

CASE NUMBER S 95 A 0250

IN THE SUPREME COURT FOR THE
STATE OF GEORGIA

JENNIFER LAYNE LEWIS,
Appellant,

V.

STATE OF GEORGIA,
Appellee.

APPEAL FROM THE SUPERIOR COURT FOR THE
COUNTY OF GLYNN, STATE OF GEORGIA

BRIEF OF AMICI CURIAE
NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, et al.
ON BEHALF OF APPELLANT JENNIFER LAYNE LEWIS

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Connecticut Coalition Against Domestic Violence
Florida Coalition Against Domestic Violence
Georgia Advocates for Battered Women and Children
Hawaii State Committee on Family Violence
Idaho Coalition Against Sexual and Domestic Violence
Illinois Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Kansas Coalition Against Sexual and Domestic Violence
Kentucky Domestic Violence Association
Louisiana Coalition Against Domestic Violence
Massachusetts Coalition of Battered Women Service Groups
Minnesota Coalition for Battered Women
Missouri Coalition Against Domestic Violence
National Center on Women and Family Law, Inc. -- National Battered Women's Law Project
National Association of Criminal Defense Lawyers
National Coalition Against Domestic Violence
National Jury Project
Nebraska Domestic Violence Sexual Assault Coalition
New Hampshire Coalition Against Domestic and Sexual Violence
New Jersey Coalition for Battered Women
New York State Coalition Against Domestic Violence
North Georgia Mountain Crisis Network
North Dakota Council on Abused Women's Services
Northwest Women's Law Center
NOW Legal Defense and Education Fund
Ohio Domestic Violence Network
Oklahoma Coalition Against Domestic Violence and Sexual Assault
Oregon Coalition Against Domestic and Sexual Violence
Pace University Battered Women's Justice Center
Pennsylvania Coalition Against Domestic Violence
Post-Conviction Remedies Clinic of Albany Law School
South Dakota Coalition Against Domestic Violence and Sexual Assault
Tennessee Task Force Against Domestic Violence
Texas Council on Family Violence
West Virginia Coalition Against Domestic Violence
Wisconsin Coalition Against Domestic Violence
Women's Law Project
Wyoming Coalition Against Domestic Violence

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I. STATEMENT REGARDING JURISDICTION

This Honorable Court has jurisdiction to hear this case on appeal, pursuant to Article VI, Section VI, Paragraph III(8) of the Constitution of the State of Georgia, insofar as a sentence of death could have been imposed for Appellant's felony murder conviction.

II. INTERESTS OF AMICI CURIAE

Amici are 44 nonprofit national and state organizations from Georgia and across the country, which represent the interests of battered women and children. Appendix A contains our Statements of Interest.

Amici are committed to ending violence against women and their children. We include organizations which: shelter battered women and their children; counsel and advocate for battered women and their children; provide training and technical assistance on domestic violence to attorneys, judges, law enforcement officials and psychologists; represent battered women in the courts; counsel men who are abusive to their intimate partners; and participate in public policy development on domestic violence.

Amici have firsthand knowledge about the physical, emotional, psychological and mental effects of domestic violence on women. Sometimes, a battered woman is forced to defend herself physically against her batterer's threat of serious bodily harm or deadly injury; she may then be required to defend herself in the legal system against resultant homicide or assault charges.

Amici's collective experience has shown that myths and misperceptions about domestic violence persist, and often make it difficult for a battered woman defendant to receive a fair trial. These myths and misconceptions arise and are expressed in a myriad of ways, both blatant and subtle, and can cause judges and jurors erroneously to reject the self-defense claims of battered women. It is imperative that -- as with all criminal defendants asserting a self-defense claim -- a battered woman be able to present all of the evidence, including a past history of abuse at the hands of the deceased and, when appropriate, expert testimony on

battering and its effects, that is relevant to a determination as to whether she reasonably believed she was in danger of imminent harm. Therefore, we respectfully urge the Georgia Supreme Court to reverse the Superior Court for Glynn County in this case.

III. JUDGMENT APPEALED FROM AND DATE OF ENTRY

Jennifer Layne Lewis stands before this Court convicted of felony murder and possession of a firearm during commission of a crime. She was sentenced on October 22, 1993 to a term of life imprisonment for the felony murder conviction, and a consecutive term of five years imprisonment on the firearms charge.

A Motion for New Trial, timely filed, was denied by the lower court on September 14, 1994. Appellant then filed a timely Notice of Appeal to this Honorable Court on September 27, 1994. The issue addressed by Amici Curiae is among those properly preserved by appellant in the lower court and before this Court for consideration and determination.

IV. STATEMENT OF ISSUES

(1)

Appellant was denied the effective assistance of trial counsel because that counsel, aware that appellant had been subjected to abuse by the deceased, failed to investigate this relevant history or present lay testimony and documentary evidence confirming it, and further failed to consider the applicability of or present expert testimony regarding the experiences and responses of battered women generally and of the appellant in particular, when -- under well-settled Georgia case law -- all of this testimony and evidence would have been admissible to support appellant's claim of self-defense and rebut the evidence and arguments of the prosecution.

V. STATEMENT OF THE CASE

Appellant, Jennifer Layne Lewis, fired a shot that killed her husband during a confrontation in which he severely assaulted and choked her, cornered her in a closet, and continued to threaten her. Earlier that same day, he had attempted to drown her. Her defense was self-defense. Although Lewis' trial counsel were aware that the fatal confrontation was not an isolated incident, but instead was one in a history of abuse, no evidence corroborative of appellant's testimony regarding this history was presented. Trial counsel also failed to present, or even consult with, the professionals who had examined appellant and could have corroborated the history of abuse and testified about the effects of battering in general and on appellant in particular. The prosecutor pointedly cross-examined appellant and argued against her self-defense claim, emphasizing the following: the lack of corroboration of the history of abuse, the lack of explanation for her failure to report the prior incidents to the police, and her failure to "turn around and just walk out of the house" in the moments prior to the firing of the fatal shot. Trial counsel failed to present the available evidence and information needed to counter the prosecution on these points.

Appellant was convicted of felony murder and possession of a firearm during commission of a crime. She was thereafter sentenced to a term of life imprisonment on the murder charge, and a consecutive term of five (5) years imprisonment on the weapons charge.

At a hearing on appellant's Motion for New Trial, it was established that there was in fact a prior history of abuse and that both medical records and expert testimony were available to establish that appellant had experienced battering. The

expert testimony, had it been presented at trial, also would have explained the experiences of battered women, their heightened fear of their abusers, and their inability to safely escape their abusers, and would have been admissible under settled Georgia law to support appellant's self-defense claim.

VI. ENUMERATION OF ERRORS

(1)

Appellant was denied the effective assistance of trial counsel because that counsel, aware that appellant had been subjected to abuse by the deceased, failed to investigate this relevant history or present lay testimony and documentary evidence confirming it, and further failed to consider the applicability of or present expert testimony regarding the experiences and responses of battered women generally and of the appellant in particular, when -- under well-settled Georgia case law -- all of this testimony and evidence would have been admissible to support appellant's claim of self-defense and rebut the evidence and arguments of the prosecution.

VII. ARGUMENTS AND CITATIONS OF AUTHORITY

A. Introduction

Appellant, a 24-year-old woman, shot and killed her husband during a confrontation in which he had beaten her severely, and which followed his attempt to drown her earlier that day. This confrontation had been preceded by other instances of physical abuse of appellant by the deceased. Appellant was deprived of the effective assistance of counsel in presenting the defense of self-defense when her own attorney failed to present corroborative evidence of this history of abuse at the hands of her husband, an error he compounded by failing to consult with and present experts to testify concerning the effects such abuse has on its victims.

It is important to stress that Amici make no claim to a separate "battered women's defense" or "battered woman syndrome defense." Rather, lay and expert testimony regarding the history of abuse and the resulting behavioral responses are admissible and relevant in self-defense cases to provide the jury with a proper understanding, unencumbered by prevailing myths concerning battered women, of the circumstances surrounding the reasonableness of the defendant's actions.

Amici do not aver that every lawyer is ineffective in failing to present lay or expert testimony about battering and its effects when the victim is a woman who kills or injures her intimate partner. However, where, as here, the state's decisional law makes such evidence admissible and relevant to the state of mind necessary for the defense of self-defense; the female defendant has a history of being abused by the deceased; and the prosecution emphasizes the accused's failure to leave the abuser, to report abusive incidents to the police or others, or to simply walk away

from her abuser during an interlude when the violence is temporarily at bay and only implicit or threatened, the presumption is that, absent extraordinary reasons, there is no tactical basis for the decision to forego the presentation of such evidence. Otherwise -- as happened in this case -- the defendant is deprived of the right not only to present her defense but also to rebut prejudicial examination and arguments by the prosecution which directly draw upon the common myths and misperceptions about battered women who kill their abusers in self-defense. Accordingly, a new trial must be granted to appellant.

B. Expert Testimony on Battering and Its Effects Is Admissible and Relevant to Support the Elements of a Self-Defense Claim and to Rebut Myths and Misperceptions about Battered Women

More than a decade before appellant's trial, this Honorable Court recognized the admissibility and need for evidence of battering, both lay and expert, in a self-defense case. In Smith v. State, 247 Ga. 612, 619, 277 S.E.2d 678, 683 (1981), this Court upheld the right to present evidence of a history of battering, including expert testimony, "to assist the jury in evaluating the battered woman's defense of self-defense" (footnote omitted).

After surveying decisional law nationally, this Court explained the need for such testimony in light of the myths that prevail about battered women and their capacity to safely leave their abusers:

We...find that the expert's testimony explaining why a person suffering from battered woman's syndrome would not leave her mate, would not inform the police or friends, and would fear increased aggression against herself, would be such conclusions that jurors could not ordinarily draw for

themselves.

Smith v. State, *supra*, 247 Ga. at 619, 277 S.E.2d at 683.

This succinct statement embodied the findings of both scholarly research and state and federal courts on this subject and anticipated legal developments in many jurisdictions, which followed this Court's lead. Since the Smith decision, this Court has reaffirmed its position on the admissibility of expert testimony on battering and its effects. Chapman v. State, 258 Ga. 214, 367 S.E.2d 541 (1988); Allison v. State, 256 Ga. 851, 353 S.E.2d 805 (1987); *see also* Pugh v. State, 191 Ga. App. 394, 382 S.E.2d 145 (1989).¹ This testimony is admissible to provide evidentiary support for a battered woman defendant's self-defense claim. Pugh v. State, 260 Ga. 874, 401 S.E.2d 270 (1991) (appeal after remand); Chapman v. State, 259 Ga. 706, 386 S.E.2d 129 (1989) (appeal after remand); Motes v. State, 192 Ga. App. 302, 384 S.E.2d 463, 466 (1989); Pugh v. State, *supra*, 382 S.E.2d at 145 (evidence of "battered woman syndrome" admissible to establish (1) reasonable fear of battered woman defendant in connection with self-defense claim and (2) deceased's general character for violence).

State and federal decisional law has followed Georgia's lead in holding that expert testimony on battering and its effects is admissible to support a claim of self-defense, and to rebut myths and misperceptions about battered women.² The most

¹ Georgia courts have applied the holding in Smith to other contexts, *e.g.*, Thompson v. State, 203 Ga. App. 339, 416 S.E.2d 755 (1992) (expert testimony on "battered woman syndrome" introduced by state to explain behavior of battered woman complainant).

² Ex Parte Haney, 603 So.2d 412 (Ala. 1992); People v. Aris, 215 Cal. App.3d 1178, 264 Cal. Rptr. 167 (1989); State v. Borrelli, 227 Conn. 153, 629 A.2d 1105 (1993); Ibn-Tamas v. U.S., 407 A.2d 626 (D.C. App. 1979); Terry v. State, 467 So.2d 761 (Fla. App. 4 Dist. 1985); State v. Cababag, 9 Haw. App. 496, 850 P.2d 716 (1993); People v. Minnis, 118 Ill. App.3d 345, 455 N.E.2d 209 (1983); People v. Fleming, 155 Ill. App.3d 29, 507 N.E.2d 954 (1987), leave to appeal denied, 116 Ill.2d 566, 515 N.E.2d 116 (1987), rev'd on other grounds, U.S. ex rel. Fleming v. Huch, 924 F.2d 679 (7th Cir. 1991); State v. Crawford, 253 Kan. 629, 861 P.2d 791 (1993); State v. Clements, 244 Kan. 411, 770 P.2d 447 (1989);

recent appellate decisions continue to recognize the legitimacy and need for evidence of battering and its effects on the accused, e.g., State v. Borrelli, supra note 2 (CT); Commonwealth v. Rodriguez, supra note 2 (MA); State v. Hess, supra note 2 (MT); State v. Koss, supra note 2 (OH); Bechtel v. State, supra note 2 (OK); Fielder v. State, supra note 2 (TX). As the Oklahoma court reiterated in Bechtel, supra at 8, Misconceptions regarding battered women abound, making it more likely than not that the average juror will draw from his or her own experience or common myths, which may lead to a wholly incorrect conclusion. Thus, we believe that expert testimony on the syndrome is necessary to counter these misconceptions.*

* Dr. Walker writes: "Expert testimony on the battered woman syndrome would help dispel the ordinary lay person's perception that a woman in a battering relationship is free to leave at anytime. The expert evidence would counter any 'common sense' conclusions by the jury that if the beatings were really that bad the woman would have left her husband much earlier. Popular misconceptions about battered women would be put to rest, including the beliefs that the women are masochistic and enjoy the beatings and that they intentionally provoke

State v. Stewart, 243 Kan. 639, 763 P.2d 572 (1988); State v. Hodges, 239 Kan. 63, 716 P.2d 563 (1986); Commonwealth v. Craig, 783 S.W.2d 387 (Ky. 1990); State v. Anaya, 438 A.2d 892 (Me. 1981); Commonwealth v. Rodriguez, 633 N.E.2d 1039 (Mass. 1994); State v. Hennem, 441 N.W.2d 793 (Minn. 1989) (en banc); State v. Hess, 252 Mont. 205, 828 P.2d 382 (1992), reh'g. den. 3/31/92; State v. Baker, 120 N.H. 773, 424 A.2d 171 (1980); State v. Kelly, 97 N.J. 178, 478 A.2d 364 (1984); State v. Gallegos, 104 N.M. 247, 719 P.2d 1268 (1986); In the Matter of Nicole V., 71 N.Y.2d 112, 518 N.E.2d 914 (1987); State v. Koss, 49 Ohio St.3d 213, 551 N.E.2d 970 (1990); Bechtel v. State, 840 P.2d 1 (Okla. Cr. App. 1992); State v. Moore, 72 Ore. App. 454, 695 P.2d 985 (1985); State v. Hill, 287 S.C. 398, 339 S.E.2d 121 (1986); Fielder v. State, 756 S.W.2d 309 (Tex. Cr. App. 1988); State v. Hazel, No. 931400263, 4th Judicial Dist. Ct. for County of Utah, State of Utah, Memorandum Decision of 9/7/93; State v. Allery, 101 Wash.2d 591, 682 P.2d 312 (1984); State v. Bednarz, 179 Wis.2d 460, 507 N.W.2d 168 (Wis. App. 1993); see also Dunn v. Roberts, 963 F.2d 308 (10th Cir. 1992) (conviction reversed because trial court denied funds for battered woman defendant to obtain expert witness); U.S. v. Winters, 729 F.2d 602 (9th Cir. 1984); Fennell v. Goolsby, 630 F.Supp. 451 (E.D. Pa. 1985).

