CRIMINAL LAW—EVIDENCE—EXPERT TESTIMONY RELATING TO SUBJECT MATTER OF BATTERED WOMEN ADMISSIBLE ON ISSUE OF SELF-DEFENSE—*Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979).

On February 23, 1976, Beverly Ibn-Tamas was charged with the fatal shooting of her husband, Dr. Yusuf Ibn-Tamas,[1] which had occurred that same morning after a violent argument.[2] It was uncontroverted that on the day of the shooting, notwithstanding Mrs. Ibn-Tamas' pregnant condition and protestation, her husband struck her and ordered her out of their home.[3] At dispute, however, was the severity of the beatings which preceded the fatal shots,[4] as well as the extent to which the deceased had committed similar acts of violence upon his wife.[5] The defendant testified that she fired the fatal shot in the belief that her husband was armed to kill her,[6] although he had no gun at that time.[7] A central issue at trial, therefore, was the reasonableness of Mrs. Ibn-Tamas' belief that her life was in imminent danger.[8]

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[1] Ibn-Tamas v. United States, 407 A.2d 626, 628 (D.C. 1979). Beverly and Yusuf Ibn-Tamas had been married for approximately three and one-half years. *Id.*

[2] Ibn-Tamas v. United States, 407 A.2d 626, 630 (D.C. 1979). The dispute and subsequent shooting took place at their family home where Dr. Ibn-Tamas retained an adjoining office. *Id.*

[3] *Id.* at 630 & n.9. Appellant further testified that she was dragged upstairs to the bedroom, threatened with a .38 caliber revolver and told, " 'You are going out of here this morning one way or the other.' " The doctor then returned to his office. *Id.* at 630.

[4] Brief for Appellant at 2, Ibn-Tamas v. United States, 407 A.2d 626 (D.C. 1979) [hereinafter cited as Brief for Appellant]. Appellant claimed that not long after her husband went downstairs to his office, he returned into the main part of the house to resume his attack. He pushed her against the bureau upon which he had left the gun. Fearful that he was going to grab it, she picked up the gun and fired a shot to scare him. He then left the room. As she started towards the stairway, he allegedly lunged at her. At that point, Mrs. Ibn-Tamas fired two shots, one of which proved to be fatal. Ibn-Tamas v. United States, 407 A.2d 626, 630-31 (D.C. 1979).

The doctor's nurse testified, however, that she heard the first shot about three seconds after she had seen the doctor go back into the house. The shot sounded as though it was coming from the landing. She then heard a thud and the second shot. *Id.* at 631.

[5] Brief for Appellant, *supra* note 4, at 3. Appellant testified that on a previous occasion her husband had accused a friend of her's of being a lesbian and ordered her from their home. When Mrs. Ibn-Tamas protested his rudeness, he struck her with various objects including his fists. Weeks later, he threatened her with a loaded gun. Ibn-Tamas v. United States, 407 A.2d 626, 629 (D.C. 1979). The only testimony which contradicted this violent behavior was that of the deceased's mother. *Id.* at 629 n.2.

[6] Ibn-Tamas v. United States, 407 A.2d 626, 631 (D.C. 1979). Brief for Appellant, *supra* note 4, at 2-3.

[7] Brief for Appellant, *supra* note 4, at 3.

[8] Ibn-Tamas v. United States, 407 A.2d 626, 634 (D.C. 1979). Brief for Appellant, *supra* note 4, at 3. The deceased's actions had placed her in such a state of fear that she testified, " 'I just knew he was going to kill me.' " Ibn-Tamas v. United States, 407 A.2d 626, 634 (D.C. 1979).

Beverly Ibn-Tamas was found guilty of second-degree murder[9] on July 29, 1977, and from this verdict appealed.[10] She contended that the trial judge had erroneously excluded expert testimony related to the subject matter of battered women proffered in support of her claim of self-defense.[11] The trial court excluded this testimony for the following reasons: 1) "it would 'go . . . beyond those [prior violent] acts which a jury is entitled to hear;' " 2) "it would 'invade . . . the province of the jury;' " and 3) " '[the expert], of necessity, conclude[d] that the decedent was a batterer.' "[12]

