IN THE SUPREME COURT OF NEW JERSEY

September Term, 1982

No. 20,219

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GLADYS KELLY,

Defendant-Petitioner.

On Petition for Certification from the Appellate Division of the Superior Court (Judges Botter and Furman)

BRIEF OF AMICUS CURIAE AMERICAN PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF DEFENDANT-PETITIONER

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On Petition for Certification from the Appellate Division
of the Superior Court (Judges Botter and Furman)

BRIEF OF AMICUS CURIAE AMERICAN PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF DEFENDANT-PETITIONER

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 have become increasingly the subject of study by social scientists. 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, defendant sought to introduce at trial the expert testimony of Dr. Lois Veronen, a clinical psychologist involved in the study of battered women. Dr. Veronen would have explained the "battered woman syndrome" to the jury and would have expressed the opinion that, because defendant suffered from that syndrome, she reasonably believed it was necessary for her to use deadly force against her husband in order to prevent immminent death or great 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 ruled that expert testimony to this effect was inadmissible under New Jersey's standard of self-defense, as set forth in State v. Bess, 53 N.J. 10, 247 A.2d 669 (1968). The Appellate Division affirmed, both on the basis of Bess and on the ground that exclusion of Dr.

Veronen's testimony "was not clearly capable of producing an unjust result, R. 2:10-2, and did not beyond a reasonable doubt lead the jury to a result it otherwise might not have reached ... ." State v. Kelly, No. A-2256-80-T4 (Super. Ct., App. Div., July 6, 1982) (per curiam).

Amicus maintains that the exclusion of Dr. Veronen's testimony was "clearly capable of producing an unjust result" within the meaning of Rule 2:10-2. Expert psychological testimony on the battered woman syndrome is essential in aiding a jury to evaluate a battered woman's claim of self-defense. A lay person confronted with the facts of this case would instinctively wonder why defendant 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 provide empirically supported 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.

Moreover, such testimony satisfies the standard for admissibility of expert testimony applied by the courts of this State. The state of scientific knowledge in this field is sufficient to permit a qualified expert to form a reliable opinion whether a defendant was suffering from the battered woman syndrome, 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 Expert Testimony Must Be Reliable 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

Rule 56(2) of the New Jersey Rules of Evidence provides for the admission of expert testimony "as to matters requiring scientific, technical or other specialized knowledge if such testimony will assist the trier of fact to understand the evidence or determine a fact in issue." Interpreting this rule, this Court recently ruled that expert testimony is admissible if "the proposed technique or mode of analysis has 'sufficient scientific basis to produce uniform and reasonably reliable results and will contribute materially to the ascertainment of the truth.'" State v. Cavallo, 88 N.J. 508, 517, 443 A.2d 1020, 1024 (1982) (quoting State v. Cary, 49 N.J. 343, 352, 230 A.2d 384, 389 (1967)) (emphasis in original).[1] Similarly, in State v. Chatman, 156 N.J. Super. 35, 38, 383 A.2d 440, 441 (App. Div.) (per curiam), cert. denied, 79 N.J. 467, 401 A.2d 224 (1978), the court observed that the methodology or

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[1] After the Court's opinion in Cavallo, Rule 56(2) was amended in respects not relevant here. The version of the Rule in effect when Cavallo was decided provided for the admission of expert testimony "within the scope of the special knowledge, skill, experience or training possessed by the witness."

equipment used by an expert witness must be shown to have "a high degree of scientific reliability ... ."[2]

A proponent of expert testimony can meet this burden, the Court explained in Cavallo, "by demonstrating that the testimony has achieved enough acceptance in the scientific community to convince the court that it is reasonably reliable." 88 N.J. at 521, 443 A.2d at 1026. Likewise, in State v. Hurd, 86 N.J. 525, 537, 432 A.2d 86, 92 (1981), the Court noted that a prerequisite for admission of expert testimony is proof of the "general acceptance of the procedure ..." used by the witness. See also State v. Melvin, 65 N.J. 1, 16, 319 A.2d 450, 458 (1974) State v. Johnson, 42 N.J. 146, 170, 199 A.2d 809, 822 (1964); State v. Walker, 37 N.J. 208, 215, 181

