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Evidence

EVIDENCE

I. RULINGS ON *IN LIMINE* MOTIONS NOT FINAL DETERMINATIONS ON ADMISSIBILITY OF EVIDENCE

In *State v. Floyd*[1] the South Carolina Supreme Court held that rulings on *in limine* motions to suppress evidence[2] are not final determinations on the admissibility of evidence. The traditional source of authority for these motions is neither statutory nor common law, but is derived from the authority of a trial court to admit or exclude evidence and to take any necessary precautions to afford all parties a fair trial.[3] Prior to *Floyd* there existed no South Carolina Supreme Court precedent on the finality of motions *in limine*.[4]

Appellant Terri Raye Floyd was charged with assault and battery upon her eight-month-old daughter, Nicole. Floyd allegedly immersed the child in a tub of scalding water. At a pre-trial *in limine* hearing, Floyd advised the court that on cross-examination the state might challenge the credibility of two of Floyd's witnesses, Ralph and Janice Marcum. More specifically, Floyd anticipated the state would reveal that, in a family court adjudication, the Department of Social Services (DSS) had removed two of the Marcums' minor children from their custody. The DSS investigator involved in the Marcum case also participated in the Floyd case and was expected to be a key witness for the state. The state argued this prior custody proceeding had created animosity in the Marcums toward DSS and especially toward the investigator involved.[5]

The trial court orally granted the defense's motion *in limine*, allowing the state to elicit testimony from the Marcums that there was "bad blood" between the witnesses, but precluding the state from revealing the circumstances which led to the animosity. At trial, however, Janice Marcum denied on cross-examination that she harbored any ill

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1. 295 S.C. 518, 369 S.E.2d 842 (1988).

2. An *in limine* motion to suppress evidence is a pretrial procedural device used to prevent potentially prejudicial evidence from coming to the attention of the jury before the court can make a ruling on its admissibility. The motion requests the court to issue a pretrial order enjoining opposing counsel from using such evidence in the jury's presence at trial. Rothblatt, *The Motion in Limine in Criminal Trials: A Technique for the Pretrial Exclusion of Prejudicial Evidence*, 60 KY. L.J. 611, 613-14 (1972).

3. *Id.* at 614-15.

4. *Floyd*, 295 S.C. at 520, 369 S.E.2d at 843.

5. *Id.* at 519-520, 369 S.E.2d at 843.

will toward Ms. Jenkins. Consequently, the court found the facts sufficiently changed to justify altering the *in limine* ruling to allow the state to question Ms. Marcum on the events which allegedly would establish the bad feelings. Floyd contended this action constituted reversible error because it violated the *in limine* ruling.[6]

Floyd primarily relied on *State v. Smith*[7] to argue that a ruling on a motion *in limine* can be a final ruling on admissibility.[8] Offering a strained reading of *Smith*,[9] Floyd argued that some rulings on motions *in limine* are preliminary and some absolute, the determination of which affects their finality.[10] Conversely, the state, citing *State v. Goodstein*,[11] argued that the finality of the motion *in limine* rests within the discretion of the trial court.[12]

While the Washington decision upon which Floyd relied arguably supported the proposition that a ruling on a motion *in limine* is an absolute determination of admissibility, the Washington court currently does not support that assertion.[13] Additionally, states which allow *in limine* motions on the admissibility of evidence generally hold them to be interlocutory in nature.[14] Consequently, by adopting the

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6. *Id.*

7. 189 Wash. 422, 65 P.2d 1075 (1937).

8. *See* Brief of Appellant at 2.

9. During the *Smith* trial, on a motion by the defense, counsel for the state disregarded an order not to cross-examine a witness on a particular matter and proceeded with his questioning. Although no objection had been made to the questioning at the time of trial, the appellate court reversed the trial court's denial of a motion for a new trial. In reversing, the court stated that in light of counsel's deliberate disregard for the court's order, prejudice must be presumed and a new trial should have been granted. *See Smith*, 189 Wash. at 429, 65 P.2d at 1078.

10. *See* Brief of Appellant at 2. Floyd's assertion that rulings can be "prohibitive-absolute" or "prohibitive-preliminary" has some support. Such a determination, however, turns upon the langauge used and the type of pretrial order sought from the court. *See* Rothblatt, *supra* note 2, at 615. In *Floyd* neither Floyd's motion nor the court's order was specific.

11. 278 S.C. 125, 292 S.E.2d 791 (1982) (conclusiveness of a pretrial motion to suppress is largely within the discretion of the trial court).

