

1 Innocence Legal Team
1600 S. Main Street, Suite 195
2 Walnut Creek, CA 94596
3 Tel: 925 948-9000

4 Attorney for Defendant

5
6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

7 THE PEOPLE OF THE STATE OF) Case No.
CALIFORNIA,)
8)
Plaintiff,) POINTS AND AUTHORITIES IN
9) SUPPORT OF ADMISSIBILITY
vs.) OF EVIDENCE OF PARENTAL
10) ALIENATION AND EXPERT
TESTIMONY)
11) ON THE PSYCHOLOGICAL
12) RAMIFICATIONS OF PARENTAL
Defendant.) ALIENATION
13)
14) Date:
15) Time:
16) Dept:

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

1 a form of suggestibility in terms of a child's ability to
2 perceive, recollect and communicate and its effect on an
3 alienated child's motive to hate or fear the accused and be
4 biased against him/her.

5
6 **I**

7 **WHAT IS PARENTAL ALIENATION?**

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

10 ". . . a disturbance in which children are preoccupied with
11 deprecation and criticism of a parent - denigration that is
12 unjustified and/or exaggerated. The notion that such
13 children are merely "brainwashed" is narrow. The term
14 brainwashing implies that one parent is systematically
15 and consciously programming the child to denigrate the
16 other. The concept of parental alienation syndrome
17 includes the brainwashing component, but is much more
18 inclusive. It includes not only conscious, but
19 subconscious

20 and unconscious factors within the programming parent
21 that contribute to the child's alienation from the other.
22 Furthermore (and this is extremely important), it
23 includes factors that arise within the child -
24 independent of the parental contributions - that play
25 a role in the development of the syndrome. In addition,
situational factors may contribute, i.e., factors that

1 exist in the family and the environment that may play a
2 role in bringing about the disorder." (Gardner, The
3 Parental Alienation Syndrome and the Differentiation
4 Between Fabricated and Genuine Child Sex Abuse (1987,
5 Creative Therapeutics)

6 **II**

7 **SPECIFIC EVIDENCE OF PARENTAL ALIENATION**

8 **DEFENDANT SEEKS TO INTRODUCE IN THIS CASE.**

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

11 **III**

12 **EVIDENCE OF PARENTAL ALIENATION IS ADMISSIBLE**
13 **AS RELEVANT TO SHOW A CHILD'S MOTIVE TO FEAR AND**
14 **HATE THE ALIENATED, ACCUSED PARENT AND BE BIASED**
15 **AGAINST HIM/HER.**

16
17 When a parent is accused of child abuse or child molest and
18 the accused parent claims that he has not abused or molested the
19 child and that he has done nothing else to cause the child to
20 have a motive to hate or fear him, evidence of child alienation
21 against a parent is relevant to establish a motive for the child
22 to fear, hate, and be biased against the accused parent, thereby
23 testifying falsely against him.

24
25 The existence or non-existence of a bias, interest or
motive to falsify is relevant to and may be used to attack the

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

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

14 IV

15 A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO

16 EXPOSE A PROSECUTION WITNESS'S BIAS AS

17 PART OF HIS 6TH AMENDMENT RIGHT TO PRESENT A DEFENSE.

18
19 As part of his 6th Amendment right to present a defense, a
20 defendant in a criminal case has a constitutional right to
21 expose the bias of a prosecution witness, either by cross-
22 examination or via the presentation of extrinsic evidence.
23 (People v. Balderas (1985) 41 Cal.3d 144.) If certain formative
24 facts give rise to an inference of bias by a prosecution
25 witness, a defendant has a right to expose those facts to the

1 jury, including facts that would realistically motivate a
2 witness to testify falsely. (United States v. Feldman (9th Cir.
3 1986) 788 F.2d 544; Chipman v. Mercer (9th Cir. 1980) 628 F.2d
4 528.) V

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

12
13 Expert testimony explaining parental alienation and its
14 application in a given situation has been admitted in numerous
15 cases both in California and elsewhere. (See Coursey v.
16 Superior Court (Coursey) (1987) 194 Cal.App.3d 147 [in
17 visitation dispute, expert testimony from therapist admitted at
18 trial that child in question suffered from parental alienation
19 syndrome and therefore did not want to visit with father]; In re
20 Violetta 568 N.E.2d 1345 (1991 Ill.) [in case involving
21 propriety of child's placement in foster home, expert testimony
22 on parental alienation syndrome admitted]; Karen B. v. Clyde M.
23 574 N.Y.S.2d 267 (1991) [in custody battle, following
24 unsubstantiated allegations of father's sexual abuse of
25

