analysis and filtered through the experience of the diagnostician. This process often makes it very difficult for the expert physician to offer definite conclusions about any particular patient."

Because the subject matter of clinical psychological research often is not visible, and the researcher must rely on inferences from speech and nonverbal communications, as well as from overt behavior, the subject matter will never be exact in the sense that it is "precise, quantitative, experimentally verified, and with substantially unanimous agreement of all behavioral scientists as to observation and theory." Diamond & Louisell, *The Psychiatrist as an Expert Witness: Some Ruminations and Speculations*, 63 MICH. L. REV. 1335, 1341, 1342 (1965). Therefore, these commentators instructed, "[t]he law must recognize that the usefulness of psychiatric evidence is not altered by the exactness or infallibility of the witness' science.

¹⁶ See *Seaboard Coast Line R.R. Co. v. Hill*, 250 So. 2d 311, 315 (Fla. 4th DCA 1971); *United States v. Stifel*, 433 F.2d at 438.

¹⁷ See *People v. Platter*, 89 Ill. App. 3d at 818, 412 N.E.2d at 192.

Rather, it is measured by the probability that what [the expert] has to say offers more information and better comprehension of the human behavior which the law wishes to understand." *Id.* at 1342.¹⁸

Despite this lack of exactitude, clinical psychology and psychiatry have become recognized and accepted fields of study capable of supporting expert opinion. *See, e.g., Commonwealth v. McCusker*, 448 Pa. 382, 387, 392, 292 A.2d 286, 289, 291 (1972). Thus, the Colorado Supreme Court concluded in *Towns v. Anderson* that "[w]hile psychiatry and psychology may not be exact sciences, they can now provide sufficiently reliable information . . . to provide a jury with an intelligent basis for evaluating a particular claim." 195 Colo. 517, 519, 579 P.2d 1163, 1164 (1978) (discussing plaintiff's claim that defendant negligently inflicted emotional distress which resulted in serious physical manifestations). *See also Hughes v. Mathews*, 567 F.2d 1250, 1258 (7th Cir. 1978); *Commonwealth v. Walzack*, 468 Pa. 210, 218-20, 360 A.2d 914, 918-19 (1976).

Recognizing the value of expert testimony in this field, courts have accepted the expert testimony of psychologists and psychiatrists on innumerable issues, such as whether an accused was insane at the time of the crime;¹⁹ the defendant's competence to stand trial;²⁰ whether a defendant acted in the heat of passion when committing a homicide;²¹ the impact of certain environmental factors on an individual's perceptions and reactions;²² the nature and severity of a person's mental condition;²³ the effects of LSD, in support of a de-

¹⁸ *See also Youngberg v. Romeo*, — U.S. —, —, 102 S. Ct. 2452, 2461 (1982); *O'Connor v. Donaldson*, 422 U.S. 563, 579, 584, 587 (1975) (Burger, C.J., concurring); *Towns v. Anderson*, 195 Colo. 517, 519, 579 P.2d 1163, 1164 (1978); *Reed v. State*, 283 Md. 374, 397-98, 391 A.2d 364, 376 (1978); *Commonwealth v. Walzack*, 468 Pa. 210, 218-19, 360 A.2d 914, 918 (1976).

¹⁹ *See Jones v. State*, 289 So. 2d 725 (Fla. 1974); *United States v. Brawner*, 471 F.2d 969, 994, 1002, 1006-07 (D.C. Cir. 1972) (en banc).

²⁰ *See Blunt v. United States*, 389 F.2d 545 (D.C. Cir. 1967); *Colbert v. State*, 18 Md. App. 632, 308 A.2d 726 (1973); *People v. Crawford*, 66 Mich. App. 581, 239 N.W.2d 670 (1976).

²¹ *See People v. Berry*, 18 Cal. 3d 509, 514, 556 P.2d 777, 779-80, 134 Cal. Rptr. 415, 418 (1976); *People v. Borchers*, 50 Cal. 2d 321, 323-29, 325 P.2d 97, 102 (1958); *Commonwealth v. McCusker*, 448 Pa. 382, 292 A.2d 286 (1972).

²² *See Seaboard Coast Line R.R. Co. v. Hill*, 250 So. 2d 311, 315 (Fla. 4th DCA 1971).

²³ *See Reese v. Naylor*, 222 So. 2d 487, 490 (Fla. 1st DCA 1969).

fendant's claim that he could not form the necessary specific intent because he was under the influence of LSD;²⁴ the effects that kidnapping, prolonged incarceration, and psychological and physical abuse may have had on a defendant's mental state at the time of a robbery, in support of her claims of coercion and duress;²⁵ the reliability of eyewitness identification testimony;²⁶ the best interests of a child, in determining with which custodian the child should be placed;²⁷ whether an individual was suffering from a mental condition that rendered him permanently disabled;²⁸ whether an accused was mentally capable of making a detailed written confession;²⁹ a defendant's ability to form the specific intent required for conviction of first-degree murder;³⁰ a victim's mental capability and probability of improvement;³¹ a defendant's unique susceptibility to inducement, in support of his claim of entrapment;³² and a defendant's subjective belief that he was in imminent danger of death or serious bodily injury, in support of his claim of self-defense.³³

The traditional acceptance by the courts, including those of this State, of expert psychological testimony regarding these various issues argues in favor of similar treatment in cases like this. As discussed in Point II.B, *infra*, the expert psychological testimony appellant sought to admit was based on the same techniques—and even

²⁴ See *Fouts v. State*, 374 So. 2d 22, 27-28 (Fla. 2d DCA 1979).

²⁵ See *United States v. Hearst*, 412 F. Supp. 889 (N.D. Cal. 1976).

²⁶ See *State v. Chapple*, No. 5054 (Ariz. S. Ct. Jan. 11, 1983).

²⁷ See *Painter v. Bannister*, 258 Iowa 1390, 1397-1400, 140 N.W.2d 152, 156-58, *cert. denied*, 385 U.S. 949 (1966).

²⁸ See *Hidden v. Mutual Life Ins. Co.*, 217 F.2d 818 (4th Cir. 1954); *Bilbrey v. Industrial Comm'n*, 27 Ariz. App. 473, 556 P.2d 27 (1976).

²⁹ See *Commonwealth v. Jones*, 459 Pa. 62, 327 A.2d 10 (1974).

³⁰ See *Hughes v. Mathews*, 567 F.2d 1250 (7th Cir. 1978); *Commonwealth v. Walzack*, 468 Pa. 210, 360 A.2d 914 (1976).