12. *See* Brief of Respondent at 9.

13. *See* State v. Austin, 34 Wash. App. 625, 662 P.2d 872 (1983) (proper function of motion *in limine* is not to obtain final ruling on admissibility), *aff'd sub nom.* State v. Koloske, 100 Wash. 2d 889, 676 P.2d 456 (1984), *overruled on other grounds by* State v. Brown, 111 Wash. 2d 124, 761 P.2d 588 (1988).

14. *See, e.g.*, Wiley v. State, 516 So. 2d 812 (Ala. Crim. App. 1986) (reconsideration of a motion *in limine* will not be disturbed unless manifest abuse is shown), *rev'd on other grounds*, 516 So. 2d 816 (1987); Blackburn v. State, 314 So. 2d 634 (Fla. Dist. Ct. App. 1975) (presumption of correctness attaches to court's reconsideration of a ruling on an *in limine* motion), *cert. denied*, 334 So. 2d 603, *cert. denied*, 429 U.S. 864 (1976); Henley v. State, 169 Ga. App. 682, 682, 314 S.E.2d 697, 699 (1984) (trial court can modify ruling on motion *in limine* to prevent "manifest injustice"); Lagenour v. State, 268

majority view, the South Carolina Supreme Court wisely recognized that *in limine* motions do not constitute final determinations on the admissibility of evidence.

Although not addressed by the court, an *in limine* motion should not be a final determination on the admissibility of evidence for several important reasons. First, the pretrial court may not be attuned fully to the issues which will be most crucial at trial. Second, the pretrial court may not be fully knowledgeable of facts when it renders its decision. Third, as in *Floyd*, situations may develop at trial which, in fairness to all parties, require a change in the court's ruling. Finally, when re-evaluating the motion during the trial, the court can better judge the probative value and the potential prejudice of the evidence, as well as determine other factors, such as the effect of the previous ruling on counsel's strategy. By its interlocutory nature the motion still alerts the court to the potential for harm and, therefore, can prevent the introduction of evidence before its prejudicial effect can be properly evaluated.

The South Carolina Supreme Court also did not have to address whether evidence introduced at trial, which had previously been objected to by a motion *in limine*, must be objected to at the time of its introduction in order to preserve error. The majority of courts that have considered this issue have required that the objection be made at trial to preserve the error.[15] Presumably, the minority reason that requiring opposing counsel to object to potentially prejudicial evidence would focus further attention on such evidence. Nonetheless, many courts have ruled that a timely objection must be made at trial.[16]

The motion as now applied in South Carolina and most other

Ind. 441, 376 N.E.2d 475 (1978) (it is not the office of a motion *in limine* to obtain final ruling on the admissibility of evidence); State v. Johnson, 183 N.W.2d 194 (Iowa 1971) (trial court's order on motion *in limine* should prevent disclosure of evidence to jury until court, during trial, can rule upon admissibility); State v. Evans, 639 S.W.2d 820 (Mo. 1982) (granting of motion *in limine* does not automatically result in permanent exclusion of evidence sought to be excluded), *aff'd per curiam*, 687 S.W.2d 634 (1985); State v. Spahr, 47 Ohio App. 2d 221, 353 N.E.2d 624 (1976) (no finality on motion *in limine* is decided until trial is completed).

15. *See, e.g.*, State v. Austin, 34 Wash. App. 625, ___, 662 P.2d 872, 874 (1983) (citing Gamble, *The Motion in Limine: A Pretrial Procedure That Has Come of Age*, 33 ALA. L. REV. 1, 16 (1981)), *aff'd sub nom.* State v. Koloske, 100 Wash. 2d 889, 676 P.2d 456 (1984), *overruled on other grounds by* State v. Brown, 111 Wash. 2d 124, 761 P.2d 588 (1988).

16. *See, e.g.*, Lagenour v. State, 268 Ind. 441, 376 N.E.2d 475 (1978) (evidence sought to be excluded by motion *in limine* must be objected to at time of introduction at trial to preserve any error in denial of the motion); State v. Evans, 639 S.W.2d 820 (Mo. 1982) (when trial court alters ruling on *in limine* motion and allows introduction of evidence, objection must be made at trial to preserve any error for appellate review).

states is a useful tool for preventing prejudicial information from coming to the jury's attention before the court rules upon its admissibility. However, since the South Carolina Supreme Court has not yet ruled whether the introduction of evidence which was previously the subject of an *in limine* ruling must be objected to at trial to preserve any potential error on appeal, prudent attorneys will raise such an objection.

