IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

FAYE D. COPELAND,

Petitioner,

vs.

JAMES WASHINGTON,

Respondent.

Case No. 97-1123-CV-W-3

MEMORANDUM OF AMICI CURIAE

IN SUPPORT OF PETITIONER FAYE D. COPELAND'S

WRIT OF HABEAS CORPUS

Respectfully submitted,

LISA M. LAURA (#66144)
and
JILL M. SPECTOR (#50890)
National Clearinghouse for the
Defense of Battered Women
125 S. 9th Street, Suite 302
Philadelphia, PA 19107
215/351-0010 • Fax 215/351-0779

Counsel for *Amici*

TABLE OF CONTENTS

Table of Authorities

Cases

Statutes

Other Authorities

Articles

Books

INTERESTS OF AMICI CURIAE

Amici curiae are nonprofit organizations that represent the interests of battered women and children and are committed to ending domestic violence. Given their service to victims of domestic violence, *Amici* are particularly qualified to provide assistance to this Court and to offer an informative perspective on the issues presented in this case.

Amici have firsthand knowledge about the physical, emotional, and psychological effects of domestic violence on victims of abuse. Based on their collective experience, *Amici* understand that when a history of abuse is relevant to the issues in a criminal case, including the defendant's conduct and state of mind, then the jury must fully understand that history, the cumulative effects of the abuse, and its relationship to the legal issues. Otherwise, as happened in this case, the jury does not have the relevant contextual information with which to evaluate the evidence presented, and cannot reach a fair or reliable determination.

NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN

The National Clearinghouse for the Defense of Battered Women, founded in 1987, works to ensure justice for battered women charged with crimes against their batterers or third persons, where the history of abuse is relevant to the legal claim or defense. The National Clearinghouse is the 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 members of the community. The National Clearinghouse works on a wide variety of cases, including those involving self-defense/defense of others, coercion and duress, crimes of omission (such as failing to protect one's children from a batterer's violence), and cases where the history and impact of the

abuse help to explain the defendant's behavior and/or rebut the *mens rea* element of the crime.

The National Clearinghouse does not advocate any special legal rules for battered women defendants, but rather works to ensure that they have the same rights and protections as all other criminal defendants. Among the most fundamental is the right to have the jury consider *all* relevant evidence, including all evidence necessary to challenge the state's case. In the case of a battered woman, this evidence often includes lay and expert testimony about the abuse that the defendant suffered at the hands of the decedent, the dynamics of the abuse experienced in the relationship, and the cumulative psychological effects of the abuse. This testimony is essential to give the jury a full understanding of the defendant's conduct and state of mind at the time of the alleged offense; to rebut the state's evidence as to *mens rea* and other elements of the crime; and hence, to enable the jury to reliably determine guilt or punishment.

MISSOURI COALITION AGAINST DOMESTIC VIOLENCE

The Missouri Coalition Against Domestic Violence (MCADV) is the statewide, nonprofit membership organization of the agencies, organizations, and individuals providing services to victims of domestic violence and their children. The mission of MCADV remains as it has since the organization's 1980 founding: to provide education on domestic violence, advocate public policy to alleviate and prevent domestic violence; provide technical assistance and training to those programs and systems addressing the needs of domestic violence victims; to provide opportunities for communication among those working in alliance in the movement to end domestic violence; and to provide research on the extent of domestic violence to more effectively reduce its impact and occurrence.

Therefore, it is consistent with the mission, history, and efforts of MCADV to support the federal court appeal filed on behalf of Faye Copeland. This is especially true given the reality that all too often those who are victims of domestic violence are charged as defendants in crimes that are not identified by the local criminal justice system as arising directly from the victims' history abuse.

In these cases, the abuse suffered by a victim of domestic violence is often relevant to the defense or to rebut an element of the crime charged. Accordingly, it is extremely important for juries to hear all the relevant evidence of the abuse in order for them to render a fair and reliable verdict. This evidence includes lay evidence of the abuse as well as expert testimony about the realities of battered women's lives and the effects of the violence inflicted upon them, all of which is not normally understood by the average layperson.

MCADV affirms that a full and vigorous defense of a victim of domestic violence who is charged with a crime related to the abuse must include evidence and testimony regarding all the information and facts about the abuse, and not be limited to self-defense.

In the case of Faye Copeland, in order for the jury to have made a reliable determination about this defendant's state of mind, and whether she had the intent necessary for a conviction on the crime charged, it was critical for the jury to hear *all* of the evidence of abuse.

Amici submit this brief to assist the United States District Court for the Western District of Missouri, Western Division, in consideration of the critical issues of criminal justice presented in this proceeding.

INTRODUCTION[1]

Petitioner, Faye Copeland, is a seventy-six year old woman who was severely physically, sexually, and verbally abused by her husband, Ray Copeland, throughout the course of their fifty-year marriage. Petitioner was convicted of first-degree murder and sentenced to death for allegedly conspiring with her abusive husband to murder five men. The state presented no evidence that Petitioner caused death or injury, or that she was present during any of the killings. Rather, the state relied on a series of inferences that purported to show Petitioner's intent to kill and participation in her husband's criminal scheme.

Although the jury was asked to assess Petitioner's conduct and infer her "partnership" with Ray Copeland, the jury was deprived of information that was critical to this assessment -- a full understanding of the history and effects of the abuse, coercion, and control that Petitioner suffered at the hands of Ray Copeland. Evidence of this abuse would have cast serious doubt as to the extent of Petitioner's true "participation" in her husband's activities, and her knowledge and intent as to the murders. This evidence would have provided the jury with an alternative explanation for Petitioner's conduct, enabling them to conclude that her behavior was a manifestation of her fear and learned responses in dealing with her abuser, not evidence of her intent to kill, as the state asserted.

