Los Angeles Superior Court Case No. BD 450081
Court of Appeal Case No. B234877

SECOND APPELLATE DISTRICT
DIVISION THREE

SEGALIT MCROBERTS (LESSERSON),

Petitioner,

vs.

LOS ANGELES SUPERIOR COURT,

Respondent.

_____

STEVEN LESSERSON,

REAL PARTY IN INTEREST.

_____

PETITIONER'S BRIEF IN REPLY TO OPPOSITION OF REAL PARTY IN INTEREST (STEVEN LESSERSON)TO PETITION FOR WRIT OF MANDAMUS AND OTHER RELIEF

(Honorable David Cunningham, Judge Presiding, Dept. 22,
Los Angeles Superior Court, Downtown courthouse)
EMERGENCY STAY GRANTED

PATRICIA J. BARRY SBN 59116
634 S. Spring St., Ste 823
Los Angeles, Ca 90014
Tele. (213) 995-0734
Fax (213) 995-0735
patbarrylegal@yahoo.com
ATTORNEY FOR PETITIONER SEGALIT MCROBERTS

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TO

PETITION FOR WRIT OF MANDAMUS AND OTHER RELIEF

I

INTRODUCTION

"It would be so nice if something made sense for a change." Alice,

Alice in Wonderland

Segalit McRoberts ("McRoberts") is petitioner (in the trial court and here) and the mother of four children. Real Party in Interest, Steven Lesserson ("Lesserson") is respondent (in the trial court and here) and the father. The two oldest children, both girls, R1 and R2, allege that their father repeatedly rubbed them in their private parts, namely, the breast, vaginal, and rectal areas. R1 is now 11 years old and R2 is 10. The two boys are 6 and 8 years old.

The younger daughter ended up with extensive genital warts in the areas where she said her father was rubbing her, in the vaginal opening, on her buttocks, and near the rectum. See CD containing medical records of Santa Monica/UCLA Rape Treatment Center which includes a photograph of R2's bottom with the genital wart lesions. Exh. 26 (to be mailed directly

by custodian of records from UCLA to this Court since trial court cannot locate the CD UCLA mailed to Judge Cunningham.) The parties and Judge Cunningham reviewed the CD on January 7, 2011.

Stan J. Katz, custody evaluator, ("Katz") engaged in criminal obstruction of justice, and the Court repeatedly violated McRoberts (and her children's) due process rights. The order giving custody to the father should be reversed and a new order substituted in its place, giving sole legal and physical custody to McRoberts with supervised visitation of the two boys and of the two girls only at their election.

> It is a cardinal principle of our jurisprudence that a party shall not be bound or concluded by a judgment unless he [*sic*] has had his day in court.... His right to a hearing does not depend upon the
>
> will, caprice or discretion of the trial judge who is to make a decision upon the issue. Judgment without such an opportunity is lacking in all of the attributes of a judicial determination. [Citations.] *Eshelman v. Eshelman* (1955) 133 Cal. App. 2d 376, 38l.

See also *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985).

> There is no question that due process is one of the cornerstones of the legal system.
>
> It is a denial of due process to treat parents differently. *Stanley v. Illinois*, 405 U.S. 645 (1972).

II

PROCEDURAL HISTORY OF THE FAMILY LAW PROCEEDING

Petitioner was married to Respondent on August 11, 1998. Petitioner filed for divorce on July 28, 2006. Respondent was arrested for domestic violence, and the criminal proceeding against him commenced on August 8, 2006. A true and correct copy of the docket in *People v. Lesserson*, Case No. 6MB01928, Los Angeles Superior Court is marked and attached as Exh. 16.

Judge Linfield ordered a custody evaluation. A true and correct copy of the stipulated unsigned order is marked and attached as Exh.69. Because Los Angeles Superior Court provides no information to parents about custody evaluators so they can make an informed choice, McRoberts stipulated to Katz. McRoberts had also obtained a restraining order for her and her children with monitored visitation during Katz's year long custody evaluation. Exh. 15. Judge Linfield issued another restraining order in February 2007 because Lesserson repeatedly violated the one in place. The monitored visits now were restricted to outside Respondent's home, Respondent could not drive the children, and Respondent could not go near the children's schools. A true and correct copy of Judge Linfield's restraining order filed March 20, 2007, is marked and attached as Exh. 20.

Petitioner applied for a TRO in January 2009 before Judge

Meisinger who denied it. Over Petitioner's written opposition filed February 26, 2009, Exh. 39, to Lesserson's OSC for reappointment of Katz, in March 2009, Judge Meisinger ordered Katz to perform a 2-week fast track evaluation , a true and correct copy of which is marked and attached as Exh. 40. Dr. Katz testified on April 1, 2009 that Lesserson had not sexually abused the girls. Judge Meisinger ordered primary custody to remain with mother (as has been the case since the children's births), and Respondent to have a third party on visits with children (which Respondent never complied with). The minute order is attached as Exh. 25. Judge Meisinger did warn Lesserson that McRoberts would have full custody if one more iota of evidence of sexual abuse appeared after the hearing. A true and correct copy of the minute order filed April 1, 2009, is marked and attached as Exh. 25. Siedel's proposed attorney order acknowledging the requirement of the third party during visitation (but stating it was not monitored visitation) is attached as Exh. 36. See Exh. 37, letter of McRoberts' attorney responding to the proposed order. On June 23, 2010, Petitioner filed for a TRO which Judge Cunningham granted. A true and correct copy of the restraining order filed June 23, 2010, is marked and attached as Exh. 27.

III

THE TRIAL IN JUDGE CUNNINGHAM'S COURT.

Trial on the sex abuse issue commenced in Judge Cunningham's courtroom on July 14, 2010. It continued over a period of one year and ended on July 28, 2011. Despite issuing two minute orders indicating that the girls would testify, Judge Cunningham changed his mind and would not allow them to testify. True and correct copies of the minute orders filed October 8, 2010, and January 4, 2011, are marked and attached as Exhs 51 and 52 respectively; 1/11/11 transcript 87:21-89:13, 91:2-8; 7/28/11: 2:18-3:7. See Family Code Section 3042, Code of Civil Procedure Section 374, both allowing the testimony of children .

The witnesses called by the mother were Elisha Hicks, M.D. ("Hicks") treating pediatrician of the children, Raymond Anderson, Ph.D. ("Anderson") forensic expert, Erika Krueger, ("Krueger") R1's treating therapist, Martine Leveque, ("Leveque") the disabled child's nurse, and McRoberts. The witnesses called by Lesserson were Katz, Lynn Dannacher, Ph.D., ("Dannacher") visitation monitor and reunification therapist, Jacob Fleischman, M.D. ("Fleischmann"), Astrid Heger, M.D.("Heger"), Gary Richwald, M.D., ("Richwald") the latter three, forensic experts, and Lesserson.

REASONS WHY THE COURT SHOULD CONSIDER DECLARATIONS OF MCROBERTS AND HER HUSBAND NICHOLAS MCROBERTS

McRoberts is submitting her declaration and the declaration of her present husband, Nicholas McRoberts ("Nick McRoberts"), Josh Marquez, Steve Brown, and Diana Horowitz. She requests that the Court consider the declarations when ruling on her petition for the following reasons:

A. The Misconduct of Katz and Repeated Failures of Mother's Attorney to Make Objections to the Proceeding and to the Testimony Resulted in Suppression of the Truth, and Without Their Declarations, This Court Will Not Have a Full, True, and Correct Record of What Occurred at the Trial Court Level.

Katz performed three evaluations, one in 2006-2007, the second one in 2009, and the third one in 2010. Katz did not produce a custody evaluation report for the first two evaluations. We estimate Katz was paid $20,000 the first time, taken from the marital assets. Lesserson and/or his supporters paid Katz $11,500 the second time and another $25,500 the third time, which includes six days of testimony at $3,000.00 a day. This estimate does not include all the extra charges Katz includes in his "orders". A true and correct copy of Katz's "stipulation and order" signed by the parties and their attorneys for the first evaluation is marked and attached as Exh 69 and the third one, as Exh. 70.

Without written evaluations in hand, Jim McCullaugh

("McCullaugh"), Attorney for McRoberts, could not effectively cross examine Katz on his testimony related to the first two evaluations. Second, McCullaugh rarely objected, and in the few instances he did, he was generally overruled. McCullaugh failed to object to Katz's rambling narratives and lack of foundation in which Katz weaved what he claimed he learned from the first two evaluations with what he claimed he learned from the third one.

McRoberts estimates that Katz interviewed the children for a total of five hours in all three evaluations. She also states that she has no record, like a calendar notation, that Katz interviewed R2 a second time, on September 14, 2010, although Katz wrote in the only evaluation report he produced that he had. McRoberts declaration, p.9, para 14. McRoberts also attaches as Exh. 49 a true and correct copy of portions of the Questionnaire Katz had McRoberts fill out where she states her concerns about the father. Katz failed to inform Judge Cunningham of those concerns.

McRoberts details in her declaration p.5, para 8 (first evaluation), p.6, para 9 (second evaluation), p.8, para 13 (third evaluation) the witnesses Katz failed to interview, which included the children's therapists, teachers, and doctors who examined R2 (Hicks and at Rape Treatment Center). Katz never tested the family members but refused to consider the results of the

tests which Dr. Anderson, Exh. 13, and Dr. Dunn, Exh. 12, conducted of the two girls, *although Katz claimed that R1 had severe psychiatric problems when he spent little time interviewing her, never tested her, never spoke to the professionals who did or to her therapists and teachers.*

Katz brought notes to the stand and at times referred to them when he testified. Oddly enough, the transcript is utterly silent about Katz's notes. At no time did Seidel indicate that Katz was looking at his notes. Judge Cunningham said nothing although observing what Katz was doing. McCullaugh never demanded to see those notes or nor requested copies of them to aid in his cross examination of Katz. **Yet, the notes are the only written documentation of what occurred during the first and second evaluations.** McRoberts Declar., p. 8, para 2.

Custody evaluations are mental examinations imposed by the Court. The Civil Discovery Act applies to family law proceedings. Tape recording the entire examination is a statutory right in California:

> § 2032.530 Civ. Proc. states in part:
>
> (a) The examiner and examinee shall have the right to record a mental examination by audio technology.

Parents and children are no different than any other person ordered

in a legal proceeding to undergo a mental examination, and should be entitled by law to record their interviews with the custody evaluator. Unrestrained by a tape recorder, Katz had free rein to make it up as he went along, which he did. For example, Katz recast McRoberts' report of spousal rape as "unwanted sex". 2/10/11 Transcript 11:1-8. Katz suppressed what McRoberts told him which was that Lesserson frequently came into their bedroom in the early mornings very drunk and would overpower her by force to have sexual intercourse against her will. McRoberts Declar.p.5, para 9. McRoberts' allegations meet the criteria set out in CA Penal Code Sec.262(a)(1) for spousal rape.

From the beginning, Katz and Siedel engaged in invidious religious discrimination against McRoberts. Petitioner Exh. 4, 4/1/09 transcript p. 17-18 (Katz making religion the issue), p.34 (religion under guise of the court choosing one lifestyle for the children), and Exh. 46, p.39 (Katz using Petitioner's conversion to Christianity as evidence that she is emotionally unstable).