1 daughter, expert testimony on parental alienation syndrome
2 admitted at trial and court found that mother likely programmed
3 the child to accuse her father of molest so mother could have
4 sole custody of child]; In re John W. (1996) 41 Cal.App.4th 961
5 [in dependency case involving unsubstantiated allegations of
6 child molest, expert testimony on parental alienation syndrome
7 admitted to show what mother had done to child]; Marriage of
8 Condon (1998) 62 Cal.App.4th 533 [expert testimony on parental
9 alienation syndrome admitted at trial in move-away case]; White
10 v. White (1999) 655 N.E.2d 523 (Ind.App. 1995) [in custody case,
11 expert testimony on parental alienation syndrome admitted at
12 trial].)

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

17 Phillips involved an appeal by a woman convicted of
18 murdering one adopted daughter and endangering the life of the
19 other. In order to suggest a motive to the jury in a case where
20 the defendant's conduct was otherwise inexplicable, the
21 prosecution was allowed to present the expert testimony of a
22 psychiatrist concerning Munchausen's Syndrome by Proxy.

24 The defense appealed on the grounds that the introduction
25 of evidence of motive was inadmissible and that the evidence was
unreliable because the witness had not interviewed the

1 defendant, used only other people's literature to form his
2 opinion since he had never treated anyone with "Munchausen
3 Syndrome By Proxy", and the fact that it is not listed as a form
4 of mental illness in American Psychiatric Association's
5 Diagnostic and Statistical Manual of Mental Disorders. The
6 reviewing court rejected each of these arguments. (Id., at pp.
7 84-88.) The court's discussion of these issues supports the
8 admission of expert testimony of parental alienation in this
9 case:

10
11 "Admissibility of psychiatric evidence by the
12 prosecution where defendant has not made her mental
13 state an issue. Appellant suggests this may be the
14 'first time in the history of California criminal
15 jurisprudence in which the prosecution was permitted
16 to put into evidence, as part of its case in chief,
17 the mental condition of the defendant without the
18 issue first being raised either by plea or by the
19 introduction of the defendant's state of mind as part
20 of the defense.' That may be true, but it is hardly
21 persuasive as to the admissibility of such testimony.
22 The rules of evidence do not preclude innovation.

23
24 While a prosecutor ordinarily need not prove motive as
25 an element of a crime (People vs. Durrant (1897) 116
Cal. 179, 208, 48 P. 65; People vs. Planagan (1944) 65

1 Cal.App.2d 371, 402, 150 P.2d 927), the absence of
2 apparent motive may make proof of the essential
3 elements less persuasive (People vs. Beagle (1972) 6
4 Cal.3d 441, 450, 99 Cal.Rptr. 313, 492 P.2d 1).
5 Clearly that was the principal problem confronting the
6 prosecutor here. In the absence of a motivational
7 hypothesis, and in the light of other information
8 which the jury had concerning her personality and
9 character, the conduct ascribed to appellant was
10 incongruous and apparently inexplicable. As both
11 parties recognize, Dr. Blinder's testimony was
12 designed to fill that gap.

13
14 The evidence was thus relevant, and therefore
15 admissible '[e]xcept as otherwise provided by statute'
16 (Evid. Code, Sec. 351). Appellant points to no
17 statutory provision which would preclude the
18 prosecutor from introducing otherwise admissible
19 psychiatric testimony relevant to motivation on the
20 ground that the defendant had not placed his or her
21 mental state in issue.

22
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

1 not be permitted. That case and its predecessor, In
2 re Spencer (1965) 63 Cal.2d 400, 412, 46 Cal.Rptr.
3 753, 406 P.2d 33, involved the constitutional issues
4 posed when a court-appointed psychiatrist is permitted
5 to testify to incriminating statements made to him by
6 the defendant in the course of the psychiatric
7 interview. Dr. Blinder never interviewed defendant,
8 and consequently no such constitutional issue is
9 implicated here.