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[2] This Court has consistently focused on the reliability of expert testimony in determining its admissibility. See, e.g., State v. Hurd, 86 N.J. 525, 536, 432 A.2d 86, 91 (1981); State v. Johnson, 42 N.J. 146, 170, 199 A.2d 809, 822 (1964); State v. Dantonio, 18 N.J. 570, 576-78, 115 A.2d 35, 39 (1955).

For similar rulings from other jurisdictions, see United States v. Brown, 557 F.2d 541, 556 (6th Cir. 1977); United States v. Alexander, 526 F.2d 161, 163 (8th Cir. 1975); 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. 858, 862, 331 P.2d 251, 253-54 (1958); Brown v. United States, 384 A.2d 647, 650 (D.C. App. 1978); 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); Reed v. State, 283 Md. 374, 380-82, 391 A.2d 364, 367-68 (1978); 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).

A.2d 1, 4, cert. denied, 371 U.S. 850 (1962); State v. Sinnott, 24 N.J. 408, 423, 132 A.2d 298, 306 (1957).[3]

B. The Standards for Evaluating General Acceptance by the Relevant Scientific Community

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 State v. Cavallo, 88 N.J. at 521, 443 A.2d at 1026.[4] Additional indicators useful in

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[3] For similar rulings from other jurisdictions, see United States v. Brown, 557 F.2d at 556-57; United States v. Alexander, 526 F.2d at 164; 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. at 860, 331 P.2d at 253; 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); Jent v. State, 408 So. 2d at 1029; Hawthorne v. State, 408 So. 2d 801, 806 (Fla. 1st DCA), cert. denied, 415 So. 2d 1361 (Fla. 1982); Reed v. State, 283 Md. at 380-82, 391 A.2d at 367-68; 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); State v. Brown, 91 N.M. 320, 323, 573 P.2d 675, 678 (Ct. App. 1977).

[4] See also State v. Hurd, 86 N.J. at 535-36, 432 A.2d at 91; State v. Johnson, 42 N.J. at 170-71, 199 A.2d at 822-23; 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 463, 465-66 (4th Cir.), cert. denied, 423 U.S. 1019 (1975); 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. 1087, 1095 (E.D.N.C. 1979); 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; Kaminski v. State, 63 So. 2d 339, 340 (Fla. 1953) (opinion on rehearing); Worley v. State, 263 So. 2d 513, 514 (Fla. 4th DCA 1972); State v. Williams, 388 A.2d 500, 502 (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).

determining whether an expert's methodology has received general acceptance are scientific journals and other materials written by authorities in the field,[5] law review commentary,[6] the number of people involved in the field,[7] the number of scientific papers and articles written on the subject,[8] any relevant legislation,[9] and the use of the expert's methodology in other areas.[10]

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.[11] Similarly, proof that the results

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5 See State v. Cavallo, 88 N.J. 508, 521, 443 A.2d 1020, 1026 (1982); 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.

6 See State v. Cavallo, 88 N.J. at 521, 443 A.2d at 1026; State v. Sinnott, 24 N.J. 408, 421-23, 132 A.2d 298, 305-07 (1957); 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).

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

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

9 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.

10 See State v. Hurd, 86 N.J. at 534, 432 A.2d at 90; State v. Dantonio, 18 N.J. at 578, 115 A.2d at 39-40; 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).

