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Chapter 26

PARENTAL ALIENATION SYNDROME IN AMERICAN LAW

DEMOSTHENES LORANDOS

OVERVIEW

This article describes the history of parental alienation syndrome [PAS] in American case law. Fifteen years of cases from 1987 through 2003 are described with illustrations from the public record. Special attention is given to the use and abuse of expert testimony from behavioral sciences professionals. Material cited by trial or appellate courts that was produced by PAS "detractors" is cited as a cross reference to the chapter, Parental Alienation Syndrome: Detractors and the Junk Science Vacuum, of this work, which analyzes three specific examples of articles written by these detractors.

I wish either my father or my mother, or indeed both of them, as they were in duty both equally bound to it, had minded what they were about when they begot me.
Laurence Sterne, *Tristram Shandy*

There is no doubt that in the difficult context of child custody battles, parents occasionally resort to outrageous acts of interpersonal sabotage. Every experienced family court judge and child custody practitioner can testify to examples of parental manipulation. Parental campaigns to distance children from another parent have been reported in the literature of psychology and law for decades.[1] The most common heuristic in this regard is *PAS*, first reported by psychiatrist Richard Gardner in 1985.[2]

Cases describing PAS can be found in 15 years of American jurisprudence.[3] Reported decisions describing the quagmire of polarized child custody and parental alienation processes run the gamut from the sublime to the ridiculous. This review focuses on exemplary cases from 1987 through 2003. The material has been gleaned from the public record.

FIFTEEN YEARS OF PAS IN AMERICAN COURTS

A Failure Of Proof

In *Coursey v. Superior Court* (1987), a trial judge in the foothills of the California mountains found Loretta Coursey in contempt of court when Gene and Loretta Coursey's 14-year-old daughter refused to visit her dad following a divorce. After a hearing, the trial court found Loretta in contempt for willfully violating the terms of a stipulated order. The trial court fined Loretta $500 and committed her to five days in jail. The trial court concluded:

> "In summary, Loretta Coursey was aware of the order. She had agreed to the order, otherwise there would not have been an order on October 31. She complied with the order on two occasions prior to November 9th. Then her attorney advised Gene Coursey's attorney that there would be no visitation on November 9th. There were no other explanations provided that I'm aware of. Specifically, there was no indication that there was physical in-

> capacity as far as [the child] was concerned. The only indication was mental or emotional disinclination."[4]

When Loretta Coursey appealed the decision, the California Court of Appeals for the Third District concluded that:

> "No evidence of Loretta's ability to compel her daughter's visitation was adduced at the hearing. As noted, Loretta's guilt was established on the testimony of Gene and Loretta's attorney. However, neither witness addressed the issue of Loretta's ability to control her daughter. ... In these circumstances, absent additional evidence, it cannot be fairly inferred that the failure of visitation was caused by the mother's willful violation of the visitation order."[5]

In this first reported PAS case, the proofs failed when the alienated parent could not prove the acts or intent of the alienating parent.

A Constitutional Right to Be Nasty

In 1988, the Florida Court of Appeals described what seemed to be Laurel Schutz's argument that she had a constitutional right to be nasty.[6] Writing for the Appeals Court, Judge Schwartz described Laurel Schutz's

> "assiduous and unfortunately largely successful efforts both to secrete physically the parties' two daughters from their father and to poison their hearts and minds against him. . . . On ample evidence, the trial court found: '. . . having observed the demeanor of the witnesses, having listened to the nuances of the testimony, having examined the exhibits and the pleadings, the Court has no doubt — not a reasonable one, not even an unreasonable one, or even a scintilla, shadow or peradventure of doubt — that the cause of the blind, brainwashed, bigoted belligerence of the children toward the Father grew from the soil nurtured, watered and tilled by the Mother. The Court is thoroughly convinced that the Mother breached every duty she owed as the custodial parent to the non-custodial parent of instilling love, respect and feeling in the children for their Father. Worse, she slowly dripped poison into the minds of these children, maybe even beyond the power of the Court to find the antidote. But the Court will try."[7]

The trial court ordered Ms. Schutz to "do everything in her power to create in the minds of [the children] a loving, caring feeling toward the Father."[8] Ms. Schutz appealed, citing an impingement on her rights to free speech.[9] Citing to Gardner and a variety of cases from around the country, the Court of Appeals labeled Ms. Schutz's argument of a constitutional right to her invective "baseless." Not to be deterred in her mission,

Ms. Schutz appealed to the Florida Supreme Court.[10] After the expenditure of thousands of dollars, the Florida Supreme Court affirmed the appeals and trial courts, holding that in view of the circumstances "any burden on the mother's first amendment rights is merely 'incidental.'"[11]

A Resolution In Counseling

In the next reported case addressing PAS, Gardner was appointed an independent and impartial examiner for "A.R." and "S.E." in New York. Gardner reported a mild degree of *parental alienation* but recommended the children stay with their mother.[12] A number of post evaluation difficulties arose, and the plaintiff called numerous fathers' rights advocates to testify. Following a great deal of psychiatric and psychological testimony, the trial court refused to transfer custody and ordered both parents to counseling. The court ordered "the therapist to immediately communicate with the Court if the therapist is of the opinion that any of the participants is not fully cooperating with the therapeutic treatment plan."[13]

The Case Of The Murder's Mom

When Violetta B. was four months old, her parents murdered her four-year-old sister.[14] Placed in foster care, Violetta flourished. When she was two years old, her paternal grandmother sought physical custody. The trial court appointed a family therapist to supervise visits and make a report. He testified that the child seemed to enjoy the visits with her grandmother, but was very happy and anxious to return to her foster mother. He further testified he was directing all of his efforts toward placing the child with the grand- mother.[15] The trial court then made the grandmother the child's private guardian and custodian. Through her guardian ad litem, the child requested a "bonding assessment," and the court appointed a psychologist.[16] Proofs at a hearing demonstrated that after the family therapist recommended that the grandmother tell the child that she wanted her to stay with her, separation from the foster mother became increasingly stressful.[17] At a follow-up hearing, a psychologist stated that the child and the foster mother had a very strong primary bond. She described the primary bond as a relationship the child used to determine both her security and also a sense of what is right. The psychologist also testified that disruption of the child's primary relationship dramatically affected the child's ability to trust. She opined that the child would be unlikely to form deep sustaining relationships with others because the risk of losing such a relationship was too painful. She went on to characterize PAS by offering that as the transitions between the two homes were becoming more difficult, the child became depressed, combative and aggressive.[18]

Although the appellate court mischaracterized the psychologist's credentials several times,[19] it relied heavily on her testimony:

> The primary basis for [the psychologist's] opinion, however, was her belief that given the strong primary bond between [the child] and [the foster mother], a transfer of custody would be extremely deleterious to [the child] psychologically and would cause her to suffer severe and irreparable trauma. [The psychologist] testified that, in her opinion, counseling would not serve to alleviate the

trauma.[20]

The appellate court's reliance on its reevaluation of the record found the trial court's order of custody with the grandmother reversed on the great weight of the evidence.[21]

Medea's Selfish Goal

In a decision as eloquent as trial judge Richard Yale Feder's in *Schutz v. Schutz,*[22] New York family court judge David F. Jung got it all right in *Karen B. v. Clyde M.*[23] This case involved spurious allegations of child sexual abuse and the trial judge's extensive efforts to find the facts.

In September of 1990, a four-year-old girl allegedly told her mother that she had been sexually abused by her father. Mom told a friend of hers, and this friend interviewed the girl at home.[24] When the friend called the Department of Social Services "hotline," a social worker investigated the complaint. In now her third interview with a concerned adult, the little girl recounted a story about her father and sexual abuse.[25] Following her story, the DSS social worker referred the girl to a local validator.[26] This particular validator was a master's level psychologist, under contract with the DSS. According to her testimony, she "interviewed approximately two hundred children concerning allegations of sexual abuse and has validated seventy-five percent of them."[27]

In a statement that was unusual for a validator,[28] she testified that the mother seemed to be repeating the story by rote. When asked what she meant by the term "rote," she testified that the mother had to start from the beginning and repeat the whole story each time. She could not respond to questions without starting from the beginning and completing the entire story.[29] In her interviews with the child, the validator used some of the most ill-advised and suggestible techniques imaginable.[30] Still, she noted that no "sex-play" occurred during her interviews and the child repeatedly told her she was "making believe."[31] She went on to testify that, in her judgment, the mother had a "vested interest in the outcome of the case."[32] Judge Jung then took the testimony of the child's pediatrician, who had examined *and* interviewed the child.[33] The pediatrician testified that the mother brought the young girl to him for an examination, and that his physical examination of the child revealed nothing. He specifically testified that the child denied to him that anything had happened.[34] After collating all of this data, the Department of Social Services concluded that the mother's allegation was unfounded.[35]

Not to be denied, the mother waited five months, and started the whole process up again.[36] This time, another worker was assigned; this person also interviewed the little girl. By the time she was interviewed by the *sixth* concerned adult, she had developed a story about an "electric dinkie."[37] Mom found a polygra- pher, who was the next person in line to interact with her and her daughter. Despite the fact that the polyg- rapher admitted he had never attempted a validation process with a young child, the "electric dinkie" story seemed to have an impact on him, as he testified that he thought the girl had been abused.[38] On cross-examination, the polygrapher stated that he was familiar with the *Sexual Allegations in Divorce (SAID) Syndrome* which describes increased numbers of false allegations when the factors he admitted to are present.[39]

