

The Admissibility of Rape Trauma Syndrome Expert Testimony in Indiana

I. INTRODUCTION

Rape is one of America's four major violent crimes.¹ It is one of the most under-reported crimes,² and one in which convictions are difficult to secure.³ The low conviction rate in rape cases contributes to the large number of rapes which occur because assailants are free to repeat the offense. The small number of convictions also deters victims from reporting the crime because they feel nothing can be done.⁴

Particularly, lack of consent by the victim, a requisite element of rape, presents a troublesome and controversial issue in court.⁵ Rape trauma syndrome, a common sequential pattern of behavioral and emotional reactions experienced by rape victims, is one tool to assist prosecutors in establishing lack of consent.⁶ However, courts which have considered expert testimony on rape trauma syndrome are not in agreement regarding the testimony's admission into evidence.⁷

Indiana courts have yet to address the admissibility of rape trauma syndrome testimony. This Note examines the requirements for the admissibility of expert testimony in Indiana and provides an extended analysis of the status of rape trauma syndrome expert testimony within these evidentiary rules. This Note suggests that expert testimony on rape trauma syndrome can satisfy Indiana's admissibility requirements, and thus should be used by prosecutors as substantive proof of lack of consent in criminal proceedings for rape. Recognizing that rape trauma syndrome should not be a source of evidence in every rape prosecution, this Note submits that its use in appropriate cases will lead to a greater number of convictions and, in turn, will encourage more reporting of the crime of rape.

II. BACKGROUND

Rape is defined by statute as knowingly or intentionally having sexual intercourse with a member of the opposite sex when "the other per-

¹U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS 5 (1982) [hereinafter cited as CRIME IN THE UNITED STATES].

²*Id.* at 14.

³See S. KATZ & M. MAZUR, UNDERSTANDING THE RAPE VICTIM 199 (1979).

⁴See Comment, *Scientific Evidence in Rape Prosecution*, 48 U. OF MO. K.C. L. REV. 216, 216 (1980) [hereinafter cited as Comment, *Scientific Evidence*].

⁵S. KATZ & M. MAZUR, *supra* note 3, at 12-14.

⁶See *infra* notes 29-63 and accompanying text.

⁷For cases admitting rape trauma syndrome expert testimony into evidence, see *State v. Marks*, 231 Kan. 645, 647 P.2d 1292 (1982); *State v. LeBrun*, 37 Or. App. 411, 587 P.2d 1044 (1978). For cases which did not permit expert testimony on rape trauma syndrome, see *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982); *State v. McGee*, 324 N.W.2d 232 (Minn. 1982); *State v. Taylor*, 663 S.W.2d 235 (Mo. 1984) (en banc).

son is compelled by force or imminent threat of force."⁸ Forcible rape is one of the four major violent crimes in the United States, the others being murder, robbery, and aggravated assault.⁹ Rape affects the lives of thousands of women each year. During 1982, there were an estimated 77,763 forcible rapes reported to law enforcement agencies in the United States.¹⁰ In addition to the number of reported rapes, forcible rape is also recognized as one of the most under-reported crimes.¹¹ It is estimated that one and one-half to twenty times more rapes actually occur than are reported.¹² Factors which have been shown to affect victims' decisions to contact law enforcement officials include the feeling that nothing could be done or victimization was not important enough, embarrassment over the incident, and fear of reprisal.¹³ In addition to the underreporting of its occurrence, rape also has a low conviction rate.¹⁴ Thus, "the courts deal with . . . few persons accused of rape—few because most rapes are unreported, because those rapes reported are often unsolved, and because those charged with the crime of rape are often found not guilty."¹⁵

⁸IND. CODE § 35-42-4-1(a)(1) (1982). Indiana's rape statute also includes the case where the victim is "unaware that the sexual intercourse is occurring; or the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given." *Id.* § 35-42-4-1(a)(2)-(3). However, Indiana's rape statute does not apply to sexual intercourse between spouses unless a petition for dissolution of the marriage, a petition for legal separation, or a protective order is pending and the spouses are living apart. *Id.* § 35-42-4-1(b). The concept of "statutory rape," formerly included in the rape statute, is now found in Indiana's child molestation statute. *See* IND. CODE § 35-42-4-3 (1982). Statutory rape, as compared with forcible rape, is a strict liability offense which occurs when a female under 16 years of age is raped, whether the rape is committed forcibly or whether there is consent. *See Williams v. State*, 178 Ind. App. 554, 383 N.E.2d 416 (1978). For purposes of this Note, rape is defined as forcible rape of adult females.

⁹CRIME IN THE UNITED STATES, *supra* note 1, at 5.

¹⁰*Id.* at 14.

¹¹*Id.*

¹²*See also* S. KATZ & M. MAZUR, *supra* note 3, at 16 (stating that 1.5 to 100 times more rapes are estimated to actually occur compared to those that are reported); O'Neale, *Court Ordered Psychiatric Examination of a Rape Victim in a Criminal Rape Prosecution—Or How Many Times Must a Woman Be Raped?*, 18 SANTA CLARA L. REV. 119, 139 (1978) (estimates range from 1 to 20 reporting to 1 in 4.5); Tanford & Bocchino, *Rape Victim Shield Laws and the Sixth Amendment*, 128 U. PA. L. REV. 544, 547 n.13 (1980) (it is estimated that the actual number of rapes ranges from 3.5 to 20 times the number of reported rapes).

¹³*See* U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 302-03 (1982); CRIME IN THE UNITED STATES, *supra* note 1, at 14; Comment, *Scientific Evidence*, *supra* note 4, at 216; *see also* S. KATZ & M. MAZUR, *supra* note 3, at 185-86.

¹⁴T. BENEKE, *MEN ON RAPE* 2 (1982) (an estimated two to three percent of all men who rape outside of marriage serve time in prison for this crime); S. KATZ & M. MAZUR, *supra* note 3, at 199 (cited study showed a 3 percent conviction rate); O'Neale, *supra* note 12, at 142 (the conviction rate for forcible rape is the lowest of any violent crime); Comment, *Scientific Evidence*, *supra* note 4, at 216 (rape is the most underreported and least-punished felony in the United States).

¹⁵E. FERSCH, *PSYCHOLOGY AND PSYCHIATRY IN COURTS AND CORRECTIONS* 270 (1980).

The law of rape requires that the victim not have consented to sexual intercourse.¹⁶ Indiana's rape statute does not explicitly contain the element of lack of consent, but requires that the victim be "compelled by force or imminent threat of force" to engage in sexual intercourse.¹⁷ Implicit in the term "compelled" is the concept of "against the victim's will," which was a requirement of Indiana's former rape statute.¹⁸ Courts construing the prior statute found the absence of consent to be an essential element of the crime.¹⁹ Thus, before a rape conviction may be obtained in Indiana, the prosecutor must prove the use of force or threat of force by the assailant as well as absence of consent on the part of the victim.²⁰

To establish lack of consent and force, the prosecutor usually relies on the testimony of the complaining witness corroborated by independent evidence of the victim's condition following the attack.²¹ Physical injury sustained by the victim is viewed as the best possible inferential proof of these elements.²² Indiana courts readily admit testimony concerning the victim's physical condition subsequent to the alleged incident.²³ Particularly relevant are hymenal membrane lacerations and other signs of trauma in the vaginal area.²⁴

However, not every victim of rape manifests physical signs of the

¹⁶S. KATZ & M. MAZUR, *supra* note 3, at 15.

¹⁷IND. CODE § 35-42-4-1(a)(1) (1982).

¹⁸IND. CODE ANN. § 35-42-4-1 commentary (West 1978).

¹⁹*See* *Burke v. State*, 250 Ind. 568, 580, 238 N.E.2d 1, 8 (1968); *Rahke v. State*, 168 Ind. 615, 622, 81 N.E. 584, 587 (1907).

²⁰*See* *Lottie v. State*, 273 Ind. 529, 534, 406 N.E.2d 632, 636 (1980) (element of crime of rape is that carnal knowledge of the woman must be against her will and consent). Technically, force and lack of consent are two separate elements of the crime of rape. The element of force focuses on the conduct of the assailant while the element of nonconsent concerns the behavior of the victim. Irrespective of this distinction, evidence that the victim suffered from rape trauma syndrome may be used to establish both of these elements. *See* Comment, *Scientific Evidence*, *supra* note 4, at 220-22. However, rape trauma syndrome is more closely related to the element of nonconsent of the victim. In the cases admitting expert testimony concerning rape trauma syndrome, this testimony was used to rebut the defense of consent. *See* *State v. Marks*, 231 Kan. 645, 647 P.2d 1292 (1982); *State v. LeBrun*, 37 Or. App. 411, 587 P.2d 1044 (1978).

²¹In Indiana, a rape conviction may be based on the uncorroborated testimony of the victim. *Morgan v. State*, 425 N.E.2d 625, 627 (Ind. 1981); *Ives v. State*, 418 N.E.2d 220, 223 (Ind. 1981). However, the use of corroborating evidence undoubtedly assists the prosecutor in obtaining convictions and raises the rape trial above the level of a verbal battle between the complainant and the defendant.

²²*See* Tanford & Bocchino, *supra* note 12, at 584; Comment, *Scientific Evidence*, *supra* note 4, at 222.

