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6  
7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

8 THE PEOPLE OF THE STATE OF	)	Case No.
CALIFORNIA,	)	
	)	
9 Plaintiff,	)	POINTS AND AUTHORITIES IN
	)	SUPPORT OF ADMISSIBILITY
10 vs.	)	OF EVIDENCE OF PARENTAL
	)	ALIENATION AND EXPERT
11 TESTIMONY	)	
	)	ON THE PSYCHOLOGICAL
	)	RAMIFICATIONS OF PARENTAL
12 Defendant.	)	ALIENATION
	)	
	)	Date:
	)	Time:
15	)	Dept:

16  
17 **INTRODUCTION**

18 Defendant stands accused of molesting/abusing his/her  
19 son/daughter. In his/her defense at trial, Defendant will seek  
20 to establish that such charges are false. To that end, he/she  
21 will seek to present evidence that his/her spouse has caused  
22 his/her son/daughter to become alienated from him/her, and thus  
23 has a motive to hate or fear the accused parent and be biased  
24 against him/her. Defendant will also seek to present testimony  
25 of a psychological expert on the issue of parental alienation as  
26 a form of suggestibility in terms of a child's ability to  
27 perceive, recollect and communicate and its effect on an  
28 alienated child's motive to hate or fear the accused and be

1 biased against him/her.

2 I

3 **WHAT IS PARENTAL ALIENATION?**

4 "Parental alienation," as defined by child psychiatrist  
5 Richard M. Gardner, M.D., refers to:

6 ". . . a disturbance in which children are preoccupied with  
7 deprecation and criticism of a parent - denigration that is  
8 unjustified and/or exaggerated. The notion that such  
9 children are merely "brainwashed" is narrow. The term  
10 brainwashing implies that one parent is systematically  
11 and consciously programming the child to denigrate the  
12 other. The concept of parental alienation syndrome  
13 includes the brainwashing component, but is much more  
14 inclusive. It includes not only conscious, but subconscious  
15 and unconscious factors within the programming parent  
16 that contribute to the child's alienation from the other.  
17 Furthermore (and this is extremely important), it  
18 includes factors that arise within the child -  
19 independent of the parental contributions - that play  
20 a role in the development of the syndrome. In addition,  
21 situational factors may contribute, i.e., factors that  
22 exist in the family and the environment that may play a  
23 role in bringing about the disorder." (Gardner, The  
24 Parental Alienation Syndrome and the Differentiation  
25 Between Fabricated and Genuine Child Sex Abuse (1987,  
26 Creative Therapeutics))

17 II

18 **SPECIFIC EVIDENCE OF PARENTAL ALIENATION**  
19 **DEFENDANT SEEKS TO INTRODUCE IN THIS CASE.**

20 Describe the specific evidence of parental alienation that you  
21 have in your case that you want admitted at trial.

22 III

23 **EVIDENCE OF PARENTAL ALIENATION IS ADMISSIBLE**  
24 **AS RELEVANT TO SHOW A CHILD'S MOTIVE TO FEAR AND**  
25 **HATE THE ALIENATED, ACCUSED PARENT AND BE BIASED**  
26 **AGAINST HIM/HER.**

27 When a parent is accused of child abuse or child molest and  
28 the accused parent claims that he has not abused or molested the  
29 child and that he has done nothing else to cause the child to  
30 have a motive to hate or fear him, evidence of child alienation

1 against a parent is relevant to establish a motive for the child  
2 to fear, hate, and be biased against the accused parent, thereby  
3 testifying falsely against him.

4 The existence or non-existence of a bias, interest or motive  
5 to falsify is relevant to and may be used to attack the  
6 credibility of a witness. (Evidence Code §210; Evidence Code  
7 §780(f); CALJIC 2.20; People v. Allen (1978) 77 Cal.App.3d 924,  
8 931.) Such bias, interest or motive may be established on cross-  
9 examination or by extrinsic proof. (People v. James (1976) 56  
10 Cal.App.3d 876, 886.) Defense counsel should be allowed wide  
11 latitude in developing facts which show bias or interest of a  
12 witness and thus affect his or her credibility. (People v.  
13 Avelar (1961) 193 Cal.App.2d 631, 634.)

14 Based on the foregoing, evidence of parental alienation is  
15 clearly admissible in the instant case as relevant to the  
16 accuser's bias and motive to testify falsely, and therefore  
17 his/her credibility.