11 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.

of the expert's tests are certain or infallible is not a prerequisite to admission of the expert's testimony. As this Court explained in State v. Johnson, 42 N.J. at 171, 199 A.2d at 823, "[p]ractically every new scientific discovery has its detractors and unbelievers, but neither unanimity of opinion nor universal infallibility is required for judicial acceptance of generally recognized matters."[12]

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). In fact, this Court has expressly indicated its willingness to admit expert testimony based on new scientific methods. See State v. Cary, 49 N.J. at 355, 230 A.2d at 390.[13]

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12 See also State v. Bryan, 133 N.J. Super. 369, 373, 336 A.2d 511, 513 (Law Div. 1974); United States v. Brown, 557 F.2d at 556; United States v. Alexander, 526 F.2d 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; Jent v. State, 408 So. 2d at 1029; Holland v. State, 359 So. 2d 28, 29 (Fla. 3d DCA 1978), cert. denied, 367 So. 2d 1124 (Fla. 1979); 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).

13 See also Worley v. State, 263 So. 2d at 614; Coppolino v. State, 223 So. 2d at 70.

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. See State v. Dantonio, 18 N.J. 570, 580, 115 A.2d 35, 40 (1955).[14] Similarly, disagreements about the specific procedures used by the expert witness,[15] the precise accuracy of the expert's conclusions,[16] and the witness' potential bias[17] 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.

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[14] See also United States v. Baller, 519 F.2d at 466-67; Holland v. State, 359 So. 2d at 29; Coppolino v. State, 223 So. 2d at 75 (Mann, J., concurring specially); Worthington v. State, ___ Ind. App. ___, ___, 409 N.E.2d 1261, 1275 (1980); State v. Williams, 338 A.2d at 505.

[15] See State v. Hurd, 86 N.J. at 543, 432 A.2d at 95; 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; Vaillancourt v. State, 288 So. 2d 216, 218 (Fla. 1974) (per curiam); Land v. State, 156 So. 2d 8, 11 (Fla. 1963), cert. denied, 377 U.S. 959 (1964); Eierle v. State, 358 So. 2d 1160, 1161 (Fla. 3d DCA 1978); 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.

[16] See State v. Chatman, 156 N.J. Super. 35, 39-40, 383 A.2d 440, 442 (App. Div.) (per curiam), cert. denied, 79 N.J. 467, 401 A.2d 224 (1978); United States v. Stifel, 433 F.2d at 438; Seaboard Coast Line R.R. Co. v. Hill, 250 So. 2d 311, 315 (Fla. 4th DCA 1971).

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

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 always "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. 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

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18 See also State v. Cavallo, 88 N.J. 508, 519, 443 A.2d 1020, 1025 (1982); 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 State v. Kelly, 118 N.J. Super. 38, 285 A.2d 571 (App. Div. 1972); United States v. Brawner, 471 F.2d 969, 994, 1002, 1006-07 (D.C. Cir. 1972) (en banc); Jones v. State, 289 So. 2d 725 (Fla. 1974).

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, 56 Mich. App. 581, 239 N.W.2d 670 (1976).

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 defendant'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

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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, 328-29, 325 P.2d 97, 102 (1958); Commonwealth v. McCusker, 448 Pa. 382, 292 A.2d 285 (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).

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, 555 P.2d 27 (1976).

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

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 defendant sought to admit was based on the same techniques -- and even 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 291.

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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).

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).

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 Reliable 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 reliability 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). The court concluded that such expert testimony must be admitted because it was "'central to [the defendant's] claim of self defense.'" Id. at 894 (quoting Ibn-Tamas v. United States, 407 A.2d 626, 639 (D.C. App. 1979)).

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 courts in this State, one federal

court, and state courts in Alaska, California, Colorado, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nevada, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, Wisconsin, and Wyoming.[34] These numerous examples 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.[35]

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[34] See State v. Hooker, No. 157-80 (Union Cty. Super. Ct., Law Div., N.J. 1980); State v. Gibbs (Middlesex Cty. Super. Ct., N.J.); United States v. Player, No. 82-0422-01-N (S.D. Cal. 1982); State v. Alayonoi (Alaska 1980); State v. Moore (Cal. 1982); State v. Franklin, No. 14701 (Solano 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. Colffield (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-115 (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 (Clark Cty. Dist. Ct., Nev. 1983); 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).