²³*See* *Aron v. State*, 271 Ind. 412, 415, 393 N.E.2d 157, 159 (1979); *Alstott v. State*, 205 Ind. 92, 95, 185 N.E. 896, 897 (1933); *Messel v. State*, 176 Ind. 214, 217-18, 95 N.E. 565, 566 (1911). Photographs of the victim's physical condition subsequent to the attack are also admissible. *See, e.g.,* *Dillon v. State*, 422 N.E.2d 1188, 1190 (Ind. 1981); *Palmer v. State*, 153 Ind. App. 648, 686-87, 288 N.E.2d 739, 761-62 (1972).

²⁴*See* *Page v. State*, 410 N.E.2d 1304, 1307 (Ind. 1980), *appeal after remand*, 424 N.E.2d 1021 (Ind. 1981), *appeal after second remand*, 442 N.E.2d 977 (Ind. 1982); *Bledsoe v. State*, 410 N.E.2d 1310, 1317 (Ind. 1980).

attack.²⁵ Illustrative of this fact is the study of Drs. A. Nicholas Groth and Ann W. Burgess which shows that sixty-five percent of the examined assaults were "power rapes" where the offender threatens or intimidates his victim rather than physically abusing her.²⁶ Physiological evidence to support the victim's allegations may also be lost when the victim delays in making her complaint.²⁷ Regardless of the reason for the lack of physical evidence, without such evidence the prosecutor may have difficulty in persuading the jury that a rape has been committed.²⁸

If the prosecutor has little or no physical evidence to establish lack of consent, expert psychological testimony about the victim's post-rape reaction may help bolster the case.²⁹ The expert, either a doctor or a rape crisis counselor, can testify that the victim suffered from an identifiable psychological syndrome which is characteristic of victims of rape.³⁰ The jury may infer from this testimony and other evidence that the victim did not consent and that a rape, in fact, occurred.³¹

The common sequential pattern of behavioral and emotional reactions experienced by victims of rape has been called rape trauma syndrome by Drs. Ann W. Burgess and Lynda L. Holmstrom, the most noted authorities in this area.³² According to Burgess and Holmstrom, "[r]ape trauma syndrome is the acute phase and long-term reorganization process that occurs as a result of forcible rape or attempted forcible rape. This syndrome of behavioral, somatic and psychological reactions is an acute

²⁵Studies in this area show varying results. The Center for Women Policy Studies found that approximately 63% of adult rape victims suffered some physical injury. In contrast, Schiff's study showed only 38% to have suffered physical injuries, and Massey reported only 10.6% had external evidence of trauma. Burgess and Holmstrom found that over half of the women in their study had at least one visible bruise to the body as a result of the assault. S. KATZ & M. MAZUR, *supra* note 3, at 162-63.

²⁶Groth & Burgess, *Rape: A Sexual Deviation*, 47 AM. J. ORTHOPSYCHIATRY 400, 404 (1977).

²⁷See Comment, *Scientific Evidence*, *supra* note 4, at 220-21.

²⁸As one rape victim remarked, a woman must be "bruised, bloody, and damned near dead" in order for the sexual assault not to be considered consensual. Note, *The Victim in a Forcible Rape Case: A Feminist View*, 11 AM. CRIM. L. REV. 335, 347 (1973) [hereinafter cited as Note, *Forcible Rape Case*].

²⁹See Comment, *Scientific Evidence*, *supra* note 4, at 221.

³⁰See *infra* notes 32-63 and accompanying text.

³¹See *State v. Marks*, 231 Kan. 645, 647 P.2d 1292 (1982); *State v. LeBrun*, 37 Or. App. 411, 587 P.2d 1044 (1978).

³²See Burgess & Holmstrom, *Rape Trauma Syndrome*, 131 AM. J. PSYCHIATRY 981 (1974) (this article is to be distinguished from that at note 53, *infra*); see also *In re Pittsburgh Action Against Rape*, 494 Pa. 15, 38-43, 428 A.2d 126, 138-40 (1981) (Larsen, J., dissenting); S. KATZ & M. MAZUR, *supra* note 3, at 215-31; Notman & Nadelson, *The Rape Victim: Psychodynamic Considerations*, 133 AM. J. PSYCHIATRY 408 (1976); Sutherland & Scherl, *Patterns of Response Among Victims of Rape*, 40 AM. J. ORTHOPSYCHIATRY 503 (1970); Comment, *Rape Victim-Rape Crisis Counselor Communications: A New Testimonial Privilege*, 86 DICK L. REV. 539, 543-44 (1982) [hereinafter cited as Comment, *Rape Victim*]; Comment, *Scientific Evidence*, *supra* note 4, at 221-22. See generally *State v. Marks*, 231 Kan. 645, 654, 647 P.2d 1292, 1299 (1982) (providing a list of sources).

stress reaction to a life-threatening situation."³³ The psychological phenomenon of rape trauma syndrome was identified by Burgess and Holmstrom in a study conducted in 1972 and 1973 of ninety-two adult women who were victims of forcible rape.³⁴ Burgess and Holmstrom found that although rape victims do not necessarily exhibit identical emotional responses, the victims in their study did experience a syndrome with specific symptomology.³⁵ Their conclusion has been supported by the studies of other researchers and medical personnel which reveal that most rape victims develop psychiatric symptoms and behavioral changes following a rape.³⁶ In addition, in 1979 the American Psychiatric Association accepted rape as a causal factor of the mental disorder of post-traumatic stress disorder.³⁷

Rape trauma syndrome, as defined by Burgess and Holmstrom, consists of a two-phase reaction.³⁸ The general reaction stages are compatible with the coping behavior of victims of other stress and life-threatening situations.³⁹ However, the specific symptoms of the rape victim are unique to rape trauma syndrome.⁴⁰

³³Burgess & Holmstrom, *supra* note 32, at 982.

³⁴*Id.* at 981.

³⁵*Id.* at 982-83; see S. KATZ & M. MAZUR, *supra* note 3, at 217; Comment, *Rape Victim*, *supra* note 32, at 543 ("Although not all victims exhibit identical emotional patterns, 'virtually all [of them] experience some of the emotions described and, therefore, the rape trauma syndrome provides a useful means to discuss the general reactions of victims to a rape experience.'" (quoting NAT'L INSTITUTE OF LAW ENFORCEMENT AND CRIM. JUSTICE, LAW ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, FORCIBLE RAPE—FINAL PROJECT REPORT 21 (1978) (Washington, D.C., Gov't Printing Office, 1978))).

³⁶See Kilpatrick, Veronen, & Resick, *The Aftermath of Rape: Recent Empirical Findings*, 49 AM. J. ORTHOPSYCHIATRY 658 (1979); Notman & Nadelson, *supra* note 32; Sutherland & Scherl, *supra* note 32; see also S. KATZ & M. MAZUR, *supra* note 3, at 215-31.

³⁷AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL FOR MENTAL DISORDERS 5, 236-39 (3d ed. 1980).

³⁸Burgess & Holmstrom, *supra* note 32, at 985. Sutherland and Scherl reported a three-phase pattern of response to rape. In the initial phase, the victim displays signs of acute distress. The second phase is a pseudoadjustment period in which the victim denies the impact of the rape and returns to her usual activities. In the third phase, depression often occurs and the victim feels the need to talk about the experience. Sutherland & Scherl, *supra* note 32.

³⁹Burgess & Holmstrom, *supra* note 32, at 985. Notman and Nadelson compared rape with other crisis situations that are unexpected and viewed as life-threatening. Allowing for differences in culture and personality style, these psychiatrists found that victims of rape display the same four reaction stages as victims of major stress. The four reaction stages are anticipatory or threat phase, impact phase, post-traumatic or "recoil" phase, and posttraumatic reconstitution phase. Notman & Nadelson, *supra* note 32, at 409; see Comment, *Scientific Evidence*, *supra* note 4, at 221.

⁴⁰See Burgess & Holmstrom, *supra* note 32, at 981-85. Justice Larsen in *In re Pittsburgh Action Against Rape* agrees that post-rape symptoms are distinguishable from those that follow other violent crimes:

The depth and range of emotional and psychological disturbance is not felt by the victims of most other crimes. Trauma is the natural consequence of any

The first phase of rape trauma syndrome is the acute phase.⁴¹ This phase is characterized by a significant disruption of the victim's lifestyle as a result of the rape.⁴² Physical symptoms are especially prominent during this phase.⁴³ Some of the somatic reactions experienced by victims are soreness and bruising, skeletal muscle tension, gastrointestinal irritability, and genitourinary disturbance including vaginal discharge, itching, a burning sensation on urination and generalized pain.⁴⁴

Moreover, during the acute phase, victims also react emotionally to the experience.⁴⁵ The initial emotional reaction may take the form of shock, dismay, and disbelief.⁴⁶ The victim may also experience a wide array of emotions including fear, anger, revenge, humiliation, embarrassment, and self-blame.⁴⁷ Of these emotions, the primary feeling described is fear⁴⁸—"fear of offender retaliation, fear of being raped again, fear of being home alone, fear of men in general, fear of being out alone. . . ."⁴⁹

Within phase one, Burgess and Holmstrom identified two emotional styles or types of response.⁵⁰ One-half of the women in their study displayed the expressed style in which the victim's emotions are exhibited by crying, sobbing, smiling, restlessness, and tenseness.⁵¹ The other half of the studied group showed the controlled response, masking their feelings behind a calm and composed exterior.⁵² This finding is notable because it refutes the stereotype that all rape victims are hysterical.⁵³

The second phase begins when the victim starts to reorganize her lifestyle.⁵⁴ The commencement of this phase varies with the individual vic-

violent crime. However, many of the symptoms of rape trauma syndrome will not be experienced with any degree of regularity by victims of non-rape crimes.

