

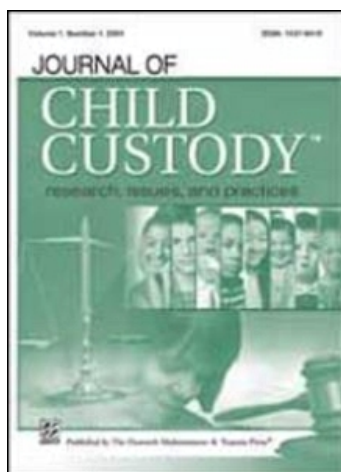
This article was downloaded by: [Matthews, Richard][informa internal users]

On: 12 July 2010

Access details: Access Details: [subscription number 755239602]

Publisher Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Journal of Child Custody

Publication details, including instructions for authors and subscription information: <http://www-intra.informaworld.com/smpp/title~content=t792306888>

### A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court

Lenore E. A. Walker<sup>ab</sup>; Kristi L. Brantley<sup>c</sup>; Justin A. Rigsbee<sup>cd</sup>

<sup>a</sup> Nova Southeastern University's Center for Psychological Studies, USA <sup>b</sup> Domestic Violence Institute, USA <sup>c</sup> doctoral program, Nova Southeastern University in Fort Lauderdale, Florida, USA <sup>d</sup> FBI Academy in Quantico, Virginia, USA

**To cite this Article** Walker, Lenore E. A. , Brantley, Kristi L. and Rigsbee, Justin A.(2004) 'A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court', Journal of Child Custody, 1: 2, 47 – 74

**To link to this Article:** DOI: 10.1300/J190v01n02\_03

**URL:** [http://dx.doi.org/10.1300/J190v01n02\\_03](http://dx.doi.org/10.1300/J190v01n02_03)

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www-intra.informaworld.com/terms-and-conditions-of-access.pdf>

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

# A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court

Lenore E. A. Walker  
Kristi L. Brantley  
Justin A. Rigsbee

**ABSTRACT.** Over the past three decades, parental alienation syndrome (PAS) has been proposed to explain behaviors by a child who refuses to spend time with a parent and actually denigrates that parent within the context of a child custody dispute. Although some mental health professionals and child custody evaluators, attorneys, and judges have been quick to accept and admit PAS as evidence in these disputes, there has been no consistent empirical or clinical evidence that PAS exists or that

---

Lenore E. A. Walker, EdD, is Professor of Psychology at Nova Southeastern University's Center for Psychological Studies, where she coordinates the clinical forensic psychology concentration in the doctoral program. She is also currently a student in the postdoctoral master's of science in psychopharmacology program and expects to receive the degree in June 2004. Dr. Walker has authored 12 books and approximately 70 book chapters and papers on domestic violence, child abuse, and women's issues. She is Executive Director of the Domestic Violence Institute, a nonprofit agency with affiliate centers around the world.

Kristi L. Brantley, MS, is a fourth-year student in the doctoral program at Nova Southeastern University in Fort Lauderdale, Florida, specializing in forensic psychology. Her current areas of interest include family law and forensic assessment.

Justin A. Rigsbee, MS, is a fourth-year student in the doctoral program at Nova Southeastern University in Fort Lauderdale, Florida. He is currently interning at the FBI Academy in Quantico, Virginia. His areas of interest include family law, forensic assessment, stalking/obsessional following, crisis negotiation, family violence, behavioral criminology, mental health law, and police psychology.

Address correspondence to: Dr. Lenore E. A. Walker, Professor of Psychology, Nova Southeastern University, Center for Psychological Studies, Fort Lauderdale, FL 33319.

Journal of Child Custody, Vol. 1(2) 2004

<http://www.haworthpress.com/web/JCC>

© 2004 by The Haworth Press, Inc. All rights reserved.

Digital Object Identifier: 10.1300/J190v01n02\_03

the alienator's behavior is the actual cause of the alienated child's behavior towards the target parent. This article attempts to help those working with custody issues understand how the PAS construct fails to meet scientific standards and should not be admissible in courts. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2004 by The Haworth Press, Inc. All rights reserved.]

**KEYWORDS.** Parental alienation syndrome, Daubert, custody, family violence, gender, psychological evaluation

Custody disputes, by definition, are highly stressful and complicated experiences, not only for the two parties attempting to gain custody of the child(ren), but for those who are involved in the decision-making process as well. Judges must make the difficult decision to determine what is in the best interest of the child(ren) when parents themselves cannot decide. This becomes even more complicated when allegations of physical or sexual abuse are introduced. The courts find themselves relying upon expert witnesses more frequently in an effort to educate the court in such instances. Despite the guidelines from many professional associations, most courts across the country use mental health professionals (MHP) who perform occasional child custody forensic evaluations rather than specially trained child custody evaluators (CCE) as expert witnesses in these cases. Unfortunately, it has been our experience, based on performing numerous second evaluation critiques, that MHPs who serve as custody and parental fitness evaluators are not always properly trained in providing the necessary psychological information critical to the child's immediate or long-term physical and psychological safety and well-being. There is a growing body of literature that deals with the impact of parental conflict (Davies & Cummings, 1994; Margolin, 1998) and trauma on children, especially physical, sexual and psychological maltreatment (e.g., Caplan, 1995; Gabarino, Kostelny, & Dubrow, 1991; Jaffe & Geffner, 1998; Rossman, Hughes, & Rosenberg, 2000). Some states such as California have passed laws requiring certain continuing education course work to attempt to overcome this information lag for any MHP who conducts a custody evaluation.

It is our belief that the lack of uniform educational standards in MHP graduate training programs or continuing education programs leaves courts and MHP evaluators vulnerable to uncritical acceptance of new theories proposed to resolve difficult decisions about the child's future that may not meet scientific scrutiny. Parental alienation syndrome (PAS) is one of the newer theories in this category, as would be Munchausen by Proxy (see Chesler, 1986, and Caplan, 1995, 2001, for a more complete discussion). Although on the surface the PAS theory and its reformulations may appear to describe the parental con-

flict and children's reactions to parental conflict observed during divorce, we agree with others such as Warshak (2003), Myers (1997), and the American Psychological Association (APA) (1996) that PAS does not meet the standards required to be considered a theory nor does PAS provide answers to the difficult questions concerning access to children that are raised, especially during complex custody battles.

This article begins with a description of PAS and its usual application in family court cases. It then goes on to describe how PAS was introduced in the family courts. Finally, we describe the legal standards that could prevent its misuse in the courts but have not yet been applied in family law cases. There have been numerous criticisms of PAS appearing in the trauma and gender studies research literature that appear not to be addressed by the child custody literature (e.g., Bancroft & Silverman, 2002; Bone & Walsh, 1999; Browne & Finkelhor, 1986; Caplan, 1995, 2001; Chesler, 1986; Faller, 1998; O'Keefe, 1994; Pagelow, 1993; Thoennes & Tjaden, 1990, 1998; Walker, 1989, 2000). There have also been criticisms of PAS in the last five years appearing in the child custody literature (e.g., Kelly & Johnston, 2001; Williams, 2001; Zirogiannis, 2001). We attempt to integrate these findings together with the current literature on PAS and child custody and then apply them to admissibility issues that could be raised in family courts.

There are five specific areas that have guided our critique of PAS. These include: (a) The same type of behaviors labeled 'alienating' by the PAS literature, by the same or different parents, do not always produce a child who is alienated from the target parent; (b) A child displaying the same rejecting and alienating behaviors may have legitimate reasons for not wanting to be with that parent based on that parent's own parenting style or abilities; (c) Children without an alienator parent display nonhostile behaviors that are similar to alienation brought on by a close affinity for the other parent; (d) The alienated child's behavior may be a temporary reaction to a prolonged and difficult divorce and not a separate syndrome; and (e) The concept is mainly applied to mothers as the alienator and fathers as the target parent without using a clear gender analysis. To address these issues, the history and critique of the attachment literature as used in child custody cases will be presented, along with evidence criticizing the lack of empirical data to support these theoretical premises that define PAS. Attachment theory has been chosen as a lynch pin in the critique of scientific integrity because it has been used by credible scientists to try to reformulate PAS into an acceptable explanation of these children's hostility towards a parent (e.g., Cassidy, 1999; Drozd & Oleson, 2003; Gould, 1998; Kelly & Johnston, 2001; Lee & Oleson, 2001). Application of PAS in the courts will then be explored using several cases to illustrate the lack of Frye or Daubert standards in family court as opposed to criminal court proceedings where such hearings are more likely to be held.