Katz and Siedel turned the trial into an auto da'fe against McRoberts. See 10/8/10 56:10-16, 56:21-24, 57:7-19, 73:12-17, 75:1-3, 79:14-20, 97:2-8;1/11/11 69:22-27, 2/10/11 9:13-17, 11:12, 16:1-5, 16:23-28; Evaluation Report, Respondent's Appendix, 45, 47, 50, 61, 83.

Katz's characterization of the children's *confusion* about their parents' religions was sham for his animus against McRoberts for converting to Christianity. The children appeared to have adjusted to the fact that now Mommy and Daddy have split up, they have different religions. Katz ignored McRoberts' reports that Lesserson and his wife called McRoberts a rasha ("evil sinner") in front of the children, and that Lesserson would turn his back to her at the visitation exchanges saying he had a right to do so because she was impure and a prostitute also in front of the children . McRoberts Declar.,p.9, para 14. See also Exh. 29, where in the Aish Hatorah "urgent calls for help" (bulletin), Lesserson begs for prayers because according to Lesserson, the children are in danger because McRoberts is taking the children to church.

As an officer of the court, Katz had a duty and obligation under the First Amendment[1] to ameliorate the differences between the husband's religion and the mother's new beliefs, not to emphasize the tensions. He had a duty to advise Lesserson to cease the religious-based attacks on his ex-wife for the sake of the children. Instead, Katz joined with Lesserson and Siedel to reinforce Lesserson's religious animosity, giving the prejudice

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[1] The First Amendment in part states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."

a gloss of officialdom. Thus, Nick McRoberts' declaration should be considered by the Court because Katz said to Nick during Nick's interview , "Do you know that Shimon belongs to a large and powerful multinational organization called Aish Hatorah?".

Katz also spent some time questioning Nick about why he had married a woman older than he was. Katz is on his third divorce. *IRMO Katz*, Case No.BD545839. Katz got away with this irrelevant and sexist yammering because Nick did not have a tape recorder turned on. Katz charged the parents for the time he wasted expounding about older women as over-the-hill sex objects. Still, Katz's outdated and stereotypical views about women are worth mentioning since they shed light on why, in part, he made the custody recommendations he did in this case, McRoberts' gender.

Nick provides information on the crime for which he was convicted and did prison time. Nick turned himself in and admitted to torching his truck for the insurance money to help out his disabled deputy sheriff father and mother who were about to lose their home. He did not show up for community service on one occasion. Seven years later, after meeting McRoberts, Nick turned himself in to do the time and did so. McCullaugh would not let him testify because of his conviction, bad strategy because Katz, Siedel, and Lesserson still capitalized on Nick's conviction, although

Siedel had no official record of conviction and Nick did not testify. Katz and Seidel at 10/8/10 73:27-28, 74:1-5, 74:14-19, 74:26-28, 86:23-24, 86:27-87:2, 88:22-23, 119:8-10, 12-19. Lesserson at 3/29/11: 38:14-15.

Nick would have provided eyewitness accounts about how the daughters engaged in sexualized behavior around him, and he had to set them straight. He now does so in his declaration.

B. The Court Placed Limitations Solely on McRoberts When She Testified Which Were Not Imposed on Katz or Any of the Witnesses Who Testified for the Father, Including the Father and Committed Other Due Process Violations.

When McRoberts first took the stand, Judge Cunningham ordered her to set aside her notes. McRoberts had made copies for the Court and Siedel. 02/23/11 transcript 1:28-2:1-18. Judge Cunningham, as already indicated, **said nothing whatsoever about Katz using his notes, notes which McCullaugh never demanded to see.** McRoberts Declar., p.8, para 12. What was worse is that Judge Cunningham limited McRoberts to events occurring only after 2009:

2/23/11 transcript SERA: (not allowed to explain on direct everything Katz brought up prior to '09): 47:18-20, 49:5-17, 49:17-28, 42-50, 74:23-28, 75:1-28, 76:1-28, 77:1-17. 3/28/11 transcript 6:12-28, 71:9-28, 72: 11-28, 73:11-28, 74:1-3.

Yet, Seidel, Lesserson, Katz, and Dannacher repeatedly referred to events occurring before 2009. 10/8/10 transcript: KATZ: 61:7-13, 61:19-22, 61:23-28, 62:1-6, 63:7-16, 63:21-23, 63:25-28, 64:1-10, 64:22-25, 65:2-4, 65:7-20, 65:26-28, 66:21-28, 67:10-19, 68:14-20, 26-28, 69:1-17, 70:6-20, 70:26-28, 71:1-4, 73:2-11, 73:12-17, 75:8-10, 75:11-19, 95:10-13? 97:1, 98:8-12, 98:24-28, 99:7-8, 100:3-9, 100:10-20, 101:2-12, 101:28-102:2, 103:7-8, 103:11-26, 104:4-27, 105:14-18, 106:26, 111:1-12, 112:15-20, 120:19-20, 121:1-27, 122:20-27.

1/7/11 transcript: KATZ: 69:15-19, 70:12-16, 73:27-28, 80:16-22, 83:27-28, 96:19-28, 99:1-6.

1/11/11 transcript: KATZ: 49:26-28, 50:7-13, 52:13-21, 53:16-20, 53:21-24, 54:6-8, 54:21-27, 55:1-28, 58:19-28, 59:1-2, 59:7-12, 59:18-19, 70:16-28

Because Katz was not tethered to written custody evaluations, there was no tape recording of Katz's interviews, and Judge Cunningham did not order him to produce his notes at the trial, Katz was free to embellish or make up stories unsupported by the actual interviews of the parties, their children, and witnesses.

Because of the restrictions Judge Cunningham placed on McRoberts

when she testified and because of Katz's abysmal failure in meeting the most essential duty of a custody evaluator not just once but twice – written evaluations passing muster under the California Rules of Court – this Court should consider the declarations so that the truth can be fully shown.

C. The Events Which Have Occurred since the Petition Was Filed and this Court Ordered a Stay Are Directly Relevant to the Issue in this Petition.

First, the Court should know how Lesserson behaved when the change of custody was to take place before this Court ordered a stay, at the first exchange, doing nothing when his young daughter ran away, and at the second exchange, hiring two burly male strangers to take custody of her and then he would show up once they had pinned this little ten year old down. All the declarations go to this issue. Second, the lack of cleanliness and sanitation at Lesserson's apartment, the fact that eight children and two adults would be living in a three-bedroom apartment if custody were changed, the fact that the stepmother just gave birth to her fourth child (Lesserson's fifth), and the photos of the breathing tube of the youngest and disabled Lesserson child **taken immediately after** he returned from a two day stay at his father's home prove conclusively that Lesserson is unable to provide for the safety of that child. McRoberts Declar., p. 17, paras.29, 20. True and correct copies of the photos of the child's breathing tube with the

mucous dated August 4 through August 6, 2011, are marked and attached as Exhs. 56-A, -B, -C, -D, and -E respectively. See also Exh. 54, Hicks' medical diagnosis of child's illness dated August 4, 2011 resulting from failure to suction and Exh. 55, prescription for antibiotics for the child because of Lesserson's neglect.

Third, on August 29, 2011, in violation of the restraining order in place, Lesserson also directly interfered with the disabled child's surgery at Children's Hospital, the purpose of which was to get the boy off a breathing machine as he slept. The surgery was cancelled. Katz serves as Assistant Director of the SCAN team and senior psychologist at Children's Hospital. 10/8/10 transcript 115:5-24. McRoberts Declar., p.18 para.32. We contend that Katz was directly involved in helping Lesserson cancel the surgery to punish McRoberts for filing this petition. After this Court reads the rest of this brief, it might well agree with our contention.

Fourth, Judge Cunningham ordered Richwald, nominated by Sonja Dugan, Minor's Counsel for R2, to conduct an examination for genital warts on Lesserson. Judge Cunningham apparently considered Richwald's report or declaration. Whatever Richwald provided the Court is found nowhere in this record. The Court should consider McRoberts' declaration at p. 13, para. 21, since she spoke to Richwald directly on the phone, and

he told her there is no test available to confirm whether a man has genital warts.

D. Katz Has Engaged in Criminal Misconduct Which Is Not a Part of the Official Record But About Which the Court Should Know in Order to Make an Informed Decision.

This Court should consider McRoberts' declaration because of the criminal obstruction of justice in which Katz engaged which is not a part of the official court record. His misconduct proves Katz's agenda which was to protect Lesserson at all costs, even at the expense of the safety and best interests of the children. The misconduct is detailed *infra*.

V

THE FAILURE OF THE FATHER'S EXPERTS TO DISCLOSE THEIR BIAS AND PREJUDICE COMBINED WITH THE MOTHER'S ATTORNEY'S FAILURE TO CHALLENGE THEM IS AN EGREGIOUS VIOLATION OF MOTHER AND CHILDREN'S DUE PROCESS RIGHTS.

A. The Connections Among the Experts.

Katz's testimony and the "expert" witnesses called by the father, namely, Heger, Fleischmann, Dannacher, and Richwald (assuming he provided information to the court) should be disregarded for failure to disclose their bias in favor of the father and prejudice against the mother.

The due process violations were compounded by the fact that

McCullaugh rarely objected, and failed to cross examine the father's experts for bias. Even when McCullaugh did object, he was generally overruled. McCullaugh **stipulated** to the qualifications of Heger although he had no idea who she was, let alone what her qualifications were. 02/10/11, 39:1-4.

Richwald and Fleischmann are both orthodox Jews and both work at UCLA, Richwald in Public Health Department - http://cdc.confex.com/cdc/std2008/webprogram/Person15194.html; and Fleischmann as UCLA Clinical Professor of Medicine and Associate Division Chief in Infectious Diseases at Veterans' Hospital which is part of UCLA teaching complex, 10/08/10, 31:16-24. Richwald is also the Vice Chair for the Council for Children, Children's Advocacy Institute, University of San Diego School of Law. Heger is on the board of First Star, a 501(c)(3) non profit associated with the Institute. [2]

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[2]
STATE SECRECY AND CHILD DEATHS IN THE UNITED STATES by The Children's Advocacy Institute and First Star
http://www.naderlibrary.com/nader.statesecrecychilddeath.htm#
ACKNOWLEDGMENTS
The Children's Advocacy Institute (CAI) was founded in 1989 as part of the Center for Public Interest Law at the University of San Diego (USD) School of Law.....First Star is a national 501(c)(3)established in 1999 to strengthen the rights and improve the lives of America's abused and neglected children through education, public policy, legislative reform, and litigation....
We thank the following individuals from the Children's Advocacy Institute:
...**Gary Richwald, MD, MPH (Council Vice-Chair)....We also acknowledge**

Neither Heger nor Katz disclosed their association in the McMartin trial through the Children's Institute International. Katz was at the institute when the McMartin parents brought their children to the Institute to be interviewed by the now infamous Kaye McFarland and examined by Heger.

Neither Heger nor Dannacher disclosed their association through the Children's Institute International. Dannacher indicated in her C.V. (Respondent's Exh. B) that she worked there 1982 to 1987 as family evaluation coordinator which was during the time Heger was examining the McMartin children, and Katz was Director of training in professional education and supervising interns.