For a detailed analysis of national trends on the admissibility of expert testimony, see Parrish, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases* (November 1994) at 36-37 (unpublished report prepared by Amicus, the National Clearinghouse for the Defense of Battered Women for The Women Judges' Fund for Justice for its State Justice Institute-funded project "Family Violence and the Courts: Exploring Expert Testimony on Battered Women").

their husbands into fits of rage." The Battered Woman Syndrome (sic) (1979).

In another leading case, Commonwealth v. Stonehouse, 521 Pa. 41, 555 A.2d 772 (1989), the need for testimony about the history of battering and its effects on the victim was explicated at length. The purpose of such testimony is to enable the jury to determine the reasonableness of the woman's actions free from the "erroneous myths concerning the victims of such abuse." Id. at 782.

Similarly, in State v. Kelly, supra note 2, the New Jersey Supreme Court concluded that expert testimony was appropriate:

The difficulty with the expert's testimony is that it sounds as if an expert is giving knowledge to a jury about something the jury knows as well as anyone else, namely, the reasonableness of a person's fear of imminent serious danger. That is not at all, however, what this testimony is directly aimed at. It is aimed at an area where the purported common knowledge of the jury may be very much mistaken, an area where jurors' logic, drawn from their own experience, may lead to a wholly incorrect conclusion, an area where expert knowledge would enable the jurors to disregard their prior conclusions as being common myths rather than common knowledge.

Id. at 378 (emphasis in original). See also State v. Allery, supra note 2 (expert testimony appropriate to rebut "stereotyped impressions about women who remain in abusive relationships").

In addition, ten states have enacted statutes which provide for the admissibility of such testimony.³

³ CAL. EVID. CODE §1107 (West 1993), LA. CODE EVID. ANN. art. 404(A)(2) (West 1989), MD. CTS. & JUD. PROC. CODE ANN. §10-916 (1991), MASS. GEN. LAWS ANN. ch. 233, §23E (West 1994), MO. ANN. STAT. (Crimes & Punishment) §563.033 (Vernon 1991), NEV. REV. STAT. §48.061 (1993), OHIO REV. CODE ANN. §§2901.06, 2945.392 (Anderson 1990), OKLA. STAT. ANN. tit. 22, §40.7 (West 1992), TEX. PENAL CODE ANN. §19.06 (West 1992), WYO. STAT. (Crimes & Offenses) §6-1-203 (1993).

C. Expert Testimony Continues to Be Necessary to Enable the Factfinder to Understand a Battered Woman Defendant's Behavior and Responses

In the past 15 years, experts have developed methodologies, findings, and opinions regarding "battered woman syndrome"⁴ that have received general acceptance in the scientific community.⁵ Battering and its effects have been the subject of numerous papers and articles published in scientific journals and in books written by authorities in the field.⁶ There is a significant body of law review commentary on the topic.⁷

⁴ In this brief, Amici use the term "expert testimony on battering and its effects," although this testimony has often been referred to in court decisions and the literature as testimony on "battered woman syndrome" or "battered women's syndrome." Because of the wide variety of responses to battering, Amici use (and urge others to use) the more generic, more inclusive language that is utilized by many expert witnesses and in a number of state statutes on the admissibility of expert testimony on battering and its effects.

⁵ That expert testimony on battering and its effects is generally accepted by the scientific community has been recognized by numerous courts, e.g., State v. Borrelli, supra note 2 (CT); State v. Hickson, 630 So.2d 172 (Fla. 1993); People v. Minnis, supra note 2 (IL); State v. Hodges, supra note 2 (KS); State v. Hennum, supra note 2 (MN); State v. Williams, 787 S.W.2d 308 (Mo. App. 1990); State v. Kelly, supra note 2 (NJ); State v. Allery, supra note 2 (WA); State v. Hanson, 58 Wash. App. 504, 793 P.2d 1001 (1990), recon. den. 8/31/90; see also Fennell v. Goolsby, supra note 2.

⁶ E.g., Barnett & Laviolette, It Could Happen to Anyone: Why Battered Women Stay (1993); Blackman, Intimate Violence: A Study of Injustice (Columbia U. 1989); Browne, When Battered Women Kill (1987); Daly & Wilson, Homicide (1987); Davidson, Conjugal Crime: Understanding and Changing the Wife Beating Pattern (1979); Dobash & Dobash, Violence Against Wives (1979); Dutton, Empowering and Healing the Battered Woman (1992); Ewing, Battered Women and Public Opinion: Some Realities About the Myth (1988); Finkelhor, Gelles, Hotaling & Straus, Dark Side of Families (1983); Hotaling & Sugarman, An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge, 1 VIOLENCE AND VICTIMS 101, (1986); Jones, Women Who Kill (1991); Saunders, When Battered Women Use Violence: Husband-Abuse or Self-Defense?, 1 VICTIMS AND VIOLENCE 47 (1986); Straus, Gelles & Steinmetz, Behind Closed Doors: Violence in the American Family (1979); Walker, The Battered Woman Syndrome (1984); Walker, The Battered Woman (1979).

⁷ Andersen & Read-Andersen, Constitutional Dimensions of the Battered Woman Syndrome, 53 OHIO ST. L.J. 363 (1992); Baumann, Expert Testimony on the Battered Wife Syndrome, 27 ST. LOUIS U. L.J. 407 (1983); Blackman, Potential Uses For Expert Testimony, 9 WOMEN'S RTS. L.REP. 227 (1986); Bochnak, ed., Women's Self-Defense Cases: Theory and Practices (1981); Bunyak, Battered Wives

Social research shows that myths and misperceptions about battered women and their behavior or actions persist to this day and expert testimony is still required to address them. Early research posited that "the public holds a host of misconceptions about battered women and the nature of abusive relationships, such as battered women provoke or are in some way responsible for the abuse, they remain with the batterer because they like the beatings, the violence fulfills a deep-seated need within each partner, and battered women are free to leave the relationship if that is what they really want [citations omitted]" (Schuller, Smith, & Olson, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 JOURNAL OF APPLIED SOCIAL PSYCHOLOGY 316 (1994)). A recent survey (Dodge & Greene, 1991) found that, compared to experts in the field, laypersons were still less likely to believe that a battered woman would be persuaded to stay in the relationship by the abuser's promises to reform, that she would believe using deadly force was the only way to protect herself, and that she would believe her batterer could kill her, as well as less likely to understand that a

Who Kill: Civil Liability and the Admissibility of Battered Woman's Syndrome Testimony, 4 LAW & INEQ. J. 603 (1986); Coffee, *A Trend Emerges: A State Survey on the Admissibility of Expert Testimony Concerning the Battered Woman Syndrome*, 25 J. FAM. L. 373 (1986-87); Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense*, 8 HARV. WOMEN'S L.J. 121 (1985); Comment, *The Defense of Battered Women Who Kill*, 135 U. PA. L. REV. 427 (1987); Comment, *The Expert as Educator: A Proposed Approach to the Use of Battered Woman Syndrome Expert Testimony*, 35 VAND. L. REV. 741 (1982); Del Tosto, *The Battered Spouse Syndrome as a Defense to a Homicide Charge Under The Pennsylvania Crimes Code*, 26 VILL. L. REV. 105 (1980-81); Developments in the Law, *Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498 (1993); Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (Summer 1993); Eber, *The Battered Wife's Dilemma: To Kill or to be Killed*, 32 HASTINGS L.J. 895 (1981); Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379 (December 1991); Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self-Defense, and Expert Testimony*, 39 MERCER L. REV. 545 (1988); Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980); Thyfault, *Self-Defense: Battered Woman Syndrome on Trial*, 20 CAL. W. L. REV. 485 (1984); Walker, Browne & Thyfault, *Beyond the Juror's Ken*, 7 VT. L. REV. 1 (1982).

battered woman would blame herself for the violence (Id. at 317).

A number of these misconceptions are linked to the inaccurate notion that all battered women fit one particular "profile" (see, e.g., Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA LAW REV. 1191, 1196 (Summer 1993)). On the contrary, "[a]ll women exposed to violence and abuse in their intimate relationships do not respond similarly, contradicting the mistaken assumption that there exists a singular 'battered woman profile'" (Id. at 1225).

In reality, "[b]attered women utilize an impressive array of strategies for attempting to stop the violence, strategies which include efforts to escape, avoid, and protect themselves and others from the violence and abuse of their intimate partners. These strategies have been categorized as personal, informal, and formal" (Dutton, supra at 1227). As examples of "personal strategies" Dutton cites compliance with the batterer's demands or anticipated demands in order to keep the peace, attempts to talk with the batterer about stopping the violence, temporary escape from the batterer's presence, physically resisting or defending oneself against the violence or abuse, and using the children (Id. at 1227-1228). "Informal strategies" include soliciting help from neighbors, family or friends in efforts to escape or asking them to intervene with the batterer, while "formal strategies" include efforts that involve the legal system, shelters for battered women or domestic violence programs (Id. at 1228).

It is important to note that no single strategy has been identified as clearly and consistently the most effective means to end battering (Id. at 1228). Yet, laypersons most commonly expect a battered woman to call police and leave the home (Id. at 1229). Empirical studies have shown that most battered women do not call police

for help with domestic violence; when they do call, the outcome may not always be positive (*Id.* at 1229). Moreover, most battered women do not use battered women's shelters (although some attempt to use a shelter but are turned away due to lack of space) (*Id.* at 1229-1230). Women who eventually leave an abusive partner often report numerous prior efforts to do so (*Id.* at 1231).

Jurors are particularly unable to grasp for themselves why women fail to leave abusive relationships, concluding erroneously either that there must not have been any battering or that by remaining, the women somehow waived their right to defend themselves (*see* Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 37 (October 1991)). Yet, battered women's belief that escape from abuse is difficult or impossible for them is borne out by crime statistics that indicate that more than 70 percent of reported battering incidents occurred after the woman left the relationship (U.S. Crime Survey, 1990) (cited in Walker, *The Battered Woman Syndrome Is a Psychological Consequence of Abuse*, in *Current Controversies on Family Violence*, 133, 143 (Gelles & Loseke, eds. 1993)). It has also been reported that a battered woman's efforts to leave her batterer frequently trigger an increase in the violence against her, and that by attempting to leave, she actually places herself in heightened risk of harm at the hands of the batterer (*e.g.*, Mahoney, *supra* at 5-6).

Given all of this, what is the role of expert testimony on battering and its effects? As one noted expert put it,

The expert witness uses his or her scientific knowledge and experience with battered women to assist the factfinder in considering the following: (1) the victim's direct experience with and knowledge of the batterer's past violent and abusive behavior, including, where relevant, evidence concerning violence in the situation leading to the case at issue; (2) the victim's prior

strategies for attempting to protect herself (or others) from the violence and abuse, why she did (or did not) choose these particular strategies, and the consequences of their use; (3) the psychological reactions of the victim to prior violence and abuse at the hands of the batterer; and (4) the contextual factors that influenced the battered woman's behavior (Dutton, supra at 1241).

The reasonableness of a battered woman defendant's "estimate" of the need to use deadly force is for the jury to decide, but it must consider in this calculus her perceptions of the dangers involved if she did not act. In considering this issue, it is critical that the jury not be misled by erroneous assumptions about a battered woman's life experience. Any such misinformation can distort the factfinder's assessment of the reasonableness of the defendant's perceptions and behavior. In this case, expert testimony was necessary not only to rebut prevailing myths, but to respond to specific issues. Most significantly, the prosecution sought to impeach appellant's version of the incident by challenging her failure to have merely walked out of the house just before the shooting and to report prior incidents to the police. But studies (such as those cited in Section VII.C., supra) demonstrate that such behavior is not unusual and that battered women cope with their situation with a wide variety of strategies.

The need for testimony, lay and expert, regarding the history of battering and its impact, remains as strong today as it did when this Court rendered its decision in Smith v. State, supra. As is set forth below, appellant was denied the effective assistance of counsel when her own attorney was responsible for the omission of such evidence.

D.Trial Counsel's Failure to Investigate the History of Abuse, Present Corroborative Evidence of That History, and Consider or Present Expert Testimony on

Battering and Its Effects Constituted Ineffective Assistance of Counsel

The responsibilities of a trial attorney, particularly in a capital homicide case, are clear. The minimum threshold for effective assistance requires the attorney (1) to be familiar with the law of the jurisdiction; (2) to be fully familiar with the evidence against the accused; and (3) to conduct "reasonable investigation[.]...of the possible avenues of defense..." Pitts v. State, 209 Ga. App. 47, 432 S.E.2d 643, 645 (1993); see also Hawes v. State, 240 Ga. 327, 240 S.E.2d 833 (1977).