### WHAT IS PAS?

First proposed by the late psychiatrist Richard Gardner (1992), PAS has been described as a cluster of symptoms commonly seen in the context of a custody dispute. Specifically, these symptoms are said to be produced by specific behaviors used by an 'alienating parent' who engages in "brainwashing" the child. The child then adopts negative views towards the 'target parent,' and in severe cases actually vilifies the rejected parent (Gardner, 1992, 2001). To his credit, especially in his later writings, Gardner specified that behavior in homes in which there is domestic violence should not be analyzed using PAS. However, he was reluctant to accept any other evaluator or even the court's findings of domestic violence and preferred to make his own, often idiosyncratic, decisions (personal communication with L. W., 1998). For example, in one case in which one of us (L. W.) was on the opposing side, Gardner requested that she ask the court to rescind a restraining order so he could put the parties together in a room where he could decide who was telling the truth about domestic violence. Importantly, when the court has made a finding of domestic violence, it is not the MHP's job to attempt to evaluate that finding in a custody dispute.

Gardner listed eight steps that when used by an alienating parent will create PAS. In no particular order, these steps are: (a) a campaign of denigration, where the child continually professes hatred of the absent parent, eventually withdrawing from the absent parent; (b) weak, absurd, or frivolous rationalizations provided by the child for deprecating the absent parent; (c) the child's use of terms, phrases, or scenarios that do not reflect the child's own experience or are concepts that are developmentally inappropriate for the child; (d) the contention that decisions to reject the 'target' or absent parent are the child's; (e) an automatic, reflexive support by the child for the loved or 'alienating' parent; (f) the absence of guilt regarding the feelings of the 'target' or absent parent; (g) the presence of borrowed scenarios (e.g., "Daddy's girlfriend is a whore"); and, finally, (h) an obvious spread of the animosity to the hated parent's extended family (e.g., grandparents, cousins, aunts, and uncles) (Gardner, 1992).

As is obvious when examining these eight steps, there are many other reasons that a child can behave in these ways, including the possibility that the 'target' parent really is behaving in an abusive manner toward the child or that the child is angry about the divorce and blames the 'target' or absent parent for the dissolution of the family. Gardner specifies a set of behaviors that the alienating parent uses to create this reaction in the child, such as 'a campaign of denigration,' using phrases or scenarios that are developmentally unexpected for the child to use, and spreading the child's animosity to the 'target' parent's extended family. In performing an evaluation, Gardner suggests that the anger or animosity of the 'alienating' parent is proof that the parent has alienated the child who displays this syndrome.

Gardner does not distinguish between PAS as a syndrome and the term parental alienation behaviors, although others do. For example, where parental alienation carries with it the alienating behavior of the parent as its only element, PAS involves the child coming to adopt the parent's negative views and putting forth false allegations (Kelly & Johnston, 2001). However, while most MHPs and custody evaluators will acknowledge observing some children behaving in angry and rejecting ways towards one parent while the other parent demonstrates anger and some behaviors that could cause alienation towards that 'target' parent, it would be difficult to draw the nexus between that behavior and the child's behavior, proving that the child suffers from PAS. Gardner and others have also attempted to differentiate between three types of PAS. Each type differs in the number of symptoms displayed. However, these criteria have been criticized as Gardner himself suggests that sometimes they will not be seen initially, thereby not even giving a bottom limit to the number of criteria needed to make a diagnosis (e.g., Caplan, in press).

### ***Mild PAS***

In the mild PAS category, despite some parental programming, the child will visit the target parent with little or no hesitation (Rand, 1997a). The child will display the least amount of the eight proposed symptoms, but neither Gardner nor other proponents specify how many symptoms are necessary for diagnosis. Gardner (2001) indicates that he believes that the programming will be reduced following the end of the custody battle and therefore does not recommend court-ordered intervention. Since most mental health syndromes do not simply disappear when the situation changes, especially when the outcome is shared parental responsibility in most of these cases, it is questionable if these cases ever demonstrated PAS, as Gardner theorizes.

### ***Moderate PAS***

In the moderate category, children experience more programming and display more of the eight proposed symptoms than the children in the mild category. However, it is unclear how many more of the symptoms need to be observed and over what period of time. In addition, these children will demonstrate more resistance to visitation. If it is determined that the parent is likely to discontinue brainwashing, Gardner (2001) recommended that the court order primary custody to remain with the programming parent. However, if the parent is believed to continue brainwashing, Gardner recommended custody be transferred to the target parent. In either case, Gardner suggested that the court appoint a PAS therapist to work with the child to stop the process of alienation and remediate the relationship between the child and the rejected parent. These last two recommendations are quite problematic and will be addressed later in this article.

### ***Severe PAS***

Children in the severe category will display most or all of the eight proposed symptoms. These children are uncompromising in their hatred for the target parent. They will refuse to visit the target parent, sometimes making false allegations of abuse or neglect. In the most severe of cases, the child will threaten to run away or commit suicide if they are forced to visit the target parent (Rand, 1997a). Gardner indicated that by leaving the child in the home of the programming parent, the child is being denied the possibility of a relationship with the target parent. However, the child is likely to act out if moved directly into the target parent's home. The acting out may result in injury to the child, target parent, or home. Gardner (2001) recommended that children in the severe category be removed from the programming parent's home and placed in a "transitional-site program" until they are ready to be transferred to the home of the target parent. Similar to the cases of children in the moderate category, Gardner suggests the appointment of a PAS therapist for the child. Again, the last two recommendations are quite problematic, especially when the child is doing well in the nontarget parent's home. Here, the consideration of what is truly in the child's best interests is essential. The presumption that for healthy development the child needs access to both parents at this time in his or her life is questionable and based on no empirical research that these authors have been able to find.

### ***HOW IS PAS USED IN THE COURTS?***

As those of us who work in the courts are aware, the legal standard "best interests of the child" has been created by law as a yardstick by which family courts are required to make decisions about custody and access to a child. However, like many legislated constructs, the standard is not carefully defined and, more often than not, MHP evaluators and courts use their own personal beliefs rather than scientific data to decide what are the child's best interests. While courts are permitted to make these kinds of judgments, hopefully using reason more than emotion, the use of MHPs in the courts should be to provide more scientific data to assist the court in making a reasoned decision. Unfortunately, in our experience, the result of many custody evaluations is usually what the evaluator determines is in the best interests of the parent(s) even when MHPs and courts believe that they are being guided by the child's best interests.

For example, in a recent case in a large urban city court, a three-year-old child was temporarily permitted to relocate with her mother to another state, provided she spend one week per month in the father's home; this order was granted despite the fact that the mother had presented evidence that the father had been sexually inappropriate with the mother during the marriage. The child



had serious emotional reactions to this arrangement and came home with questionable symptoms that were consistent with child sexual abuse (the child's mother was careful not to make allegations but asked for further evaluation). Further, it was discovered that the father was renting pornographic movies when the child was with him. Without a full hearing, the judge changed the removal order and required the mother and child to live in the same city as the father while leaving the access order in place. A custody evaluation was in progress, and when the CCE's evaluation was found to be inadequate and flawed by two other CCEs, the judge took both parents into chambers and asked them to get down on their knees so he could pray for them. Needless to say, the case was removed to another court, but the original judge is still in family court hearing other cases.

Deciding what is in the child's best interests from the child's perspective can be a controversial area, and MHPs often do not agree on what is in the best interest of the child. For example, by keeping children out of the courtroom, some MHPs believe that they are relieving children from the burden of decision making while others believe that such a philosophy interferes with children's rights to make decisions for which they are developmentally prepared (see pp. 313-327 in Walker & Shapiro, 2003, for a discussion of the quest for children's legal rights giving them legal standing in courts). In another commonly seen example, a mother who attempts to protect her child from an abusive father may be seen as interfering with the father's rights of access to a child by one MHP, while another sees it as a valiant attempt to protect the child. Although admonitions are given to carefully assess each situation individually and proceed with caution, the custody evaluation literature strongly suggests reintegration of an alienated child with the rejected parent even when the parent has serious problems that have contributed to the child's rejection. Johnston, Waters, and Friedlander (2001) suggest that the visitation plan with a rejected parent should be one that a child can handle; it is not optional. For example, "... , the therapist can talk with them about how they can make the visit or contact more bearable, even though they do not want to go" (p. 327). Adolescents are described as "reminiscent of civil rights protestors, raising the practical question as to whether they can be physically forced and the moral question of whether they have any right to refuse to comply with stipulations and court orders where they have no status as parties" (p. 327).

The introduction of the concept of PAS is an example of this process. For instance, some MHPs rely on the presumption that access to two parents is better than one for a child without fully understanding the impact of a parent with mental health problems or behavioral problems related to power and control. In some cases where there is overt violence, MHPs accept as necessary the supervision of that parent or demonstration that the parent can control the violent or abusive behavior while with the child. However, once the defense challenges whether sexual abuse of the child or domestic violence, per se, has occurred, using PAS as a defense, many MHPs have difficulty in assigning the



cause of the child's responses noted during an evaluation. Abuse cases are not the only ones in which PAS is used without firm scientific data to support it, but they often lead to such detrimental consequences for the child (and sometimes the mother or father) that they are the most frequently used examples.