Katz also lied in court about the number of years he has known Dannacher, the dual hatted professional serving as both monitor and "reconciliation" therapist over McRoberts' objection to her serving in either capacity. Katz testified he knew Dannacher for about four years, then changed it to fourteen years, (when it is actually thirty-four years if Dannacher provided an accurate C.V.), and that they only share an office together (but yet he could render an opinion that she was highly qualified to serve as monitor AND "reconciliation" therapist). 02/10/11, 17:1-17. See

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the wonderful contributions of many individuals at First Star, including ... Astrid H. Heger... Emphasis added.

also 2/10/11 16:9-10.

Dannacher, on the other hand, testified that her job in both the previous and current evaluation, was to report to Katz (1/7/11 7:15-16; 8:6-9). On her CV, p. 4 she lists Katz as one of her supervisors while she was a psychology intern from 1977-1982, and on p.3 that from 1982-1987 she was Katz's psychology assistant in his Beverly Hills private practice, assisting in "730 evaluations". Dannacher lists Katz as a professional reference. She continues to be his office partner.

Katz made no bones about appointing Dannacher *without court order* to serve as the father's "parenting coach"in 2007 when he was conducting the first custody evaluation. 10/8/10 64:19-23 "I think both myself and Dr. Danniker, [sic] who was a parenting shadow or parent educator who Mr. Lesserson retained to help him learn to parent the four children, both said if your children don't want to be tickled, don't tickle them." *Id.* 80:14-16. Katz admitted "we had Dr. Lynn Daniker [sic] go to the house and spend visitation time with the father and the children." On 10/8/10 he admits at 101:28 to 102:1-2 to having used Dannacher in '06-'07 (first evaluation) to say that Lesserson has no problem. On 10/8/10, when the court considers bringing in minors counsel, Katz opposed the appointment, we say to maintain full control over the custody proceeding.

Id., 134:1-16. On 10/8/10, Katz paved the way for Dannacher to come in, *Id.,* 110:22-26 and 111:11-27. Lesserson admits at trial, 5/13/11, 32:12-13 that Katz was the one who suggested getting Dannacher involved again and recommended this to Lesserson. How much the father or Katz has paid Dannacher over the years is not known.

The Court appointed Dannacher over McRoberts' adamant objection not only as the visitation monitor but also as a **reunification** therapist.

On July 7, 2011, McRoberts filed an exparte application to have Dannacher removed as the monitor because of repeated violations of the California Rules of Court, alleging lack of neutrality and failure to protect the children. Judge Cunningham denied the application stating the application was "too thick" for him to read. A true and correct copy of McRoberts' ExParte Application to Remove Dannacher as Monitor filed July 19, 2011, is marked and attached as Exh. 33. McRoberts declar., p.8, para 12.

Katz most likely worked told Siedel that Heger would be happy to testify for the father. Katz, whose influence is ubiquitous, is on the faculty of UCLA School of Social Welfare, 10/08/10: 116:6-7, and might have met Richwald or Fleischmann or both at UCLA. Or, Siedel who is also an

orthodox Jew and a donor to Aish Hatorah[3] may have learned about Richwald through the Yiddish Book Club.[4] .

While these are speculations, Heger, Dannacher, and Katz cannot deny they know one another from Children's Institute International and the McMartin case. Heger and Richwald cannot deny they know each other through the children's institute at San Diego School of Law. Richwald and Fleischmann cannot deny they know each other through their employment at UCLA in the health sciences departments. Siedel cannot deny he and his wife have donated to Aish Hatorah.

Siedel, Richwald, and Fleischmann cannot deny they are orthodox Jews who find McRoberts' conversion from the tenets of a fundamentalist Jewish sect to a belief in Jesus as the Messiah as nothing short of heresy. Seidel worked with Katz and Lesserson to make McRoberts' change of religion an issue. Seidel filed Lesserson's opposition to one of McRoberts'

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www.jewishjournal.com/community_calendar/2008/02/24/ Feb 24, 2008 – Adult Education, ***Los Angeles*** Organizations/Sponsors: ***AISH HATORAH***".. Cached ".... Honoring: Saul & Marilyn Yarmak; Philip & Sarah Mintz; Mel & Carol Maller; **Joel & Rachel Seidel**; Jim & Donna Lerner; ..." Emphasis added.

4

www.yiddishbookcenter.org/talking-books-honor-roll
Cached.... Friends of the Yiddish Book Center ..... Mr. Gary A. Richwald ...

declarations in which Lesserson made much of the fact that McRoberts has a tattoo of a cross on her arm, that she used to be orthodox Jew and now is a born-again Christian, that she changed the children's biblical names, noting that with the religious changes he claimed she underwent she also experienced "...numerous personal and emotional changes". Lesserson then segued to the sex abuse charges intimating to the reader that they came about because of her religious conversion and "...numerous personal and emotional changes", maybe even the tattoo, certainly not from the fact he was molesting his daughters. A true and correct copy of Lesserson's responsive declaration in opposition to McRoberts' application for a TRO dated August 4, 2010 is marked and attached as Exh 41, p.2, paras 5-7.

Siedel's cross examination of McRoberts bordered on the irrational, suggesting that he had crossed the line between zealous representation of Lesserson and a personal vendetta against McRoberts for leaving Aish Hatorah, a sect to which he and his wife have made donations. For example, Siedel attacked McRoberts for taking photos of her daughters' injuries after returning from a visit with their father to corroborate her concerns Lesserson was abusing their daughters all the while claiming she had no evidence they were being abused and that she was an alienator. 03/28/11: 19:11 - 20:5; 25:12 - 30:7; 33:18 - 40:7.

B. The Testimony of the Father's Experts Besides Katz.

FLEISCHMANN

Fleischmann did admit that adults get genital warts 90% of the time through sexual transmission, and with children, it was about 50-50%, 10/05/10, 51:9-22. Fleischmann had some knowledge of genital warts, but his specialty was really in "fungus". He had no background in child sexual abuse. So, an expert in fungus with little expertise in genital warts, selected an article on genital warts to testify about, as opposed to probably hundreds of others, and told the judge what he thought the article was all about. 10/8/10 32:3-4 "My research is actually the fungus, not the virus the HPV." 32:21-22 "I have not done any specific research with anogenital warts." 34:24-26 "**Summarize for me basically what you learned from this article."** 38:2-5 "Have these been with prepubescent children? No. I'm an adult infectious disease specialist." Emphasis added.

DANNACHER

Not only was Dannacher serving two functions clearly in conflict with each other, monitor and reunification or "reconciliation" therapist, but without objection from Mother's Counsel, she began to render opinions about Katz's opinions on custody, the man who had been her mentor, her

supervisor, an individual whom she named as a reference, and with whom she has shared an office for years including to the present time. Katz was the individual who got her paying positions, in this case, **without court authorization** to serve as a "parenting coach". We have already proven that it was Katz who recommended Dannacher to Lesserson who demanded her appointment.

Dannacher's testimony was deadening and tedious. It served only as a policing function in which Dannacher provided an almost minute-by-minute description of what was going on during the supervised visits between Lesserson and his daughters even as the trial was going on in which the Court was supposed to determine whether Lesserson had sexually abused the two daughters. Like Katz's testimony, Dannacher's testimony was mostly a conversation-like narrative. Like Katz, she suppressed evidence which hurt the father.

Dannacher's testimony only proved four points: Dannacher was unequivocally on Dad's side, having lost all objectivity; there was nothing that could redeem Mother and Children; and Dad was not a child molester, but a loving father who just needed help from someone like her. Mom was nothing short of an alienator. McCullaugh could have stipulated that this is what Dannacher would testify to, saving the Court hours of sitting through

her testimony which was so lacking in credibility that it said more about her as Katz's long time protégé and office partner, and former supervisor than it did about McRoberts and the four children.

Finally, Dannacher became a custody evaluator **without court authorization** rendering opinions about Katz's recommendations on custody. After Dannacher rendered opinions about the opinions of Katz or about the mother not insuring father's visitation, Seidel recalled Katz who had remained in the courtroom to hear his protege's glowing approval of his custody recommendations to have him render opinions about Dannacher's opinions on Katz's opinions. Katz answers Seidel's questions on custody at 10/8/10 , 1/7/11 (p.72-92); Dannacher deemed an expert 1/7/2011: 59:21-28 and 60:1-3. See also 1/7/11: 64:24-28- 67:14-16;67:27-28; 73:18-20; 75; 5/10/11, 6:2-28; 7-48; 91:3-17. Siedel even asked Katz, "If I ask you to stand on one foot can you summarize your findings….?" Katz replied "Do I have to stand on one foot?" 2/10/11 7:26-8:5. It was a two-ring circus with Katz as the ringleader. McCallaugh had given up on objecting, and Judge Cunningham, the control over his courtroom.

RICHWALD (J. Cunningham decides to have genital warts testing but reserves the right for Petitioner to cross examine and rebut at 05/13/11, 68:19-69:7.)

Richwald can only be described as the phantom expert. We have no idea what he wrote in his report to Judge Cunningham, because it is not a part of any record which McRoberts has seen. It is not in the superior court file as far as this writer knows. While Judge Cunningham did say Richwald could be cross examined, it never happened. See McRoberts Declar., p.18, paras.20-21.

HEGER

It is doubtful whether Heger, Richwald's colleague at the San Diego School of Law children's institute and Katz's colleague from the days of the McMartin scandal, qualified as an expert on genital warts. Siedel qualified her only as an expert in sexual abuse, a topic so broad as to be meaningless. McCullaugh stipulated although he did not know the first thing about her. Nor did McCullaugh question her on her qualifications in general, or genital warts as proving or not proving sexual abuse of children, in particular. An examination of Heger's c.v. (Resp. Appendix Vol. 2, 161-193) lists no article on the topic of genital warts diagnosis in a child sex abuse case.

No one questioned Heger how many times she personally had diagnosed genital warts in a child, or how many times she diagnosed genital warts in a child disclosing that an adult had been rubbing her in the areas of

infection, and Heger concluded the warts were not related to sexual abuse of the child. Heger admitted she had only looked at records she labeled Stuart House, that she did not examine R2, did not look at her medical records, and did not contact her pediatrician. 02/10/11: 47:19 - 48:1. Yet, she concluded:

> It doesn't look like sex abuse to me. it looks like the kind of warts you would see somewhere else on the body. Just happens to be in the peri-anal area. 02/10/11, 44:15-17.

Heger flat out denied that genital warts was "diagnostic of sexual abuse" and that it was not a "reportable finding" "in and of itself" because it is primarily transmitted at birth, then by hands, then by sexual contact. 02/10/11, 40:8-12.

> ...– child abuse centers don't report this as a sexual disease is because there are so many nonsexual ways it can be transmitted. *Id.,*41:13-17

McCullaugh was successful in getting an admission out of Heger

> **well, I mean, I think you're going to have to -- if the child is describing being touched in the genital area, you're going to have to listen to what the child says and take the weight of that. I'm just saying that I would the take the weight of what the child says with or without the presence of genital warts**. *Id.,*49:3-8, Emphasis added.

