

**EVIDENTIARY ISSUES
WITH PARENTAL ALIENATION SYNDROME**

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Expert testimony on unsubstantiated social science syndromes such as the Parental Alienation Syndrome (PAS) has been increasingly admitted in courtrooms across the United States. This is a problem because a trier of fact is making a determination based on theories that are inaccurate or incorrect. To remedy this, the standards of admissibility for expert testimony must be heightened. The broad discretion given to trial judges in determining admissibility should be reevaluated and a new rule of evidence for social science testimony should be adopted.

PARENTAL ALIENATION SYNDROME AND ITS PROBLEMS

Parental Alienation Syndrome (PAS) is a term originated by Dr. Richard Gardner to describe a cluster of co-occurring symptoms: (a) an alienated parent who engages in brainwashing, (b) a child who has adopted those negative views, and (c) a child who has vilified the rejected parent.¹ Gardner claimed that PAS is a syndrome because there is a common etiology or underlying cause, that is, an alienating parent.² Gardner differentiated PAS from parental alienation (PA). According to Gardner, the only element present in PA is the alienating behavior by a parent.³ In the case of PA, the child has not adopted the parent's negative views and is not making false allegations.⁴

The judicial system should look at Gardner's theories with heightened skepticism. Gardner's research methods and techniques have been questioned by notable scholars in the mental health field.⁵ Gardner's research methods have been determined by scientists to lack predictive value and validity.⁶ It is also impossible to assign potential rates of error using Gardner's diagnostic tools.⁷

In developing a predictive tool, one is concerned with both the reliability and validity of the instrument.⁸ When a standardized test measures the occurrence of a disease or syndrome, the test is reliable if different evaluators giving the same test derive the same or similar conclusions.⁹ A standardized test is valid if the items on the test have a clear and obvious relationship to the purpose of the test.¹⁰ In assessing Gardner's tests for diagnosing PAS, empirical studies show that the tests lack reliability, because the criteria for determining legitimate abuse are vague and ill defined and therefore invite a wide range of subjective opinion.¹¹ Other criticisms of Gardner's theories are that most of his writings are not subject to professional peer review and that all of Gardner's books are published through his self-owned publishing company.¹²

HOW COURTS HAVE BEEN USING/ADMITTING PAS

Despite the criticisms, evidence of PAS has permeated courtrooms across the country.¹³ An example of this is the case of *Karen B. v. Clyde M.*¹⁴ In this case, Mandi, a four-year-old girl, was removed from her mother's custody and placed with her father, whom she alleged was sexually abusing her.¹⁵ On hearing the allegations, her mother informed the local Department of Child Protective Services, and a caseworker began an investigation.¹⁶ The caseworker interviewed Mandi to determine whether the allegations could be validated.¹⁷ Mandi confided in the caseworker that she was fabricating the abuse allegations.¹⁸ A physical exam revealed no evidence of abuse.¹⁹ The caseworker also observed that Mandi's mother was vehement about getting sole custody of Mandi.²⁰ Mandi's statement, accompanied by the lack of physical evidence and Mandi's mother's attitude, resulted in the caseworker's not substantiating the abuse.²¹

In reviewing both of Mandi's parents' petitions for sole custody, the court relied on PAS and determined that Mandi's initial allegations were consistent with what Gardner described in his writings.²² The court reasoned that Mandi was being programmed by her mother to exhibit alienating behavior toward her father that was being manifested in falsified sex abuse claims.²³ The court not only awarded sole custody to Mandi's father but also ordered that Mandi's mother receive no visitation rights because of the harmful effect her behavior was having on Mandi and Mandi's relationship with her father.²⁴

In *Karen B.*, the judge invoked the PAS evidence on the recommendation of the case worker assigned to Mandi's case, without any hearing as to whether PAS was reliable or valid or whether it had gained general acceptance in the mental health field.²⁵ The result in this case should alert the legal and mental health profession of the dangers of admitting social science evidence or testimony without a definitive way of measuring reliability and validity. The trial judge admitted evidence of PAS and made a decision based solely on this evidence, because present standards of admissibility allow him to. It is of course possible that the sex abuse allegations were falsified or that the father was a better custodial parent overall. The court, however, focused exclusively on the PAS diagnosis and foreclosed a broader inquiry into Mandi's best interest. The investigation should have been continued and an independent judgment rendered based on the total factual circumstances and without the distortion created by reliance on an unsubstantiated mental health syndrome.