Without this information, the jury was left with the false impression that Petitioner was not a battered woman, that Petitioner's marriage was perfectly "normal," and that her seemingly "suspicious" conduct had no explanation other than evidence of her guilt. The jury was deprived of the specialized education that it needed as to the realities of battered women's experiences, and the

[1] For a full recitation of the facts and procedural history, Amici adopt the Statement of the Case and Procedural History as set forth in the Petition for Writ of *Habeas Corpus*. Particular facts are recited here as relevant.

cumulative psychological and behavioral responses to abuse. As social scientists and legal experts continue to recognize, such a specialized education on the effects of battering is often critical for the jury to fairly assess the defendant's conduct, state of mind, and the issues in the case.

The unjustified omission of relevant and necessary lay evidence of abuse by Petitioner's trial counsel, and the exclusion of expert testimony on battering and its effects by the trial court, prevented Petitioner from challenging the key *mens rea* element of the first-degree murder charge. Petitioner was deprived of her right to defend against this charge, resulting in a verdict that is inherently unfair and unreliable. Accordingly, Amici respectfully request that this Court grant the Petition for *Habeas Corpus*.

ARGUMENT

DUE TO BOTH THE OMISSION OF RELEVANT LAY EVIDENCE OF ABUSE, RESULTING FROM TRIAL COUNSEL'S INEFFECTIVENESS, AND THE EXCLUSION OF EXPERT EVIDENCE ON BATTERING, IN VIOLATION OF DUE PROCESS, THE JURY DID NOT HAVE COMPLETE INFORMATION CONCERNING THE ABUSE PETITIONER SUFFERED AND THUS COULD NOT RELIABLY DETERMINE PETITIONER'S MENS REA.

A. When a history of abuse is relevant to a defendant's conduct and state of mind, lay and expert testimony on battering is essential for a fair and reliable assessment of the evidence, in cases not limited to self-defense.

Courts and legislatures have repeatedly recognized that -- as happened in this case -- when relevant evidence about battering and its effects is omitted from a criminal trial, gravely unjust outcomes may result. This principle is not new. The evidentiary rules of virtually every jurisdiction have long admitted evidence of a history of abuse between the parties when relevant to the issues in the case.[2] Likewise, since the late 1970s, courts around the country have increasingly recognized that not only lay testimony, but also expert testimony on battering and its effects,[3] is often necessary

---

[2] *See, e.g.*, Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 408, 421, 422 (1991) (noting that the overwhelming majority of jurisdictions provide for the admission of "social context" evidence of the decedent's abusive conduct toward the defendant and toward third persons on the theory that it is relevant to the defendant's state of mind).

[3] At the outset, it is important to explain the terminology used in this brief. *Amici* use the term "battering and its effects" to describe the substance of lay and expert testimony regarding abuse. *Amici* note that many experts describe such testimony as "battered woman syndrome," a term coined in the late 1970s. *See* Lenore E. Walker, THE BATTERED WOMAN (1979). During the last 25 years, extensive research has been done focusing on battering and its effects upon women and children. As the professional literature has grown, the term "battered woman syndrome" has become less and less adequate to describe accurately and fully the current body of knowledge about battering and its effects. Many domestic violence experts now agree that the term "battered woman syndrome" is too limiting as it does not properly convey the range of behavioral and psychological responses that battered women exhibit, instead incorrectly implying that all women who experience abuse react in exactly the same way. *See* Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1196 (1993); and *People v. Humphrey*, 921 P.2d 1, 7 n.3 (Cal. 1996). Many experts and social scientists have replaced "battered woman syndrome" with the term "battering and its effects" to describe the experiences, beliefs, perceptions, and realities of battered women's lives. *See, e.g.*, NATIONAL INSTITUTE OF JUSTICE,

to give jurors the tools they need to evaluate the conduct of a battered woman defendant and ensure a fair trial.[4]

The rationale of courts and legislatures for admitting evidence about the history of abuse in criminal trials of battered women is that jurors cannot understand or evaluate an abused person's

---

DEPARTMENT OF JUSTICE, THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT, NCJ 160972 (May 1996) (hereinafter referred to as NIJ); Dutton (HOFSTRA 1993); and Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 975-76 (1995). The term "battering and its effects" is increasingly being used in legal and scholarly treatises (*see, e.g.*, NIJ, Dutton (HOFSTRA 1993), and Stark), as well as in statutes (*see, e.g.*, LA. CODE EVID. ANN. art. 404(A)(2) (West 1989) (allowing for the admissibility of "an expert's opinion as to the effects of the prior assault acts"), MASS. GEN. LAWS ANN. ch. 233, §23E (West 1994) (allowing for expert testimony regarding "the nature and effects of physical, sexual or psychological relationships"), NEV. REV. STAT. §48.061 (1993) (providing that "[e]vidence of domestic violence . . . and expert testimony concerning the effect of domestic violence is admissible"), and OKLA. STAT. ANN. tit. 22, 40.7 (West 1992) (allowing for expert testimony "concerning the effects of . . . domestic abuse on beliefs, behavior, and perception" of the person being abused).

[4] *Ex parte Haney*, 603 So. 2d 412 (Ala. 1992); *State v. Borrelli*, 227 Conn. 153, 629 A.2d 1105 (1993); *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. App. 1979); *Terry v. State*, 467 So. 2d 761 (Fla. App. 4 Dist. 1985), *pet. for review denied*, 476 So.2d 675 (Fla. 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, sub nom. United States 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); *State v. Stewart*, 243 Kan. 639, 763 P.2d 572 (1988); *State v. Anaya*, 438 A.2d 892 (Me. 1981); *Commonwealth v. Rodriguez*, 633 N.E.2d 1039 (Mass. 1994); *State v. Hennum*, 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) (appeal on remand); *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. 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); *Dunn v. Roberts*, 963 F.2d 308 (10th Cir. 1992); *United States v. Winters*, 729 F.2d 602 (9th Cir. 1984); *Fennell v. Goolsby*, 630 F. Supp. 451 (E.D. Pa. 1985).

