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Attorneys for

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF \_\_\_\_

	)	Case No.
	)	
	)	
Plaintiff,	)	MOTION TO EXCLUDE
	)	STUDIES REGARDING
Vs.	)	THE PERCENTAGE OF
	)	FALSE ALLEGATIONS
	)	OF CHILD MOLEST
Defendant.	)	
	)	
_____	)	

TO: All parties and to their attorneys of record, and to the  
Honorable Judge of the Superior Court:

In the case at bar, the prosecution may seek the  
admission of so-called scientific studies regarding the allegedly  
small percentage of false allegations of child molest. As will  
be more fully set forth below in the following memorandum of  
points and authorities, such studies are inadmissible, as they  
are irrelevant and lack adequate foundation. As such, they must

be excluded.

Dated: Respectfully submitted,

LAW OFFICE OF PATRICK E. CLANCY

By \_\_\_\_\_

Attorney for Defendant

**MEMORANDUM OF POINTS AND AUTHORITIES**

I

**STUDIES REGARDING THE INCIDENCE OF FALSE  
ALLEGATIONS OF CHILD MOLEST ARE NOT RELEVANT EVIDENCE.**

Only relevant evidence is admissible at trial.  
(Evidence Code section 350.) "Relevant evidence" means testimony or physical objects, including evidence bearing on the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evidence Code section 210; People v. Basuto (2001) 94 Cal.App.4th 370,

386; People v. Garceau (1993) 6 Cal.4th 140, 176-177.) A court has no discretion to admit irrelevant evidence. (People v. Crittenden (1994) 9 Cal.4th 83, 132.) Evidence which produces only speculative inferences is irrelevant evidence. (People v. DeLaPlane (1979) 88 Cal.App.3d 223, 242.)

Evidence of so-called scientific studies on the incidence of false allegations of child molest do not constitute probative evidence as defined above. In essence, the prosecution is seeking the admission of the allegedly low incidence of false allegations in order to prove that this defendant is guilty. This it cannot do. The statistics proffered by the prosecution are about other people and therefore do not have any tendency in reason to prove or disprove a disputed issue in the case. For example, would this court allow the prosecutor to introduce studies showing 99% of all people charged with murder are found guilty by a jury in order to prove the guilt of a defendant on trial? Certainly not. What the prosecution seeks to do here with studies of the incidence of false allegations is no different. Essentially, what the prosecutor is asking the jury to do is find the defendant guilty because only a small percentage of child molest allegations are false. This it cannot do.

## II

### **THE STUDIES REGARDING THE INCIDENCE OF FALSE ALLEGATIONS LACK ADEQUATE FOUNDATION.**

It is anticipated that the prosecutor will offer the testimony of (whoever their expert is) who will discuss various studies concerning the percentage of false allegations of child molest or who may discuss such percentage based upon children he has dealt with in his own practice. However, in either case, such evidence lacks an adequate foundation as there is no evidence of the methodology used in these studies from which an indicia of reliability can be drawn (or something to the effect that the methodology of those studies sucks, if you know what it is. This is an area for Demo or you.) (See State v. Parkinson (Idaho App. 1996) 909 P.2d 647, 654; State v. Aspeytia (Idaho App. 1997) 936 P.2d 210, 215-216.) State v. Parkinson, supra, is instructive:

"In an offer of proof, Dr. Chappius was asked by defense counsel for his opinion "as to the general incidence of fabrications with regard to sexual allegations made by minors." Dr. Chappius responded that in approximately twenty-five to thirty percent of the cases his office was involved in, the allegations were false. This opinion on the statistical incidence of false accusations of sexual abuse was based only on anecdotal information derived from Dr. Chappius's personal experience as a therapist in Sandy, Utah, and as a consultant to the Utah court system. Any potential inference of scientific reliability is belied by the very narrow information base and the lack of any scientific methodology underlying this estimate. Most importantly, Dr. Chappius stated that he based his determination of which allegations were false upon the outcome of court proceedings against the accused perpetrator. . . .The unreliability of Dr. Chappius's estimate is patent. . . . .

Although Dr. Chappius also alluded to national research that estimated the range of false allegations to be between five and thirty percent of all sex abuse accusations, there was not evidence of the methodology used in those studies from which an indicia of reliability could be drawn, and the very breadth of the range from five percent to thirty percent suggests a lack of accuracy and trustworthiness. The record is conspicuously lacking any explication of disciplined inquiry and methodology that would support Dr. Chappius's testimony on the incidence of false accusations of sexual abuse. The trial court correctly excluded this evidence for lack of adequate foundation under I.R.E. 702." (909 P.2d at pp. 653-654.)

Moreover, the estimates contained in the studies proffered by the prosecution are much too low in any event. Meyers (Meyers, I., Legal Issues in Child Abuse and Neglect Practice (2d ed. 1998) points out that commonly such estimates as to "false" reports are misleading, because they do not include misperception reports [good faith but untrue reports] or unsubstantiated reports. One study found that in 34% of good-faith reports, there was no child abuse, and another 21% of the reports were inconclusive. (Id., at p. 33.) Ceci & Bruck, Jeopardy in the Courtroom (1995), p. 31.) (You probably can add more to this with your vast knowledge of the relevant studies, I just got this much from a brief I found on Westlaw.)

#### **CONCLUSION**

To admit the prosecution's junk science studies regarding the incidence of false allegations or (name of expert)'s experience concerning same would give a false aura of

reliability to the People's case. There is neither scientific nor legal foundation for the admission of such evidence.

Dated:

Respectfully submitted,