494 Pa. 15, 42-43, 428 A.2d 126, 140 (1981) (emphasis omitted) (Larsen, J., dissenting).

⁴¹Burgess & Holmstrom, *supra* note 32, at 982.

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.* at 982-83; see S. KATZ & M. MAZUR, *supra* note 3, at 220; Comment, *Scientific Evidence*, *supra* note 4, at 221.

⁴⁵Burgess & Holmstrom, *supra* note 32, at 983.

⁴⁶*Id.* at 982; see Notman & Nadelson, *supra* note 32, at 409; Sutherland & Scherl, *supra* note 32, at 504.

⁴⁷Burgess & Holmstrom, *supra* note 32, at 983; see S. KATZ & M. MAZUR, *supra* note 3, at 216-23; Notman & Nadelson, *supra* note 32, at 410; Comment, *Scientific Evidence*, *supra* note 4, at 221.

⁴⁸Burgess & Holmstrom, *supra* note 32, at 983; Donadio & White, *Seven Who Were Raped*, 22 NURSING OUTLOOK 245, 246 (1974); Notman & Nadelson, *supra* note 32, at 409.

⁴⁹State v. Marks, 231 Kan. 645, 653, 647 P.2d 1292, 1299 (1982).

⁵⁰Burgess & Holmstrom, *supra* note 32, at 982. Psychiatrists Notman and Nadelson found that rape victims, like fire and flood victims, may respond to the crisis either coolly and collectedly or react with confusion, paralyzing anxiety, an inability to move, or hysterical crying or screaming. Notman & Nadelson, *supra* note 32, at 409.

⁵¹Burgess & Holmstrom, *supra* note 32, at 982.

⁵²*Id.*

⁵³Holmstrom & Burgess, *Assessing Trauma in the Rape Victim*, 75 AM. J. NURSING 1288, 1290 (1975) (this article is to be distinguished from that at *supra* note 32).

⁵⁴Burgess & Holmstrom, *supra* note 32, at 982.

tim, with most victims entering this phase about two to three weeks after the attack.⁵⁵ Nightmares and phobias are especially prevalent in the second phase.⁵⁶ The surveyed group experienced, in varying degrees, fear of crowds, people behind them, being indoors or outdoors (usually depending upon the place of the assault), and being alone.⁵⁷ An increase in motor activity is also likely in this phase. The surveyed victims often reacted by changing their telephone numbers and their residences during this period.⁵⁸ Finally, many victims experienced anxiety which disrupted their normal sexual activity.⁵⁹

The duration of the second phase of rape trauma syndrome has not been definitively determined.⁶⁰ The followup conducted by Burgess and Holmstrom a few weeks or months after the rapes revealed that forty-nine percent of the surveyed victims claimed they were completely or almost completely recovered from the rape experience.⁶¹ Other studies show that most rape victims seem to recover from the incident within a year.⁶² However, despite general recovery, many clinical observers as well as victims report that forcible rape results in chronic psychological scars.⁶³

The regularity with which victims experience the symptoms of rape trauma syndrome and the identifiable nature of the syndrome make it a useful tool in establishing the requisite element of lack of consent by the victim.⁶⁴ Prosecutors in a number of states have sought, with varying results, to admit expert testimony that the victim suffered from rape trauma syndrome.⁶⁵ Indiana courts have yet to address the issue of the admissibility of expert testimony on rape trauma syndrome.

III. THE ADMISSIBILITY OF EXPERT TESTIMONY IN INDIANA

Generally, before any type of expert testimony is admitted by the trial court for the jury's consideration, certain evidentiary requirements must be met.⁶⁶ The first requirement is that the subject of the testimony must

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.* at 984; see S. KATZ & M. MAZUR, *supra* note 3, at 218; Comment, *Scientific Evidence*, *supra* note 4, at 221.

⁵⁸Burgess & Holmstrom, *supra* note 32, at 983.

⁵⁹*Id.* at 984; see S. KATZ & M. MAZUR, *supra* note 3, at 223-24.

⁶⁰See S. KATZ & M. MAZUR, *supra* note 3, at 227-29.

⁶¹*Id.* at 227 (of the surveyed group, 16% denied having any symptoms and 33% reported minimal discomfort).

⁶²*Id.* at 229 (only those rape victims with prior psychiatric or emotional difficulties required additional psychiatric treatment).

⁶³*Id.* at 227.

⁶⁴Comment, *Scientific Evidence*, *supra* note 4, at 220-22.

⁶⁵For cases finding rape trauma syndrome expert testimony admissible, see *State v. Marks*, 231 Kan. 645, 647 P.2d 1292 (1982); *State v. LeBrun*, 37 Or. App. 411, 587 P.2d 1044 (1978). For cases which did not permit expert testimony on rape trauma syndrome, see *State v. McGee*, 324 N.W.2d 232 (Minn. 1982); *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982); *State v. Taylor*, 663 S.W.2d 235 (Mo. 1984) (en banc).

⁶⁶See C. MCCORMICK, MCCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE § 13, at

be beyond the ken of the average laymen or that the evidence assist the trier of fact.⁶⁷ Second, the expert witness must possess sufficient skill, knowledge, or experience in the field so that his opinion probably will aid the trier of fact.⁶⁸ The third requirement, referred to as the reliability requirement, is that "the state of the pertinent art or scientific knowledge [must] permit a reasonable opinion to be asserted . . . by an expert."⁶⁹ This evidentiary requirement is generally interpreted as requiring the expert testimony to have a recognized theoretical basis.⁷⁰ Fourth, the probative value of the expert testimony must not be substantially outweighed by the probative dangers which would result from admitting the testimony.⁷¹

The proponent of the testimony has the burden to establish that the witness meets these criteria before the trial judge may determine that the witness qualifies as an expert.⁷² Trial judges are afforded great deference in determining the admissibility of expert testimony.⁷³ Appellate courts will reverse admission decisions only if a trial court has abused its discretion, that is, "drawn an erroneous conclusion in judgment, one clearly against the logic and effect of the facts and circumstances or the reasonable and actual deductions to be made from such evidence."⁷⁴

Once the trial court determines that expert testimony is admissible, the witness may testify concerning his own observations, inferences, and conclusions if he has firsthand knowledge of the facts at issue between the contending parties.⁷⁵ If the expert witness has no firsthand knowledge, he may provide testimony based upon his knowledge as to facts in the record.⁷⁶ The expert witness, in the absence of personal knowledge, may express an opinion upon a hypothetical statement of facts supported by the evidence.⁷⁷

29-31 (2d ed. 1972). See generally Recent Development, *The Expert as Educator: A Proposed Approach to the Use of Battered Women Syndrome Expert Testimony*, 35 VAND. L. REV. 741, 746-49 (1982) [hereinafter cited as Recent Development, *Expert as Educator*].

⁶⁷C. MCCORMICK, *supra* note 66, § 13, at 29; see Recent Development, *Expert as Educator*, *supra* note 66, at 747.

⁶⁸C. MCCORMICK, *supra* note 66, § 13, at 30.

⁶⁹*Id.* at 31 (footnote omitted).

⁷⁰See Recent Development, *Expert as Educator*, *supra* note 66, at 748-49.

⁷¹See FED. R. EVID. 403. Although technically this requirement is a request for discretionary exclusion, for purposes of this Note it will be treated as an objection to the admission of evidence. A request for discretionary exclusion may be distinguished from an objection to the admission of evidence in that an objection asserts a right of the party to have the evidence excluded, while a request invokes the power of the trial judge to exclude the evidence for other reasons. C. WRIGHT & K. GRAHAM, FEDERAL PRACTICE AND PROCEDURE: EVIDENCE § 5224 (1978).

⁷²See M. SEIDMAN, THE LAW OF EVIDENCE IN INDIANA 21 (1977).

⁷³See *City of Bloomington v. Holt*, 172 Ind. App. 650, 661, 361 N.E.2d 1211, 1218 (1977), *aff'd*, 181 Ind. App. 179, 391 N.E.2d 829 (1979); *Northern Ind. Pub. Serv. Co. v. Otis*, 145 Ind. App. 159, 199-200, 250 N.E.2d 378, 404 (1969).

⁷⁴*Underhill v. Deen*, 442 N.E.2d 1136, 1139 (Ind. Ct. App. 1982) (citation omitted).

⁷⁵*Id.* at 1139; *Senco Products, Inc. v. Riley*, 434 N.E.2d 561, 565 (Ind. Ct. App. 1982).

⁷⁶*Senco Products, Inc. v. Riley*, 434 N.E.2d 561, 565 (Ind. Ct. App. 1982).

⁷⁷*Id.*; *City of Indianapolis v. Robinson*, 427 N.E.2d 902, 907 (Ind. Ct. App. 1981).