Legislatures have followed suit, enacting statutes expressly providing for the admissibility of lay and/or expert testimony about abuse in criminal trials. For a detailed analysis of national trends on the admissibility of expert testimony and on statutes involving evidence on battering, see Janet Parrish, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases*,

claim or defense without fully understanding her experiences of abuse and history with the batterer. Evidence about battering provides the *context* necessary for the jury to evaluate the claim.[5]

Likewise, expert testimony on battering and its effects is introduced in criminal trials to "show the trier of fact the context of a defendant's actions." Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 426 (1991). Expert testimony educates the jury as to the *cumulative effects* of the abuse on the defendant and provides information that is not within the knowledge of the average layperson regarding the woman's experiences of abuse.

While the admission of evidence about battering in criminal cases evolved in the context of self-defense, it is now widely recognized that such evidence is relevant to various other types of claims and defenses as well. *See* NATIONAL INSTITUTE OF JUSTICE, DEPARTMENT OF JUSTICE, THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT, NCJ 160972 (May 1996) (hereinafter referred to as NIJ), Section I at 2-4. Evidence on battering may be relevant, for example, to explain the battered woman defendant's reactions and behavior; to support claims of coercion and duress; and, in some circumstances, to support claims of mental impairment.[6] *Id.*

WIS. WOMEN'S L. REV. 75 (Summer, 1996); also contained in NIJ, Section II.

[5] Recently, in response to Congress' passage of the VIOLENCE AGAINST WOMEN ACT (PUB. L. 103-322, TITLE IV), the National Institute of Justice/Department of Justice reported on and confirmed the validity and importance of evidence about battering in criminal trials. NIJ, Section I. This report concluded, in part, that "[e]vidence and testimony about battering and its effects provide information germane to factfinders' deliberations in criminal cases involving battered women." NIJ, Section I at 22. In particular, "an extensive body of scientific and clinical knowledge" strongly supports the validity and relevance of battering as a factor in the reactions and behavior of victims of domestic violence. NIJ, Foreword, at ii.

[6] *See also Arcoren v. United States*, 929 F.2d 1235 (8th Cir. 1991) ("battered woman syndrome" evidence admissible by state to explain battered woman's recantation of abuse claimed in her original police report); *Cababag*, *supra* note 4 (expert testimony on battering admissible to explain seemingly "bizarre" conduct of domestic violence victims, including minimization of the

In addition, evidence about battering may be relevant to rebut or negate the prosecution's evidence that the defendant possessed the requisite "intent" or other culpable mental state. *See, e.g., Dunn v. Roberts*, 963 F.2d 308 (10th Cir. 1992) (denial of funds for expert on battering violated due process since battering was relevant to negate the specific intent element of the aiding and abetting statute); *United States v. Marenghi*, 893 F.Supp. 85 (D.Me. 1995) (in drug prosecution, evidence of "battered woman syndrome" could be admissible to negate *mens rea* element of the crime); *Barrett v. State*, 675 N.E.2d 1112 (Ind. App.1996) (in child neglect case, expert testimony on "battered woman syndrome" was admissible to rebut state's evidence and support battered woman's claim that she did not possess requisite specific intent), *transfer denied* (5/22/97); *State v. Lambert*, 173 W.Va. 60, 312 S.E.2d 31 (1984) (defendant was entitled to present evidence of battering to negate criminal intent element of welfare fraud charge). Indeed, omission of evidence, when relevant to rebut the *mens rea* element of the crime, can constitute a constitutional violation. *See, e.g., Dunn, v.*

---

abuse and other related behaviors, which is beyond knowledge of ordinary juror); *State v. Slade*, 168 Wis.2d 358, 485 N.W.2d 839 (Wis. Ct. App. 1992) (in sexual assault, battery, and false imprisonment case, state expert's testimony regarding victims in abusive relationships relevant to provide alternative explanation for battered woman's conduct in not making greater efforts to resist or escape defendant); *Minnis, supra* note 4 (expert testimony on battering admissible to explain battered woman defendant's conduct, not only at time of homicide, but also to explain her actions afterwards in dismembering her abuser, as it would have rebutted state's theory that this was evidence of consciousness of guilt); *United States v. Ramos-Oseguera*, 120 F.3d 1028 (9th Cir. 1997) (expert testimony on battering admitted in federal drug case to support battered woman defendant's duress claim); *United States v. Brown*, 891 F. Supp. 1501 (D.Kan. 1995) (after-discovered evidence of battering warranted new trial since it would have explained defendant's state of mind and supported her compulsion defense in federal drug case); *People v. Romero*, 13 Cal. Rptr.2d 332 (Cal. App. 2 Dist. 1992) (expert testimony on battering was relevant to duress defense of battered woman defendant convicted of second-degree robbery with abusive boyfriend), *rev'd on other grounds*, 35 Cal. Rptr.2d 270, 883 P.2d 388 (1994); *State v. Williams*, 937 P.2d 1052 (Wash. 1997) (expert testimony on "battered woman syndrome" admitted to support battered woman's duress claim in welfare fraud case); *United States v. Johnson*, 956 F.2d 894 (9th Cir. 1992) (in federal drug case, evidence of battering relevant to defendants' duress claims at trial, but if complete duress defense fails, then evidence of battering to support incomplete duress must be taken into consideration by sentencing court in making downward departure under sentencing guidelines).

Roberts, 963 F.2d 308 (10th Cir. 1992); *Chambers v. Mississippi*, 410 U.S. 284 (1973); *Washington v. Texas*, 388 U.S. 14 (1967); *Crane v. Kentucky*, 476 U.S. 683 (1986); *see also Hughes v. Matthews*, 576 F.2d 1250 (7th Cir. 1978) (male defendant's due process rights violated by exclusion of competent psychiatric evidence that would have been relevant on issue of specific intent). *See infra* text 18-21.