Another case where PAS testimony resulted in a change of custody to the father is *Hanson v. Joseph*.²⁶ In *Hanson*, the court had to decide whether a mother's animosity and conduct toward her husband justified modification of a joint-custody agreement.²⁷ Shortly after the couple's dissolution agreement, the mother filed a petition for sole custody, alleging that her husband was sexually abusing their child.²⁸ The father filed an emergency petition for sole custody, alleging that the child was suffering from PAS.²⁹ The father introduced the testimony of a PAS expert, and the evidence was admitted. The expert testified that the mother's comments against the father, made in the child's presence, were for the sole purpose of initiating the child's alienation of his father and that the mother's behavior was endangering the emotional and physical development of the child.³⁰ On hearing this testimony, the court ordered an immediate custody change, granting sole custody to the father.³¹ Again, as in *Karen B.*, the court failed to evaluate the reliability and validity of PAS and did not look to broader best interest factors in awarding custody.³² The *Hanson* dissent denounced the majority for admitting PAS testimony without such an analysis.³³ The dissent also affirms the danger of allowing PAS testimony to be "outcome determinative" in custody disputes.³⁴ In *Hanson*, the judge gave sole custody to the father because an expert testified how the

mother's behavior negatively affected the child and engendered PAS.³⁵ However, the expert made his determination without interviewing the mother and despite the fact that the father had severe emotional problems, which affected his ability to work.³⁶

These two cases are representative of reasons why PAS testimony must be scrutinized for validity and reliability. Judicial decisions based on testimony of the existence of PAS has been used to justify changing court-ordered custody agreements and potentially endangering the emotional stability of children by placing them with a parent with whom they do not want to be.³⁷ A court that believes that PAS exists might also subject a child to a possible risk of sexual abuse by finding a true allegation to be false because the court believes a PAS-influenced allegation is not credible. PAS should not be a tool in a fact-finder's toolbox unless the theory meets standards of admissibility of expert testimony. Even then, PAS evidence should never be outcome determinative.³⁸

DOES PAS MEET STANDARDS FOR ADMISSIBILITY OF EXPERT SOCIAL SCIENCE TESTIMONY

INTRODUCTION

Key terms must be defined before considering whether testimony about PAS should be admissible: scientific evidence, social science evidence, and technical evidence. *Scientific evidence* is evidence grounded in the methods and procedures of science;³⁹ it is derived through the recognition and formulation of a problem, the collection of data through experimentation, the formulation of a hypothesis, and the testing and confirmation of the hypothesis formulated.⁴⁰ Evidence that Benedictin is responsible for birth defects is an example of scientific evidence because this conclusion results from the systematic accumulation of evidence in support of a particular proposition.⁴¹

Social science evidence refers to evidence of mental disorders and other phenomenon in the world of human behavior.⁴² Social science research meets the standards of scientific evidence if true experimental methods are employed.⁴³ True experiments involve proper sampling methods, full control of the independent variables, random assignment of participants to treatment and no-treatment groups, and before and after measures by raters that are blind to the hypothesis tested.⁴⁴ These stringent standards are not often feasible or ethical for social science researchers who instead rely on quasiexperimental methods and statistical controls of the independent variables.⁴⁵ More simply put, some of social science research lacks the ability to manipulate the independent variables in ways that can positively determine their influence on the dependent variables or outcomes.⁴⁶

Technical evidence is evidence presented by an expert whose body of knowledge is not derived from scientific experimentation or statistical analysis, yet it is the result of specialized knowledge gained through personal experience.⁴⁷ An example of this is the testimony of an expert who has spent his career studying skid marks and tire wear to determine whether a tire was defective.⁴⁸

The thesis of this article is that testimony about PAS does not qualify as social science evidence because it has not been empirically substantiated and that the standards of admissibility need to be changed to prevent evidence such as PAS to enter the courtroom as technical evidence.