For example, in Kelly and Johnston's (2001) reformulation of PAS theory, they include the alienating parent's fears of dangerous behavior towards the child by the rejected parent as an organizing belief. "Second, the aligned parent often fervently believes that the rejected parent is dangerous to the child in some way(s): violent, physically or sexually abusive, or neglectful. Therefore, the aligned parent's behaviors are aimed at blocking access to the child. A campaign to protect the child from the presumed danger is mounted on multiple fronts, often involving attorneys, therapists, pediatricians, and school personnel. Behaviors include seeking restraining and supervised visitation orders, installing security equipment at the residence, and finding reasons to cancel visits when orders for contact exists" (p. 258). Statements like this leave the courts with no way to verify the accuracy of the complaints about abuse. Of course, these are all methods that domestic violence counselors suggest to women as ways to protect their children. However, for those who have a gender bias against women in the court (e.g., see the gender bias task force reports filed in most states during the mid-1990s about attorney's and judge's bias against women), these statements are taken literally and custody is changed.

In another example, "... a pattern of refusal to comply with clearly specified court orders for contact, therapy, and communication with the rejected parent would also constitute a basis for changing custody" (Sullivan & Kelly, 2001, p. 312). Forcing parents into alienation therapy together, sometimes with the child, is another possibility of leaving the abused mother and child without protection. Conjoint parent sessions, as a recommendation by Johnston et al. (2001, p. 328-330), are not recommended in the domestic violence literature (e.g., Jaffe & Geffner, 1998; Walker, 2000). Forcing the mother into therapy with a therapist selected by the court is recommended by Gardner (2001) despite the fact that he acknowledges its usual futility in stopping the mother's 'alienating' behavior (e.g., see Myers, 1997, for further examples).

It is our opinion that, despite the attempts of custody evaluators and researchers to reformulate the original theory of PAS, the original construct remains flawed. Nonetheless, it remains a popular way for some MHPs and courts to try to conceptualize and resolve conflict between parents who cannot get along with each other during the divorce process by giving access to the child to the parent who is being rejected or taking the child away from both parents. In some cases, the notion that the parent who is more generous with the other parent is behaving in the 'best interests of the child' has been codified into law, such as the 'friendly parent' statutes in many states. Further, friendly parent statutes have also been used as a way to punish a mother who makes abuse allegations against the father, especially when there is difficulty in substantiating those allegations (e.g., Caplan, in press; Faller, 1998; Jaffe & Geff-

ner, 1998; Pagelow, 1993; Thoennes & Tjaden, 1990). Bancroft, who has worked with fathers in offender specific treatment groups for many years, supports the feminist perspective with data from the men he has treated (Bancroft & Silverman, 2002).

Court decisions that have been reviewed indicate that in many of these cases, the court does not appear to truly understand the often multi-determined psychological dynamics that underlie the conflict. Rather, they seem to believe that one parent's behaviors are the only cause of the child's alienation from the other parent (Bancroft & Silverman, 2002; Jaffe, Lemon, & Poisson, 2003; Walker & Shapiro, 2003). In many of these cases, the fact that the child appears to get along with the alienated parent after the court's decision to place the child in that parent's custody is used to justify the original finding, which is certainly circular and nonscientific reasoning and only demonstrates the resiliency of the child. In other cases, if the court does not find the mother credible, for a variety of other reasons, the child may be removed from her home and placed with the other parent without a full hearing. What is commonly seen in these cases is prolonged litigation and use of the courts and MHP's evaluations as a way of keeping the conflict from ever resolving for the child.

## REFORMULATIONS

As was described earlier, Gardner first introduced PAS to describe the "phenomenon" where a child from a 'broken marriage' becomes alienated from one parent (called the 'target parent') due to the active efforts of the other parent (called the 'alienating parent' or 'alienator') to end that relationship. While there is no question that there are children who do not want to spend time with one parent and even behave in overtly rejecting, angry, and hostile ways towards that parent and that there are parents who display behaviors that Gardner termed 'alienating' behaviors (perhaps using early studies by Wallerstein & Kelly, 1976, 1980), both the causes and remediation seem to be multi-determined rather than placing the total focus on the so-called 'alienating mother.' Warshak (2003) presents a discussion of the various theories that have been used to accept or criticize PAS as a scientific theory.

### *Reformulations of PAS*

Kelly and Johnston (2001) attempted to apply the developmental psychology constructs of attachment and alienation to the family psychology literature. Bowlby (1969) and subsequent developmental psychologists used the terms attachment and alienation in the literature concerning the origination of attachment disorders of childhood. These fairly substantial problems with attachment to people in infancy were found to be a factor in children's later in-

terpersonal difficulties. As part of our discussion on the reformulation of PAS, later in this article we question whether the application of attachment and alienation from divorce later in children's lives is more confusing than useful. In our critique, we believe that there may be better ways to account for the multi-determination of children's behaviors seen during the period of divorce than a construct that is used in the developmental literature to describe profound lifelong disturbed psychological patterns of behavior. However, first we discuss several attempts at measuring specific parental behaviors thought to produce PAS in children.

*Parental alienating behaviors.* Rand (1997a, 1997b) provides a review of the literature on PAS and appears to have attempted to broaden the definition of PAS without utilizing Gardner's definitions or terms. However, others suggested that the PAS construct is best measured by looking specifically at the parent's behaviors towards the child. For example, Siegel and Langford (1998) use the MMPI-2 scales to identify PAS by hypothesizing that parents who cause PAS in children have a particular pattern on this test. A similar argument is made by Wakefield and Underwager (1990), who compared a convenience sample of two groups of parents going through a custody dispute. The group that did not have allegations of physical or sexual abuse appeared to have fewer mental health and personality diagnoses than the group who did make such allegations. Of course, those who have experienced violence in the family may well appear to have similar diagnoses on one test when evaluated by those untrained in domestic violence (Walker, 1994, 2000). A major flaw in this analysis is that a theory to identify PAS in a child cannot be substantiated simply by analyzing the parent's behavior (Otto, Edens & Barcus, 2000). As was mentioned earlier, the presence of PAS-type behavior in children whose parents do not fit the pattern or where one child does exhibit the behavior and the other does not would nullify this theory. Faller (1998) suggests that the theory does not even take into account an honest mistake made by a parent. As Bone and Walsh (1999) note, the diagnostic hallmarks of PAS are often couched in clinical terms that are often vague and open to multiple interpretations.

*Alienation as one construct on a continuum of attachment disorders.* Kelly and Johnston (2001) attempt to change the focus from the alienator back onto the alienated child. Further, their work clearly challenges the proposal that alienation produces a specific syndrome or that alienation is the only reason for similar behaviors seen in children. Although they attempt to demonstrate that certain parental conflict styles will produce different behaviors in children, they cannot account for why some children in a family demonstrate these behaviors and others do not. They suggest that there are different types of attachment problems seen in children of high conflict divorcing families. In fact, their work is expanded upon by Drozd and Oleson (2000, 2003) and Drozd, Kuehnle, and Walker (2004) when domestic violence is present. In particular, Drozd and colleagues have found that the construct of estrangement should

come after the construct of alienation in their theory, as it is hypothesized that children who are estranged have a basis in fact for their feelings, such as a parent who has abandoned them or one who has exploited or abused them. This moves away from the more analytic theories that underlie the Kelly and Johnston reformulations.

However, we challenge the theory that PAS or any form of alienating behaviors observed during a divorce is actually an attachment disorder, whether it is used in developmental or family context. That is, we do not believe that there are sufficient empirical data to support the theory that a child who demonstrates attachment problems to one parent from alienation, estrangement, or other family conflict styles will suffer the same kind of psychological adjustment problems after the divorce or later in life as those children who have been diagnosed with actual attachment disorders from infancy, such as those in Pervasive Developmental Disorders (PDD) or even Autism Spectrum Disorders. In fact, as we point out later, the alienated child frequently does not have attachment problems with other peers, adults, or the non-alienated parent, although other problems may be present in that relationship. Further, there are no empirical or clinical data to demonstrate whether any negative long-term effects to a child who is seen as alienated during the custody evaluation are due to the father's negative behavior, the court-ordered estrangement from the mother, or other factors that were not even considered in the original formulation of PAS or its reformulation. We believe that the short-term or long-term data on outcome are not sufficient to warrant changing the child's primary parent from the so-called alienating parent to the target parent or taking the child away from either parent except in very rare cases. Yet one author (L. W.) recently has participated in two different cases (hired by the mother on one and by the father on the other) where the same judge used PAS as an excuse to place one child in custody of the so-called target parent and the other children in foster care. In both cases, the court was so blinded by the conflict between the parents that the children's best interests were not met.