The present case illustrates the relevance of evidence on battering and its effects in a case not involving self-defense. Here, the omission of this evidence, from both lay and expert witnesses, prevented the jury from fairly assessing Petitioner's *mens rea*. The jury was essentially left in the dark, without alternative explanations for Petitioner's conduct (which was deemed inculpatory by the prosecutor), leaving Petitioner unable to effectively rebut the state's case.

Given the importance of evidence about battering for a fair adjudication of battered women's claims, it is not surprising that, in some circumstances, convictions have been reversed when this critical evidence was withheld from the jury, whether due to trial court error, ineffectiveness of counsel, or inability of the defendant to discuss the abuse issues at the time of trial. *See, e.g., Commonwealth v. Stonehouse*, 521 Pa. 41, 555 A.2d 772 (1989); *People v. Day*, 2 Cal. App. 405, 2 Cal. Rptr. 916 (1992); *United States v. Brown*, 891 F. Supp. 1501 (D.Kan. 1995); *McMaugh v. State*, 612 A.2d 725 (R.I. 1992).[7]

---

[7] *See also Barrett v. State*, 675 N.E.2d 1112 (Ind. App.1996), *Rogers v. State*, 616 So.2d 1098 (Fla. Dist. Ct. App. 1993), *reh'g denied* (5/14/93), *approved in part, quashed in part*, 630 So.2d 177 (Fla. 1993); *Terry*, *supra* note 4; *Smith v. State*, 247 Ga. 612, 277 S.E.2d 678 (1981); *Minnis*, *supra* note 4; *State v. Williams*, 787 S.W.2d 308 (Mo. App. 1990); *State v. Doremus*, 2 Neb. App. 784, 514 N.W.2d 649 (1994); *Kelly*, *supra* note 4; *Koss*, *supra* note 4; *State v. Daws*, 1994 Ohio App. Lexis 3295 (7/27/94) (slip op.), *appeal allowed by* 71 Ohio St. 3d 1406, 641 N.E. 2d 203 (1994); *Bechtel*, *supra* note 4; *Commonwealth v. Tyson*, 535 Pa. 391, 635 A.2d 623 (1993); *Commonwealth v. Kacsmar*, 421 Pa. Super. 64, 617 A.2d 725 (1992), *appeal denied*, 536 Pa. 640, 639 A.2d 25 (1994); *Hill*, *supra* note 4; *State v. Wilkins*, 305 S.C. 272, 407 S.E.2d 670 (S.C. App. 1991), *reh'g denied* (8/29/91), *cert. denied* (11/21/91); *Fielder*, *supra* note 4; *State v. Allery*, *supra* note 4; *Romero*, *supra* note 6; *United States v. Word*, 129 F.3d 1209 (11th Cir.

As these decisions, as well as courts, legislatures, and governmental agencies continue to recognize, in order to ensure a fair and reliable assessment of a battered women defendant's claim, a jury must be provided with the necessary information to understand her experiences of abuse, the cumulative effects of the abuse, and the relevance of the abuse to the criminal case.

B. In the present case the omitted lay evidence of abuse and the excluded expert evidence on battering and its effects were both directly relevant to rebut the state's evidence of *mens rea*.

The central issue for the jury in this case was whether Petitioner specifically intended to cause five deaths. Since the state proceeded on a theory of accomplice liability, it had to prove beyond a reasonable doubt that it was Petitioner's *"conscious purpose"* to commit the killings and that she *personally deliberated* over the death of each victim. *State v. O'Brien*, 857 S.W.2d 212, 218 (Mo. banc 1993).

In order to prove her intent, the state relied primarily on statements and activity of Ray Copeland conducted outside of Petitioner's presence. The evidence relating to Petitioner's conduct consisted of a series of facts from which the jury was asked to infer that Petitioner possessed the requisite intent.[8] For example, the state presented evidence that Petitioner assisted with farm chores (10T, 52-53, 65; 12T, 2-8; 13T, 49-50)[9], obtained social security numbers from several of the farmhands when they were first hired (10T, 131-32, 136, 230, 233; 13T, 19-20, 110-11, 121-22),

---

1997); *State v. Scott*, 1989 WL 90613 (Del. Super. 7/19/89); *Commonwealth v. Miller*, 430 Pa. Super. 297, 634 A.2d 614 (1993), *appeal denied*, 646 A.2d 1177 (Pa. 1994); *State v. Zimmerman*, 823 S.W.2d 220 (Tenn. Cr. App. 1991).

[8] The evidence presented at trial pertaining to Petitioner is summarized at pages 105-107 of the Petition for Writ of *Habeas Corpus*.

[9] Abbreviations for references to the court record are as follows: Trial transcript = T; Trial Exhibits = Ex.; Legal file on appeal = L.f.; Rule 29.15 Motion Transcript = M.T.; Rule 29.15 Motion Exhibits = M.Ex. Dr. Marilyn Hutchinson transcripts = 16T, 19T; Dr. Lenore E. Walker transcripts = 1T, 5T.

asked one for a blank check (10T, 136, 233), and initially signed for a certified letter for one of the farmhands before denying knowing him (14T, 69-84, 87-88).

However, because the jury did not have a complete picture of the abuse that Petitioner suffered by Ray Copeland, the jury could not accurately evaluate the facts relating to Petitioner's conduct. If they had heard all of the evidence of Ray Copeland's longstanding pattern of abuse towards Petitioner and her children, and the effects of that abuse on Petitioner, it would have helped to explain more accurately the facts on which the state relied and provided the jury with alternative explanations for her behavior. *See infra* text at 11-14.

The jury was deprived of a full explanation about Ray Copeland's abuse in several respects. First, the jury was not given a complete picture of the extent of Ray Copeland's physical abuse, coercion, and control over Petitioner and the children. Although they heard about some of Ray Copeland's verbal abuse of Petitioner, and heard limited evidence of his abuse of the children, the jury was given the distinct impression that Petitioner was never physically abused and that she was not a battered woman.