The trial judge took the testimony of the girl's preschool teacher, a probation officer, and a certified social worker in the mental health clinic, none of whom observed any fear of the father by the child.[40] Following a review of a lengthy law guardian report, the trial judge made the following findings:

1. The trained validator conducted numerous interviews with the child and "concluded no abuse had taken place";[41]
2. When reading the polygrapher's report, the validator testified that the statements the child reportedly made to the polygrapher were "an almost exact verbatim statement to her" from the mother;[42]
3. The polygrapher who got the "electric dinkie" story "only had one interview with the child which occurred many months after the alleged incident or incidents;"[43]
4. "When asked to provide details, the youngster is either unable to do so or creates a scenario for the purposes of the interview. However, in subsequent interviews a different scenario may be presented."[44]
5. The child's "descriptions of sexual activity between herself and her father vary considerably depending upon whether she was talking to" this adult interviewer or that adult interviewer.[45]
6. "There was no credible testimony to suggest that the child was afraid of her father and in fact the testimony suggested a relaxed and warm relationship."[46]
7. "There was no testimony to suggest that [the girl] had any awareness of her sexuality or had become involved in any sexual activity."[47]
8. "None of the adults to whom [the girl] made disclosures could conclude with *any* certainty that [she] was describing one or more than one experience."[48]
9. "[The] Court had the unique opportunity of observing the demeanor of all witnesses who appeared before it and concludes that the testimony of the father is more credible than that of the mother."[49]
10. The court agreed with the validator and the child's law guardian "that it is likely that the mother programmed her daughter to accuse the

> father of sexually abusing the child so that she could obtain sole custody and control or even preclude any contact that the father might have with his daughter."[50]

Rather eloquently, Judge Jung concluded: "In the opinion of this Court, any parent that would denigrate the other by casting the false aspersion of child sex abuse and involving the child as an instrument to achieve his or her selfish purpose is not fit to continue in the role of a parent. . . . Like Medea, she is ready to sacrifice her child to accomplish her selfish goal."[51]

"Toto" Annihilation

In *Toto v. Toto,*[52] the parties really taxed the Ohio Court of Appeals' demonstrated orientation to boilerplate.[53] As the court noted, post decree litigation began in 1984 with the first of 132 motions. Dad filed 75 motions and Mom filed 57 motions. Additional motions were filed by three different guardians ad litem.[54] It seems the annihilation process began because, although the parties entered an agreement whereby they were to consult on all major decisions affecting the children's welfare, and any disputes were to be resolved by mediation, the father was granted veto power over any mediation decisions. In effect, he was given authority to impose his own solutions at will.[55]

Over the course of six years of litigation, the trial court appointed three guardian ad litems, two at the father's request and one on its own motion. Each guardian ad litem stressed the importance of re-establishing visitation between the dad and his children, but found that the visitation and companionship problems were the fault of the father, not the mother or children. During an interview with the children, the trial court learned that they loved their father, but could not cope with his erratic behavior toward them.

According to the GALs and the trial court, the dad had repeatedly terminated visitation, at will. The court concluded that there was no evidence in the record to support the father's claim that the mother was brainwashing the children. The appellate record indicates that seven psychologists evaluated the parties and their children. They determined that the father loved his children and they loved their father, but that the protracted litigation had a detrimental effect on everyone. The psychologists found that the children suffered from PAS, which was further compounded by the parties' inability to communicate.

Ultimately, the trial court entered orders, assessing well over $100,000 in attorney fees and restricting visitation. Everyone appealed. The county Court of Appeals rubber-stamped the trial court with page after page of boilerplate and concluded: "All of the psychologists and guardians ad litem gave credible testimony which stressed the need for visitation. However, as a result of Appellant's "erratic" behavior in exercising his visitation, and the resulting psychological problems of the children, it is both just and reasonable for the trial court to limit visitation to a specific schedule."[56]

The Tree Climbers

In *Wiederholt v. Fischer,*[51] the father petitioned a Wisconsin trial court for a change in custody of his children. He alleged that their mother was fomenting PAS. The trial court noted that when the dad attempted visitation with his three girls, they "would run away and climb trees when he came to pick them up."[58] Numerous motions were filed dealing with "accusations involving what the parties told the children, whether photographs could be taken of the children, problems with the pick-up and drop-off time and locations, problems with telephone contact, and issues over the children's clothes and toys."[59] Finally, the father petitioned the trial court to change custody.

At a three-day hearing, the trial court took the testimony of a local psychologist. The court noted that he was well respected and that the court respected his opinions.[60] He testified that: "Parental Alienation Syndrome' can be one of four types: (1) one parent actively brainwashing or manipulating the feelings of a child concerning the other parent, (2) one parent unconsciously rewarding a child for turning his or her affections away from the other parent, (3) a child alienating himself or herself on the basis of fear of loss of love, and (4) a child alienating himself or herself because of certain situational factors."[61] The psychologist then testified that the children were suffering from the severe form of the syndrome and that it was "one of the worst cases I've ever seen in doing this kind of work."[62] His testimony indicated that the proposed cure was controversial, and that research data to support the success of transferring the children to the "hated" parent was limited. The court concluded that the evidence was not strong enough that the alienation would be cured by placing the children with their father.[63] The court left things as they were, out on a limb.

The appellate court opined *inter alia:* "Based on the weighing of all the evidence, the court found that the cure proposed by [the father] was not better than the current primary placement with [the mother]. The court found that the psychological impact on the children is risky and uncertain. These findings are not clearly erroneous."[64]

Parental Alienation As A Defense: Bite Marks In Nevada

Three young children were placed with the dad following a divorce. According to the record, the parties fought over custody of the kids for years.[65] When the mom petitioned to change custody, she asked for a *court-appointed special advocate* (CASA) to investigate allegations of physical abuse.

In a hearing during which three experts testified, the

CASA reported that the children claimed they were being left unsupervised with their dad's daughter from a previous marriage. This was determined to be a clear violation of a prior court order. Each child also claimed that this daughter was physically abusive on several occasions. The father brought an expert who testified that the children suffered from PAS, developed by the children's mother. The dad further claimed that because of this PAS, the CASA "was duped by the three children, and thus, the CASA's testimony was skewed" in favor of the mother.[66]

The mother enlisted the aid of an expert, who agreed with the CASA. Both the mother's expert and the CASA recommended a change of custody to her. According to the appellate court, the scales were tipped "by the severe bite mark inflicted on the litigants' son" while in the dad's care.[67]

The Doctors' Case

In *In re Marriage of Rosenfeld,*[6] an Iowa trial and appellate court took exactly the action the Wisconsin trial court refused in *Wiederholt v. Fischer*[69] two years before. In *Rosenfeld*, the couple, both doctors of osteopathy, were divorced in December, 1990. Physical care of the children was awarded to the father. As a part of its findings in making the physical care determination, the trial court noted that the mother suffered migraine headaches and was addicted to her medication, and had attempted to alienate the children from her ex-husband. Two years later, the mother moved the court to change custody. During an eighteen-day hearing, she brought an expert who testified extensively about PAS. The trial court found that the father had attempted to alienate the children from his ex-wife and that her "drug addiction" was traced to a food allergy; that she had overcome this and succeeded in establishing a successful medical practice. The trial court granted the mother physical care. The father appealed. According to the trial court:

> Two material changes in circumstances have occurred since the decree. At that time, [the mother] had a warm and loving reciprocated relationship with her children then ages nine and three. The relationship now cannot be expressed as mutual. [She] continues trying to be their mother and is devoted to them, but the conduct of the children toward their mother is appalling. . . . These children have been turned against [their mother] and it has happened by conduct from [the father's} household. The only way this most unfortunate situation can be corrected is to place the children in the primary physical care of [the mother].[70]

The trial court found that this was a case of PAS involving both children, and that it was severe.[71] By way of illustration, the court cited to two incidents, both of which involved the father's new wife.

> The first involved the prior fourth of July weekend. [Mother] asked to trade holidays because she had to work a sixty-hour weekend. [Father] refused to change the holiday schedule and, although he knew [Mother] was working, he got [the four-year-old son] up to get ready for his mother's visitation and let him sit for two hours with his bag by the window watching for his mother who did not come. When she did not come on Monday, the same scene was reenacted. . . . The second was an attempt to charge [Mother] or someone who cared for [the four-year-old son] under [her] direction with sexually molesting or abusing him. [The new wife] took [the four-year-old] to doctors four times on two separate occasions with her complaints. All medical opinions refuted [her] claims but [she] told others about them, including their Rabbi, and she made her complaints in front of [the four-year-old son].[72]

In reaching its conclusions, the trial court noted considerable animosity between the father's new wife, and his ex-wife. The appellate panel specifically found, as did the trial court, that his new wife "contributed substantially to the discord."[73]

On appeal, the father attacked the validity of PAS and the testimony of his ex-wife's expert. The appellate panel side stepped the issue, and re-focused on the parties' behavior:

> We do not pass upon the issue of whether parental alienation syndrome is a reliable theory. Rather, we look at the evidence induced and draw our own conclusion. . . . Our major concern focuses on [the new wife]. . . . She has been manipulative, forbidding [the four-year-old son] to talk to his mother at school and church functions. The trial court in its findings noted the fact [she] had alienated her three children from a prior marriage from their father after she divorced him.[74]

Angry and Violent PAS in Indiana

In 1993, an Indiana woman filed a divorce petition against her husband and asked for sole custody of their two minor children. Before the trial court heard the case, she filed objections to the psychologist her husband wanted to use "and instead requested that the parties utilize the services of a specific person."[75] When the trial court took testimony the following year, witnesses testified that the mother was hostile and violent and had, on at least one occasion, kicked her minor son.[76] When the clinical psychologist she had insisted upon took the stand, he testified that:

> it would be in the best interests of the children for the trial court to award sole custody of the children to [father] because [mother] was engaging in a pattern of behavior known as parental alienation syndrome, a series of actions and 'maneuvers' by which she would attempt to exclude [father] and to denigrate him in the eyes of the children. [The psychologist] also stated that [she] displayed excessive anger and hostility toward [father].[77]

The mother responded by asserting that she had to put the ten-year-old boy on the stand to rebut the expert and the witnesses who testified they saw her kick the boy. The

trial court refused to subject the child to the process and the Court of Appeals affirmed.[78]

Insults and Obsessions in Florida

After a Florida couple was divorced, the husband's visitation with the children became vexatious.[79] When he petitioned to change custody due to PAS, the trial court undertook a six-day trial. The trial court first noted that there were "allegations that the parents insulted each other and displayed ill-will toward each other in front of the children"[80]

In a basic litigator's sense of what PAS is, the appellate court noted the following:

> During the six-day trial, the court heard testimony from lay and expert witnesses, including a psychiatrist and two psychologists, examined exhibits, and observed the behavior of the parties. . . . There was testimony that the former wife would create a scene when the former husband tried to exercise visitation, and that when the children were with the former husband she would telephone them constantly and cry. . . . The former wife . . . intentionally or inadvertently communicated to the children her intense dislike of the former husband to the extent that it affected their emotional well-being and their relationship with the former husband. There was also evidence that the former wife was obsessed with making shared parenting as difficult as possible for the former husband, that she made questionable parenting decisions, and that her behavior was damaging to the children.[81]

As the *Rosenfeld*[82] court did in Iowa, the Florida trial and appellate courts dealt with a serious PAS case by changing custody to the alienated parent.

It is important to note that the PAS is not gender specific. In another Florida PAS case of insults and obsessions the same year, the court in *Williams v. Williams*[83] took custody from an alienating father and vested it in the alienated mother.

The "Big Time Trouble" Case

In *Hanson v. Spolnik*[84] a special judge found a mother in contempt of a restraining order, awarded sole custody to the father, restricted the mother's visitation rights, and awarded attorney fees to the father.[85]

In this matter, the mother and father's marriage was dissolved in 1995. Pursuant to the parties' dissolution agreement, the trial court awarded them joint legal and physical custody of their four-year-old daughter. Under the terms of the agreement, the father retained custody of the child for three days per week and the mother had custody for four days per week. In addition, all major decisions regarding the child's care - including education, extracurricular activities and medical treatment - were to be made by both parents.

Later that year the mother started taking the child to a child psychologist because she believed the child "was anxious and confused about the divorce and the visitation schedule."[86] During the sessions with the psychologist the mother repeatedly indicated that she desired a modification in the child custody arrangement, stating that she suspected the father of sexually abusing the child. The mother went on to offer that the father "had a long history of 'psych' treatment."[87] After interviewing the little girl, the psychologist determined that she was not unduly upset by the visitation schedule and that a modification in the custody arrangement was not necessary at that time.

The trial court noted that tensions between the parties continued to grow. The court found that in the presence of the four-year-old girl, the mother accused the father of disrupting her class and making her cry. The mother then told him to go to hell, indicated that he was going to get AIDS, and informed the child that she would have to be decontaminated after her father placed his hat on her head. The court went on to note that according to the father, the child also heard her mother repeatedly call him "Satan" and accuse him of being a homosexual.[88]

Soon thereafter, the father filed a petition for a mutual restraining order, claiming that his ex-wife had made numerous harassing telephone calls to him with regard to the modification proceedings and requesting that the parties' communication with each other be restricted to visitation issues. The trial court granted the petition for the restraining order the next day.

In early 1996, the father hired a private investigator to accompany him as a witness when he exchanged the child at the mother's residence because he believed the mother "would attempt to fabricate allegations against him."[89] After the father and the investigator arrived to pick-up the little girl, the mother followed them to a local truck stop where the investigator had left his car. The mother then proceeded to photograph the investigator and obtain his license plate number. Later that evening, said the court, she left the following message on the father's answering machine: "You can play this for the Judge because I would gladly be in contempt with you. You know what, buddy? You've got big-time problems. You are traumatizing that little girl, and you're going to court this week, and you'll see what's going to happen to you. And I hope you play this for the father's attorney and all your other goons, because *you are in bigtime trouble."*[90]

The court found the mother in contempt and ordered her to complete eight hours of community service, apologize to her ex-husband and pay his attorney's fees.

Three months later, the father filed an emergency petition for modification of custody and supervised visitation. At the hearing, the father presented the testimony of a child psychologist,[91] who, after reviewing records and reports from Child Protective Services, the psychologist, and several other counselors, indicated that the mother had not taken appropriate action in resolving a sexual incident between the child and the mother's older daughter from a previous relation- ship.[92] He also indicated that the mother's comments and allegations

against the father were directed at alienating his four-year-old daughter from the father and that the mother's behavior endangered the child's emotional and psychological development.

Following the hearing, the trial court entered findings of fact and conclusions of law, determining that there had been a substantial change in circumstances that justified a modification in custody. Specifically, the court determined that the mother had engaged in a concerted effort to destroy the child's relationship with the father since the divorce. As a result, the court awarded sole physical and legal custody of the child to the father. In addition, the court denied the mother visitation for a period of 60 days, followed by two hours of supervised visitation with the child every two weeks for three months. Further, the mother was ordered to pay the father's attorney's fees.[93] The mother appealed.

The appellate court reasoned that the evidence presented at the modification hearing revealed that immediately after the father and the mother were awarded joint custody of the child, numerous disputes arose. Specifically, the appellate court noted that the mother made repeated allegations of sexual abuse against the father, none of which were substantiated. In addition, the evidence, as set forth in the trial court's findings of fact, indicated that the mother made numerous disparaging comments about, and allegations against, the father in front of the child and others, including the comment that the child would have to be decontaminated after wearing the dad's hat and that the father had hired a hit man. The appellate panel noted that despite the fact that the trial court attempted to minimize the hostility by restricting the parties' interaction and communication to visitation issues, the animosity escalated to the point that a private investigator and the police were involved in simple exchanges.

The appellate panel ruled that: "Based on this evidence, the trial court could have reasonably concluded that [the child's] mental and physical welfare was in jeopardy and, as a result, a modification in the joint custody arrangement was necessary."[94]

New York Gets It Right - Again

In *J.F. v. L.F.*[95] Judge Sandra B. Edlitz of the family court in Westchester County demonstrates that family court judge David F. Jung's decision in *Karen B. v. Clyde* M.,[96] was not a fluke. They *can* get it right in New York.

In this case, the mom and dad were divorced in 1993, with sole custody of the parties' two children given to the mom. A consent order was entered the following year specifying joint custody, with the mother retaining primary custody. A visitation schedule was included in the 1995 order. Three years later, by order to show cause against the children's mother, the father applied for an order transferring custody to him. Annexed to the order to show cause was an affidavit of the psychiatrist previously involved in the case. In his affidavit, he recommended a change of custody to the father. Also included in the request for a change of custody was an affidavit of the father, along with an extensive exhibit. This affidavit and exhibit provided a summary of the mother's interference with visitation and examples of ways in which the mother allegedly alienated the children from their father during the years 1996, 1997 and 1998.[97]

The court conducted a continued hearing over the course of 15 days. The trial judge conducted in camera interviews of both children, and withheld her decision until school was out for the summer.

During the fifteen-day hearing, the mother bitterly contested the concept of PAS. The court's position was that: "Generally the New York Courts, in the context of a custody/visitation case, rather than discussing the acceptability of PAS as a theory, have discussed the issue in terms of whether the child has been programmed to disfavor the noncustodial parent, thus warranting a change in custody."[98]

The trial judge noted that two expert witnesses testified that the PAS existed in this case. The psychologist who evaluated the children and provided a written report to the court found that PAS was "clear" and "definite" with both children. She quoted a New York criminal case and wrote that: "Parental Alienation
Syndrome occurs when 'one parent uses his/her influence with his/her child to undermine the relationship between the child and the other parent. . . . It typically arises when the parents are engaged in divorce proceedings or a custody dispute."[99] Judge Edlitz explained that she had an opportunity to observe the children closely during the extensive in camera interviews. She was so taken by the children's behavior, she reported her in camera sessions extensively:

> Yet, particularly when discussing their father and his family, they present themselves at times in a surreal way with a pseudo-maturity which is unnatural and, even, strange. They seem like 'little adults.' This Court finds that they live a somewhat sheltered, cloistered existence with their mother, emotionally and socially. They do not have friends to their home on a regular basis, and they do not go to other children's homes with any frequency. They do not have friends in their mother's neighborhood. The loving way in which the children perceive their mother, and the way in which they uncritically describe her as being perfect, stands in stark contrast to their descriptions of their father. Their opinions about their father are unrealistic, misshapen and cruel. They speak about and to him in a way which seems, at times, to be malicious in its quality. Nothing in the father's behavior warranted that treatment. The psychiatrists testified that the children are aligned in an unhealthy manner with the mother and her family. This is evidenced not only in the testimony of the father but also in the in camera interview. They repeatedly refer to the mother's family as 'my family,' but they do not refer to the father or his family that way. Both children used identical language in dismissing the happy times they spent with their father as

> evidenced in the videotape and picture album as 'Kodak moments.' They deny anything positive in their relationship with their father to an unnatural extreme.[100]