EVOLUTION OF STANDARDS FOR ADMISSIBILITY OF EXPERT TESTIMONY

Standards of admissibility for expert testimony have changed since the Washington, D.C. Circuit's decision in *Frye v. United States*.⁴⁹ The court in *Frye* adopted what is now commonly referred to as the *general-acceptance standard*. This is a stringent standard that holds that for scientific evidence to be admissible, it must be gathered using techniques that have gained general acceptance in their field.⁵⁰

This test was controlling in a majority of jurisdictions until the Supreme Court's decision in *Daubert v. Merrill Pharmaceuticals*.⁵¹ The *Daubert* court construed Federal Rule of Evidence (FRE) 702 as giving the trial judge gatekeeping power to determine whether scientific evidence is admissible.⁵² Although the trial judge is given gatekeeping responsibilities, the *Daubert* opinion fails to specify exactly how a judge should manage this task.⁵³ The opinion does offer a nonbinding list of considerations that a judge might consider when deciding whether evidence is admissible, including the following: whether the theory has been tested, whether the potential error rate is known, whether the theory has been subject to peer review, and whether the theory has widespread acceptance in the field.⁵⁴ The opinion also gives an analysis of the scientific method and finds that any theory derived through the scientific method is reliable.⁵⁵

The problem with *Daubert* is that it assumes that trial judges have the ability to comprehend what evidence is scientific and what evidence should be subject to some standardized method of reliability.⁵⁶ The *Daubert* decision also does not require the trial judge to adhere to the four-step test of reliability that it sets out.⁵⁷ Rather, the court holds that the trial judge has plenary discretion and that these factors are merely guidelines to which a judge could look.

Daubert engendered mass confusion in the state and federal courts as to what expert evidence was admissible.⁵⁸ Although the court laid a foundation for admitting scientific testimony, the court was not explicit as to whether the holding extended to the admissibility of social science expert testimony, such as mental health diagnoses and syndromes.⁵⁹ If a court determines that the social science testimony is not scientific, then a court could apply a different standard than the one applied to scientific evidence.⁶⁰ This distinction between scientific and social science evidence is important because if the *Daubert* factors do not apply to social science evidence, judges would have no guidelines as to the admissibility of PAS testimony.

An example of a court's making a distinction between scientific and social science evidence for purposes of a *Daubert* analysis is *United States v. Bighead*.⁶¹ In *Bighead*, the defendant was charged with two counts of sexual abuse with a minor.⁶² Although the victim claimed that the abuse had lasted from the time she was 11 until she was 17, the abuse was not reported until the victim was 18.⁶³ The government introduced an expert witness on child sex abuse to rebut the defendant's theory that delayed reporting indicates false accusations.⁶⁴ The trial court allowed the testimony. On appeal, the defense argued that the expert's testimony should have been inadmissible because the theory was not reliable or valid under *Daubert*.⁶⁵ The Circuit Court rejected this argument and held that the expert's testimony was not scientific and therefore not subject to the *Daubert* factors.⁶⁶ The expert's testimony consisted of her own observations drawn from years of experience with child sex abuse cases and therefore was consistent with specialized knowledge but not scientific knowledge.⁶⁷ Thus, the testimony was admissible as social science evidence and was not put through the scrutiny of *Daubert*. Under this analysis, PAS testimony is admissible in any jurisdiction that has adopted this interpretation of *Daubert*.⁶⁸

In jurisdictions that hold *Daubert* applicable to social science expert testimony, PAS might not be admissible. The *Daubert* factors suggest that a judge look to the reliability and validity of the testimony and to whether the testimony is generally accepted or peer reviewed.⁶⁹ When tested under this standard, PAS will fail, and expert testimony about PAS evidence would be inadmissible.