A. *The Subject Matter of the Testimony*

The first requirement for the admission of expert testimony relates to the subject matter of the testimony: "[T]he subject of the inference must be so distinctly related to some science, profession, business or occupation as to be beyond the ken of laymen. . . ."⁷⁸ This requirement limits the subject matter upon which an expert is permitted to testify. Courts are unwilling to admit expert testimony on matters within the common knowledge of the average person for fear that the "aura" of expertise will unduly influence the jury.⁷⁹ Expert testimony on subjects within the jury's ken is also objectionable because lay jurors are as competent as an expert to draw inferences from the facts.⁸⁰

Indiana courts have readily accepted expert testimony on certain subject matter areas. Expert medical testimony is permitted to establish cause of death because the average person does not possess the skill or knowledge to make such a determination.⁸¹ Medical experts are also allowed to give their opinions concerning the cause of physical ailments⁸² as well as the effect and extent of a person's injuries.⁸³

Expert testimony regarding an individual's mental condition is also admissible in Indiana courts. This type of testimony appears frequently in will contests where testamentary capacity is at issue⁸⁴ and in cases where the defendant invokes the insanity defense.⁸⁵ In Indiana, when an insanity defense is filed, the court is required by statute to appoint two or three psychiatrists to examine the defendant and provide expert testimony at trial.⁸⁶

⁷⁸Davis v. Schneider, 182 Ind. App. 275, 283, 395 N.E.2d 283, 290 (1979); see M. SEIDMAN, *supra* note 72.

⁷⁹See Recent Development, *Expert as Educator*, *supra* note 66, at 747.

⁸⁰See M. SEIDMAN *supra* note 72, at 21.

⁸¹See Haskell & Barker Car Co. v. Erickson, 73 Ind. App. 657, 661-62, 128 N.E. 466, 467 (1920).

⁸²William H. Stern & Son, Inc. v. Rebeck, 150 Ind. App. 444, 449, 277 N.E.2d 15, 19 (1971); Pennsylvania Co. v. Frund, 4 Ind. App. 469, 472-73, 30 N.E. 1116, 1117 (1892).

⁸³Cerra v. McClanahan, 141 Ind. App. 469, 472-74, 229 N.E.2d 737, 739-40 (1967); Fort Wayne Transit, Inc. v. Shomo, 127 Ind. App. 542, 553-54, 143 N.E.2d 431, 437-38 (1957).

⁸⁴See Underhill v. Deen, 442 N.E.2d 1136, 1139-40 (Ind. Ct. App. 1982); Conner v. First Nat'l Bank, 118 Ind. App. 173, 179-84, 76 N.E.2d 262, 265-67 (1947). Lay witnesses may also give their opinions concerning the mental condition of the testator. Rice v. Rice, 92 Ind. App. 640, 645-46, 175 N.E. 540, 542 (1931). This opinion testimony is permitted because lay witnesses may draw conclusions from the appearance and deportment of the testator which cannot be accurately described in words but which are a reliable basis for their opinions. See *id.* at 644, 175 N.E. at 541.

⁸⁵See Williams v. State, 265 Ind. 190, 198-99, 352 N.E.2d 733, 741-42 (1976); Atkinson v. State, 181 Ind. App. 396, 403, 391 N.E.2d 1170, 1175-76 (1979), *aff'd*, 411 N.E.2d 651 (Ind. Ct. App. 1980). Opinions of lay persons are also admissible on the issue of the defendant's insanity. Unlike the expert witness who possesses specialized knowledge, the lay witness is permitted to testify because of his particular experience with the defendant. See McCall v. State, 273 Ind. 682, 688, 408 N.E.2d 1218, 1222 (1980).

⁸⁶IND. CODE § 35-36-2-2 (1982).

If Indiana courts find an individual's mental condition to be an appropriate subject of expert testimony, then similarly the court should find the question of whether an alleged rape victim suffered from rape trauma syndrome to be a proper subject for expert testimony. Rape trauma syndrome is characterized by a common sequential pattern of behavioral and emotional reactions.⁸⁷ Those who are trained in the science of psychology, the study of "behavior, acts or mental processes of the mind, self or person,"⁸⁸ are uniquely qualified to identify this phenomenon in alleged victims of rape. The use of psychological evaluations may also reveal whether an individual has fabricated an incident.⁸⁹

Conversely, the average person is unfamiliar with the crime of rape and its emotional and behavioral aftereffects. This lack of common knowledge and understanding is illustrated by the continued existence of societal myths about rape. For example, one prevalent myth is that the rape victim "asked for it."⁹⁰ This myth erroneously focuses on the sexual gratification aspect of rape when most researchers have found that rape is primarily an "act of violence with sex as the weapon."⁹¹ Another widely accepted belief is that many accusations of rape are false.⁹² However, it is difficult to substantiate that false reports of rape are greater than false reports of other crimes.⁹³ The fact that rape is one of the most under-reported crimes also suggests that this commonly held belief is untrue.⁹⁴ If the average person's knowledge of rape is tainted with these societal myths, it follows that the subject of rape trauma syndrome is beyond the knowledge and experience of the average juror. Thus, Indiana courts should permit expert testimony on the subject.

Other state courts which have considered rape trauma syndrome testimony as substantive proof of the crime of rape have decided the admissibility question under conservative evidence rules⁹⁵ as well as more liberal evidentiary requirements.⁹⁶ Missouri's corresponding evidentiary requirement is similar to the strict common law rule in force in Indiana.

⁸⁷See *supra* notes 32-63 and accompanying text.

⁸⁸H. LIEBENSON & J. WEPMAN, *THE PSYCHOLOGIST AS A WITNESS* 23 (1964).

⁸⁹See *id.* at 68.

⁹⁰See *In re Pittsburgh Action Against Rape*, 494 Pa. 15, 40, 428 A.2d 126, 138-39 (1981) (Larsen, J., dissenting); Notman & Nadelson, *supra* note 32, at 412; see also S. KATZ & M. MAZUR, *supra* note 3, at 137-51.

⁹¹See Burgess & Holmstrom, *supra* note 32, at 982; Groth & Burgess, *supra* note 26, at 401-02.

⁹²See Notman & Nadelson, *supra* note 32, at 412; O'Neale, *supra* note 12, at 133-44; see also S. KATZ & M. MAZUR, *supra* note 3, at 205-14.

⁹³See Tanford & Bocchino, *supra* note 12, at 546-47; Note, *Forcible Rape Case*, *supra* note 28, at 336-38.

⁹⁴See *supra* notes 11-12 and accompanying text.

⁹⁵See *State v. Taylor*, 663 S.W.2d 235 (Mo. 1984) (en banc).

⁹⁶See *State v. Marks*, 231 Kan. 645, 647 P.2d 1292 (1982); *State v. McGee*, 324 N.W.2d 232 (Minn. 1982); *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982); *State v. LeBrun*, 37 Or. App. 411, 587 P.2d 1044 (1978).

Missouri courts hold that expert testimony should not be admitted ““unless it is clear that the jurors themselves are not capable, for want of experience or knowledge of the subject, to draw correct conclusions from the facts proved.””⁹⁷ In *State v. Taylor*,⁹⁸ the Supreme Court of Missouri found reversible error in the trial court’s admission of a psychiatrist’s opinion that the prosecutrix suffered from rape trauma syndrome arising out of an attack by the defendant.⁹⁹ The *Taylor* court concluded that the jury could determine whether intercourse was forcible based upon its own evaluation of the evidence.¹⁰⁰ Thus, the *Taylor* decision suggests that the subject of rape trauma syndrome is not beyond the ken of the average person.

Other state courts have addressed the admissibility of rape trauma syndrome expert testimony under a more liberal evidentiary requirement. Oregon, Kansas, and Minnesota have all essentially adopted the federal rules standard which permits expert testimony if it “will assist the trier-of-fact to understand the evidence or to determine a fact in issue.”¹⁰¹ The application of this evidence rule by the state courts, however, has produced divergent results.

Courts in Oregon and Kansas have determined that expert testimony regarding rape trauma syndrome fulfills this evidentiary requirement. In *State v. LeBrun*,¹⁰² the Oregon Court of Appeals found no error in the admission of a rape victim advocate’s testimony that the victim’s emotional state comported with that of most victims of sexual abuse.¹⁰³ Similarly, in *State v. Marks*,¹⁰⁴ the Supreme Court of Kansas held that expert testimony by a forensic psychiatrist that the victim suffered from the post-traumatic stress disorder known as rape trauma syndrome was admissible.¹⁰⁵ Although the testimony in *LeBrun* and *Marks* was not opposed on the grounds that the subject of rape trauma syndrome was inappropriate for expert testimony, these decisions permitting the admis-

⁹⁷*State v. Taylor*, 663 S.W.2d 235, 239 (Mo. 1984) (en banc) (quoting *Sampson v. Missouri Pac. R.R. Co.*, 560 S.W.2d 573, 586 (Mo. 1978) (en banc)). This is a well established rule in Missouri. See *Benjamin v. Metropolitan St. Ry. Co.*, 133 Mo. 274, 34 S.W. 590 (1896).

⁹⁸663 S.W.2d 235 (Mo. 1984) (en banc).

⁹⁹*Id.* at 239-40.

¹⁰⁰*Id.* at 241.

¹⁰¹FED. R. EVID. 702. Oregon’s corresponding evidentiary rule is identical to Federal Rule 702. See OR. R. EVID. 702. Kansas’s correlating rule of evidence is not identical to the Federal Rule. See KAN. CIV. PROC. CODE ANN. § 60-456 (Vernon 1965). However, the author’s comments to the evidentiary rule state that Federal Rule of Evidence 702 is “substantially in accord” with the Kansas statute. KAN. CIV. PROC. CODE ANN. § 60-456 author’s comments (Vernon Supp. 1984). Minnesota, like Oregon, has an evidentiary rule identical to the Federal Rule. See MINN. R. EVID. 702.

¹⁰²37 Or. App. 411, 587 P.2d 1044 (1978).

¹⁰³*Id.* at 415-16, 587 P.2d at 1047.

¹⁰⁴231 Kan. 645, 647 P.2d 1292 (1982).