In *Ibn-Tamas v. United States*,[13] the Court of Appeals for the District of Columbia held, for the first time, that expert testimony relating to "battered women" was admissible on the grounds that it would not invade the province of the jury[14] and that its probative value was not outweighed by its prejudicial impact.[15] The court, however, did not reverse the conviction because the trial record was insufficient to establish as a matter of law that all of the criteria for admissibility had been satisfied.[16] Accordingly, the case was remanded to the trial court for a determination of *all* of the relevant criteria.[17]

In reviewing the trial court's ruling on the profferred expert testimony, the court of appeals in *Ibn-Tamas* utilized a bi-level analysis.[18] The threshold analysis involved the question of admissibility to which the three-fold test previously enunciated by the court in *Dyas* v. *United States* was applied.[19] The *Dyas* test, governing the admissibility of expert testimony, requires that:

> (1) the subject matter "must be so distinctively related to some science, profession, business or occupation *as to be beyond the ken*

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[9] The case was first tried in September 1976, but after the jury returned a verdict of guilty, the trial judge declared a mistrial. Ibn-Tamas v. United States, 407 A.2d 626, 628 (D.C. 1979). He believed that the appellant's right to effective counsel had been prejudiced, and that the jury's use of a dictionary created an additional prejudice. *Id.* at 628 n.1. Upon her conviction in 1977, Beverly Ibn-Tamas was sentenced for a period of one to five years. *Id.* at 628.

[10] Ibn-Tamas v. United States, 407 A.2d 626, 628 (D.C. 1979).

[11] Appellant raised a total of six issues on appeal. As to all but the error excluding expert testimony, the court of appeals affirmed. Ibn-Tamas v. United States, 407 A.2d 626, 628 (D.C. 1979).

[12] *Id.* at 631.

[13] 407 A.2d 626 (D.C. 1979).

[14] *Id.* at 639.

[15] *Id.* Contrary to the majority's holding, the dissent concluded that the proffered testimony was "irrelevant to any material issue in the case." *Id.* at 653 (Nebeker, J., dissenting).

[16] *Id.* at 640.

[17] *Id.*

[18] *Id.* at 632.

[19] 376 A.2d 827, 832 (D.C.), *cert. denied*, 434 U.S. 973 (1977); 407 A.2d at 632.

> *of the average laymen* [emphasis added]"; (2) "the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference *will probably aid the trier in his search for truth* [emphasis added]"; and (3) expert testimony is inadmissible if "the state of the pertinent art of scientific knowledge does not permit a reasonable opinion to be asserted even by an expert."[20]

Judge Ferren, speaking for the majority in *Ibn-Tamas*, considered the second ground proposed by the trial court for excluding expert testimony to be the sole ground going to admissibility. That proposal was based on a possible invasion into what was held to be "the province of the jury."[21] Accordingly, the court proceeded to analyze that ground by applying the first prong of the *Dyas* test.[22]

Whether the subject matter is " 'beyond the ken of the average layman,' "[23] requires that the testimony provide insight into the evidence which the unaided jury could not otherwise perceive.[24] To satisfy this criterion in the situation at hand, the expert must shed light on relevant aspects of the defendant's relationship with her husband which a jury would not gain simply by evaluating the defendant's self-defense testimony.[25] Pursuant to a review of the trial record, the majority declared that this criterion was indeed met.

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[20] 376 A.2d at 832 (quoting C. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 13, at 29-31 (2d ed. 1972)).

[21] 407 A.2d at 632. The court noted two ways in which the expert could preempt the jury's function. First, the expert could state a conclusion as to an ultimate issue. *Id. See, e.g.*, United States v. Spaulding, 293 U.S. 498, 506 (1935) (expert's opinion furnished no basis for opposing inferences); Lampkins v. United States, 401 A.2d 966, 971 (D.C. 1979) (opinions which would merely tell jury what result to reach as to guilt or innocence, or which submit the whole case to expert for decision, should be excluded).

Second, the expert could "speak to matters which 'the jury itself is just as competent to consider' " and weigh. 407 A.2d at 632 (quoting Lampkins v. United States, 401 A.2d 966, 969 (D.C. 1979)). *See also*, Waggeman v. Forstmann, 217 A.2d 310, 311 (D.C. 1966) (need for expert testimony disappears where his function no longer aids trier of fact); C. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 13, at 29-30 (2d ed. 1972).