The Supreme Court was called on in 1999 to answer the questions left open by *Daubert* and to determine the standard of admissibility for expert testimony in *Kumho Tire v. Carmichael*.⁷⁰ The facts of *Kumho* differed from *Daubert*'s because *Kumho* involved the testimony of a technical expert.⁷¹ The expert performed a visual inspection of the tire at issue in the case and determined through his experience that the tire was defective.⁷² *Kumho*, the defendant, moved to exclude the testimony on the grounds that it failed the reliability requirements set forth in *Daubert*.⁷³ The trial court excluded the evidence and granted *Kumho*'s summary judgment motion.⁷⁴ On certiorari, the Supreme Court held that the *Daubert* factors were not limited to scientific evidence.⁷⁵ Justice Breyer explained that the *Daubert* factors were enunciated to assist trial judges in determining what expert testimony was reliable but that the factors were not definitive or binding.⁷⁶ The trial judge has considerable leeway in deciding what factors are applicable in the determination of an expert's validity and reliability.⁷⁷ The *Kumho* decision goes as far as to open the door for the admissibility of novel expert analysis.⁷⁸ This is an extremely broad standard that gives trial judges great discretion in determining what expert evidence is reliable and valid and therefore admissible.

Although the Supreme Court in *Kumho* broadened the judge's gatekeeping responsibility and held that *Daubert* applied to social science and technical evidence, different jurisdictions continue to follow the *Frye* general-acceptance standard or the *Daubert* multiple-factor test for reliability and validity.⁷⁹ How expert social science evidence is properly admitted under these tests and how the courts can misapply the standards is important in demonstrating why the standards need to be changed. It is also a necessary starting point for developing a new standard that will prevent unreliable and invalid social science evidence and testimony such as PAS from being admissible.

One mental health syndrome, which will pass the *Frye* general-acceptance standard and qualify as social science expert testimony, is the Child Sexual Abuse Accommodation Syndrome (CSAAS).⁸⁰ Evidence of the syndrome has been admissible in an overwhelming majority of jurisdictions for the purpose of explaining the significance of a child's self-impeaching behavior, such as delayed sex-abuse reporting and recantation.⁸¹ This syndrome is admissible under the *Frye* because evidence of CSAAS has been admissible testimony previously.⁸² This is not to say that CSAAS has not met criticism in the mental health field, but under *Frye*, as long as courts have admitted the testimony, the testimony is considered generally acceptable.⁸³

It is thus possible for PAS to pass muster under jurisdictions that follow *Frye* if counsel can demonstrate that PAS has infiltrated judicial opinions and therefore is generally accepted. This is why courts should not be bound by the *Frye* general-acceptance standard. It allows for the admissibility of unreliable and invalid testimony. A kind of catch-22 is involved under *Frye*: Questionable expert testimony becomes generally accepted the more courts accept it; therefore, one mistake can breed others. That clever arguing may result in the admissibility of PAS leads individuals who are concerned with unreliable and invalidated evidence influencing judges back to the proverbial drawing board to develop a more potent exclusionary standard.

Getting expert social science testimony admitted in jurisdictions applying *Daubert* is a more difficult task.⁸⁴ As previously discussed, *Daubert* is not a bar to admissibility of PAS in

jurisdictions that distinguish scientific evidence from social science and technical evidence.⁸⁵ Courts that hold social science evidence to be scientific, and therefore apply the *Daubert* factors, hold that expert testimony on mental health syndromes is not admissible unless symptomology is determined through standardized tests and the responses to those tests are quantified through normative scoring procedures.⁸⁶ The reliability and validity of the expert's theories also depend on whether the theory has been subject to peer review and whether the theory has gained general acceptance.⁸⁷ Testimony of PAS would not be admissible in any courtroom applying these criteria. As previously discussed, PAS data have no predictive value, error rates cannot be assigned, research methods are questionable, PAS is not the subject of the peer-review process, and the social science community has not generally accepted that the syndrome exists.

