PEDALING SNAKE OIL AND PROFITING FROM PAIN: THE MONETIZATION OF THE JUNK SCIENCE OF "PARENTAL ALIENATION" IN THE CALIFORNIA FAMILY LAW COURTS

CARRIE LEONETTI*

*Associate Professor, University of Auckland School of Law. The author is an (inactive) member of the California bar and lectured in the Forensic Psychiatry Fellowship Program at the Oregon Health Sciences University.

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Abstract

This Article argues that theories based on the discredited theory of "parental alienation" have caused California family law judges to overestimate the prevalence of false family violence allegations. As a result, they are unwilling to make factual findings about family violence without professional psychological assistance and appoint custody evaluators to advise them about whether victims' claims are true or fabricated. It argues that using custody evaluators as de facto forensic investigators has created a system of financial conflicts of interest for the evaluators. It documents how the California family-law courts hire mental-health professionals to "cure" the non-existent disorders that they diagnosed in their court evaluations. It argues that the result has been the creation of a billion-dollar industry centered around diagnosing and curing children of non-existent pathologies and women for the disorder of believing their children's reports of abuse.

Introduction

Studies show that most parents resolve their child custody arrangements by agreement after they separate.[1] Only a small percentage of parents have "custody battles"—engaging in months or years of litigation and ultimately requiring a family law court to determine their children's living arrangements.[2] This small percentage of parents does not occur at random. Instead, research demonstrates that most of these litigious parents comprise a family violence perpetrator and a family violence victim.[3] What underlies their contentious

[1] *See* Joyanna Silberg & Stephanie Dallam, *Abusers Gaining Custody in Family Courts: a Case Series of Over Turned Decisions,* 16 J. CHILD CUSTODY 140, 140 ((2019).

[2] *See* Sandra T. Azar, *et al., Children of Divorce and Relationship Dissolution*, in THOMAS H. OLLENDICK (ed.), THE OXFORD HANDBOOK OF CLINICAL CHILD AND ADOLESCENT PSYCHOLOGY (2018), at 499.

[3] "Child abuse," as used in this article, includes the physical, psychological, and sexual abuse of a person under eighteen. This Article uses "intimate partner violence" to describe family violence and sexual violence between adult partners, "child abuse and neglect" to describe family violence and/or sexual abuse involving a child victim, and "family violence" as the umbrella term encompassing all these phenomena. At times, the Article also uses "domestic violence" because that is the preferred term in California legislation and cases and the more frequent term in the academic literature. "Family violence" includes physical, psychological, sexual, and financial

litigation is the victim's fear for their children's safety in the perpetrator's care.[4]

One factor that makes these cases contentious is that family courts are notoriously bad at fact-finding regarding allegations of family violence during custody proceedings. As I previously documented in "A Little Knowledge is a Dangerous Thing" and "Parental Alienation, Gender Bias, and Hypocrisy in the California Family Courts," the California family law courts lack the ability to identify coercive control and psychological abuse, minimize family violence, and cling to baseless myths about the "harm" that children suffer from losing contact with abusive parents.[5] Psychologists regularly testify that children exhibit the symptoms of the discredited theory of "parental alienation (syndrome)," although they often (deceptively) steer away from using diagnostic terms like "symptom" or "syndrome." These theories of parental alienation permeate custody proceedings in California. As a result, many family law judges are fixated on the specter of false allegations and are unwilling to make factual findings about family violence without professional psychological assistance.[6] The judges appoint custody evaluators in part to advise them about whether victims' claims of family violence are true or fabricated.[7]

As an initial matter, this is an inappropriate use of a custody evaluation. The primary goal of custody evaluations is to provide the

abuse, and coercive control. The Article prefers "family violence" to "domestic violence" because "domestic violence" can refer either only to intimate partner violence or to all forms of family violence and can, therefore, be ambiguous.

4 *See generally* Debra Pogrund Stark, et al., *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform Proposal*, 26 MICH. J. GENDER & L. 1 (2019).

5 *See* Carrie Leonetti, *A Little Knowledge is a Dangerous Thing: Custody Evaluators and the Pop Psychology of "Parental Alienation" in the California Family Law Courts*, USF L. REV. (forthcoming 2023); Carrie Leonetti, *Parental Alienation, Gender Bias, and Hypocrisy in the California Family Law Courts,* B.U. PUB. INT. L.J. (forthcoming 2023).

6 *See* CAL. FAM. CODE § 3111(a) (West 2020) (authorizing courts to appoint child custody evaluators to conduct custody evaluations in contested proceedings involving child custody or visitation rights).

7 *See* Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law,* 110 GEO. L.J. 835, 853 (2022); *see also* Robert Mnookin, *Child Custody Revisited,* 77 L. & CONTEMPORARY PROBLEMS 249 (2014); Elizabeth S. Scott & Robert E. Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard,* 77 L. & CONTEMPORARY PROBLEMS 69 (2014); Joyanna Silberg & Stephanie Dallam, *Abusers Gaining Custody in Family Courts: A Case Series of Over Turned Decisions*, 16 J. CHILD CUSTODY 140 (2019).

court with expert evidence regarding family dynamics, child development, and child safety.[8] Custody evaluations should never be used for forensic investigating, fact-finding, or legal decision-making.[9]

To make matters worse, using custody evaluators as *de facto* forensic investigators creates a moral hazard and, over time, creates a system of financial conflicts of interest for the evaluators. An ethical evaluator would advise the family law judge that they were not a human lie-detector test and refuse to perform an evaluation for which there are no validated assessments or reach a conclusion with no basis in evidence or reliable methodology.[10] The problem is that a custody evaluator who cautions a family law judge that there is no scientific validity or reliability to a clinical psychologist's speculative interpretation of the truth of a victim's reports of family violence will not be hired by the court to perform an evaluation. By contrast, a custody evaluator who willingly agrees to engage in subjective, malleable interpretations and offer the court firm conclusions that lack a sufficient evidence basis becomes the most valuable psychologist in town. Research shows that psychologists and psychiatrists who provide expert testimony often operate outside their area of core competence, proffering one-sided evidence and labor under the irreconcilable conflict between the role of a clinician and forensic expert.[11]

Compounding this conflict of interest is the fact that courts no longer stop simply at contracting custody evaluations; they double down by hiring psychologists and other mental health professionals to "cure" non-existent disorders diagnosed in their court evaluations.[12] The result is the creation of a billion-dollar industry centered around diagnosing and curing children of non-existent pathologies and diagnosing and curing women for the disorder of believing their children's reports of abuse.[13]

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[8] *See* Hannah Dreyfus, *A Custody Evaluator Who Disbelieves 90% of Abuse Allegations Recommended a Teen Stay Under Her Abusive Father's Control,* PROPUBLICA, Sept. 30, 2022, available at: https://www.propublica.org/article/parental-responsibility-evaluators-colorado (last visited Dec. 6, 2023).

[9] *See* Azar, *et al., supra* note 2, at 499.

[10] *See* Leonetti, *Pop Psychology of "Parental Alienation" supra* note 5.

[11] 4 BRIAN R. CLIFFORD, *Expert Testimony*, FORENSIC PSYCHOLOGY 50 (Graham J. Towl & David A. Crighton, eds., 2010).

[12] *See generally In re Marriage of Crystal H.*, 127 Cal. App. 4th 1 (2005).

[13] *See* Robert J. Hansen, *Reunification Camp Survivors Expose For-Profit Industry's Relationship with Family Courts,* DAVIS VANGUARD, Nov. 29, 2022, available at:

I. Statutory Framework in California

a. Custody Evaluations

In any contested proceeding involving child custody or visitation, the family law court can order a custody evaluation if it is in the best interest of the child.[14] The California Evidence Code also authorizes family law courts, more generally, to appoint an expert witness to investigate, render a report, and testify.[15] The courts can appoint an expert under Evidence Code § 730, and parties can offer expert evidence under Evidence Code § 733. Most "expert witnesses" in the family law courts are not presented by one party or challenged by another but are appointed court consultants.[16]

A custody evaluation is not determinative.[17] It is simply expert evidence that the judge considers along with other evidence in reaching its factual findings and legal determination. The court is not bound to accept the evaluator's recommendations.[18] Nonetheless, family law courts typically put a great deal of weight on the recommendations of court-appointed evaluators.[19]

b. Mental Health Professionals

Under the California Evidence Code, on the motion of either party or its own motion, the family court may appoint a psychiatrist or other mental health professional to examine the parents and children to make a report and testify at trial on custody and visitation issues.[20]

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https://www.davisvanguard.org/2022/11/reunification-camp-survivors-expose-for-profit-industrys-relationship-with-family-courts/ (last visited Dec. 6, 2023).