*Children's rights and PAS therapy.* Those recommending a type of PAS therapy with the alienated child may well be trying to cure problems that were caused by the supposed remediation. For example, suggestions that placing the conflicting parents in mediation or therapy together during the pendency of the litigation disregards the possibility that the conflict will be less upsetting to the child once the litigation is resolved. In other cases, the suggestion that the therapist can actually train one or both angry, hostile, or even violent parents in the course of family therapy may be placing more of a burden on the therapist from that expectation than other possible solutions, including time-out until the litigation has been resolved for a certain period of time (Johnston et al., 2001). In many families, the child should not be forced into therapy that is designed to take away the decision-making rights of the child. Perhaps even more frightening to those who believe that children have rights that should be respected and legal standing to participate in the decisions that impact their fu-

ture is the angry and punishing tone of some authors who insist that children be forced into compliance with court orders (e.g., see Sullivan & Kelly, 2001, for some illustrations of recommended jury instructions that these authors suggest could also be interpreted as removal of children's rights in the name of psychological health). While some MHP believe that they are removing burdens from children by insisting that they must follow court orders, we have seen some orders that take children out of homes in which they are thriving. One author (L. W.) has spoken with the children in these families after they have grown up, still angry and resentful that they were removed from the preferred parent's home and forced to be with a parent who did not treat them well.

*Gender issues.* Although it is described in gender-neutral terms by its proponents and detractors, in fact, PAS as a proposed syndrome is most often used to accuse the mother of alienating the child from the father. As described above, PAS is particularly popular as a defense to allegations of the mother that the father has committed domestic violence or sexual abuse of the child (Bancroft & Silverman, 2002; Caplan, in press; Chesler, 1990; Myers, 1997; Walker, 2000). Despite the clear gender imbalance, there has not been sufficient analysis of sex role socialization and resulting stereotypical behavior between males and females to rule it out as a major or even contributing factor.

### ***Remediating PAS***

Even those who question the existence of PAS, or the ability of custody evaluators to reliably assess for it, reiterate the same recommendations to remediate PAS by changing the child's negative and hostile feelings towards the target parent in a similar format (see examples given above as well as Kelly & Johnston, 2001; Johnston et al., 2001; Lee & Oleson, 2001; Siegel & Langford, 1998; Sullivan & Kelly, 2001; Turkat, 1994). Although the research suggests that high levels of marital conflict both before, during, and postdivorce may cause long-term problems in some children, in fact, there are no reliable or valid measures of what type of and how much marital conflict will reliably cause such harm in which children. Nor are there reliable data to suggest that substitution of one parent (the target parent) for the other parent (the 'alienator') will produce a healthy child, especially if the target parent really was hurting the child or others in front of the child. Some have suggested that the fact that once children are placed in the target parent's home and the hostility ceases, this proves the other parent caused the child's feelings through alienating tactics. However, studies have shown that children can accommodate to various forms of abuse without demonstrating the harm done to them until they have grown up and left the family home (Briere, 1997; Browne & Finkelhor, 1986; Gold, 2000). Given the complexities of sorting out actual domestic violence from false allegations, we suggest that MHPs or CCEs without specific domestic violence training do not attempt to prove or disprove allegations and refer to specialists.

### ***Is PAS an Attachment Disorder?***

Alienation as a construct is used in PAS literature in ways unintended by the original attachment literature (e.g., Bowlby, 1969; Cassidy, 1999), in which children were assessed for the degree of attachment they could make with adults. A child who cannot create a bond with a parent or caretaker may be said to have an 'attachment disorder.' Even in a theoretically perfect PAS case, by definition the child does have a strong attachment to the 'alienating' parent, and removal of that parent can reliably be predicted to cause the same damage as is found in the original psychological attachment studies when the psychological parent is removed. Davies and Cummings (1994) found that children placed in analogue situations where adults were engaging in loud, verbal conflict were seriously distressed by the conflict they were exposed to, even if the adults were strangers. They found that the younger the child, the longer the impact lasted. Imagine the impact on children who live in homes where dangerous physical violence sometimes followed similar verbal conflict. Researchers, clinicians, and evaluators do not take verbal aggression as seriously as those who work in the area of domestic violence suggest (Jacobson & Gottman, 1998). For example, Harway and Hansen (1994) found that less than one-third of mental health professionals took seriously the verbal conflict in a case study where the abuser ultimately killed his female partner.

### ***Does PAS Meet the DSM Criteria for a Syndrome?***

Although suggested by some proponents, including Gardner, the idea that PAS should be accepted in the *Diagnostic and Statistical Manual for Mental Disorders* (DSM-IV-TR; American Psychiatric Association [APA], 2000) has been met with overt skepticism both for its lack of empiricism and its inability to meet the basic DSM definition of a syndrome. The DSM-IV-TR defines a syndrome as such: "A grouping of signs and symptoms, based on their frequent co-occurrence, that may suggest a common underlying pathogenesis, course, familial pattern, or treatment selection" (p. 828).

Included in the DSM-IV-TR definition of a syndrome is the necessity of signs and symptoms. A sign is defined as "an objective manifestation of a pathological condition. Signs are observed by the examiner rather than reported by the affected individual" (APA, 2000, p. 827). In addition, a symptom is defined as "a subjective manifestation of a pathological condition. Symptoms are reported by the affected individual rather than observed by the examiner" (p. 828). Kirk and Kutchins (1992) as well as Caplan (1997) criticize the entire DSM system which forensic psychology tends to depend upon. As previously noted, Gardner provides a list of eight primary symptoms of PAS. These "symptoms" are descriptions of observed behavior as opposed to reported behaviors and should actually be considered signs, not symptoms, as defined by DSM-IV-TR criteria.



Given the disagreement as to the etiology of PAS, one may conclude that the symptoms of the proposed syndrome do not lead to a particular cause. For instance, a diagnosable syndrome usually requires the patient to have symptoms that point to the cause of the illness, which is not the case with PAS (Myers, 1993). A portion of the DSM-IV-TR definition requires a syndrome to have "a grouping of signs and symptoms." Gardner's eight primary symptoms do not meet the DSM-IV-TR's definition of a symptom, resulting in his theory lacking a necessary component of a diagnosable syndrome. Furthermore, Kelly and Johnston (2001) stated that PAS could not be a diagnosable syndrome because it does not meet the DSM-IV-TR definition of having a "common underlying pathogenesis, course, familial pattern, or treatment selection" (p. 249). Myers (1993) suggested that the term "non-diagnostic syndrome" should be used to describe those syndromes that do not point to a particular cause, such as Gardner's proposed syndrome. Otto et al. (2000) disagree, claiming that PAS is more likely to be diagnosed by the parent's behavior rather than the child's symptoms. This is also true for another syndrome, Munchausen by Proxy, that PAS supporters also believe is responsible for a child's alienation. In this non-empirically based alleged disorder, the parent is said to use coercion to make the child psychologically ill in order to focus attention on him or herself. Like PAS, the parent usually accused of having some form of Munchausen by Proxy is the child's mother.

### ***Alienated Child or Alienating Parent***

Children displaying some of the signs and symptoms of PAS for a short time following a divorce might represent the child's normal reaction to the divorce (Warshak, 2002, 2003). In fact, separation anxiety might be to blame for what appears to be alienation. This anxiety typically occurs when children are young and forced to transition between parent's homes. Difficult, troubled, and shy or timid children tend to have a hard time adjusting to stress in general. These children may appear to be experiencing PAS, while in fact they are adapting the best they can to the stress in their lives. Warshak also provides additional reasons as to the presence of apparent parental alienation. For instance, not wanting to be with a parent may be a child's attempt to protect him or herself from an explosive environment. Alternatively, the child who has been exposed to domestic violence may feel that he or she needs to protect one parent by not wanting to spend time with the other parent.

Warshak (2001) recommends five factors in distinguishing between apparent and actual PAS. These factors are: (a) The apparent alienation is temporary and short-lived; (b) It is occasional rather than frequent; (c) It occurs only in certain situations; (d) It coexists with expressions of genuine love and affection; and (e) It is directed at both parents. While Warshak's recommendation may provide one approach to differentiating children who are alienated from those who are just angry, he does not provide diagnostic instrumentation to as-



sist in the determination of the existence of these five factors. Lee and Olesen (2001) attempt to provide more guidance for the evaluator, but they begin with the assumption that there is a legitimate category of PAS and that it is based on negative behavior by an alienating parent rather than protective behavior.

Kelly and Johnson (2001) found that while many parents engage in alienating behaviors during a custody dispute, only a small proportion of children ever become alienated despite the fact that many parents engage in similarly alienating behaviors. Obviously, it takes more than the behavior of the alienating or programming mother, as she is frequently referred to in the literature. Children have been found to display alienating symptoms in the absence of a programming parent. In light of this, Kelly and Johnston (2001) have suggested that "alienating behavior by a parent is neither sufficient nor a necessary condition for a child to become alienated."

While further attempting to clarify the etiology of the proposed syndrome, Kelly and Johnston recommend a model called "the alienated child." Their definition removes Gardner's focus on a programming parent, and rather places the focus on the child. However, although these authors suggest that the child is responsible for his or her feelings and behavior associated with alienation, they do agree that the alienation is unjustified. In an attempt to explain how some children resist attempts at programming, while other alienate in the absence of programming, they suggest that a variety of interrelated factors cause alienation. These factors are said to include the child's background, such as their cognitive capacity and temperament, parent's behavior, sibling relationships, and the child's vulnerabilities.