Frank C. Williams III

II. Prosecutor's Comments and Admissibility of Evidence of Homosexuality Limited

In *State v. Diddlemeyer*[17] the South Carolina Supreme Court once again defined limits on prosecutorial comments and the admission of evidence related to a defendant's homosexuality. The court reversed and remanded Diddlemeyer's murder conviction on four grounds.

First, the appellant's court appointed counsel failed to meet attorney experience requirements defined in South Carolina Code section 16-3-26(B).[18] The court avoided ruling on the constitutionality of failure to meet the statutory mandates. Instead, it found the record was so flawed with improperly admitted testimony and unpreserved exceptions that the attorney's lack of experience had denied Diddlemeyer a fair trial.[19]

The court cited *United States v. Blankenship*[20] for the proposition that violation of a statutory right to effective counsel does not automatically mandate reversal.[21] The court, however, did not expressly endorse the Fourth Circuit's opinion and left to speculation whether it would find that such a statutory deficiency violated the defendant's right to effective counsel.[22] Irrespective of the constitutional issue, the court is likely to continue to scrutinize closely the trial record for evidence that an attorney's failure to meet statutory experience requirements led to errors that denied the defendant a fair trial.

Second, the court held that testimony of Diddlemeyer's accomplice regarding their homosexual relationship had no bearing on any issue and should not have been admitted.[23] The state introduced the testimony to support its contention that the accomplice was compelled to

17. 296 S.C. 235, 371 S.E.2d 793 (1988).
18. *See* S.C. Code Ann. § 16-3-26(B) (Law. Co-op. 1976 & Supp. 1988).
19. *Diddlemeyer*, 296 S.C. at 238, 371 S.E.2d at 795.
20. 548 F.2d 1118 (4th Cir.), *cert. denied*, 425 U.S. 978 (1976).
21. *Diddlemeyer*, 296 S.C. at 238, 371 S.E.2d at 794.
22. *See id.*, 371 S.E.2d at 794-95.
23. *Id.* at 234, 371 S.E.2d at 795.

cooperate with Diddlemeyer because of their relationship.[24] Quoting *State v. Hartfield*,[25] the court explained that society's general disdain for homosexuality causes such evidence, introduced for any reason other than to prove a fact at issue, to become an attack on the defendant's character.[26] Since the testimony was not related to a fact at issue, it was impermissible character evidence and should have been excluded. The court found additional support for the exclusion of evidence in South Carolina cases excluding evidence of prior criminal acts unconnected with present charges against the defendant.[27] The court's ruling on this issue is consistent with its ruling in *Hartfield*. *Diddlemeyer* presents an even stronger case for exclusion than *Hartfield*, in which evidence of a homosexual relationship between the defendant and the victim was erroneously admitted.

Third, the solicitor's indirect references to the defendant's silence at trial were held to have violated Diddlemeyer's constitutional rights under the fifth, eighth, and fourteenth amendments.[28] The court held the solicitor's sentencing phase argument, referring to Diddlemeyer's lack of remorse, was an impermissible reference to his silence at trial and constituted reversible error.[29] The court cited several South Carolina cases reversing murder convictions when a solicitor referred to a defendant as having shown no remorse.[30] In cases in which improper prosecutorial remarks occurred only during the sentencing phase, as in *Diddlemeyer*, the error was only one of several grounds for reversal. Although the court implied that improper sentencing phase arguments constitute grounds for reversal of a conviction, impermissible comments made during the sentencing phase could have no effect on the rights of the defendant during the guilt phase of the trial. Standing alone, these comments would require resentencing, but would not logically constitute grounds for reversal of the conviction.

In prior cases, the court has emphasized the solicitor's role as an administrator of justice rather than a procurer of convictions.[31] The

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24. *Id.*

25. 272 S.C. 407, 411, 252 S.E.2d 139, 141 (1979).

26. *Diddlemeyer*, 296 S.C. at 239, 371 S.E.2d at 795.

27. *See id.* (citing State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987); State v. Smith, 279 S.C. 440, 308 S.E.2d 794 (1983); State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973)).

28. *Id.* at 239-40, 371 S.E.2d at 795.

29. *Id.*

30. *Id.* (citing *Johnson*, 293 S.C. 321, 360 S.E.2d 317); State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987); State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986); *see also* Wainwright v. Greenfield, 474 U.S. 284 (1986) (court condemned solicitor's reference to appellant's post-*Miranda* warning silence as evidence of appellant's sanity).