#### 18 IV

#### 19 A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO 20 EXPOSE A PROSECUTION WITNESS'S BIAS AS 21 PART OF HIS 6<sup>TH</sup> AMENDMENT RIGHT TO PRESENT A DEFENSE.

22 As part of his 6<sup>th</sup> Amendment right to present a defense, a  
23 defendant in a criminal case has a constitutional right to expose  
24 the bias of a prosecution witness, either by cross-examination or  
25 via the presentation of extrinsic evidence. (People v. Balderas  
26 (1985) 41 Cal.3d 144.) If certain formative facts give rise to  
27 an inference of bias by a prosecution witness, a defendant has a  
28 right to expose those facts to the jury, including facts that  
would realistically motivate a witness to testify falsely.

1 (United States v. Feldman (9<sup>th</sup> Cir. 1986) 788 F.2d 544; Chipman  
2 v. Mercer (9<sup>th</sup> Cir. 1980) 628 F.2d 528.)

3           **EXPERT TESTIMONY IS ADMISSIBLE TO EXPLAIN**  
4           **PARENTAL ALIENATION AS A FORM OF SUGGESTIBILITY**  
5           **IN TERMS OF A CHILD'S ABILITY TO PERCEIVE, RECOLLECT,**  
6           **AND COMMUNICATE AND ITS EFFECT ON AN ALIENATED CHILD'S**  
7           **MOTIVE TO HATE OR FEAR THE ACCUSED AND BE BIASED AGAINST HIM,**  
8           **IN OTHER WORDS TO EXPLAIN THE RELEVANCE OF EVIDENCE**  
9           **OF PARENTAL ALIENATION.**

7           Expert testimony explaining parental alienation and its  
8 application in a given situation has been admitted in numerous  
9 cases both in California and elsewhere. (See Coursey v. Superior  
10 Court (Coursey) (1987) 194 Cal.App.3d 147 [in visitation dispute,  
11 expert testimony from therapist admitted at trial that child in  
12 question suffered from parental alienation syndrome and therefore  
13 did not want to visit with father]; In re Violetta 568 N.E.2d  
14 1345 (1991 Ill.) [in case involving propriety of child's  
15 placement in foster home, expert testimony on parental alienation  
16 syndrome admitted]; Karen B. v. Clyde M. 574 N.Y.S.2d 267 (1991)  
17 [in custody battle, following unsubstantiated allegations of  
18 father's sexual abuse of daughter, expert testimony on parental  
19 alienation syndrome admitted at trial and court found that  
20 mother likely programmed the child to accuse her father of molest  
21 so mother could have sole custody of child]; In re John W. (1996)  
22 41 Cal.App.4th 961 [in dependency case involving unsubstantiated  
23 allegations of child molest, expert testimony on parental  
24 alienation syndrome admitted to show what mother had done to  
25 child]; Marriage of Condon (1998) 62 Cal.App.4th 533 [expert  
26 testimony on parental alienation syndrome admitted at trial in  
27 move-away case]; White v. White (1999) 655 N.E.2d 523 (Ind.App.  
28 1995) [in custody case, expert testimony on parental alienation

1 syndrome admitted at trial].)

2 The admissibility of expert testimony on parental alienation  
3 is compelled by People v. Phillips (1981) 122 Cal.App.3d 69 and  
4 People v. McDonald (1984) 37 Cal.3d 351.

5 Phillips involved an appeal by a woman convicted of  
6 murdering one adopted daughter and endangering the life of the  
7 other. In order to suggest a motive to the jury in a case where  
8 the defendant's conduct was otherwise inexplicable, the  
9 prosecution was allowed to present the expert testimony of a  
10 psychiatrist concerning Munchausen's Syndrome by Proxy.

11 The defense appealed on the grounds that the introduction of  
12 evidence of motive was inadmissible and that the evidence was  
13 unreliable because the witness had not interviewed the defendant,  
14 used only other people's literature to form his opinion since he  
15 had never treated anyone with "Munchausen Syndrome By Proxy", and  
16 the fact that it is not listed as a form of mental illness in  
17 American Psychiatric Association's Diagnostic and Statistical  
18 Manual of Mental Disorders. The reviewing court rejected each of  
19 these arguments. (Id., at pp. 84-88.) The court's discussion of  
20 these issues supports the admission of expert testimony of  
21 parental alienation in this case:

22 "Admissibility of psychiatric evidence by the  
23 prosecution where defendant has not made her mental  
24 state an issue. Appellant suggests this may be the  
25 'first time in the history of California criminal  
26 jurisprudence in which the prosecution was permitted to  
27 put into evidence, as part of its case in chief, the  
28 mental condition of the defendant without the issue  
first being raised either by plea or by the  
introduction of the defendant's state of mind as part  
of the defense.' That may be true, but it is hardly  
persuasive as to the admissibility of such testimony.  
The rules of evidence do not preclude innovation.