The prosecutor repeatedly insisted that Petitioner was not battered, stressing that point in closing and witness examination, and going so far as to compare her marriage to his own (17T, 37). The jury would never have believed those assertions had it heard the truth about the relationship -- that Ray Copeland had hit Petitioner across the face with the back of his hand, drawing blood (M.Ex. K); slapped, pushed and kicked her "vigorously and without restraint" (M.Ex. H.); ran over her with a tractor (M.T.2 264-66); slapped, kicked and beat her with his fists (M.T.1, 19; M..T.7, 1304-06); hit, kicked, pushed, shoved her and called her names (M.T.5, 963-66); threw a gravy bowl at her and frequently pinched her and pulled her hair (M.T.2, 338-40; 344); struck her across the back with a board (L.f., 1577; M.T., 1155-56); broke her leg by kicking her with a steel-toed

shoe (M.Ex.H.); sat with a rifle in his lap causing Petitioner to do whatever he wanted (*id.*); and treated her in a cruel and degrading way (*id.*), "like an ignorant servant," not permitting her to talk to family members in his presence (M.Ex.G; M.Ex. B).

Moreover, the jury never heard from family members, neighbors and co-workers who could have also testified about the visible signs of the abuse that Petitioner exhibited, including scarring, bruising and black eyes. (M.Ex.A; M.Ex.E; M.Ex.F; M.Ex.G; M.Ex.Q; M.Ex.R; M..T. 2, 264; M.T. 1, 19; M.T. 7, 1304-06). Further, Petitioner's medical records could have corroborated some of her physical injuries. (M.Ex., 35; M.Ex. 4, M.T. 1, 136-39).

Similarly, the jury did not hear the extent of the abuse inflicted by Ray Copeland on his children and others, evidence that would have further established Ray Copeland's pattern of abuse and Petitioner's knowledge of his violence. The jury never heard, for example, incidents in which Ray Copeland hit his children with metal cow kickers (M.T.7, 1280), a skillet (*id.*), a wrench (M.T.2, 264-66), a chain (M.Ex. I), boards, baling wire, butcher knives or anything else that was handy (M.T. 1, 19; M.T. 7, 1304-06); that he forced his son to continue working with a broken wrist (M.T.7, 1280); beat farm animals and pets with boards (M.T.2, 271); beat his son on the head with a claw hammer (M.T.5, 963-66; M.Ex. I); hit son Bill on the head with a 2"-x-4" piece of lumber when he was 11-years-old (M.T.2, 345); killed his children's pets (M.T.2, 356-57); and tried to rape Petitioner's sister (M.Ex. H).[10]

Additionally, the jury was deprived of any cogent explanation of the cumulative effects of Ray Copeland's brutality, and how his abuse affected Faye Copeland's state of mind and conduct. Although trial counsel asserted that Petitioner was the victim of Ray Copeland's "domination" and control (15T, 152-163; 179, 184; 17T, 76-78), there was never any clear connection made between

[10] For a full recitation of the omitted evidence of abuse, see Petition for Writ of *Habeas*

this assertion and the issues for decision in the case.[11]

In order to render a fair and reliable decision about Petitioner's state of mind, the jury needed to understand how Petitioner's legitimate fear of Ray Copeland, and the cumulative psychological and behavioral effects of the violence he inflicted upon her, would have explained her seemingly "suspicious" conduct.

By way of illustration, to get the jury to infer intent, the state introduced evidence at trial that Petitioner asked for a blank check from one of the farmhands (10T, 136, 233); that she returned a certified letter addressed to a farmhand, claiming that she did not know him (14T, 69-84, 87-88); that there was a substantial amount of clothing and luggage left in the bedroom where the farmhands slept (13T, 18, 165-201, 229-34; 14T, 61-64, 103-09); and that she gave the police incorrect information about some of the farmhands (14T, 228-30, 235).

To the extent that these facts were used to show that Petitioner was a "willing participant" and "must have known" about Ray Copeland's murder scheme, the evidence of abuse would have provided an alternative explanation. As experts on domestic violence have long recognized, battered women develop an impressive array of strategies for attempting to stop or reduce the violence in their lives. Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome,* 21 HOFSTRA L. REV. 1191, 1227 (1993); 1T, 91. Strategies to stop or reduce violence often include complying with the batterer's demands or anticipated demands in order to prevent another violent episode. Dutton, *supra* at 1227, 1228; Mary Ann Dutton, EMPOWERING AND HEALING THE BATTERED WOMAN: A MODEL FOR

Corpus, pp. 67-85.

[11] In the guilt phase, expert testimony which could have explained the effects of abuse on Petitioner and how it related to her state of mind was precluded entirely. In the penalty phase, the expert's credibility, and her ability to articulate how the abuse affected Petitioner, was severely undermined because trial counsel failed to provide the expert with critical information about any

ASSESSMENT AND INTERVENTION, 41 - 42 (1992). What may appear to be "going along" with the batterer or "participating" in his plans, may in fact be survival techniques to reduce future violence.

Based on the omitted witness accounts, Ray Copeland's abusive episodes toward Petitioner and her children were both severe and regular, and the control that he exerted over Petitioner was overwhelming. His tactics of power and intimidation were very effective. As witnesses repeatedly confirmed, Petitioner was treated like a "slave" (M.Ex.G); she had to do what Ray Copeland wanted her to do, or else she risked serious harm to both her and her children. (M.T.1,19; M.T.7, 1304-06). He had only to "give her a look" to make her "stop talking and drop her head." (M.Ex. E). A failure to do what he "told her" to do resulted in a backhand across her face that drew blood. (M.Ex. K). He would get her to do what he wanted by sitting with a rifle in his lap. (M.Ex. H) Use of intimidating gestures and actions such as these are tactics typically used by batterers to heighten the victim's terror, allowing abusers to exert effective control with merely a look or a word. *See* Ellen Pence & Michael Paymar, *Theoretical Framework for Understanding Battering*, in EDUCATION GROUPS FOR MEN WHO BATTER: THE DULUTH MODEL 1-15 (1993). [12]

Given Ray Copeland's pattern of violence and intimidation, Petitioner was, in effect, under a continuing "state of siege," living with the ongoing terror of the next attack upon her or her children. *See* Dutton (HOFSTRA 1993) at 1208 (explaining how the dynamic of power and control in abusive relationships causes ongoing psychological abuse even between physically abusive incidents, akin to a "state of siege."). Like many battered women, Petitioner dealt with this violence, in part, by trying to avoid a confrontation, complying with his demands and "keeping the peace." (16T, 92, 95,

---

specific instances of physical abuse that Petitioner suffered at the hands of Ray Copeland.