In Georgia, where decisional law has permitted evidence of abuse and its impacts on the accused for more than a decade, the duty to investigate the history and impact of battering is paramount once trial counsel becomes aware of such a background.⁸ This duty includes (1) fully de-briefing the client to learn the details of the history of abuse; (2) seeking out corroborative evidence (e.g., medical records, lay witness testimony, photographs, etc.); and (3) consulting with an expert or experts to assess the psychological impact of the abuse on the accused and determine whether expert testimony, admissible as a matter of law, should be adduced to support the defendant's testimony and explain her behavior.

In the instant case, trial counsel was aware of the abuse but took no further action. Although appellant was being treated by various mental health professionals, trial counsel consulted with none; although trial counsel was aware of chiropractic records supporting the history of abuse, trial counsel neither obtained

⁸ Indeed, it would not be unreasonable to posit that trial counsel, investigating any homicide involving parties in a spousal or intimate relationship, should make an initial inquiry to determine whether a history of abuse was present. However, in the instant case this Court need not reach that issue, as trial counsel knew, from the interviews with his client, that there had been prior incidents of abuse committed by the deceased, and should have known from talking with the mental health professionals who had evaluated her.

nor presented such evidence; and although trial counsel had, from previous experience, been aware of the possibility of presenting expert testimony, he took no steps to even investigate this possibility in this case.⁹

A fundamental flaw in trial counsel's preparation was his determining, without expert advice or assistance, whether appellant was indeed a battered woman. It is unclear what factors led to this conclusion: the reluctance of appellant to disclose her history of abuse; the seeming lack of corroborating lay witnesses; or that she was alleged to have, on occasion, used force against her husband. None of these factors, alone or cumulatively, made appellant something other than a victim of battering. Indeed, as the experts cogently explained at the post-verdict hearing, battered women often minimize or even deny the extent and duration of violence visited upon them.¹⁰ Put simply, trial counsel was without the skills to make such an evaluation¹¹ -- it was his obligation, upon learning of the abusive relationship, to ensure that a proper evaluation was conducted. Only then could counsel make a reasoned choice regarding what witnesses and evidence to present.¹²

⁹ In fact, trial counsel may have labored under the very misconceptions that an expert could have addressed, as his post-trial testimony indicated a concern that, because appellant may have used drugs or alcohol or may have exhibited anger at her husband, she could not have been a battered woman (Transcript of hearing on Motion for New Trial at pp. 50-51, 55, 63-64, 67).

¹⁰ See, e.g., Transcript of hearing on Motion for New Trial at pp. 132, 142, 167-168, 174, 178. .

¹¹ This Court would never countenance an attorney's "deciding" that an insanity defense was not viable where the defendant exhibited signs of serious mental illness, unless that attorney first consulted with a mental health expert who could evaluate the client's history and mental state. The same standard must be applied in cases involving battering.

¹² Trial counsel, in addition to being unable to properly evaluate whether appellant was a victim of battering, also seemed less than knowledgeable about this Court's decisional law explicating the interplay between the history of battering and the defense of self-defense: Q. What is your understanding about how this battered woman syndrome relates to self-defense?

A. Well, as I say, in Georgia, I don't believe there's a defined standard to it that would

It is unquestioned that appellant was seriously prejudiced by counsel's derelictions. No corroboration of appellant's testimony regarding the history of abuse was presented; the jury was not informed of information critical to debunking the myths that still permeate the public understanding of the dilemmas faced by battered women; and the prosecutor exploited those myths in cross-examining appellant and during closing argument.

This Court is urged to follow the seminal decision on ineffectiveness of counsel in this context, Commonwealth v. Stonehouse, 521 Pa. 41, 555 A.2d 772 (1989). Stonehouse found counsel ineffective for failing, *inter alia*, to present expert testimony detailing the impact battering has on a woman, even one of fortitude (the defendant in Stonehouse was herself a police officer). The Pennsylvania Supreme Court's analysis has particular application to the case at hand:

...Expert testimony would reveal that battered women view batterers "as omnipotent in terms of their ability to survey their women's activities," and that there are reasons for battered women's reluctance to seek help from others, such as fear, embarrassment, and the inability of police to respond in ways that are helpful to the battered women. Expert testimony would also have shown that among battered women who kill, the final incident that precipitates the killing is viewed by the battered women as "more severe and more life-threatening than prior incidents."

On the basis of such expert testimony, the jury could have found that appellant herein was a battered woman and that, like most battered women, appellant was isolated and justifiably believed that no one could help her solve her predicament except herself...

...There was no reasonable basis for trial counsel not to call an expert witness to counter the erroneous battered women myths

apply. (Transcript of hearing on Motion for New Trial at p.50.)

upon which the Commonwealth built its case. Thus, trial counsel was ineffective, and the absence of such expert testimony was prejudicial to appellant in that the jury was permitted, on the basis of unfounded myths, to assess appellant's claim that she had a reasonable belief that she faced a life-threatening situation when she fired her gun at Welsh.

Commonwealth v. Stonehouse, supra, 555 A.2d at 784-785 (citations and footnote omitted) (emphasis in original).

In the instant matter, the prejudice resulting to appellant as a result of her counsel's derelictions was magnified by the fact that the prosecutor directly drew upon and exploited precisely those misconceptions which expert evidence would have corrected. A focal point of the prosecutor's examination of appellant was to repeatedly emphasize her failure to leave the marital dwelling, seek police intervention, or obtain any other help before the fatal shot was fired.¹³ Appellant's counsel permitted this damaging testimony to remain completely unrebutted. These points were hammered home during the prosecutor's closing argument, again, without any counter having been posited by defense counsel:

Now, ladies and gentlemen, does that make, ask yourself, does that make sense to you? Here's a man that she claims has just tried to kill her and she also believes him when he says, "I'm not going to be home later on in the evening." Is that reasonable? Is that credible? Is it reasonable and credible that the parents of this woman, knowing this fact, are going to take her to him? Are going to leave her alone with this monster?...

* * * * *

But at some point in time, she walks out of here, her story is she walks out of here, this woman who almost drowned earlier, in white clothing. Comes out and sees Duane mesmerized by this

¹³ Because the prosecutor's emphasis of these points pervaded his examination of appellant, the relevant excerpts are too lengthy to reproduce here and are appended to this brief as Appendix B.

closet. He just happened to be standing there looking at this closet. And all of a sudden he grabs her and throws her in the wall. **"Well, did you think about leaving then?"**

"No, he walked on I went in the kitchen after him." Ask yourselves -- Ladies and gentlemen, when you walk back in that jury room, there's not a sign above that door: "Leave all your common sense and reason out in the hallway." She walks in the kitchen with him. What does he do then? Oh, of course, then he throws her into the kitchen cabinet. "Could you leave then?"

"Well, yeah, I could."

Anything blocking the way to the door?"

"No, nothing blocking my way to the door."

"Could you have walked out of the house?"

"Well, yeah, I could have walked out of the house."

"Were you scared?"

"I was horrified."

"Well, what happened then?"

"Well, then he pushed me in the dining room."

"Could you leave?"

"Yeah, I guess I could have walked out the door."

* * * * *

So at that time, and we about ran out of rooms in the house to be abused in, if you haven't noticed. She walks, she says, he walks down the hall and she hears the door slam. **What's the first thing this woman does? Does she pick up the phone and call for help? Does she walk and lock the door?...[S]he admits that the first thing she did is she picked up the Glock, the loaded gun...So she's walking down the hall, gets to the front**

of the house, not locking the door, picks up and calls 911. And what's the first thing she says, ladies and gentlemen? "I want somebody, I want somebody to come and remove my husband from my house." Here is a woman who hours earlier had allegedly been strangled, drowned, attempted to be drowned. Had been beat up in no less than one, two, three, four bedrooms. Weekend prior to that, had allegedly been punched in the face. The first thing she says is, "I want somebody to come and remove my husband from my house." Not, "Please send help. I have been beaten. He's threatened to kill me. He's beaten me up."

Transcript of trial, prosecutor's closing argument, pp. 46-51 (emphases added).

These arguments could have been answered and appellant's actions explained had trial counsel presented the necessary expert evidence. Indeed, it is precisely to correct such misconceptions that this Court permits expert testimony concerning battering and its effects. Smith v. State, *supra*, 247 Ga. at 619, 277 S.E.2d at 683 (why the battered woman would not inform police or friends, would not leave, and would fear increased aggression are conclusions requiring expert explanation).

In assessing ineffectiveness claims based on failure to present evidence on battering and its effects, courts have recognized the impact of the prosecutor's drawing on such uncorrected misconceptions. In People v. Day, 2 Cal. App.4th 405, 413-414, 2 Cal. Rptr.2d 916, 924-925 (1992), the court reversed the defendant's manslaughter conviction on ineffectiveness grounds, with reasoning that equally applies to the instant facts:

One of the most commonly made arguments by prosecutors in urging rejection of a defense is that the person's behavior is inconsistent with that defense.

...We conclude the failure to present BWS evidence was prejudicial: the evidence was not only relevant, but critical in permitting the jury to evaluate appellant's testimony free of the misperceptions regarding battered women. Appellant's

testimony provided the only eye-witness account. The prosecution's case rested on circumstantial evidence and exploitation of myths about battered women. The prosecutor repeatedly relied on misconceptions about battered women in urging the jury to reject appellant's claim of self-defense....Had evidence of the battered woman syndrome been introduced, [counsel] effectively could have countered the battered woman myths on which the prosecutor built his case (citing Com. v. Stonehouse...).

See also, People v. Romero, 13 Cal. Rptr.2d 332, 340 (Cal. App. 2 Dist. 1992), rev'd on other grounds, 35 Cal. Rptr.2d 270, 883 P.2d 388 (1994) (counsel ineffective for failing to present "battered woman syndrome" evidence which would have explained defendant's "failure simply to walk away," and explain behavior that might otherwise appear unreasonable).

The Stonehouse decision is not an aberration. Rather, it presaged a growing body of law recognizing the responsibilities of trial counsel to provide the evidence, from both lay and expert witnesses, corroborative of a battered woman's testimony and elucidating the impact of such battering on the abused woman. See, e.g., People v. Romero, supra; People v. Day, supra; State v. Scott, 1989 WL 90613 (Del. Super. 7/18/89); Commonwealth v. Tyson, 535 Pa. 391, 635 A.2d 623 (1993); Commonwealth v. Miller, 430 Pa. Super. 297, 634 A.2d 614 (1993); State v. Zimmerman, 823 S.W.2d 220 (Tenn. Crim. App. 1991). See also the pre-Stonehouse decisions, Larson v. State, 104 Nev. Adv. 113, 766 P.2d 261 (1988) and State v. Felton, 110 Wis.2d 485, 329 N.W.2d 161 (Wis. 1983).

The parallels among Stonehouse, Day, and the instant case are several, but in one respect the case at hand has an even greater dereliction by trial counsel: not only did appellant Lewis suffer from the absence of expert testimony, but her credibility was left subject to attack by the prosecutor because of the absence of

corroborative evidence that would have confirmed the prior acts of abuse. This evidence, including testimony from appellant's chiropractor and supporting medical documentation, was known to trial counsel but never proffered at trial. Again, the prosecutor took full advantage of the absence of this available evidence, emphasizing it throughout his closing argument and in his final remarks to the jury: Any witnesses, is it [the claim of prior abuse] corroborated? Have you heard anyone come in this courtroom and corroborate the injury besides the family who love her?

Transcript of trial, prosecutor's closing argument, p. 41.

But you have the evidence before you. All the credible evidence before you and had Duane Lewis ever been violent towards Jennifer Lewis, I guarantee you you would have heard it this week. You would have heard that evidence.

Id. at p. 65.

In sum, appellant not only was hampered in presenting her defense by the myths surrounding the circumstances and experiences of battered women, but she was also rendered less than credible by the lack of substantiation of her own testimony.

Nothing in the prosecutor's Brief in this Court rebuts this analysis. Indeed, that Brief¹⁴ is premised on misconceptions as fundamental as those under which trial counsel labored. The Brief for Appellee asserts that trial counsel's conduct was acceptable because ...the victim was not the "typical" victim of a battered woman because he was not asleep or otherwise incapacitated.

(Brief for Appellee at p.27). No authority is cited for this proposition because, in fact,

¹⁴The Brief is also noticeably silent regarding the prosecution's use of myths regarding battered women and its attack on appellant for the alleged lack of corroboration for her claims.

this allegedly "typical" scenario is the case in only a minority (20 percent) of battered women's homicides.¹⁵ Rather, most battered women defendants charged with homicide have used force against their batterers in a confrontational situation.

The prosecution's misconception confirms trial counsel's ineffectiveness. Each relied on a myth or stereotype, rather than investigation and analysis, in seeking to justify the failure to present evidence of battering and its effects. In no way can such an approach satisfy the constitutional minimum for effective representation.

Amici do not contend that expert or lay testimony is necessary or appropriate in every case in which a woman kills her husband, paramour or similar partner in self-defense. However, where there is a history of abuse, and in light of the myths that prevail about the behavior and responses of battered women, trial counsel must be deemed ineffective where he/she fails to present evidence that confirms that history and explains the dynamics in the abusive relationship and the abuse victim's reasonable basis for her perception of life-threatening danger.

In the instant case, appellant's claim of self-defense lacked even the most fundamental support available, that of corroborative medical evidence, because of trial counsel's failure. This omission was compounded by the failure to explore and present expert testimony. Had these two categories of information been adduced, there is a more-than-reasonable probability that the trial would have had a different outcome.

