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Update

Parental Alienation Syndrome: What Professionals Need to Know Part 1 of 2

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Introduction

The late Dr. Richard Gardner, a clinical professor of Psychiatry at Columbia University, coined Parental Alienation Syndrome (PAS) in 1985, after noticing a "disorder" among patients within his private practice. The "disorder" involves one parent alienating the child against the other parent typically in the context of a child-custody dispute. Dr. Gardner defined PAS as follows:

> [t]he parental alienation syndrome is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the parental alienation syndrome explanation for the child's hostility is not applicable.3

Absent from this definition is specific reference to sexual abuse allegations, but these are often the "denigration" to which Dr. Gardner referred in his definition. In this

Although PAS may be hailed as a "syndrome" (a group of symptoms that occur together and constitute a recognizable abnormality), in fact it is the product of anecdotal evidence gathered from Dr. Gardner's own practice.4 The purpose of this article is to briefly discuss the major premises upon which PAS is based, and to identify key weaknesses. Part 2 of this Update considers case law and strategies for meeting PAS defenses.

PAS is based primarily upon two notions, neither of which has a foundation in empirical research.

1. PAS Presupposes a High Rate of False Accusations in Custody Cases

The theory of PAS is based in part on the notion that, within custody disputes, there is a high incidence of false abuse allegations. Dr. Gardner theorized that allegations arising within the context of a custody dispute have a "high likelihood of being false,"5 and went so far as to state that he believed "the vast majority of allegations in this category [divorce cases with custody disputes] are false." 6 To the contrary, the available research suggests that false allegation rates are not significantly high. For example, a 1990 study by Thoennes and Tjaden evaluated 9,000 divorces in 12 states7 and found that sexual abuse allegations were made in less than 2 percent of the contested divorces involving child custody. Within this group, it appears false allegations occurred in approximately 5% to 8% of cases.8 This study is one of the most comprehensive and least subject to bias and sampling problems, since its sample is so large and representative of the population of those divorcing with custody and visitation disputes.9

2. PAS Presumes a Disadvantage to Women in Child Custody Determinations

Another underlying principle of PAS is that women more often than men resort to making false allegations of abuse in disputed custody proceedings. The theory is that mothers encourage false accusations in order to obtain financial or strategic advantage during custody determinations. 10 The reasoning behind this theory seems to be that, in most jurisdictions, custody determination standards have changed from the "tender years" presumption—a standard which favored women obtaining custody of young children—to the "best interests of the child."11

This hypothesis ignores the fact that most sex offenders are indeed men.12 It also fails to account for the possibility that the divorce process might liberate an abused child from the heavy burden associated with keeping a secret like sexual abuse,13 or that post-divorce living conditions or circumstances might render a child vulnerable to sexual abuse.14

Although the tender year's presumption which favored women is largely gone, women are not disadvantaged under the new standard. The "best interests" standard removes gender presumptions altogether from custody determinations.15 It should be noted that some legal scholars suspect a gender bias within PAS theory itself.16

Other Weaknesses: Lack of Peer Review and

process.17 Moreover, PAS is not recognized by any professional associations,18 including the American Psychiatric Association. PAS is also not included within the DSM-IV.

It is also worth noting that Dr. Gardner often expressed disdain for child abuse professionals, labeling them "validators," theorizing that greed and desire for increased business prompted some sexual abuse allegations, and speculating that parents and professionals alike made some false allegations because "all of us have some pedophilia within us."19

Conclusion

At best, PAS is a nondiagnostic "syndrome" that only explains the behavior of the child and the mother when there is a known false allegation.20 It is a courtroom diagnosis befitting adversaries involved in legal sparring. It is not capable of lending itself to hard data or inclusion in the forthcoming DSM-V.

In short, PAS is an untested theory that, unchallenged, can have far-reaching consequences for children seeking protection and legal vindication in courts of law.