[35] 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 other grounds. 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, but expressly declining to decide whether the expert testimony would have been admissible at trial).

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 reliability of expert psychological testimony on the battered woman syndrome. 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 Distict 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 even arguably questions the reliability of such testimony. 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.

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 general reliability of such testimony. And in that case, by contrast to this one, the defendant's behavior differed substantially from the standard behavior of battered women in similar situations. See id. at 1377,

1378. The Wyoming court did express 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. But the court did not explain or substantiate that conclusion, and did not indicate what persons, other than those studying battered women, are familiar with the research in this field and should be considered part of the relevant scientific community whose acceptance is required.[36] In fact, the court did not even indicate that any such persons had refused to recognize the battered woman syndrome or to accept the methods used by researchers in the field. Moreover, as discussed infra, the court's concerns are simply unfounded.[37]

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

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[36] Other courts have ruled that the relevant scientific community includes only those with some experience in, or familiarity with, the expert witness' particular field of study. See, e.g., People v. Williams, 164 Cal. App. 2d Supp. 858, 862, 331 P.2d 251, 254 (1958) ("those who would be expected to be familiar with its use"); Ibn-Tamas v. United States, No. 79-1278, slip op. at 5 (D.C. App. Jan. 17, 1983) (Gallagher, J., concurring) ("frequently a specialized segment of a science ..."); Commonwealth v. Lykus, 367 Mass. 191, 203, 327 N.E.2d 671, 678 (1975) (giving greater weight to "those experts who have had direct and empirical experience in the field ..."); State v. Coolidge, 260 A.2d 547, 561 (N.H. 1969), rev'd on other grounds, 403 U.S. 443 (1971) ("scientists familiar with this limited field").

[37] 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).

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 reliable expert opinion. Moreover, none of those cases even purports to suggest that the state of scientific knowledge is necessarily incapable of yielding reliable 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." Bunrle v. State, 627 P.2d at 1378.

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.[38] 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,[39] and, with certain limitations, on the characteristics of the typical battering parent.[40]

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, including New Jersey. This trend supports defendant'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

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38 See, e.g., State v. Pickles, 46 N.J. 542, 218 A.2d 609 (1966); 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 (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).

39 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).

40 See State v. Loebach, 310 N.W.2d 58, 62-64 (Minn. 1981); State v. Loss, 205 Minn. 271, 279-80, 284 N.W.2d 404, 408-09 (1973).

demonstrates that the methodology used by those studying 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.[41] 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

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41 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).

contexts, on their subjects.[42] 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.

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 behavorial scientists are trained to master." 11 Seton Hall L. Rev. 255, 263 (1980).[43] 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., State v. Kelly, 118 N.J. Super. 38, 44-45, 285 A.2d 571, 575 (App. Div.

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42 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).

43 See also Diamond & Louisell, The Psychiatrist as an Expert Witness: Some Ruminations and Speculations, 63 Mich. L. Rev. 1335, 1341 (1965).

1972). 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 41, at 35-39; Gayford, Wife Battering: A Preliminary Survey of 100 Cases, 1 Brit. Med. J. 194 (1975).[44] 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 -- 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).[45] And others, including Dr. Veronen, have applied the theory of learned helplessness, which was developed and researched by other psychologists, to

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[44] 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).

[45] 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).

the study of battered women. See, e.g., L. Walker, The Battered Woman (1979). 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.[46] 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,[47] and feel at least partly responsible for the abuse inflicted on them and therefore guilty and ashamed of being battered women.[48] As a result of these feelings, the fact

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[46] 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).

[47] 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 41, at 159; L. Walker, supra note 41, at 32-33; Berkman, supra note 42, at 613; Goodstein & Page, Battered Wife Syndrome: Overview of Dynamics and Treatment, 138 Am. J. Psychiatry, 1036, 1041, 1042 (1981); Hilberman & Munson, supra note 41; 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).