10
11 Evidence Code Section 801 describes the boundaries of
12 expert testimony: `If a witness is testifying as an
13 expert, his testimony in the form of an opinion is
14 limited to such an opinion as is: (a) Related to a
15 subject that is sufficiently beyond common experience
16 that the opinion of an expert would assist the trier
17 of fact; and (b) Based on matter (including his
18 special knowledge, skill, experience, training, and
19 education) perceived by or personally known to the
20 witness or made known to him at or before the hearing,
21 whether or not admissible, that is of a type that
22 reasonably may be relied upon by an expert in forming
23 an opinion upon the subject to which his testimony
24 relates, unless an expert is precluded by law from
25 using such matter as a basis for his opinion.'

1 Testimony outside these boundaries, i.e., `testimony
2 in the form of an opinion that is based in whole or in
3 significant part on matter that is not a proper basis
4 for such an opinion,' is subject to exclusion upon
5 objection. (Evid. Code Section 803.)

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

16
17 Under the provisions of subdivision (b), the fact that
18 Dr. Blinder's testimony was based in large measure
19 upon reports by others rather than upon his personal
20 observations of the defendant or of other persons
21 displaying that syndrome may affect the weight of his
22 testimony but does not render that testimony
23 inadmissible if those reports meet the standard of
24 reasonable reliability. (See Jefferson, California
25 Evidence Benchbook (1972) Sec. 29.4, 507-509; cf.

1 People vs. Brekke (1967) 250 Cal.App.2d 651, 661-662,
2 58 Cal.Rptr. 854.)

3
4 All of the studies cited by Dr. Blinder appeared in
5 professional technical journals (cf. Luque vs.McLean
6 (1972) 8 Cal.3d 136, 148, 104 Cal.Rptr. 443, 501 P.2d
7 1163) and were written by medical specialists on the
8 basis of personal observations. 'While a layman may
9 not testify to a fact which he has learned only by
10 reading a medical book, there is no question that a
11 professional physician may rely upon medical texts as
12 the basis for his testimony. [Citations.]' (Brown vs.
13 Colm (1974) 11 Cal.3d 639, 644, 114 Cal.Rptr. 128, 522
14 P.2d 688.)

15
16 Appellant does not question Dr. Blinder's
17 qualifications to appraise the reliability of these
18 studies, nor does she suggest that information
19 contained in them could feasibly have been presented
20 except through the reported data. (Ibid.) Indeed, she
21 does not directly question the trustworthiness of
22 these studies at all, or the accuracy of Dr. Blinder's
23 interpretation of them to the jury. Rather, she rests
24 upon the proposition that Munchausen's syndrome by
25 proxy is an 'unrecognized illness...not generally

1 accepted by the medical profession,' and points to the
2 fact that the syndrome is not listed or discussed as a
3 form of mental illness in the American Psychiatric
4 Association's Diagnostic and Statistical Manual of
5 Mental Disorders.

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

23
24 People v. McDonald, supra, concerned the admissibility of
25 expert testimony on psychological factors affecting the

1 accuracy of eyewitness identification testimony. The California
2 Supreme Court held that expert testimony which simply informs
3 the jury of certain psychological factors that may impair the
4 accuracy of eyewitness identifications "falls well within the
5 broad statutory description of 'any matter that has any tendency
6 in reason' to bear on the credibility of a witness." (Id., at
7 p. 366.) This type of testimony concerns matters sufficiently
8 beyond common experience so that it can assist the trier of
9 fact, and thus passes the test of Evidence Code §801. (Id., at
10 p. 369.) The McDonald court also noted that in a sex case,
11 "expert medical testimony may be admitted to impeach the
12 credibility of the complaining witness by showing that he
13 suffers from a particular mental disorder that impairs his
14 ability to tell the truth." (Id., at p. 370.) The expert
15 testimony sought to be admitted here concerning certain
16 psychological factors that affect a child witness's ability to
17 perceive, recollect and communicate, in other words, memory, and
18 influence his or her biases and motives is no different than the
19 testimony approved in McDonald. Other cases involving sex
20 offenses have approved the use of expert psychological testimony
21 admitted for similar purposes. (E.g., □ 1People v. Stoll (1989)
22 49 Cal.3d 1136 [testimony concerning rape trauma syndrome];
23 People v. Gray (1986) 187 Cal.App.3d 213 [psychological
24 testimony concerning traits or characteristics of children who
25

1 have been subjected to sexual abuse admissible as akin to
2 testimony informing the jury of factors that can affect
3 eyewitness identification].) **CONCLUSION**

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

20 Dated:

21 Respectfully submitted,
22

23 _____
24

25 Attorney for Defendant