The judge went on to note that the predictions of the mental health evaluators "have unfortunately come true. All three of the experts agree that the children have been alienated from their father by their mother."[101] She summarized that a Board-certified psychiatrist served as the independent court psychiatrist in the case in 1994, again in 1995, and for the current proceeding. In 1994 and 1995 he recommended a change in custody to the father.[102] She continued that a clinical psychologist concluded in his reports that the PAS was "clear" and "definite" with both children.[103] She went on to summarize the work of the psychiatrist whose affidavit was annexed to the petition to change custody to the father.[104] The court offered that he had a subspecialty in child and adolescent psychiatry, and he submitted a report which in part offered:

> As predicted in my lengthy testimony in 1994, the alienation from the father has become more severe, probably the most severe case of alienation I have personally witnessed in my 33 years of doing child psychiatry. All of the classic signs of Alienation Syndrome are there and have been in place at least since 1991. If the children are allowed to remain with their mother, their paranoia will harden into pathological personality traits as so clearly seen in their mother and her extended family. If the children are placed in their father's custody at this time, emotional upset and some possible turmoil in the short term may occur. This will require competent professional intervention.[105]

The trial court found that in this case, the subject children were alienated from their father by their mother. The court opined that the children's "negative view of their father is out of all proportion to reality. . . . The children do not want to visit with their father. With the passage of time, these children have become 'staunch corroborators' of their mother's ill opinion of the father. They call their father names, they make fun of his personal appearance, they treat him as though he were incompetent, and they speak of and treat his wife similarly."[106]

Judge Edlitz went on to point out that "after a review of all of the evidence, and being in the unique position to observe the demeanor and credibility of the witnesses" she could not countenance the mother's behavior or influence over the children. She reasoned that, "The father has continued to keep fighting to have access to his children over the years, despite the clear attempts on the part of the mother to undermine his relationship with them."[107]

Judge Edlitz's conclusion was that:

> The animosity that the mother, the physical "custodial" parent has long harbored for the father has not lessened with time. As predicted by the mental health professionals at the inception of these matters, the mother has succeeded in causing parental alienation of the children from their father, such that they wish no longer to have frequent and regular visitation or anything much else to do with him. Ultimately, with much deliberation, this Court has determined that the long-term emotional best interests of these children mandate a change of custody to the father.[108]

From the Sublime in New York to the Ridiculous in Ohio

Just a few months after Judge Edlitz' detailed work in *In the Matter ofJ.F. v. L.F*for the Westchester County family court, the folks in Dayton, Ohio demonstrated that they may never get it right. *Pathan v. Pathan*[109] illustrates classic PAS behaviors by an American woman against her Pakistani husband and child. The court-appointed psychologist committed numerous egregious errors, in this author's opinion, and the trial judge did not do a good job. True to form, the appellate court lathered on the boilerplate, and did little else.

In *this case,* Dr. Pathan, a native of Pakistan, and his wife were married in Dayton, Ohio on November 2, 1985. During the marriage, the parties resided in California. One child, "S," was born to the parties in 1989. The couple obtained dissolution of their marriage in Los Angeles, California in 1993. During the separation, the wife returned to Dayton, Ohio, with "S," where she was employed as a music teacher.[110]

In 1993, Dr. Pathan entered into an arranged marriage to his first cousin, a native of Pakistan. She came to the United States in 1994, after the marriage. Problems began when, in mid-1994, the ex-wife learned of Dr. Pathan's marriage to his cousin. The problems were serious enough to necessitate court intervention for compliance with the visitation schedule because the ex-wife began interfering in Dr. Pathan's phone conversations with his young daughter.

At the hearings on Dr. Pathan's attempts to change custody, the ex-wife tried to show that the child was frightened by her father. She produced a videotape taken at her home showing the little girl lying on the ground in a state of distress, pleading not to attend visitation with Dr. Pathan. However, another video was admitted into evidence. This depicted the visitation exchange just hours later, showing the child hugging Dr. Pathan and happily getting into his car for the visit.[111]

According to the appellate court, there was evidence in the record indicating that the mother actively tried to cause the little girl to think less of her father. She told the child that Dr. Pathan was not present at her birth and also told her that Dr. Pathan had had a preference for a son.[112]

The record also reveals that knowing that Dr. Pathan was a devout Muslim; the mother enrolled the girl in a Christian academy. At the school, the mother completed the information form and placed a large "N/A" in the

location for information about the child's father. In the blank that requested information as to with whom the child resided, she placed the words "Mother only" and underlined "only" three times. She also failed to provide any other information about Dr. Pathan on the form. The magistrate and the trial court also noted that the mother subjected the child to unnecessary drug testing at a children's medical center both before and after a weekend visit with Dr. Pathan.[113]

The magistrate and the trial court found that the mother's sister showed the child a movie called "Not Without My Daughter" (1991). According to the appellate court:

> The movie is a true story of an American woman married to a physician who was Iranian, but who practiced in Michigan. The characters in the story have one child, a young daughter. The physician asks the wife to accompany him to Iran for a family vacation, and while there, it becomes clear to the wife that he intends to remain there. In the film, the father beats and imprisons the mother. The film graphically depicts the cultural differences between Iran and the United States, particularly in the differences in the treatment of women and children. The general feeling from the movie is hatred and great trepidation toward the culture and the physician.[114]

The appellate court went on to opine: "The story is remarkably similar to [the child's] situation with her physician father from a similar national origin, and a mother and child with whom [the child] could identify."[115]

The court-appointed psychologist had demonstrated significant bias in her work with Dr. Pathan. First, she used standardized testing measures wholly inappropriate for Pakistanis.[116] She merely stated that she "took his ethnicity into account."[117] Next, she determined that Dr. Pathan was depressed and had a "paranoid predisposition" and based these diagnoses on Dr. Pathan's beliefs that his ex-wife had interfered with his telephone contact with his daughter, was on a "rage of vindictiveness" to block visitation, and had enrolled the child in a Christian school to spite him.[118] Finally, she required Dr. Pathan to participate in an unethical, dual relationship. With the trial court's blessing, the psychologist conducted a course of "family counseling sessions." These were serious breaches of professional ethics in this author's opinion.[119]

Dr. Pathan asked for an independent evaluation and named a local psychologist. On the suggestion of his ex-wife's counsel, Dr. Richard Gardner was appointed for the limited purpose of determining if the child suffered from PAS. Although he did not render an opinion as to custody, Dr. Gardner found that the ex-wife had induced a moderate amount of alienation in the parties' daughter, based upon her course of conduct in discouraging all forms of contact with Dr. Pathan. Gardner cited her exclusion of Dr. Pathan from the child's school enrollment forms and attempts to gather negative information about Dr. Pathan. In addition, Dr. Gardner stated in his report that he believed that the mother was a "child abuser."

The hearing officer noted that evidence existed that the mother had participated in psychologically abusing the little girl. This magistrate also noted that she had engaged in conduct involving psychological abuse and active interference with visitation and telephone contact. Nevertheless, the magistrate felt that it would be too traumatic to relocate the child.

Everyone objected and the case went to the trial court. The trial judge opined that the mother had been the primary offender in continuously and willfully denying and impeding Dr. Pathan's visitation with the child since Dr. Pathan's remarriage. The trial court found that the mother had unreasonably limited telephone visitation and had generally discouraged Dr. Pathan's relationship with his daughter. The trial court noted that even the girl's first-grade teacher was aware that the mother did not want the child visiting with Dr. Pathan. According to the reviewing court, the record is abundant with evidence of Merry discouraging and interfering with Dr. Pathan's visitation, both in person and by telephone. As the trial court noted, the problems ranged from intentionally leaving home when Dr. Pathan called during scheduled hours to not placing the little girl on the telephone and offering him a weak excuse for her not speaking, to the ex-wife hanging up on Dr. Pathan when he did call.

With five full years of this history, the Ohio court merely opined that if the mother did not mend her ways, "it might, in the future, be in [the child's] best interest for the court to grant the father's request for a change in custody."[120] The reviewing court provided six pages of boilerplate and little else.

Ample Evidence of PAS in Michigan

In the Matter of Spencley v. Spencley[121] found the Michigan appeals court dealing with the complaints of two parents against the state for its abuse and neglect determination. The family came to the attention of the court when the wife made several unsubstantiated allegations of child sexual abuse against the husband. The Michigan version of the Department of Social Services[122] came to the family court during the divorce proceedings and asserted that the three children were being emotionally abused by the parents. The court took evidence and found that the mother's latest complaint of child sexual abuse was unfounded but that the manner in which the couple handled their divorce and the parenting of the children amounted to abuse.

One of the psychologists who had worked with the family members testified at trial that the parents' behavior amounted to PAS. This psychologist testified that evidence showed that the mother was, during the course of the divorce, attempting to alienate the children from their father. On appeal, the mother challenged the concept of PAS, but the appellate court ruled that ample evidence of emotional injury to the children existed, and the

psychologist merely used the concept of PAS as an explanatory tool: "The family court's factual findings are amply supported by the evidence presented at trial and, indeed, there was overwhelming evidence that the children were suffering from 'severe emotional problems.'"[123]

Debbie Does It in Arkansas

In *Chambers v. Chambers,*[1,24] the chancery court in Bradley County, Arkansas was faced with a completely successful campaign of *parental alienation.* Indeed, the record reveals that the mother's campaign spanned many years and totally destroyed the father's relationship with his children.