³¹ See *United States v. Taylor*, 562 F.2d 572, 575 (8th Cir.), *cert. denied*, 434 U.S. 988 (1977).

³² See *United States v. Hill*, 655 F.2d 512 (3d Cir. 1981); *but see Tremain v. State*, 336 So. 2d 705 (Fla. 4th DCA 1976) (refusing to admit similar testimony on the ground, not relevant here, that evidence of defendant's mental state is not admissible unless sanity is at issue), *cert. denied*, 348 So. 2d 954 (Fla. 1977).

³³ See *State v. Brown*, 91 N.M. 320, 573 P.2d 675 (Ct. App. 1977) (testimony that minority groups, especially blacks, perceive the police as a threat to them); *State v. Ellis*, 89 N.M. 194, 548 P.2d 1212 (Ct. App. 1976); *Commonwealth v. Light*, 458 Pa. 328, 326 A.2d 188 (1974).

used many of the same theories—relied upon by psychologists generally, and by psychologists whose expert testimony has been admitted in cases like those cited above. It would be anomalous to admit expert psychological testimony in all these other areas but reject such testimony in support of a battered woman's self-defense claim. See *Hughes v. Mathews*, 567 F.2d at 1257; *Commonwealth v. Walzack*, 468 Pa. at 219 & n.9, 360 A.2d at 918 & n.9; *Commonwealth v. McCusker*, 448 Pa. at 392, 292 A.2d at 191.

II. THE METHODOLOGY USED BY PSYCHOLOGISTS STUDYING BATTERED WOMEN IS GENERALLY ACCEPTED BY THE RELEVANT SCIENTIFIC COMMUNITY; ACCORDINGLY, THE STATE OF SCIENTIFIC KNOWLEDGE SUPPORTS A REASONABLE EXPERT OPINION ON THE BATTERED WOMAN SYNDROME

Application of the principles outlined in Point I.B, *supra*, to the study of battered women demonstrates the adequacy of the state of scientific knowledge in that field and the appropriateness of admitting the testimony of qualified experts on the battered woman syndrome. The guidelines on which courts have traditionally relied in determining whether an expert's methodology has received general acceptance in the relevant scientific community—the relevant caselaw, the scientific literature, the law review commentary, and the number of researchers and scientific materials in the field—support admission of the testimony of qualified experts involved in the study of battered women.

A. The Relevant Caselaw

The overwhelming majority of courts confronted with the question of the admissibility of expert testimony on the battered woman syndrome have accepted such testimony. In *State v. Anaya*, 438 A.2d 892 (Me. 1981), for example, the Supreme Judicial Court of Maine ruled that a psychologist should have been permitted to testify about the battered woman syndrome in support of a defendant's theory of self-defense or provocation—to “describe[] *his profession's analysis* of the behavior and emotional patterns of women suffering from repeated physical abuse inflicted by their husbands or lovers,” which included the psychologist's characterization of abuse as a three-stage cyclical process; to discuss “the psychological and environmental factors which contribute to the individual male's disposition towards abuse”; and to testify “that abused women often continue to live with their abusers even though beatings continue, and that a certain

substrata of abused women perceive suicide and/or homicide to be the only solutions to their problems." *Id.* at 893, 894 (emphasis added).

Similarly, in *Smith v. State*, 247 Ga. 612, 277 S.E.2d 678 (1981), the Georgia Supreme Court held that the expert testimony of a clinical psychologist should have been admitted in a case similar to the one before this Court. The expert in *Smith* was to testify "that it is not unusual for a battered woman who has been abused over a long period of time to remain in such a situation . . .," "that a battered woman typically believes that the man is not going to repeat the abuse when he promises not to do it again, that the battered woman becomes increasingly afraid for her own well-being, . . . that the primary emotion of a battered woman is fear," and that "in [the expert's] professional opinion the defendant fell within the battered woman profile and had the typical battered woman's syndrome." *Id.* at 614, 277 S.E.2d at 680. See also *State v. Baker*, 120 N.H. 773, 775-76, 424 A.2d 171, 172-73 (1980) (admitting testimony of prosecution's expert on the battered woman syndrome to rebut defendant's contention that he abused his wife because he was insane); *Morrison v. Bradley*, — Colo. App. —, —, 622 P.2d 81, 83 (1980) (admitting, in wrongful death action, expert testimony on a battered woman's emotional state and the causes of her condition, but not on whether the abuser was conscious of his actions).

In fact, the admissibility of expert testimony on the battered woman syndrome has been so clear to most courts that they have routinely admitted it without even issuing an opinion—including one federal court and state courts in Alaska, California, Colorado, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nevada, New Jersey, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, Wisconsin, and Wyoming.³⁴ These numerous examples

³⁴ See *United States v. Player*, No. 82-0422-01-N (S.D. Cal. 1982); *State v. Alayonbi* (Alaska 1980); *State v. Moore* (Cal. 1982); *State v. Franklin*, No. 14701 (Solana Cty. Ct., Cal. 1981); *State v. Harwood* (Cal. 1981); *State v. Churchill*, No. 104837 (San Francisco Cty. Ct., Cal. 1981); *State v. Gilbert*, No. 27315 (Sutter Cty. Ct., Cal. 1981); *State v. Peters* (Cal. 1978); *State v. Rowe* (Colo. 1983); *State v. Ham* (Colo. 1982); *State v. Bradley* (Adams Cty. Ct., Colo. 1981); *State v. Zamora* (Colo. 1981); *State v. Colfield* (Colo. 1981); *State v. Archuletta* (Colo. 1979); *State v. Noble*, No. 78-CR-1-0045-10 (Colo. Dist. Ct. 1978); *State v. Robinson* (Colo. 1978); *State v. Glenn* (Ind. 1979); *State v. Childers*, No. 7-C-78-69 (Benton Cty. Cir. Ct., Ind.); *State v. Conyers*, No. 5625 (Boone Cty. Dist. Ct., Iowa); *State v. Davis*, No. 79-CR-116 (Osage Cty. Ct., Kan. 1980); *State v. Smith* (Otsego Cty. Cir. Ct., Mich.); *State v. Brinker*, No. 30842 (Ramsey Cty. Dist. Ct., Minn.); *State v. Grieg* (Mont. 1977); *State v. Avatari*, No. C53047

where expert testimony regarding the battered woman syndrome has been admitted furnish persuasive evidence that the methodology used by such experts has received general acceptance.⁸⁵

Although a few courts have ruled to the contrary, those cases are distinguishable. Moreover, in *amicus*' view, this Court should decline to follow the results reached by those courts, none of which analyzed in detail the question whether the methodology used by experts studying battered women is generally accepted by the relevant scientific community. In *Ibn-Tamas v. United States*, No. 79-1278 (D.C. App. Jan. 17, 1983), for example, in a one-paragraph opinion, and with no further analysis or explanation, the District of Columbia Court of Appeals affirmed the trial court's finding that the expert's methodology was not generally accepted on the ground that it was not "manifest error." Slip op. at 2.