[48] See R. Langley & R. Levy, supra note 47, at 114, 115-18; L. Walker, supra note 41, at 14-16, 20, 33, 56-57; Goodstein & Page, supra note 47, at 1042, 1043; Hilberman & Munson, supra note 41; Harv. Note, supra note 47, at 163 (describing testimony of Vicki Boyd).

that they are isolated from their friends and families by the batterer and by their own guilt and shame,[49] the fear of reprisal from the batterer,[50] the concern for children,[51] the ineffective response of societal institutions -- including the police and the legal system[52] -- and the lack of financial resources,[53] battered women feel trapped in their relationship with the batterer and helpless to ameliorate their situation.[54] They are further influenced to remain with the batterer by the periods of reconciliation and the batterer's promises to reform,[55] which often occur between incidents of

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49 See R. Gelles, supra note 41, at 187; L. Walker, supra note 41, at 165-74; Frieze, supra note 41, at 101-02; Goodstein & Page, supra note 47, at 1040, 1042, 1043; Hilberman & Munson, supra note 41; Walker, Thyfault & Browne, Beyond the Juror's Ken: Battered Women, 7 Vt. L. Rev. 1, 11 (1982).

50 See Smith v. State, 247 Ga. at 615, 277 S.E.2d at 680 (describing testimony of expert clinical psychologist); R. Gelles, supra note 41, at 193; R. Langley & R. Levy, supra note 47, at 114, 121-22; E. Lizzey, Scream Quietly or the Neighbors Will Hear 39 (1974); M. Pagelow, supra note 41, at 72; Berkman, supra note 42, at 614; Frieze, supra note 41, at 98; Goodstein & Page, supra note 47, at 1042, 1043; Hilberman & Munson, supra note 41; Walker, Thyfault & Browne, supra note 49, at 12.

51 See R. Langley & R. Levy, supra note 47, at 113; M. Pagelow, supra note 41, at 72; L. Walker, supra note 41, at 149; Frieze, supra note 41, at 98.

52 See R. Langley & R. Levy, supra note 47, at 120-21, 153-85; M. Pagelow, supra note 41, at 68-71, 75-82; L. Walker, supra note 41, 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 47, at 1041.

53 See R. Langley & R. Levy, supra note 47, at 118-20; L. Walker, supra note 41, at 127-44; Frieze, supra note 41, at 98; Goodstein & Page, supra note 47, at 1041, 1042; Hilberman & Munson, supra note 41.

54 See M. Pagelow, supra note 41, at 47-48; L. Walker, supra note 41, at 42-54; Frieze, supra note 41, at 102-03; Goodstein & Page, supra note 47, at 1042; Hilberman & Munson, supra note 41; Walker, Thyfault & Browne, supra note 49, at 8-9; Harv. Note, supra note 47, at 163 (describing testimony of Vicki Boyd).

55 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

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abuse.[56] Eventually, the violence increases in frequency and intensity, and some of these women come to believe that self-defense is their only alternative to enduring the abuse.[57] 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 reliability of expert testimony regarding the battered woman syndrome.

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55 Continued

47, at 114; M. Pagelow, supra note 41, at 74; L. Walker, supra note 41, at 66-69; Goodstein & Page, supra note 47, at 1042; Walker, Thyfault & Browne, supra note 49, at 9; Harv. Note, supra note 47, at 173 (describing testimony of Vicki Boyd).

56 See State v. Anaya, 438 A.2d 892, 893 (Me. 1981) (describing testimony of John Bishop); R. Langley & R. Levy, supra note 47, at 111; M. Pagelow, supra note 41, at 44-45, 163; L. Walker, supra note 41, at 55-70; Frieze, supra note 41, at 104-05; Goodstein & Page, supra note 47, at 1042; Walker, Thyfault & Browne, supra note 49, at 6, 9.