Trial counsel's omissions do not reflect a reasoned choice. Indeed, as he failed to even explore these options with the most minimal of investigations, he cannot be said to have had any tactical basis whatsoever for his omissions. Accordingly,

¹⁵Maguigan, supra note 7 at 397; Parrish, supra note 2 at Appendix II.

appellant was denied the effective assistance of counsel.

VIII. CONCLUSION

Lay and expert testimony on the history and impact of battering are relevant to the central issues in most self-defense cases: the defendant's perceptions and behavior at the time of the killing, and their reasonableness given the history between her and the abuser. Georgia specifically permits expert testimony not only to correct common misconceptions and support a self-defense claim generally, but also to assist the factfinder in assessing the defendant's mental state and the honesty of her belief that danger was imminent.

Amici Curiae seek no more than to ensure that trial counsel act as this Court has previously required -- by conducting a diligent examination of the law and the evidence in preparing for trial. In the context of a battered woman defendant, that investigation and preparation requires knowledge of this Court's decisional law permitting evidence, both lay and expert, regarding battering and its impacts; consulting with experts; and the securing and presentation of such evidence where it supports the defense.

Here, trial counsel took none of these steps. As his representation was therefore clearly deficient, Amici Curiae urge this Court to enter the relief sought by appellant and grant her a new trial.

This ____ day of February, 1995.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the within Brief of Amici Curiae National Clearinghouse for the Defense of Battered Women, et al. on Behalf

of Appellant Jennifer Layne Lewis on the following persons:

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Appendix A
Statements of Interest of Amici Curiae

NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN

The National Clearinghouse for the Defense of Battered Women (NCDBW) is a nonprofit organization, incorporated in the Commonwealth of Pennsylvania. Founded in 1987, NCDBW's purpose is to increase justice for battered women charged with crimes who, after years of abuse, kill their batterers in self-defense, are coerced into crime by their batterers, or are unable to protect their children from their batterer. NCDBW has grown into a major national resource, information and advocacy center.

The National Clearinghouse is the first and only national organization that provides technical assistance and information to battered women defendants, defense attorneys, battered women's advocates, expert witnesses and other professionals and community lay people. NCDBW provides direct assistance and consultation to defense teams on request; offers the nation's most comprehensive Resource Library about an array of topics related to battered women charged with crimes, including the use of expert witnesses on battering and its effects; provides direct support to battered women in prison; and provides training to members of the criminal justice community and to the public at large regarding the unique dynamics and factors affecting battered women defendants. NCDBW also coordinates a growing network of people and organizations who share our concerns.

The National Clearinghouse works to educate attorneys, experts, advocates, judges, legislators, the media, the public at large and battered women themselves that there is no such thing as the so-called "battered women's defense" or "battered woman syndrome defense;" rather, where a battered woman acts to defend herself or her children based on a reasonable belief in an imminent danger of serious bodily harm from her batterer, the appropriate defense is self-defense (*see Pugh v. State*, 260 Ga. 874, 401 S.E.2d 270 (1991)). Like all criminal defendants, in order to have a fair trial, a battered woman defendant must be allowed to present all relevant evidence that supports her defense, such as the prior history of abuse, to assist the judge and/or jury to understand the defendant's state of mind at the time of the alleged offense and, specifically, why it was reasonable for her to fear imminent harm at the hands of the deceased. Finally, such relevant evidence of the past history of abuse may include expert testimony on battering and its effects. Depending on the fact pattern and other factors, an expert witness is not always required in order fully to present a defense of self-defense, duress, etc. However, in many cases, expert testimony on battering and its effects is essential if the court and/or jury are to be able to put aside myths and misperceptions about battered women or their actions, and fairly assess the reasonableness of the defendant's beliefs given the past history of violence (*see Chapman v. State*, 258 Ga. 214, 367 S.E.2d 541 (1988)).

NCDBW submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal,

and urges that the order of the trial court be reversed.

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

The Alaska Network of Domestic Violence and Sexual Assault (ANDVSA) is a nonprofit organization, incorporated in the State of Alaska. Founded in 1980, ANDVSA's purposes include providing communication and linkage among programs and organizations whose primary focus is the elimination of domestic violence and sexual assault, and; to expose the roots of domestic violence and sexual assault in the institutionalized discrimination against women and children in the culture.

ANDVSA is concerned about the safety of women within intimate relationships, and the necessity of defending their lives when assaulted. Self-defense is often the only recourse available to victims of domestic violence, and should be an appropriate defense in the legal sense for battered women who are defendants on trial for killing their abusers.

ANDVSA is also concerned about the lack of knowledge, misconceptions, and myths many citizens bring with them when confronted with rendering a verdict in a criminal case involving claims of domestic violence. In cases where an abused woman is alleged to have murdered her perpetrator it is imperative that members of the jury and the judge have the opportunity to listen to relevant evidence of the prior history of abuse in the specific case before them. Both these opportunities will assist in understanding why the defendant feared for her life at the time of the alleged offense.

Finally, ANDVSA submits this statement of interest because we are particularly interested in battered women being able to obtain sound effective assistance from legal counsel in presenting a self-defense claim. Apparently, this did not happen in the case currently under review. ANDVSA urges the Georgia Supreme Court to reverse the order of the trial court.

AMERICAN CIVIL LIBERTIES UNION OF GEORGIA

The American Civil Liberties Union of Georgia, a 2,600-member state affiliate of the American Civil Liberties Union, joins in this brief of amicus curiae because of the constitutional implications upon counsels' failure to investigate and raise self-defense claims on behalf of battered women.

CENTER FOR CONSTITUTIONAL RIGHTS

WHEREAS, The Center for Constitutional Rights litigates constitutional issues concerning gender and racial-based violence; and

WHEREAS, The Center for Constitutional Rights is a nonprofit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the Constitution of the United States and the Universal Declaration of Human Rights; and

WHEREAS, in the more than two decades since its founding this organization has worked to make meaningful the international and constitutional as well as statutory rights of Blacks, Latinos, Native Americans, Asians, women, lesbians, gay males, low income and homeless persons, and other groups that have been historically marginalized and discriminated against; and

WHEREAS, this organization maintains a formal docket area in Women's Rights and has litigated, either directly or appearing as amicus, in a number of cases involving Women's Rights and Hate Crimes, including Open Door Counseling Clinic v. Republic of Ireland, Planned Parenthood v. Casey, NOW v. Terry, and in Native American Women's Health Education Resource Center v. Lake Andes, challenging the City of Lake Andes, South Dakota city council decision not to grant a zoning permit allowing the Native American Women's Health Education Resource Center to establish the city's first battered women's shelter; and

WHEREAS, this organization is deeply concerned about the widespread problems of domestic violence, and about the ability of battered women defendants who assert that they have killed or assaulted their batterer in self-defense or in defense of their children to receive fair and just treatment within the criminal justice system, including effective assistance of defense counsel; and

WHEREAS, this organization supports the defendant in the case of State of Georgia v. Jennifer Layne Lewis, now pending in the Georgia Supreme Court, in which case the defendant is challenging the decision of the Superior Court for the County of Glynn in the State of Georgia, convicting her of felony murder and weapons charges, sentencing her to life in prison plus five years, and denying her motion for a new trial; and

WHEREAS, the decision of the Superior Court, if it is affirmed, will seriously and adversely affect the ability of battered women charged with crimes to have the effective assistance of legal counsel and to have their defense, such as self-defense, presented fully and fairly, including the presentation of all relevant evidence, such as evidence of the prior history of abuse at the hands of their batterer and expert testimony on battering and its effects; and

WHEREAS, the decision of the Superior Court, if it is affirmed, will have the effect of victimizing a second time a woman who has already been the victim of domestic violence;

NOW, BE IT RESOLVED, that the Center for Constitutional Rights acknowledges support for the defendant and her appeal from the decision of the Superior Court for the County of Glynn in the State of Georgia in State v. Lewis and joins as an amicus in this case. This Resolution will remain in full force through this and other appeals, on condition that the National Clearinghouse for the Defense of Battered Women keeps the organization apprised of the status of the case and the position of the amici.

COLORADO DOMESTIC VIOLENCE COALITION

The Colorado Domestic Violence Coalition (CDVC), is a statewide nonprofit organization incorporated in the state of Colorado. CDVC, originally the Colorado Coalition for Aid to Battered Women, founded in 1977, is dedicated to the elimination of domestic violence in all its forms through community education, networking, and the empowerment of battered women and their children.

The Colorado Domestic Violence Coalition is the largest organization in the state of Colorado that provides technical assistance and information to battered women defendants, defense attorneys, prosecutors, battered women's advocates, expert witnesses, the medical profession and other community lay people. CDVC offers direct assistance to prosecutors and defense attorneys upon request; offers the state's most comprehensive Resource Library on an array of topics related to battered women, publishes an attorney's manual, a criminal justice manual and a health care manual and video, and annually sponsors prosecutors, judges and police trainings. CDVC also coordinates a growing network of people and 53 member programs and organizations who share our concerns.

The Colorado Domestic Violence Coalition works to educate attorneys, advocates, judges, legislators, the media, the public at large, and battered women themselves that there is no such thing as the so-called "battered women's defense" or "battered woman syndrome defense;" rather, where a battered woman acts to defend herself or her children based on a reasonable belief in an imminent danger of serious bodily harm from her batterer, the appropriate defense is self-defense (see *Pugh v. State*, 260 Ga. 874, 401 S.E.2d 270 (1991)). Like all criminal defendants, in order to have a fair trial, a battered woman defendant must be allowed to present all relevant evidence that supports her defense, such as the prior history of abuse, to assist the judge and/or jury to understand the defendant's state of mind at the time of the alleged offense, and specifically, why it was reasonable for her to fear imminent harm at the hands of the deceased. Finally, such relevant evidence of the past history of abuse may include expert testimony on battering and its effects. Depending on the fact pattern and other factors, an expert witness is not always required in order fully to present a defense of self-defense, duress, etc. However, in many cases, expert testimony on battering and its effects is essential if the court and/or jury are to be able to put aside myths and misperceptions about battered women or their actions, and fairly assess the reasonableness of the defendant's beliefs given the past history of violence (see *Chapman v. State*, 258 Ga. 214, 367 S.E.2d 541 (1988)).

CDVC submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

COALITION IN DEFENSE OF BATTERED WOMEN

The Coalition in Defense of Battered Women was formed in 1991 in Tennessee to support battered women who have fought back against their abusers. Coalition members include inmates and former inmates of the Tennessee Women's Prison, the Tennessee Task Force Against Domestic Violence, the Tennessee Association of Criminal Defense Lawyers, the Vanderbilt Center for Health Services, the Nashville chapter of the National Organization for Women, graduate and undergraduate students, and concerned citizens.

The goals of the Coalition in Defense of Battered Women are:

- 1) To document the problems that battered women face when they defend themselves against violence;
- 2) To develop strategies that promote justice for battered women who act in self-defense;
- 3) To inform and involve attorneys, mental health professionals, advocates, activists and others in issues relevant to battered women defendants.

The Coalition has initiated several projects on behalf of women who have been charged with killing partners who abused them. These include:

- 1) an analysis of sentencing patterns for women convicted of killing their partners;
- 2) a survey of attorneys who have defended battered women in court;
- 3) a survey of inmates in the Tennessee Women's Prison who allege that the partners they killed were their abusers;
- 4) an analysis of the most promising strategies for promoting justice for battered women who defend themselves from violence.

The Coalition in Defense of Battered Women works to educate attorneys, experts, advocates, judges, legislators, the media, the public at large, and battered women themselves that when a battered woman acts to defend herself or her children based on a reasonable belief in an imminent danger of serious bodily harm from her batterer, the appropriate defense is self-defense (see *Pugh v. State* 260 Ga. 874, 401 S.E.2d 270 (1991)). Like all criminal defendants, in order to have a fair trial, a battered woman defendant must be allowed to present all relevant evidence that supports her defense, such as the prior history of abuse, to assist the judge and/or jury to understand the defendant's state of mind at the time of the alleged offense, and specifically, why it was reasonable for her to fear imminent harm at the hands of the deceased. Such relevant evidence of the past history of abuse may include expert testimony to help the judge and/or jury put aside myths and misperceptions about battered women or their actions, and fairly assess the reasonableness of the defendant's beliefs given the past history of violence (see *Chapman v. State* 258 Ga. 214, 367 S.E.2d 541 (1988)).

The Coalition in Defense of Battered Women submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

CONNECTICUT COALITION AGAINST DOMESTIC VIOLENCE

The Connecticut Coalition Against Domestic Violence was established in 1978 as a vehicle for community-based domestic violence programs to provide statewide public policy advocacy, legislative reform, and education on the issue of domestic violence. The Coalition is a nonprofit membership organization composed of the 18 agencies that provide services to battered women and their children in Connecticut. The Coalition is dedicated to working toward the elimination of the conditions that exist which allow or promote violence against women. To this end, the Coalition's primary concern is for the safety and self-determination of battered women, their children, and other domestic violence victims. Our challenge is to deepen public understanding and concern about domestic violence and mobilize community resources on behalf of domestic violence victims. Through CCADV, domestic violence agencies receive a wide range of information, training and ongoing technical assistance designed to assist them in service delivery to victims of domestic violence.

As a member of the Governor's Task Force on Family Violence, CCADV successfully worked to effect passage of the 1986 Family Violence Prevention and Response Act, still considered one of the country's most comprehensive family violence statutes. CCADV administers the Family Violence Victim Advocate (FVVA) Program developed as part of the court-based Family Violence Intervention Units established under the new law. With inadequate financial resources, CCADV continues to build this program into an effective model for providing court-based victim services, one which makes full use of the strengths of community-based shelter programs and the Family Violence Intervention Units. CCADV has closely monitored the implementation of the new law since it went into effect in October 1986, and a major focus of our work since then has been working with the police, court personnel, and other service providers to ensure that both the spirit and the letter of the law are being carried out.