In *State v. Thomas*, 66 Ohio St. 2d 518, 423 N.E.2d 137 (1981), the Ohio Supreme Court excluded a psychiatric social worker's testimony on four grounds, only one of which is even arguably applicable to this case. And in concluding that the defendant had not shown general acceptance of the expert's methodology, the court neither indicated what methodology the expert had used nor cited any evidence suggesting that that methodology had not been generally accepted. Moreover, in that case, unlike this one, the proffered expert testimony was not "an unequivocal expert opinion, based on personal counseling with the defendant, . . . that the defendant was a 'classic case' of the battered wife and did in fact perceive herself to be in imminent danger at the time of the shooting." *Id.* at 521 n.3, 423 N.E.2d at 139-40 n.3.

(Clark Cty. Dist. Ct., Nev. 1983); *State v. Hooker*, No. 157-80 (N.J. Super. Ct. 1980); *State v. Gibbs* (Middlesex Cty. Super. Ct., N.J.); *State v. Barker* (Or. 1982); *State v. Stark* (Or. 1982); *State v. Norris* (Or. 1979); *State v. Groves* (Pa. 1982); *State v. Hutto*, No. 79-GS-10-1453 (Charleston Cty. Ct. of General Sessions, S.C.); *State v. Sandiford* (Tex. 1981); *State v. Barson* (Houston Cty. Dist. Ct., Tex.); *State v. Jenkins* (Va. 1980); *State v. Curry*, No. 80-1-01904-6 (King Cty. Super. Ct., Wash. 1980); *State v. Avritt*, No. 87799 (King Cty. Super. Ct., Wash.); *State v. Allen*, No. 78-FLO-269 (Dunn Cty. Cir. Ct., Wis. 1978); *State v. Austin*, No. 7828 (Natrona Cty. Dist. Ct., Wyo. 1979).

⁸⁵ In two other cases, the courts did not rule out the admissibility of expert testimony on the battered woman syndrome in an appropriate case, but excluded such testimony on grounds not relevant here. See *People v. Adams*, 102 Ill. App. 3d 1129, 1133-34, 430 N.E.2d 267, 271-72 (1981) (excluding expert testimony on the battered woman syndrome because defendant had failed to preserve the issue for appeal); *People v. Powell*, 102 Misc. 2d 775, 424 N.Y.S.2d 626 (Tompkins Cty. Ct. 1980) (refusing to set aside a guilty verdict on the ground of newly discovered evidence consisting of expert testimony on the battered woman syndrome because such testimony was not newly discovered evidence and would not change the result).

Similarly, in *Buhrle v. State*, 627 P.2d 1374 (Wyo. 1981), the Wyoming Supreme Court based its decision to exclude expert testimony regarding the battered woman syndrome on four rationales, only one of which is even arguably relevant to the decision facing this Court. The court expressed concern that research involving the battered woman syndrome was relatively new and that "acceptance or recognition of the *phenomenon* is largely limited to the people who are actively engaged in the research and the people making research grants." *Id.* at 1377 (emphasis added). Apparently, therefore, the court was looking for general acceptance of "the phenomenon" of the battered woman syndrome, and thus of the expert's conclusions rather than methodology. As explained in Point I.B, *supra*, this Court has properly focused on the general acceptance of an expert's methodology. Moreover, as discussed *infra*, the Wyoming court's concerns are simply unfounded.³⁶

The few cases excluding expert psychological testimony on the battered woman syndrome are, therefore, largely irrelevant to the issues facing this Court and treat those issues only in the most cursory fashion. Those opinions do not examine the guidelines usually used in determining whether an expert's technique has received general acceptance in the relevant scientific community and do not justify their conclusion that the state of scientific knowledge is inadequate to support a reasonable expert opinion. Moreover, none of those cases even purports to suggest that the state of scientific knowledge is necessarily incapable of supporting expert testimony in cases such as this. Each opinion is based only on the evidence before the court in that particular case, and the courts do not exclude the possibility that another defendant could make a sufficient showing to justify admission of expert testimony. As the Wyoming Supreme Court emphasized, for example, "we are not saying that this type of expert testimony is not admissible; we are merely holding that the state of the art was not adequately demonstrated to the court, and because of inadequate foundation the proposed opinions would not aid the jury." *Buhrle v. State*, 627 P.2d at 1378.

³⁶ Two other courts have refused to accept expert testimony on the battered woman syndrome on grounds totally unrelated to the issue facing this Court. See *Mullis v. State*, 248 Ga. 338, 338-39, 282 S.E.2d 334, 337 (1981) (distinguishing its prior opinion in *Smith v. State* because the expert testimony related to the defendant's fear, which, unlike the battered woman syndrome, can be understood by the average jury); *People v. White*, 90 Ill. App. 3d 1067, 414 N.E.2d 196 (1980) (excluding the testimony of a physician who was not an expert in the study of battered women).

Courts confronted with the issue presented by this case have looked for guidance not only to other cases involving the admissibility of expert psychological testimony on the battered woman syndrome, but also, by way of analogy, to cases involving expert testimony on the "battered child syndrome." See *Smith v. State*, 247 Ga. at 617, 277 S.E.2d at 682; *State v. Baker*, 120 N.H. at 776, 424 A.2d at 173; see also Comment, *The Admissibility of Expert Testimony on Battered Wife Syndrome: An Evidentiary Analysis*, 77 Nw. U.L. REV. 348, 363 (1982). Expert testimony aimed at demonstrating that an injury to a child was not accidental, but was consistent with a pattern of physical abuse, has been accepted without exception by the courts considering the question.³⁷ Experts on the battered child syndrome have been permitted to testify, for example, on the reasons why the syndrome occurs and who usually inflicts the abuse,³⁸ and, with certain limitations, on the characteristics of the typical battering parent.³⁹

In summary, the courts that have ruled on the admissibility of expert testimony regarding both the battered woman syndrome and the battered child syndrome have overwhelmingly favored admission of such testimony. Expert testimony on the battered woman syndrome has been admitted in one federal court and in the courts of twenty-two (22) states. This trend supports appellant's contention that the methodology used by experts studying battered women has received general acceptance.