Darnell (1999) continues Gardner's focus on parental behaviors and identifies three types of alienators: naïve alienators, active alienators, and obsessed alienators. He purports to be broadening Gardner's ideas and does not use the word "syndrome" to describe the behaviors. Cartwright (1993) suggests that PAS may be triggered by additional influences such as malicious third parties or disagreements about finances. Rand (1997b) indicated that the programming parent's social network might be incorporated into the brainwashing process. In addition, new partners, mental health professionals, and even cults help create and maintain PAS. Cartwright (1993) suggested that PAS may be precipitated by parental disagreements on matters other than custody, and that even lawyers can assist in maintaining PAS. It has been suggested that since PAS does not identify a cause, prognosis, and treatment, the court would better be served by a more specific description of the child's behavior (Kelly & Johnston, 2001). A more specific description may assist the court in finding a way to end the alienating behavior by possibly identifying and addressing the cause in each individual case.

## LEGAL STANDARDS AND PAS

Over the course of many years, courts in the United States have adhered to different criteria for the admissibility of scientific or expert testimony. While none of them deal exclusively with testimony from mental health professionals, they have been used to evaluate admissibility of such testimony.

The first test of admissibility of expert testimony occurred in *Frye v. United States* (1923). While this particular case dealt with the admissibility of the polygraph in court, it has been used in a much broader context to decide the admissibility of any proffered or proposed expert testimony. This test is described as a general acceptability theory, where if the theory, methodology, or conclusion that is being offered or “proffered” as expert testimony is “generally accepted” within the relevant scientific field, it is deemed to meet the criteria for acceptability. Here, reliability is determined by general acceptability. This test of admissibility does not define what “generally acceptable” means. It is here that some of the confusion may occur when parental alienation syndrome testimony may present itself in a courtroom.

While commentary by various legal scholars has described general acceptability as referring to acceptance by “a substantial majority of the relevant scientific discipline,” there is no agreed upon definition for the term “substantial majority” nor for “relevant scientific discipline.” This further clouds the issue as to whether or not parental alienation syndrome is in fact a syndrome that has been accepted within the scientific discipline (here, clinical psychology and psychiatry).

Scholars (e.g., Slobogin, 1999) and judges (e.g., Williams, 2001) have suggested that PAS would not meet the standard of general acceptance in *Frye*. Slobogin added that PAS may meet the *Frye* standard if the standard were lowered to general acceptance among a specific group of professionals in the field (we presume he is grouping CCEs in that group) as opposed to the majority of professionals in the field. Gardner, however, does not believe that a change in the *Frye* standard is necessary. According to Gardner (2002), on January 30, 2001, a court in Tampa, Florida (Florida is still a *Frye* state), ruled that PAS had gained acceptance in the scientific community and should be admitted during expert testimony. Gardner attributed this ruling to his own testimony. On Gardner’s Website, he has stated that there are now more than 100 peer-reviewed articles published as well as 40 court rulings accepting PAS. He went on to suggest that this recent ruling would set a precedent for the admissibility of PAS in other cases. However, while there are a number of articles published (even if they all were in peer-reviewed journals that the current authors’ review suggests is untrue), this does not mean that the articles all favorably accepted PAS. Interestingly, the Illinois Supreme Court has accepted for review in the 2004 term a case *Perez v. Bates* that deals with the introduction of PAS testimony as one of the factors in changing custody of the child from the mother to the father.

In addition to the acceptability of PAS as a theory, the techniques used to support a diagnosis of PAS must have also gained general acceptance in their field in order to be admitted into court. This has posed a problem for proponents of PAS. In an attempt to determine if allegations of sexual abuse were false, Gardner developed the Sexual Abuse Legitimacy Scale (SALS) in 1992. Faller (1998) stated that a close examination of the SALS factors indicated that its primary purpose was to diagnose PAS. Given that the SALS has never been validated and has never been researched, Williams (2001) stated that this assessment instrument is a "widely discredited objective test" (p. 269). In fact, a review of the so-called test itself indicates that it would not meet the standards to be labeled a test by psychologists.

The next test of admissibility for expert witnesses occurred in 1975, when the Federal Rules of Evidence (FRE) were adopted by the U.S. Federal Court system. The FRE had specified sections (Rules 702 through 705) to assist the court with criteria for the admissibility of expert testimony. Following the introduction of the FRE, courts used some informal combination of the *Frye* and the FRE to determine admissibility of expert testimony until 1993, when the United States Supreme Court dramatically altered the standards for admissibility for expert testimony in federal courts when deciding *Daubert v. Merrell Dow Pharmaceuticals* (1993). This case dealt with admissibility of evidence from an expert scientist whose medication trials were found to be of a questionable methodology. The trial court ruled the testimony was inadmissible, finding the reanalysis of the prior trials was "junk science" because the biochemist had used new methodology that was not generally acceptable and therefore failed to meet the *Frye* standard. The United States Supreme Court, in a majority opinion authored by Justice Blackmun, described *Frye* as too austere and not allowing for innovation and creativity and suggested using the FRE, with some important modifications, for judges to test for scientific reliability of a proposed expert's opinion. This became known as the *Daubert* standard.

Subsequent to *Daubert*, several other cases such as *Kumho Tire Company v. Carmichael* (1999) gave the courts even more guidance in determining whether scientific evidence was sufficiently reliable to be introduced into evidence in a trial. The FRE as amended in 2000 that deal with 'scientific, technical or other specialized knowledge' have been incorporated into the evidence code in federal court cases and in slightly over half of the states, so that some now have either an exact replica or words closely approximating them as the basis for their own rules of evidence. Other states that still use either the *Frye* standard or *Daubert* do not have specific guidelines for judges, or they have their own standards. The FRE state that if scientific, technical, or other specialized knowledge would be of assistance to the triers of fact (judges or juries) and out of the "ken" or knowledge base of the ordinary layperson, then an expert who was qualified by knowledge, skill, education, experience, and training could render an opinion.

An attorney who proposes or proffers an expert to the court must have that expert describe his or her education, training, and general skills in a variety of areas. Once the judge qualifies that individual as an expert, s/he can offer opinion testimony. Only the judge can decide who is an expert and who is a fact witness. At one time, during discussions prior to the 2002 revision of the American Psychological Association's (2002) Code of Ethics, it was suggested that treating therapists should not be expert witnesses in order to differentiate them from forensic psychologists. However, in the final revision, it is clear that either treating or evaluating psychologists can ethically be presented as expert witnesses so they can give opinion testimony if the judge so rules. FRE 703 discusses the criteria required for the methodology upon which the expert bases his or her opinion. It indicates that the methodology used by the expert must be "reasonably relied upon by other experts in the same field." Unfortunately, the phrase "reasonably relied upon" was not defined, leaving it to the courts to figure out if a method is scientific or not. *Daubert* does set out several guidelines for the court to consider, which include: (a) There is a testable hypothesis; (b) It has been tested; (c) There is a known error rate; (d) It has been peer reviewed; (e) It has been published; and (f) It has general acceptance in the field.

### ***Can PAS Meet the FRE or Daubert Criteria?***

On its face, PAS may sound as though it is a well-defined, diagnosable syndrome, perhaps because it appeals to our common sense; for example, how can it be in a child's best interests to be alienated from one parent by another? However, perhaps it is really in the child's best interests not to be alone with a violent or harmful parent. To answer the question as to whether or not it is "reasonably relied upon by other experts in the same field" becomes even more controversial as the answer depends upon which groups of professionals are surveyed. Professionals who work with abused children and domestic violence victims would not rely upon PAS to explain the child's or non-offending parent's behavior (Drozd & Olesen, 2000; Drozd & Walker, 2001; Drozd et al., 2004; Jaffe & Geffner, 1998; Jaffe et al., 2003). Those who support the fathers' rights political movement would rely on PAS (Wakefield & Underwager, 1990). Most professionals would not take a position, as they would be unfamiliar with the arguments.

### ***Not a DSM Diagnostic Category***

The fact that the proposed syndrome is not listed/defined in the current or prior editions of the DSM could create an assumption that the proposed syndrome is not "relied upon by other experts in the same field." Regardless, members of the court who are not familiar with the current arguments in clinical forensic psychology and child custody assessment usually are not aware of

the controversy surrounding PAS. They are, also, not aware of the APA Task Force on Violence and the Family's (1996) admonition not to use PAS or Munchausen by Proxy because of the lack of empirical evidence to support that they exist. Routinely courts admit testimony and base their recommendations for custody and access on PAS, believing that the construct is both reliable and valid in the psychological community when it is not.