Her testimony was only to clarify that she did not want decisions made on bad science, and bad science "...would be to say that warts are always sexually transmitted." *Id., 49:9-12, although admitting in prior testimony that the third way of getting genital warts was through sexual contact.*

Mere resort to the Web impeaches Heger's testimony.

In an article entitled "Ano-Genital Warts in Children: Sexual Abuse or Not?" by

Gail Hornor, RNC, MS, CPNP, from Journal of Pediatric Health Care found at http://www.medscape.com/viewarticle/483621 and posted Posted: 07/26/2004; J Pediatr Health Care. 2004;18(4) © 2004 Mosby, Inc., a true and correct copy of which is marked and attached as Exh.71, Hornor indicates that

> Studies indicate that in adults, genital HPV infections are primarily sexually transmitted (Gutman, Herman-Giddens, & Phelps, 1993; Stevens-Simon, Nelligan, Breese, Jenny, & Douglas, 2000).

The federal government says the same thing, that the primary source of HPV infection in adults is through sexual contact at the Center for Disease Control website found at http://www.cdc.gov/std/HPV/ STD Fact-HPV .htm:

> HPV is passed on through genital contact, most often during vaginal and anal sex. HPV may also be passed on during oral sex and genital-to-genital contact. HPV can be passed on between straight and same-sex partners—even when the infected partner has no signs or symptoms. ....
>
> **Rarely, a pregnant woman with genital HPV can pass HPV to her baby during delivery**..... A true and correct copy of the CDC fact sheet on HPV/genital warts is marked and attached as Exh. 72.

Our federal government and Honor's article establish that the primary way that adults get genital warts is through sexual contact (Fleischmann also confirmed this) and rarely through the birth canal; whereas, Heger reversed places, putting birth canal in first place and sexual contact last – and she made no distinction between adult and child contagion.

No one asked Heger to assume that if the daughter had reported that her father rubbed her in the same areas the genital warts appeared, would the genital warts be indicative of sexual abuse by the father of hand- to-genital contact? Looking at the lesions on R2's bottom also belies what Heger testified to, that they are the same warts as appear on one's hands. Anyone coming into contact with a person with lesions on her hands like the ones on R2's bottom would run in the opposite direction as fast as she could.

Heger discounted the fact that Hicks had found warts in the introitus of R2's vagina. *Id.,* 44:1-5, Exh 2, p.3. Hicks had testified that if the patient discloses sexual contact to a doctor or psychotherapist that would be an additional or stronger sign that the genital warts might have been sexually transmitted. 10/08/10, 29:9-15. Yet, Heger testified that she would give a "zero" to the diagnosis of genital warts "...in terms of reporting abuse because there's so many ways it could be transmitted." 51:8-11, although at the same time she testified that when a diagnosis of genital warts is made in a child she looks to other factors, including **the child's allegations** and recent or old medical history documenting trauma, which she admitted she knew nothing about in this case. 02/10/11, 45:28; 46:1-7, Emphasis added.

Heger was also not entirely truthful about her employment. This writer sued Heger on behalf of a 65 year old lesbian therapist, Sharon Kidd. Heger had terminated Kidd – Heger claimed – because Kidd reported being harassed by another employee. *Kidd v. Violence Intervention Program,* Case No. BC 402191, Los Angeles Superior Court.

In the McRoberts case Heger testified as follows:

> I am director of a program called Violence Education Program at County USC Medical Center where I am a professor in clinical

> pediatrics, and it's a program that concerns childhood domestic assault, domestic violence, elder abuse, and foster children, in one setting. 02/ 46:10-15.

According to a declaration Heger provided in the *Kidd* case, on October 25, 2009, A true and correct copy of which is marked and attached as Exh. 73, Heger has also been the Executive Director of Violence Intervention Program, Community Mental Health Center ("VIP-CMHC") [where Kidd was employed.] since 2001. Heger stated that VIP-CMHC

> ...is privately incorporated as a 501(c)(3) that provides mental health services and financial support **to an victim of family violence and/or sexual assault.** Exh. 73, 2:12-14, Emphasis added.

The significance of this statement is that when a child comes to VIP-CMHC there is an assumption that she is a victim of family violence and/or sexual assault, which means many of the children Heger is seeing in this clinic are reporting sexual abuse. If Heger diagnoses genital warts in a child in the VIP-CMHC clinic, the likelihood she would give a "zero" to this diagnosis as evidence of sexual abuse is unlikely especially in view of her testimony that she would look at the child's allegations when she makes a diagnosis of genital warts.

Hornor, *supra,* does state that

In children, the mode of transmission of HPV infection is not as straightforward (see Box 1). Sexual transmission is recognized as a possibility in children, but other possible modes of transmission have been documented [Citations.]

The article goes on to state:

Sexual abuse must never be eliminated when considering possible modes of transmission for ano-genital HPV. Many forms of sexual abuse can result in transmission of HPV, including genital-genital contact, genital-anal contact, oral-genital contact, fondling, and digital anal/genital penetration Emphasis added.

The article also states:

A complete psychosocial assessment must be obtained, including a family tree that indicates all persons living in the home with the child. Familial social risk factors must be explored, such as drug or alcohol concerns, domestic violence, past or current involvement with CPS, mental health issues,... One should explore with the parent or guardian any past or present concerns regarding sexual abuse of any family member, especially the child with ano-genital warts. A behavioral history of the child, particularly any sexual acting out behaviors, should be obtained. Emphasis added.

A behavioral history of the two girls was established – which Heger knew nothing about – in which therapists for both girls reported that when each girl respectively disclosed her father's sexual molestation, each began to masturbate. McRoberts Declar. pp. 1-4, paras 2-7. The visitation monitor reported that on several occasions, upon arriving at the father's home, both

girls would automatically strip off their clothes, and she, not the dad, would have to tell them to put their clothes back on. When she turned her back, the older daughter was undressed in bed with her father. *Id.,* Exh. 53. Order filed February 28, 2007 (J. Linfield).

McRoberts reported to Katz that when she was married, she would hear her daughters late at night cry out for her, she would go to their room, find it locked, pound on the door, only to have Lesserson open it. McRoberts reported all of the above to Katz. McRoberts Declar., pp.1-5, paras 2-7.

There are other reasons to find that Heger had slanted her testimony in the McRoberts case as a "professional courtesy" for her colleagues Katz, Dannacher, and Richwald. A nurse named Antoinette Zaragoza sued Los Angeles County + University of Southern California Healthcare Network, and Heger, *Zaragoza v. County of Los Angeles, et al.,* Case No. BC 426903. The complaint was filed on November 25, 2009, a true and correct copy of which is marked and attached as Exh.74.

Zaragoza alleged that Heger engaged in whistleblower retaliation against her. Zaragoza also alleged at p.2, para 8, that Heger was dishonest and engaged in unethical, if not criminal, misconduct regarding patients:

> ....While working under Astrid Hedger [sic], M.D., Ms. Zaragoza witnessed doctor Hedger engage in HIPPA and other statutory violations such as theft, fraud and misrepresentation "capping" county patients, referring them to her private clinic [VIP-CMHC]

Zaragoza goes on to allege that after she reported Heger's illegal misconduct to the County, Heger placed her in a "perpetual limbo" where she had no work and no supervisors. *Id.,* at 3, para 11. The case settled.

Heger's conduct in the McMartin case also should have served as a cautionary tale for anyone retaining Heger as an expert. The book "Satan's Silence: Ritual Abuse and the making of a Modern American Witchhunt" by Debbie Nathan and Michael Snedecker published 1995 as quoted on the website http://menz.org.nz/cosa/dsac-doctors-for-sexual-abuse-care/ goes into some detail about Heger's misconduct in the McMartin case.

Quoting from "Satan's Silence" the website states that Heger had little experience in examining children for sexual abuse until the McMartin case, that she found in almost all the children she examined physical evidence of sexual abuse, that she was very coercive with the children but felt she was doing it for their own good, that she showed no remorse or humility for the way she handled the McMartin investigation, that while her procedures were being debunked in the media she began testifying for the

defense in sexual abuse cases that the four millimetre measure for hymens was forensically meaningless which apparently in the McMartin case according to Heger proved sexual abuse. Her career as an “expert” on child sexual abuse exploded over night as a result of the McMartin case:

> "Heger’s career, too, took off dramatically. Before she examined the McMartin children, she had never testified as a child sex-abuse expert; afterward, she was deluged by requests to testify in court for prosecutors and to make media appearances. She also began travelling throughout California, the United States, and Canada to address sex-abuse congresses, give professional trainings, deliver lectures, and to participate in committee reviews. In 1985, she became Director of the Child Sexual Abuse Clinic at the Los Angeles County – University of Southern California Medical Centre."

Hornor cites studies which also show that Heger’s testimony of physical findings of sexual abuse in all or almost all the McMartin children she examined is not credible (along with Defense Expert‘s testimony finding no physical evidence of sexual abuse in the McMartin children):

> The diagnosis of sexual abuse is typically made on the basis of the child's history (Citation). Objective evidence of sexual abuse, including abnormal physical findings noted on physical examination or the presence of a sexually transmitted disease (STD), are uncommon (Adams & Knudson, 1996; Siegfried et al.). Studies have revealed that only 5% to 23% of girls who have given a history of sexual abuse, including penile penetration of the vagina, have physical findings of sexual abuse (Citations).

Just as Heger misdiagnosed the McMartin children on a grand scale so she misled the Court by her sleight of hand [excuse the pun] testimony in the McRoberts case. Heger's scandalous role in the McMartin case, Zaragoza's charge of dishonesty against Heger, her dishonesty in the McRoberts case through suppression of her friendship and professional relationship with Katz, Dannacher, and Richwald, the impeachment of her McRoberts testimony by a simple referral to the federal Centers for Disease Control on HPV infection and the Hornor article, and the failure of Siedel to establish her credentials in the role that the diagnosis of HPV infection plays in a child sexual abuse investigation render her testimony unreliable, unethical, and dishonest.

VI

THE BACKSTORY OF KATZ'S CRIMINAL OBSTRUCTION OF JUSTICE IS AS IMPORTANT AS WHAT WENT ON IN THE COURTROOM, IF NOT MORE SO, AND THE COURT SHOULD KNOW OF HIS MISCONDUCT SO THAT IT MAY MAKE AN INFORMED DECISION.

A. The SLAPP Lawsuit Filed by Dickerman, Katz's Friend and Professional Colleague, against McRoberts and Her Parents with Katz Serving as His Cocounsel on Behalf of Lesserson.

Attorney William Dickerman, associated closely with both Katz **and** Aish Hatorah figures prominently in the case, having filed a SLAPP lawsuit against McRoberts and her parents in January 2007 in order to suppress the self-revelatory evidence in Lesserson's journal which McRoberts found in a

public library while picking up her children's jackets left behind by Lesserson after a supervised visit with the children. McRoberts declar., pp.10-11, paras.17-18. A true and correct copy of the complaint Dickerman,[5] filed against McRoberts and her parents, on March 7, 2007, *Lesserson v. Lesserson,* Case No. BC 367475, Los Angeles Superior Court is marked and attached as Exh. 68. Katz most likely told Siedel to get in touch with Dickerman so that Dickerman could sue McRoberts.