B. The Scientific Literature

A second source of information useful in evaluating the state of scientific knowledge is the literature in scientific journals and other materials written by authorities in the field. This literature likewise demonstrates that the methodology used by those studying

³⁷ See, e.g., *United States v. Bowers*, 660 F.2d 527, 528-29 (5th Cir. 1981); *People v. Ellis*, 41 Colo. App. 271, 273-74, 589 P.2d 494, 496 (1978); *People v. Platter*, 89 Ill. App. 3d 803, 818-19, 412 N.E.2d 181, 192-93 (1980); *Commonwealth v. Labbe*, 6 Mass. App. Ct. 73, 373 N.E.2d 227, 230-31 (1978); *People v. Barnard*, 93 Mich. App. 590, 286 N.W.2d 870 (1979); *State v. Taylor*, 163 Mont. 106, 118, 515 P.2d 695, 702 (1973); *People v. Henson*, 33 N.Y.2d 63, 304 N.E.2d 358, 349 N.Y.S.2d 657 (1973); *State v. Best*, 89 S.D. 227, 232 N.W.2d 447 (1975); *State v. Mulder*, 29 Wash. App. 513, 629 P.2d 462 (1981).

³⁸ See *State v. Durfee*, 322 N.W.2d 778, 782 (Minn. 1982); *State v. Wilkerson*, 295 N.C. 559, 567, 247 S.E.2d 905, 909 (1978).

³⁹ See *State v. Loebach*, 310 N.W.2d 58, 62-64 (Minn. 1981); *State v. Loss*, 295 Minn. 271, 279-80, 204 N.W.2d 404, 408-09 (1973).

battered women has been accepted by the relevant scientific community.

Many psychologists, psychiatrists, sociologists, and other experts in the fields of battered women and family violence have utilized similar research methods. They gather data and attempt to detect patterns in behavior, perception, and attitudes based on in-depth interviews, observations, and questionnaires.⁴⁰ Additionally, some researchers studying battered women perform psychological tests—such as the Conflict Tactics Scale, the Buss-Durkee Hostility-Guilt Inventory, the Center for Epidemiological Studies Depression Scale, and Levenson's Internal, Powerful Others, and Chance Scales—which have been developed and used in other contexts, on their subjects.⁴¹ An expert whose testimony is offered to support a battered woman's claim of self-defense then uses the results of these studies to describe the battered woman syndrome and its typical effects, to discuss the similarities between the battered woman model and the facts of the particular case, and to render an opinion whether the defendant suffered from the battered woman syndrome.

⁴⁰ See, e.g., *Smith v. State*, 247 Ga. 612, 615, 277 S.E.2d 678, 680 (1981) (describing methodology used by expert witness in that case); R. DOBASH & R. DOBASH, *VIOLENCE AGAINST WIVES* (1979); R. GELLES, *THE VIOLENT HOME* 29-40 (1974); M. PAGELOW, *WOMAN-BATTERING: VICTIMS AND THEIR EXPERIENCES* (1981); M. STRAUS, R. GELLES & S. STEINMETZ, *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* (1979); L. WALKER, *THE BATTERED WOMAN* xiii (1979); Cohen, Freedman, Englehardt & Margolis, *Family Interaction Patterns, Drug Treatment, and Changes in Social Aggression*, in *VIOLENCE IN THE FAMILY* 120, 121-22 (S. Steinmetz & M. Straus eds. 1974); Frieze, *Perceptions of Battered Wives*, in *NEW APPROACHES TO SOCIAL PROBLEMS* 79, 99-100 (I. Frieze, D. Bar-Tal & J. Carroll eds. 1979); Hilberman & Munson, *Sixty Battered Women*, 2 *VICTIMOLOGY* 460 (1978); Levinger, *Physical Abuse Among Applicants For Divorce*, in *VIOLENCE IN THE FAMILY* 85, 85-86 (S. Steinmetz & M. Straus eds. 1974); O'Brien, *Violence in Divorce-Prone Families*, in *VIOLENCE IN THE FAMILY* 65, 68-69 (S. Steinmetz & M. Straus eds. 1974); Prescott & Letko, *Battered Women: A Social Psychological Perspective*, in *BATTERED WOMEN: A PSYCHOSOCIOLOGICAL STUDY OF DOMESTIC VIOLENCE* 72 (M. Roy ed. 1977); Whitehurst, *Violence in Husband-Wife Interaction*, in *VIOLENCE IN THE FAMILY* 75, 80 (S. Steinmetz & M. Straus eds. 1974). See also Walter, *Expert Testimony and Battered Women*, 3 *J. LEGAL MED.* 267, 289 (1982).

⁴¹ See Berkman, *The State of Michigan versus a Battered Wife*, 44 *BULL. MENNINGER CLINIC* 603, 611-12 (1980); Star, *Comparing Battered and Non-Battered Women*, 3 *VICTIMOLOGY* 32 (1978); Steinmetz, *Occupation and Physical Punishment: A Response to Straus*, 33 *J. MARRIAGE & FAM.* 664 (1971); Straus, *Measuring Intrafamily Conflict & Violence: The Conflict Tactics (CT) Scales*, 41 *J. MARRIAGE & FAM.* 75 (1979); M. Schulman, *A Survey of Spouse Abuse Against Women in Kentucky* (1979); L. Walker, *The Battered Woman Syndrome Study: Final Report to National Institute of Mental Health* (1981) (N.I.M.H. Grant # R.O.I.M.H. 30147).

Not only are these methods accepted by researchers studying battered women, but they are also the same techniques commonly used by psychologists conducting research on any subject. As one commentator observed, "the ability to compile data and detect behavioral patterns based upon interviews and observations is a skill which behavioral scientists are trained to master." 11 SETON HALL L. REV. 255, 263 (1980).⁴² The experts whose testimony was admitted in the cases cited in Point I.C., *supra*, likewise reached their opinions by relying on similar methods. For example, in evaluating whether a defendant was sane at the time of the crime, or is competent to stand trial, a psychologist interviews and examines the defendant, and comes to a conclusion about the person's sanity or competence after comparing his observations and test results with the results of evaluations of other defendants. *See, e.g., Land v. State*, 156 So. 2d 8, 11 (Fla. 1963) (characterizing an opinion based on such a technique as "worthy of great credence"), *cert. denied*, 377 U.S. 959 (1964); *Murphy v. State*, 252 So. 2d 385, 387-88 (Fla. 3d DCA 1971) (*per curiam*). Just as a psychologist's opinion on a defendant's sanity or competence to stand trial is admitted as expert testimony, so a psychologist's opinion on the battered woman syndrome, which is based on an identical technique, should be accepted.