### ***NO PEER SCRUTINY OF THEORY OR METHODOLOGY***

Meanwhile, the debate continues as to the admissibility of PAS using the other guidelines suggested in *Daubert*. Williams (2001) stated that he would have a difficult time in deciding if the methodology behind PAS is testable, has been subjected to peer review, and if there is general acceptance of the parental alienation syndrome theory within the field. Obviously, it is difficult to test a concept and see if it can be falsified when the definition is not clear enough to set up criteria to measure it. Kelly and Johnston (2001) suggest that "in the United States, some jurisdictions are now rejecting expert witness testimony on PAS based on the higher standards for admissibility of evidence contained in *Daubert* . . ." (p. 250). Nonetheless, PAS has already been admitted in some jurisdictions, especially those in which there was no challenge, making it difficult to keep it out from others. Interestingly, a perusal of the cases on several Internet Websites suggests that it is the family courts that are not holding admissibility hearings and admitting the PAS evidence, while criminal courts that do challenge its scientific basis do not permit PAS to be introduced as evidence.

One of the many reasons that Gardner's proposed syndrome does not meet the *Daubert* standard of admissibility is the fact that he has published the majority of his work through his own publishing company, thereby never going through the peer-review process that is so important in scientific studies. Warshak (2001, 2003) believes that even though PAS has not gone through peer review, because there are currently 94 publications that focus on PAS written by authors other than Gardner, it would still meet acceptability standards. While he was alive, Gardner (2002) himself counted more than 100 peer-reviewed articles by other authors on the subject of PAS and referred readers to his Website ([www.rgardner.com/ref](http://www.rgardner.com/ref)) for a complete listing of articles and court rulings related to PAS. Warshak (2001) concludes that given the number of articles published in peer-reviewed journals, ". . . there are no reasonable grounds for maintaining that PAS has not passed peer review" (p. 45). However, the number of articles does not by itself serve as a substitute for rigorous scientific scrutiny of the theoretical underpinnings, creation of hypotheses based on theory, and methodology to test the hypotheses. Even if this conclusion can be settled upon, the proposed syndrome has not been determined to have a hypothesis that has been tested and a theory that has a known

error rate. Additionally, there continues to be no empirical evidence concluding PAS is reasonably relied upon by those within the field.

Despite these facts, it has been questioned whether *Daubert* is applicable to social science testimony. Ziropiannis (2001) suggested that there is a possibility of courts determining that the social science testimony in general is not scientific testimony and should not be held to the *Daubert* standard. In such cases, there were no guidelines for the judges to use in determining the admissibility of PAS testimony. Ziropiannis cited *United States v. Bighead* (1997) as an example. This case was appealed to the Circuit Court, arguing that an expert's testimony on child sexual abuse should have been inadmissible because the theory did not meet the *Daubert* standard of admissibility. The Circuit Court decided that since the expert's testimony was not based on specialized knowledge, such as years of experience in the field, nor on scientific knowledge, it was admissible as social science evidence and, therefore, not put through the scrutiny of *Daubert*. Ziropiannis (2001) went on to suggest that "parental alienation syndrome is admissible in any jurisdiction that adopts the interpretation of *Daubert*" (p. 337).

### ***Reliability of the Expert***

PAS has been presented in custody disputes other than in the U.S. In other countries, such as England and Wales, the general legal rule is similar to the U.S. in that expert evidence is admissible only when it provides relevant knowledge concerning the issue at hand, which would be beyond what a judge or jury could reasonably be expected to possess. Where the standards differ, however, is that the court formulates the issue at hand by testing reliability. However, the concept or disorder is not tested, the expert him/herself is tested. Here, an expert may not be deemed competent to testify due to a lack of experience or limited qualifications, despite the reliability or validity of the concept of interest. The presentation of PAS as a diagnosable disorder in a courtroom in England or Wales would run the risk of being disputed by a judge due to the lack of scientific backing. In contrast, an expert called to testify to dispute the existence of such a controversial syndrome or disorder may be excluded in testifying due to a lack of experience or research base to draw from.

Clinical forensic psychologists and psychiatrists need to demonstrate how the methods by which they have performed evaluations meet the psychological standards, as well as the legal standards governing the admissibility of expert testimony. This includes the use of standardized tests that include reliability and validity measures as well as standard errors written in the manuals. Since there has been only one instrument proposed to assess for the presence of parental alienation syndrome (the SALS), and this instrument has been determined not to be reliable or valid, there are currently no tests in existence that meet criteria for the legal standards.



## COURTS' RESPONSE TO PAS TESTIMONY

Fourteen of the court cases that were found on the Gardner Website were reviewed in order to better understand how courts are responding to PAS testimony. These cases were selected as they were thought to be the most favorable towards admissibility of PAS. A search of Lexis-Nexus did not reveal additional cases. Nine of the fourteen cases reviewed admitted expert testimony involving PAS. Most of these nine cases relied on this testimony in determining custody either at the trial court level or at the appellate level. In addition, three of the appellate court cases admitted testimony on PAS and subsequently changed custody from the "programming parent" to the "target parent" (*J.F. v. L.F.*, 1999; *Karen B. v. Clyde M.*, 1991; *Kirk v. Kirk*, 2001).

The nine cases that admitted PAS testimony were further examined to determine which, if any, of Gardner's eight primary symptoms were present. None of these cases provided a detailed basis for the child's diagnosis of PAS. At least two experts never interviewed the child or the parents, instead relying upon a record review to make their diagnosis (*Chambers v. Chambers [Richardson]*, 2000; *Hanson v. Spolnik*, 1997). One expert suggested that their decision was based on the mother's anger and hostility toward the child's father (*White v. White*, 1995). Another concluded that due to the presence of PAS, the child did not want to visit with the father (*Coursey v. The Superior Court of Sutter County*, 1987). This is an example of why, once it is alleged, PAS will always be true simply by definition. Did the diagnosis of PAS explain the child not wanting to visit the father, or did the child's not wanting to visit the father support a PAS diagnosis? Two cases presented evidence on PAS in order to rebut sexual abuse allegations (*In re John W. v. Phillip W.*, 1996; *Karen B. v. Clyde M.*, 1991). The abuse allegations were found to be false. Again, one must wonder which came first, a diagnosis of PAS leading to a conclusion that the allegations were false, or false allegations suggesting the presence of PAS?

One judge ordered a psychological evaluation for PAS, but this court did not address the general acceptance of PAS in the scientific community (*In the Interest of T.M.W., a child*, 1989). In fact, PAS testimony was not challenged in any of the family court cases reviewed. In all of the cases reviewed, it was only the criminal case where PAS was subjected to a *Frye* hearing (*The People of the State of New York v. Fortin*, 2000). Following the *Frye* hearing, the judge found that PAS is not generally accepted in the relevant scientific community and, therefore, did not admit PAS testimony. PAS would have been subjected to a *Frye* hearing in a second criminal case; however, the request was not made until after the expert had already testified (*Perlow v. Berg-Perlow, Berg, Berg, and Berg*, 2002).

It is clear that in the criminal court case, PAS testimony was subjected to a *Frye* hearing and it was found not to have met *Frye* standards. In family court cases, PAS testimony appears to be admitted simply because it is not being challenged by either attorney. This is particularly troublesome given that the



issue at hand involves the living arrangements of children and, subsequently, the children's relationship with their parents. It appears that even at the appellate level of family court, PAS testimony is accepted with little resistance. For example, in *Hanson v. Spolnik* (1997), following a dissolution agreement, the couple was awarded joint legal and physical custody of their four-year-old child. After numerous unsuccessful attempts to modify the custody agreement, the child's father, Edward, accused the child's mother, Marianne, of engaging in a pattern of parental alienation. A child psychologist testified that Marianne was attempting to alienate the child from her father and that this behavior "endangered the child's emotional and psychological development." The court agreed that Marianne had engaged in a concerted effort to destroy the child's relationship with Edward and, subsequently, awarded sole physical and legal custody to Edward. Marianne appealed, but the appellate court found that the trial court was correct in modifying the custody agreement. In addition, they stated that it was necessary, as was awarding Edward sole custody. Although this was the majority opinion, Judge Chezem disagreed. Judge Chezem stated that while the trial judge did not use the term "parental alienation syndrome," he relied upon the psychologist's PAS testimony in making his custody decision. This was particularly bothersome to Judge Chezem since he "seriously questions the existence of a parental alienation 'syndrome.'" He argued that there was no specific causation of PAS and that there were no apparent objective criteria to determine its validity and reliability. In addition, he argued that PAS had not been subjected to peer review and had not gained general acceptance by scientists in the relevant scientific community. These are the same arguments made earlier in this article. Judge Chezem concluded that "this case poses a threat not only to the well-being of this small child, but also to any child with less than perfect parents who are divorcing."

In reviewing these cases, it appeared irrelevant whether the court used either the *Frye* or the *Daubert* standard, considering the number of judges who allowed PAS testimony without ever questioning its reliability and validity. Since the only cases that can be studied are those in the appellate courts, it is impossible to know what reasons judges give when they do admit the testimony. Those cases that were reviewed suggested that PAS testimony is not even being challenged in most family courts.