After reading the journal, McRoberts became fearful of Lesserson. McRoberts showed the journal to her parents because she was living at their home, and her parents were trained respectively in psychiatry and psychology. She showed the journal to her then family law attorney, Wendy Herzog, who directed her to provide the journal to Katz, and to

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[5]See http://www.jlaw.com/Directory/california.html

William Dickerman
Firm:
Address: 11355 W. Olympic Blvd., Suite 100, Los Angeles, CA 90064
E-mail: wdickerman@mindspring.com
URL: http://dickermanlaw.com
Phone: 310-268-6666
Fax: 310-268-6667
Area of Practice: Litigation Real Property
Affiliation: Aish Hatorahh
Law School: Univ. of Southern Calif.
Year of Graduation: 1977
Bar Membership: California
..... Emphasis added.

Katz who reported to Siedel that McRoberts had Lesserson's journal. Dickerman alleges as much in the complaint. See Exh. 68, pp.2-3, para. 9.

During the first evaluation, McRoberts had already informed Katz that she was concerned about the possibility of the girls being molested by their father, and how abusive he was in the marriage to her, including spousal rape. McRoberts Declar., 5, para 9; Exh. 49.

McRoberts was using the journal only in connection with her petitioning activity in family law court, and thus, Dickerman's lawsuit was a SLAPP lawsuit. Code of Civil Procedure Sec.425.16, the Anti-SLAPP statute, provides that:

> A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. (§ 425.16, subd. (b)(1).)

The statute further defines the phrase "any act of that person in furtherance of the person's right of petition or free speech" to include the following:

> (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding

> authorized by law;....(§ 425.16, subd. (e).) *Garretson v. Post* (2007)156 Cal.App.4th 1508, 1515

As our High Court stated in *Flatley v. Mauro* (2006) 39 Cal. 4th 299, 324:

> Section 425.16 is not concerned with securing for litigants freedom of access to the judicial process. The purpose of section 425.16 is to protect the valid exercise of constitutional rights of free speech and petition from the abuse of the judicial process (§ 425.16, subd. (a)), by allowing a defendant to bring a motion to strike any action that arises from any activity by the defendant in furtherance of those rights. (§ 425.16, subd. (b)(1).)

Lesserson's privacy interests must give way to the petitioning activity of McRoberts, because the journal contained admissions of Lesserson which supported McRoberts' allegations against him. They also contained admissions showing that Lesserson was in desperate need of counseling and might be on the brink of physically harming McRoberts again (he had knocked her down when served with divorce papers as he admitted in his journal).

Katz had a legal and ethical obligation to review the journal because Lesserson wrote that he fantasized about sex with young girls, masturbated obsessively, admitted he was alcoholic, admitted that he had knocked McRoberts down when served with the dissolution papers, described how he would take custody from McRoberts, stated that he hated women in

general and McRoberts in particular, and that he manipulated people by using his status as a rabbi in the Aish Hatorah organization. McRoberts declar.p.11, par. 17.

Katz pressured McRoberts to settle the case **by returning the journal to Lesserson.** Katz acted *ultra vires* and obstructed justice by suppression of damaging admissions of Lesserson concerning his state of mind and mental processes directly relevant to the custody issues. As Nick points out in his declaration Katz reminded him that "Shimon" belonged to a "large and powerful international organization, Aish Hatorah." Fearful of losing her children, McRoberts gave in to Katz's pressure and returned the journal to Lesserson to settle the lawsuit.

Siedel and Dickerman also engaged in misconduct meriting bar discipline. They both sent letters to Wendy Herzog attached as Exhs. 66 and 67 respectively, threatening her with bar discipline in violation of Rule 5-100(A) which states:

> A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

The men obtained their goal. Herzog was so intimidated that she got off McRoberts' case within hours of receipt of the letters.

B. Domestic Violence Criminal Prosecution Against Lasserson.

In October 2006 when McRoberts had Lesserson served with divorce papers, he attacked her and knocked her down. McRoberts called the police who referred the case to the Malibu City Attorney who filed criminal charges against Lesserson for domestic violence on August 8, 2006. See docket in *People v. Lesserson*, *supra*, attached as Exh. 16.

In 2006 McRoberts also obtained a family court restraining order against Lesserson. See Exh. 15. Besides pressuring McRoberts to return the journal to Lesserson, Katz was also pressuring her to tell the prosecutor she wanted to drop the charges against Lesserson. Katz used his powerful office as custody evaluator to commit the crime of interference with the victim witness. Penal Code Section 136.1(a) states:

> Except as provided in subdivision ©, any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:
>
> (1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

Katz was acting in concert with Siedel and Lesserson. Therefore, the crime of interference was a felony:

> © Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:
>
> .... (2) Where the act is in furtherance of a conspiracy.

Katz also became a religious advocate for Lesserson and Aish Hatorah, pressuring McRoberts to give Lesserson a "get" (a Jewish divorce), to "keep kosher", and to move closer to Aish Hatorah, the organization she had broken from, despite the fact that Katz knew McRoberts had become a Christian.

While McRoberts did not "keep kosher" or move closer to Aish Hatorah, McRoberts did obtain a Jewish divorce only because Katz demanded it. Worst of all, thanks to Katz's pressure and interference, McRoberts informed the prosecutor she wanted to drop the domestic violence charges. The prosecutor told her the charges would not be dropped. However, shortly after McRoberts informed the prosecutor she wanted to drop the charges, the prosecutor reduced the charges to disturbance of the peace. Katz had obtained his goal – neither he nor Judge Cunningham had to consider a conviction for domestic violence when changing custody to Lasserson.

In the law journal article entitled “Problems in Domestic Violence: Should Victims Be Forced to Participate in the Prosecution of Their Abusers?” Repository Citation

Thomas L. Kirsch II, 7 Wm. & Mary J. Women & L. 388 (2001), http://scholarship.law.wm.edu/wmjowl/vol7/iss2/4, the author points out that it is generally the perpetrator or his attorney persuading the victim to drop charges or to refuse to testify. Here it was the unheard-of instance of a custody evaluator using his position to commit the crime of interference with the victim witness, making his crime all the more repugnant and shocking the conscience of the Court.

It is all the more disheartening that Katz did this in view of the fact that domestic violence remains a major problem in the United States:

> Domestic violence is an ongoing problem in this country, or as former United States Department of Health and Human Services Secretary Donna Shalala described it, "an unacknowledged epidemic in our society." 10 Husbands, boyfriends, lovers and partners abuse women of all races, classes, occupations, ethnic groups and ages."11A woman is abused every fifteen seconds.12 Every year, over two million women report being abused.'" 13 One in five women abused by her husband or ex-husband reports that she has been victimized over and over by that same person."'14 One out of four pregnant women has a history of domestic abuse. 15 Domestic abuse is the leading cause of injury to women aged fifteen to forty-four.l6 It accounts for more injuries than accidents, muggings and rapes combined.17 Twenty-two to thirty-five percent of women who visit medical emergency facilities are there for injuries related to

> domestic abuse. 18 One-third to one-half of female homicide victims were murdered by their male partners. 19 Domestic violence is a serious problem and needs attention on many fronts.20 Statistics indicate that few cases ever go to trial, police fail to arrest many offenders and, when prosecutors do decide to file charges, they often recommend dismissal.21 [footnotes all omitted.] *id.,* 7 Wm. & Mary J. Women & L. 385-386.

C. Katz's Directive to McRoberts to Stop Making Reports to DCFS.

Katz admitted that he "encouraged" McRoberts to stop making reports to DCFS (although it was the mandated reporters making the reports, not McRoberts). 02/10/11: 27:26 - 28:11. We contend that Katz notified DCFS to ignore any reports, and because of Katz's long term relationship with DCFS , the department agreed to do so. Katz's ties to DCFS:10/8/10 114:10-13 "I've began conducting evaluations in dependency court in 1980....for about 30 years." 10/8/10 115:18-24 At Children's Institute International, he was director of training, of "protective social workers to diagnose, treat child sexual abuse."10/8/10 116:14-17 "I co-chaired with Judge Paul Boland two conferences for the Dependency Court which both dealt with sexual abuse. I presented and trained probably thousands of people..." 1/7/11 100:5-7 "You can go to the dependency court like I did and spend ten years evaluating kids..." Dannacher also has ties to DCFS: On p.5 of her CV she lists a certificate of outstanding service from

the Department of Children's Services Los Angeles County for 1994 and for 1995, it is a certificate for outstanding ***supervisor.*** Respondent Exh. B.

D. McRoberts' Former Mother-In-Law's Criminal Charges against McRoberts.

Around November 2006, McRoberts was at Cedars-Sinai because her disabled child was undergoing surgery. Although there was a restraining order in place against Lesserson, he appeared in the waiting room with his two parents, Ida and Eugene Lasserson. McRoberts had words with her former mother-in-law. Then, after Dickerman sued McRoberts and her parents over the journal, McRoberts received a notice in the mail from the Los Angeles City Attorney's Office that her mother-in-law had made assault charges against her based on the incident at the Cedars Sinai hospital in November 2006. The witness? An Aish Hatorah member. McRoberts Declar., p.11, paras 17-18.

Katz succeeding in creating a closed system which he completely controlled to the complete detriment of McRoberts and her children.

VII

KATZ'S MISCONDUCT IN THIS PROCEEDING IS CONSISTENT WITH HIS PRIOR MISCONDUCT IN THE MCMARTIN AND JACKSON CASES.

Katz has testified in ways about children which are clearly contradictory. In the Jackson molestation cases, as in the McMartin school case, Katz took the position that children rarely lie after age 5 about sexual molestation, only because he saw an opportunity make money and advance his career. See http://www.jaysclasses.com/Syllabi/Cr_Investig/Michael_Jackson/michael_jackson.html

> Psychologist Stanley Katz examined Gavin (the present victim) and another boy, who eventually got a $20 million-plus settlement for an alleged molestation in 1993 [of Jordan Chandler]. Katz notified police after examining Gavin. He is supposedly the first person the victim told about being molested. *Id.*

After seeing the disastrous fall out from Heger's and McFarlane's disreputable investigations in the McMartin case, despite the fact that he was Director of training in professional education and supervised interns at the Children's Institute International, he wrote a book entitled "The Codependency Conspiracy" in which he stated that up to 40 percent of children's sex abuse allegations are false. *Id.*

In the Jackson criminal trial, Katz testified that children don't lie about sexual abuse after being questioned about his book:

> Under cross-examination [in the Jackson criminal trial], Katz said he only meant preschool-age children, and that false allegations by older children are rare. *Id.* .

Katz's friend and associate Dickerman who sued McRoberts probably because Katz asked him to, also testified in the Jackson trial:

> Also testifying was William Dickerman, the attorney the family hired after they left Neverland. ...[U]nder cross-examination, [he admitted] he never mentioned allegations that Jackson molested the boy, served him alcohol, or held his family against their will — claims at the heart of the crimes Jackson is charged with — in letters to Jackson's attorney, and he never reported any such claims to police. **Dickerman also acknowledged an arrangement with lawyer Larry Feldman to split any fees generated by a possible lawsuit against Jackson. Dickerman had referred the family to Feldman, the lawyer who had negotiated an eight-figure settlement for Jackson's 1993 accuser, and Feldman, in turn, referred them to Katz.** (Jackson, who was not charged with a crime in the 1993 matter, denied any wrongdoing, just as he has in the current case.) Still, Dickerman said, the family never directed him to ask Jackson for money. Emphasis added.