[14] § 3111(a).

[15] CAL. EVID. CODE § 730 (West 1990).

[16] *See* Jason D. Hans et al., *The Effects of Domestic Violence Allegations on Custody Evaluators' Recommendations,* 28 J. FAM. PSYCH. 957 (2014).

[17] Osgood v. Landon, 127 Cal. App. 4th 425, 433 (2005); In re Marriage of DeRoque, 74 Cal. App. 4th 1090, 1096-97 (1999).

[18] Osgood, 127 Cal. App. 4th at 433; In re Marriage of DeRoque, 74 Cal. App. 4th at 1096-97.

[19] Carrie Leonetti, *Endangered by Junk Science: How the New Zealand Family Court's Admission of Unreliable Expert Evidence Places Children at Risk*, 43 CHILD. LEGAL. RTS. J. 17, 18-19 (2022) [hereinafter "Leonetti, *Endangered by Junk Science*"].

[20] § 730; In re Marriage of Seagondollar, 43 Cal.Rptr.3d 575, 578 (Cal. Ct. App. , 2006); In re Marriage of Kim, 256 Cal.Rptr. 217, 372 (Cal. Ct. App., 1989).

c. Counseling

In contested custody and visitation proceedings, the family court can also require parents, children, or any other party involved in the dispute to participate in outpatient to facilitate communication between the parties regarding their child's best interests, reduce conflicts over visitation and custody, and improve the quality of parenting skills of each parent.[21]

d. "Reuinification Services"

The family law courts are not supposed to order family "reunification services" as part of a custody or visitation order.[22] Reunification services should only be provided under the juvenile dependency law when a child is placed in foster care.[23]

II. The Alienation Industry

a. Fetishizing Paid Consultants

In "Combatting a Dangerous American Export," I explained how the construct of parental alienation is exploited for profit by paid consultants who work exclusively as expert witnesses and paid speakers.[24] The New Zealand Family Court remains enamored with paid consultants; the Court describes some paid consultants' credentials in psychology and psychiatry as "eminent" and cites their proprietary materials as representative "literature."[25] Courts and court-appointed evaluators quote uncritically from these hired experts' promotional materials when describing their credentials and experience.[26]

The California family courts appear to have a similar relationship with paid psychologists. For example, in *In re Marriage of Crystal*

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21 CAL. FAM. CODE §§ 3190(a), 3191 (West 1994).

22 CAL. FAM. CODE § 3026 (West 1994).

23 *Id.;* CAL. WELF. & INST. CODE § 361.5 (West 2023).

24 *See* Carrie Leonetti, *Combatting a Dangerous American Export: The Need for Professional Regulation of Psychologists in the New Zealand Family Court*, UCLA PAC. BASIN L.J. (forthcoming 2023) [hereinafter "Leonetti, *Dangerous American Export*"].

25 *Id.*

26 *See id.*

H., the trial judge gushed about Joan B. Kelly, whom he heard speak at a "seminar;" he described her as "a world-renowned psychologist" and "a national expert" explaining a "really important" study that she told him about.[27] The judge claimed that Kelly told him that he should not place children who did not want contact with one parent in individual therapy but instead send them to "conjoint therapy" with the parent they did not wish to contact.[28] Kelly was not an accredited forensic psychologist, but rather a clinical psychologist who worked as a private consultant.[29] She was a public advocate of the parental alienation theory and profited from convincing courts to embrace it.[30] She was self-employed at a for-profit mediation center—performing precisely the "conjoint therapy" that she told the trial judge was the only appropriate solution for parental alienation.[31] Because she marketed her services as resolving parental conflict, she was financially interested in promoting the idea that co-parenting was always best for children.[32] Her studies were not published in peer-reviewed academic journals but, in the tradition of the parental alienation industry, were self-published and promoted or published in the popular press.[33] It is concerning that an experienced trial judge could not distinguish between peer-reviewed, methodologically controlled academic research and a marketing pitch.[34]

In *Marriage of Terpko*, the family court described its custody evaluator, Leslie Packer, as having "exemplary" qualifications, with no indication of the criteria by which it reached this characterization.[35] Dr. Packer was a clinician in private practice who had not published an article since 1986 and only published one article since 1970,

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27 *In re Marriage of Crystal H.*, 127 Cal. App. 4th at 5, 8 (2005).

28 *Id.* at 9.

29 *See* Mediate, https://mediate.com/author/joan-b-kelly-ph-d/ (last visited December 7, 2022).

30 See Joan B. Kelly, *Commentary on "Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children" (Warshak, 2010),* 48 FAM. CT. REV. 81 (2010); Joan B. Kelly and Janet R. Johnston, *The Alienated Child: A Reformulation of Parental Alienation Syndrome,* 39 FAM. CT. REV. 249 (2001).

31 *See* Mediate, *supra* note 29.

32 *Id.*

33 *See, e.g.*, JOAN B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE (Basic Books, 1980).

34 *See Marriage of H.*, 2013 WL 2940952, at 9.

35 No. A148641, 2019 WL 1614521 at 3 (Cal. Ct. App. 2019).

two years before she became a licensed psychologist; her "qualifications" would seem quite outdated.[36] She also had a checkered past. Packer was the subject of a very unflattering exposé in the *SF Weekly* in 2011 (seven years before her evaluation in the *Terpko* case) after her custody evaluation resulted in years of sexual abuse for a child.[37]

In 1999, the Santa Clara County family law court appointed Packer to perform a custody evaluation in a case involving a mother's allegations that her former husband was sexually abusing their fifteen-year-old daughter.[38] Packer opined that the mother's fears were "unfounded."[39] Despite being aware of what she characterized as the father's "unusual sexual practices," she noted that the mother's concerns were "paranoid thinking" and not based on reality.[40] Based on her recommendation, the court granted the father full custody of the couple's children.[41] Three years later, when she turned eighteen, the daughter left the father's care and reported years of his sexual abuse to the police.[42] The following year, the father pleaded no contest. He was convicted of twenty-five counts of sex crimes against the daughter, including child molestation, sexual penetration of a child with a foreign object, and use of a minor to create pornography.[43]

In *Marriage of Terpko*, the family court also described Rebecca Bailey, the owner of a for-profit coercive reunification camp, as "the most eminent person in the particular field," again without identifying the particular field in which Bailey was supposedly "eminent" or the criteria that the court applied in finding her eminence.[44] Bailey is a self-described "professional teacher, speaker, author, and entrepreneur."[45] She is an ideologue and paid consultant who refers to

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36 *See "Welcome!,"* http://www.kidwrk.com/ (last visited November 10, 2022).

37 *See* SF Weekly Staff, *California Family Courts Helping Pedophiles, Batterers Get Child Custody*, SF WEEKLY (Mar. 2, 2011), https://archives.sfweekly.com/sanfrancisco/california-family-courts-helping-pedophiles-batterers-get-child-custody/Content?oid=2180699 (last visited Dec. 7, 2022).

38 *See id.*

39 *Id.*

40 *Id*.

41 *See id.*

42 *See id.*

43 *Id.*

44 In re Marriage of Terpko, No. A148641, 2019 WL 1614521 at 2 (Cal. Ct. App. 2019).

45 *"My Story,"* https://drrebeccabailey.com/ (last visited Nov. 10, 2022).

parental alienation as "familial abduction."[46] She has made appearances on the Dr. Oz Show.[47]

b. Misunderstanding, Cherry Picking, and Misrepresenting Academic Literature

Court evaluators often misunderstand and even outright misrepresent the academic literature on child development, family dynamics, and child welfare: "Despite the consensus of mainstream psychologists opposing the way that [the parental-alienation] construct is used in Family Court, court psychologists regularly cherry-pick the handful of "studies" that they claim support the construct while ignoring the weight of the evidence in the field."[48]

For example, the belief that a disruption to a child's relationship with a violent parent would cause more harm to the child than exposure to additional violence (or the emotional harm even if the violence did not repeat) is based on a misapplication of studies showing that, in the aggregate, and without excluding child abuse as a confounding variable, children do better in joint custody arrangements.[49] These studies do not control for family violence. Therefore, the studies cannot be generalized to situations where the choice is between joint custody when one parent is an abuse perpetrator and granting sole custody to the protective parent.[50]

Divorce studies established a correlation between the positive involvement of both parents and well-being for decades; still subsequent, more nuanced studies show that the driving force behind this correlation is parental conflict.[51] "Studies that control for parental conflict consistently show that children are better off in the primary care of one parent with minimal contact with the other parent than in

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46 *Id.*

47 Trey Bundy, *Bitter Custody*, REVEAL NEWS (Mar. 9, 2019), https://revealnews.org/podcast/bitter-custody/ (last visited Nov. 10, 2022).

