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Reply to Professor Ehrhardt

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Reply to Professor Ehrhardt

I was relieved to note that Professor Ehrhardt's critique of my Comment found more to agree with than to criticize. His major concern seems to be my failure to explain why I don't feel CSAAS should be submitted to a *Frye* test. What follows is my attempt to address that concern.

There exists a spectrum of strategies available to Florida prosecutors wishing to use CSAAS. One of these is to argue for a new admissibility standard. A survey of the cases reveals that the courts examining CSAAS under the *Daubert* standard tend to view it in a more favorable light.¹ More interesting to me was the approach of the Michigan Supreme Court which recognized that both *Frye* and *Daubert* are designed to test the hard, scientific-method-based sciences and thus created a new admissibility standard for the behavioral sciences.² An adventurous prosecutor might ask the court to consider a similar distinction in Florida.

Happily, an innovation like this is probably unnecessary, since CSAAS really should pass a *Frye* test when offered for the correct purpose (rehabilitation). My paper noted that this usage has met with "almost universal approval."³ I am confident (as is, I think, Professor Ehrhardt) that as prosecutors become familiar with the proper usage of CSAAS, the Florida courts will acknowledge its utility and Florida juries will have another tool to aid them in this most difficult of decisions.

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1. Arthur H. Garrison, *Child Sexual Abuse Accommodation Syndrome: Issues of Admissibility in Criminal Trials*, 10 ISSUES IN CHILD ABUSE ACCUSATIONS 10 (1998).

2. The ultimate testimony received on syndrome evidence is really only an opinion of the expert based on collective clinical observations of a class of victims. Further, the issues and the testimony solicited from experts is not so complicated that jurors will not be able to understand the "technical" details. The experts in each case are merely outlining probable responses to a traumatic event. It is clearly within the realm of all human experience to expect that a person would react to a traumatic event and that such reactions would not be consistent or predictable in all persons. Finally, there is a fundamental difference between techniques and procedures based on chemical, biological, or other physical sciences as contrasted with theories and assumptions that are based on the behavioral sciences. "We would hold that so long as the purpose of the evidence is merely to offer an explanation for certain behavior, the *Davis/Frye* test is inapplicable." *People v. Beckley*, 456 N.W.2d 391, 404 (Mich. 1990).

3. *State v. J.Q.*, 599 A.2d 172, 183 (N.J. Super. Ct. App. Div. 1991).