The court disposed of the first pre-emptive means by concluding that the expert would have merely supplied background data in aid of the jury's ultimate conclusion on the question of self-defense. 407 A.2d at 632. The court noted that, in recent years, the ultimate facts rule has been relaxed, particularly where the expert states an opinion on facts which the jury can not draw. *Id.* at 632 n.13. *See, e.g.*, Casabarian v. District of Columbia, 134 A.2d 488, 491 (D.C. 1957) ("The real test is not that the expert opinion testimony would go to the very issue to be decided by the trier of fact, but whether the special knowledge or experience of the expert would aid the court or jury in determining the questions in issue.").

[22] 407 A.2d at 633. *See* notes 19-20 *supra* and accompanying text.

[23] 407 A.2d at 633.

[24] *Id.*

[25] *Id.* The expert testified, out of the jury's presence, that battered women typically possess little self-esteem, feel powerless, and have few close friends. They often feel responsible for

Specifically, the court of appeals considered Mrs. Ibn-Tamas' testimony on direct examination, that on the morning of the shooting, her husband repeatedly beat her, ordered her to leave the house, and threatened her with a pistol.[26] The defendant further testified that, mindful of her husband's propensity to commit brutal and violent acts upon her,[27] she perceived herself to be in imminent danger at the time of the shooting.[28] On cross-examination the government attempted to discredit this testimony by suggesting that the defendant's account of her marital relationship was exaggerated,[29] and, in any event, a woman truly fearful of her husband would have either left him or at least sought help from friends or the police.[30]

To rebut this line of attack, the defense proffered the testimony of its expert, Dr. Walker, in order to inform the jury of the battered woman phenomenon. This testimony would have demonstrated that a battered woman's behavior is at variance with the average lay person's notion of how one would react to a spouse who is a batterer.[31] Agreeing with this position, the appellate court reasoned that the testimony would have served two relevant functions.[32] First, it would have enhanced the defendant's credibility in responding to questions about her marital relationship;[33] and, second, it would have supported her belief that she was in imminent danger on the morning of the shooting, thus reinforcing Mrs. Ibn-Tamas' contention that she had acted in self-defense.[34] More importantly, the expert would have supplied an interpretation of the facts relating to the defendant's state of mind at the time of the shooting which was beyond the ordinary lay perception.[35] In so doing, the court of appeals held that the

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their husband's behavior. However, they also believe that their husbands are capable of killing them and that there is no escape. *Id.* at 634.

[26] *Id.* at 630. *See* notes 3-4 *supra* and accompanying text.

[27] 407 A.2d at 634. *See* note 5 *supra* and accompanying text.

[28] *See* note 8 *supra* and accompanying text.

[29] 407 A.2d at 633-34. The government further suggested that because of her exaggerated account, Mrs. Ibn-Tamas' belief that she was in imminent danger at the time of the shooting was "implausible." *Id.* at 633.

[30] *Id.* at 634.

[31] *Id. See* note 25 *supra* and accompanying text. Dr. Walker would have told the jury that of the 110 battered women she had studied, 60% had never told anyone that their husbands beat them, "40% had told a friend, and only 10% had called the police." 407 A.2d at 634. When asked about her interview with the accused, Dr. Walker replied that Mrs. Ibn-Tamas was " 'a classic case' of the battered wife." *Id.*

[32] 407 A.2d at 634.

[33] *Id.* The expert testimony would have countered the government's questions designed to show that the accused's testimony about her marital relationship was "implausible." *Id.* at 633.

[34] *Id. See* note 8 *supra* and accompanying text.

[35] 407 A.2d at 634-35. The expert's testimony would have been akin to that admitted in the case of Patricia Hearst " 'to explain the effects [of] kidnapping, prolonged incarceration, and

first *Dyas* criterion had been met as a matter of law.[36] Notwithstanding the erroneous ruling by the trial court as to this criterion, the appellate court was constrained to determine whether the trial judge had implicitly addressed the second and third criteria required for the ruling.[37]

The court analyzed the second *Dyas* criterion, whether the expert has sufficient skill in the field,[38] pursuant to the standard established by the Court of Appeals for the District of Columbia in *Jenkins v. United States*.[39] As in *Ibn-Tamas*, *Jenkins* involved the admissibility of testimony by a psychologist.[40] According to *Jenkins*, the test of the psychologist's competence to testify as to the diagnostic category into which the accused's condition would fit depends upon the "nature and extent of his knowledge."[41] *Jenkins* also stressed that the actual experience of the witness, and not his or her medical background, was the critical factor with respect to the competence of the witness to testify as an expert.[42]

The trial record in *Ibn-Tamas* established that Dr. Walker was permitted to testify as an expert in a similar case involving a battered woman accused of killing her spouse.[43] Dr. Walker's qualifications included, but were not limited to, a doctorate in psychology, a private practice, clinical experience and research in relation to wife bat-

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psychological and physical abuse . . . on the defendant's mental state at the time of the [criminal act].' " *Id.* at 634 (quoting United States v. Hearst, 412 F. Supp. 889, 890 (N.D. Cal. 1976)).