¹⁰⁵*Id.* at 653-55, 647 P.2d at 1299-1300.

sion of the testimony indicate that rape trauma syndrome expert testimony assists the trier of fact in rape prosecutions.¹⁰⁶

The Supreme Court of Minnesota took a differing view in *State v. Saldana*.¹⁰⁷ The *Saldana* court, applying an identical evidentiary rule, concluded that the jury was as capable as the expert of considering the evidence and deciding whether the alleged rape occurred.¹⁰⁸ Accordingly, the court determined that expert testimony concerning rape trauma syndrome was "of no help to the jury,"¹⁰⁹ and hence did not satisfy Minnesota's evidentiary requirements.¹¹⁰ Relying on its reasoning in *Saldana*, the Minnesota court in *State v. McGee*¹¹¹ found fundamental error in the admission of a doctor's testimony that the behavioral and emotional pattern of the complainant was consistent with rape trauma syndrome.¹¹² Thus, although the courts in *LeBrun*, *Marks*, *Saldana*, and *McGee* employed similar evidentiary rules, the outcome of the cases are in conflict. These divergent results are inexplicable unless attributed to the peculiarities of the particular courts.

Indiana courts, however, are not bound by rulings of other state courts. Indiana courts have permitted expert testimony on the subject of an individual's mental condition.¹¹³ Similarly, because rape trauma syndrome is a psychological phenomenon which can be accurately identified only by those with training in psychology,¹¹⁴ Indiana courts should find that the subject of rape trauma syndrome is appropriate for expert testimony.

B. Qualification of Expert

Indiana's second admissibility requirement for expert testimony is that "the witness must have sufficient skill, knowledge or experience in that field as to make it appear that his opinion or inference will probably aid the trier in his search for the truth."¹¹⁵ There is no black letter rule as to the amount of knowledge which a witness must possess before qualifying as an expert in a given field.¹¹⁶ The requisite competency may

¹⁰⁶Kansas has a specific statute which states that "[u]nless the judge excludes the testimony he shall be deemed to have made the finding requisite to its admission." KAN. CIV. PROC. CODE ANN. § 60-456(c) (Vernon 1965).

¹⁰⁷324 N.W.2d 227 (Minn. 1982).

¹⁰⁸*Id.* at 230-31.

¹⁰⁹*Id.* at 229.

¹¹⁰*Id.* at 230-31.

¹¹¹324 N.W.2d 232 (Minn. 1982).

¹¹²*Id.* at 233.

¹¹³See *supra* notes 84-86.

¹¹⁴See *supra* notes 88-89 and accompanying text.

¹¹⁵*Davis v. Schneider*, 182 Ind. App. 275, 283-84, 395 N.E.2d 283, 290 (1979) (citations omitted); see M. SEIDMAN, *supra* note 72.

¹¹⁶*State v. Vaughan*, 234 Ind. 221, 228, 184 N.E.2d 143, 147 (1962); *City of Indianapolis v. Robinson*, 427 N.E.2d 902, 906 (Ind. Ct. App. 1981).

be obtained through either formal education or practical experience.¹¹⁷ For example, the Indiana Court of Appeals in *State v. Totty*,¹¹⁸ an automobile accident case, admitted expert testimony from an engineer who held bachelor of science, master of science, and doctor of philosophy degrees in engineering.¹¹⁹ In *Roberts v. Wabash Life Insurance Co.*,¹²⁰ the court found no error in permitting a witness, who had been a fire and explosion investigator for more than thirty years, to testify as an expert concerning the cause of death of a body found amidst the debris of a burned building.¹²¹

Moreover, the qualifications of an expert or the extent of his knowledge does not necessarily go to the admissibility of the expert testimony, but rather to the weight of the testimony.¹²² In *Travelers Indemnity Co. v. Armstrong*,¹²³ the plaintiff insured brought an action against the insurer to recover the amount of the repair estimate of a fire-damaged house. The plaintiff sought to admit the testimony of the local bank president who was familiar with real estate values and with the house in question, although the president had not seen the interior of the house since substantial remodeling had occurred. The trial court permitted the bank president to express his opinion regarding the value of the house before and after the fire. The defendant raised the objection that the bank president was not competent to testify because he had not seen the interior of the house immediately prior to the fire. The appellate court found no error in the admission of the testimony, stating that an expert's competency is to be determined by his knowledge of the subject matter generally while his knowledge of the specific subject at issue goes to the weight of the testimony.¹²⁴

Of the courts which have considered the admissibility of rape trauma syndrome testimony, no court has found that an expert was unqualified to testify on the subject.¹²⁵ In *State v. McGee*, the prosecutor presented the testimony of a physician which included a description of rape trauma syndrome.¹²⁶ The testimony in *State v. Marks* was introduced by a forensic psychiatrist.¹²⁷ Qualifying as a counselor of sexual assault victims, the

¹¹⁷*Gary v. State*, 400 N.E.2d 215, 219 (Ind. Ct. App. 1980); see *State v. Maudlin*, 416 N.E.2d 477, 481 (Ind. Ct. App. 1981).

¹¹⁸423 N.E.2d 637 (Ind. Ct. App. 1981).

¹¹⁹*Id.* at 643.

¹²⁰410 N.E.2d 1377 (Ind. Ct. App. 1980).

¹²¹*Id.* at 1386.

¹²²*Reid v. State*, 267 Ind. 555, 560, 372 N.E.2d 1149, 1152 (1978); *City of Indianapolis v. Robinson*, 427 N.E.2d 902, 906 (Ind. Ct. App. 1981).

¹²³442 N.E.2d 349 (Ind. 1982).

¹²⁴*Id.* at 365.

¹²⁵See *State v. Marks*, 231 Kan. 645, 647 P.2d 1292 (1982); *State v. McGee*, 324 N.W.2d 232 (Minn. 1982); *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982); *State v. Taylor*, 663 S.W.2d 235 (Mo. 1984) (en banc); *State v. LeBrun*, 37 Or. App. 411, 587 P.2d 1044 (1978).

¹²⁶324 N.W.2d 232, 233 (Minn. 1982).

¹²⁷231 Kan. 645, 653, 647 P.2d 1292, 1298 (1982).

expert in *State v. Saldana* was the director of a victim assistance program and held a bachelor's degree in psychology and social work.¹²⁸ In *State v. Taylor*,¹²⁹ expert testimony was provided by a psychiatrist who had fifteen years of experience and had treated over 300 victims of rape and sexual assault.¹³⁰ The rape victim advocate in *State v. LeBrun* had observed over 100 reported rape victims and had previously worked with sexually and physically abused children and adolescents. In addition, she held a master's degree in social work.¹³¹

Indiana courts have yet to address the issue of the admissibility of rape trauma syndrome expert testimony, and thus no guidelines exist for the qualification of experts to testify upon this subject. Conceivably, in order to qualify as an expert, the court will require a witness to have training in psychology and possess knowledge concerning rape and rape trauma syndrome. Indiana courts may also require the witness to have experience in working with rape victims, although this could be a factor affecting the weight of the testimony rather than its admissibility.

C. Reliability Requirement

Indiana's third requirement for the admission of expert testimony is that the state of the pertinent art of scientific knowledge must permit an expert to assert a reasonable opinion.¹³² Courts frequently require a scientific principle upon which expert testimony is based to be "sufficiently established to have gained general acceptance in the particular field in which it belongs."¹³³ This test originated in *Frye v. United States*,¹³⁴ one of the first cases to discuss the admissibility of polygraph examinations.¹³⁵ Another possible reliability standard is the test for the admissibility of expert testimony which was generally in use prior to the *Frye* decision. Under this practice, "[a]ny relevant conclusions supported by a qualified expert witness should be received unless there are distinct reasons for exclusion."¹³⁶ In particular, the probative dangers of prejudice, misleading the jury, and undue consumption of time may outweigh the probative value of the expert's conclusions.¹³⁷

As between the two admissibility standards, Indiana courts will most

¹²⁸324 N.W.2d 227, 229 (Minn. 1982).

¹²⁹663 S.W.2d 235 (Mo. 1984) (en banc).

¹³⁰*Id.* at 236.

¹³¹37 Or. App. 411, 416, 587 P.2d 1044, 1047 (1978).

¹³²C. McCORMICK, *supra* note 66, § 13, at 31; *see Noblesville Casting Div. v. Prince*, 438 N.E.2d 722, 727 (Ind. 1982).

¹³³*Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923); *see, e.g., People v. Kelly*, 17 Cal.3d 24, 31-33, 549 P.2d 1240, 1244-45, 130 Cal. Rptr. 144, 148-49 (1976); *State v. Mack*, 292 N.W.2d 764, 768 (Minn. 1980).

¹³⁴293 F. 1013 (D.C. Cir. 1923).

¹³⁵*See id.*

¹³⁶C. McCORMICK, *supra* note 66, § 203, at 491 (footnote omitted).