48 *Endangered by Junk Science, supra* note 19, at 42.

49 *Id.*

50 *See id.*

51 *See* Carrie Leonetti, *Sub Silentio Alienation: Deceptive Language, Implicit Associations, Cognitive Biases, and Barriers to Reform*, 62 WASHBURN L. REV. 286, 298 (forthcoming 2023) [hereinafter "Leonetti, *Sub Silentio Alienation*"].

shared care in families with high levels of conflict."[52] The divorce studies also failed to control for family violence as a confounding variable.[53]

The New Zealand Family Courts rely on a small handful of family-law articles to support their mythology of parental alienation and how the court evaluators do not recognize or report the results of peer-reviewed, methodologically valid psychology research.[54] When the New Zealand Family Court personnel purport to rely on psychological "literature," they often misunderstand or misrepresent its methodology, results, and conclusions.[55] Psychological evaluators "fail to acknowledge the large body of peer-reviewed psychological research demonstrating the long-term harm to children from exposure to family violence and undermining their relationships with protective parents."[56]

Similar issues are evident in the California family law courts. For example, in *In re Marriage of A.S. v. C.A.,*[57] one evaluator based his opinion that the mother was "alienating" the child on an article by Drozd and Oleson, which he described as "the best article written in the area of decisions about alienation."[58] However, the evaluator misstated the date of the article.[59] The evaluator failed to inform the court what Drozd and Oleson, the authors of the article, note:

Some mothers are blamed for sabotaging (mislabeled as alienating behaviors) their children's relationships with their fathers when they intend to protect their children. Their intent is protection, not revenge. A significant problem occurs when evaluators fail to thoroughly explore the factors operating in the particular family: the abuse hypothesis as well as the specific types of parenting. Mistaking one type of interference with the child's access to the other parent for another type can have serious and pernicious effects, including that a

52 *Id.*
53 *Id.* at 299.
54 *See id.*
55 *See id.*
56 *Id.* at 306.
57 No. G052341, 2017 WL 1506755 (Cal. Ct. App.2017).
58 *Id.* at 5.
59 *Id.* at 5, n. 4.

protective parent may lose her children, the batterer may go free, and the children may be placed in an inappropriate home.[60]

They explain, "[t]oo often, we have observed evaluators confusing protective parenting with alienation, resulting in a false conclusion of alienation when, in fact, the parent is engaged in appropriate protection of the child."[61]

In December 2021, the Association of Clinical Psychologists in the United Kingdom issued a statement about appointing unqualified "expert" psychological witnesses in the British family courts.[62] The ACP warned that "'Psychological experts' without the necessary qualifications and experience are sometimes instructed to act as expert witnesses in the family court. This can result in harm to the public."[63] Alluding to evaluators pressing the junk science of parental alienation in the family courts, they warned that unqualified psychologists had "suggested inappropriate diagnoses and made recommendations for children to be removed from their mothers based on these diagnoses."[64] They admonished that qualified psychologists "understand the importance of using evidence-based and well-validated methodologies to assess individuals and make recommendations."[65]

c. ***Shifting Terminology***

The New Zealand Family Court continued to use theories based on parental alienation syndrome but increasingly used obfuscating language and pop psychology analyses to pretend that they were not deploying the discredited construct.[66] The personnel of the New Zealand Family Court have moved away from using the phrase "parental alienation," presumably in recognition that experts have rejected the

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60 Leslie M. Drozd & Nancy W. Oleson, *Is It Abuse, Alienation, and/or Estrangement? A Decision Tree*, 1 J. CHILD CUSTODY 65, 96-97 (2004).

61 *Id.* at 97.

62 *See* Association of Clinical Psychologists UK, *The Protection of the Public in the Family Courts* (Dec. 2021), https://acpuk.org.uk/the-protection-of-the-public-in-the-family-courts/ (last visited Jan. 13, 2023).

63 *Id.*

64 *Id.*

65 *Id.*

66 *See Endangered by Junk Science, supra* note 19.

phrase as scientifically invalid; however, the Court continues to embrace the concept of parental alienation.[67]

The lesson that the courts in New Zealand appear to have learned from the debunking of PA pseudo-science is not that it is junk science but rather that PA concepts should be hidden while nonetheless followed in secret application. By avoiding the terminology of "alienation" while still employing its principles, courts continue to harm and endanger women and children who have experienced violence while simultaneously insulating themselves from scrutiny and accountability for poorly theorized and dangerous decision making based on junk psychology. [68]

Similar terminology shifts also occurred in the California family law courts. For example, in *In re Marriage of Idelle C., Ovando C.,* a reunification therapist, accused the mother of sending "covert and overt messages" to the child that were "counterproductive to treatment."[69] In *In re Marriage of Arthur,* the court found that the mother had "emotionally aligned the children with her and against [the father]" at the suggestion of their counsel.[70] To make matters worse, when the mother's lawyer argued on appeal that the children's counsel was not qualified to make a psychological diagnosis and that parental alienation syndrome failed to meet the standards for the admissibility of scientific evidence, the Court of Appeal for the Third District rejected her challenge finding that the Superior Court did not rest its findings on "any theory of parental alienation syndrome."[71] In other words, the lower court's use of the shifting terminology of parental alienation successfully confounded the appellate court's analysis of its reasoning. In *McRoberts v. Superior Court of Los Angeles County.,* the court-appointed evaluator opined that children were "aligned" with the mother because they were "very angry" at the father.[72] In *In re M.M.,* the Child's counsel opined that the mother was "emotionally unstable" and "enmeshed" with the child.[73]

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67 *See Sub Silentio Alienation, supra* note 51.

68 *Endangered by Junk Science, supra* note 19.

69 No. B146948, 2002 WL 176418, at 7 (Cal. Ct. App.2002).

70 No. C042379, 2004 WL 1732709, at 9 (Cal. Ct. App. 2004).

71 *Id.*

72 No. B234877, 2012 WL 2317714, at 2 (Cal. Ct. App. 2012).

73 No. B259253, 2015 WL 8770107, at 8 (Cal. Ct. App.2015).

In *Marriage of Terpko*, the family court found "clear evidence" that children were "splitting," which the court custody evaluator defined as "black and white, all good vs. all bad thinking" and "a sign of regression in children older than five."[74] This reasoning appears to be an idiosyncratic definition employed by the court evaluator with no counterpart in mainstream psychology. As an initial matter, black-and-white thinking is a common and developmentally appropriate feature of children's cognition well past five.[75] "Splitting" is a documented psychological phenomenon, but it means something different than how the evaluator employed it. According to the Fifth Edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ("*DSM-5*"), "splitting" is a maladaptive defense mechanism and a form of dissociation.[76] According to the *DSM-5*, it is often associated with borderline personality disorder.[77] It has no relationship to child development, and there is no research to validate the use to which the evaluator put the concept in *Terpko*.

Despite the lack of scientific validation behind the theory of parental alienation, California courts still admit expert evidence based on it.[78] The confusion seems to stem from a meaningless distinction between parental alienation and parental alienation syndrome on which the courts appear to rely. As Trey Bundy explains:

[B]y [2003], mental health experts had discredited [Richard Gardner's] theories [of parental alienation syndrome]. They called it junk science. Some state courts even ruled it inadmissible, but it didn't go away. A group of judges, lawyers, and psychologists still believed there was something to Gardner's theory and went to work redefining it. They decided it's not a mental health disorder, and they change the

74 In re Marriage of Terpko, No. A148641, 2019 WL 1614521 at 1 (Cal. Ct. App. 2019).

75 Kelly Burch, *A Mom and Psychologist Says the "Barbie" Movie Can Be a Great Way to Open up Conversations with Your Teen. Here's How*, BUSINESS INSIDER, July 29, 203, available at: https://www.insider.com/how-to-use-barbie-movie-to-open-conversations-with-teens-2023-7 (last visited Dec. 7, 2023).