[36] 407 A.2d at 635.

[37] *Id.* "[I]n scrutinizing the trial court's ruling for abuse of discretion, the reviewing court may examine the record and infer the reasoning upon which the trial court made its determination.' " *Id.* (quoting from Johnson v. United States, 398 A.2d 354, 366 (D.C. 1979)).

Of interest to note, however, is that the court of appeals' evaluation of the record was clearly from the vantage point of an affirmance of the erroneous discretionary ruling. *See* 407 A.2d at 635-36. Apparently, the court concluded that to draw inferences from the record in order to satisfy the second and third *Dyas* criteria as a matter of law would usurp the trial court's discretion. While *Johnson* suggests this defferential view of trial court discretion, *Johnson* also suggests an important trade-off: "If the error in the discretionary determination jeopardized the fairness of the proceeding as a whole, or the error had a possibly substantial impact upon the outcome, the case should be reversed." Johnson v. United States, 398 A.2d 354, 366 (D.C. 1979). Thus, because of the tri-part nature of the ruling on admissibility involved herein, and the failure of the trial court to expressly rule upon *all* the essential criteria, the benefits of reversal which otherwise accrue where the error in discretion is material, are compromised in favor of trial court discretion. *See* 407 A.2d at 639 (the excluded expert testimony was highly probative and central to the claim of self-defense).

[38] 407 A.2d at 636-37. *See* note 19-20 *supra* and accompanying text.

[39] 307 F.2d 637 (D.C. Cir. 1962).

[40] *Id.*

[41] *Id.* at 645.

[42] *Id.* at 644. Prior to *Jenkins*, psychologists were not qualified as experts to render diagnostic opinions because they lacked medical background. *See* Note, *Psychologist's Diagnosis Regarding Mental Disease or Defect Admissible on Issue of Insanity*, 8 VILL. L. REV. 119 (1962).

[43] 407 A.2d at 636 n.18.

tering, and affiliation with various psychological associations.[44] At the time of trial she was also under contract to publish the studies she had done on wife battering.[45]

Despite her abundant knowledge and experience in the field, the court was unable to resolve the question of Dr. Walker's qualifications as a matter of law.[46] Although the court conceded that, based on the *Jenkins* test, Dr. Walker could not be disqualified as a matter of law,[47] it could not determine from the record whether the trial court had ruled thereon.[48] Accordingly, this issue was remanded to the trial court for determination.[49]

Finally, the court analyzed the facts of *Ibn-Tamas* in light of the third *Dyas* criterion which asks whether "the state of the pertinent art or scientific knowledge is sufficient to permit an expert opinion."[50] Satisfaction of this criterion requires that the witness' method of scientific inquiry has gained general acceptance in the particular field of expertise.[51] The court expressly rejected the government's contention that *Frye v. United States*[52] should render Dr. Walker's methodology unacceptable.[53] The court noted that *Frye* dealt only with the admissibility of expert testimony based upon new methods of scientific inquiry which had not gained general acceptance in the field of expertise.[54] In addition, the court distinguished *Ibn-Tamas* from those decisions which have precluded reliance on expert testimony because the state of scientific knowledge was so meager.[55] "[S]uch instances merely reflect the court's conclusion that no reliable methodology for making the inquiry has been discovered."[56]

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[44] *Id.*

[45] *Id.*

[46] *Id.* at 640. The court did note, however, that no one had questioned Dr. Walker's qualifications. *Id.* at 637.

[47] *Id.* at 637.

[48] *Id.* at 636 n.17.

[49] *Id.* at 640 n.28.

[50] *Id.* at 637. *See* notes 19-20 *supra* and accompanying text.

[51] 407 A.2d at 638.

[52] 293 F. 1013 (D.C. 1910).

[53] 407 A.2d at 637. The court noted that since the relevant expert diagnosis is not limited to a medical diagnosis, the field of expertise is broad enough to include clinical psychology. *Id. See* Jenkins v. United States, 307 F.2d 637 (D.C. Cir. 1962). In addition, the question was not, as the government contended, whether there was a common acceptance of the subject matter studied. 407 A.2d at 637.