The parties were married in 1984. They had five children. During their divorce process in 1994, the father's difficulties with visitation caused the chancery court to appoint a psychiatrist to provide family therapy. The psychiatrist eventually concluded that the relationship between the appellant and his children had deteriorated to such an extent that visitation with the minor children posed the risk of emotional harm.[125] The father was so incensed at the psychiatrist's efforts, he filed suit against him for malpractice, and he withdrew.

The chancery court appointed another doctor in 1995, but it took until early 1996 to get the family members to participate in treatment. Two years after the process of court-ordered family treatment began, the doctor issued a report which *inter alia* noted that the process of alienation had been so successful, he was "concerned about the children's emotional state" and "recommending the court not force the minor children to visit" their father.[126] The chancery judge then denied the father's request for immediate required visitation and recused himself.[127]

A new chancery judge was assigned, and the father finally got a hearing *two years later.*[128] At the hearing, he relied on the expertise of an adolescent and child psychiatrist, in arguing that a material change of circumstances had occurred. Based upon his review of the medical records, court filings, and deposition transcripts and videotapes in this case, this psychiatrist testified that PAS was so severe that the children were "hopelessly estranged from him."[129] Indeed, he described the mother's efforts at PAS as so successful that " alienation was so complete that therapy would have no chance, under those circumstances."

In many ways, this psychiatrist agreed with the court-appointed therapist that the prospects for the mother's help in visitation were "hopeless." The appellate court put a good deal of stock in these opinions and quoted his testimony extensively:

> I don't think therapy would do anything, other than further prolong the agony. The court would have to be willing to order visitation with the expressed intent that if visitation is interfered with in any way it would have to consider seriously reversing the custody of [the youngest child] which would no doubt cause a lot of wailing and gnashing of teeth. I'm just suggesting that if visitation is awarded, I would suggest as an expert, that the court would have to anticipate that that is going to be interfered with. This child is going to protest. There will be no support of it. It will put her in a bind.[130]

In the face of the severe (and successful) *parental alienation*, the psychiatrist went on to testify: "I'm recommending visitation with the understanding that the court should be able to enforce it if there is any disruption or anyone trying to disrupt with that visitation. The child is going to refuse to go for visitation. That would be my guess. I feel that the court should force the visitation. It is kinda like after children get their first shot they don't want to go get a second one but you have to force them."[131]

Relying on the total success of her campaign of *parental alienation*, the mother moved for a directed verdict - to deny her ex-husband's motion for forced reintegration with his children.

The chancery judge explained *inter alia*: "I don't know y'all. . . . All . . . I know . . . there's been a war between the two of you for years. . . . But we've got to deal with what the situation is today. [The psychiatrist] . . . I believe . . . quoting [the court-appointed therapist] . . . said 'The relationship is over. It's gone, and I agree.' So that's the situation I'm dealing with today."[132]

Whereupon, the judge granted the mother's request for a directed verdict and ordered that the father had to keep sending her money.

Fortunately, the Arkansas appellate court did not follow the state of Ohio's habit of pasting in page after page of boilerplate. The appellate panel merely reasoned that because the mother had been at it for so long, "what the record abundantly shows [is what] has become an extremely hostile and unfortunate family situation resulting in a relationship that even [the psychiatrist] deemed 'hopeless." Therefore, reasoned the appellate panel, the father failed to show the statutory requisite "change of circumstances" warranting the court's intervention.[133]

Indiana Gets It Wrong - Then Right - Then Wrong

Just as chancery Judges Jerry Mazzanti and Robert Garrett of Arkansas participated in the *Chambers v. Chambers*[134] mess for five years, Lake County, Indiana SpecialJudge Mary Beth Bonaventura participated in a five-year battle for the daughter involved in *Kirk v. Kirk*. Unlike Arkansas or Ohio, the Court of Appeals in Indiana put a stop to it.[135] Unfortunately, it appears, behind the scenes machinations found the Indiana Supreme Court intervening with what seems a disregard for the record.[136]

The child was six years old when the mother began making spurious child sexual abuse claims. The little girl was twelve years old when Special Judge Bona- ventura made a final decision.[137] During the intervening six years, the record reflects that the couple's marriage was dissolved in 1992. The mother was awarded legal and

physical custody of their daughter, who was born in 1989. At first, the father exercised unsupervised visitation with the child every other weekend. Until mid-1995, he continued visitation in this fashion. In September 1995, the mother accused him of sexually molesting the child and refused to allow further visitation.[138]

Over the next five years, the trial court appointed expert after expert but consistently failed to make a final decision. The court appointed a total of seven experts and two GALs, received two more petitions from the father, and held the mother in contempt three times (with little or no real penalties). All experts and GALs who filed reports with the court expressed concern over the mother's and the child's mental health and recommended that the court consider a change in custody because the mother would not cooperate with attempts at reunification. It is important to note that none of the experts felt that there was *any* credible evidence that the alleged molestation had actually taken place. No criminal charges were ever filed. Finally, in 2001, the court ruled on all issues, denying the father's petition for change of custody and ordering more family counseling. The father appealed.[139]

The appellate panel noted that in November 1996, a clinical psychologist recommended that the court order professionally directed reunification efforts and that if such reunification could not reasonably occur within four months, "an alternate residential setting *that would promote* [the child's] *health*... be considered."[140] This recommendation was seconded one month later in a report by the GAL, who stated that reunification efforts utilizing professional guidance by a qualified therapist should commence immediately and that if reunification "cannot reasonably occur within four months, an alternate residential setting for [the child] shall be determined by the court *to promote* [the child's] health."[141] Four months later, the GAL reported that there had been no progress since her earlier report.

She opined that the child's belief in the allegations of molestation was directly related and substantially caused by the pathology between the mother and the child. In July 1997, the GAL filed an additional report with the court. She noted the emotional distancing between the child and the father, stating, "Every indication suggests that the mother has continuously and persuasively supported and orchestrated this distancing. . . . The mother has systematically refused to cooperate with a *therapeutic reuniting of child with* father."[142] She again recommended that the court oversee the therapeutic reunification of the father and the child.

Six months later, a clinical psychologist reported to the court that reunification

> between [the father] and [the child] will be extremely difficult due to the *dysfunctional, highly symbiotic, codependency which exists between* [the mother and the child] . . . [Mother's] noninclusion of [father] and total desire for her daughter to deny and disown her father's existence and presence in her life is extremely emotionally unhealthy. It is my opinion that this psychopathology relates to [mother's] dysfunctional nature with respect to wanting to maintain almost total control of her daughter's life.[143]

The psychologist recommended therapeutic reunification efforts and "that serious consideration be given to removing [the child] to a neutral residential placement which would allow her the opportunity to develop her sense of identity, autonomy, and to effect a more positive relationship with her father."[144]

In April 1998, he diagnosed the child with PAS and again recommended "that the court consider removing [the child] to a more neutral setting so that she can have the opportunity to form her own, independent views of her father without any potential interference or alienation."[145]

In July 1998, another clinical psychologist submitted his report to the court. He noted that "[d]ata generated in this evaluation is strikingly similar to the previous professional reports" and that: "[t]he recommendations offered by [an earlier psychologist] in her report are extremely accurate, concise and should be given the strongest consideration." As to the mother, he wrote: "she should not be allowed to continue in the role of custodial parent."[146] Concerning the mother's participation in any reunification plan, he went on to write about mother's refusal to cooperate in reunification sessions and advised that "[i]f this lack of cooperation is substantiated, it. . . indicates a strong need for judicial intervention as soon as possible to resolve this impasse. I believe that continued obstruction of the healing process by any of the parties involved is *detrimental to the well-being of the minor child in this case,* and must be dealt with directly."[147]

In March 1998, an ACSW/LCSW, appointed by the court to begin therapeutic reunification sessions, reported the mother's total lack of cooperation. She summarized the previous professional evaluations and recommendations and noted her agreement with the expressed concerns, beginning with the original psychologist's fears first expressed in 1996 regarding the welfare of the child. She advised the court:

> The help that each of us; [psychologists, GAL] the court and I attempted to provide this little girl, [the child], has long been thwarted by [mother]. ... I respectfully submit to this court that too many years have passed without this child getting the limits and boundaries set to protect her. ... I believe the time has come to place [the child] in a residential environment away from her mother's full-time influence. [The child] *is a victim in a severe case of parental alienation syndrome*. . . . This is, indeed, a drastic level of intervention, however, this situation has become in need of drastic solutions or history will repeat itself.[148]

A few days following this report, one of the psychologists, appointed by the court as the therapy coordinator, advised the court of the mother's failure to cooperate, supported the recommendations, and stated: "[G]iven the history of this case and data available to me, I expect that [mother's] efforts to sabotage reunification

will exceed her cooperation, continuing a *destructive influence on* [the child's] *psychological wellbeing and development."*[149] In August 1998, the same person reported that he still was not receiving cooperation from the mother and "that an intervention by the court *will be necessary."*[150]

In August 1999, the social worker informed the court that "[w]e appear to be at a crisis point in efforts toward reunification" and that neither the child "[n]or her mother understand the seriousness of the process."[151] She recommended that the mother be found in contempt unless she took immediate steps to bring herself into compliance. A few weeks later the social worker made her final report to the court, recommending that the child be removed from the mother's home and stating that the mother "has proved once again that she will not change."[152] She also noted that there was evidence that the child had told many of her classmates and teachers that her father had sexually molested her.[153]

In October 1999, a different social worker wrote to the court, "I feel I underestimated the dangerousness and level of pathology of [mother]. I feel she is extremely destructive. She will go to great lengths to sabotage reunification efforts between [the child] and [father]."[154] She insisted that she had to withdraw from the case because, as she put it: "I cannot submit myself to false allegations of abuse and place my license and reputation on the line. I feel [mother] will continue to fabricate false accusations against anyone who is attempting to aide [*sic*] in the reunification process."[155]