76 AM. PSYCHIATRIC ASS', DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 819, 865 (5th ed. 2013) [hereinafter "DSM-5"].

77 Am. Psych. Ass'n, *Dictionary of Psychology*, https://dictionary.apa.org/splitting (last visited Nov. 10, 2022).

78 McRoberts v. The Superior Court of LA Cnty., No. B234877, 2012 WL 2317714, at 11 (Cal. Ct. App. 2012).

name to parental alienation, minus the syndrome. It's now an umbrella term to explain why some kids reject their parents.[79]

The theory in the California family law courts seems to be that evidence relating to parental alienation syndrome would be inadmissible because the syndrome lacks scientific validation and is not a recognized diagnosis.

Inexplicably, however, the courts find that evidence relating merely to parental alienation or alienation-based theorizing is admissible because it is not a diagnosis. For example, in *McRoberts,* when the mother argued on appeal that the court evaluator's evidence relating to parental alienation syndrome should not have been admitted because it lacked scientific validity, the Second District rejected her claim, explaining, "when asked about the "parental alienation syndrome," Dr. Katz stated… "You can't be diagnosed as having alienation, but it is clear, everyone involved in these kind of cases know[s] the children are estranged and sometimes alienated from their parents."[80]

The Court's reasoning begs disbelief. The Court of Appeal inexplicably found the expert's explanation that he does not derive his opinions from scientifically validated methodologies—but rather divines them intuitively—as a reason why his opinion should not be subjected to the scrutiny that it would face if the expert were attempting to base his opinion on scientific methods.[81] The Court did not explain why the distinction between a diagnostic "syndrome" and an "observed dynamic" (from which the expert was deriving an opinion that a particular child was experiencing) was a salient one in the application of rules intended to keep unreliable scientific evidence from distorting judicial decision making.[82]

The Court inexplicably pronounced: "Nothing in his testimony carried a misleading aura of scientific infallibility."[83] The expert pronounced that a child's allegations of sexual abuse were "likely false" and the result of being "aligned" with the mother rather than

79 Bundy, *supra* note 47, at 17.

80 McRoberts, No. B234877, 2012 WL 2317714, at 11.

81 *Id.*

82 *Id.*

83 *Id.* at 12.

experience.[84] The expert based this opinion on what the Court of Appeal concedes was a claim to "three decades of practice" experience.[85] This is precisely the type of unreliable opinion evidence that the rules governing expert opinion were meant to preclude.[86]

The Court's claim that the testimony did not have the characteristics of "diagnosis" or the aura of scientific infallibility was also untrue.[87] The psychologist opined that one girl "seems to have developed an Obsessive Compulsive Disorder or Obsessive Compulsive Personality Disorder and demonstrates idiosyncratic behavior."[88] This is a diagnosis and a shockingly cavalier one at that. Diagnosing anyone, let alone a child, with obsessive-compulsive disorder or a personality disorder requires an extensive process of assessment and differential diagnosis. Obsessive-compulsive disorder has to be distinguished from an anxiety disorder, a major depressive disorder, an eating disorder, a tic disorder, a psychotic disorder, and other compulsive behaviors.[89] Obsessive-compulsive disorder differs from developmentally normative preoccupations and rituals by being excessive or persisting beyond developmentally appropriate periods.[90] The distinction between subclinical symptoms and a clinical disorder requires assessing multiple factors, including the individual's level of distress and impairment in functioning.[91] Obsessions and compulsions must be time-consuming (e.g., more than one hour per day) or cause clinically significant distress or impairment to warrant a diagnosis of obsessive-compulsive disorder.[92] There is no indication in the record that the child had any of the signs of obsessive-compulsive disorder or obsessive-compulsive personality disorder.[93]

Similarly, in *Marriage of Terpko*, the Court of Appeal for the First District rejected the mother's argument that the court erred in relying

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[84] *Id.* At 2.

[85] *Id.* at 11.

[86] *See* People v. Kelly, 17 Cal.3d 24 (Cal. 1976).

[87] McRoberts v. The Superior Court of LA Cnty., No. B234877, 2012 WL 2317714, at 12 (Cal. Ct. App. 2012).

[88] *Id.* at 2-3.

[89] DSM-5, *supra* note 76, at 241-42.

[90] *Id*. at 235.

[91] *Id.*

[92] *Id.* at 238.

[93] *See Generally* McRoberts v. The Superior Court of LA Cnty., No. B234877, 2012 WL 2317714 1 (Cal. Ct. App. 2012).

on evidence of parental alienation syndrome from its court-appointed custody evaluator, Dr Packer.[94] The Court of Appeal's reasoning for why the record did not support the mother's claim that the evaluator relied on parental alienation syndrome is mind-splitting. The Court claimed:

Dr. Packer at no point discussed Parental Alienation Syndrome or suggested that the children were suffering from any such disorder. Dr. Packer testified that alienation is an irrational negative reaction toward one parent that is fostered by the other parent. In her report Dr. Packer explained, "Estrangement between child and a parent is what happens when there is a reality basis for the child to have ambivalent or negative feelings toward a parent. In cases where there has been documented abuse, children sometimes reject the abusive parent. . .. When a child rejects a parent in a divorce/custody context, the dilemma is sorting out estrangement vs. alienation. Alienation is the phenomenon of a child rejecting a parent when the child previously had a good enough relationship with both parents. Now, the child views one parent as all good and the other as all bad."[95]

It appears that the court was entirely shocked by the evaluator's use of the word "phenomenon" instead of "diagnosis," as if the terminology was talismanic. Interestingly, however, in a footnote, the Court defined parental alienation syndrome as "a disturbance in which children are . . . subconsciously and unconsciously 'programmed' by one parent against the other."[96] The court did not seem to notice that the evaluator's evidence in the trial court precisely met this definition.

In *P.M. v. S.S.,*[97] the mother objected to the family law court's reliance on the pseudo-science of parental alienation in disbelieving her claims of abuse and blaming her for the child's estrangement from the father.[98] The court refused to admit evidence relating to parental alienation syndrome but agreed to consider "any evidence, direct or circumstantial, regarding whether or not the mother supports the relationship" between the child and father "because of the manner of

94 In re Marriage of Terpko, No. A148641, 2019 WL 1614521 at 3 (Cal. Ct. App. 2019).

95 *Id.*

96 *Id.* at 3 n.4.

97 No. D078381, 2022 WL 2352986, at 1 (Cal. Ct. App. 2022).

98 *Id.* at 18,19.

the reporting in this case."[99] "Circumstantial evidence that the mother does not support the relationship between the child and father" because she has disclosed that FV *is* parental alienation syndrome. The court rejected the name while embracing the construct. On appeal, the Court of Appeal for the Fourth District denied the mother's argument, distinguishing between evidence of parental alienation syndrome, which had "no diagnosable criteria," with "conduct that demonstrates that the parent is unsupportive of the other parent's relationship with the child."[100] These are meaningless distinctions. The problem with parental alienation syndrome is not that it is a "diagnosis" (as opposed to a disorder or phenomenon), but rather, it is based on amorphous, unmeasurable, and irrefutable criteria.[101]

d. *"Parental Alienation Therapy"*

In "Endangered by Junk Science," I documented how the New Zealand Family Court orders reunification and "deprogramming" treatment for children that they deem as "alienated."[102] In "Sub Silentio Alienation," I documented the "Myth of 'Treatment'" in the New Zealand Family Court, noting: "PA theory has started to include calls for coercive 'reprogramming' interventions, through which children are pressured into admitting that their violent parents are not violent and agreeing that they want contact with them."[103] These programs often prohibit contact between the children ordered into them and their protective parents.[104] The purpose of the reunification therapy is to change the child's attitudes when parental alienation is purported to have occurred.[105]

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99 *Id.*

100 *Id.*

101 *Id.*

102 *See Endangered by Junk Science, supra* note 19.

103 *See Sub Silentio Alienation, supra* note 51.

104 *See* Hannah Dreyfus, *Colorado Lawmakers Consider Reforms to the Way Family Courts Handle Abuse Allegations,* PROPUBLICA (Mar. 2, 2023), https://www.propublica.org/article/colorado-family-court-custody-kilmer-lawsuit (last visited Apr. 28, 2023).