¹³⁷*Id.*

likely subject rape trauma syndrome expert testimony to the general acceptance requirement of *Frye*.¹³⁸ However, even if the *Frye* standard is applied, expert testimony concerning rape trauma syndrome may still be challenged on the basis of prejudicing or misleading the jury and unduly consuming time.¹³⁹ Two recent Indiana decisions considering the admissibility of testimony based upon new scientific principles suggest that Indiana courts will require rape trauma syndrome to gain general acceptance in its field before allowing expert testimony on the syndrome to be admitted as evidence. In *Peterson v. State*,¹⁴⁰ the supreme court addressed the issue of admissibility of identification testimony of a witness who was able to identify the defendant only after undergoing hypnosis. The court found error in the admission of the testimony, extensively quoting opinions of two other states which found that experts in the field do not view hypnosis as a scientifically reliable and accurate method of improving memory capability.¹⁴¹ In *Cornett v. State*,¹⁴² the court, faced with expert testimony concerning voice spectrography,¹⁴³ endorsed the policy underlying *Frye* that courts should restrain the introduction of expert testimony until the experts are in agreement about the reliability of a scientific technique.¹⁴⁴

In deciding whether a new technique satisfies the *Frye* requirement, Indiana courts have considered opinions of other jurisdictions, articles from law reviews and scholarly journals, and testimony from experts in the field as to whether the technique has gained general acceptance.¹⁴⁵ The courts in *Taylor*, *Saldana*, and *Marks* employed the *Frye* test to determine the admissibility of the proffered expert testimony on rape trauma syndrome. Nevertheless, the application of this standard produced divergent results. In *State v. Taylor*, the Missouri court questioned the acceptance and soundness of the scientific technique upon which rape trauma syndrome is based.¹⁴⁶ In *State v. Saldana*, the Minnesota court stated that

¹³⁸See *Cornett v. State*, 540 N.E.2d 498, 502-03 (Ind. 1983); *Peterson v. State*, 448 N.E.2d 673, 676 (Ind. 1983); *Jones v. State*, 425 N.E.2d 128, 131 (Ind. 1981).

¹³⁹See *infra* notes 166-219 and accompanying text.

¹⁴⁰448 N.E.2d 673 (Ind. 1983).

¹⁴¹*Id.* at 676-78. The actual holding of the court was based on the inability of the defendant to exercise his due process rights to confront and cross-examine the witness. *Id.* at 678-79.

¹⁴²450 N.E.2d 498 (Ind. 1983).

¹⁴³Voice spectrography is founded on the theory that voices, like fingerprints, are unique to individuals. *Id.* at 500. A voiceprint, also referred to as a speech spectrogram, is a visual record of the sound waves of a human voice. Some experts believe that voiceprints and tape recordings of several people's voices may be compared to identify a certain person's voice. On the other hand, some scientists question the reliability of this identification technique. See *id.* at 500-03.

¹⁴⁴*Id.* at 503.

¹⁴⁵See, e.g., *Cornett v. State*, 450 N.E.2d 498 (Ind. 1983); *Peterson v. State*, 448 N.E.2d 673 (Ind. 1983).

¹⁴⁶663 S.W.2d 235, 240 (Mo. 1984) (en banc).

“[r]ape trauma syndrome is not the type of scientific test that accurately and reliably determines whether a rape has occurred.”¹⁴⁷ The court focused on the fact that victims of nonrape crimes or traumatic events may experience some of the symptoms of rape trauma syndrome.¹⁴⁸ The *Saldana* court also found fault with rape trauma syndrome because it does not occur in every case.¹⁴⁹ In contrast, the Kansas court in *State v. Marks* found that rape trauma syndrome was generally accepted as the common reaction of victims of sexual assault.¹⁵⁰ The *Marks* court based its decision upon an examination of literature on the subject, including literature which the *Saldana* court used to support its contrary view.¹⁵¹

The dissenting opinion in *McGee* also addressed the issue of whether rape trauma syndrome possessed the requisite acceptance and reliability to satisfy the *Frye* test. The *McGee* dissent relied on rape trauma syndrome's substantial data base to support the conclusion that the syndrome was “accepted as reliable within the medical community.”¹⁵²

Indiana courts may also consider decisions from other jurisdictions where rape trauma syndrome was utilized for purposes other than as substantive proof of rape. For example, in *In re Pittsburgh Action Against Rape*,¹⁵³ the dissent relied on rape trauma syndrome to support the need for the court's recognition of an absolute privilege for confidential communications made in the rape victim/rape crisis counselor relationship.¹⁵⁴ In *White v. Violent Crimes Compensation Board*,¹⁵⁵ the plaintiff's suffering from rape trauma syndrome justified the court in tolling the limitation period of New Jersey's Criminal Injuries Compensation Act, thereby enabling the plaintiff to comply with the Act's timely filing requirement.¹⁵⁶ In *State v. Mackie*,¹⁵⁷ the prosecutor showed that the victim suffered from

¹⁴⁷324 N.W.2d 227, 229 (Minn. 1982).

¹⁴⁸*Id.* The court cited the American Psychiatric Association's DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS to support this proposition. The specific entry in the manual has generated opposition to the reliability of rape trauma syndrome because it mentions rape as only one of a number of stressors which may cause post-traumatic stress disorder. See AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 236 (3d ed. 1980). While the same general responses follow nearly any psychologically stressful event, there is some authority that victims of other crimes do not suffer from the specific symptoms of rape trauma syndrome with any significant degree of regularity. For example, rape victims tend to blame themselves for the occurrence of the rape while victims of other crimes generally experience little anguish over the role they might have played in the occurrence of the crime. See *In re Pittsburgh Action Against Rape*, 494 Pa. 15, 42-43, 428 A.2d 126, 138 (1981) (Larsen, J., dissenting).

¹⁴⁹324 N.W.2d at 230.

¹⁵⁰231 Kan. 645, 654, 647 P.2d 1292, 1299 (1982).

¹⁵¹See *id.*; *State v. Saldana*, 324 N.W.2d at 229-30. Both opinions cite *Rape and Sexual Assault* by C. Warner and literature authored by Burgess and Holmstrom.

¹⁵²324 N.W.2d 232, 233 (Minn. 1982) (Wahl, J., dissenting) (footnote omitted).

¹⁵³494 Pa. 15, 428 A.2d 126 (1981).

¹⁵⁴*Id.* at 34-63, 428 A.2d at 135-50 (Larsen, J., dissenting).

¹⁵⁵76 N.J. 368, 388 A.2d 206 (1978).

¹⁵⁶*Id.* at 388, 388 A.2d at 216.

¹⁵⁷___ Mont. ___, 622 P.2d 673 (Mont. 1981).

rape trauma syndrome in order to render her prior out-of-court statements admissible under the excited utterance exception to the hearsay rule.¹⁵⁸ These decisions, although not addressing the admissibility of rape trauma syndrome testimony in rape prosecutions, do establish that rape trauma syndrome has received a degree of acceptance by the courts.¹⁵⁹

Articles from law reviews and scientific journals may be reviewed by Indiana courts in determining whether rape trauma syndrome satisfies the *Frye* standard. Many articles have been published which discuss the psychological phenomenon of rape trauma syndrome.¹⁶⁰ A consensus of these sources shows that virtually all rape victims experience some of the emotions that are a part of rape trauma syndrome,¹⁶¹ although there is not complete agreement as to the sequence of the symptom responses.¹⁶² The literature also establishes that the concept of rape trauma syndrome was developed through scientific study and empirical documentation. The fact that others in the field have duplicated the results of the original researchers provides additional assurance of the acceptance and reliability of rape trauma syndrome.¹⁶³

After considering cases, literature, and testimony on the controversial syndrome, Indiana courts must decide whether rape trauma syndrome possesses the requisite general acceptance to satisfy the *Frye* standard. Other states applying the *Frye* test to this syndrome have not reached testimony concerning rape trauma syndrome as they choose. However, the literature on the subject suggests that the majority of rape victims develop psychiatric symptoms and behavioral changes characteristic of rape trauma syndrome.¹⁶⁵ As further research is completed and as courts in other jurisdictions accept the validity of rape trauma syndrome, Indiana courts may be persuaded to adopt the view that rape trauma syndrome is reliable and sufficiently accurate to be admitted into evidence.

D. Probative Value Versus Probative Dangers

A fourth requirement for the admission of expert testimony is that the probative value of the proffered testimony must not be outweighed by the probative dangers which might flow from its admission.¹⁶⁶ The

¹⁵⁸*Id.* at 675. Technically, the court determined that the victim's statements did not constitute hearsay under the Montana Rules of Evidence. *Id.*

¹⁵⁹For additional cases which involve the psychological phenomenon of rape trauma syndrome, see *People v. Matthews*, 91 Cal. App. 3d 1018, 154 Cal. Rptr. 628 (1979) and *Alphonso v. Charity Hosp.*, 413 So. 2d 982 (La. Ct. App. 1982).

¹⁶⁰See *supra* notes 32-63.

¹⁶¹Comment, *Rape Victim*, *supra* note 32, at 543.

¹⁶²See, e.g., *Burgess & Holmstrom*, *supra* note 32, at 982; *Sutherland & Scherl*, *supra* note 32, at 504-09.

¹⁶³See *supra* notes 32-63.

¹⁶⁴See *supra* notes 146-52.

¹⁶⁵See S. KATZ & M. MAZUR, *supra* note 3, at 215-31.

¹⁶⁶See FED. R. EVID. 403. See *supra* note 71.

Indiana rule which embodies this particular challenge is found in *Smith v. Crouse-Hinds Co.*:¹⁶⁷

There are counterbalancing factors which may cause the court to exclude evidence which is prima facie relevant because they outweigh the probative value of the evidence offered. These factors have been characterized as:

- (1) the danger that the evidence offered will unduly arouse the emotions of the jury to prejudice or sympathy;
- (2) the probability that the evidence and the answering evidence it provokes will create a side issue that is unduly time consuming or distracting to the jury;
- (3) the likelihood that the evidence will confuse or mislead the jury;
- (4) the likelihood that the evidence will unfairly surprise the opponent.¹⁶⁸

After stating the Indiana rule, the *Smith* court cited to Federal Rule of Evidence 403.¹⁶⁹ Thus, interpretations of the Federal Rule are appropriately utilized in construing Indiana's corresponding evidentiary rule.