### REASONING AND RECONCEPTUALIZATION

Gardner's argument as to the existence of the syndrome is circular: If a parent acts a certain way, she (as Gardner indicates that it is almost always the mother) is an alienator and the child is an alienated child; if the child is alienated, the alienator parent should be punished by removing that parent's contact with the child. However, the child is not alienated towards the allegedly guilty parent, who may well be a protective parent if the target or alienated

parent is indeed abusive. In fact, removal from the parent to whom the child is attached might actually cause the child to develop true alienation symptoms.

Recently, another view of PAS has arisen. King (2002) applies an auto-poietic approach to PAS. King's theoretical model observes law and child mental health as a closed, self-referring system of communication, serving very different social functions and different ways of attributing meanings to social contexts. This model was designed by King in order to observe strategies and devices that are utilized by the law and mental health professionals, giving an impression of compatibility of the two disciplines.

Drozd and Olesen (2000) have reconceptualized alienation by examining the child's behaviors and attachments and then assessing whether their parent's behaviors may very well be alienating. The authors have offered a series of questions to ask and areas to explore in determining whether abuse or alienation is present in a custody case. Drozd and Olesen suggest that the child's behavior is the first thing that should be assessed. If there are any problems with the child's behavior or with his or her attachments, then the evaluator should assess whether or not there is a realistic reason for the child's troubled behavior, or if there are reasons to believe that the child has been exposed to some form of abuse. If so, then the evaluator should determine if the abuse is pure abuse or if there is abuse and alienation. In such instances, the child may suffer from PTSD as well as fear the abuser and not want to be around that parent. Of particular importance is the fact that some children may identify with the aggressor and, subsequently, have attachment difficulties with the non-abusing parent. Drozd has further refined her model, and it now ranges from equal attachments, affinity, alignment, alienation, estrangement, and rupture (see Drozd et al., 2004).

The response to an abusive parent by the other may also be adaptive. Some mothers may appear to be alienating their child(ren) from the abusive parent. Their motivation for doing so may be out of their own fear, fear for the children, or possibly out of anger. Therefore, they will act in a manner designed to protect their children. It has been suggested that quite often the parent's protective behavior is mislabeled as alienating (Drozd & Walker, 2001). If such behavior becomes overtly alienating, these parents can be educated to stop the alienating behavior and to find other ways to protect their children (Drozd & Walker, 2001).

If no abuse is present and there continues to be problems with the child's behavior and/or attachments, it is possible that the child is aligned with one parent more than the other, or the child may have more of an affinity towards one parent as opposed to the other. These behaviors may be normal developmental variations that will be ameliorated in time without intervention. It is possible for some children to be subject to pure alienation, in which the alienating parent demonstrates alienating behaviors towards the target parent. Kelly (2000) and Johnston and Roseby (1997) write about the different kinds of alienating behaviors and indicate that they can, in fact, go on in families.

Recently, Kelly and Johnston (2001) also have attempted to reformulate the behavior of an alienated child. The authors define the alienated child as "one who expresses, freely and persistently, unreasonable negative feelings and beliefs toward a parent that are significantly disproportionate to the child's actual experience with that parent" (p. 251). The focus, then, is the behavior of the child(ren) and the relationship between the parent and child. Reasons why children may resist visitation with a parent that qualify as alienation include resistance ingrained in normal developmental processes; resistance rooted primarily high-conflict marriage and divorce; resistance in response to a parent's parenting style; resistance arising from the child's concern about an emotionally fragile custodial parent; and resistance stemming from the remarriage of a parent (Johnston, 2003; Kelly & Johnston, 2001). According to this reformulation, the relationship the child has with a parent exists on a continuum after a divorce or separation. This continuum begins at one end with positive relationships with both parents, moving along to affinity with one parent, allied children, estranged children, and then finally, the alienated child, where there is a severe distortion on the child's part of the previous relationship with the parent. Kelly and Johnston note that the alienation of a child from a parent occurs in high-conflict custody disputes; however, they also indicate that this alienation is an infrequent occurrence among the population of divorcing children.

## CONCLUSION

Researchers and practitioners would do well to examine Gardner's PAS theory with skepticism and should be cautious about integrating it in testimony or evaluations. Gardner's attempts to produce a predictive instrument have yielded evidence from empirical studies that the tests lack reliability (Campbell, 1997; Kelly & Johnston, 2001). These same authors indicate that this is because the criteria Gardner used for determining abuse are not well-defined, are single rather than multidimensional, and will tend to introduce subjective opinion into the situation. Also of significance, many of Gardner's theories and writings have not been subject to professional peer review, and his own publications are made available through his very own publishing company. An attempt has also been made to examine the theoretical premises that both the original theory of PAS and its reformulations are based upon. We find that there is no theory behind the allegations that children who are hostile to spending time with the non-preferred parent are alienated. We looked at the areas surrounding the impact that the syndrome may have to see if we could find a scientific reason for the child's seemingly irrational behavior. However, the few investigations that do exist proceed with their methodology while assuming the syndrome exists without attempting to produce empirical evidence for its existence (e.g., Siegal & Langford, 1998).

Despite all of the controversy that encompasses the existence of the syndrome, "evidence" of PAS continues to find its way into courtrooms throughout the nation. For example, in *Karen B. v. Clyde M.* (1991), a judge invoked PAS evidence based upon the recommendation from a case worker involved without hearing testimony as to whether or not PAS was reliable, valid, or had gained acceptance within its scientific field. In this case, sole custody was awarded to the child's father, and the mother was denied visitation rights due to the alleged harmful effect her behavior was having on the child and the relationship between her and her father. This is but one example of many where the admissibility of PAS testimony without regard to existing evidentiary issues has impacted the outcome of custody determinations.

## REFERENCES

- American Psychiatric Association. (2000). *Diagnostic and statistical manual of mental Disorders* (4th ed., text revision). Washington, DC: Author.
- American Psychological Association. (1996). *Report of the presidential task force on violence and the family*. Washington, DC: Author.
- American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, 57(12), 1060-1073.
- Bancroft, L., & Silverman, J. G. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage.
- Bone, J. M., & Walsh, M. R. (1999). Parental alienation syndrome: How to detect it and what to do about it. *The Florida Bar Journal* 73(3), 44-48.
- Bowlby, J. (1969). *Attachment and loss: Vol. I. Attachment*. New York: Basic Books.
- Briere, J. (1997). *Psychological assessment of adult posttraumatic states*. Washington, DC: American Psychological Assessment Resources.
- Browne, A., & Finkelhor, D. (1986). Impact of child sexual abuse: A review of the research. *Psychological Bulletin*, 99, 66-77.
- Campbell, T. W. (1997). Indicators of child sex abuse and their unreliability. *American Journal of Forensic Psychology*, 15(1), 5-18.
- Caplan, P. J. (1995). *They say you're crazy: How the world's most powerful psychiatrists decide who's normal*. Reading, MA: Addison Wesley.
- Caplan, P. J. (2001). *Don't blame mother: Mending the mother-daughter relationship*. New York: Routledge.
- Caplan, P. J. (in press). What is it that's being called "Parental Alienation Syndrome"? In P. J. Caplan & L. Cosgrove (Eds.), *Bias in psychiatric diagnosis*. New York: Jason Aronson.
- Cartwright, G. F. (1993). Expanding the parameters of parental alienation syndrome. *The American Journal of Family Therapy*, 21, 205-215.
- Cassidy, J. (1999). The nature of the child's ties. In J. Cassidy & P. R. Shaver (Eds.), *Handbook of attachment* (pp. 3-20). New York: Guilford.
- Chambers v. Chambers (Richardson), No. CA99-688 (Ark. Ct. App. Div. Two 2000). LEXIS 476.