105 Elena Andreopoulos & Alison Wexler, *The "Solution" to Parental Alienation: A Critique of the Turning Points and Overcoming Barriers Reunification Programs*, 19 J. FAM. TRAUMA, CHILD CUSTODY & CHILD DEV. 417, 418 (2022).

Several programs across the United States claim to address parental alienation through reunification therapy.[106] However, to convince a child no longer to feel distress or request protection from a violent parent is the opposite of what evidence-based, trauma-informed therapy entails.[107] These programs pose significant risks of serious harm to the children subjected to them, including depression, self-harm, and risk-taking, in terms of children running away to escape the coercive interventions or becoming more vulnerable to victimization. Joan Meier termed these programs as "threat therapy."[108]

Recent research by Andreopoulos and Wexler examines reunification programs that are held out as "solutions" to parental alienation.[109] Advocates of parental alienation believe that its dynamics and symptoms can be resolved through psycho-educational interventions for alienated children and reunification therapy for alienated children and rejected parents.[110] Also, studies that purport to validate these programs "acknowledge that they did not control for any outside factors that could impact the results of the study, which is a basic component of any reliable scientific research."[111]

Andreopoulos and Wexler document how proponents of these coercive interventions prohibit individual therapy follow-up for children who undergo their programs, claiming that therapy could provide an opportunity for the children to repeat their disclosures of family violence.[112] They document how proponents of alienation therapy claim that outside specialist therapists might "side with" the victim rather than supporting reunification, "especially if they are treating their client for posttraumatic stress disorder (PTSD) symptoms due to marital abuse."[113] They note:

The first concern is the implication someone's individual therapist should be working for the entire family, even if that is not their client. This could lead to difficult dynamics in the therapeutic space.

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106 *See id.*

107 *See Dangerous American Export, supra* note 24.

108 7 JOAN S. MEIER, VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS 149 (Eve S. Buzawa, ed. 2009).

109 *See* Andreopoulos & Wexler, *supra* note 105.

110 *Id.* at 418.

111 *Id.* at 431 (citation omitted).

112 *Id.* at 422.

113 *Id.* at 430.

The second concern is if the client has PTSD from marital abuse, then rejection of the other parent by the child is justified and not eligible for [reunification therapy] based on their requirements.[114]

The authors explain: "The concern arises as to whether the child is provided space to express and discuss their feelings or thoughts."[115] There is "a persistent lack of reliable research" to substantiate the methods and practices of reunification programs and that they pose the potential for traumatizing individuals who participate in them.[116] Reunification programs are "marketed as a family program; however, the focus tends to be on the satisfaction of the parents."[117] They explain: "In essence, it is imperative to listen to the child…A relationship cannot be imposed on someone and, even if the child maintains misinformed beliefs of a parent, it is vital to consider the psychological impact of this process on the child."[118]

The myth that there is a "therapeutic" value to forcing children to stop fearing violent parents dominates the California family courts. Even though the Family Code expressly prohibits family law courts from ordering family "reunification services" as part of a custody or visitation order,[119] they nonetheless order children into "therapy" for the non-existent disorder of parental alienation, often with the express goal of forcing then to "reunify" with parents who have harmed them. For example, in *Idelle C.,* after disbelieving the Child's disclosures of sexual abuse, the superior court ordered that she remain in therapy "not as a victim of molestation but as a victim of her parents' ongoing dispute."[120]

In *M.M.,* the evaluator recommended that the father and child "attend a therapeutic reunification program" even though the child made repeated disclosures of his physical and sexual abuse; he also told the Los Angeles County Department of Child and Family Services that she did not want to attend conjoint therapy with the father because it

114 *Id.*

115 Andreopoulus & Wexler, *supra* note 105, at 422.

116 *Id.*

117 *Id.* at 428.

118 *Id.*

119 CAL. FAM. CODE § 3026 (West 1994).

120 In re Marriage of Idelle C., Ovando C.,No. B146948, 2002 WL 176418, at 3 (Cal. Ct. App. 2002).

caused her to feel stressed, depressed, and anxious.[121] The child's private therapist indicated that the child was not "ready to begin conjoint therapy with the father" because she was "afraid of him" and "emotionally exhausted" from the court proceedings.[122] The court nonetheless ordered the child to participate in "conjoint therapy" with the father.[123]

In *Marriage of Terpko,* the family law court ordered a "transition plan" for the children's custody reversal, which required them to reside at the for-profit, equine-based "Transitioning Families reunification program site" for as long as the program director, Rebecca Bailey, dictated.[124] Bailey acknowledges there is no "data" behind her reunification program.[125] The family court also ordered that the children's "therapy" for parental alienation include forcible transport and no contact with the mother.[126]

Survivors of Bailey's program reported disturbing practices. For example, one adult survivor reported that she was removed from school and held incommunicado at Transitioning Families as a teenager, under a family court order, for more than ten months.[127] She reported that she was "brainwash[ed]," "grill[ed]," and forced to watch videos about parental alienation.[128] She reported that Bailey told her that she was "delusional" and tried to "talk [her] out of" believing her memories.[129] She reported that the "therapists" at Transitioning Families told her that her memories of her mother's abuse were "not accurate" and had been "inserted . . . into [her] brain" by her father.[130] The "therapists" did this even though Child Protective Services had substantiated her claims of abuse.[131] She was not allowed to see her father, her safe and protective parent, for four

121 In re *M.M.,* No. B259253, 2015 WL 8770107, at9 (Cal. Ct. App. 2015).
122 *Id.* at 14.
123 See *id.* at 18 n.2.
124 In re Marriage of Terpko, No. A148641, 2019 WL 1614521 at 2 (Cal. Ct. App. 2019).
125 Bundy*, supra* note 47, at 18.
126 *Marriage of Terpko,* 2019 WL 1614521, at 2.
127 Bundy, *supra* note 47, at 23.
128 *Id.* at 20.
129 *Id.*
130 *Id.* at 21.
131 *See id.*

years.[132] She reported that the Transitioning Families program cost her her childhood and relationships with important family members, which would "haunt [her] forever."[133] Her "therapy" at Transitioning Families cost $214,000.[134]

In *In re Harris*, the Court of Appeals for the Fourth District upheld one of these reunification orders, the statutory prohibition against reunification therapy notwithstanding.[135] Shortly after the mother and father's separation when the child was five, evidence emerged that the father, who had a history of physical abuse against the mother, repeatedly sexually abused the child.[136] A court-appointed psychologist conducted an assessment and concluded that the father sexually abused the child.[137] Following a full evidentiary hearing, the family law court found, through a preponderance of the evidence, that the father sexually abused the child and ordered that the mother have sole legal and physical custody of the child, denying visitation to the father.[138]

A few months later, the father applied to modify the custody order, seeking monitored visitation with the child and "reunification leading up to full visitation."[139] The father continued to deny the sexual abuse, despite the court's factual findings, and had taken steps to address his sexual offending.[140] A new family law judge, nonetheless, plowed ahead with reunification. He appointed a new evaluator, Amy Stark, as the "case manager" for a "supervised reunification process" between the father and child.[141] Amy Stark is a for-profit consultant who sells "meditations" through her website and has appeared on the Oprah Winfrey Show.[142] Stark has no specialized expertise in child sexual abuse and recommended a reunification therapist who also had

132 *See id.* at 29.
133 Bundy, *supra* note 47, at 22.
134 *Id.*
135 *See* No. G047229, 2014 WL 99168 (Cal. Ct. App. 2014).
136 *Id*. at 5.
137 *Id*. at 9.
138 *Id.*
139 *Id.* at 10.
140 *Id.* at 6.
141 *Id.* at 4.
142 Dr. Amy Stark, *Welcome*, https://www.dramystark.com/ (last visited Dec. 11, 2022).

no expertise in child sexual abuse.[143] There is no indication in the court's decision regarding how or why Stark recommended the provider.

Instead of addressing the obvious harm to the child of being forced to reunify with her unrepentant and unreformed abuser, the court found that the mother "thwart[ed] the counseling" and "appeared to exaggerate [Child]'s anxiety" at being reunified with the father who molested her.[144] Child's counsel urged the court to find that the mother was "driving the drama and inciting [child] to act out and 'perform' for the reunification counselor."[145] According to the family law court, Stark and the "reunification" therapist were attempting to hold [cother] accountable for" the child's "staged drama and calculated out-of-control behavior."[146] They did not consider that a child's terror at being forced into contact with her sexual abuse perpetrator could be genuine or proportional to the harm being inflicted on her by a system that did not view her sexual abuse as relevant to her safety. The court appointed a new reunification therapist, Mitchell Rosen, who also did not have expertise in child sexual abuse. Rosen recommended that "reunification" was in the child's best interests.[147] In doing so, Rosen ensured an ongoing and lucrative involvement with the court.