[12] As experts have noted, such ongoing intimidation is just as important to understanding the woman's response to abuse as are the physically violent episodes. *See* Stark, *supra* note 3 (citing Diane R. Follingstad et al., *Factors Moderating Physical and Psychological Symptoms of Battered Women*, 6 J. FAM. VIOLENCE 81, 92 (1991)).

99). *See* Dutton (HOFSTRA 1993) at 1227-1228. She learned that the best way to deal with the violence was to be deferential to her batterer; she didn't fight or question him; rather, she did what he wanted her to do (16T, 85, 94, 95, 97; 19T, 39; 1T, 140; 5T, 820) and denied anything negative about him to others and even to herself. (19T, 38; 1T, 144). Such strategies may have been instrumental in containing Ray Copeland's violence, and possibly in saving Petitioner's own life or the lives of her children.

Thus, Petitioner's seemingly "suspicious" conduct with respect to the farmhands, and her apparent "covering" for Ray Copeland, may well have been what she had to do to placate Ray Copeland and stop the violence.

Petitioner, like many battered women, also minimized and denied the negative aspects of her batterer's behavior. (5T, 819; 16T, 108-09). When confronted with negative behaviors, she would "push" them out of her mind. (1T, 144). She would filter out the information that she did not want to confront about Ray Copeland, instead seeing only what she wanted to see (5T, 822). This type of behavior is fairly typical for battered women and others who have experienced physical and psychological trauma. Judith L. Herman, TRAUMA AND RECOVERY 87 (1992); Bessel A. Van Der Kolk & Alexander C. McFarlane, *The Black Hole of Trauma,* in TRAUMATIC STRESS 3-23 (Bessel A. Van Der Kolk, Alexander C. McFarlane, & Lars Weisaeth eds., 1996). Denial and minimization are a normal response to abnormal, traumatic events. (5T, 804-05). *See* Ronnie Janoff-Bulman, SHATTERED ASSUMPTIONS: TOWARDS A NEW PSYCHOLOGY OF TRAUMA 98 (1992). As a result of her minimization and denial, Petitioner would not necessarily recognize what might otherwise appear to be signs of criminality; she would not necessarily "know" that the farmhands were the victims of Ray Copeland's criminal scheme, despite the presence of seeming "clues." (5T, 845, 849-50). Even when she had reason to be suspicious, Petitioner knew that she could not question

Ray Copeland. (5T, 853). She dared not delve into anything that appeared to be suspicious lest she put herself and her children at greater risk (17T, 66).

In sum, the evidence of the history and effects of abuse would have cast the state's evidence in an entirely different light, raising doubt that the state's evidence could possibly support the necessary inference that Petitioner intended to kill. Evidence of abuse , such as testimony regarding Petitioner's inability to question seemingly unusual activities of Ray Copeland or delve into his affairs, would have directly undercut the inference that Petitioner was a willing participant in Ray Copeland's criminal activities who "must have known" about the criminality, and particularly the murders. To ascribe to her specific intent as to the murders based on her purported knowledge that "something was amiss" simply ignores reality and the dynamics of the abusive relationship that she suffered.

1. Trial counsel was ineffective for failing to fully investigate and present to the factfinder corroborative evidence of battering and its effects.

The omission of relevant evidence of battering in this case was due, in large part, to trial counsel's failure to present witnesses and documentation that would have factually established the true extent of the abuse that Ray Copeland inflicted on Petitioner and the children.[13] Trial counsel, like all criminal defense attorneys, clearly had the duty to investigate and present all relevant evidence to support his claim that Petitioner did not have the required intent. This evidence included material witnesses to, and documentation of, the abuse.

[13] As detailed in the previous section, although counsel did present some evidence of Ray Copeland's verbal abuse of Petitioner and his physical abuse of the children, counsel failed to present the available witnesses who would have testified to the most severe and repeated instances of physical abuse of Petitioner and her children. See *supra* text at 10-12, detailing the testimony of some of the witnesses who were inexplicably not called at trial.

Counsel's failure to present the lay evidence of abuse was not due to lack of notice or availability of that evidence at the time of trial. Discovery and post-trial investigation in this case show that counsel had ample notice about the omitted evidence of abuse.[14]

Nor did counsel's hiring of an expert on battering in any way cure his omission of the relevant witnesses and documentation to the physical abuse. While expert testimony on battering and its effects is often helpful in a criminal case to explain the effects of abuse, it is not a substitute for lay evidence that establishes the very existence of that abuse. As experts have repeatedly stated, expert testimony, when introduced by the defense, should be used to support a battered woman's claim, "*not to replace it.*"[15] Both lay and expert testimony are *indispensable components* for understanding the battered woman's legal claim.[16]

Indeed, the expert testimony that counsel did present was severely hindered by counsel's own failure to provide that expert with complete information about the significant lay evidence of abuse that existed. Evidence that either confirms or refutes the history of abuse is, of course, necessary for an expert to form his or her opinion. Simply retaining an expert was not sufficient. By failing to provide the expert with important information about the abuse of Petitioner, counsel deprived her of the very building blocks that would have served as a foundation for her testimony.