Not only the techniques used by those in the field of battered women, but also their theories, are generally accepted by the relevant scientific community. Often the underlying theories used by these experts are well-developed, well-recognized theories previously applied in other contexts and simply adapted to the study of battered women. Some researchers, for example, use a social learning approach, which theorizes that one's behavior is the product of reinforcement by other people and social sources. *See, e.g., M. PAGELOW, supra* note 40, at 35-39; Gayford, *Wife Battering: A Preliminary Survey of 100 Cases*, 1 BRIT. MED. J. 194 (1975).⁴³ Other researchers have used attribution theory—which assumes that one can predict a person's behavior and emotional reactions by understanding that person's ideas about why people act as they do—

⁴² *See also* Diamond & Louisell, *The Psychiatrist as an Expert Witness: Some Ruminations and Speculations*, 63 MICH. L. REV. 1335, 1341 (1965).

⁴³ For discussions of social learning theory generally, *see, e.g., R. Stark, SOCIAL PROBLEMS* 506 (1975); Bandura & Ross, *Transmission of Aggression Through Imitation of Aggressive Models*, 63 J. ABNORMAL PSYCHOLOGY 575 (1961).

to explain the correlation between a battered woman's beliefs about the causes of the abuse and her reactions to the violence. See Frieze, *Perceptions of Battered Wives*, in NEW APPROACHES TO SOCIAL PROBLEMS 79 (I. Frieze, D. Bar-Tal & J. Carroll eds. 1979).⁴⁴ Similarly, Dr. Walker has applied the theory of learned helplessness, which had been developed and researched by other psychologists, to the study of battered women. That theory explains that an individual who is placed in an extremely unpleasant environment over which he has no control loses all motivation to attempt to change that environment and passively accepts further adverse situations from which he could escape.⁴⁵ Thus, the theories, as well as the methodology used by those studying battered women, are well-developed and respected and have commonly been used by psychologists in other areas.

Moreover, researchers who have studied battered women have reached very similar conclusions about the battered woman syndrome and its effects on abused women, thereby corroborating the reliability of the methodologies and theories used. For example, researchers have discovered that women suffering from the battered woman syndrome have low self-esteem,⁴⁶ and feel at least partly responsible for the abuse inflicted on them and therefore guilty and ashamed of being battered women.⁴⁷ As a result of these feelings, the fact that they are isolated from their friends and families by the batterer

⁴⁴ For discussions of attribution theory generally, see F. HEIDER, *THE PSYCHOLOGY OF INTERPERSONAL RELATIONS* (1958); Thibaut & Riecken, *Some Determinants and Consequences of the Perception of Social Causality*, 24 J. PERSONALITY 113 (1955).

⁴⁵ See, e.g., M. SELIGMAN, *HELPLESSNESS: ON DEPRESSION, DEVELOPMENT AND DEATH* (1975); Hiroto, *Locus of Control and Learned Helplessness*, 102 J. EXPERIMENTAL PSYCHOLOGY 187 (1974); Overmeier & Seligman, *Effects of Inescapable Shock upon Subsequent Escape and Avoidance Learning*, 63 J. COMP. & PHYSIOLOGICAL PSYCHOLOGY 23 (1967).

⁴⁶ See *Smith v. State*, 247 Ga. at 615, 277 S.E.2d at 680 (describing testimony of expert clinical psychologist); R. LANGLEY & R. LEVY, *WIFE BEATING: THE SILENT CRISIS* 114 (1977); M. PAGELOW, *supra* note 40, at 159; L. WALKER, *supra* note 40, at 32-33; Berkman, *supra* note 41, at 613; Goodstein & Page, *Battered Wife Syndrome: Overview of Dynamics and Treatment*, 138 AM. J. PSYCHIATRY, 1036, 1041, 1042 (1981); Hilberman & Munson, *supra* note 40; Note, *Defense Strategies for Battered Women Who Assault Their Mates: State v. Curry*, 4 HARV. WOMEN'S L.J. 161, 163 (1981) (hereinafter cited as HARV. Note) (describing testimony of Vicki Boyd).

⁴⁷ See R. LANGLEY & R. LEVY, *supra* note 46, at 114, 116-18; L. WALKER, *supra* note 40, at 14-16, 20, 33, 56-57; Goodstein & Page, *supra* note 46, at 1042, 1043; Hilberman & Munson, *supra* note 40; HARV. Note, *supra* note 46, at 163 (describing testimony of Vicki Boyd).

and by their own guilt and shame,⁴⁸ the fear of reprisal from the batterer,⁴⁹ the concern for children,⁵⁰ the ineffective response of societal institutions—including the police and legal system⁵¹—and the lack of financial resources,⁵² battered women feel trapped in their relationship with the batterer and helpless to ameliorate their situation.⁵³ They are further influenced to remain with the batterer by the periods of reconciliation and the batterer's promises to reform,⁵⁴ which often occur between incidents of abuse.⁵⁵ Eventually, the violence increases in frequency and intensity, and some of these women come to believe that self-defense is their only alternative to

⁴⁸ See R. GELLES, *supra* note 40, at 187; L. WALKER, *supra* note 40, at 165-74; Frieze, *supra* note 40, at 101-02; Goodstein & Page, *supra* note 46, at 1040, 1042, 1043; Hilberman & Munson, *supra* note 40; Walker, Thyfault & Browne, *Beyond the Juror's Ken: Battered Women*, 7 VT. L. REV. 1, 11 (1982).

⁴⁹ See *Smith v. State*, 247 Ga. at 615, 277 S.E.2d at 680 (describing testimony of expert clinical psychologist); R. GELLES, *supra* note 40, at 193; R. LANGLEY & R. LEVY, *supra* note 46, at 114, 121-22; E. LIZZEY, SCREAM QUIETLY OR THE NEIGHBORS WILL HEAR 39 (1974); M. PAGELOW, *supra* note 40, at 72; Berkman, *supra* note 41, at 614; Frieze, *supra* note 40, at 98; Goodstein & Page, *supra* note 46, at 1042, 1043; Hilberman & Munson, *supra* note 40; Walker, Thyfault & Browne, *supra* note 48, at 12.