[54] 407 A.2d at 638. For example, this criterion is directed to the use of the "polygraph, spectrographic identification, psycholinguistics, [and] tests for marijuana." *Id.* & nn. 21 & 22.

[55] *Id.* at 638. Where the cause of the disease is unknown, such as cancer, expert testimony is unreliable. *Id.*

[56] *Id.*

Thus, the relevant inquiry became whether Dr. Walker's use of in-depth interviews for studying and identifying 110 battered women had gained general acceptance in the field of clinical psychology.[57] While the court recognized that trial courts are encouraged to ignore the third prong of *Dyas*, " 'relegating any disagreement in the scientific community to the weight, not admissibility of the testimony,' "[58] it could only concede that Dr. Walker's methodology did not fall short as a matter of law.[59] Again, because the court of appeals was unable to conclude that the record manifested a trial ruling thereon, this issue was remanded.[60]

In light of the fact that admissibility remained an open question, the court focused upon the second level of its bi-level analysis which concerned the probative value versus the prejudicial impact of Dr. Walker's testimony.[61] The first and third grounds provided by the lower court in excluding the proffered testimony related to its prejudicial effects.[62] With regard to the first ground, the court of appeals stated that in the case of homicide, "prior acts of violence are admissible . . .'where the defendant raises the claim of self-defense against the decedent as the alleged first aggressor.' "[63] Noting that at trial substantial testimony relating to the decedent's earlier attacks had been admitted,[64] the appellate court viewed the incremental prejudicial impact of labelling the victim as a batterer as minimal.[65] Having already concluded that the expert's testimony would have provided the jury with relevant insight into the central issue of self-defense,[66] the testimony on battered women was, therefore, highly probative,[67] clearly outweighing any prejudicial impact as a matter of law.[68]

The decision of the court of appeals in *Ibn-Tamas* marks the first significant step toward judicial recognition of the behavioral

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[57] *Id.* Her studies were of battered women from all racial and socio-economic groups. *Id.* at 634. *See* notes 85-88 *infra* and accompanying text.

[58] *Id.* at 638 n.23 (quoting MCCORMICK, HANDBOOK OF THE LAW OF TORTS § 203 (2d ed. 1972)).

[59] 407 A.2d at 639.

[60] *Id.* at 639 n.25. Contrary to the majority, the dissent concluded that the trial court had properly addressed the third test in excluding the testimony. *Id.* at 648 n.7 (Nebeker, J., dissenting).

[61] *Id.* at 639.

[62] *Id. See* note 12 *supra* and accompanying text.

[63] 407 A.2d at 639 (quoting from United States v. Akers, 374 A.2d 874, 877 (D.C. 1977)) (emphasis omitted).

[64] 407 A.2d at 639.

[65] *Id.*

[66] *Id.* at 634. *See* notes 34-36 *supra* and accompanying text.

[67] *Id.* at 639.

[68] *Id.*

phenomenon known as the battered women's syndrome. By concluding as a matter of law that the battered woman phenomenon is beyond the ken of the average layman (first *Dyas* criterion),[69] the substantive hurdle for the purpose of admitting expert testimony related thereto is overcome.[70] Thus, the impact of *Ibn-Tamas* is not only recognition of the phenomenon, but is also an expansion of the subject matter about which experts may testify. However, because the court was unable to conclude that the other two *Dyas* criteria were sufficiently met in order to warrant reversal of the conviction,[71] the precedential value of the decision is substantially undercut. Furthermore, the guidance which it provides future litigants on the ultimate question of admissibility of expert testimony concerning battered women is at best limited.

In light of the *Jenkins* standard,[72] and Dr. Walker's abundant qualifications on the record,[73] it is difficult to reconcile the appellate court's inability to qualify her as an expert witness. More problematic, however, is the court's failure to direct the trial court to allow further evidence of Dr. Walker's credentials. This appears to suggest that the record is sufficient to support, on remand, either qualification or disqualification.[74] In effect, this permits the trial judge to exercise unfettered discretion in determining whether or not a psychologist is qualified to testify as an expert and casts doubt on the *Jenkins* standard. Further, trial judges may be encouraged to compile ambiguous records in order to support ambiguous rulings.[75] Where, for example, the record fails to reveal an express determination upon all the necessary criteria required for the ruling,[76] the trial judge may nevertheless, on remand, preserve in his silence the improprieties which may prompt his erroneous determinations, sheltered by his unchecked claim to superior opportunity to observe the witness.[77]

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[69] *See* note 36 *supra* and accompanying text.