1 While a prosecutor ordinarily need not prove motive as  
2 an element of a crime (People vs. Durrant (1897) 116  
3 Cal. 179, 208, 48 P. 65; People vs. Planagan (1944) 65  
4 Cal.App.2d 371, 402, 150 P.2d 927), the absence of  
5 apparent motive may make proof of the essential  
6 elements less persuasive (People vs. Beagle (1972) 6  
7 Cal.3d 441, 450, 99 Cal.Rptr. 313, 492 P.2d 1).  
8 Clearly that was the principal problem confronting the  
9 prosecutor here. In the absence of a motivational  
10 hypothesis, and in the light of other information which  
11 the jury had concerning her personality and character,  
12 the conduct ascribed to appellant was incongruous and  
13 apparently inexplicable. As both parties recognize,  
14 Dr. Blinder's testimony was designed to fill that gap.

15 The evidence was thus relevant, and therefore  
16 admissible '[e]xcept as otherwise provided by statute'  
17 (Evid. Code, Sec. 351). Appellant points to no  
18 statutory provision which would preclude the prosecutor  
19 from introducing otherwise admissible psychiatric  
20 testimony relevant to motivation on the ground that the  
21 defendant had not placed his or her mental state in  
22 issue.

23 Appellant relies on People vs. Nicholas (1967) 65  
24 Cal.2d 866, 880, 56 Cal.Rptr. 635, 423 P.2d 787, as  
25 standing for the proposition that such evidence should  
26 not be permitted. That case and its predecessor, In re  
27 Spencer (1965) 63 Cal.2d 400, 412, 46 Cal.Rptr. 753,  
28 406 P.2d 33, involved the constitutional issues posed  
when a court-appointed psychiatrist is permitted to  
testify to incriminating statements made to him by the  
defendant in the course of the psychiatric interview.  
Dr. Blinder never interviewed defendant, and  
consequently no such constitutional issue is implicated  
here.

Evidence Code Section 801 describes the boundaries of  
expert testimony: 'If a witness is testifying as an  
expert, his testimony in the form of an opinion is  
limited to such an opinion as is: (a) Related to a  
subject that is sufficiently beyond common experience  
that the opinion of an expert would assist the trier of  
fact; and (b) Based on matter (including his special  
knowledge, skill, experience, training, and education)  
perceived by or personally known to the witness or made  
known to him at or before the hearing, whether or not  
admissible, that is of a type that reasonably may be  
relied upon by an expert in forming an opinion upon the  
subject to which his testimony relates, unless an  
expert is precluded by law from using such matter as a  
basis for his opinion.' Testimony outside these  
boundaries, i.e., 'testimony in the form of an opinion  
that is based in whole or in significant part on matter  
that is not a proper basis for such an opinion,' is

1 subject to exclusion upon objection. (Evid. Code  
2 Section 803.)

3 The existence, nature, validity, and applicability of  
4 these facts of the phenomenon characterized as  
5 'Munchausen Syndrome by Proxy' are all matters  
6 sufficiently beyond common experience that expert  
7 opinion would assist the trier of fact, and appellant  
8 does not argue otherwise. Thus, the requirements of  
9 subdivision (a) of section 801 are satisfied. It is  
10 the provisions of subdivision (b) that form the focus  
11 of appellant's attack.

12 Under the provisions of subdivision (b), the fact that  
13 Dr. Blinder's testimony was based in large measure upon  
14 reports by others rather than upon his personal  
15 observations of the defendant or of other persons  
16 displaying that syndrome may affect the weight of his  
17 testimony but does not render that testimony  
18 inadmissible if those reports meet the standard of  
19 reasonable reliability. (See Jefferson, California  
20 Evidence Benchbook (1972) Sec. 29.4, 507-509; cf.  
21 People vs. Brekke (1967) 250 Cal.App.2d 651, 661-662,  
22 58 Cal.Rptr. 854.)