If what many people believe about Jackson, that he did molest boys who stayed at his home in Santa Barbara, Katz's obvious opportunism, greed, and unethical misconduct destroyed any chance that the prosecution would succeed.

An article found on the web at

http://www.ezilon.com/information/article_3253.shtml, entitled “Jackson witness is linked to America's most infamous child sex claims” By Andrew Gumbel in Los Angeles, Apr 3, 2005, 15:32, proves this point:

> A few days ago prosecutors in the Michael Jackson case arguably hit their lowest point - by showing obvious embarrassment at a man touted as one of their star witnesses. On the stand was Stan Katz, the psychologist who first interviewed the teenage boy at the centre of the case and subsequently reported his allegations of sexual abuse to the police. The jury and press gallery were primed to hear a detailed account of what Gavin Arviso disclosed to Dr Katz about Jackson's alleged attempts to seduce him.
>
> Instead, Tom Sneddon, the Santa Barbara County district attorney, did little more than establish the circumstances of Dr Katz's involvement and then, after barely half an hour, abruptly terminated his questioning. The prosecutor's reticence almost certainly had to do with Dr Katz's association with one of the most notorious child sex abuse investigations in American history - a catalogue of appalling professional errors and mass hysteria surrounding a Los Angeles area pre-school in the 1980s that scarred dozens of lives but failed to lead to a single criminal conviction.
>
> Dr Katz's organisation, Children's Institute International, believed at the time it had uncovered sex crimes and satanic rituals at the McMartin pre-school in Manhattan Beach. After interviewing 400 current and former students, it concluded that 369 of them had been sexually abused - lured into underground tunnels, forced to perform bizarre forms of devil-worship including the disinterment of coffins, raped at a car wash and filmed with their adult abusers for pornographic purposes....
>
> All this, of course, plays very nicely into the hands of Mr Jackson's defence lawyers. Mr Sneddon's abbreviated questioning of Dr Katz

> denied them the opportunity to reveal the full horrors of the McMartin case to the jury last week, but they did get Dr Katz to acknowledge that he was personally involved.....
>
> **But Dr Katz does present the latest of a series of headaches for the prosecutors**, who badly need some authoritative figures with direct knowledge of the case to tell the court why the boys should be believed - despite the vagueness of some parts of their account and their acknowledged record of lies and rowdy behaviour.
>
> **For this purpose, Dr Katz is effectively useless, the risk being that he could only fuel the defence's contention that Mr Jackson's accusers are being egged on by a cabal of unscrupulous professionals out to fleece him for as much money as they can.**
>
> He and the private litigation lawyer Larry Feldman, who referred the Arvisos to him, were both involved in an earlier case against Mr Jackson, in which Jordy Chandler, then 13, accused the singer of molesting him. Chandler's family dropped their charges only after receiving a $20m (£10.6m) settlement. ..... Emphasis added.

Given this history of flipflopping about whether children lie or speak the truth about sexual molestation, solely related to whether he will make money and advance his career, Katz's opinions in this case about the children's reports of sexual molestation are untrustworthy.

VIII

KATZ AND DANNACHER WHO EARN THEIR LIVING TESTIFYING ABOUT CUSTODY AND CHILDREN, PURPOSELY CONFLATED THE ALIENATED CHILD WITH THE ABUSED CHILD,WHILE ANDERSON, MCROBERTS' EXPERT, CHIDED KATZ FOR GOING BEYOND WHAT HE COULD ETHICALLY TESTIFY TO AND REJECTED THE PAS THEORY AS HAVING NO SCIENTIFIC FOUNDATION.

Katz as well as Dannacher who had never been appointed as a custody evaluator repeatedly testified about alienation and called McRoberts an alienator. They testified about Richard Gardner and his Parental Alienation Syndrome ("PAS") with approval. **10/8/10 transcript KATZ:** 56:3-28, 57:6-14, 15-19, 59:6-15, 60:24-28, 61:23-28, 62:1-6, 63:12-16, 25-28, 64:1-6, 25-28, 65:1-20, 66:7-12, 21-28, 67:10-23, 68:13-28, 69:1-17, 70:10-28, 71:1-28, 72:1-15, 19-28, 73: 1-17, 75:1-3, 77:15-21, 78:4-24, 79:6-22, 80:13-19, 81:7-10, 86:27-28, 87:1-3, 91:13-28, 92:1-28, 93:1-28, 94:1-6, 23-28, 95:1-13, 96:12-28, 97:1-28, 98:1-28, 99:1-11, 102:28-103:1-4, 105:23-28, 106:1-8, 25-27, 108:6-8, 109:23-28, 110:8-13, 22-26, 111:1-27, 112:5-28, 113:1-7, 119:3-28, 120:1-28, 121:1-28, 122:1-28, 123:1-28, 124:1-28, 125:1-28, 126:1-28, 127:1-28, 128:1-28, 129:1-28, 130:1-28, 131:1-5, 134:1-16.

1/7/11 transcript DANNACHER: 10:14-28, 11:1-28, 12:1-28, 14:9-28, 15:1-25, 16:1-28, p.17-32, 33:1-17, p. 34-44, 45:1-19, 47:15-19, 52:28-53:1-28, 54:1-28, 55:1-16, 55:26-28, 56:1-3.

KATZ: 66: 18-28, 67:1-28, 68:1-28, 69:1-28, 70:12-24, 71:24-28, 72:1-28, 73:1-10, 18-28, 74:1-27, 75:2-11, 25-28, 76:2-19, 77:1-11, 13-28, 78:1-12, 79:10-15, 81:22-28, 82:1-17, 83:1-15, 84:5-28, 85:20-24, 86:13-22, 87:16-19, 90:1-24, 91:3-28, 92:1-26, 93:1-28, 94:1-28, 95:1-28, 96:1-8, 97:17-28, 98:18-28, 100:16-27, 101:1-28, 102:1-28, 103:1-28, 104:1-9.

1/11/11 transcript KATZ: 48:2-6, 48:10-20, 49:12-18, 49:26-28, 50:7-13, 52:8-10, 52:13-21, 53:2-5, 53:16-20, 53:21-24, 54:6-8, 21-27, 55:1-28, 56:1-28, 57:1-28, 58:1-14, 58:19-28, 59:1-2, 7-12, 18-19, 60:11-23, 61:5-21, 62:1-8, 17-21, 66:23-28, 69:9-15, 69:22-27, 75:11-23, 76:14-28, 77:1-28, 78:1-9, 83:18-28.

2/10/11 transcript KATZ: 7:7-21, 8:12-15, 8:19- 28, 9:1-6, 13-17, 18-28, 10:1-28, 11:9-28, 12-16, 18:9-28, 19:1-3, 23-28, 20:1-28, 21:1-5, 23-28, 22:1-16, 22:26-23:2, 23:24-28, 24:9-14, 24:20-28, 25:1-5, 25:15-26, 30:22-26, 31:8-23, 36:3-28, 37:1-8.

5/10/11 transcript DANNACHER:

10:7-10, 10:20-22, 13:13-16, 15:22-25, 16:6-28, 17:1-28, 18:1-28, 19:1-28,

20:1-28, 21:1-4, 22:1-28, 23:1-28, 24:1-26, 25:3-5, 25:21-27, 26:11-25, 27:3-28, 28:24-28, 29:1-13, 29:28, 30:1-3, 30:7-8, 30:13-16, 30:21-25, 30:26-28, 31:3-14, 31:18-28, 32:1-12, 32:22-26, 33:1-5, 33:14-28, 34:1-27, 35:2-28, 36:1-28, 37:1-13, 37:22-28, 38:1-14, 39:5-15, 39:20-25, 39:20-28, 40:2-6,9-12,16-17,27-28, 41:1-22, 42:10-28, 43:1-6, 11-16, 44:24-28, 45:1-25, 46:1-28, 47:5-28, 48:1-18, 48:21-28, 49:1-28, 50:1-23, 51:26-28, 52:1-11, 54:2-27, 55:23-28, 56:1-12, 58:2-28, 59:1-28, 63:19-28, 64:1-17, 65:1-27, 69:16-28, 70:1-28, 71:1-24, 72:5-17, 73:9-15, 75:23-28, 76:1-28.

Anderson's testimony was like a breath of fresh air injecting some common sense and genuine science into the proceeding. Anderson administered Petitioner the MMPI test, which he has administered "1000's of times". 1/11/11 transcript 4:8. He used the Statement Validity Analysis Test to test the girls' credibility on the sex abuse allegations.. Id.15:26-16:14. He concluded from the girls testing that their charge of sexual abuse is "a credible accusation". *Id*. 17:25-28; 29:21-23. Rikki received a score of 10 which is the maximum possible score for this test of credibility. Id. 29:28-30:1-6. Anderson makes the point that he and Dr. Katz are not finders of fact, that they are merely supposed to "describe the personality functioning of the individual". 39:16-20 and 40:1-15. His findings about McRoberts' personality from testing and interviewing her

several hours was that she did not have the typical alienating personality, she did not have oversexualizing qualities nor angry, hostile tendencies typical of women who falsify these claims. *Id.*, 4:19-28, 5:9-20, 6:1-3, 7:1-12. He also dismissed Parental Alienation Syndrome, saying there are no experts in PAS. *Id.* 7:26-8:9.

Anderson's testimony is consistent with what our amicae argue in their brief and what the studies of Janet Johnston, a leading expert on parental alienation, have to say about alienation, Exhs. 9 to 11, discussed at pp.22-29 of our Petition. The girls reported to Katz that they do not want to visit their father because he molested them, a reasonable basis for not wanting to visit with him. As already indicated, Katz and Dannacher argued to the Court that McRoberts was an alienator, as confusing as they made that concept (she was sincere but wrong; the kids believed they were molested but they were wrong too; the mother was an alienator because she persisted in her sincere belief that the kids were molested just as the girls persisted in their sincere claims they were molested) kept out all damning evidence against the father, including his attempts at alienation, refused to review the reports of therapists, teachers, and doctors who had examined and tested the children or even to speak to them, conducted no testing, with

Katz not even producing custody evaluations two times, and on this sadly-deficient record, pronounced their verdict against McRoberts.

IX

KATZ'S TESTIMONY SHOULD BE STRICKEN BECAUSE, AS ALREADY ESTABLISHED, KATZ FAILED TO PROVIDE CUSTODY EVALUATIONS FOR HIS FIRST TWO EVALUATIONS, AND NEVER PROVIDED FORM FL-326 OR ANY OTHER CERTIFICATION THAT HE HAS COMPLIED WITH THE TRAINING REQUIREMENTS SET OUT IN RULES 5.220(g) AND 5.230(d)(A)(5)(a).