Federal Rule 403 excludes relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."¹⁷⁰ Rule 403 is not a rigid exclusionary rule but instead requires the trial judge to balance the probative worth of the proffered evidence against the harmful consequences that might arise from its admission.¹⁷¹ Under Rule 403, trial judges have been given much discretion in controlling the introduction of evidence.¹⁷² Also, the specific circumstances of each case play a major role in the determination of whether proffered evidence satisfies this evidentiary requirement.¹⁷³ The combination of the trial judge's broad discretionary power and the fact-specific nature of this determination has led one commentator to suggest that the trial judge's decision on this matter is practically unreviewable.¹⁷⁴ An additional implication is that past

¹⁶⁷175 Ind. App. 679, 373 N.E.2d 923 (1978).

¹⁶⁸*Id.* at 682, 373 N.E.2d at 926 (citations omitted).

¹⁶⁹*Id.*

¹⁷⁰FED. R. EVID. 403.

¹⁷¹J. WEINSTEIN & M. BERGER, WEINSTEIN'S EVIDENCE ¶ 403[01] (1982).

¹⁷²*Id.*

¹⁷³*Id.*

¹⁷⁴*See id.* Wright and Graham state that "[t]his seems something of an overstatement." C. WRIGHT & K. GRAHAM, *supra* note 71, § 5224, at 323. However, they recognize that the rule implies a large amount of discretion on the part of the trial judge and that appellate courts give great deference to the trial judge's Rule 403 determinations. *Id.*

holdings are useless in the Rule 403 weighing process.¹⁷⁵ Nevertheless, other courts' reasoning and treatment of the counterbalancing factors may be considered by a trial judge who is confronted with a similar type of evidence.

1. *Probative Value.*—According to Professor Wright, American law contains no rules for determining the probative worth of evidence.¹⁷⁶ A California court, construing a rule of evidence similar to Federal Rule 403, stated that the chief components of probative value are relevance, materiality, and necessity.¹⁷⁷ Indiana courts have defined the relevancy of evidence as whether such evidence has the logical tendency to prove a material fact in dispute between the parties.¹⁷⁸ This definition incorporates the concept of materiality into that of relevancy.

Applying this definition to rape trauma syndrome testimony, Indiana courts should find the testimony relevant to a material issue in rape prosecutions. Virtually all rape victims experience some of the symptoms of the common sequential pattern of behavioral and emotional reactions identified as rape trauma syndrome.¹⁷⁹ The fact that a victim of an alleged rape suffered from rape trauma syndrome thus has a tendency to prove that the victim did not consent to sexual intercourse, an element of the crime of rape.¹⁸⁰

Some of the courts which have discussed the admissibility of rape trauma syndrome testimony found that the testimony was relevant to disputed issues in criminal prosecutions for rape. In *State v. Marks*, the Supreme Court of Kansas held that expert psychiatric testimony concerning a victim's suffering from rape trauma syndrome was relevant when the defendant claimed consent.¹⁸¹ Although finding rape trauma syndrome testimony inadmissible, the Missouri court in *State v. Taylor* conceded that the existence of psychological symptoms in a rape victim which correspond to the symptoms of a traumatic stress reaction is probative of the issue of force.¹⁸²

¹⁷⁵C. WRIGHT & K. GRAHAM, *supra* note 71, § 5224, at 322. Wright and Graham quote the Comment to the Model Code: "The application of this Rule should depend so completely upon the circumstances of the particular case and be so entirely in the discretion of the trial judge that a decision in one case should not be used as precedent in another." *Id.*

¹⁷⁶*Id.* at § 5214, at 265.

¹⁷⁷*People v. Delgado*, 32 Cal. App. 3d 242, 249, 108 Cal. Rptr. 399, 404-05 (1973), *overruled on other grounds*, *People v. Rist*, ___ Cal. 3d ___, 545 P.2d 833, 841, 127 Cal. Rptr. 457, 465 (1976).

¹⁷⁸*Rust v. Guinn*, 429 N.E.2d 299, 305 (Ind. Ct. App. 1981); *see also* M. SEIDMAN, *supra* note 72, at 63.

¹⁷⁹*See* Comment, *Rape Victim*, *supra* note 32, at 543; *see also supra* notes 32-63 and accompanying text.

¹⁸⁰*See* Comment, *Scientific Evidence*, *supra* note 4, at 220-22.

¹⁸¹231 Kan. 645, 654, 647 P.2d 1292, 1299 (1982).

¹⁸²*State v. Taylor*, 663 S.W.2d 235, 240 (Mo. 1984) (en banc). The *Taylor* court later stated that expert testimony that a victim exhibits characteristics consistent with those resulting

In addition to relevancy and materiality, Indiana courts should consider the need for the proffered evidence in making their assessment of probative value. The Advisory Committee's note to Rule 403 states that a court can balance "the probative value of and need for evidence against the harm likely to result from its admission."¹⁸³ The factors of "waste of time" and "cumulative evidence" in Rule 403 also imply that the trial judge should consider the availability of other evidence in completing the balancing test.¹⁸⁴

The case of *State v. Marks* illustrated one facet of the "need" component. In *Marks*, the victim sustained no bruises or marks from the alleged attack except for a lacerated area near her vagina.¹⁸⁵ The prosecutor, with little physiological evidence to support the inference of rape, introduced expert testimony regarding the existence of rape trauma syndrome in the victim subsequent to the incident.¹⁸⁶ Because no other physiological evidence was available, the prosecutor relied on psychiatric evidence to bolster the case.

In contrast, the court in *State v. Saldana* found there was no need for rape trauma syndrome expert testimony because the jurors were competent to consider the evidence and decide whether rape had occurred.¹⁸⁷ Accordingly, the court assigned little probative value to the testimony.¹⁸⁸ In turn, the danger of unfair prejudice outweighed the small amount of probative value and the court found the expert testimony inadmissible.¹⁸⁹ Thus, in determining the admissibility of expert testimony on rape trauma syndrome, the trial court will assess the value of such testimony in terms of need.

The probative value of proffered evidence is also affected by public policy considerations.¹⁹⁰ A definite policy supports the admission of expert testimony on rape trauma syndrome. As stated in *In re Pittsburgh Action Against Rape*, there is a "compelling public interest in encouraging victims of violent crimes to come forward."¹⁹¹ Of the four major violent crimes, rape is the most under-reported.¹⁹² The admission of expert testimony concerning rape trauma syndrome should result in more rape prosecutions and convictions as well as a changed public attitude toward

from a traumatic stress reaction would have no relevancy. *Id.* However, the court did not appear to be addressing relevancy, but rather was concluding that the probative value of the testimony would be outweighed by its tendency to create prejudice and confusion.

¹⁸³FED. R. EVID. 403 advisory committee note.

¹⁸⁴C. WRIGHT & K. GRAHAM, *supra* note 71, § 5214, at 269.

¹⁸⁵231 Kan. at 647, 647 P.2d at 1295.

¹⁸⁶*Id.* at 653-54, 647 P.2d at 1298-99.

¹⁸⁷324 N.W.2d 227, 230 (Minn. 1982); see *State v. Taylor*, 663 S.W.2d 235, 241 (Mo. 1984) (en banc).

¹⁸⁸324 N.W.2d at 230.

¹⁸⁹*Id.* at 230-31.

¹⁹⁰J. WEINSTEIN & M. BERGER, *supra* note 171, at ¶ 403[01].

¹⁹¹494 Pa. 15, 24, 428 A.2d 126, 130 (1981).

¹⁹²See *supra* notes 9-12 and accompanying text.

victims who do not display physiological signs of the attack.¹⁹³ A greater reporting of the crime of rape should then follow. Because the admission of rape trauma syndrome expert testimony furthers the policy of encouraging victims to report the occurrence of rape, Indiana courts should increase their assessment of the probative value of rape trauma syndrome testimony.

2. *Countervailing Factors*.—Indiana courts must also assess the probative dangers that will result from the admission of rape trauma syndrome expert testimony.¹⁹⁴ The Supreme Court of Missouri in *Taylor* and the Supreme Court of Minnesota in *Saldana* and *McGee* discussed evidentiary rules similar to that of Rule 403. The countervailing arguments against admissibility identified by the defendants were undue prejudice, confusion of the issues, and misleading the jury.¹⁹⁵

As explained in the Advisory Committee's note on Rule 403, unfair prejudice "means an undue tendency to suggest decision on an improper basis, commonly . . . an emotional one."¹⁹⁶ This definition is similar to one of Indiana's countervailing factors which focuses on the undue arousal of the jury's emotions.¹⁹⁷ Judge Weinstein, in his treatise on the Federal Rules, commented on unfair prejudice: "Evidence that appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action may cause a jury to base its decision on something other than the established propositions in the case."¹⁹⁸ Unfair prejudice may also be based on inappropriate logic.¹⁹⁹

In *State v. Saldana*, the Supreme Court of Minnesota ruled that expert testimony regarding rape trauma syndrome "produces an extreme danger of unfair prejudice."²⁰⁰ The court, however, did not criticize the expert testimony because it appealed to the jury's emotions. Rather, the *Saldana* court seemed to find fault with the logic behind the use of the testimony in the case.²⁰¹ The court noted that the factual question for the jury's determination was whether the alleged rape occurred.²⁰² According to

¹⁹³See *supra* notes 16-31 and accompanying text.