The Connecticut Coalition Against Domestic Violence works to educate attorneys, experts, advocates, judges, legislators, the media, the public at large, and battered women themselves that there is no such thing as the so-called "battered women's defense" or "battered woman syndrome defense," rather, where a battered woman acts to defend herself or her children based on a reasonable belief in an imminent danger of serious bodily harm from her batterer, the appropriate defense is self-defense (see *Pugh v. State*, 260 Ga. 874, 401 S.E.2d 270 (1991)). Like all criminal defendants, in order to have a fair trial, a battered woman defendant must be allowed to present all relevant evidence that supports her defense, such as the prior history of abuse, to assist the judge and/or jury to understand the defendant's state of mind at the time of the alleged offense, and specifically, why it was reasonable for her to fear imminent harm at the hands of the deceased. Finally, such relevant evidence of the past history of abuse may include expert testimony on battering and its effects. Depending on the fact pattern and other factors, an expert witness is not always required in order fully to present a defense or self-defense, duress, etc. However, in many cases, expert testimony on battering and its effects is essential if the court and/or jury are to be able to put aside myths and misperceptions about

battered women or their actions, and fairly assess the reasonableness of the defendant's beliefs given the past history of violence (see *Chapman v. State*, 258 Ga. 214, 367 S.E.2d 541 (1988)).

The Connecticut Coalition Against Domestic Violence submits this statement of interest to assist Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

FLORIDA COALITION AGAINST DOMESTIC VIOLENCE

The Florida Coalition Against Domestic Violence (FCADV) is a nonprofit organization, incorporated in the State of Florida. Founded in 1979, FCADV's purpose is to eliminate domestic violence and oppression in our society, to empower women through the elimination of personal and institutional violence and oppression by advocating for social change through nonviolence and nondiscriminatory alternatives which may include technical assistance, education, policy development and support of shelter programs in the State of Florida. FCADV is the unified voice of the state's thirty-seven certified domestic violence centers, survivors and victims of domestic violence as well as advocacy organizations which share the philosophy of FCADV.

FCADV has been instrumental in advocating for battered women in prison and established a specific action group to seek clemency in cases of self-defense. Due to the work of the FCADV Women in Prison Committee, in 1992 Governor Lawton Chiles established special panels to evaluate clemency petitions for battered women in prison. Two women were released from prison in 1992 based on the clemency panel's recommendation which included testimony from FCADV experts. During 1994 an additional six battered women received various forms of clemency, from release to reduced sentences, under the special process that the Women in Prison Committee helped the Governor's Office develop for battered women. In most of these cases, testimony of prior history of abuse was not presented at trial, nor were expert witnesses able to testify as to the effects of battering. Therefore, FCADV is particularly cognizant of the need for a battered woman defendant to be allowed to present all relevant evidence that supports her defense, including prior history of abuse and expert testimony on battering and its effects.

FCADV submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

GEORGIA ADVOCATES FOR BATTERED WOMEN AND CHILDREN

The Georgia Advocates for Battered Women and Children (GABWC) is a not-for-profit organization incorporated in the state of Georgia for the purpose of providing services and advocacy on behalf of the victims of domestic violence. Since 1981 the GABWC has

provided training, technical assistance, advocacy, and support to the shelters, programs, advocates and organizations working to end the violence in the lives of women and children.

Like all criminal defendants, in order to have a fair trial, a battered woman defendant must be allowed to present all relevant evidence that supports her defense, such as the prior history of abuse, to assist the judge and/or jury to understand the defendant's state of mind at the time of the alleged offense, and specifically why it was reasonable for her to fear imminent harm at the hands of the deceased. Additionally, such relevant evidence of the past history of abuse may include expert testimony on battering and its effects. Although, depending on the case, an expert witness may not be necessary, expert testimony on battering and its effects is essential for the court and/or jury to put aside misconceptions about battered women and their actions and fairly assess the reasonableness of the defendant's beliefs given the past history of violence.

GABWC submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issues of justice for battered women presented in the appeal and urges that the order of the trial court be reversed.

HAWAII STATE COMMITTEE ON FAMILY VIOLENCE

The Hawaii State Committee on Family Violence (HSCFV) is a private, not-for-profit organization; a statewide coalition of domestic violence programs. The HSCFV was organized in 1980 to coordinate a statewide effort to eliminate family violence in the State of Hawaii.

The HSCFV provides public education; training for police, judges, attorneys, health care providers, school personnel, clergy, etc.; information and referrals; a resource library; technical assistance to family violence programs; statewide data collection; statewide staff training and retreats; conferences, seminars, and workshops; legislative research, monitoring, and analysis; statewide planning; and administration of Family Violence Prevention Services.

The HSCFV believes that, like all criminal defendants, a battered woman must be allowed to present all relevant evidence that supports her defense, such as any and all information about prior history of abuse, and possibly expert testimony, to assist the judge and/or jury in understanding the defendant's state of mind at the time of the alleged offense.

The HSCFV submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

IDAHO COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

The Idaho Coalition Against Sexual and Domestic Violence is a statewide organization made up of 25 member programs throughout the state. We are a nonprofit organization that has been actively involved in domestic violence since 1979. The organization's mission statement reflects the coalition's philosophy -- we are a catalyst for social change working to create a nonviolent society.

The Idaho Coalition is aware of Ms. Jennifer Lewis' case involving her effort to defend herself against Duane Lewis. The Idaho Coalition feels strongly that Ms. Lewis' attorney failed to advise her of appropriate evidence that needed to be available to the jury in her first trial, concerning her past abuse.

The Idaho Coalition Against Sexual and Domestic Violence submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

The Illinois Coalition Against Domestic Violence is a nonprofit organization, incorporated in the State of Illinois. Founded in 1978, ICADV's purpose is to advocate for the rights of victims of domestic violence, provide technical assistance and training, and to develop public education materials. ICADV is a statewide membership organization comprised of domestic violence service providers and open to any individual or organization interested in the elimination of domestic violence.

The ICADV administers federal VOCA funds for court advocacy and children's services in domestic violence programs in Illinois. We provide technical assistance and training to domestic violence workers as well as law enforcement, medical personnel, prosecutors, judges, social workers, educators, child protection workers, etc. We design and present trainings, provide public education materials and maintain a vast library of books, journals, articles and videos for public use. ICADV responds as a collective voice on behalf of battered women and their children to legislators, hospitals, justice personnel, media and the public.

The ICADV is involved in statewide activities which will encourage the development of coordinated responses to domestic violence at the local level. Victims of domestic violence continue to be harassed, threatened, abused and killed due to inappropriate response by the justice system. Part of the inappropriate response is poorly trained private bar who may not be representing the best interests of victims. ICADV is involved in developing protocols and trainings of law enforcement, prosecutors and the private bar.

ICADV submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women represented in the appeal,

and urges that the order of the trial court be reversed.

IOWA COALITION AGAINST DOMESTIC VIOLENCE

The Iowa Coalition Against Domestic Violence (ICADV) is a nonprofit organization, incorporated in the state of Iowa in 1985. ICADV provides educational and technical assistance to the domestic violence programs across Iowa, and also acts on a statewide level to promote public policy and legislative issues on behalf of battered women and their interests. ICADV's purpose is three-fold: 1) to facilitate and promote networking among organizations, victims/survivors assistance projects and individuals committed to ending violence against women; 2) to raise awareness and increase knowledge about the dynamics and needs of the victims/survivors of domestic violence; and, 3) to advocate for the welfare and rights of actual and potential victims/survivors of domestic violence.

All criminal defendants are entitled to a fair trial in which they are allowed to present all evidence relevant to their defense. This right does not change simply because the defendant is a battered woman who has protected herself by killing her batterer. For such a woman, as in this case before the Georgia Supreme Court, the proper defense to which she is entitled is that of self-defense. She has acted to defend herself, or her children, based on a reasonable belief in an imminent danger of serious injury or even death at the hands of her batterer. The elements of this self-defense claim require that relevant evidence of a prior history of abuse be presented to assist the trier of fact in understanding both the battered woman's state of mind at the time of the alleged offense and why it was reasonable for her to fear imminent harm.

However, because of the numerous myths which surround battered women and the issue of domestic violence, many people, both legal and lay, want to apply a different defense called "battered woman syndrome" or "battered women's defense." This mistaken adherence to such a defense only establishes the need for expert testimony in these cases. First, the relevant evidence of past abuse may include expert testimony on battering and the effects of domestic violence. Secondly, while such testimony may not be required to present a specific defense, expert testimony on domestic violence and its effects can play a pivotal role in educating the court and/or the jury, enabling them to set aside their misconceptions about battered women, thus allowing her to receive a fair trial.

The Iowa Coalition Against Domestic Violence respectfully submits this statement of interest to assist the Georgia Supreme Court as it considers the vital issue of justice for battered women as presented in this appeal, and urges the reversal of the order of the trial court.

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is a nonprofit

organization, incorporated in the state of Kansas uniting domestic violence and sexual assault programs in their vision of violence-free lives for the women, children, and men of Kansas. KCSDV Member Programs provide a wide spectrum of services to victims including hotlines, crisis intervention, shelter from abuse, and outreach counseling. KCSDV supports these activities by providing information, technical support, training, networking and a united public voice concerning issues of common concern. It is the goal of KCSDV and its Member Programs to equip families with the personal resources to end the violence in their families.

When efforts to end domestic violence fail, however, the violence escalates. Too often the result is the death of a family member. In 1993 in Kansas, 42 homicides occurred in domestic situations. Of these 42 murders, 20 victims were male and 22 were female. The facts of the Georgia v. Jennifer Layne Lewis case are all too familiar. Familiar as they are to those who work in the field of domestic violence or to those attorneys who represent defendants in these cases, they are facts which can be inconceivable to jurors. Common myths and misconceptions about the mental state of battered persons permeate the social consciousness. Full disclosure of the history of violence in the relationship and expert testimony on the effects of long term violence on the perceptions of the battered partner are essential to understanding the mental state of an abused partner who kills her abuser. When a defense attorney neglects this evidence, he or she deprives the jury of the only information upon which they build an understanding of the mental state of the defendant. Furthermore, when defense counsel elects, as part of trial strategy, to omit reference to past abuse, this decision must be fully informed. A decision to omit potentially mitigating evidence demands careful consideration.

KCSDV submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

KENTUCKY DOMESTIC VIOLENCE ASSOCIATION

The Kentucky Domestic Violence Association (KDVA) is a nonprofit organization incorporated in the Commonwealth of Kentucky for the purposes of providing supportive and technical assistance to Kentucky's sixteen regional spouse abuse programs and advocating for victims of domestic violence. In 1994, Kentucky's spouse abuse programs sheltered over 5,000 women and their dependent children and provided non-residential counseling to an additional 7,000 individuals.

Founded in 1981, KDVA and its member programs have consistently supported measures to assist women who have killed their partners in self-defense. In 1992 KDVA was involved in the development and passage of legislation amending Kentucky's self-defense statute to ensure admissibility of evidence of past battering and to exempt battered defendants from the mandatory sentencing requirements in the state's violent offender statute. Despite these changes in Kentucky law and efforts to inform attorneys about these cases, many

women who kill their batterers in self-defense continue to receive inadequate legal representation resulting in either plea bargains involving lengthy sentences or convictions with disproportionately harsh penalties.

Therefore, the Kentucky Domestic Violence Association joins as amicus curiae in State of Georgia v. Jennifer Layne Lewis now before the Georgia Supreme Court.

LOUISIANA COALITION AGAINST DOMESTIC VIOLENCE

The Louisiana Coalition Against Domestic Violence (LCADV) is a nonprofit network of battered women's programs, other organizations, and individuals who share the goal of stopping violence against women and their minor children. Member agencies comprise thirteen of the state's sixteen family violence programs.

Since 1982 LCADV has empowered its members through advocacy, education, public policy development, and technical assistance designed to enhance the ability of individual programs to meet the needs of battered women and their children. In addition, LCADV serves as a resource to the courts, law enforcement, and other groups of professionals whose work brings them into contact with battered women, their children, and/or their abusers, including attorneys who represent battered women defendants.

Our members hold that there is no such thing as the "battered women's defense" or "battered woman syndrome defense." Instead we believe that in those instances where a battered woman acts to defend herself or her children based on a reasonable belief that she or her children are in imminent danger of serious bodily harm by her batterer, the appropriate defense is self-defense.

Our member agencies recognize that in order for a battered woman defendant to have a fair trial, she must be allowed to present all relevant evidence that supports her defense, including evidence concerning the prior history of abuse. Furthermore, we recognize that it is often necessary to present expert testimony about the phenomenon of battering and its effects upon the victim, in order for the judge and/or jury to fully understand and appreciate the battered woman defendant's state of mind and her actions at the time of the alleged offense. Such testimony is important because it can address the many myths and misconceptions about domestic violence that persist in our society.

Therefore, LCADV submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

MASSACHUSETTS COALITION OF BATTERED WOMEN SERVICE GROUPS

The Massachusetts Coalition of Battered Women Service Groups (MCBWSG) is a nonprofit organization, incorporated in 1978. MCBWSG is a membership organization of 33 battered women's programs. It is a statewide public education and advocacy organization committed to ending violence against women and their children.

The MCBWSG has worked extensively for many years to educate police, judges and court system personnel about the dynamics which trap women in violent relationships and the barriers which often prevent her from leaving. We also worked with our state legislature to craft a statute which was passed this year, "An Act Establishing The Admissibility of Evidence of Abuse in Criminal Actions."

In addition, the MCBWSG has documented that, since January of 1993, 51 women in Massachusetts have been murdered allegedly as a result of domestic violence. Five children were murdered with their mothers. In that same period of time there have been eight cases of homicide in which self-defense based on a history of domestic violence have been alleged. The Coalition has worked hard to promote a public awareness that in many, if not all, of these self-defense cases the battered woman could well have been an additional statistic on the victims list had she not defended herself.