Prosecutors and other child abuse professionals should educate themselves, their colleagues and clients when confronting PAS in the legal realm. Part 2 of this newsletter will address the case law on this subject. For more in-depth and comprehensive treatment of these issues, contact the National Center for Prosecution of Child Abuse.

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3 Richard A. Gardner, M.D., "Does the DSM-IV Have Equivalents for the Parental Alienation Syndrome (PAS) Diagnosis?" American Journal of Family Therapy, 31(1):1-21; also available, **http://www.rgardner.com/refs/ar12.html**.
4 Richard A. Gardner, M.D., The Parental Alienation Syndrome, at 59 (1992) (noting in the introduction of this book that he termed the disorder PAS after seeing children in his practice whom he believed were "brainwashed by one parent against the other").
5 Gardner, 1991, p. 4.
6 See Kathleen Coulborn Faller, The Parental Alienation Syndrome: What is it and What Data Support it? Child Maltreatment, Vol. 3, No. 2, May 1998.
7 Thoennes & Tjaden, The Extent, Nature and Validity of Sexual Abuse Allegation in Custody/Visitation Disputes, Child Abuse and Neglect 1990, 14:151-163.
8 Id.
9 Kathleen Coulborn Faller, David L. Corwin & Erna Olafson, Literature Review: Research on False Allegations of Sexual Abuse in Divorce, APSAC Advisor 1993, 6(3), page 9.
10 Richard Gardner, M.D., The Parental Alienation Syndrome, p. 62, 1992.
11 Richard Gardner, M.D., The Parental Alienation Syndrome, p. 61-62, 1992.
12 Faller, Corwin & Olafson, supra note 9, at 10.
13 See Meredith Sherman Fahn, Allegations of Child Sexual Abuse in Custody Disputes: Getting to the Truth of the Matter, Family Law Quarterly, Vol. XXV, No. 2, Summer 1991, page 203 (quoting Sink, Studies of True and False Allegations: A Critical Review, Sexual Abuse Allegations in Custody and Visitation Cases 37, 38 (American Bar Association) (E. Nicholson ed. 1988)). For more information regarding the dynamics of sexual abuse, contact the National Center for Prosecution of Child Abuse for materials regarding Dr. Roland Summit's "Child Sexual Abuse Accommodation Syndrome."
14 Id. See also Robin Fretwell Wilson, Children at Risk: The Sexual Exploitation of Female Children After Divorce, 86 Cornell L. Rev. 251, 262-263 (2001).
15 See Ex Parte Devine, 398 So.2d 686 (Ala. 1981) (discussing the origin of the tender years presumption and its constitutional infirmities; ultimately abandoning it in favor of the best interests of the child standard).
16 See, e.g., Cheri L. Wood, The Parental Alienation Syndrome: A Dangerous Aura of Reliability, 27 Loy. L.A. L. Rev. 1367, 1372-73 (1994); Kathleen Niggemyer, Comment, Conceiving the Lawyer as Creative Problem Solver: Parental Alienation Syndrome is Open Heart Surgery: It Needs More than a Band-Aid to Fix It, 34 Cal. W. L. Rev. 567, 576 (1998); Priscilla Read Chenoweth, Don't Blame the Messenger in Child Sex Abuse Cases,

(concluding, "much of Gardner's writing is strongly anti-woman. He states that the claims of women who refuse joint mediation due to violence are somewhere 'between fabrication and delusion'"). For direct quotes from Dr. Gardner, refer to his 1992 book, The Parental Alienation Syndrome, p. 122.

17 See Cheri L. Wood, supra, note 16.

18 Id.

19 Gardner (1991), page 26. He wrote, "Each time the accusers make an accusation, they are likely to be forming an internal visual image of the sexual encounter. With each mental replay, the accusers gratify the desire to be engaging in the activities that the perpetrators are involved in in the visual imagery." See also Faller, supra note 6, at 104-105.

20 See Faller, supra note 6, at 111.