¹⁹⁴See *Smith v. Crouse-Hinds Co.*, 175 Ind. App. at 682, 373 N.E.2d at 926; J. WEINSTEIN & M. BERGER, *supra* note 171, at ¶¶ 403[03]-[04]; C. WRIGHT & K. GRAHAM, *supra* note 71, at §§ 5215-20.

¹⁹⁵See *State v. McGee*, 324 N.W.2d 232 (Minn. 1982); *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982); *State v. Taylor*, 663 S.W.2d 235 (Mo. 1984) (en banc). Because the countervailing factors of prejudice, confusion, and misleading the jury tend to overlap, courts often discuss the three factors in terms of prejudice. C. WRIGHT & K. GRAHAM, *supra* note 71, at 274. The Minnesota Supreme Court appears to have taken this approach in *Saldana* and *McGee*. See *State v. McGee*, 324 N.W.2d at 234; *State v. Saldana*, 324 N.W.2d at 229-30. For purposes of this Note, however, prejudice is discussed as a separate category.

¹⁹⁶FED. R. EVID. 403 advisory committee note.

¹⁹⁷See *supra* note 168 and accompanying text.

¹⁹⁸J. WEINSTEIN & M. BERGER, *supra* note 171, at ¶ 403[03] (footnotes omitted).

¹⁹⁹C. WRIGHT & K. GRAHAM, *supra* note 71, § 5215, at 275-77.

²⁰⁰324 N.W.2d at 229.

²⁰¹*Id.* at 229-30.

²⁰²*Id.* at 229.

Saldana, the manner in which most people react to rape and whether this particular victim's reactions were typical should not influence the jury's decision.²⁰³ However, the court in *Marks* refuted the *Saldana* argument of bad logic, finding that evidence of rape trauma syndrome supported the inference that the victim had been raped.²⁰⁴ Thus, no court has found that rape trauma syndrome expert testimony unduly aroused the jury's emotions, though the logical basis for the use of such testimony has been questioned.²⁰⁵

Two additional countervailing factors to be included in the Rule 403 balancing test are confusion of the issues and misleading the jury.²⁰⁶ These two factors are not easily distinguishable.²⁰⁷ Dean McCormick seems to combine "confusion" and "misleading" when he states that evidence may be excluded when "the probability that the proof and the answering evidence that it provokes may create a side issue that will unduly distract the jury from the main issues."²⁰⁸

Under the category of confusing and misleading the jury, courts are hesitant to admit evidence possessing an aura of scientific infallibility.²⁰⁹ In *State v. Taylor*, the court found reversible error in the trial court's admission of rape trauma syndrome evidence.²¹⁰ In making its determination, the *Taylor* court stated that "a hazard exists from 'the misleading aura of certainty' that surrounds scientific evidence."²¹¹ Similarly, in *State v. Saldana*, the court held that the defendant was unfairly prejudiced by the admission of expert testimony concerning rape trauma syndrome which created an "aura of specific reliability and trustworthiness."²¹² The *Saldana* court further found that the admission of such testimony would inevitably result in a battle of experts, invading the province of the jury and confusing the issues which the jury must determine.²¹³

The dissent in *State v. McGee* also recognized the countervailing factors present in expert testimony concerning rape trauma syndrome.²¹⁴ However, it noted that such dangers may be checked by defense counsel's ability to cross-examine.²¹⁵ In *McGee*, defendant's counsel was able to

²⁰³*Id.* at 229-30; see *State v. Taylor*, 663 S.W.2d at 241.

²⁰⁴See *State v. Marks*, 231 Kan. at 654, 647 P.2d at 1299 (expert psychiatric testimony regarding rape trauma syndrome is relevant in a criminal prosecution for rape and sodomy where the defense is consent).

²⁰⁵The court in *State v. Taylor* recognized the inherent danger of prejudice which is created by the status of an expert. 663 S.W.2d at 240.

²⁰⁶FED. R. EVID. 403. Indiana's corresponding evidentiary rule also includes these two countervailing factors. See *supra* note 168 and accompanying text.

²⁰⁷J. WEINSTEIN & M. BERGER, *supra* note 171, at ¶ 403[04].

²⁰⁸C. MCCORMICK, *supra* note 66, § 185, at 439 (footnote omitted).

²⁰⁹J. WEINSTEIN & M. BERGER, *supra* note 171, at ¶ 403[04].

²¹⁰663 S.W.2d at 241-42.

²¹¹*Id.* at 241 (quoting *State v. Stout*, 478 S.W.2d 368, 372 (Mo. 1982)).

²¹²324 N.W.2d at 230.

²¹³*Id.*

²¹⁴324 N.W.2d at 234 (Wahl, J., dissenting).

²¹⁵*Id.*

elicit testimony from the expert that the victim's symptomatic pattern may have been caused by events in her life prior to the alleged criminal act. The countervailing dangers were thereby lessened and the expert testimony should have been admissible.²¹⁶ Thus, rape trauma syndrome expert testimony has the potential to create Rule 403 countervailing dangers. However, these probative dangers may be controlled to some degree by the effective use of cross-examination.

3. *The Balancing Test.*—Rule 403 requires the trial judge to balance the costs of the evidence against its benefits.²¹⁷ If the judge concludes that the probative value of the tendered evidence is not “substantially outweighed” by the probative dangers that will accompany its admission, the evidence must be admitted. Nevertheless, if the probative value is outweighed by one or more of the countervailing factors, the trial judge then has the discretion to exclude the evidence.²¹⁸ When in doubt, the trial judge should probably admit the evidence as policy favors the admissibility of evidence.²¹⁹

It is difficult to predict whether expert testimony concerning rape trauma syndrome can satisfy Indiana's evidentiary requirement similar to Federal Rule 403. If the trial court, however, takes into account the elements of relevance, need, and substantive policy in the assessment of probative value, cases will certainly occur where the probative worth of rape trauma syndrome expert testimony will not be substantially outweighed by countervailing factors. Provided other evidentiary requirements are met, Indiana courts should then admit rape trauma syndrome testimony into evidence.

IV. CONCLUSION

Expert testimony concerning rape trauma syndrome could be found admissible under Indiana's current evidence rules. To satisfy Indiana's first requirement for expert testimony, the trial judge must conclude that the subject of rape trauma syndrome is beyond the knowledge or experience of the average laymen. Rape trauma syndrome is a psychological phenomenon, and individuals possessing training in psychology are uniquely qualified to identify this syndrome in alleged victims of rape. The continued existence of unfounded myths about rape further supports the conclusion that the general public does not understand either the crime of rape or its aftereffects. Indiana's second requirement is that the witness

²¹⁶*Id.*

²¹⁷C. WRIGHT & K. GRAHAM, *supra* note 71, § 5214, at 263.

²¹⁸*See id.* at 263-64. Wright and Graham characterize Rule 403 as requiring a two-step process of balancing and then discretionary judgment. *Id.* at 264. *See* J. WEINSTEIN & M. BERGER, *supra* note 171, at ¶ 403[01].

²¹⁹*See* J. WEINSTEIN & M. BERGER, *supra* note 171, at ¶ 403[01]; C. WRIGHT & K. GRAHAM, *supra* note 71, § 5214, at 265.

must possess sufficient skill, knowledge, or experience in the field to qualify as an expert. The witness may acquire the necessary competency through formal education or practical experience. Regarding the reliability requirement of new scientific techniques, Indiana's third evidentiary requirement, cases conflict on whether rape trauma syndrome has gained the requisite general acceptance. However, with increasing research and publication of literature supporting the existence of rape trauma syndrome, this issue may soon be definitively determined. The fourth requirement for the admission of expert testimony is that the probative value of the proffered testimony must not be outweighed by the probative dangers which might arise from its admission. If the trial court considers the factors of relevance, need, and substantive policy in the assessment of probative value, expert testimony regarding rape trauma syndrome will, in certain instances, satisfy this evidentiary requirement. Thus, it appears that Indiana's existing evidentiary rules do not preclude the admission of expert testimony on rape trauma syndrome as circumstantial evidence to support the inference of rape.

Although admissible under Indiana's rules of evidence, rape trauma syndrome testimony should not be presented in every rape prosecution where the victim has received assistance from a qualified expert. Expert psychological testimony should definitely not be introduced when the particular expert feels hesitant about the diagnosis of rape trauma syndrome. In appropriate cases, however, expert testimony regarding the existence of rape trauma syndrome would be an excellent evidentiary tool to assist the prosecutor in carrying a very heavy burden of proof in prosecutions for sexual assault. The availability of such testimony and its acceptance by the court would allow more rape cases to endure the prosecutor's screening process. A greater number of rape convictions would also occur. In addition, the admission of rape trauma syndrome expert testimony and the resulting convictions should produce public awareness of rape trauma syndrome as a valid indicator of rape. This public awareness, in turn, would tend to encourage victims to report the occurrence of rape.

Thus, in appropriate cases, prosecutors in Indiana should introduce expert testimony concerning rape trauma syndrome. Moreover, Indiana courts must find this form of evidence admissible. Rape is a violent crime which traumatizes thousands of victims and their families each year. Indiana courts should guard the needs of the people they serve. They should seek an active role in solving the problem of rape, both its frequent occurrence and the failure of victims to report the crime. Therefore, Indiana courts must move forward and admit expert testimony on rape trauma syndrome.