Over the past two years the Governor of Massachusetts has commuted, after an exhaustive case-by-case analysis, the sentences of five women who were incarcerated for killing their abusive partners. These commutations were undertaken because the courts had not considered or had not allowed evidence of past abuse to be heard.

In order to ensure equal protection under the law, it is essential that the juries are presented with all evidence relevant to the defendant's defense. A prior history of abuse is significant to the defendant's state of mind and reasonable fear of imminent harm.

The MCBWSG submits this statement of interest to the Georgia Supreme Court as it considers this crucial issue of justice for battered women, and urges that the order of the trial court be reversed.

MINNESOTA COALITION FOR BATTERED WOMEN

The Minnesota Coalition for Battered Women, Inc. (MCBW) is a private nonprofit membership organization incorporated in the state of Minnesota which serves as a statewide coalition of approximately 100 local, regional and statewide grassroots organizations which provide shelter and services to battered women and their families. MCBW provides training and technical assistance for member programs, networking and support for battered women, and community education to law enforcement schools, the general public and others. The member organizations of MCBW, with consultation and assistance provided by the coalition, provide shelter and lay advocacy every year to

thousands of battered women, including battered women charged with crimes where a battered woman acts to defend herself or her children based on a reasonable belief of imminent danger of serious bodily harm from the batterer.

MCBW's interest in this matter is public in nature. The mission of MCBW is to end violence against battered women and their children. MCBW can inform the Georgia Supreme Court regarding the impact on battered women of any decision the court may make.

The Minnesota Coalition for Battered Women works to educate attorneys, experts, advocates, judges, legislators, the media, the public at large and battered women themselves that there is no such thing as the so-called "battered women's defense" or "battered woman syndrome defense." The appropriate defense is self-defense. Like all criminal defendants, in order to have a fair trial, a battered woman defendant must be allowed to present all relevant evidence that supports her defense - such as the prior history of abuse - to assist the judge and/or jury to understand the defendant's state of mind at the time of the alleged offense; and specifically, why it was reasonable for her to fear imminent harm at the hands of the deceased. Finally, such relevant evidence of the past history of abuse must include expert testimony on battering and its effects. Depending on the fact pattern and other factors, an expert witness is not always required in order fully to present a defense of self-defense, duress, etc. However, in many cases, expert testimony on battering and its effects is essential if the court and/or jury are to be able to put aside myths and misperceptions about battered women or their actions, and fairly assess the reasonableness of the defendant's beliefs given the past history of violence.

The Minnesota Coalition for Battered Women submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

MISSOURI COALITION AGAINST DOMESTIC VIOLENCE

The Missouri Coalition Against Domestic Violence (MCADV) is a nonprofit organization incorporated in the state of Missouri. Since its founding in 1980, the mission of MCADV has not changed. That mission is: to educate the general public about domestic violence, train professionals, and advocate for public policy to alleviate and prevent domestic violence; to provide technical assistance, trainings, and support to program members and related communities of service providers; to provide opportunities for communication among those working in the movement to end violence against women and their children; and to research the extent of domestic violence to more effectively reduce its impact and occurrence in the lives of Missouri's women and children.

The staff of MCADV amplifies the work of member direct service programs statewide through the development and provision of educational materials and trainings to professionals in related service fields; the direction and training of residents in

communities without domestic violence services who wish to begin services; the operation of a public information resource line on domestic violence issues; the provision of technical assistance and training to the Missouri judiciary, court personnel, and other members of the state's legal community; and public policy advocacy directed at both the state and national levels.

Therefore, it is of interest to MCADV to affirm its position that where a battered woman acts to defend herself or her children based on a reasonable belief in an imminent danger of serious bodily harm from her batterer, the appropriate defense is self-defense. Through its provision of educational programs and trainings, MCADV informs others that a battered woman, as with all criminal defendants seeking a fair trial, must be allowed to present all relevant evidence that supports her defense. This includes the prior history of abuse so that it may assist the judge and the jury in gaining an understanding of the defendant's state of mind at the time of the alleged offense and, specifically, why it was reasonable for her to fear imminent harm at the hands of the deceased. Further, relevant evidence of the past history of abuse may include expert testimony on battering and its effects, even as it is not always required to fully present a defense.

The Missouri Coalition Against Domestic Violence submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit corporation which currently has a membership of more than 8,000 attorneys and 28,000 affiliate members in 50 states. The American Bar Association recognizes the NACDL as an affiliate organization and awards it full representation in its House of Delegates.

The NACDL was founded over 25 years ago to promote study and research in the field of criminal defense law; to disseminate and advance knowledge of the law in the area of criminal practice; and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. Among the NACDL's stated objectives is the proper administration of criminal justice. Thus, the members of the NACDL have a vital interest in insuring that the integrity of the federal and state systems of criminal justice are protected. This includes an interest in ensuring that evidence of battering and its effects is identified, investigated, and presented in appropriate cases through all permissible means, including the effective use and presentation of expert witnesses.

NATIONAL CENTER ON WOMEN AND FAMILY LAW, INC. -- NATIONAL BATTERED WOMEN'S LAW PROJECT

The National Battered Women's Law Project, a program of the National Center on Women and Family Law, Inc., acts as legal back-up to attorneys, battered women's programs, policymakers, and judges in all fifty states. The Project serves as an information clearinghouse on legal issues facing battered women and their children; produces manuals, handbooks, public education materials and resource packets on these legal issues; analyzes federal and state legislative and administrative developments and other legal issues which affect battered women; and reports on legal and legislative developments with respect to battered women's issues in our bimonthly newsletter, *The Women's Advocate*, which is mailed to over 3400 individuals and programs.

The National Center on Women and Family Law, Inc. is a not-for-profit organization created in 1979 to address family law issues, particularly those affecting low-income women. It is the national support center on family law for the Legal Services Corporation. The Center provides assistance to legal services attorneys and other advocates throughout the country on issues such as custody, support and family violence; trains attorneys and paralegals; and publishes extensively. The Center has filed many amicus briefs in the U.S. Supreme Court and state supreme courts throughout the United States in cases raising issues of importance.

The National Battered Women's Law Project has been concerned with protecting the rights and interests of battered women. It has seen that there is still much confusion about what domestic violence is, how battered women experience domestic violence, and whether women who sometimes try to defend themselves against abusive partners are battered women. The Project knows that it is often necessary for expert witnesses to refute these and other myths about domestic violence and to explain what are the real experiences of battered women.

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

The National Coalition Against Domestic Violence (NCADV) is a nonprofit organization founded in 1978. NCADV provides advocacy for battered and formerly battered women, technical assistance to programs and state coalitions serving battered women, advocacy in Washington, DC on public policy issues affecting battered women and their children, and community education on a national basis. NCADV provides information and referrals to the general public and assistance to professionals working with battered women.

Battered women and the actions they take to protect themselves are often not understood and, as a result, expert testimony may be needed to help the court and jury fairly weigh the evidence for their self-defense pleas. NCADV does not support the theory of the battered women's syndrome, our position is that the battered woman has been forced to choose a lethal form of protection, self-defense, in order to survive. Evidence of her many attempts to protect herself without using force must be allowed to be heard in court to help those making the assessment understand the level of danger she was in at the time of her actions.

NCADV submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

NATIONAL JURY PROJECT

The National Jury Project is a nonprofit corporation established in 1975 for the purpose of studying all aspects of the American jury system and maintaining and strengthening that system. The National Jury Project provides consultative and educational services to the attorneys and social science professionals in criminal and civil litigation in federal and state courts throughout the United States.

The National Jury Project has assisted attorneys in jury selection in thousands of civil and criminal trials, including numerous cases involving issues of domestic violence.

The National Jury Project has authored three texts, *Jurywork: Systematic Techniques* (2d ed 1983), *Women's Self-Defense Cases: Theory and Practice* (1981), and *The Jury System: New Methods of Reducing Prejudice* (1975). Members of the National Jury Project have written numerous articles for legal and social science journals and contributed to texts on subjects related to voir dire, the jury selection process, and issues related to the presentation of evidence to juries. National Jury Project members are frequent speakers at training seminars for criminal and civil trial lawyers throughout the United States, including, inter alia, seminars conducted by the American Bar Association, the Practising Law Institute, the American Trial Lawyers Association, and the National Association of Criminal Defense Lawyers. The National Jury Project was a co-founder of the Women's Self-Defense Law Project. This project assisted attorneys throughout the United States in providing more effective representation for women victims of violence who were forced to defend themselves. The National Jury Project is also a participating founder of the National Clearinghouse for the Defense of Battered Women.

From its members' studies of the relevant fields of social science and their extensive work and observations in individual cases, including post-trial interviews with jurors, the National Jury Project has developed a broad understanding of how jurors process information and evaluate evidence. The experience of the National Jury Project demonstrates that it is essential to combat commonly held myths and misperceptions about domestic violence in order to allow a jury to reasonably evaluate the context in which a woman may decide to defend herself against physical and sexual abuse.

Accordingly, amici have a strong interest in the outcome of this case.

NEBRASKA DOMESTIC VIOLENCE SEXUAL ASSAULT COALITION

The Nebraska Domestic Violence Sexual Assault Coalition is a statewide advocacy organization committed to reducing violence against women and children in Nebraska. Our primary purpose is to provide training and technical assistance to the 24 community-based domestic violence and sexual assault programs throughout the state. Our broader mission is to increase public awareness and understanding about domestic violence and sexual assault and the impact this violence has on other major problems facing our state, including child abuse, juvenile delinquency and youth violence.

The NDVSAC is very concerned about the myths and misconceptions that still prevail in our society concerning the dynamics of battering and its impact on those caught in its terror. How is one to understand what "imminent danger" means for someone who has been beaten and terrorized by their perpetrator over and over again when that information is not even presented in a court of law? The law of our land is clear about the use of self-defense. The law is clear about giving juries information that they need in order to make a more informed decision about the case before them. In many cases, expert testimony, prior history of abuse, defendant's state of mind, is essential information that the court system needs to help dispel the very myths and misconceptions that, if left unchallenged, can imprison innocent people.

The NDVSAC submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women in the case of State of Georgia v. Jennifer Layne Lewis.

NEW HAMPSHIRE COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE

The New Hampshire Coalition Against Domestic and Sexual Violence was founded in 1977 and is a nonprofit organization incorporated in the state of New Hampshire. The NHCADSV is a statewide network of independent member programs committed to ending domestic and sexual violence. To that end the Coalition seeks to:

- ensure that quality services are provided to victims/survivors of domestic and sexual violence;
- prevent future violence by educating the public;
- influence public policy;
- and encourage the provision of services for perpetrators.

The Coalition is comprised of 14 programs throughout the state that have been established to provide services for survivors of sexual assault and battered women and their children. Services Coalition groups provide include:

- 24-hour crisis lines;
- emergency shelter and transportation;
- legal advocacy in obtaining restraining orders against abusers;
- hospital and court accompaniment for rape survivors;
- information about and help in obtaining public assistance.

The Coalition assists its 14 member groups by providing technical assistance and training, support in developing new programs, peer evaluation of services, and by serving as a statewide clearinghouse and coordinating organization. It administers state and federal contracts that provide funding for its member programs. Additionally, the Coalition advocates for legislative changes that affect battered women and sexual assault survivors.

As advocates for public policy reforms that benefit victims of domestic violence, the New Hampshire Coalition Against Domestic and Sexual Violence has an interest in the effective assistance of counsel in presenting a battered woman's self-defense claim.

The New Hampshire Coalition Against Domestic and Sexual Violence submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

NEW JERSEY COALITION FOR BATTERED WOMEN

The New Jersey Coalition for Battered Women (NJCBW) is a statewide coalition of domestic violence service programs and concerned individuals whose purpose and mission is to end violence in the lives of women. Incorporated in 1979, NJCBW is a private, nonprofit corporation whose members include all 23 domestic violence programs in New Jersey. NJCBW advocates for battered women with state-level governmental and private agencies, the state legislature, judiciary, and governor to support legislation and policies that will increase the safety and options of victims of domestic violence. It also provides information, resources, technical assistance and training to domestic violence programs, the public, and those agencies, organizations and individuals involved with New Jersey's response to domestic violence.

The NJCBW asserts that the history of violence against a battered woman is of central relevance in a criminal case where that woman is charged with killing or injuring the batterer. Whether the evidence of battering is used to support a claim of self-defense or whether it is used to establish mitigating factors in the case, the exclusion of such evidence deprives a battered woman defendant of her best defense, and the judge and jury of critical information. Furthermore, the use of expert testimony regarding battering and its effects is often necessary where a history of battering is presented, in order for the judge and jury to understand and fairly assess the defendant's reasonable beliefs given the history of battering.

NJCBW joins the brief of amicus curiae to assist the Georgia Supreme Court in its consideration of the critical issue presented in State of Georgia v. Jennifer Layne Lewis and urges that the order of the trial court be reversed.

NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE

The New York State Coalition Against Domestic Violence, (NYSCADV) Albany, New York is a not-for-profit organization incorporated under the laws of New York State. The purpose of the Coalition is to provide a statewide 24-hour toll-free domestic violence hotline, community education, planning and technical assistance on domestic violence. NYSCADV also serves as an advocacy group for battered women's programs, coordinating information and strategies for the prevention of domestic violence.

We, therefore, have an interest in the case of State of Georgia v. Jennifer Layne Lewis, Georgia Supreme Court now pending.

NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES

The North Dakota Council on Abused Women's Services (NDCAWS) is a nonprofit coalition of nineteen domestic violence service providers in the state of North Dakota.

Organized in 1978, the coalition has grown from five agencies to nineteen, and continues to provide training, technical assistance, and educational and prevention services statewide.

NDCAWS member organizations have been involved with a number of cases involving battered women's self-defense over the past ten years, and advocates have, in fact, served as expert witnesses in some cases.

We believe strongly that a battered woman must be able to present evidence of prior history of abuse in order for a judge and/or jury to fairly consider a self-defense claim when she has been charged with killing her assailant.