PAS might be admissible, however, in jurisdictions that do not subject social science testimony to *Daubert*, because diagnoses of the syndrome result from the culmination of a specialist's experiences and therefore is specialized technical knowledge under *United States v. Bighead*. It is possible for PAS testimony to be admitted into evidence in these jurisdictions. As in *Bighead*, PAS is based on personal observations and specialized experience of the psychiatrist who defined the syndrome. Therefore, courts applying this *Daubert* standard might admit testimony of the existence of PAS as the specialized knowledge of a psychiatrist through years of work.

PAS testimony might also be admissible under *Kumho*. *Kumho* allows for the admissibility of testimony of novel theories, even if the theory does not meet a stringent application of *Daubert*.⁸⁸ PAS testimony may be admissible in jurisdictions that follow *Kumho*, because the trial judge is given broad discretion in determining the reliability and validity of theories that are not subject to peer review and of theories that researchers have not substantiated.⁸⁹

PAS: DEVELOPING A STANDARD FOR EXPERT SOCIAL SCIENCE TESTIMONY

The problem that has emerged is that *Kumho*, *Daubert*, *Frye*, or some combination thereof still have not created a universally recognized standard to determine what is reliable and valid mental health or social science expert testimony. Some commentators have suggested that all courts readopt the old *Frye* standard that some states still follow.⁹⁰ Although the *Frye* standard might prevent PAS testimony from entering the courtroom, it also prevents expert testimony on new theories that are reliable and valid but that have yet to gain general acceptance in the field, because of lack of time.⁹¹ The *Daubert* test is simply not stringent enough. It leaves too many questions unanswered as to how judges are to establish the reliability and validity of expert testimony. In some jurisdictions, PAS testimony would be admissible because the judge decided either not to apply the factors at all or that the factors were to be applied to scientific evidence only.

The problems presented by *Daubert* appeared to be bandaged by *Kumho*, which held that *Daubert* applied to social science, scientific, and technical evidence.⁹² Unfortunately, the court in *Kumho* did not mandate that the *Daubert* factors be applied to all expert evidence; it only suggested that these factors be applied to each of these types of evidence.⁹³

The basic reason why these standards, which most or all states have adopted, do not prevent PAS testimony from being admitted is that these standards are interpretations of Federal Rules of Evidence (FRE) 702 and that this rule is poorly drafted.⁹⁴ The rule allows "a witness qualified as an expert by knowledge, skill, experience, training, or education [to] testify in

the form of an opinion or otherwise.”⁹⁵ Thus, an expert’s testimony could be deemed reliable by the judge simply because the expert demonstrates skill in a particular specialized area, is educated in the field, or has experience. It does not make distinctions between scientific, social science, and technical evidence and require that an expert’s testimony about mental health syndromes meet reliability criteria. Under FRE 702, Gardner could qualify as an expert witness in a child custody dispute because he meets this criteria for an expert witness and could testify about PAS based on his clinical observations and experience.

One way to ensure the reliability and validity of expert social science testimony is to add the two parts of the *Daubert* test to the FRE standard, thus ensuring (a) that the expert’s theory is tested using acceptable methods in a particular field of knowledge and (b) that the data collected from research could be assigned potential error rates and predictive value.⁹⁶ This is an appropriate solution for many reasons. First, most or all of the states have adopted a provision in their evidence code similar to FRE 702.⁹⁷ Therefore, states would most likely make note of an amendment and reconfigure their own rules. If states do adopt this codification, the question of whether a judge could use his own criteria for testing reliability is answered.

Codifying the two *Daubert* criteria would force judges to apply testability and error analysis to all forms of expert testimony, whether the testimony be scientific, social science, or technical. Problems may arise with this codification in instances in which data and theory construction are not or cannot be the result of experimental design and empirical testing because experts might have difficulty presenting a specific formula and quantitative data to prove the reliability and validity of their results. The facts of the *Kumho* case, where a tire specialist gave an expert opinion as to whether a tire was defective, is a good example. For these types of specialists, the FRE 702 principles should remain unchanged. An expert in a technical field should lay a foundation for his knowledge, such as years of experience, type of experience, and any techniques used to reach his result. A judge requiring the same extensive testing and data analysis for technical experts as he would for scientific or social science evidence would be infeasible. These experts would rarely meet the standard, and technical evidence would be inadmissible.