31. *See, e.g.*, State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981); State v. Allen, 266 S.C. 468, 487, 224 S.E.2d 881, 888 (1976).

court has repeatedly reminded solicitors to confine their remarks to the facts of the case, its reasonable inferences, and appropriate characteristics of the defendant.[32] This ruling reaffirms the court's continuing commitment to protect a defendant's rights under the fifth and fourteenth amendments.

Finally, the court held that it was error to admit into evidence the plea agreement of Diddlemeyer's accomplice without any limiting instructions as to jury use.[33] Because the agreement included the solicitor's opinion of Diddlemeyer's culpability, the opinion also was entered into evidence. Relying on its decision in *State v. Woomer*,[34] the court held that allowing admission of the solicitor's opinion interjected an arbitrary factor into the jury's deliberations.[35] It potentially gave jurors an impression that the solicitor's office formed its opinion of Diddlemeyer's role in the murder based on an independent investigation.[36] As a result, the court held that introduction of this evidence required at least a limiting instruction to the jury regarding the plea agreement's purpose.[37]

The court's original opinion cited as additional error the solicitor's

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32. *See* State v. Cockerham, 294 S.C. 380, 383, 365 S.E.2d 22, 23 (1988) (per curiam) (citing State v. Reed, 293 S.C. 515, 362 S.E.2d 13 (1987)). The solicitor in *Cockerham* asked the jury to "imagine what kind of mood that young man was in the night the victim was killed, as he sits here today quiet as can be." *Id.* at 381, 365 S.E.2d at 22. He later argued:

> That night, February 9th, Dean Cockerham conducted a trial, much like the trial we are having here, in some ways, and in some ways very far from it, because [the victim's] Constitutional Rights and the rights to a trial by jury didn't do much for her that night, because on that night, he was her judge, he was her jury, and he was her executioner. And she didn't have a right to . . . be represented by a lawyer. She didn't have a right to independent people on her jury.

Id. at 381-82, 365 S.E.2d at 23.

Later, during the penalty phase, the solicitor instructed the jury to look at Cockerham to see if he looked sorry or exhibited any remorse. He then attempted to arouse the jury's passion with the following remarks:

> And he's going to do everything he can through his attorneys to take advantage of your caring, and your *softness*, and that *softness* which creates an inability to do something difficult like, you should be sentenced to death. He's not soft, but he depends on *your soft underbelly, your lack of courage, your lack of commitment* to get out of what he's into.

Id. at 383, 365 S.E.2d at 23 (emphasis supplied by the court).

33. *Diddlemeyer*, 296 S.C. at 240-41, 371 S.E.2d at 796.

34. 278 S.C. 468, 299 S.E.2d 317 (1982), *cert. denied*, 463 U.S. 1229 (1983) (death sentence is not free of arbitrary factors when solicitor's opinion of defendant's guilt is before jury as evidence).

35. *Diddlemeyer*, 296 S.C. at 240, 371 S.E.2d at 796.

36. *Id.* at 240-41, 371 S.E.2d at 796.

37. *Id.* at 241, 371 S.E.2d at 796.

sentencing phase argument extolling the death penalty's deterrent effects.[38] The court initially held the solicitor's comments[39] violated the defendant's due process rights by introducing an arbitrary factor into the jury's sentencing deliberations.[40] The state petitioned for rehearing on this issue, arguing that the solicitor's comments were within the guidelines set in earlier cases by the South Carolina Supreme Court.[41] The state distinguished the solicitor's comments from attempts to introduce specific evidence regarding the deterrent effects of capital punishment,[42] which were proscribed by the court in *State v. Plath*[43] and *State v. Woomer*.[44] The petition was denied, but the court implicitly adopted the state's position by withdrawing its original opinion and issuing another. The current opinion does not address this issue.

The court's implicit decision to allow solicitors to argue the deterrent effects of capital punishment is consistent with earlier South Carolina cases.[45] Looking closely at the content of the solicitor's argument in *Diddlemeyer*, however, raises the question of whether such an argument diverts the jury's attention from the defendant's culpability and focuses instead on the defendant's potential value as an example to others. In its petition, the state cited United States Supreme Court

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38. *See State v. Diddlemeyer*, No. 22861, slip op. at 10 (S.C. Ct. App. April 11, 1988), *amended on denial of reh'g*, 296 S.C. 235, 371 S.E.2d 793 (1988).