57 See State v. Anaya, 438 A.2d at 893 (describing testimony of John Bishop); R. Langley & R. Levy, supra note 47, at 161-62; L. Walker, supra note 41, at 31; Hilberman & Munson, supra note 41.

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.[58] More specifically, the commentators who have discussed the adequacy 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.[59]

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,[60] because they feel guilty and ashamed of their status as

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58 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 41; Harv. Note, supra note 47, 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).

59 See Nw. Comment, supra note 58, at 367-70; Seton Hall L. Rev., supra note 58, at 263; see also Walter, supra note 41, at 288-30.

60 See Eber, supra note 58, at 901; Truninger, Marital Violence: The Legal Solutions, 23 Hastings L.J. 259, 260 (1971); Walter, supra note 41, at 274; Harv. Note, supra note 47, 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 58, at 588; Vill. Comment, supra note 58, at 111; Washburn Note, supra note 58, at 689 n. 3; Note, Does Wife Abuse Justify Homicide?, 24 Wayne L. Rev. 1705, 1710 (1978) (hereinafter cited as Wayne Note).

battered women,[61] because they are isolated from their friends and families,[62] because they fear reprisal from the batterer if they leave,[63] because they are concerned about their children,[64] because societal institutions provide little aid or support,[65] because they hope the situation will improve and they believe the batterer's promises to reform,[66]

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61 See Eber, supra note 58, at 901; Schneider, supra note 58, at 627; Walter, supra note 41, at 274; Harv. Note, supra note 47, at 163; Nw. Comment, supra note 58, at 351; Vill. Comment, supra note 58, at 111; Washburn Note, supra note 58, at 689 n. 3; Wayne Note, supra note 60, at 1710.

62 See Schneider, supra note 58, at 627; Nw. Comment, supra note 58, at 351; U. Colo. Comment, supra note 58, at 588; Vill. Comment, supra note 58, at 111.

63 See Eber, supra note 58, 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 58, at 152; Walter, supra note 41, at 273; Nw. Comment, supra note 58, at 351; N.Y.U. Note, supra note 60, 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 58, at 743; Vill. Comment, supra note 58, at 110, 126 n. 166; Wayne Note, supra note 60, at 1710.

64 See Eber, supra note 58, at 902, 921; Schneider, supra note 58, at 626; Harv. Note, supra note 47, at 173; Nw. Comment, supra note 58, at 351; N.Y.U. Note, supra note 60, at 140; Stan. Note, supra note 63, at 625 n. 43.

65 See Eber, supra note 58, at 902-17; Eisenberg & Micklow, supra note 63, at 145-59; Schneider, supra note 58, at 626; Schneider & Jordan, supra note 58, at 151-53; Truninger, supra note 59, at 262, 272; Walter, supra note 41, at 270-73; Woods, Litigation on Behalf of Battered Women, 7 Women's Rts. L. Rep. 39 (1981); N.Y.U. Note, supra note 60, 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 58, at 588; Wayne Note; supra note 60, at 1710.

66 See Eber, supra note 58, at 902; Schneider, supra note 58, at 627; Truninger, supra note 59, at 260; Walter, supra note 41, at 273; Harv. Note, supra note 47, at 173; Nw. Comment, supra note 58, at 351; N.Y.U. Note, supra note 60, at 140; Vand. Comment, supra note 58, at 588; Vill. Comment, supra note 58, at 110; Washburn Note, supra note 58, at 689 n. 3.

and because they lack the requisite financial means to care for themselves.[67] Similarly, the commentators have agreed that battered women have feelings of helplessness,[68] that the abuse is characterized by a cyclical process, increasing in frequency and intensity over time,[69] and that some of these women eventually believe that self-defense is their only recourse.[70]

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 defendant's contention that the methodology used by experts studying battered women has received general acceptance.