When the child was nine, the family law court found that the child was "at immediate risk" in the mother's legal custody, granted temporary sole legal custody of the child to children's counsel, and appointed Rosen to "develop and implement a reunification plan" between father and child "according to his discretion."[148] The following year, the family law court issued a "Reunification Order," which continued the child's legal custody in children's counsel, granted children's counsel "sole decision-making authority affecting [child]'s health and education," and ordered "reunification counseling" between the father and child.[149] The court based its order on its finding

143 In re Harris, No. G047229, 2014 WL 99168, at 12 (Cal. Ct. App. 2014).
144 *Id.* at 10.
145 *Id.*
146 *Id.*
147 *Id.*
148 *Id.* at 7.
149 *Id.*

that the mother had "engaged in a sustained effort to thwart and impede the father's parenting time and . . . interfered with his parent-child relationship."[150] The court insisted that "[u]nder the very unique and very troubling circumstances at hand," it was "determined to press forward with reunification" because not forcing reunification would "affirmatively harm [child]."[151] The court delegated Rosen the authority to set a visitation schedule between the father and child at his discretion, with no requirement of judicial oversight and no opportunity for the mother or child to present evidence of harm inflicted on the child.[152]

The Court of Appeals for the Fourth District upheld the trial court's reunification order, noting with apparent approval the family court judge's belief that the mother's "ongoing obsession" with the father's sexual abuse of the child was "the more likely source of harm to [child] going forward."[153] The Court of Appeals also inexplicably found that the family court's order for "reunification therapy" was not an order for "reunification services," which are prohibited under Family Code § 3026, characterizing it instead as the run-of-the-mill "outpatient counseling" that the family court often orders as part of its custody determinations.[154]

In 2012, the United States Department of Justice released the *Report of the Attorney General's National Task Force on Children Exposed to Violence*.[155] The Report calls for the implementation of trauma-informed care and practices for children exposed to violence, including the development and dissemination of standards in professional associations for conducting comprehensive specialized assessments of children exposed to violence and coordinated and adaptive approaches to improve the quality of trauma-specific treatments and services across settings.[156] The *DSM-5* defines trauma as an emotional response to a traumatic event or a pattern of traumatic experiences that results in initial and sometimes long-term psychological

150 *Id.*at 9.

151 *Id.* at 13.

152 *Id.* at 7.

153 *Id*. at 21.

154 *See id.*

155 *See* ROBERT L. LISTENBEE, JR. ET AL., REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, U.S. DEP'T OF JUST. (2012).

156 *Id.* at 12-14.

stress impacts.[157] Trauma-informed practices are the most effective treatment for children recovering from trauma.[158]

Because "therapeutic" interventions for children identified as "alienated" are based on the pseudo-science of parental alienation, they violate many of the ethical regulations for psychologists. In "Combatting a Dangerous American Export," I explained that "[a] psychologist who employed these thought-reform methods would therefore be more likely to cause psychiatric disorder in a 'patient' than to treat one, particularly since the condition being 'treated' is not recognized by mainstream psychologists and psychiatrists."[159]

In *In re Head*, the Oregon Board of Psychology initiated disciplinary action against Jacqueline Head, a licensed psychologist, for unprofessional conduct.[160] The disciplinary action arose from Dr. Head's conduct as a forensic psychologist in family court proceedings. Dr. Head was retained to provide reunification therapy and written reports to the family court on its progress.[161] In 2020, Dr. Head sent a letter to the father's lawyer indicating that Children suffered from "parental alienation."[162] Dr. Head recommended to the family court that the father and children attend an alienation reunification workshop and that the children be placed in the father's custody for six months after the workshop to remedy their "alienation."[163]

The Oregon Board of Psychology found that Dr. Head's conduct violated four ethical standards for psychologists: the duty to avoid harm, cooperation with other professionals, having an adequate basis for scientific and professional judgments, and having a sufficient basis for assessment and imposed discipline upon her.[164] The Board found that Dr. Head violated the duty to avoid harm because she failed to establish that attending the reunification workshop would not harm the children based on their unique therapeutic histories and needs.[165] The Board found that Dr. Head violated the duty to

157 DSM-5*, supra* note 76, at 265.

158 *See generally Dangerous American Export, supra* note 24.

159 *Id.*

160 *See* Jacqueline J. Head, Case No. 2020-035 (Or. Bd of Psych., July 2022).

161 *Id.* at 2.

162 *Id.*

163 *Id.* at 3.

164 *Id.* at 3-4.

165 *Id.* at 4.

cooperate with other professionals when she failed to consult the children's existing therapist to gain her professional perspective.[166] The Board also found that Dr. Head violated the duty to have an adequate basis for her scientific and professional judgments by referring to "parental alienation" as if it were a diagnosis, "a representation which is not established [through] scientific or professional knowledge within the field of psychology" because the *DSM-5* did not recognize parental alienation.[167] Next, the Board found that Dr. Head violated her duty to have an adequate basis for her assessment of the children when she made evaluations and recommendations to the court when she had insufficient information to substantiate her representation that the children suffered from "parental alienation" when parental alienation was not listed in the *DSM-5* "and it is therefore not possible to diagnose individuals with that condition."[168] The Board concluded that Dr. Head's failures constituted unprofessional conduct because her recommendation that the family attend the alienation workshop "constituted a danger to the children's emotional health or safety because …[the] four-day workshop [was] held at a distance location where they would experience pressure to retract, give up, or overcome their emotional experiences of distance, anger or hurt regarding [father], which could result in emotional harm"[169]

The Oregon Board of Psychology referred to the notorious, controversial, and highly profitable "Family Bridges" "reunification" program developed by discredited California psychologist, Randy Rand.[170] In 2009, the California Board of Psychology took disciplinary action against Dr. Rand for "extreme departure from the standard of practice" in two different court proceedings after he testified in family court that a child was severely alienated and should attend his

166 *See* Head, *supra* note 160.

167 *Id.* at 4.

168 *Id.*

169 *Id.*

170 *See* Barbara Bradley Hagerty, *Can Children Be Persuaded to Love a Parent They Hate?,* ATLANTIC (Dec. 2020), https://www.theatlantic.com/magazine/archive/2020/12/when-a-child-is-a-weapon/616931/; Robert J. Hansen, *Reunification Camp Survivors Expose For-Profit Industry's Relationship with Family Courts,* NEWSBREAK (Nov. 27, 2022), https://original.newsbreak.com/@robert-j-hansen-1587368/2838569822850-reunification-camp-survivors-expose-for-profit-industry-s-relationship-with-family-courts.

program without ever meeting them.[171] The California Board of Psychology placed Rand on probation and prohibited him from practicing psychology.[172] In 2019, the Board issued a citation to Rand for violating the conditions of his probation, and he was permanently suspended from practicing psychology.[173]

e. Parental Alienation Is Qualitatively Different From Parental Alienation Syndrome

The construct of parental alienation syndrome has been discredited internationally.[174] The debunking of the construct of parental alienation is not about its terminology but the fallacious reasoning and unreliable forensic application that underlies it.[175] Family court systems made surface changes in the terminology that they use to discuss parental alienation rather than abandoning the discredited construct or critically examining their unreliable use in custody determinations.[176] In California, the terminological preference appears to be dropping the word "syndrome" from parental alienation syndrome and referring instead merely to "parental alienation" or "alienation."[177] At the same time, the California courts continue to rely on the fallacious syndrome reasoning of the syndrome construct.[178]

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171 Randy Rand, Case No. 1F 2004 158933, (Cal. Bd. of Psych., Dept. of Consumer Aff. May 29, 2009).,

172 *See id.*

173 *See* Randy Rand*,* Order of AbatementCitation No. 600 2019 000149, (Cal. Bd. Of Psych., Mar. 5, 2019).

174 *See Endangered by Junk Science, supra* note 19.