⁵⁰ See R. LANGLEY & R. LEVY, *supra* note 46, at 116; M. PAGELOW, *supra* note 40, at 72; L. WALKER, *supra* note 40, at 149; Frieze, *supra* note 40, at 98.

⁵¹ See R. LANGLEY & R. LEVY, *supra* note 46, at 120-21, 153-85; M. PAGELOW, *supra* note 40, at 68-71, 75-82; L. WALKER, *supra* note 40, at 64-65, 192, 205-50; Bard, *The Study and Modification of Intra-Familial Violence*, in *VIOLENCE IN THE FAMILY* 127, 130-39 (S. Steinmetz & M. Straus eds. 1974); Goodstein & Page, *supra* note 46, at 1041.

⁵² See R. LANGLEY & R. LEVY, *supra* note 46, at 118-20; L. WALKER, *supra* note 40, at 127-44; Frieze, *supra* note 40, at 98; Goodstein & Page, *supra* note 46, at 1041, 1042; Hilberman & Munson, *supra* note 40.

⁵³ See M. PAGELOW, *supra* note 40, at 47-48; L. WALKER, *supra* note 40, at 42-54; Frieze, *supra* note 40, at 102-03; Goodstein & Page, *supra* note 46, at 1042; Hilberman & Munson, *supra* note 40; Walker, Thyfault & Browne, *supra* note 48, at 8-9; HARV. Note, *supra* note 46, at 163 (describing testimony of Vicki Boyd).

⁵⁴ See *Smith v. State*, 247 Ga. at 615, 277 S.E.2d at 680 (describing testimony of expert clinical psychologist); R. LANGLEY & R. LEVY, *supra* note 46, at 114; M. PAGELOW, *supra* note 40, at 74; L. WALKER, *supra* note 40, at 66-69; Goodstein & Page, *supra* note 46, at 1042; Walker, Thyfault & Browne, *supra* note 48, at 9; HARV. Note, *supra* note 46, at 173 (describing testimony of Vicki Boyd).

⁵⁵ See *State v. Anaya*, 438 A.2d 892, 893 (Me. 1981) (describing testimony of John Bishop); R. LANGLEY & R. LEVY, *supra* note 46, at 111; M. PAGELOW, *supra* note 40, at 44-45, 163; L. WALKER, *supra* note 40, at 55-70; Frieze, *supra* note 40, at 104-05; Goodstein & Page, *supra* note 46, at 1042; Walker, Thyfault & Browne, *supra* note 48, at 6, 9.

enduring the abuse.⁵⁶ The researchers studying battered women agree, therefore, on the personality traits characteristic of the women suffering from the battered woman syndrome and on the effects of the syndrome on a woman's perceptions, emotions, and behavior. This consistency in result confirms the reliability of the methodologies and theories used by researchers in the field.

A review of the scientific literature thus indicates that researchers studying battered women employ a similar methodology, which is identical to that used by psychologists in other areas where their expertise has been recognized. The application of well-established theories to the study of battered women and the similar findings made by researchers in this field furnish additional evidence of the general acceptance of that methodology.

C. The Law Review Commentary

All of the scholarly legal materials discussing the use of expert testimony on the battered woman syndrome advocate the acceptance of such testimony.⁵⁷ More specifically, the commentators who have discussed the adequacy of the state of the scientific knowledge in this field have all concluded that the methodology used by researchers studying battered women is generally accepted by the relevant scientific community.⁵⁸

⁵⁶ See *State v. Anaya*, 438 A.2d at 893 (describing testimony of John Bishop); R. LANGLEY & R. LEVY, *supra* note 46, at 161-62; L. WALKER, *supra* note 40, at 31; Hilberman & Munson, *supra* note 40.

⁵⁷ See Eber, *The Battered Wife's Dilemma: To Kill or to Be Killed*, 32 HASTINGS L.J. 895, 927-28 (1981); Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 645-46 (1980); Schneider & Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 WOMEN'S RTS. L. REP. 149, 162 (1978); Walter, *supra* note 40; Harv. Note, *supra* note 46, at 167-68, 172-73; Comment, *The Admissibility of Expert Testimony on Battered Wife Syndrome: An Evidentiary Analysis*, 77 NW. U.L. REV. 348 (1982) (hereinafter cited as NW. Comment); Comment, *The Use of Expert Testimony in the Defense of Battered Women*, 52 U. COLO. L. REV. 587 (1981) (hereinafter cited as U. COLO. Comment); Comment, *The Expert as Educator: A Proposed Approach to the Use of Battered Woman Syndrome Expert Testimony*, 35 VAND. L. REV. 741 (1982) (hereinafter cited as VAND. Comment); Comment, *The Battered Spouse Syndrome as a Defense to a Homicide Charge Under the Pennsylvania Crimes Code*, 26 VILL. L. REV. 105, 127-34 (1980-81) (hereinafter cited as VILL. Comment); Note, *Evidence: Admitting Expert Testimony on the Battered Woman Syndrome*, 21 WASHBURN L.J. 689 (1982) (hereinafter cited as WASHBURN Note); 11 SETON HALL L. REV. 255 (1980).

⁵⁸ See NW. Comment, *supra* note 57, at 367-70; SETON HALL L. REV., *supra* note 57, at 263; see also Walter, *supra* note 40, at 288-90.

Additionally, legal scholars have endorsed the theories and findings of experts in this field, including the views that women suffering from the battered woman syndrome remain with the batterer because they have low self-esteem,⁵⁹ because they feel guilty and ashamed of their status as battered women,⁶⁰ because they are isolated from their friends and families,⁶¹ because they fear reprisal from the batterer if they leave,⁶² because they are concerned about their children,⁶³ because societal institutions provide little aid or support,⁶⁴ because they hope the situation will improve and they believe the batterer's promises to reform,⁶⁵ and because they lack

⁵⁹ See Eber, *supra* note 57, at 901; Truninger, *Marital Violence: The Legal Solutions*, 23 HASTINGS L.J. 259, 260 (1971); Walter, *supra* note 40, at 274; HARV. Note, *supra* note 46, at 163; Note, *The Case for Legal Remedies for Abused Women*, 6 N.Y.U. REV. L. & SOC. CHANGE 135, 140 (1976) (hereinafter cited as N.Y.U. Note); U. COLO. Comment, *supra* note 57, at 588; VILL. Comment, *supra* note 57, at 111; WASHBURN Note, *supra* note 57, at 689 n.3; Note, *Does Wife Abuse Justify Homicide?*, 24 WAYNE L. REV. 1705, 1710 (1978) (hereinafter cited as WAYNE Note).