One year later, yet another court-appointed custody evaluator recommended that legal custody of the child be given to the father. He also recommended that the father move to the child's neighborhood and that he assume physical custody. In the face of this overwhelming evidence, Special Judge Bonaventura denied the father's petition to modify custody.[156]

The Court of Appeals did what needed to be done. The panel concluded unanimously that: "The trial court abused its discretion in allowing Mother to retain legal and physical custody of the child despite *overwhelming evidence* that their relationship was harmful to the child's mental health."[157] Their reasoning was simple: "The voluminous evidence leads unerringly to but one conclusion: that there has been a substantial negative change in the child's mental health since the last custody determination and that a change of custody is not only in her best interests but also is *imperative and long overdue."*[158] The appellate court reversed, with an immediate remand for a change of custody. The truly unfortunate part of this case involves the action taken by the Indiana Supreme Court in June 2002.[159] In their review, the Court actually commended the judge. It seems the members of the Supreme Court had no appreciation whatsoever for her multiyear indecision. Unfortunately, the current members of the Indiana Supreme Court did not pay adequate attention to what the appellate panel clearly saw as the child's deepening pathology during the process of indecision. Indeed, if the judge had been a behavioral scientist, a board of review may very well have described the deepening pathology in the child as iatrogenic. Had the judge been a behavioral scientist, she very well may have been sued for incompetence and subjected to licensure revocation. It would be difficult to envision a judicial officer less able to grasp what the numerous competent behavioral sciences professionals were telling her.

While the problems for the family worsened as the judge watched the child's pathology deepen, the action of the Indiana Supreme Court in lowering the standard to that of Ohio and its rubber-stamp appellate processes will likely harm many more children and families. In their rush to overturn what the appellate panel worked so hard to explain, the current members of Indiana's Supreme Court underscored the importance of new research describing most judicial officers as inadequate regarding understanding science in general and the behavioral sciences in particular.[160] For in their brief published opinion, the current members of the Indiana Supreme Court completely neglected the spurious nature of the original claim of sexual abuse and the reports and testimony of seven competent behavioral sciences professionals, and characterized the five-year trauma as simply "a situation that centers on the personalities of two parents battling for control of a child."[161] What's more, the current members of Indiana's highest court described the child as now thoroughly believing the spurious claims of sexual assault[162] but were unable to connect the dots concerning the development of a false memory. And this despite seven experts doing everything they could to make that clear.

CONCLUSION

Certainly other PAS cases can be found in fifteen years of American jurisprudence. Several more boilerplate redundancies and interesting criminal cases exist. However, these cases provide a representative sample of the court's developing approach to PAS. One more bears mention. On January 17, 2002 after a hearing, the trial court in DuPage County, Illinois, ruled: "The Parental Alienation Syndrome is generally accepted in the mental health community and has met the requirements of the *Frye* test."[163]

ENDNOTES

1. *See e.g.:* Emery, Robert E. (1982). Interparental Conflict and the Children of Discord and Divorce, 92 *Psy-*

chological Bulletin. 310, Hetherington, E. Mavis et al. (1982). Effects of Divorce on Parents and Children, in *Non-Traditional Families 233* (Michael E. Lamb ed.); Hetherington, E. Mavis (1989). Coping with Family Transitions: Winners, Losers, and Survivors, 60 *Child Development.* 1; Johnston, Janet R. et al., (1989). Ongoing Postdivorce Conflict: Effects on Children of Joint Custody and Frequent Access, 59 *American Journal of Orthopsychiatry 576;* Walsh, P.E. & Stolberg, A.L. (1989). Parental and Environmental Determinants of Children's Behavioral, Affective and Cognitive Adjustment to Divorce, 12 *Journal of Divorce 265;* Tschann, Jeane M. et al. (1990). Conflict, Loss. Change and Parent-Child Relationships: Predicting Children's Adjustment During Divorce, 13 *Journal of Divorce 1;* Amato, Paul R. & Keith, Bruce (1991). Parental Divorce and the WellBeing of Children: A Meta-Analysis, 110 *Psychological Bulletin. 26;* Hodges , William F. et al. (1991). Infant and Toddlers and Postdivorce Parental Access: An Initial Exploration, 16 *Journal of Divorce & Remarriage 239;* Brown, Joseph H. et al. (1991). Family Functioning Factors Associated with the Adjustment of Children of Divorce, 17 *Journal of Divorce & Remarriage 81.*

2. Gardner, Richard A. (1985). Recent trends in divorce and custody litigation. 29 *The Academy Forum (2)3-7.* New York: The American Academy of Psychoanalysis. Gardner's original anecdotal rendering of this phenomena described purposely contrived false allegations of child sexual abuse in custody litigation. Since that time, Gardner continually updated and rediscussed his sense of this phenomena, *e.g.:* Gardner, Richard A. (1992). *The Parental Alienation Syndrome.* Cresskill, NJ, Creative Therapeutics, Inc. Gardner, Richard A. (1998). *The Parental Alienation Syndrome,* Second Edition. Cresskill, NJ, Creative Therapeutics, Inc. and a wealth of peer reviewed, scientific journal articles. For a listing, please see: http://www.rgardner.com- /refs/pas peerreviewarticles.html. Dr. Gardner defines PAS:

   > The parental alienation syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the parental alienation syndrome explanation for the child's hostility is not applicable. [http://www.rgardner.com/refs/ pas intro.html]

3. *Coursey v. Superior Court* 194 Cal App 3d 147; 239 Cal Rptr 365 (1987) through *Bates v. Bates* Docket No. 99 D 958 — Eighteenth Judicial Circuit Court, Illinois (January 17th, 2002).
4. *Coursey v. Superior Court* 194 Cal App 3d 147, 152; 239 Cal Rptr 365, 368 (1987).
5. *Id.* at 194 Cal App 3d 155-156; 239 Cal Rptr 370.
6. *Schutz v. Schutz,* 522 So. 2d 874 (Florida App. 1988).
7. *Schutz*,522 So. 2d at 875.
8. *Id.*
9. *Id.* at 874.
10. *Schutz v. Schutz,* 581 So. 2d 1290 (1991).
11. *Id.* at 1292.
12. *A.R. v. S.E., New York Law Journal,* December 11, 1990 pg 27-28, at 27.
13. *Id.* at pg 28.
14. *In re Violetta B.,* 210 Ill. App 3d 521,524; 568 N.E.2d 1345 (1991).
15. *Id.* at 525.
16. *Id.* at 528.
17. *Id.*
18. *Id.* at 530.
19. The court referred to her having completed an "American *Psychiatric* Association approved internship in clinical psychology." 210 Ill. App. 3d at 529, *emphasis added*, and then characterized her as: "a *psychiatrist*who testified as an expert witness in the area of child development and *psychology*." 210 Ill. App. 3d at 535, *emphasis added*.
20. *Id.* at 210 Ill. App. 3d 535.
21. *Id.* at 210 Ill. App. 3d 536.
22. Supra, at notes 7 through 12.
23. *Karen B. v. Clyde M.,* 151 Misc. 2d 794; 574 N.Y.S. 2d 267 (1991).
24. *Id.* at pg 795. In child sexual abuse allegations, the difficulty with children's suggestibility makes it critical to document the number and quality of interviews with the child. *See* e.g.: Lorandos, D. & Campbell, T. (1995). Myths and Realities of Sexual Abuse Evaluation and Diagnosis: A Call for Judicial Guidelines. 7 *Issues in Child Abuse Accusations, 1*; *See also:* Wakefield, H., & Underwager, R. (1991). Sexual allegations in divorce and custody disputes 9 *Behavioral Sciences and the Law, 451.* Wakefield and Underwager suggest understanding the "natural history" of an allegation, paying close attention to the origin, nature, and timing of the allegation.
25. *Karen B. v. Clyde M.*, 151 Misc. 2d 794 at 795-796.
26. A "validator" in the context of allegations of child sexual abuse is distinct from an "examiner" or an "evaluator." Validators tend to reason from preconceived notions which may lead to errors of "causism" and "hyperclaim- ing". *See* e.g.: Lorandos, D. (1995). Finding the right expert, in *Expert Witnesses: BeyondJunk Science andDaubert.* Institute of Continuing Legal Education, Ann Arbor, Mich. for a description of causism and hyperclaiming; *See also*: Gardner, R. A. (1991). The "validators" and other examiners. 2 *Issues in Child Abuse Accusations, 38.*
27. *Karen B. v. ClydeM.,* 151 Misc. 2d 794 at 796. This 75% "validation" rate is of course, astoundingly higher than the national average of substantiated cases of child sexual abuse. For this time period, *see* e.g.:

Daro, D., & Mitchel, L. (1990). Current trends in child abuse reporting and fatalities: The results of the 1989 annual 50 states survey. Washington, DC: National Commission for the Prevention of Child Abuse. Daro and Mitchel indicate that the 1989 annual 50 state survey found a 63% unsubstantiated rate. *See also:* Flango, V. E. (1991). Can central registries improve substantiation rates in child abuse and neglect cases? 15 *Child Abuse & Neglect 403.* Flango surveyed New York state and found that 61% of sexual abuse allegations for a period of one year (1985). could not be substantiated.