[70] *See* note 23 *supra* and accompanying text.

[71] *See* note 16 *supra* and accompanying text.

[72] *See* notes 39-42 *supra*, and accompanying text.

[73] *See* notes 43-45 *supra* and accompanying text.

[74] 407 A.2d at 640 n.28. "[I]n ruling that the expert testimony is neither inadmissible nor admissible as a matter of law, we are not suggesting that we believe the record is so deficient that the trial court must take additional testimony before exercising appropriate discretion." *Id.*

[75] *Id.* at 640 n.29. The need for remand was "for clarification because the stated reasons were erroneous and [it] could not be certain that the record otherwise supported the ruling as a matter of law." *Id.*

[76] *Id.* at 635.

[77] *Id.* at 636 n.17. Because the evidence on the record did not permit one interpretation, the court suggested that the trial court might have excluded Dr. Walker's testimony on the basis of its "opportunity to observe and appraise the witness." *Id.*

Additionally, in view of the legal analysis established by the court regarding the third prong of *Dyas*[78] and its conclusion that *Frye* was inapplicable,[79] the necessity to remand this issue is unclear. Perhaps the majority's inability to approve of Dr. Walker's methodology was prompted by the adamant disapproval of Judge Nebeker.[80] In his dissent, he characterized Dr. Walker's data base of 110 battered women as a "paltry universe."[81] Moreover, the dissenting opinion indicated that because the record was "utterly devoid" of evidence concerning the method used or its general acceptance in the field, the foundation for the testimony was "patently inadequate."[82] Once again, the decision to take further evidence on this issue was left to the trial court's discretion,[83] appearing to suggest that the record was sufficient to support either acceptance or rejection of her methodology.[84]

There is little question that, among her colleagues, Dr. Walker's methodology is both traditionally accepted and frequently used.[85] Indeed, the ability to compile data and detect behavioral patterns based upon interviews and observations is a skill which behavioral scientists are trained to master.[86] Yet it has taken the legal profession decades to gain respect for the precision of behavioral science.[87] Today, it is the experienced advocate and judge who can appreciate the relevant insight to be gained from this wealth of knowledge.[88]

The court in *Ibn-Tamas* has set significant precedent by recognizing the relevance of the behavioral scientists' studies. Nevertheless, the remnants of skepticism, perhaps attributable to naïveté, which still pervade the legal community,[89] are hidden within this legal monument and inhibit its potential. Hopefully, with the benefit of hindsight, future appellate courts will require trial judges to express reasons on the record,[90] or to make further evidentiary findings on all

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[78] *See* notes 51-56 *supra* and accompanying text.

[79] *See* notes 52-56 *supra* and accompanying text.

[80] 407 A.2d at 639 n.25.

[81] *Id.* at 655 (Nebeker, J., dissenting).

[82] *Id.*

[83] *See* notes 75-77 *supra* and accompanying text.

[84] 407 A.2d at 639 n.25.

[85] Lassen, *The Psychologist is an Expert in Assessing Mental Disease or Defect*, 50 A.B.A. J. 239 (1964).

[86] Rose, *The Social Scientist is an Expert Witness*, 40 MINN. L. REV. 205 (1956).

[87] *Id.* at 216-17.

[88] *Id.* at 217. *See also* Louisell, *The Psychologist in Today's Legal World*, 39 MINN. L. REV. 235 (1955).

[89] *See* Louisell, *supra* note 88.

[90] *See* note 74 *supra* and accompanying text.

the necessary criteria[91] when faced with novel and material questions relating to admissibility.[92] Such a requirement would minimize the potential injustices[93] occasioned by silence and ambiguity, reluctance and naïveté.

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[91] *See* note 17 *supra* and accompanying text.

[92] *See* note 37 *supra* and accompanying text.

[93] *Id. See also* Johnson v. United States, 398 A.2d 354, 361-62 (D.C. 1979):

> [I]f the trial court's decision is supported by improper reasons, reasons that are not founded in the record, or reasons which contravene the policies meant to guide the trial court's discretion or the purposes for which the determination was committed to the trial court's direction, reversal is likely called for.

Id. at 367.