⁶⁰ See Eber, *supra* note 57, at 901; Schneider, *supra* note 57, at 627; Walter, *supra* note 40, at 274; HARV. Note, *supra* note 46, at 163; NW. Comment, *supra* note 57, at 351; VILL. Comment, *supra* note 57, at 111; WASHBURN Note, *supra* note 57, at 689 n.3; WAYNE Note, *supra* note 59, at 1710.

⁶¹ See Schneider, *supra* note 57, at 627; NW. Comment, *supra* note 57, at 351; U. COLO. Comment, *supra* note 57, at 588; VILL. Comment, *supra* note 57, at 111.

⁶² See Eber, *supra* note 57, at 901-02; Eisenberg & Micklow, *The Assaulted Wife: "Catch 22" Revisited*, 3 WOMEN'S RTS. L. REP. 138, 144-45 (1977); Schneider & Jordan, *supra* note 57, at 152; Walter, *supra* note 40, at 273; NW. Comment, *supra* note 57, at 351; N.Y.U. Note, *supra* note 59, at 140; Note, *Partially Determined Imperfect Self-Defense: The Battered Wife Kills and Tells Why*, 34 STAN. L. REV. 615, 625 n.43 (1982) (hereinafter cited as STAN. Note); VAND. Comment, *supra* note 57, at 743; VILL. Comment, *supra* note 57, at 110, 126 n.166; WAYNE Note, *supra* note 59, at 1710.

⁶³ See Eber, *supra* note 57, at 902, 921; Schneider, *supra* note 57, at 626; HARV. Note, *supra* note 46, at 173; NW. Comment, *supra* note 57, at 351; N.Y.U. Note, *supra* note 59, at 140; STAN. Note, *supra* note 62, at 625 n.43.

⁶⁴ See Eber, *supra* note 57, at 902-17; Eisenberg & Micklow, *supra* note 62, at 145-59; Schneider, *supra* note 57, at 626; Schneider & Jordan, *supra* note 57, at 151-53; Truninger, *supra* note 59, at 262, 272; Walter, *supra* note 40, at 270-73; Woods, *Litigation on Behalf of Battered Women*, 7 WOMEN'S RTS. L. REP. 39 (1981); N.Y.U. Note, *supra* note 59, at 143-63; Comment, *The Battered Wife Syndrome: A Potential Defense to a Homicide Charge*, 6 PEPPERDINE L. REV. 213, 214-19 (1978); Note, *Limits on the Use of Defensive Force to Prevent Intramarital Assaults*, 10 RUT.-CAM. L. REV. 643, 643 (1979) (hereinafter cited as RUT.-CAM. Note); U. COLO. Comment, *supra* note 57, at 588; WAYNE Note, *supra* note 59, at 1710.

⁶⁵ See Eber, *supra* note 57, at 902; Schneider, *supra* note 57, at 627; Truninger, *supra* note 59, at 260; Walter, *supra* note 40, at 273; HARV. Note, *supra* note 46, at 173; NW. Comment, *supra* note 57, at 351; N.Y.U. Note, *supra*

the requisite financial means to care for themselves.⁶⁶ Similarly, the commentators have agreed that battered women have feelings of helplessness,⁶⁷ that the abuse is characterized by a cyclical process, increasing in frequency and intensity over time,⁶⁸ and that some of these women eventually believe that self-defense is their only recourse.⁶⁹

The legal literature on the subject of battered women, which overwhelmingly supports the admission of expert testimony on the battered woman syndrome and confirms the theories and findings of researchers in this field, thus corroborates appellant's contention that the methodology used by experts studying battered women has received general acceptance.⁷⁰

D. The Number of Researchers and Scientific Materials

Although research on the battered woman syndrome was virtually nonexistent in the 1960s, the subject has since received considerable attention in the psychological literature.⁷¹ This brief alone cites

note 59, at 140; VAND. Comment, *supra* note 57, at 588; VILL. Comment, *supra* note 57, at 110; WASHBURN Note, *supra* note 57, at 689 n.3.

⁶⁶ See Eber, *supra* note 57, at 902; Schneider, *supra* note 57, at 626; Schneider & Jordan, *supra* note 57, at 152; Truninger, *supra* note 59, at 261; Walter, *supra* note 40, at 273; HARV. Note, *supra* note 46, at 173; NW. Comment, *supra* note 57, at 351; N.Y.U. Note, *supra* note 59, at 139; STAN. Note, *supra* note 62, at 625 n.43; U. COLO. Comment, *supra* note 57, at 588; VILL. Comment, *supra* note 57, at 107; WAYNE Note, *supra* note 59, at 1709.

⁶⁷ See Eber, *supra* note 57, at 928; Schneider, *supra* note 57, at 627; Walter, *supra* note 40, at 276; HARV. Note, *supra* note 46, at 163, 172; NW. Comment, *supra* note 57, at 351; U. COLO. Comment, *supra* note 57, at 588-89; VAND. Comment, *supra* note 57, at 742-43; VILL. Comment, *supra* note 57, at 110; WASHBURN Note, *supra* note 57, at 689 n.3.

⁶⁸ See Eber, *supra* note 57, at 927, 928-29; Schneider, *supra* note 57, at 626; Truninger, *supra* note 59, at 274; Walter, *supra* note 40, at 275-76; HARV. Note, *supra* note 46, at 164-65, 172; NW. Comment, *supra* note 57, at 350; N.Y.U. Note, *supra* note 59, at 138; RUT-CAM. Note, *supra* note 64, at 644 n.7; STAN. Note, *supra* note 62, at 626 n.49; U. COLO. Comment, *supra* note 57, at 557-58; WASHBURN Note, *supra* note 57, at 689 n.3.

⁶⁹ See Eber, *supra* note 57, at 925; NW. Comment, *supra* note 57, at 351-52; VILL. Comment, *supra* note 57, at 107, 112, 133; WAYNE Note, *supra* note 59, at 1710.