---

[14] For example, prior to trial, counsel received from the state a police report containing an interview with Petitioner's neighbor, Cheryl Moore. In her interview, Ms. Moore stated that Ray Copeland had "picked up a board and struck [Petitioner] square across the back with it." (L.f. 1577; M.T. 1155-56). Despite this report, counsel did not investigate or present Ms. Moore as a witness. During the court proceedings, counsel was informed that Petitioner's son, Everett Copeland, had witnessed his father physically abuse Petitioner. Everett indicated to counsel that he was willing to testify about this abuse, yet his testimony was omitted. *See* Petitioner's Writ for *Habeas Corpus* at 74. Moreover, the other witnesses to the physical abuse of Petitioner who were not called at trial were close relatives and neighbors of Petitioner who were readily available to counsel. (*Id.* at 67-80, 83-85). This is not a situation where the witnesses to the abuse would have been difficult to detect or locate. For example, counsel needed only to look to Petitioner's own siblings to uncover some of the most compelling evidence about the abuse (*Id.* at 69, 83).

[15] Parrish, *supra* note 4, at 78.

As a result of this omission, the expert testimony that was proffered at trial and offered at the penalty phase was left wide open to attack by the prosecution. Due largely to the absence of the corroborating lay evidence of abuse, the expert's opinions, including the opinion that Petitioner was a battered woman, was painted by the state as lacking in foundation and credibility. (17T, 38, 109-110; 19T, 80, 82, 120-122, 166, 182, 188).[17]

Counsel's duty to investigate the history of abuse was in no way diminished by the fact that Petitioner did not initially talk about the abuse. To the contrary, Petitioner's initial reluctance to discuss the abuse made counsel's duty of investigation of other sources of information about the abuse even more paramount.

It has long been recognized that, for a variety of reasons, battered women are often unable or unwilling to talk about their experiences of abuse. Battered women may psychologically cope with the abuse by developing mechanisms that help them minimize or deny the existence of the abuse to themselves. Dutton (1992) at 60. Some battered women rationalize the violence as a means of emotionally or practically coping with it. Kathleen Ferraro & John Johnson, *How Women Experience Battering: The Process of Victimization,* 30 SOC. PROB. 325, 327-28 (1983). Still others recognize the existence of the violence but deny it to others out of fear of increased violence from the batterer, shame, and the realization that others will not understand or will not believe that it happened. *See* Kathleen Waits, *Battered Women and Family Lawyers: The Need For An Identification Protocol,* 58 ALB. L. REV. 1027, 1054 (1995); Ann Jones, NEXT TIME, SHE'LL BE DEAD: BATTERING AND HOW TO STOP IT 14 (1994). ("Knowing public attitudes, abused women

---

[16] NIJ, Section III at 1-2.

[17] The prosecutor ridiculed the argument that Ray dominated Petitioner, characterizing it as the "harsh words defense" (17T, 109), and contended that "this portrayal of Faye Copeland as some naive and gullible and quivering woman that they want you to see over here is not the Faye Copeland that helped her husband kill these guys." *Id.* at 103.

often keep silent out of shame and a fear of being blamed, thereby appearing to acquiesce to violence.")

As courts have recognized, the initial reluctance of a battered woman to discuss the abuse should not be a barrier to a fair disposition of her case. In *McMaugh v. State*, 612 A.2d 725 (R.I. 1992), McMaugh and her husband were charged with, *inter alia*, murder in the first degree. At a joint trial with her husband, McMaugh testified that she had accidentally shot the victim. No evidence of her husband's abuse of her was presented, and both she and her husband were convicted. McMaugh later sought post-conviction relief alleging that she had not shot the victim at all, but had merely been in the car when her husband shot the victim. McMaugh claimed that she was a victim of battering and that her husband had coerced her into the story about the accidental shooting. The Rhode Island Supreme Court reversed the conviction, finding that the evidence about battering was exculpatory, after-discovered evidence. The Court stated:

> It was not until after McMaugh began serving her own sentence that she was able to reveal that she was the victim of an extremely focused campaign of abuse and domination that prevented her from assisting her own trial attorney and presenting a credible defense. The uncontradicted evidence is that because of the battering she was subjected to by her husband, McMaugh was precluded from coming forward with exculpatory evidence for use at the original trial. It was not until the spring of 1986, over a year after the trial was completed and McMaugh had been separated from her husband by their incarceration in separate prisons that [her attorney] and [expert] were able to discover the battering she had been subjected to by her husband.

Id. at 732.

Like the defendant in *McMaugh*, Petitioner did not discuss the abuse at the time of her trial. However, unlike *McMaugh*, in the instant case, counsel had significant notice and evidence of the pattern of physical abuse, coercion, and control that Ray Copeland inflicted on his family. Petitioner's initial denial was perfectly consistent and even predictable behavior for a woman that had endured as much violence as she had. Petitioner's denial made the investigation of the other

sources of abuse all the more important. In such cases, "the attorney or his investigator must put the case together around their client until the weight of evidence regarding her abuse overcomes her reluctance to talk about it or even to understand that she has been wronged." Alan D. Eisenberg & David A. Dillon, *Medico-Legal Aspects of Representing the Battered Woman*, 5 OKLA. CITY U. L. REV. 645, 647 (1980).

Amici do not contend that every lawyer who fails to present corroborative evidence of a history of abuse is derelict in his or her duties. However, where, as here, the prosecution based its entire case on accomplice liability; where the history of abuse would have explained actions of the defendant that the state relied upon to establish the culpable mental state; and where the evidence of abuse is available, both from police reports and available witnesses, counsel must conduct a reasonable investigation, and absent extraordinary reasons, present that history to the factfinder.

For these reasons, as well as those discussed in Petitioner's own brief, *amici* respectfully suggest that Faye Copeland did not enjoy the effective assistance of counsel in her defense.

2. Fundamental fairness requires that testimony on battering and its effects be admitted when relevant to the defendant's *mens rea*.