39. The solicitor argued:

> Why do we have a death penalty law? You know some people may say, well, to deter crime. Does it not? It'll certainly deter Diddlemeyer. And, you know, when you talk about the death penalty and the deterring effect, they've got lighthouses and they've got one right down here at McClellanville and the light spins around an [sic] you say, well, we don't know how many ships would crash on the shore in the middle of the night if it wasn't for the lighthouse, but you do know the purpose of that lighthouse. It's up there to warn, don't come too close, don't come too close, it's dangerous. And so is there not a warning under the death penalty law to say to people, you don't come to Horry County and take out insurance policies on a human being and kill him. You don't do that because if you do that you are going to suffer the ultimate punishment. Don't come here, don't do that.

Record at 1179.

40. *Id.*

41. *See* State's Petition for Rehearing at 2, State v. Diddlemeyer (citing State v. Yates, 280 S.C. 29, 310 S.E.2d 805 (1982), *cert. denied*, 462 U.S. 1124 (1983), *vacated sub nom.* Yates v. Aiken, 474 U.S. 896 (1985); State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975)).

42. *See id.*

43. 281 S.C. 1, 313 S.E.2d 619, *cert. denied sub nom.* Arnold v. South Carolina, 467 U.S. 1265 (1984).

44. 278 S.C. 468, 299 S.E.2d 317 (1982), *cert. denied*, 463 U.S. 1229 (1983).

45. *See* State v. Yates, 280 S.C. 29, 310 S.E.2d 805 (1982), *cert. denied*, 462 U.S. 1124 (1983), *vacated sub nom.* Yates v. Aiken, 474 U.S. 896 (1985); State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975).

decisions recognizing deterrence as one of the goals of capital punishment.[46] The cited cases, however, do not stand for the proposition that deterrence should be considered in an individual sentencing proceeding.

Although a recognized justification for capital punishment, it does not logically follow that deterrence should be a jury's primary consideration in deciding whether an individual defendant deserves the death penalty.[47] Justice Bussey, concurring in *State v. Durden*,[48] urged the court to consider the precise language used by solicitors and the context of the argument in making its determination.[49] As for the question of when a solicitor's argument, focusing on the value of capital punishment, so arouses a jury's passion and prejudice that the defendant's culpability becomes lost in a perceived need to send society a message, the court in *State v. Diddlemeyer* left that question unanswered.

Sandra L.W. Miller

III. EXPERIENCED SOCIAL WORKERS WHO OBSERVE VICTIM HELD QUALIFIED TO TESTIFY AS EXPERT WITNESSES

Many cases hinge on matters which elude the experience or education of juries. This problem necessitates testimony from expert witnesses. In *Honea v. Prior*[50] the South Carolina Court of Appeals recognized the role social workers often play in assault cases and accordingly held that social workers may be qualified as expert witnesses as to the mental conditions of victims.

The Aiken County Common Pleas Court found William Franklin Prior, a physician, liable for damages for sexually assaulting his patient, Patti Honea. During the course of the trial, the judge allowed two social workers to testify as expert witnesses concerning Honea's mental condition. Both social workers had earned master's degrees in social work, received further training in the subject of sexual assault, treated sexual assault victims for many years, and had seen Honea sev-

46. State's Petition for Rehearing at 3, State v. Diddlemeyer (citing Tison v. Arizona, 481 U.S. 137 (1987); Gregg v. Georgia, 428 U.S. 153 (1976)).

47. *See Tison*, 481 U.S. at 180-81; (Brennan, J., dissenting). The dissent suggests that the justifications for the death penalty, retribution and deterrence, have inadequate self-limitations. Unfettered by the Constitution, such principles could logically support human torture. *Id.* at 180. The eighth amendment serves to impose those limitations by limiting the state's ability to punish offenders in a way that is disproportionate to the individual's own conduct and culpability.

48. 264 S.C. 86, 212 S.E.2d 587 (1975).

49. *See id.* at 93-94, 212 S.E.2d at 591 (Bussey, J., concurring).