23 All of the studies cited by Dr. Blinder appeared in  
24 professional technical journals (cf. Luque vs. McLean  
25 (1972) 8 Cal.3d 136, 148, 104 Cal.Rptr. 443, 501 P.2d  
26 1163) and were written by medical specialists on the  
27 basis of personal observations. 'While a layman may  
28 not testify to a fact which he has learned only by  
reading a medical book, there is no question that a  
professional physician may rely upon medical texts as  
the basis for his testimony. [Citations.]' (Brown vs.  
Colm (1974) 11 Cal.3d 639, 644, 114 Cal.Rptr. 128, 522  
P.2d 688.)

Appellant does not question Dr. Blinder's  
qualifications to appraise the reliability of these  
studies, nor does she suggest that information  
contained in them could feasibly have been presented  
except through the reported data. (Ibid.) Indeed, she  
does not directly question the trustworthiness of these  
studies at all, or the accuracy of Dr. Blinder's  
interpretation of them to the jury. Rather, she rests  
upon the proposition that Munchausen's syndrome by  
proxy is an 'unrecognized illness...not generally  
accepted by the medical profession,' and points to the  
fact that the syndrome is not listed or discussed as a  
form of mental illness in the American Psychiatric  
Association's Diagnostic and Statistical Manual of  
Mental Disorders.

We are aware of no such requirement. We are not  
confronted here with the admissibility of evidence

1 developed by some new scientific technique such as  
2 voiceprint identification. (cf. People vs. Kelly (1976)  
3 17 Cal.3d 24, 30-32, 130 Cal.Rptr. 144, 549 P.2d 1240),  
4 nor with conflict within the scientific community. In  
5 People vs. Jackson (1971) 18 Cal.App.3d 504, 507, 95  
6 Cal.Rptr. 919, the court referred to the 'battered  
7 child syndrome' as an 'accepted medical diagnosis' on  
8 the basis of medical literature not unlike that  
9 presented here. The studies here show intentional  
10 poisoning of infants by their mothers to be another  
11 form of child abuse. In the absence of some reason to  
12 doubt their validity, we find no abuse of discretion in  
13 the trial court's decision to allow expert testimony  
14 based thereon."

15 People v. McDonald, supra, concerned the admissibility of  
16 expert testimony on psychological factors affecting the accuracy  
17 of eyewitness identification testimony. The California Supreme  
18 Court held that expert testimony which simply informs the jury of  
19 certain psychological factors that may impair the accuracy of  
20 eyewitness identifications "falls well within the broad statutory  
21 description of 'any matter that has any tendency in reason' to  
22 bear on the credibility of a witness." (Id., at p. 366.) This  
23 type of testimony concerns matters sufficiently beyond common  
24 experience so that it can assist the trier of fact, and thus  
25 passes the test of Evidence Code §801. (Id., at p. 369.) The  
26 McDonald court also noted that in a sex case, "expert medical  
27 testimony may be admitted to impeach the credibility of the  
28 complaining witness by showing that he suffers from a particular  
29 mental disorder that impairs his ability to tell the truth."  
30 (Id., at p. 370.) The expert testimony sought to be admitted  
31 here concerning certain psychological factors that affect a child  
32 witness's ability to perceive, recollect and communicate, in  
33 other words, memory, and influence his or her biases and motives  
34 is no different than the testimony approved in McDonald. Other

1 cases involving sex offenses have approved the use of expert  
2 psychological testimony admitted for similar purposes. (E.g.,  
3 People v. Stoll (1989) 49 Cal.3d 1136 [testimony concerning rape  
4 trauma syndrome]; People v. Gray (1986) 187 Cal.App.3d 213  
5 [psychological testimony concerning traits or characteristics of  
6 children who have been subjected to sexual abuse admissible as  
7 akin to testimony informing the jury of factors that can affect  
8 eyewitness identification].) **CONCLUSION**

9       The defendant is falsely accused of a child molestation.  
10 **He/she** is constitutionally entitled to present evidence of  
11 parental alienation which is relevant to establishing bias and a  
12 motive to testify falsely on the part of **his/her** chief accuser.  
13 Expert psychological testimony explaining parental alienation as  
14 a form of suggestibility in terms of a child's ability to  
15 perceive, recollect and communicate and its affect on said  
16 child's bias and motive to testify falsely is admissible as well  
17 to establish the foundation for such testimony. Finally, it is  
18 important to note that the expert will not testify that a molest  
19 did or did not occur. The expert will not be rendering any  
20 opinion on the credibility of the complainant. They will only be  
21 testifying about the psychological factors which if found to be  
22 present may tend to establish a possible motive for the false  
23 allegation.

24       Dated:

Respectfully submitted,

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Attorney for Defendant

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