28. Many experienced litigators refer to validators as "never hearing an allegation they didn't like" Personal communication, California criminal defense attorney Patrick Clancy. http://www.accused.com.
29. *Karen B. v. ClydeM.,* 151 Misc.2d 794 at 796.
30. *Karen B. v. Clyde M.,* 151 Misc.2d 794 at 796 : "The witness observed no sexual play with the anatomically correct doll." Anatomically detailed (breasts, genitalia, public hair etc.) dolls are widely considered extremely suggestive and leading, in child sexual abuse investigations. *See* e.g.: White, S., Strom, G., Santilli, G., & Haplin, B. (1986). Interviewing young sexual abuse victims with anatomically correct dolls. 10 *Child Abuse & Neglect 519;* Glaser, D., & Collins, C. (1989). The response of young, nonsexually abused children to anatomically correct dolls. 30 *Journal of Child Psychology & Psychiatry 547;* Levy, R. J. (1989). Using "Scientific" Testimony to Prove Child Sexual Abuse: The Dorsey & Whitney Professorship Lecture. 23 *Family Law Quarterly 383;* Realmuto, G. M., Jensen, J. B., & Wescoe, S. (1990). Specificity and sensitivity of sexually anatomically correct dolls in substantiating abuse: A pilot study. 29 *Journal of the American Academy of Child & Adolescent Psychiatry 743;* Gardner, R. A. (1992). Leading stimuli, leading gestures and leading questions. 4 *Issues in Child Abuse Accusations 144;* Skinner, L. J,. & Berry, K. K. (1993). Anatomically detailed dolls and the evaluation of child sexual abuse allegations. 17 *Law and Human Behavior* 399; Wolfner, G., Faust, D., & Dawes, R.M. (1993). The use of anatomically detailed dolls in sexual abuse evaluations: The state of the science. 2 *Applied and Preventative Psychology 1;* De- Loache, J. S. (1995). The use of dolls in interviewing young children. In M. S. Zaragosa, J. R. Graham, G. C. N. Hall, R. Hirschman, Y. S. Ben-Porath (Eds.), *Memory and Testimony in the Child Witness* (pp. 160-178). Thousand Oaks, CA: Sage Publications; Lorandos, D. & Campbell, T. (1995). Myths and Realities of Sexual Abuse Evaluation and Diagnosis: A Call for Judicial Guidelines. 7 *Issues in Child Abuse Accusations, 1*.
31. *Karen B. v. Clyde M.,* 151 Misc.2d 794 at 797.
32. *Id.*
33. *Id.* By reckoning from the appellate opinion, this was the *fifth* concerned adult to interview the little girl.
34. *Karen B. v. ClydeM.,* 151 Misc.2d 794 at 797.
35. *Id.*
36. *Karen B. v. ClydeM.,* 151 Misc.2d 794 at 797 & 798.
37. *Id.* at 798.
38. *Id.* at 798. The record is silent on what attempts were made to determine the reliability of a polygraph with a child less than 4'/$_2$ years old *or* what, if any, attempts were made to describe it's utility in child sexual abuse evaluations.
39. *Id. See also:* Blush, G. L., & Ross, K. L. (1987). Sexual allegations in divorce: The SAID syndrome. 25 *Conciliation Courts Review 45.*
40. *Karen B. v. Clyde M.,* 151 Misc.2d 794 at 798 & 799.
41. *Id.* at 799.
42. *Id.*
43. *Id.*
44. *Id.* at 800.
45. *Id.*
46. *Id.*
47. *Id.*
48. *Karen B. v. Clyde M.,* 151 Misc.2d 794 at 801 *emphasis added*.
49. *Id.*
50. *Id.*
51. *Karen B. v. Clyde M.,* 151 Misc.2d 794 at 801.
52. *Zigmont fka Toto v. Toto,* 1992 WL 6034 (Ohio App. 8th District) Docket No. 62149.
53. A review of Ohio appellate decisions involving PAS cases, and indeed family law cases in general, finds a dramatic proclivity to rubber-stamp their trial courts and simply rewrite the same conclusory citations to statutory law. *See* e.g.: *Zigmont fka Toto v. Toto,* 1992 WL 6034; *Hornsby (Sims) v. Hornsby,* 1992 WL 193682; *Renz(Conner) v. Renz,* 1995 WL 23365; *Pisaini v. Pisaini,* 1998 WL 655484; *Bates v. Bates,* 2001 WL 1560916.
54. *Zigmont fka Toto v. Toto,* 1992 WL 6034 (Ohio App. 8th District) Docket No. 62149. Westlaw page *2.
55. *Id.* at Westlaw pages *1 & *2.
56. *Zigmont fka Toto v. Toto,* 1992 WL 6034 (Ohio App. 8th District) Docket No. 62149. Westlaw page *8.
57. *Wiederholt v. Fischer,* 169 Wis 2d 524; 485 NW 2d 442 (1992).
58. 169 Wis 2d at 529.
59. *Id.*
60. 169 Wis 2d at 531.
61. *Id.*
62. *Id.*
63. 169 Wis 2d at 532.
64. 169 Wis 2d at 533.
65. *Truax v. Truax,* 110 Nev 437; 874 P 2d 10 (1994).
66. *Id.* at 439.
67. *Id.*
68. In *re Marriage of Rosenfeld,* 524 NW 2d 212 (Iowa App, 1994) .

69. *Wiederholt v. Fischer,* 169 Wis 2d 524; 485 NW 2d 442 (1992).
70. In *re Marriage of Rosenfeld*, 524 NW 2d 212, 214 (Iowa App, 1994).
71. *Id.*
72. *Id.* at 214 & 215. Please note that it is a convention of this author, *not* to mention the name of children referred to in cited cases, even though they may be found in the cited text.
73. *Id.* at 215.
74. *Id.*
75. *White v. White,* 655 NE 2d 523, 526 n 2 (Indiana App, 1995) .
76. *Id.* 655 NE 2d at 526 & 527.
77. *Id.* at 526.
78. *Id.* at 532.
79. *Tucker fka Greenberg v. Greenberg,* 674 So 2d 807, 808 (Florida App, 1996).
80. *Id.*
81. *Id.* at 674 So 2d 808 & 809.
82. In *re Marriage of Rosenfeld,* 524 NW 2d 212 (Iowa App, 1994).
83. *Williams v. Williams*, 676 So 2d 493 (Florida App, 1996) .
84. *Hanson v. Spolnik,* 685 NE 2d 71 (Indiana App, 1997).
85. *Id.*
86. *Id.* 685 NE 2d at 74.
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id. emphasis added*.
91. *Id.* at 76. This was the same psychologist who testified in *White v. White,* 655 NE 2d 523 (Indiana App, 1995). Both cases took place in Indianapolis, Indiana.
92. *Id.* at 77. The trial court also took testimony from a clinical psychologist who interviewed the older girl and the four-year-old, who specifically stated that "there was inappropriate sex play between the two children."
93. *Id.* at 76.
94. *Id.* at 79.
95. In *the Matter of J.F. v.* L.F.,181 Misc.2d 722; 694 N.Y.S.2d 592 (1999).
96. *Karen B. v. Clyde M.,* 151 Misc.2d 794; 574 N.Y.S.2d 267 (1991).
97. *Id.* 181 Misc.2d at 724.
98. *Id.* at 723.
99. *Id.* at 723, quoting *People v. Loomis,* 172 Misc. 2d 265, 267; 658 N.Y.S.2d 787 (New York App, 1997).
100. *Id.* at 725.
101. *Id.* at 726.
102. *Id.* at 726-727. In connection with this proceeding, and pursuant to order of the court, the psychiatrist conducted evaluations of the parents and children and submitted reports. He found *inter alia* that the mother continued to have a DSM-IV psychiatric diagnosis of "moderate-to-severe Personality Disorder, NOS, with Borderline, Obsessive, and Passive-Aggressive features." He testified that: "Father is painted in a highly derogatory and negative fashion, way out of proportion to any possible deficiencies that he may have. This is clearly a borderline mental device within the mother's psychology which has been clearly duplicated in the children."
103. *Id.* at 727.
104. *Id.* This psychiatrist was a diplomate in psychiatry and neurology, a member of the American Academy of Psychiatry and the Law, and a diplomate of the American College of Forensic Examiners.
105. *Id.*
106. *Id.*
107. *Id.* at 731.
108. *Id.* at 723.
109. *Pathan v. Pathan,* 2000 WL 43711 (Ohio App. 2 Dist).
110. *Id.* Westlaw page *1
111. Id., page *2.
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.* Although the mother alleged she just happened to get some tapes from her sister, it was discovered that the "Not Without My Daughter" movie was specifically chosen for the child's viewing.
116. *Id.* Westlaw page *3. She acknowledged that none of the tests had been adjusted to account for Dr. Pathan's Pakistani ethnicity, and in fact there had been no statistical attempts to standardize the MMPI-II for individuals with Dr. Pathan's ethnicity at all. *Please see*: American Psychological Association (1992). Ethical principles of psychologists and code of conduct. 47 *American Psychologist 1597.*

Standard 2.02 (a) of the American Psychological Association's ethical code — addressing issues of "Competence and Appropriate Use of Assessments and Interventions" states:

> "Psychologists who develop, administer, score, interpret, or use psychological assessment techniques, interviews, tests, or instruments do so in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques."

Standard 2.02 (a) therefore obligates psychologists to use assessment procedures for which there is validation evidence supporting those assessment procedures. *For example.* In *In re Cheryl H.,* 200 Cal. Rptr. 789 (Ct. App 1984), the court disallowed the use of psychological testing to establish a "profile" characteristic of fathers who commit sexual abuse. According to the expert witness, 85 percent of fathers who commit sexual abuse have personality traits of high passive-dependency and highly guarded and

defensive tendencies. The court pointed out that the statistical evidence was not persuasive.