Petitioner's *mens rea* was placed squarely in issue in this case by state law requiring proof beyond a reasonable doubt of Petitioner's "conscious purpose" and "deliberation" as to the killings. Since proof of *mens rea* was a pivotal issue, it was essential that Petitioner be permitted to challenge that element of the crime with all relevant and probative evidence. The right to present such evidence when necessary to challenge the state's case is an essential component of the right to present a meaningful defense. *Washington v. Texas*, 388 U.S. 14 (1967); *Crane v. Kentucky*, 476 U.S. 683 (1986), *Chambers v. Mississippi*, 410 U.S. 284 (1973). *See also Dunn v. Roberts*, 963

F.2d 308 (10th Cir. 1992); *Barrett v. State,* 675 N.E.2d 1112 (Ind. App. 1996); *Hughes v. Matthews,* 576 F.2d 1250 (7th Cir. 1978).[18]

As detailed in the preceding sections, testimony on battering and its effects was relevant to Petitioner's *mens rea* and would have directly rebutted the inferences necessary for the state's theory that she possessed the requisite intent. Accordingly, it was fundamentally unfair to permit the state to fully present its version of the facts as to the *mens rea* element, yet refuse Petitioner her right to present opposing evidence to defeat or raise a reasonable doubt about that element.

The state supreme court demonstrated a remarkable misunderstanding of the whole area of testimony on battering and its effects in concluding that, in the absence of a mental disease or defect, such testimony is only admissible in self-defense cases. *See State v. Copeland,* 928 S.W.2d 828, 838 (1996). The Missouri statute authorizing the admission of expert testimony on battering in self-defense cases nowhere excludes such testimony in other cases, either expressly or by reasonable implication. *See* MO. REV. STAT. Sec. 563.033 (Supp.1988). Nor could a whole category of evidence that is logically relevant and probative of an element of the crime constitutionally be excluded by such a mechanistic application of state rules. *See Chambers v. Mississippi,* 410 U.S. 284 (1973).[19]

---

[18] *But see Montana v. Egelhoff,* 518 U.S. 37, 116 S.Ct. 2013 (1996) (state permitted to restrict admissibility of intoxication evidence, which was historically prohibited due to policy reasons); *United States v. Scheffer,* 118 S.Ct. 1261 (1998) (polygraph evidence could be prohibited due to scientific unreliability). Unlike the evidence in *Montana v. Egelhoff*, evidence of battering and its effects does not have the same historic prohibition; to the contrary, it's long been admissible in a variety of contexts. *See supra* text at 3-7. Moreover, intoxication evidence and evidence of battering are incomparable in that battered women do not cause and cannot control the violence inflicted upon them. *See* Mary Ann Dutton, *Necessary Issues For Understanding Battered Women,* 2(3) DOMESTIC VIOLENCE REP. 33, 34 (1997). Nor does evidence on battering and its effects present the reliability problems or the questionable scientific validity found to be the basis for the wholesale exclusion of polygraph evidence in *Scheffer. See* NIJ, Section I at 22.

[19] The Missouri Supreme Court's reliance on *Montana v. Egelhoff* to help justify its exclusion of evidence on battering and its effects is completely unreasonable. *See Copeland,* 928

Notably, the Eighth Circuit has held that the *state* can admit expert testimony on battering and its effects in cases not involving self-defense. *See, e.g., Arcoren v. United States,* 929 F.2d 1235 (8th Cir. 1991) (state's use of testimony on "battered woman syndrome" to explain a battered woman's behavior did not violate defendant's due process rights; defendant, a male batterer, argued that use of expert testimony on "battered woman syndrome" must be limited to self-defense claims). *See also Estelle v. McGuire*, 502 U.S. 62, 112 S.Ct. 475 (1991) (not a violation of defendant's due process rights for the state to admit testimony on "battered child syndrome" to establish defendant's intent in child abuse case). *Cf. Bachman v. Leapley*, 953 F.2d 440 (8th Cir.1992) (not a constitutional violation to allow state's expert on "rape trauma syndrome" to testify as to the credibility of the victims' statements about the conduct of defendant, the victims' mental states, and the consistency of their behavior with other victims of sexual abuse).

In light of the scientific and clinical research that has been done on battering and its effects over the last 20 years, expert testimony in this area has achieved scientific validity and acceptance. It is widely understood that battered women display a variety of concrete psychological and behavioral responses to battering. As in the case of Petitioner, battered women's responses can include compliance and avoidance behaviors, minimization, and sometimes outright denial about the abuse and the abuser's behavior. Testimony regarding these responses was essential in order to help the jury assess many aspects of Petitioner's conduct, which the prosecution so forcefully argued was evidence of her intent to kill. This case is a perfect illustration of the relevance of such testimony in a case not involving self-defense, and how the arbitrary exclusion of such relevant and probative testimony deprived the defendant of her constitutional right to challenge the state's case

---

S.W.2d at 837. Although a state may have a legitimate interest in restricting the rights of defendants who voluntarily become intoxicated, there is no conceivable state interest in doing the same to victims of domestic violence.

and present a defense.

For these reasons, as well as the reasons articulated in Petitioner's own brief, Faye Copeland was deprived of a fair trial, in violation of the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, and those set forth in the Petition for Writ of *Habeas Corpus*, *Amici* respectfully request that this Court grant the Petition for Writ of *Habeas Corpus*.

Respectfully submitted,

LISA M. LAURA (#66144)

JILL M. SPECTOR (#50890)

National Clearinghouse for the
Defense of Battered Women
125 S. 9th Street, Suite 302
Philadelphia, PA 19107
215/351-0010 · Fax 215/351-0779

Counsel for *Amici*

I hereby certify that a copy of the foregoing was mailed this _____ day of January, 1999, to Steven Hawke, Assistant Attorney General, Office of the Attorney General, PO Box 899, Jefferson City, MO 65102.

LISA M. LAURA (#66144)
Counsel for *Amici*