Under this standard, expert testimony of a child’s relationship with a parent, including the child’s alienation from a parent, would be admissible if the expert fulfilled standard criteria for evaluating the mental health of the child and parents. It would qualify for expert testimony because it is truly technical evidence. What would not be admissible, however, is the expert’s characterizing or classifying a child’s alienated feelings for a parent or the behavior of the other parent, which may cause such feelings, as a “syndrome.”

CONCLUSION

Judges considering whether to allow the introduction of PAS evidence in child custody cases should distinguish between technical evidence and social science evidence, which can be substantiated through empirical testing. The evidence that can be evaluated through empirical testing will be subject to the *Daubert* factors. This way, a judge is required to see evidence of experimental design, empirical tests, error rates, and predictive value of data. PAS evidence would be inadmissible under these standards because the theory is not empirically substantiated.

Evidence of a child’s alienation from a parent will still be admissible in a child custody proceeding, through, for example, receipt into evidence of a forensic evaluations report detailing such alienation and describing judicial management and treatment recommenda-

tions to cope with it. What will be inadmissible, however, is the false patina of scientific objectivity and diagnosis created by attaching the word *syndrome* to the alienated child's feelings and the behavior of the allegedly alienating parent.

NOTES

1. See RICHARD A. GARDNER, M.D., *THE PARENTAL ALIENATION SYNDROME AND THE DIFFERENCE BETWEEN FABRICATED AND GENUINE CHILD SEX ABUSE* 70 (Creative Therapeutics 1987).

2. See *id.* (stating that Parental Alienation Syndrome [PAS] symptoms are a campaign of denigration; weak, frivolous, or absurd rationalizations for the depreciation; lack of ambivalence; the independent thinker phenomenon; reflexive support of the alienating parent; absence of guilt over the cruelty; and exploitation of the alienated parent).

3. See Richard A. Gardner, M.D., *Differentiating Between Parental Alienation Syndrome and Bona Fide Abuse Neglect*, 27 *American Journal of Family Therapy* 97, 98 (1999).

4. See Joan B. Kelly & Janet R. Johnston, *The Alienated Child: A Reformulation of Parental Alienation Syndrome*, 39 *FAM. CT. REV.* (2001).

5. See *id.*; See also Rorie Sherman, *Gardner's Law*, NAT'L L. J. Aug 16, 1993 at 45 (stating that when pressed, Gardner admits that there are no data to support his characterizations. He describes his theories as a precursor to scientific research developing in the field); See also Justice R. James Williams, *Should Judges Close the Gate on PAS and PA* 3.9 *FAM. CT. REV.* (2001); See also Katheline C. Faller, *Parental Alienation Syndrome: What is it and What Data Support it?* CHILD MALTREATMENT, Volume 3 100-115 (1998).

6. See Lucy Berliner & John Conte, *Sexual Abuse Evaluations: Conceptual and Empirical Obstacles*, 17 *CHILD ABUSE & NEGLECT* 111, 114 (1993) (finding that Gardner's tests lack predictive value and cannot be tested for validity).

7. See *id.*

8. See Jerome H. Poliacioff, Ph.D., Cynthia Greene, & Laura Smith, *Parental Alienation Syndrome: Frye v. Gardner in the Family Courts*, MARRIAGE AND DIVORCE (1997). <http://www.gate.net/~liz/liz/poliacioff.htm>

9. See *id.*

10. See *id.*

11. See T. W. Campbell, *Indicators of Child Sex Abuse and Their Unreliability*, AMERICAN JOURNAL OF FORENSIC PSYCHOLOGY, 1997 at 5-18; See also Kelly & Johnston, *supra* note 5, at 4.

12. See Stephanie Dallam, *The Evidence of Parental Alienation Syndrome: An Examination of Gardner's Theories and Opinions*, JOURNAL OF ABUSE AND NEGLECT, 111, 125 (finding through an extensive search that none of Gardner's articles have ever been published in a peer-reviewed journal).