- Chesler, P. (1986). *Mothers on trial: The battle for children and custody*. New York: McGraw-Hill.
- Coursey v. The Superior Court of Sutter County, 194 Cal. App. 3d 147 (Cal. Ct. App. 1987).
- Darnell, D. (1999). Parental alienation: not in the best interests of the children. *The North Dakota Law Review*, 75, 325-327.
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (US Sup. Ct. 1993).
- Davies, P. T., & Cummings, E. M. (1994). Marital conflict and child adjustment: An emotional security hypothesis. *Psychological Bulletin*, 116, 387-411.
- Drozd, L., Kuehnle, K., & Walker, L. E. A. (2004). Safety first: Understanding the impact of domestic violence in child custody disputes. *Journal of Child Custody*, 1(2), 77-105.
- Drozd, L., & Olesen, N. (2003). *Is it domestic violence and/or alienation?* Manuscript in preparation.
- Drozd, L., & Olesen, N. (2000, November). *Is it domestic violence and/or alienation?* Paper presented at the Association of Family and Conciliation Courts' National Custody Conference, Kiawah, SC.
- Drozd, L., & Walker, L. (2001, September). *Protective mothers*. Symposium at the International Conference on Family Violence, San Diego, CA.
- Faller, K. C. (1998). The parental alienation syndrome: What is it and what data support it? *Child Maltreatment*, 3, 100-115.
- Frye v. United States, 54 App. D.C. 46, 293 F. 1013 (D.C. Ct. of App. 1923).
- Garbarino, J., Kostelny, K., & Dubrow, N. (1991). What children can tell us about living in danger. *American Psychologist*, 46, 376-382.
- Gardner, R. A. (1992). *The parental alienation syndrome: A guide for mental health and legal professionals*. Creskill, NJ: Creative Therapeutics.
- Gardner, R. A. (2001). Should courts order PAS children to visit/reside with the alienated parent? A follow-up study. *American Journal of Forensic Psychology*, 19, 61-106.
- Gardner, R. A. (2002). Parental alienation syndrome vs. parental alienation: Which diagnosis should evaluators use in child-custody disputes? *The American Journal of Family Therapy*, 30, 93-115.
- Gold, S. N. (2000). *Not trauma alone: Therapy for child abuse survivors in family and social context*. Philadelphia, PA: Brunner-Routledge.
- Gould, J. W. (1998). *Conducting scientifically crafted child custody evaluations*. Thousand Oaks, CA: Sage.
- Hanson v. Spolnik, 685 N.E.2d 71 (Ind. Ct. App. 1997).
- Harway, M., & Hansen, M. (1994). *Spouse abuse: Assessing and treating battered women, batterers, & their children*. Sarasota, FL: Professional Resource Press.
- In re John W. v. Philip W., 41 Cal. App. 4th 961 (Cal. Ct. App. 1996).
- In the Interest of T.M.W., a child, 553 So. 2d 260 (Fla. Ct. App. 1989).
- Jacobson, N. S., & Gottman, J. M. (1998). *When men batter women: New insights into ending abusive relationships*. New York: Simon & Schuster.
- Jaffe, P. G., & Geffner, R. (1998). Child custody disputes and domestic violence: Critical issues for mental health, social service, and legal professionals. In G. W. Holden, R. Geffner, & E. N. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* (pp. 371-408). Washington, DC: American Psychological Association.

- Jaffe, P. G., Lemon, N., & Poisson, S. E. (2003). *Child custody & domestic violence*. Thousand Oaks, CA: Sage.
- J.F. v. L.F., 181 Misc. 2d 722 (N.Y. Fam. Ct. 1999).
- Johnston, J. R. (2003). Parental alignments and rejection: An empirical study of alienation in children of divorce. *Journal of American Academy of Psychiatry and the Law*, 31(2), 158-170.
- Johnston, J. R., & Roseby, V. (1997). *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce*. New York: US Free Press.
- Johnston, J. R., Waters, M. G., & Friedlander, S. (2001). Therapeutic work with alienated children and their families. *Family Court Review*, 39, 316-333.
- Karen B. v. Clyde M., Family Court of New York, Fulton County, 151 Misc. 2d 794; 574 N.Y. 2d 267 (1991).
- Kelly, J. B. (2000). Children's adjustment in conflicted marriage and divorce: A decade review of research. *Journal of the America Academy of Child and Adolescent Psychiatry*, 39, 963-973.
- Kelly, J. B., & Johnston, J. R. (2001). The alienated child. A reformulation of parental alienation syndrome. *Family Court Review*, 39, 249-266.
- King, M. (2002). An autopoietic approach to 'parental alienation syndrome.' *The Journal of Forensic Psychiatry*, 13, 609-635.
- Kirk v. Kirk, 759 N.E.2d 265 (Ind. Ct. App. 2001).
- Kirk, S., & Kutchins, H. (1992). *The selling of DSM: The rhetoric of science in psychiatry*. New York: Aldine DeGruyter.
- Kumho Tire Company v. Carmichael, 119 S. Ct. 1167 (1999).
- Lee, S. M., & Olesen, N. W. (2001). Assessing for alienation in child custody and access evaluations. *Family Court Review*, 39, 282-298.
- Margolin, G. (1998). Effects of domestic violence on children. In P. Trickett & C. Schellenbach (Eds.), *Violence against children in the family and community* (pp. 57-101). Washington DC: American Psychological Association.
- Myers, J. E. B. (1993). Expert testimony describing psychological syndromes. *Pacific Law Journal*, 24, 1453-55.
- Myers, J. E. B. (1997). *A mother's nightmare—incest: A practical legal guide for parents and professionals*. Thousand Oaks, CA: Sage.
- O' Keefe, M. (1994). Linking marital violence, mother-child/father-child aggression, and child behavior problems. *Journal of Family Violence*, 9, 63-78.
- Otto, R. K., Edens, J. F., & Barcus, E. H. (2000). The use of psychological testing in child custody evaluations. *Family & Conciliation Courts Review*, 38, 312-340.
- Pagelow, M. D. (1993). Justice for victims of spouse abuse in divorce and child custody cases. *Violence and Victims*, 8, 69-83.
- Perlow v. Berg-Perlow, Berg, Berg, and Berg, 816 So. 2d 210 (Fla. App. 2002).
- Rand, D. C. (1997a). The spectrum of parental alienation syndrome (Part I). *American Journal of Forensic Psychology*, 15, 23-52.
- Rand, D. C. (1997b). The spectrum of parental alienation syndrome (Part II). *American Journal of Forensic Psychiatry*, 15, 39-92.
- Rossman, B. B. R., Hughes, H. M., & Rosenberg, M. S. (2000). *Children and inter-parental violence: The impact of exposure*. Philadelphia, PA: Brunner/Mazel.
- Siegal, J. C., & Langford, J. S. (1998). MMPI-2 validity scales and suspected parental alienation syndrome. *American Journal of Forensic Psychology*, 16, 5-14.



- Slobogin, C. (1999). The admissibility of behavioral science information in criminal trials: From primitivism to Daubert to voice. *Psychology, Public Policy, and Law*, 5(1), 100-119.
- Sullivan, M. J., & Kelly, J. B. (2001). Legal and psychological management of cases with an alienated child. *Family Court Review*, 39, 299-315.
- The People of the State of New York v. Fortin, 184 Misc. 2d 10 (N.Y. County Ct. 2000).
- Thoennes, N., & Tjaden, P. (1990). The extent, nature, and validity of sexual abuse allegations in custody/visitation disputes. *Child Abuse and Neglect*, 14, 151-163.
- Tjaden, P. G., & Thoennes, N. (1998, September). *The prevalence and consequences of intimate partner violence: Finding from the National Violence Against Women Survey*. Paper presented at the American Society of Criminology 49th Annual Meeting, San Diego, CA.
- Turkat, I. D. (1994). Child visitation interference in divorce. *Clinical Psychology Review*, 14, 737-742.
- United States v. Bighead, 128 F.3d 1329, 1331 (9th Cir. 1997).
- Wakefield, H., & Underwager, R. (1990). Personality characteristics of parents making false accusations of sexual abuse in custody disputes. *Issues in Child Abuse Accusations. Institute for Psychological Therapies*, 2, 121-136.
- Walker, L. E. A. (1989). *Terrifying love: Why battered women kill and how society responds*. New York: Harper Collins.
- Walker, L. E. A. (1994). *Abused women and survivor therapy: A practical guide for the psychotherapist*. Washington, DC: American Psychological Association.
- Walker, L. E. A. (2000). *The battered woman syndrome* (2nd ed.). New York: Springer.
- Walker, L. E. A. (in press). Custody and access to children when sexual abuse allegations occur. In L. E. A. Walker, S. N. Gold, & B. S. Lucenko (Eds.), *Handbook of child sexual abuse* (2nd ed.). New York: Springer.
- Walker, L. E. A., & Shapiro, D. (2003). *Introduction to forensic psychology: Clinical and social psychological perspectives*. New York: Kluwer.
- Wallerstein, J. S., & Kelly, J. B. (1976). The effects of parental divorce: Experiences of the child in later latency. *American Journal of Orthopsychiatry*, 46(2), 256-269.
- Wallerstein, J. S., & Kelly, J. B. (1980). Effects of divorce on the visiting father-child relationship. *American Journal of Psychiatry*, 137(12), 1534-1539.
- Warshak, R. A. (2001). Current controversies regarding parental alienation syndrome. *American Journal of Forensic Psychology*, 19, 29-59.
- Warshak, R. A. (2002). Misdiagnosis of parental alienation syndrome. *American Journal of Forensic Psychology*, 20, 31-52.
- Warshak, R. A. (2003). Bringing sense to parental alienation: A look at the disputes and the evidence. *Family Law Quarterly*, 37(2), 273-301.
- White v. White, 655 N.E.2d (Ind. Ct. App. 1995).
- Williams, J. R. J. (2001). Should judges close the gates on PAS and PA? *Family Court Review*, 39(3), 267-281.
- Ziorgiannis, L. (2001). Evidentiary issues with parental alienation syndrome. *Family Court Review*, 39, 334-343.

SUBMITTED: September 14, 2003

REVISED: December 9, 2003

REVISED: December 15, 2003

ACCEPTED: December 18, 2003