⁷⁰ Additionally, several commentators have observed that Dr. Walker is a qualified expert in the study of battered women. See Walter, *supra* note 40, at 288; NW. Comment, *supra* note 57, at 355 n.41, 366 & n.115; VAND. Comment, *supra* note 57, at 764-65; SETON HALL L. REV., *supra* note 57, at 262; see also *Buhrle v. State*, 627 P.2d 1374, 1376 (Wyo. 1981).

⁷¹ See *Ibn-Tamas v. United States*, 407 A.2d 626, 638 n.24 (D.C. App. 1979); M. PAGELOW, *supra* note 40, at 21; Berkman, *supra* note 41, at 610; Gelles,

twenty-three (23) works on the subject. The reference list contained in one book, which was written in 1981 and reviewed the literature in the field, includes citations to seventy-two (72) sources on the subject of battered women—five (5) books, thirty-four (34) scientific articles, and thirty-three (33) papers, most of which were presented at professional meetings or conferences. See M. PAGELOW, *supra* note 40, at 275-87. A computer search on scientific materials written in the past five years on this topic uncovered an additional fifty-eight (58) sources—one (1) book, thirty-five (35) articles, and twenty-two (22) dissertations.⁷²

Not only is there a substantial amount of literature on the topic of battered women, but a significant number of respected researchers have devoted themselves to this field. Although precise quantification is difficult, one commentator has observed that “many professionals—clinical psychologists, sociologists, and social workers—make the subject the basis of their livelihood.” NW. Comment, *supra* note 57, at 364. Approximately one hundred and fifty (150) researchers presented their findings concerning battered women at a Family Violence Research Conference held at the University of New Hampshire in July 1981.⁷³ In addition to Dr. Walker, *amicus* is aware of the following researchers who have focused their efforts primarily on this field: Irene Frieze, Richard Gelles, Elaine Hilberman, Del Martin, Mildred Pagelow, Suzanne Steinmetz, and Murray Straus.

The number of researchers and scientific articles compares quite favorably with the figures cited by the Sixth Circuit in *United States v. Stifel*, in support of its conclusion that the methodology used by experts engaged in neutron activation analysis to identify the source of certain particles was generally accepted by the relevant scientific community. There, the court noted that more than one hundred (100) scientific papers had discussed neutron activation analysis, and four (4) experts had devoted their careers to the process. See 433 F.2d 432, 440-41 (6th Cir. 1970), *cert. denied*,

Violence in the Family: A Review of Research in the Seventies, 42 J. MARRIAGE & FAM. 873, 874 (1980); Goodstein, *supra* note 46, at 1036; Walter, *supra* note 40, at 289; NW. Comment, *supra* note 57, at 348 n.1.

⁷² These figures do not include any scientific materials dealing with family violence generally, even though that literature most likely discusses battered women to some extent, or any materials appearing in the popular press.

⁷³ A book containing many of these reports is to be published this year. *THE DARK SIDE OF FAMILIES* (D. Finkelhor, R. Gelles, G. Hotaling & M. Straus eds.).

401 U.S. 994 (1971). Similarly, the number of researchers and scientific materials dealing with battered women substantiates the adequacy of the state of scientific knowledge in that field to support admission of expert testimony.

CONCLUSION

The guidelines traditionally used in evaluating whether an expert's methodology has been generally accepted by the relevant scientific community all point toward accepting expert testimony on the battered woman syndrome. The overwhelming majority of courts in which such testimony has been proffered have accepted it—usually without even deeming it necessary to issue an opinion—and courts have uniformly admitted analogous expert testimony regarding the battered child syndrome.

The scientific literature demonstrates that researchers studying battered women use similar techniques, which are also the techniques commonly used by psychologists in other areas. That literature also indicates that researchers have adapted to the study of battered women well-developed and respected theories previously applied by psychologists in other contexts. The courts' traditional acceptance of expert psychological testimony relying on these same techniques and theories supports admission of expert psychological testimony in cases such as this. The scientific literature demonstrates that researchers have reached very similar conclusions about the traits characteristic of battered women and the effects of the battered woman syndrome, thereby corroborating the reliability of the methodologies and theories used.

The law review commentary likewise supports the admission of expert testimony on the battered woman syndrome, agrees that the methodology used by researchers in this field has been generally accepted by the relevant scientific community, and endorses psychologists' theories and findings about the impact of the syndrome on an abused woman's perceptions, emotions, and behavior. Finally, the significant number of researchers and scientific materials dealing with battered women suggests that the field is well-developed.

The "battered woman syndrome" diagnosis thus has a sound psychological basis with respect to both theory and technique, and the state of scientific knowledge regarding the syndrome is more than adequate to meet the threshold standard of admissibility this Court must apply. To admit such testimony in cases like this is not, however, to give it undue weight or even to accept it in every case. As

is true of all testimony, the jury must determine what weight to accord expert testimony on the battered woman syndrome. And the factors affecting the weight to which this testimony is entitled are properly brought to the jury's attention by the opposing party, or through the trial court's limiting instructions.

Similarly, a reversal of the trial court's ruling in this case need not require the acceptance of expert testimony on the battered woman syndrome in all cases, but could be limited, at least initially, to cases where a criminal defendant offers the testimony—cases where constitutional principles require that close questions of evidence be resolved in the defendant's favor.

Because the study of battered women is well-developed, with a sound psychological basis, and the methodology used by researchers in this field has been generally accepted by the relevant scientific community, the state of scientific knowledge is sufficient to permit a qualified expert to form a reasonable opinion on the battered woman syndrome. Accordingly, *amicus* urges the Court to reverse the trial court's order excluding Dr. Walker's testimony and to remand for a new trial.

Respectfully submitted,

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I hereby certify that on February 11, 1983, I served a copy of the foregoing Brief of *Amicus Curiae*, by mailing, first-class postage prepaid, to Leo A. Thomas, Esq., Levin, Warfield, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.O. Box 12308, Pensacola, Florida 32581, counsel for appellant, and to Raymond L. Marky, Esq., Assistant Attorney General, The Capitol, Tallahassee, Florida 32301, counsel for appellee.

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IN THE
District Court of Appeal of Florida
FIRST DISTRICT

No. AN-435

JOYCE BERNICE HAWTHORNE,
v. *Appellant,*
STATE OF FLORIDA,
Appellee.

On Appeal from the Circuit Court for Escambia County

BRIEF OF *AMICUS CURIAE*
AMERICAN PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF APPELLANT

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