The court in *Gier v. The Educational Service Unit No. 16,* 845 F. Supp. 1342 (D. Neb. 1994)., applied the analysis prescribed by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceutical, Inc.,* 113 S. Ct. 2786 (1993)., to disallow testing which had been offered for the proof of child molestation. The witnesses' conclusions were based in part on the use of Child Behavior Check Lists. The trial judge felt that the reliability of the methodologies used by plaintiff's witnesses had not been sufficiently established; no records or tapes were made of the interviews and thus it could not be determined whether the interviewer either inappropriately suggested an answer or incorrectly interpreted a response.

It is also necessary to consider Standard 2.03 of the Ethical Code of the American Psychological Association. This Standard states:

"Psychologists who develop and conduct research with tests and other assessment techniques use scientific procedures and current professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use." *Id.*

As a result of the potential for arbitrarily undermining the civil rights of those evaluated, Standard 2.03 obligates psychologists who do psychological testing to support their conclusions with properly conducted validity studies. *For example*: The court in *Argen v. New York State Bd. of Law Examiners,* 860 F. Supp. 84 (W.D.N.Y. 1994), rejected the testimony of psychologists who purported to establish that plaintiff had a learning disability that entitled him to reasonable accommodation in taking the bar examination. The first witness relied on tests not generally accepted in this scientific community as a reliable basis to establish a learning disability. Another witness, who reported on his interpretation of the tests, was unable to explain how he used the test to arrive at his conclusions.

And see: American Educational Research Association, American Psychological Association, National Council on Measurement in Education (1999). *Standards for educational and psychological testing*. Washington, DC: American Educational Research Association. These 1999 Standards are also relevant to the testimony of psychologists in legal proceedings. In particular, consider the following Testing standards:

Standard 11.1:

"Prior to the adoption and use of a published test, the test user should study and evaluate the materials provided by the test developer. Of particular importance are those that summarize the test's purposes, specify the procedures for test administration, define the intended populations of test takers, and discuss the score interpretations for which validity and reliability data are available."

Standard 11.2:

"When a test is to be used for a purpose for which little or no documentation is available, the user is responsible for obtaining evidence of the test's validity and reliability for this purpose."

Standard 12.13:

"Those who select tests and draw inferences from test scores should be familiar with the relevant evidence of validity and reliability for tests and inventories used and should be prepared to articulate a logical analysis that supports all facets of the assessment and the inferences made from the assessment." In August 1999, the Council of Representatives of the American Psychological Association approved the 1999 Standards for Educational and Psychological Testing [American Psychological Association (2000).

Proceedings of the American Psychological Association, Incorporated, for the legislative year 1999: Minutes of the annual meeting of the Council of Representatives. 55 *American Psychologist 837,* p. 885).] The American Psychological Association, therefore, formally recognizes the 1999 Standards and their applicability to the professional work of psychologists.

117. *Id.* The magistrate determined that: "[The doctor's] clinical impressions were 'distorted' by the test data and her apparent dislike of Dr. Pathan's style during the evaluation process." At Westlaw page *11.
118. *Id.* Both the magistrate and the trial court found Dr. Pathan's beliefs to be justified.
119. *See* e.g.: Campbell, T.W. (1992). Psychotherapy with children of divorce: The pitfalls of triangulated relationships. 29 *Psychotherapy, 646,* 651. Discussing the common problem of evaluators in custody circumstances falling into the dual role of counselor or therapist. *See also:* Campbell, T.W. and Lorandos, D. (2001). *Cross Examining Experts in the Behavioral Sciences.* Minneapolis, MN. West Group two volumes. Specifically, Chapter Two provides a detailed discussion of the literature of science, ethics, and law on impermissible dual relationships.

Also see:

American Psychological Association (1992). Ethical principles of psychologists and code of conduct. 47 *American Psychologist 1597,* p. 1601. The ethical code for psychologists also prohibits dual relationships. Standard 1.17 (a-c) of the code of ethics for the American Psychological Association — addressing "Multiple Relationships" — states:

"(a) In many communities and situations, it may not be feasible or reasonable for psychologists to avoid social or other nonprofessional contacts with persons such as patients, clients, students, supervisees, or research participants. Psychologists must always be sensitive to the potential harmful effects of other contacts on their work and on those persons with whom they deal. A psychologist refrains from entering into or promising another

personal, scientific, professional, financial, or other relationship with such persons if it appears likely that such a relationship reasonably might impair the psychologist's objectivity or otherwise interfere with the psychologist's effectively performing his or her functions as a psychologist, or might harm or exploit the other party.

(b) Likewise, whenever feasible, a psychologist refrains from taking on professional or scientific obligations when preexisting relationships would create a risk of such harm.

(c) If a psychologist finds that due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist attempts to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Codes."

Additionally, the ethical standards regarding the "Forensic Activities" of psychologists — specifically Standard 7.03 addressing "Clarification of Role" — states: "In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters. When psychologists may be called on to serve in more than one role in a legal proceeding — for example, as consultant or expert for one party or for the court and as a fact witness — they clarify the role expectations and the extent of confidentiality in advance to the extent feasible, and thereafter as changes occur, in order to avoid compromising their professional judgment and objectivity and in order to avoid misleading others regarding their role."

And, *also see:* Committee on Ethical Guidelines for Forensic Psychologists (1991). Specialty guidelines for forensic psychologists. 15 *Law and Human Behavior 655.* The Specialty Guidelines for Forensic Psychologists indicate the following:

"Forensic psychologists avoid providing professional services to parties in a legal proceeding with whom they have personal or professional relationships that are inconsistent with the anticipated relationship. When it is necessary to provide both evaluation and treatment services to a party in a legal proceeding (as may be the case in small forensic hospital settings or small communities), the forensic psychologist takes reasonable steps to minimize the potential negative effects of these circumstances on the rights of the party, confidentiality, and the process of treatment and evaluation."

120. Id.,Westlaw page *4. On a positive note: The case returned to Magistrate Jeffrey Taylor for further hearings. On January 15th, 2000 the magistrate and the assigned judge Hon. Charles A. Lowman III ordered that custody of the child be changed to the alienated father. The child is reported to be doing well. Personal communication to Dr. Gardner from the father, May, 2002.
121. *Spencley v. Spencley,* 2000 WL 33519710 (Mich App).
122. Renamed the *Family Independence Agency* when the new Republican governor slashed state welfare payments and completely eliminated "general assistance" payments to indigents.
123. *Spencley v. Spencley,* 2000 WL 33519710 (Mich App) at Westlaw page *4.
124. *Chambers v. Chambers,* 2000 WL 795278 (Arkansas App).
125. *Id.* at WL *1.
126. *Id.*
127. *Id.* Chancery judge Jerry Mazzanti entered his order denying the father's motion on December 4th and recused himself on December 11th, 1996.
128. *Id.* The new judge took over January 13th, 1997. The hearing on the father's request for visitation was held January 29th, 1999.
129. *Id,* Westlaw page *3.
130. *Id. emphasis in original.*
131. *Id.*
132. *Id.,* Westlaw page *4.
133. *Id.,* Westlaw pages *4 & *5.
134. *Id.*
135. *Kirk v. Kirk,* 759 N. E.2d 265 (Indiana App, December, 2001).
136. *Kirk v. Kirk,* 770 N.E.2d 304 (June 21, 2002).
137. *Id.* 759 N. E.2d at 266.
138. *Id.*
139. *Id.*
140. *Id.* at 267.
141. *Id.* at 268, *emphasis added*.
142. *Id*. at 268, *emphasis added*.
143. *Id.* at 268, *emphasis added*.
144. *Id.* at 268, *emphasis added*.
145. *Id.* at 268, *emphasis added*.
146. *Id.*
147. *Id.* at 268, *emphasis added*.
148. *Id.* at 268-269, *emphasis added.*
149. *Id.* at 269, *emphasis added*.
150. *Id.* at 269, *emphasis added*.
151. *Id*. at 269.
152. *Id.*
153. *Id.*
. *Id.* at 269.
. *Id.* at 270.
. *Id.* at 266.
. *Id.* at 270, *emphasis added*.
. *Id.* at 270, *emphasis added*.
. *Kirk v. Kirk,* 770 N.E.2d 304 (June 21, 2002).
. *See* e.g.: Kovera, M.B. and McAuliff, B.D. (2000). The Effects of Peer Review and Evidence Quality on Judge Evaluations of Psychological Science: Are Judges Effective Gatekeepers? 85 *Journal of Applied Psychology 574;* Gatowski, S. I.; Dobbin, S.A.; Richardson, J.T.; Gins- burg, G.P.; Merlino, M.L. & Dahir, V. (2001).

Asking the Gatekeepers: A National Survey ofJudges on Judging Expert Evidence in a Post — *Daubert* World. 24 *Law and Human Behavior 433. See also:* Lorandos, D. & Campbell, T.W. (2005), *Benchbook in the Behavioral Sciences — Psychiatry — Psychology — Social Work.* Durham, NC: Carolina Academic Press. Chapter Two describes research into attorneys' and judges' inabilities to meet the requirements of the *Daubert* tests for validity and reliability.

. *Kirk v. Kirk,* 770 N.E.2d 304 (June 21, 2002).

. *Id.* at 306, footnote one.

. *Bates v. Bates,* Circuit Court for DuPage County, Illinois. Docket No. 99-D 958, January 17th, 2002.