We have already established repeatedly that Katz failed in the most fundamental duty he was legally and ethically obliged to perform: provide written custody evaluations as required by Fam. C. Sec.3111(a). Katz also never filed Form FL-326, a certification he is qualified to conduct the custody evaluations involving domestic violence and sexual abuse. The one custody evaluation he wrote does not contain a statement of his qualifications. While Rule 5.230(f)(3)(B) permits an evaluator to count as training classes she has taught one time, Katz's testimony and C.V. (Respondent's Exh. A) leave one with the impression that his teaching years are behind him. For example, Katz testified about working with Judge Paul Boland. Judge Boland passed away in September 2007. That the Court should require Katz to continue his training on sex abuse and domestic violence is evidenced by how out of touch he is with the experiences of

women in the United States concerning sexual harassment and sexual abuse as proven when he testified about McRoberts' sexual history.

X

KATZ'S TESTIMONY ON ALIENATION SHOULD BE DISREGARDED NOT ONLY BECAUSE IT IS NOT A RECOGNIZED PYSCHOLOGICAL THEORY AND HAS NO FACTUAL BASIS IN THIS CASE, BUT BECAUSE KATZ BUTTRESSED IT ON AN EQUALLY-UNTESTED PSYCHOLOGICAL THEORY OF "HYPERVIGILENCE" WHICH ALSO HAS NO FACTUAL BASIS IN THIS CASE.

Another issue, besides alienation, on which Siedel and Katz devoted a good deal of time is McRoberts' "sexual hypervigilence". While Katz successfully suppressed evidence of Lesserson's mental processes about sexual fantasies of young girls, hatred of women in general and McRoberts in particular, and obsessive masturbation, he jumped at the opportunity to put McRoberts on trial about her sexual history.

Initially, Siedel questioned McRoberts about her father molesting her to which she objected because she was unrepresented by counsel in January 2009 at a hearing before Judge Meisinger. Judge Meisinger made her answer the questions. Siedel used that testimony at the trial. 3/25/11 at 56:7-16. Katz testified, without objection, to sexual harassment McRoberts experienced from two rabbis years apart, one making passes at her and saying he wanted to marry her although he was married, and the other years

later, putting his hand on her shoulders in a girls' orphanage. Katz also testified to suggestions by a couple McRoberts worked for of engaging in a menage a trois. 08/10/10: 59:1-5; 73:2-11: 01/11/11: 50:7-13; 53:16-20; 54:6-28; 55-59:2; 66:23-28; 02/10/11: 10:26-28; 11:1-8; 12:4-20; 24:20-28; 25:1-4; 02/23/11: 61:11-28; 62; 63. Katz reduced Lesserson's spousal rape to "unwanted sex". 2/10/11: 11:1-8. Katz testified about "hypervigilence" at 10/08/11: 65:9-13; 98:26-28; 99:1-11; 103:1-4; 130:11-28; 131:1-5; 02/10/11: 15:15-20. Lesserson, the ex-husband no less, made up the final of the triumvirate of witnesses (Katz, Siedel, and Lesserson) on Sera's sexual history at 03/29/11 at 65:23-28 - 68:4.

McRoberts explained the incidents at 02/10/11: 46:11-28 - 59:7; 03/28/11: 60:28 - 62:10; 65:9 - 69:2. Siedel cross examined Sera on her sex history and hypervigilence at 03/25/11: 56:7-60:28; 74:25-84:2; 03/29/11:20:16-26; 28:1-19; 29:8-28.

Testimony on this issue should not have been allowed. First it is irrelevant because diagnosis of hypervigilence is not found in the Diagnostic and Statistical Manual of Mental Disorders as a mental disorder causing sexually-abused mothers, as opposed to non-sexually-abused mothers, to believe their daughters were sexually abused when they were not. Second it is inadmissible character evidence because it is being

admitted and argued by Katz, Lesserson, and Siedel for the proposition that the girls acted in accordance with the mother's character for being sexually abused, itself inadmissible character evidence in California.

Third, it should be inadmissible because McRoberts' so-called "sexual history" is unremarkable when compared to the statistics of girls and women being sexually harassed and sexually abused in the United States.

The recent expose of Herman Cain as a serial sexual harasser, along with the past history of Justice Thomas, Governor Schwarzenegger, and President Clinton being charged with sexual harassment reminds us that if men in high places sexually harass women, it makes all women vulnerable to it.

http://abcnews.go.com/blogs/politics/2011/11/one-in-four-u-s-women-reports-workplace-harassment/#.TvU98F2ze8k.emailBy Gary Langer

Nov 16, 2011 12:01am states:

> More than a political issue, sexual harassment in the workplace is a common experience among women — and source of worry among men — in American society.
>
> One in four women has experienced workplace sexual harassment, this ABC News/Washington Post poll finds. One in 10 men say they've experienced it as well — and a quarter of men say they worry about being falsely accused of sexual harassment.

According to a website,

ow-find.blogspot.com/2011/09/child-sexual-abuse-in-united-states-and.html

> Child sexual abuse occurs frequently in Western society. The rate of prevalence can be difficult to determine. In the UK it is estimated at about 8% for boys and 12% for girls. The estimates for the United States vary widely. A literature review of 23 studies found rates of 3% to 37% for males and 8% to 71% for females, which produced an average of 17% for boys and 28% for girls, while a statistical analysis based on 16 cross-sectional studies estimated the rate to be 7.2% for males and 14.5% for females. The US Department of Health and Human Services reported 83,600 substantiated reports of sexually abused children in 2005. Including incidents which were not reported would make the total number even larger. Surveys have shown that one fifth to one third of all women reported some sort of childhood sexual experience with a male adult.

The menage a trois suggestions were minor, and McRoberts soon left the couple's employment because they had engaged in what she believed was white collar crime. The hands-on-shoulders harassment was likewise minor, but serious for the girl orphans, since the rabbi had authority over them, and who would believe them over him? The rabbi's passes and wanting to marry McRoberts are generic acts of harassment of the sort that the 25% women workers who are harassed would probably report. The molestation by McRoberts' father of fondling and other inappropriate sexual behavior was serious, but McRoberts testified she had put it behind her. The spousal rape was equally serious but Katz dismissed it, because it

was Lesserson who was the perpetrator. McRoberts' sexual history should not have been considered by the Court.

XI

THE DCFS REPORT ON WHICH SIEDEL PLACES SO MUCH SIGNIFICANCE THAT HE USED IT IN HIS BRIEF IN OPPOSITION TO THE AMICAE BRIEF WAS AN EVIDENTIARY BOONDOGGLE.

Siedel apparently believes he pulled a coup by his use of the DCFS report, Respondent's Exh. E, since he relies on the report in his brief in opposition to the amicae brief. McCullaugh did his best to keep the report out on relevant grounds, but Siedel managed to get it in, as Respondent's Exh. E.

The document has no evidentiary value because it lacks authentication and indicia of reliability, is filled with double and triple inadmissible hearsay, and Siedel used it improperly to attempt to impeach McRoberts on a statement of another witness, but not based on what he said but on what the narrator claimed he said after he interviewed the child based on what she said which is also not reported in the narrative.

On 2/10/11, Siedel presented the DCFS report to question Katz on it. 2/10/11 21:17-20. Seidel continued reading from it from 22:21-23:2, 23:28-24:14, 24:19-25:5. Judge Cunningham ignored McCullaugh's

objection, *Id*.25:6-14, that he does not have a copy of what Seidel is reading to Katz, and so, he cannot object.

McCullaugh was then forced to question Katz, to rebut Seidel's questioning of Katz about the inadmissible report, still without having a copy of the report. *Id.* 29:1-28. Judge Cunningham said that during lunch McCullaugh could get a copy of it although Katz was only ordered for the morning, a half day. McCullaugh again argued that he had not had a chance to review this report and should be able to cross Katz on it. *Id.* 32:6-28. The report continued to be read into the record. Judge Cunningham also took a copy of the report for himself. Id. 35:15-17.

Seidel brought in the DCFS report again. 3/25/11: 28:24-28. Seidel requested that it be admitted as Respondent's exhibit. *Id.* 30:7-8. McCullaugh objected on "multiple hearsay grounds", as well as lack of authentication and chain of custody. Judge Cunningham explained to Seidel there is no way to take judicial notice of this narrative, acknowledging the several problems with this report. *Id.* 36:18-22. However, Judge Cunningham then allowed Seidel to attempt to impeach Petitioner with it. *Id.* 37:24-38:2. Seidel then submitted it as Respondent's exhibit E as he intended from the beginning. *Id.* 39:22-40:13.

First, the report was clearly inadmissible because there was no authentication. No DCFS custodian of records appeared in court nor was the report mailed directly to the court with a custodian of records declaration. Second, the report does not meet the business record exception to the hearsay rule as stated in Evid. C. Secs. 1270 and 1271, because "The sources of information and method and time of preparation were [not] such as to indicate its trustworthiness." Evid. C. Sec.1271(d). Siedel did not produce the author of the report nor the police officer who, according to the report, may have said the daughter was coached.

Evid. C. Section 1271 applies to "[e]vidence of a writing made as a record of an *act, condition, or event* …." (Emphasis added.) As the California Supreme Court recently explained, "to be admissible under the business records exception, the evidence '… must be a record of an act, condition or event; a conclusion is neither an act, condition or event; it may or may not be based upon conditions, acts or events observed by the person drawing the conclusion ….'" *People v. Beeler* (1995) 9 Cal. 4th 953, 980 *quoting People v. Terrell* (1955) 138 Cal. App. 2d 35, 57, 291 P.2d 155.

In *People v. Reyes* (1974) 12 Cal. 3d 486, 502-04, the Court upheld the exclusion of a diagnosis of "Alcoholism with sexual psychopathy" in a psychiatric report, because the diagnosis was "based upon the thought

process of the psychiatrist expressing the conclusion." Similarly, the exclusion of psychiatric records on hearsay grounds was upheld in *People v. Young* (1987) 189 Cal. App. 3d 891, 912. The court explained that "psychiatric records "tend to be opinions, rather than the record 'of an act, condition or event' which is admissible under Evidence Code section 1271." *Id*. Along the same lines, a probation report "d[id] not qualify as a business or official record" in *People v. Campos* (1995) 32 Cal.App.4th 304, 307-08, and a doctor's opinion regarding the cause of a patient's headaches constituted inadmissible hearsay in *Godfrey v. Steinpress* (1982) 128 Cal. App.3d 154, 184.

A police officer's opinion about whether a child victim of sexual abuse was coached is certainly inadmissible under this line of cases

As our High Court pointed out in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1355:

> ....Although affidavits or declarations are authorized in certain motion matters under Code of Civil Procedure section 2009, this statute does not authorize their admission at a contested trial leading to judgment.

In *Elkins, supra,* our High Court held that

> In sum, consistent with the traditional concept of a trial as reflected in provisions of the Evidence Code and the Code of Civil Procedure, we conclude that respondent's rule and order calling for the admission and use of declarations at trial conflict with the hearsay rule. *Id.,* at 1360.

If a declaration is not admissible under *Elkins* in a contested trial leading to judgment, *a fortiorari* is an unsworn narrative DCFS report not admissible in such a proceeding.

Finally, Siedel's attempt at impeachment of McRoberts based on what the police officer is supposed to have said is inadmissible because it is not a prior inconsistent statement of McRoberts. See Evidence Code Sections 769, 770 - 780.