175 *See* United Nations Hum. Rts. *Call for Inputs — Custody Cases, Violence Against Women and Violence Against Children*,https://www.ohchr.org/en/calls-for-input/2022/call-inputs-custody-cases-violence-against-women-and-violence-against-children (last visited Feb. 21, 2023) (explaining that "parental alienation" and the presumption that a child's fear or rejection of one parent stems from the malevolent influence of the other parent "lack a universal clinical or scientific definition" and that "the parental alienation concept has become a tool for denial of domestic and child abuse, leading to further discrimination and harm to women and children").

176 *See Sub Silentio Alienation, supra* note 51.

177 *See* Hansen, *supra* note 170.

178 "Syndrome evidence," as that phrase is used in this Article, consists of a quasi-diagnostic process. Syndromes are characterized by a cluster of symptoms believed to correlate with an underlying cause. It does not matter whether the proponents of a syndrome use the terminology "syndrome" or "symptoms". The crucial defining factors are that an underlying pathological cause is divined from a cluster of observable characteristics, which is known to have other causes. The determination that an individual is suffering from a "syndrome" entails at least an implicit

For example, in *Idelle C.,* the mother offered social-science evidence regarding the lack of as-applied validity of the construct of parental alienation and its history of tactical use by perpetrators of domestic violence.[179] The superior court responded by insisting that it did not base its rulings on parental alienation syndrome, explaining: "[p]arental alienation certainly did—was involved, but not any parental alienation syndrome. I firmly believe that there can be parental alienation. I have no idea of whether this is a parental alienation syndrome."[180]

This is a distinction without a difference. As I previously explained in "Endangered by Junk Science," the problem with syndrome evidence in forensic contexts is that it is used to demonstrate proximate causation.[181] Factual evidence relating to the "symptoms" of the syndrome is used to determine whether the sufferer has the syndrome even though there are other causes and no direct evidence of the cause.[182] The court implicitly rules out other possible causes for the symptoms.[183] However, there is no way to know whether the suspected syndrome caused the observed phenomena in a particular case.[184]

Parental alienation fits this pattern. The observed symptoms are a child's rejection of a relationship or contact with a parent.[185] By finding that the other parent's conduct "alienated" the child, based solely on the child's reaction to the rejected parent, the court is finding that the rejection is not the result of some other plausible cause, such as the conduct of the rejected parent (particularly in cases involving family violence) or a neutral cause like personality clash, lack of

determination that the symptoms were not caused by an alternate trigger or occurred at random. *See Endangered by Junk Science, supra* note 19. Consistent with forensic syndrome evidence generally, the theory of parental alienation asserts that, when children show certain observable characteristics (signs of alienation), those characteristics are evidence that they have been subjected to "alienating behaviors" by one parent targeting their relationship with their other parent, even if the alienating behaviors are not directly observed. *Id.*

179 In re Marriage of Idelle C., Ovando C.,No. B146948, 2002 WL 176418 (Cal. Ct. App. 2002).

180 *Id.* at 17 n 14.

181 *See Endangered by Junk Science, supra* note 19, at 21.

182 *Id.* at 21.

183 *See id.*

184 *See id.*

185 *See id.*

commonality, or ordinary adolescent development.[186] Dropping "the word 'syndrome' from 'parental alienation syndrome' does not change its fundamental nature as a syndrome; it merely obscures the inferences that underlie it."[187]

The overwhelming weight of authority in the field of psychology is that parental alienation is not a syndrome, a construct, or a reliable form of forensic assessment.[188] the fact that the judge did not understand the syndrome supported the mother's claim that courts cannot apply the construct forensically to reach reliable results. The addition or absence of the word "syndrome" is irrelevant to the basis for the criticisms of family courts' reliance on this discredited construct. It is unclear from the family court's discussion of parental alienation (syndrome) whether the judge believed that there was a difference between parental alienation syndrome and parental alienation. However, using the alienation construct in the case made clear that it exhibited the characteristics that have made the construct the subject of nearly universal criticism by academics, human-rights committees, and domestic violence organizations.

Furthermore, the superior court's basis in *Idelle C.* for finding parental alienation was concerning.[189] The judge appeared to rely solely on anecdotal experience, personal beliefs, and intuition as a superior basis for fact-finding than evidence-based judgment.[190]

f. Financial Conflicts of Interest

One pervasive issue with expert evidence from custody evaluators relating to parental alienation is that they recommend interventions that would financially benefit themselves or an associate. Proponents of parental alienation formed an international advocacy group called "Family Access-Fighting for Children's Rights," which offers presentations by advocates of parental alienation to buttress the

186 *See id.*

187 *See Endangered by Junk Science, supra* note 19.

188 *See id.*

189 In re Marriage of Idelle C., Ovando C.,No. B146948, 2002 WL 176418 (Cal. Ct. App. 2002).

190 *Id.*

legitimacy of the construct.[191] Andreopolous and Wexler note that the professionals operating reunification programs also train mental health professionals, lawyers, and judges and publish books promoting their programs.[192] They document that there is no procedure to determine whether the "alienated" parent is abusing the child.[193] Therefore, it is unclear whether the program personnel use any psychological measures with the families, and families may be overcharged as the program does not pay for accommodations.[194]

Describing the only academic study to attempt to demonstrate the safety and efficacy of one coercive reunification program, Andreopolous and Wexler document that the lead researcher is an advocate for parental alienation and that the "study itself has a multitude of issues regarding the overall research design and subsequent analysis."[195]

In 2022, the Family Justice Council, an interdisciplinary advisory board appointed by the British Secretary of State for Justice to monitor family justice in the United Kingdom, issued Interim Guidance relating to conflicts of interest by expert witnesses in custody cases with allegations of alienating behavior.[196] In the Interim Guidance, the Council admonished that a court evaluator recommending an intervention "deliverable only by the [court-appointed] expert or their associates" constituted a conflict of interest and was inconsistent with high-quality forensic evaluations.[197] The Council explained, "[t]he court should be extremely cautious when asked to consider assessment and treatment packages offered by the same or linked providers. It should be noted that differentiation of roles between assessor and intervention is consistent with therapeutic practice outside of the

191 *See* Am. Pro. Soc'y on the Abuse of Child*., APSAC Position Statement: Assertions of Parental Alienation Syndrome (PAS), Parental [Alienation] Disorder (PAD), or Parental Alienation (PA) When Child Maltreatment Is of Concern* (Jan. 22, 2022), https://apsaclibrary.org/positions_all.php#.

192 Andreopoulos & Wexler, 20 note 94, at 429.

193 *Id.*.

194 *Id.* at 423.

195 *Id.* at 425.

196 *See* U.K. Family Justice Council, *Interim Guidance in Relation to Expert Witnesses in Cases Where There Are Allegations of Alienating Behaviours – Conflicts of Interest* (May 2022), https://www.judiciary.uk/family-justice-council/working-groups-3/responding-to-allegations-of-alienating-behaviour/ (last visited Jan. 13, 2023).

197 *Id.*

family court arena."[198] Unfortunately, these types of self-serving recommendations for lucrative interventions that lack scientific validity are not regulated in the California family law courts, and judges seem unconcerned by the apparent conflict of interests. As demonstrated above, court custody evaluators and "reunification therapists" are permitted to identify parental alienation while simultaneously serving as "case managers" and "therapy" providers.

g. Survivors' Experiences

Young adults who, as children, were labeled "alienated" and forced into "deprogramming" therapy to have relationships with abusive parents have formed survivor groups and reported harrowing and disturbing stories of their experiences in these programs.[199] Around the country, these young adults filed class-action lawsuits against custody evaluators and reunification providers.

In March 2023, several mothers who Mark Kilmer, a custody evaluator in Colorado and a licensed psychologist in California, labeled "alienating" filed a class-action lawsuit accusing Kilmer of fraud, breach of contract, negligence, and intentional infliction of emotional distress.[200] The lawsuit involves five representative cases, disbelieved by Kilmer out of a class involving more than sixty complainants who made credible allegations of sexual, physical, and psychological abuse during custody evaluations.[201] The lawsuit alleges that Kilmer collected an average of $14,000 per custody evaluation and was aware that his recommendations to the family court were likely to determine the outcome of custody and visitation disputes in most cases.[202]

According to the complaint, Kilmer bragged that he could determine whether people were lying to him based on his "clinical experience" and that "sometimes the judge just cuts and pastes all my recommendations and puts it into the court order," describing custody

198 *Id.*

199 *See* Hansen, *supra* note 170; *see Dangerous American Export, supra* note 24.