13. See http://www.rgardner.com/refs/pas_legalcites.html

14. See *Karen B. v. Clyde M.*, 574 N.Y.S.2d 267 (Fam. Ct. 1991).

15. See *id.*, at 268.

16. See *id.*

17. See *id.*, at 269.

18. See *id.*

19. See *id.*

20. See *id.* at 270; Accord Gardner, *supra* note 2 at 99 (stating that the mother's motivation in gaining sole custody is a contributing factor in the development of the child's PAS); But see John E. B. Myers, *Allegations of Child Sexual Abuse in Custody and Visitation Litigation; Recommendations for Improved Fact Finding and Child Protection*, 28 *FAM. L. J.* 38 (1989) (stating that parents' behavior during custody litigation should not be misinterpreted. Such parents are under enormous, sometimes disabling, stress. They are desperate to protect their children and may act in bizarre ways that seem irrational).

21. See *Karen B.*, 574 N.Y.S.2d at 270.

22. See *id.*, at 271.

23. See *id.*, at 272.

24. See *id.*

25. See *id.*

26. See *Hanson v. Joseph*, 685 N.E.2d 71 (1997).

27. See *id.*, at 74.

28. See *id.*, at 75.

29. *See id.*, at 75.
30. *See id.*
31. *See id.*
32. *See id.*
33. *See id.*, at 84.
34. *See id.*
35. *See id.*
36. *See id.*
37. *See Hanson v. Joseph*, 685 N.E.2d at 84 (dissenting Citezem, J.) (finding that PAS is dangerous because it could place children in environments where they do not feel safe).
38. *See Matthew J. Sullivan & Joan B. Kelly Legal and Psychological Management of Cases With an Alienated Child*, 39 FAM. CT. REV. (2001) (stating that alienation is a complex phenomenon and must be treated as such. A PAS diagnosis, even if accurate, requires careful therapeutic intervention rather than punishment of the initiator of the syndrome).
39. *See Daubert*, 509 U.S. at 590.
40. *See id.*
41. *See id.*
42. *See Thomas Kuhn, THE STRUCTURE OF SCIENTIFIC REVOLUTION 10-35* (University of Chicago Press 1970).
43. *See id.*
44. *See id.*
45. *See id.*
46. *See id.*
47. *See Kumho Tire v. Carmichael*, 526 U.S. 137, 144 (1999).
48. *See id.*
49. 293 F. 1013 (D.C. 1923).
50. *See id.*, at 1014.
51. 509 U.S. 579 (1993); *See also* Major Victor Hansen, *Rule of Evidence 702: The Supreme Court Provides a Framework for Reliability Determinations*, 162 MIL. L. REV. 1, 14 (1999) (stating that the *Daubert* court held that *Frye* was no longer the controlling test because it did not complement the broader standards of Federal Rule of Evidence [FRE] 702).
52. *See Daubert*, 509 U.S. at 596.
53. *See Cheri Wood, The Parental Alienation Syndrome: A Dangerous Aura Reliability*, 27 LOY. L.A. L. REV. 1367, 1368 (1994).
54. *See Daubert*, 509 U.S. at 597.
55. *See id.*
56. *See Wood, supra* note 53, at 1405.
57. *See Daubert*, 509 U.S. at 589 (holding that the factors are flexible and not binding and that the judge has discretion in applying standards of validity and reliability).
58. *See Edson McClellan, Sharpening the Focus on Daubert's Distinction Between Scientific and Nonscientific Testimony*, 34 SAN DIEGO L. REV., 1719, 1722.
59. *See McClellan, supra* note 58, at 1722.
60. *See Daubert*, 509 U.S. at 589 (holding that the factors will help a judge ensure that scientific testimony is relevant and reliable) (emphasis added); *See also* McClellan, *supra* note 77 at 1724 (stating that if the knowledge underlying the expert's opinion was derived from the scientific method, a different reliability standard would be used than if knowledge was derived through common experience).
61. *See United States v. Bighead*, 128 F.3d 1329 (9th Cir. 1997) (*rev'd on other grounds*).
62. *See id.*, at 1330.
63. *See id.*
64. *See id.*
65. *See id.*
66. *See id.*, at 1331.
67. *See id.*
68. *See McClellan, supra* note 77, at 1732 (stating that courts have essentially chosen between three broad options in identifying *Daubert's* scope. The first option is to hold that *Daubert* is inapplicable to nonscientific testimony, the second option is to cite *Daubert* for the proposition that nonscientific testimony must be reliable and relevant to the task at hand, and the third option is to hold that the *Daubert* factors extend to nonscientific evidence); *See, e.g., Iacobelli Construction Inc. v. County of Monroe*, 32 F.3d 19 (2d Cir. 1994) (applying the first option); *Freed-*