XII

KATZ WAS ABLE TO CONDUCT THE SECOND AND THIRD EVALUATIONS ONLY BECAUSE THE COURT VIOLATED MCROBERTS' DUE PROCESS RIGHT TO STRIKE KATZ PURSUANT TO LASC L.R.14.21(a), NOW RULE 5.20(A) AS OF JULY 2011.

On February 25, 2010, Judge Meisinger denied Lesserson's exparte request for reappointment of Katz as custody evaluator, stating he wanted a pair of "fresh eyes" to look at the case. A true and correct copy of the order denying the exparte request for reappointment is marked and attached as

Exh. 38. Lesserson filed an OSC for Katz's reappointment, and McRoberts objected in writing to his re-appointment. A true and correct copy of McRoberts' responsive declaration filed February 26, 2009, to Lesserson's OSC seeking the appointment is marked and attached as Exh.39 The hearing was set for March 4, 2009, which McRoberts could not attend because she had no gas money. In her absence, Judge Meisinger re appointed Katz despite her written objection. McRoberts declar., p.7, para 12. A true and correct copy of the order re-appointing Katz is marked and attached as Exh. 40.

McRoberts' written objection to Katz's re-appointment constituted a strike pursuant to Los Angeles Superior Court Local Rule 5.20 (former Local Rule 14.21):

> (a) Peremptory Challenge. When a private evaluator is appointed, other than by stipulation, each side will be permitted one peremptory challenge of a specific evaluator. The challenge must be made within ten court days of the notice of appointment.

Judge Meisinger did not honor McRoberts' strike, thus violating her due process rights. McRoberts and her children were forced through yet another unethical evaluation by a biased and prejudiced evaluator.

Judge Cunningham's due process violation was compounded by the fact that he held the hearing on Katz's re-appointment in chambers without McRoberts present. McCullaugh represented to McRoberts that he did argue against the appointment. McRoberts declar., p.7, para 12. Thus, Judge Cunningham had actual knowledge that McRoberts was exercising her right to strike Katz pursuant to LASC L.R.5.20 (or the former 14.21). The due process violation led to irreparable harm to McRoberts and her children, Katz's unethical and unfounded conclusion that Lesserson had not sexually abused the girls AND custody should change immediately to the father.

This Court has no record of why Judge Cunningham re-appointed Katz in the face of McRoberts' adamant objection. The Fourth District Court of Appeal has issued repeated admonitions to family courts to stop the chambers conferences. *In re Marriage of Hall* (2000) 81 Cal.App.4th 313, 315, 316, 320, 321:

> . ... This case appears to have followed the all-too-common pattern in family law of lawyers disappearing into a judge's chamber and emerging with the judge's order, independent of any hearing or settlement....

The *Hall* Court's comment about the appearance of unfairness chamber conferences create is prescient of what occurred here:

> Unfortunately, when lawyers and the judge disappear into chambers and emerge with an order to confer on the parents, the impression created is not one of a "fair and reasonable" process. Rather, the impression is one of a decision that has been predetermined without a hearing.[fn7 omitted]. *Id.,* at 319-320.

While child support is very important, it pales in comparison with the issue of child sexual abuse and the re-appointment of a custody evaluator who had showed himself to be very prejudiced against the mother, and one who had failed to produce evaluations when he was appointed on the two prior occasions. Yet, even for child support issues, the Fourth DCA rightfully stated that

> ....[W]hen orders are strictly the products of unreported chambers conferences, there is no opportunity for the court to exercise its discretion, because any discretion, under the current statutory scheme, requires either a statement on the record or some kind of writing.

The Court also indicated that unreported chambers conferences leave the parties without a record to take to the Court of Appeal.

> A logical corollary of this statute is that appellate courts must have enough information in the record to evaluate whether a court correctly followed the formula .... An adequate record on appeal is vital to the implementation of that policy.

The *Hall* case was decided in 2000. In *Seneca Ins. Co. v. County of Orange* (2004) 117 Cal.App.4th 611, 619, the Fourth DCA once more expressed its disapproval of chambers conferences.

Appointing a custody evaluator with a track record like Katz's for the third time in a chambers conference over the adamant objection of a parent cannot pass muster under any interpretation of the Due Process Clause, and for this reason alone, the Court should strike Katz's testimony.

XIII

KATZ'S SO-CALLED "ORDERS" IN WHICH HE FORCES THE PARENTS TO SIGN AWAY THEIR RIGHTS SHOULD BE EXAMINED BY THIS COURT BECAUSE THEY ARE GENERIC, NOT TAILORED TO THE ISSUES IN THE PARTICULAR PARENTS CASE, ARE ALMOST EXCLUSIVELY ABOUT MONEY AND LITTLE ABOUT PROTOCOL.

Katz was required to set out the scope and purpose of the evaluation in writing. See Rule 5.200(e). He failed to do so. See Exhs. 69, 70.

In a family law due process case coming out of Orange Superior Court, *IRMO Seagondollar* (2006) 139 Cal.App.4th 1116, the Court of Appeal was merciless in its criticism of the trial court and the evaluator. The Court emphasized at 1120:

> Virtually from start to finish, the trial court handling this matter failed to follow or evenly apply the rules and procedures governing

> family law matters and, by failing to do so, denied Timothy the opportunity to be meaningfully heard..... **The rules of procedure are commands which ensure fairness by their enforcement.** emphasis added.

This writer cannot spend any more time on this issue because of word count. She respectfully urges this Court to review Katz's "stipulations and orders" because they demonstrate Katz's first and foremost concern, his fees including for additional costs probably not permitted by law, and that he did not tailor the contract to the issues of the family he was evaluating.

See *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116, 1133 ...(pursuant to Cal. Rules of Court, rule 5.220(e)(1)(A), the evaluator had an obligation to supply to the parties "a written protocol describing the purpose of the evaluation and explaining the procedures he intended to follow").

Katz's repeated violations of the law make his testimony useless and the Court should strike it.

XIV

CONCLUSION

From the moment Katz was appointed, due process, fairness, and equal treatment of the parents disappeared. Katz was on a mission: to protect the father and to vindicate Aish Hatorah. Katz turned the case into one of persecution against McRoberts for religious apostasy. His history in the McMartin and Jackson cases indicates he is an opportunist who puts money ahead of children. When he knew he could make millions by saying children do not lie about sexual molestation and by claiming Michael Jackson molested Jordan Chandler, he said so. When he thought he could make more money by writing a book stating that children lie about sexual molestation 40% of the time, he wrote the book. When he thought he could make additional millions by claiming that children after age 5 rarely lie about sexual molestation and that Jackson had molested Gavin Arviso ten years after the Chandler case, he did. When Katz saw the criminal molestation case against Jackson based on Arviso's allegations going south, he then proclaimed that Jackson was just a kid in an old man's body.

In this case, Katz created a closed system, one which he manipulated and controlled. He eliminated any negative evidence against Lesserson by pressuring McRoberts to withdraw the criminal domestic violence charges

against Lesserson and to quit making reports to DCFS (although it was the mandated reporters calling DCFS). Katz is the one who probably enlisted the services of his good friend Dickerman to sue McRoberts for the return of Lesserson's journal even as McRoberts was trying to protect her children and herself in family court.

Katz never questioned whether McRoberts' former mother-in-law had set her up for a criminal charge possibly because he may have had a hand in her allegations. The notice from the City Attorney's Office based on the mother-in-law's criminal charges came right at the time when Katz was pressuring McRoberts to return the journal to Lesserson, to drop the criminal charges against Lesserson, and to stop making reports to DCFS, Dickerman was suing her, Lesserson was not providing child support, and Katz was supposedly evaluating her and her children.

Katz clearly believes he is above the law. He did not produce written evaluations the first two times he was appointed. He has never provided a document, including Form FL-326, indicating he is still qualified to conduct evaluations involving domestic violence and sexual abuse.

Once he suppressed relevant evidence about the father, Katz relied on unproven theories of PAS and hypervigilence to use against McRoberts

in order to distract the Court from the girls' accusations against the father and the telling physical evidence of genital wart lesions on R2's genital and rectal areas. Anderson rebutted all of Katz's points which Judge Cunningham ignored because, as he admitted, he only relied on Katz's recommendations.

Katz could not carry out his mission were it not for the acquiescence of the courts. Both Judge Meisinger and Judge Cunningham should have honored McRoberts' opposition against the reappointment of Katz pursuant to LASC L.R. 5.20 (prior, L.R.14.21). Judge Cunningham should have conducted the hearing on the third appointment of Katz on the record because of McRoberts' objection to him, not in chambers. Judge Cunningham should never have ordered Dannacher to serve both as visitation monitor and reunification therapist because the positions inherently conflict with each other. Judge Cunningham should have honored McRoberts' request to remove Dannacher as monitor and reunification therapist because of her obvious bias in favor of the father and unwillingness to terminate the visitation when the children showed fear or extreme reluctance although mandated by the rules to do so. Instead, Dannacher used their reluctance to visit as evidence of McRoberts' alienation.

Judge Cunningham allowed Siedel to examine Katz and McRoberts on an unauthenticated and inadmissible DCFS document riddled with inadmissible hearsay and permitted it to go into evidence despite the repeated objections of McCullaugh. Judge Cunningham permitted Katz and Dannacher to testify in narrative form, transforming the courtroom into Katz's living room, with Siedel, Katz, and Dannacher controlling the conversation. McRoberts and her witnesses had been rendered irrelevant.

Judge Cunningham did not admonish Katz about his use of notes during his testimony as he had McRoberts, nor did Judge Cunningham order copies for him, the court record, and McCullaugh, although they are the only documents Katz has concerning his first two evaluations. He permitted him and Dannacher to testify about events occurring well before 2009. On the other hand, when McRoberts testified Judge Cunningham limited her testimony to events after 2009.

The failure of Lesserson's so-called forensic experts, Richwald, Fleischmann, and Heger to disclose their associations with one another, with Katz, with Dannacher, and with Siedel was appalling.

The experts provided little assistance to the Court in resolving the issue of sexual abuse or what role a diagnosis of genital warts plays in a

sexual abuse case where the child has already disclosed her father was rubbing and fondling her where the lesions appeared.

This case cries out for legal reform. It proves that there are three tiers of justice: appellate courts, family courts, and the cottage industry which has sprung up in the lower courts consisting of unregulated custody evaluators, minors counsel, and custody investigators. This Court, the other Courts of Appeal, and the Supreme Court issue rulings and holdings for the family courts to follow. The family courts ignore those holdings as demonstrated in this case and in the cases cited in this brief. The family courts have abdicated any kind of control or regulation over the conduct of custody evaluators, minors counsel, and custody investigators. This unconscionable state of family law affairs frequently results in terrible tragedies of protective parents losing their children to the abusive parents, as it did here.

For these reasons, McRoberts request that the order be reversed and sole legal and physical custody of the four children awarded to her with supervised visitation of the two boys and of the two girls only at their election, and attorney fees and costs.

DATED: January 9, 2012 _____
PATRICIA J. BARRY

CERTIFICATION OF WORD COUNT

I certify that the font is times new roman and that the word count with all the citations to the trial transcripts included is 15,444 words. Without the long citations to the trial transcripts the word count is approximately 14,650 words.

DATED: January 9, 2012 _____

PATRICIA J. BARRY