200 *See* Woodruff, et al., v. Kilmer, Complaint and Jury Demand, at 1-2 (Dist. Ct.Colo., 2023) [hereinafter "Woodruff Complaint"].

201 *Id.* at 17.

202 *Id.* at 2-3.

proceedings as "Kabuki theater."[203] The complaint alleges that Kilmer believes, without any scientific evidence, that ninety percent of domestic violence and "me too" allegations made by women are false, strategically concocted for legal advantage, that he pleaded guilty to criminal domestic violence, that he lost legal custody of his children due to concerns about his parenting, and that he claimed the allegations of family violence that his former partner made against him were false despite his criminal conviction.[204] Furthermore, the complaint alleges that Kilmer sympathizes with accused perpetrators of family violence, demonstrates animus toward victims of family violence, and, in one case, gave the accused advice about how to obtain a favorable result.[205]

In the first case, the plaintiffs, Rhonda Woodruff and Lauren Woodruff, were two mothers enduring custody disputes with the same father.[206] Five mental health professionals made reports of concern to the Department of Human Services relating to the father's endangerment of Lauren Woodruff's children.[207]

Kilmer performed custody evaluations in both cases. He opined that Rhonda Woodruff had fabricated her claims of domestic violence because she had a personality disorder and alienated her children from their father based solely on the father's claims.[208] He recommended joint custody and reunification therapy between the children and their father, and the court followed his recommendations.[209] In Lauren Woodruff's case, he recommended joint legal custody even though Woodruff had a protective order against her ex-husband.[210] In both cases, Kilmer failed to advise the court that the father had a documented history of abusing both women.[211] In Lauren Woodruff's case, he failed to include the reports of concern to the Department of

203 *Id.* at 3, 6.
204 *Id.* at 4-8.
205 *Id.* at 7-8.
206 *See id.*
207 *Id.* at 12.
208 *Id.* at 10.
209 *Id.* at 10-11.
210 *Id.* at 13.
211 *Id.* at 10.

Human Services and their resulting investigations in his court report.[212]

In their lawsuit against Kilmer, the Woodruffs alleged that their ex-husband forced their children to hide in the trunk of his car while he attempted to abscond across state lines with them, traveling at speeds of 115 miles per hour.[213] Lauren Woodruff alleged that her ex-husband subsequently left the state to evade the resulting Department of Human Services investigation for child endangerment and that Kilmer failed to disclose this in his custody evaluation.[214] Rhonda Woodruff alleged that both she and her three daughters made detailed disclosures of the father's sexual and physical abuse to Kilmer during his custody evaluation and that the daughters expressed fear of their father's dangerous parenting. Still, Kilmer failed to perform any family violence screening.[215] She alleged that Kilmer made derogatory comments by mocking her fear of her ex-husband, suggesting that her disclosures of abuse constituted "public disparagement" of her ex-husband, and failed to contact a single witness who could corroborate her claims of abuse.[216] She alleged that Kilmer's conduct caused significant emotional trauma and distress to her daughters.[217] Lauren Woodruff alleged that Kilmer omitted all of her evidence of family violence from his court report and had repeated *ex parte* conversations with her ex-husband and his lawyer.[218]

In the second case, plaintiff Karen Asensio's ex-husband, Cedric Asensio, was charged with felony child abuse after dragging their daughter, Elina, up a flight of stairs by her necklace, leaving a large cut on her neck and causing the blood vessels on her eyelids to burst.[219] A child welfare investigator documented Elina's injuries.[220] Cedric Asensio eventually pleaded guilty to misdemeanor assault.[221] Karen Asensio alleges that Elina disclosed multiple episodes of child

212 *Id.* at 12.
213 *Id.* at 9.
214 *Id.* at 11.
215 *Id.* at 9-10.
216 *Id.* at 10-11.
217 at 11.
218 *Id.* at 11-12.
219 *Id.* at 13.
220 *See id.*
221 *Id.* at 14.

abuse inflicted by her father against her and her siblings but that Kilmer characterized the abuse as an "aberration" in his court report and pressured Elina to attend therapy with Cedric Asensio.[222] Kilmer recommended immediate joint custody and reunification therapy.[223] Elina continues to be in the joint custody of her father.[224]

In the third case, Kilmer performed a child and family investigation for plaintiff Jane Doe 1's child, who had severe developmental and psychiatric disabilities.[225] Doe 1 provided Kilmer with documentation from three licensed specialist domestic violence therapists documenting her ex-husband's history of abuse against both her and her child.[226] Doe 1's complaint alleges that Kilmer provided unilateral advice and assistance to her ex-husband, including providing him with an advanced copy of his report before he filed it with the court or provided it to Doe 1 immediately before the custody hearing.[227] The complaint alleges that Kilmer ignored Doe 1's credible allegations of family violence.[228] Based on Kilmer's report, the court awarded the father joint legal and physical custody.[229]

In the fourth case, Kilmer performed a custody evaluation in Jane Doe 2's divorce proceedings.[230] Doe 2's complaint alleges that she informed Kilmer that her husband had inflicted sexual and family violence on her and an earlier partner and provided him with medical records substantiating her allegations, that her children disclosed abuse to Kilmer, that her ex-husband admitted committing child abuse, and that Kilmer responded by becoming angry and argumentative with her.[231]

In the fifth case, Kilmer performed a custody evaluation for the plaintiff, Jane Doe 3.[232] Doe 3 alleges that she informed Kilmer that

222 *See id.*
223 *See id.*
224 *See* Dreyfus, *supra* note 104.
225 *Id.*at 14.
226 *See id.*
227 *Id.* at 15.
228 *See id.*
229 *See id.*
230 *See id.*
231 *See id.* at 15-16.
232 *Id.* at 16.

her ex-husband abused her, but that Kilmer disbelieved her and opined that she was incredible due to personality issues.[233]

Kilmer was removed from the roster of custody evaluators in Colorado, but individual family court judges permit him to continue to testify in cases in which he was previously appointed.[234] He completed Lauren Woodruff's custody evaluation after his suspension.[235] In his evaluations, Kilmer routinely advances the construct of parental alienation.[236]

III. Legislative Reform

In April 2023, the California Senate Judiciary Committee passed the Safe Child Act, colloquially called "Piqui's Law."[237] In support of the bill, ten-year-old Zoe Winenger testified about the trauma that she endured in a court-ordered reunification camp.[238] Piqui's Law will amend section 3026 of the Family Code to prohibit more clearly court-ordered family reunification services as part of child custody or visitation proceedings, including reunification programs that are predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached.[239] It will also require custody evaluators to only testify as experts in child custody proceedings in which a parent has been alleged to have committed family violence if they can demonstrate that they have sufficient special knowledge, skill, experience, training, or education relating to their testimony.[240] The bill will now move onto the Senate Appropriations Committee.[241]

233 *See id.*

234 *See* Dreyfus, *supra* note 104.

235 *See id.*

236 *See id.*

237 *See* Cal. S.B. 331 (West 2023).

238 *See Piqui's Law by California State Senator Susan Rubio Passes Key Senate Committee - Mandates Courts Put Child Safety First in Custody Disputes,* SIERRA SUN TIMES (Apr. 26, 2023), https://goldrushcam.com/sierrasuntimes/index.php/news/local-news/45581-piqui-s-law-by-california-state-senator-susan-rubio-passes-key-senate-committee-mandates-courts-put-child-safety-first-in-custody-disputes (last visited Apr. 28, 2023).

239 Cal. S.B. 331 at § 4 (West 2023).

240 *Id.* at § 5.

241 *See Piqui's Law*, *supra* note 238.

IV. Conclusion

The family law courts' insatiable demand for expert assistance in custody proceedings involving family violence created a lucrative and unregulated market for custody evaluations and reunification therapies that is plagued by unprofessional practice and financial conflicts of interest. Psychological testing is a massive industry with companies primarily interested in making money. The psychological tools they sell can cost hundreds of dollars, and many devices have recurring costs.[242]

In the absence of judicial regulation of these methodological and ethical lapses, it is high time that the California Legislature reins in the practice of forensic psychologists and prohibits coercive deprogramming "therapies." The California legislature should pass Piqui's Law as soon as possible.

[242] Tess M.S. Neal, et al., *Psychological Assessments in Legal Contexts: Are Courts Keeping "Junk Science" Out of the Courtroom?,* 20 PSYCH. SCI. IN PUB. INT. 135, 136 (2019).