Misconceptions about the actions of battered women abound, and they are often most apparent in these cases of life and death. The enormous stakes for both the victims of abuse and their children make an adequate understanding of self-defense as it relates to battered women critical.

NDCAWS joins the brief of amicus curiae to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

NORTH GEORGIA MOUNTAIN CRISIS NETWORK

The North Georgia Mountain Crisis Network, Inc., hereafter referred to as the Network, is a community-based, nonprofit organization serving battered women and their children in Fannin/Gilmer County, Georgia. Services provided include: emergency shelter, legal advocacy, counseling, and other support as needed. The Network also strives to increase

public awareness on all issues related to domestic violence, presenting educational programs and utilizing all available public media in an attempt to inform the public about the roots of violence against women and children. We in the Network are committed to advocating for changes within societal and judicial systems which will help break the generational patterns of family violence in our current social system.

We are in agreement with the National Clearinghouse for the Defense of Battered Women that each battered woman charged with the crime of injuring or killing her batterer should be entitled to effective counsel who is knowledgeable about battered woman syndrome and self-defense issues concerning her actions.

NORTHWEST WOMEN'S LAW CENTER

The Northwest Women's Law Center, based in Seattle, Washington, is a nonprofit public interest legal organization that works to advance the legal rights of women through litigation, education, legislative advocacy, and a free information and referral phone service for women with legal problems. Since its founding in 1978, the Law Center has been dedicated to representing the interests of victims of domestic violence, including those victims who have been forced to kill their abuser in an effort to protect themselves from serious injury or death. The Law Center has a long history of litigation and participation as amicus curiae in cases around the country on behalf of battered women. The Law Center has also been instrumental in the passage of legislation that protects the rights of battered women charged or convicted of killing their abuser.

NOW LEGAL DEFENSE AND EDUCATION FUND

NOW Legal Defense and Education Fund ("NOW LDEF") is a leading national nonprofit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and to secure equal rights. NOW LDEF was founded as an independent organization in 1970 by leaders of the National Organization for Women. NOW LDEF has been engaged on many fronts in efforts to eliminate gender-motivated violence and has participated as amicus curiae in numerous cases in support of the rights of women who have been the victims of domestic and other gender-motivated violence.

OHIO DOMESTIC VIOLENCE NETWORK

The Ohio Domestic Violence Network (ODVN) is a not-for-profit organization incorporated in the State of Ohio for the following purposes:

ODVN is a membership organization of shelters, domestic violence programs, batterer intervention programs, legal advocacy programs, and other legal, social service or

advocacy organizations providing services and advocacy to victims and perpetrators of domestic violence.

ODVN provides training and technical assistance to domestic violence programs, the legal community, the medical community, the social service community and other interested parties on issues of domestic violence. ODVN operates a toll-free information and referral line that provides access to local domestic violence program hotlines 24 hours a day.

The Ohio Domestic Violence Network, as a part of our public policy initiatives, works to educate state legislators and public officials on the issue of self-defense, that is, where a battered woman acts to defend herself or her children based on a reasonable belief in an imminent danger of serious bodily harm from her batterer. Further, the Ohio Domestic Violence Network supports the fact that in order to have a fair trial, a battered woman defendant must be permitted to present all relevant evidence that supports her defense, including the prior history of abuse, to assist the judge or jury in understanding the defendant's state of mind at the time of the alleged offense, and specifically why it was reasonable for her to fear imminent harm from the batterer. In addition, relevant evidence of the past history of abuse may include expert testimony on battering and its effects, particularly where there are misconceptions regarding battered women and their actions.

The Ohio Domestic Violence Network submits this statement of interest to assist the Georgia Supreme Court in its consideration of the crucial issue of justice for battered women presented in the appeal and urges that the order of the trial court be reversed.

OKLAHOMA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

OCDVSA is a statewide, nonprofit organization incorporated in 1981. Our mission is to end violence against women and children by providing statewide legal access, shelter, education and awareness programs.

The Coalition is comprised of 27 individual domestic violence and sexual violence programs, each serving a section of the state. In 1993 we housed almost 18,000 persons in domestic violence shelters in Oklahoma.

By providing a unified voice for survivors we have been able to meet the needs of individual women and children more effectively. We are committed to assuring both national and state laws that recognize the importance of victim protection, not victim blaming.

OCDVSA supports the consideration of the critical issue of justice for battered women being undertaken by the Georgia Supreme Court, and urges that the trial court be reversed.

OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE

The Oregon Coalition Against Domestic and Sexual Violence (OCADSV) is a nonprofit organization incorporated under the laws of the State of Oregon since 1978. The OCADSV has 31 member programs that provide direct services to victims of domestic and sexual violence throughout Oregon. The purposes of the OCADSV include, but are not limited to, the following:

- Providing assistance to victims of domestic and sexual violence;
- Providing training to staff of organizations engaged in crisis intervention or education in domestic and sexual violence;
- Encouraging increased awareness and understanding of domestic and sexual violence, through public education;
- Exploring and supporting innovative approaches to prevention of and response to domestic and sexual violence.

The OCADSV has an interest in State of Georgia v. Jennifer Layne Lewis because we work to educate officials and the public about the potential lethality of domestic violence if authorities do not intercede appropriately. When the system and community fail victims of family violence, victims must rely on their own resources to save their lives (and often the lives of their children, friends and relatives). This means we all bear some responsibility for the deaths that result.

Domestic violence is rarely a one-time incident. It is a pattern of coercion, control and violence. As such, any act that results from it or is a part of it cannot be understood in isolation. This is not a new legal concept. It is an issue of relevance; an issue of self-defense. Unfortunately, self-defense by a battered woman is not well understood, even by attorneys who represent or prosecute them. Therefore, it is essential that experts in this area be granted amicus status to assist the court in reaching a clear and valid decision that will affect other cases and other lives.

PACE UNIVERSITY BATTERED WOMEN'S JUSTICE CENTER

The Pace University Battered Women's Justice Center (BWJC) was established in 1991 as the first center at an American university dedicated to training, education and scholarship in the area of domestic violence. The BWJC is nonprofit organization, incorporated in New York, and created as a partnership between Pace University and the State of New York. The BWJC teaches lawyers and prosecutors to provide appropriate legal representation to battered women in civil and criminal proceedings, promotes the provision of pro bono legal services to battered women, creates and lobbies for legislation and policy that will stop the violence, and engages in creative legal research and scholarship related to domestic violence. A primary goal of the BWJC is to educate defense attorneys to provide competent representation to women who fight back against their abusers. To date, over one hundred attorneys and judges have participated in our training programs.

It is black-letter law that, in a case in which a battered woman has fought back and killed her abuser, the appropriate defense is self-defense, not some gerrymandered, nonexistent substitute erroneously called the "battered woman's syndrome defense." See Pugh v. State, 260 Ga. 874, 401 S.E.2d 270 (1991). To ensure a fair trial in such a case, just as in any case of self-defense, the competent attorney must provide the jury with any relevant history of battering that will assist the factfinder in understanding the state of mind of the defendant at the time of the incident and why it was reasonable for her to fear imminent harm from her abuser. Additionally, in a case in which a battered woman is a defendant, competent representation often includes the presentation of expert testimony to explain the battered woman's syndrome. Without such expert testimony, a jury may turn a deaf ear to the woman's explanation of why she did not leave her abuser and might dismiss her actions as unreasonable at best, and incredible at worst. Also, without such expert testimony, a jury could fail to understand how an abused woman is uniquely capable of predicting imminent serious bodily harm from her abuser. See Chapman v. State, 258 Ga. 214, 367 S.E.2d 541 (1988).

The incompetence of Jennifer Lewis' attorney in not presenting essential evidence of prior abuse and of the battered woman's syndrome more than satisfies the pertinent two-part constitutional test for ineffective assistance of counsel enunciated by the Georgia Supreme Court in McBrayer v. State, 259 Ga. 513, 383 S.E.2d 879, 881 (1989) (suggesting also via dicta that "[t]he battered wife syndrome concerns the defense of justification." Id.). First, in State v. Lewis, the defense counsel's errors were "so serious that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment." Id., quoting Strickland v. Washington, 466 U.S. 668, 687 (1984). Second, these deficiencies in representation so prejudiced the defendant that she "was deprived of a fair trial, a trial whose result is reliable." Id. Thus, since Jennifer Lewis received deficient representation and was materially prejudiced thereby, her sixth amendment right to effective assistance of counsel has been abridged.

The BWJC submits this Statement of Interest to assist the Georgia Supreme Court in its evaluation of this appeal and urges reversal of the order of the trial court.

PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE

The Pennsylvania Coalition Against Domestic Violence, Inc. (PCADV) is a not-for-profit organization incorporated in the Commonwealth of Pennsylvania for the purpose of providing services and advocacy on behalf of the victims of domestic violence and their minor children. PCADV is a membership organization of 61 shelters, hotlines, counseling programs, safe home networks, legal advocacy projects, and transitional housing projects for battered women and their dependent children in the Commonwealth. For almost twenty years, PCADV has provided training and technical assistance to domestic violence programs, the bar, the courts, and law enforcement agencies on issues of domestic violence and custody.

PCADV recognizes that domestic violence can be lethal for battered women. In the past eight months, Pennsylvania has lost over eighty women who died at the hands of their batterers. Additionally, we know that, nationwide, approximately 1500 battered women are killed each year by their batterers. Unfortunately some battered women must injure or kill their batterers in order to save lives.

Every citizen of this country has the constitutional and human right to defend themselves against bodily injury or death by an attacker. Battered women also hold these rights. It is essential that battered women charged with homicide be given the opportunity to defend themselves and seek justice in a court of law.

Effective counsel for battered women who kill in order to save their own lives must include self-defense. A woman's defense must help the court and jury to understand her state of mind at the time of the alleged offense. This evidence must include available evidence of past abuse and, where appropriate, expert testimony on battering and its effects.

Defense counsel, at the very least, must be aware of and use in practice the basic elements of the self defense claim. Counsel must attempt to show the incident was an attack on the battered woman and was not mutual. Any other characterization would serve to defeat her claim. Any evidence of an attack on the battered woman at the time of the charged offense is critical to her defense and must be presented.

PCADV joins the brief of amicus curiae in the case of State v. Lewis to assist the Georgia Supreme Court in its consideration of the critical issues of justice for battered women.

POST-CONVICTION REMEDIES CLINIC OF ALBANY LAW SCHOOL

The Post-Conviction Remedies Clinic of Albany Law School is a nonprofit organization, established in 1993 with help from a grant from the United States Department of Education. In the Clinic, second and third year law students work under the supervision of a Clinical Professor, representing incarcerated battered persons where the battering was connected to the crime for which the person is incarcerated. At this point in time, the Clinic undertakes representation of battered women on clemency petitions and coram nobis motions, when the case is appropriate for students to handle under faculty supervision. The Clinic is also engaged in systemic and legislative projects and provides consultation and referral of information on an as-needed basis.

The issue before the Georgia Supreme Court is one of critical importance to all survivors of battering who, like our clients, have been accused of a crime. The Court's decision ultimately determines whether battered women can expect their attorneys to be knowledgeable and unbiased about the opportunities the criminal justice system currently provides for survivors to present a claim of self-defense. Like the National Clearinghouse for the Defense of Battered Women, we contend that there is no such thing as the so-called "battered women's defense" or "battered woman syndrome defense;" rather, where a

battered woman acts to defend herself or her children based on a reasonable belief in an imminent danger of serious bodily harm from her batterer, the appropriate defense is self-defense (see Pugh v. State, 260 Ga. 874, 401 S.E. 2d 270 (1991)). Like all criminal defendants, in order to have a fair trial, a battered woman defendant must be allowed to present all relevant evidence that supports her defense, such as the prior history of abuse, to assist the judge and/or jury to understand the defendant's state of mind at the time of the alleged offense, and specifically, why it was reasonable for her to fear imminent harm at the hands of the deceased. Finally, such relevant evidence of the past history of abuse may include expert testimony on battering and its effects. Depending on the fact pattern and other factors, an expert witness is not always required in order to fully present a defense of self-defense, duress, etc. However, in many cases, expert testimony on battering and its effects is essential if the court and/or jury are to be able to put aside myths and misperceptions about battered women or their actions, and fairly assess the reasonableness of the defendant's beliefs given the past history of violence (see Chapman v. State, 258 Ga. 214, 367 S.E. 2d 541 (1988)).

In addition, because we are legal professionals and involved in teaching future lawyers, we consider it integral to the representation of our profession that the standard for legal competence includes an understanding of the rights of battered women.

The Post-Conviction Remedies Clinic of Albany Law School submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

SOUTH DAKOTA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

The South Dakota Coalition Against Domestic Violence and Sexual Assault provides assistance to a total of twenty-two domestic violence programs across the state of South Dakota. During the past year, over 42,000 shelter nights were provided to women and children fleeing from violent homes. This is within the scope of a total of 710,000 population throughout the entire state. Some programs have twenty years of experience in the field of domestic violence.

There have been deaths due to domestic violence. For the most part, those deaths have been women and children. Disparate sentencing has resulted, in the punishment meted out to those found guilty. A man spent ten months in the state penitentiary for the death of his girlfriend, while a woman is currently serving a twenty-five year prison sentence for the death of her husband, whose blood alcohol at the time of death was three times the legal limit for intoxication. Women die because they don't fight back - and when they do, they are blamed for the incident. Arrest, jail, penitentiary - for those who fight for their lives. Somewhere there must be justice.

The issue of the State of Georgia v. Lewis seems to be such a case in which the woman,

when trying to protect her life, is blamed for the violence and is seemingly in control of a situation. In looking at the information provided, that is clearly not the case. Backing up - ultimately to the inside of a closet - is hardly the movement of a person asserting power. It is that of a person being threatened with bodily harm or even death. Such self-protection must be recognized.

We ask that the appeal be considered and that the decision of the Superior Court for the County of Glynn in the State of Georgia be reversed.