50. 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988).

eral times.[51]

On appeal, Prior claimed the trial judge abused his discretion by allowing the social workers to be qualified as experts to give psychiatric diagnoses. The court rejected Prior's contention, noting that "[t]he trial judge's determination regarding a witness' qualifications to testify as an expert will not be disturbed on appeal, absent a showing of an abuse of discretion."[52] The court recognized that to qualify as an expert, the witness must have gained special knowledge about a subject, but that knowledge need not come from academic study.[53] It decided the social workers in this case were not automatically disqualified because of their lack of medical training. The court stated, "Considering each social worker's education, her post-graduate training, her clinical experience with victims of sexual assault, and her opportunities to observe Honea, we hold the trial judge committed no abuse of discretion in determining that each social worker was qualified as an expert . . . ."[54]

Honea is well decided. The decision is consistent with South Carolina law and, perhaps more importantly, is good policy. While the narrow issue of the ability of social workers to qualify as experts to give psychiatric diagnoses is novel in this state, the principle is well established in South Carolina that qualifying a witness is a matter best left to the discretion of the trial judge.[55] The trial judge is in the best position to evaluate witnesses and is vested with wide discretion in qualifying experts, since witnesses are not required to have obtained expertise through formal education.[56]

In *Howle v. PYA/Monarch, Inc.*[57] the court of appeals held that the trial court did not abuse its discretion by allowing a psychologist to qualify as an expert to testify about a person's mental condition. The court stated that "[a] psychologist is not incompetent to give his opinion simply because he is not a licensed medical doctor."[58] Since a psychologist can qualify as an expert, it certainly is not unreasonable to permit a well-trained and experienced social worker to be similarly qualified.

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51. *Id.* at 529-30, 369 S.E.2d at 848.

52. *Id.* at 530, 369 S.E.2d at 849 (citing McCown v. Muldrow, 91 S.C. 523, 74 S.E. 386 (1912)).

53. *Id.*

54. *Id.* at 531, 369 S.E.2d at 849.

55. *See, e.g.*, Bonapart v. Floyd, 291 S.C. 427, 354 S.E.2d 40 (Ct. App. 1987); Campbell v. Paschal, 290 S.C. 1, 347 S.E.2d 892 (Ct. App. 1986); South Carolina Dep't of Social Servs. v. Bacot, 280 S.C. 485, 313 S.E.2d 45 (Ct. App. 1984).

56. *See* Botehlo v. Bycura, 282 S.C. 578, 320 S.E.2d 59 (Ct. App. 1984).

57. 288 S.C. 586, 344 S.E.2d 157 (Ct. App. 1986).

58. *Id.* at 594, 344 S.E.2d at 161.

While few states have addressed the issue of social worker qualification, many states have embraced the notion that "opinion evidence upon an issue of mental condition is not . . . limited to the opinion of physicians."[59] Nonphysicians held qualified to testify often have been psychologists.[60] Other jurisdictions have qualified witnesses who were neither physicians nor psychologists to testify as to mental conditions, particularly concerning sexual assault victims.[61] Thus, although few jurisdictions have considered specifically whether social workers may give psychiatric diagnoses, South Carolina does not appear out of step with states addressing comparable questions.

The strength of *Honea* is that it reflects today's necessary interaction between the fields of mental health and social work. With the increased number of rape crisis centers and clinics designed to treat sexual assault victims, social workers often are more accessible to victims than psychiatrists. Additionally, social workers are more economically accessible than psychiatrists. By allowing only psychiatrists to testify as to mental conditions, courts would encourage testimony of professionals often not sought solely for treatment, but also in anticipation of a court appearance.

Honea leaves some questions unanswered, however. Where is the line to be drawn as to who may qualify? What basic qualities must one possess to meet the threshold requirement and qualify as an expert to testify about mental conditions? While no definite answers can be given to these questions, it is clear that even if future South Carolina courts require less formal training, they likely will continue to require significant experience and opportunity for observation.

Margaret A. Chamberlain

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59. 31 AM. JUR. 2D *Expert and Opinion Evidence* § 27 (1967).

60. *See, e.g.*, United States v. Riggleman, 411 F.2d 1190 (4th Cir. 1969); Reese v. Naylor, 222 So. 2d 487 (Fla. Dist. Ct. App. 1969); *In re* Marriage of Auer, 86 Ill. App. 3d 84, 407 N.E.2d 1034 (1980); Kravinsky v. Glover, 263 Pa. Super. 8, 396 A.2d 1349 (1979); Landreth v. Reed, 570 S.W.2d 486 (Tex Ct. App. 1978).

61. *See, e.g.*, People v. Stanley, 36 Cal. 3d 253, 681 P.2d 302, 203 Cal. Rptr. 461 (1984); State v. Lawrence, 112 Idaho 149, 730 P.2d 1069 (Ct. App. 1986); Onwan v. Commonwealth, 728 S.W.2d 536 (Ky. Ct. App. 1987); State v. Liddell, 211 Mont. 180, 685 P.2d 918 (1984); State v. LeBrun, 37 Or. App. 411, 587 P.2d 1044 (1978).