man v. Case Corp., 118 F.3d 1011 (4th Cir. 1997) (applying the second option); *United States v. Jones*, 107 F.3d 1147 (6th Cir. 1997) (applying the third option).

69. See *Daubert*, 509 U.S. at 593.

70. 526 U.S. at 137 (1999).

71. See *id.*, at 143.

72. See *id.*, at 144.

73. See *id.*

74. See *id.*, at 145.

75. See *id.*, at 151.

76. See *id.*

77. See *id.*, at 152 (finding that the trial judge has much latitude in deciding how to test an expert's reliability).

78. See *id.*, at 153 (finding that "It may not be surprising in a particular case; for example, that a claim made by a scientific witness has never been the subject of peer review . . . [or] may never [have] previously interested any scientist.").

79. See *People v. Yates*, 168 Misc.2d 101 (applying the *Frye* general acceptance standard); See *Morgan v. Krenke*, 72 F.Supp. 2d 980 (E.D. Wis. 1999) (referring to *Daubert* as the standard for admissibility 8 months after the *Kumho Tire* decision).

80. See Roland A. Summit, *Abuse of the Child Sexual Abuse Accommodation Syndrome (CSAAS)*, CHILD SEXUAL ABUSE, VOL 1 No. 4 1992 (defining CSAAS).

81. See *Bostic v. State*, 772 P.2d 1089 (Alaska Ct. App. 1989); *State v. Moran*, 728 P.2d 248 (Ariz. 1986); *People v. Leon*, 263 Cal. Rptr. 77 (Ct. App. 1989); *State v. Spigarolo*, 556 A.2d 112 (Conn. 1989).

82. See *State v. J.Q.*, 599 A.D.2d 172, 179 (stating that expert's testimony is reliable if the expert's theory has gained acceptance in the field as demonstrated through acceptance in scientific writings or by judicial opinions that indicate that the expert's premise has general acceptance).

83. See *id.*

84. See James T. Richardson, Gerald P. Ginsburg, Sophia Gatowski, & Shirley Dobbin, *The Problems of Applying Daubert to Psychological Syndrome Evidence*, 79 JUDICATURE 10, 10 (1995).

85. See Bighead, 128 F.3d at 1331.

86. See *State v. Cressy*, 137 A.2d 696 (N.H. 1993).

87. See *id.*

88. See *Kumho*, 526 U.S. at 153.

89. See *id.*

90. See Wood, *supra* note 53, at 1407 (discussing the merits of the *Frye* standard).

91. See Hansen, *supra* note 51, at 14.

92. See *Kumho*, 526 U.S. at 153.

93. See *id.* (holding that the district judge has discretionary authority to determine reliability in light of the circumstances of a particular case; the *Daubert* factors are not necessarily applicable).

94. Although FRE 702 does not govern state custody proceedings, it does represent an important formulation of standards of admissibility for expert testimony followed in many states. See *Attorney Accountability: Hearings on H.R. 10 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary*, 104th Cong 1st Sess. 146 (1995).

95. FED. R. EVID. 702.

96. See *Daubert*, 509 U.S. at 591.

97. See *Attorney Accountability: Hearings on H.R. 10 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary*, 104th Cong 1st Sess. 146 (1995).

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