We are proud to join in the amicus brief for this purpose.

TENNESSEE TASK FORCE AGAINST DOMESTIC VIOLENCE

The Tennessee Task Force Against Domestic Violence (TTFADV) established in 1985, was the first organization in our state to respond to the emergency needs of victims of domestic violence. The coalition is a statewide agency composed of shelters, programs, and individuals working in a coalition to end domestic violence and is incorporated in the State of Tennessee as a private, nonprofit agency. Currently there are 32 programs serving over 30,000 victims annually. During the past ten years, we have provided training on domestic violence to judicial conferences, district attorney conferences, court clerks, and legal service attorneys. We assisted the Tennessee Association of Legal Services in the development of a Domestic Violence Handbook for Victims.

TTFADV developed and implemented a statewide law enforcement training project which was funded by the U.S. Department of Justice. In the past three years, over 5,000 Tennessee law enforcement officers have been trained. Recently, this project was identified as a national model by the Urban Institute.

The Task Force recently received funding from the State Justice Institute to develop the Improving Court Response to Domestic Violence Project. The goal of our project is to improve the response of the criminal justice system to domestic violence victims through the development of state leadership, judicial education, and local community task forces. Working closely with experts in the field and in the judiciary, the program will enhance the understanding of judges, prosecutors, and other members of the criminal justice system about domestic violence dynamics, civil and criminal remedies, and the impact of developing a coordinated community response.

TTFADV and other concerned experts in the field see that relevant evidence of the past history of abuse is useful in establishing a defense of self-defense when a battered woman acts to defend herself or her children based on a reasonable belief that she/they are in imminent danger of serious bodily harm from her batterer.

TTFADV submits its statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal,

and urges that the order of the trial court be reversed.

TEXAS COUNCIL ON FAMILY VIOLENCE

The Texas Council on Family Violence (TCFV) is a nonprofit membership association founded in 1978, incorporated in the State of Texas. It was created by the women who opened the first shelters for battered women in Texas, and has led highly successful efforts to increase funding for battered women's shelters throughout the state.

TCFV represents 62 shelters for battered women, 26 programs for batterers, and four family violence legal assistance programs, as well as individuals and other organizations working to end violence against women statewide.

In 16 years, funding for the state's Family Violence Program has increased from \$200,000 annually in 1979 to \$18.3 million now. Under TCFV's leadership, the number of battered women's shelters in Texas has grown from 6 to 62, and the 55 Texas laws that have been passed to protect women and children from abuse are a result of TCFV's advocacy efforts.

TCFV has been the leader in Texas seeking to effect changes in the criminal justice system's response to family violence. Its public policy work is coordinated through the Public Policy Committee of the organization's Board of Directors, comprised of judges, prosecutors, defense attorneys, law enforcement officers, shelter workers and other advocates for battered women. TCFV also responds annually to thousands of technical assistance requests and inquiries on its toll free technical assistance line. Staff members provide consultation and professional education and training to battered women's shelters, family violence programs, battering intervention and prevention programs, police departments and academies, prosecutors, and probation officers. It has extensive resource files and a lending library with more than 1,100 books, manuals, and reports, as well as 300 audio and video tapes on family violence theory, research and services.

The organization is currently working on a pilot national toll-free hotline for victims of domestic violence and was a leader in the national lobbying effort to pass the Violence Against Women Act, as part of the 1994 crime bill.

The Texas Council works to locate pro bono legal assistance to battered individuals who killed in self-defense to develop petitions for clemency. TCFV successfully advocated for the passage of Senate Concurrent Resolution 26 in the 1991 legislative session that called upon the Board of Pardons and Paroles to review the sentences of women, men and children convicted of murder or manslaughter whose offenses were directly related to family violence victimization. To date, more than 200 women, 24 men and 31 children have been identified as candidates for review of the circumstances in which their offenses occurred to determine if executive clemency for acting in self-defense should be granted. A companion bill passed in 1991, SB 275, that amended the state's Penal Code to permit evidence of family violence and expert testimony about its effects at trial when the

defendant who was battered by the deceased alleges a justification of self-defense.

There is no mention of a "battered women's defense" in Texas law; indeed the "battered women's syndrome" is not a legally recognized concept in this state. TCFV has long held the belief, and advocated through its public policy positions, that a battered defendant is entitled to present all relevant evidence to aid in his or her defense, including the history of abuse by the deceased, to help the judge and jury (if there is one) understand his or her state of mind at the time of the alleged offense. Expert testimony is one more tool a battered defendant is permitted to use to assist the criminal justice system in understanding the effects of being victimized over time by a partner or parent.

The Texas Council on Family Violence submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, State of Georgia v. Jennifer Layne Lewis. We respectfully urge that the order of the trial court be reversed.

WEST VIRGINIA COALITION AGAINST DOMESTIC VIOLENCE

The West Virginia Coalition Against Domestic Violence (WVCADV) is a nonprofit organization founded in the late 1970's and incorporated in the State of West Virginia in July, 1981. The Coalition is a network of thirteen direct services programs, their outreach offices, and a Central Service Office. The mission of WVCADV is to end violence in the lives of women, children, and men within the family or home.

Direct service programs respond on a 24-hour basis, providing safe shelter and emotional support, advocacy in a variety of areas, referrals to other social service agencies, and information on victims' rights. Outreach offices provide similar services except for emergency shelter, particularly legal advocacy. The Central Service Office has as its focus training and technical assistance in the areas of family violence and social change work that insures victims' rights while holding perpetrators accountable for their behavior.

WVCADV holds that, like all defendants, a battered woman has the right to present all relevant evidence that supports her action in defense of a serious threat to her life or that of her children. This includes a history of battering or abuse and any medical evidence produced by such a past history. As a Coalition we also recognize the possibility that expert testimony on the dynamics of battering and its effects may be appropriate in the case of a battered woman who kills her abuser.

Unfortunately myths and misconceptions about domestic violence abound, as the media during the past few months have demonstrated. This is evident especially in cases of domestic homicide and makes it difficult for battered women who kill their abusers to find judicial justice when asserting that the homicide was a means of self-defense.

The West Virginia Coalition Against Domestic Violence submits this statement of interest to

assist the members of the Georgia Supreme Court as they consider the critical issues of justice presented by this appeal. WVCADV urges that as a result of this consideration the order of the trial court be reversed.

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

The Wisconsin Coalition Against Domestic Violence (WCADV) is a nonprofit organization, incorporated in the State of Wisconsin. Founded in 1978, WCADV is a statewide membership organization of battered women, formerly battered women, domestic abuse programs, and individuals committed to ending domestic violence. The mission of the WCADV is to eliminate domestic violence by changing societal attitudes, practices and policies about women from diverse groups, their children, and violence through education, advocacy, and social action.

The Wisconsin Coalition is the only statewide organization in Wisconsin that provides training and technical assistance on domestic violence issues for battered women's advocates, other professionals and community lay people. WCADV actively promotes public policy to protect victims of domestic violence and their children; offers a Resource Library about an array of topics related to battered women; and provides training about the dynamics and factors affecting battered women. WCADV also coordinates a growing network of people and organizations who share our concerns.

Through its recent expansion, WCADV has developed a Legal Project which will educate attorneys, experts, advocates, judges and other legal professionals about domestic violence. This project also provides limited funding of direct legal representation for victims of domestic violence. In addition, a clemency component will be added in 1995 based on a previous WCADV study on incarcerated women in Wisconsin prisons. This study found numerous women imprisoned for acts to defend herself and her children. However, at trial, few of these defendants were allowed to present (either by the court or the defense attorney) relevant evidence concerning her victimization by the individual against whom she defended herself.

WCADV submits this statement of interest to assist the Georgia Supreme Court in its consideration of the critical issue of justice for battered women presented in the appeal, and urges that the order of the trial court be reversed.

WOMEN'S LAW PROJECT

The Women's Law Project is a Philadelphia-based nonprofit public interest legal center dedicated to improving the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Since its founding in 1974, the Law Project has engaged in extensive activities challenging gender discrimination in employment, education, insurance, and in family matters relating to

custody, support, domestic violence and divorce. Assisting women who are victims of domestic violence, in particular, has been a major focus of both the telephone counseling service, which handles approximately 5,000 calls a year, and the Law Project's litigation efforts, which include both original litigation and participation as amicus curiae.

WYOMING COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

The Wyoming Coalition Against Domestic Violence and Sexual Assault is a nonprofit organization consisting of a network of 24 domestic violence agencies throughout Wyoming that provides crisis intervention (24-hour hotlines and safehouses), hospital, law enforcement and legal advocacy, victim support, one-to-one education, community education-prevention and public awareness programs, and community-wide referrals. The Coalition recognizes the connection of oppression to the personal and societal violence in the lives of women and children. Our mission is to end violence through education, empowerment and justice.

The Coalition was responsible for the enactment of the Wyoming Family Violence Protection Act, Marital Rape Statute, Battered Women's Syndrome, and assisted in passage of stalking legislation in Wyoming. The Coalition strives to educate public officials on the societal impacts of domestic violence and issues concerning victims of domestic violence. Additionally, the Coalition continues drafting legislation intended to strengthen Wyoming's Family Violence Protection statute, designing the domestic violence training conducted by the Wyoming Police Academy, and recommending improvements to the criminal justice system's response to domestic violence and sexual assault.

Given the Coalition's dedication to ending violence against women and their children, supporting effective assistance of counsel in presenting a battered woman's self-defense claim is totally within our mission. Furthermore, the Wyoming Coalition Against Domestic Violence and Sexual Assault regards effective assistance of counsel as being essential for fair representation which is imperative to our efforts in ending the victimization and re-victimization of women and children by perpetrators of these crimes.

The Wyoming Coalition emphatically urges the Georgia Supreme Court to reverse the Superior Court decision for Glynn County to ensure fair representation for battered women.

Appendix B
Excerpts from Trial Transcript
(Cross-Examination of Jennifer Layne Lewis)

Q. ...[Y]ou didn't make a police report?

A. No.

Q. Did you think about making a police report?

A. No.

Q. Back in...February when Duane allegedly hit you, did you make a police report?

A. ...[N]o, I did not make a police report....

Q. Okay, Did you tell anybody about that incident?

A. I don't believe I did.

Transcript of trial, p. 480.

* * * *

Q. How long did you have that mark on your face?...

Q. It was noticeable?

A. Yes.

Q. And you didn't make a police report at that time?

A. No.

Q. And you didn't tell anybody about this incident?

A. No, well, not that night...

Transcript of trial, p. 488.

* * * *

Q. Did you think about walking out the front door?

A. No, sir.

Q. After what you said happened that afternoon, at least I have counted on three separate occasions, he has either thrown you into the wall, the kitchen cabinet, in the dining room area, you didn't think about just turning and walking out the front door?

A. It just didn't happen that way.

Q. You didn't think about walking out that front door?

A. Not at that moment.

Transcript of trial, p. 560.

* * * *

Q. Were you scared enough to leave the house?

A. I wanted to leave; he told me I couldn't...

Q. But you testified earlier that you could have walked out that door, couldn't you?...

Q. A few minutes ago, you just didn't say you could have walked out the door, but you just didn't want to leave?

A. I said the door was there, I could have walked out of it.

Q. Could you have walked out the door?

A. Yes, sir, I--

Q. Was he physically blocking you from that door?

A. Not at that time.

Q. So at this point, back in the master bedroom, you had decided that you're not leaving, that he is?

A. Yes. I, well, I just wanted him to leave; I wasn't thinking about whether I was leaving or not, I was just thinking about getting him out. I just wanted him to leave, to leave me alone.

Transcript of trial, pp. 565-566.

* * * *

Q. You cuss at him at Mackay River for damaging your jet ski, but you don't say anything bad to him when he's throwing you around the house?

Transcript of trial, p. 567.

* * * *

Q. But you could have left?

A. Yes.

Q. Did you think about the gun in the kitchen when you were thrown into the cabinet?

A. No, sir.

Q. But you could have left?

A. Possibly, yes.

Q. And did you think about the gun when you were first thrown into the bedpost?

A. No, sir...

Q. But you could have left?

A. I did leave the room; I left the room, and I called 911...

Transcript of trial, p. 570.

* * * *

Q. For one moment that evening, did you believe that your life was threatened?

A. From after he threw me into the bedpost.

Q. And you had ample opportunity to leave that household since that time and before that, isn't that correct?

A. Yes, sir.

Q. And even at this time when you say right at this moment that you feel that your life was threatened, the front door of the house is opened, and your husband is downstairs, isn't that correct?

A. Yes, sir.

Transcript of trial, p. 581.

* * * *

Q. Was there anything preventing you from walking back into the house at that time?

A. No, sir.

Q. So you could have walked back in the house and locked the door?

A. I could have done that.

Q. But you chose not to do that?

A. I did not do that....

Q. And you could have walked inside the house and locked the door?

A. Yes, sir, I could have done that.

Transcript of trial, p. 584.

* * * *

Q. You could have shut the door?

A. Yes, I could have shut the door.

Q. Nothing preventing you from shutting that door?...

Q. Well, but you could have shut that door--?

A. Yes, sir.

Q. You could have shut that door before he came in the house?

A. Possibly, yes.

Transcript of trial, p. 593.

* * * *

Q. How was he preventing you from getting help?

A. He took the phone....

Q. Would you have helped yourself if you had walked back in that house and shut the door?

A. Yes, sir, that could have been helpful.

Q. You didn't do it because you weren't threatened, isn't that true?

A. No, sir, it just didn't happen.

Transcript of trial, p. 594.

* * * *

Q. Well, at the time he cut the phone off, where was he?....

Q. And you could have walked back outside the house, isn't that true?

A. Well, he was between me and the door.

Q. Did you try to walk back out from the house?

A. No, sir, I did not try to.....

Q. Any reason why you didn't try to do that?

A. It just didn't happen.

Transcript of trial, pp. 596-597.