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67 See Eber, supra note 58, at 902; Schneider, supra note 58, at 626; Schneider & Jordan, supra note 58, at 152; Truninger, supra note 59, at 261; Walter, supra note 41, at 273; Harv. Note, supra note 47, at 173; Nw. Comment, supra note 58, at 351; N.Y.U. Note, supra note 60, at 139; Stan. Note, supra note 63, at 625 n. 43; U. Colo. Comment, supra note 58, at 588; Vill. Comment, supra note 58, at 107; Wayne Note, supra note 60, at 1709.

68 See Eber, supra note 58, at 928; Schneider, supra note 58, at 627; Walter, supra note 41, at 276; Harv. Note, supra note 47, at 163, 172; Nw. Comment, supra note 58, at 351; U. Colo. Comment, supra note 58, at 588-89; Vand. Comment, supra note 58, at 742-43; Vill. Comment, supra note 58, at 110; Washburn Note, supra note 58, at 689 n. 3.

69 See Eber, supra note 58, at 927, 928-29; Schneider, supra note 58, at 626; Truninger, supra note 59, at 274; Walter, supra note 41, at 275-76; Harv. Note, supra note 47, at 164-65, 172; Nw. Comment, supra note 58, at 350; N.Y.U. Note, supra note 60, at 138; Rut.-Cam. Note, supra note 65, at 644 n. 7; Stan. Note, supra note 63, at 626 n. 49; U. Colo. Comment, supra note 58, at 557-58; Washburn Note, supra note 58, at 689 n. 3.

70 See Eber, supra note 58, at 925; Nw. Comment, supra note 58, at 351-52; Vill. Comment, supra note 58, at 107, 112, 133; Wayne Note, supra note 60, at 1710.

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 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 41, 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 58, at 364. Approximately one hundred and fifty (150) researchers presented their findings concerning battered women

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71 See Ibn-Tamas v. United States, 407 A.2d 626, 638 n. 24 (D.C. App. 1979); M. Pagelow, supra note 41, at 21; Berkman, supra note 42, at 610; Gelles, Violence in the Family: A Review of Research in the Seventies, 42 J. Marriage & Fam. 873, 874 (1980); Goodstein, supra note 47, at 1036; Walter, supra note 41, at 289; Nw. Comment, supra note 58, 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.

at a Family Violence Research Conference held at the University of New Hampshire in July 1981.[73] 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, Murray Straus, and Lenore Walker.

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, 401 U.S. 994 (1971).[74] 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.

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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.).

74 Cf. State v. Chatman, 156 N.J. Super. 35, 383 A.2d 440 (App. Div.) (per curiam), cert. denied, 79 N.J. 467, 401 A.2d 224 (1978) (holding expert testimony based on methods substantially identical to neutron activation analysis admissible).

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 further 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 women 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 reliable opinion on the battered woman syndrome. Consequently, the trial court's exclusion of Dr. Veronen's expert testimony, which was essential to the jury's understanding of defendant's self-defense claim, was "clearly capable of producing an unjust result" within the terms of Rule 2:10-2.

Amicus urges the Court to reverse and remand for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 1983, I served two copies of the foregoing Brief of Amicus Curiae, by mailing, first-class postage prepaid, to Sheri Woliver, Esq., Assistant Deputy Public Defender, 20 Evergreen Place, 1st Floor, East Orange, N.J. 07018, counsel for defendant-petitioner; George L. Schneider, Esq., Hilary L. Brunell, Esq., Office of the Essex County Prosecutor, Essex County Courts Building, Newark, N.J. 07102, counsel for plaintiff-respondent; Elizabeth M. Schneider, Esq., Constitutional Litigation Clinic, Rutgers Law School, 15 Washington Street, Newark, N.J. 07102, counsel for amicus American Civil Liberties Union of New Jersey; and Stephen M. Latimer, Esq., 8 Bosko Drive, East Brunswick, N.J. 08816, counsel for amicus New Jersey Coalition for Battered Women.

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