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LETTER TO THE EDITOR

Admissibility of shaken baby syndrome/abusive head trauma evidence

Keith A. Findley · A. Norman Guthkelch · Patrick D. Barnes · David A. Moran · Waney Squier

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Sir,

In a recent editorial, Professor Moreno [1] criticizes those who question the traditional shaken baby syndrome/abusive head trauma (SBS/AHT) hypothesis, particularly our response to an article by Narang [2], who argues that the courts should endorse this hypothesis and exclude alternatives, including those based on the peer-reviewed literature [3].

Moreno contends that our response "ignores the vast quantity of medical evidence cited by Dr. Narang and appears to be based instead on two literature reviews" [1]. In fact, our 104-page article addresses in detail each of the cited papers. Although numerous, these papers are characterized by unsupported assumptions, lack of controls, misunderstanding of statistics, and misplaced reliance on confessions. In short, the evidentiary basis for the traditional SBS/AHT hypothesis is unreliable.

Narang and Moreno do not suggest that the cited studies meet the standards of evidence-based medicine, the current benchmark for clinical medicine. Instead, they argue that the judgment and experience of clinicians should outweigh deficiencies in the research. This is, however, contrary to *Daubert v. Merrell Dow Pharmaceuticals Inc*., which explicitly rejects reliance on the *ipse dixit* of experts to compensate for inadequacies in the research [4].

Sometimes Moreno misunderstands our paper. For example, she argues: "If short falls routinely produced the forces necessary to fracture infant skulls, emergency rooms would be flooded with infants and children suffering from skull fractures and head injuries after minor falls" [1]. No one claims that short falls "routinely" cause head injuries, but there is general agreement that they *sometimes* cause them and are *occasionally* fatal; indeed, several fatal short falls have been caught on videotape [3].

Moreno contends that we claimed, wrongly, that "*Daubert* requires an all-or-nothing determination" [1]. In fact, we emphasized that *Daubert* requires exacting judicial scrutiny of particular propositions as they relate to "the task at hand," rather than the kind of global admissibility assertions made by Narang [3]. In the quoted passage, our point was simple: if testimony on one hypothesis is allowed, testimony on alternative hypotheses should also be allowed. In medicine, this is known as a differential diagnosis (i.e. list of possible causes). In law, it is known as due process.

K. A. Findley (✉)
University of Wisconsin Law School, 975 Bascom Mall, Madison, WI 53705, USA
e-mail: kafindle@wisc.edu

A. N. Guthkelch
Pediatric Neurosurgery (Retired), Evanston, IL, USA

P. D. Barnes
Department of Radiology, Lucile Packard Children's Hospital, Palo Alto, CA, USA

D. A. Moran
University of Michigan Law School, Ann Arbor, MI, USA

W. Squier
Department of Neuropathology, John Radcliffe Hospital, Oxford, UK

References

1. Moreno JA (2012) What do pediatric healthcare experts really need to know about Daubert and the rules of evidence? Pediatr Radiol 43:135–139
2. Narang S (2011) A *Daubert*-analysis of abusive head trauma/shaken baby syndrome. Hous J Health L & Pol'y 11:505–633
3. Findley KA, Barnes PD, Moran DA et al (2012) Shaken baby syndrome, abusive head trauma, and actual innocence: getting it right. Hous J Health L & Pol'y 12:209–312
4. (1993) Daubert v. Merrell Dow Pharm. Inc., 509 U.S. 570