The American Professional Society on the Abuse of Children™
Strengthening Practice Through Knowledge
apsac.org @The_APSAC

In partnership with THE NEW YORK FOUNDLING
nyfoundling.org
@TheNYFoundling

APSAC ALERT

Vol. 13, No. 2

SPECIAL POINTS OF INTEREST

- Parental alienation accusations can transform custody conflicts into child abuse allegations.
- The weaponization of the parental alienation concept in family court has a consequent chilling effect on abuse reports.
- Parental alienation is not an accepted psychological diagnosis.
- Knowledge of the history of the parental alienation concept and lack of adequate empirical research or established measurement protocols can provide a foundation to challenge parental alienation claims in the courtroom.

Dealing With Parental Alienation Allegations in Family Court

Jean Mercer, Ph.D., and John Myers, J.D.

Professionals in child protection have historically had limited involvement with family court child custody matters. Similarly, many family law professionals have had limited knowledge of the child protection system. In recent years, however, those with experience in child custody may have noticed a strange overlap between child protection and child custody. Increasing numbers of child custody cases involve allegations of child abuse of a special kind—parental alienation (PA). For that reason, we recently published an article in *Child and Family Law Journal* (Myers & Mercer, 2022) that may be useful to readers of the APSAC Alert. We will discuss some of the essential points of that article here.

Parental alienation is said to be present when a child of a divorced couple resists or refuses contact with one of the parents, when it is thought that the preferred parent has persuaded the child to take this position, and when the rejected parent is said not to have perpetrated any form of child abuse. We hasten to say that PA does sometimes happen, although its frequency is not known. APSAC (2022) issued a position statement on the use of PA concepts.

We are concerned about PA because we believe it to be claimed far more often in custody litigation than it actually occurs. PA allegations can be weaponized in court to the detriment of children and parents. Anecdotal reports from young adults who went through court-ordered custody change and treatment for PA have described the fear, anger, and distress they experienced. PA allegations can lead to court orders prohibiting all contact between the child and the parent preferred by the child (preferred parent)—for 90 days or for much longer periods. Court orders based on PA claims may also include untested reunification therapies (RTs) that cost thousands of dollars and that put children and the preferred parent under the control of a therapist with narrow, PA-related training.

A reason for particular concern is that allegations of PA may be used to counter reports of child abuse—physical, sexual, or emotional. The rationale for this counterclaim is that a preferred parent who wishes to alienate a child from the other parent is likely to encourage the child to disclose abuse even when no abuse occurred. Such reasoning has a chilling effect on preferred parents who are trying to protect their children from potential abuse but who are afraid to report what they know or suspect because they may be accused of alienation.

In the present article, we provide a brief history of PA, its meaning, and its transformation of custody conflicts into child abuse allegations. Because readers who are drawn into PA cases either work with lawyers or are lawyers themselves, we also provide approaches to cases where PA is claimed. Readers who would like to have more details about PA legal issues are recommended to read the *Child and Family Law Journal* article.

The History of PA

The concept of PA was formulated in the 1980s by the child psychiatrist Richard Gardner. Gardner described parent and child behaviors that he observed among his patients. Gardner did not systematically investigate PA as a phenomenon or compare his patients with other groups of children. In the 1990s, the psychologist Randy Rand suggested a treatment for children who were resisting contact with one parent. Subsequently, the psychologist Richard Warshak organized the method into a treatment called Family Bridges, and a number of other interventions (now referred to as reunification therapies, RTs) were developed. These treatments generally involve complete separation from the preferred parent and forced contact with the rejected parent.

Currently, there is no established protocol for identifying or measuring PA. There have never been adequate outcome studies of any of the RTs. There are anecdotal reports of harm done by RTs. As a result, many mental health professionals and lawyers have been concerned about the application of various PA concepts, including the use of RTs for the purpose of improving a parent–child relationship.

However, in 2018, the psychologist Jennifer Harman and two colleagues (Harman et al., 2018) published an article in a major psychology journal in which they claimed that PA is a form of family violence and therefore a type of child abuse, and that children in PA cases should be considered in need of protection and separated from the preferred parent, who is identified as a child abuser. This claim quickly became a staple of argument in family court as children who did not want contact with one parent were asserted to be suffering from abuse and in need of protection from the parent they wanted to live with. In some cases, this argument has caused children to be placed with a parent who is actually abusive, followed by new abusive events. In many cases, the argument has led to unnecessary prohibition of contact between the child and the preferred parent. The federal Violence Against Women Act was reauthorized by Congress in 2022. The act includes a model law that prohibits the use of RTs for the purpose of improving a relationship between a child and one parent.

Challenging Claims of PA

In many cases, lawyers and expert witnesses confronted with PA claims have no idea how to argue against them. Lawyers arguing that PA is present in a case are likely to come to court with publications supporting the idea of PA and suggesting that PA cases are easily identified and treated.

What can lawyers and experts do when they are convinced that their accused clients have not persuaded the children to resist contact with one parent? The risks are considerable for the preferred parent and the children if the court comes to the wrong conclusion. Professionals must be prepared with the available information in opposition to the PA position. In our lengthy article in *Child and Family Law Journal*, we discuss the relevant literature on PA and provide concrete suggestions to counter accusations of PA. We briefly summarize the article as follows:

1. PA concepts have been controversial from the beginning and remain so

PA proponents often claim that PA principles and practices are generally accepted, but this was not the case in Richard Gardner's day and is not true today. PA does not meet the *Frye* or *Daubert* standards for admissibility of scientific evidence.

2. Dubious empirical research on PA and RTs

PA proponents claim there is empirical research that supports PA. In our *Child and Family Law Journal* article, we cite literature to refute this claim. PA proponents assert that RTs are safe and effective. However, the few empirical studies of RTs are inadequate to support this position. Very few studies have looked at children or adolescents who were currently embroiled in cases with PA allegations. Some research claiming to allow conclusions about children was done by interviewing adults who were willing to talk about their families' earlier problem behaviors. Recently, an empirical investigation by George Washington University law professor Joan Meier reported that mothers who reported concerns about child abuse were more likely to lose custody completely on the grounds that they had alienated the children. PA proponents Jennifer Harman and Demosthenes Lorandos published an attempt to replicate Meier's study and claimed to find different results—concluding that Meier must have been wrong. In our *Child and Family Law Journal* article, we summarize the Meier vs. Harman/Lorandos debate.

3. Impeach the PA expert with learned treatises

In our article we discuss how attorneys can use the professional literature to impeach PA experts on the following issues:

a. There is no consensus definition of PA, and an expert who claims there is can be impeached by reference to many published statements on this point.

b. A finding of PA is a conclusion that is generally not based on analysis of evidence about the occurrence of abuse, even though PA-associated authors consistently say that a child's rejection of a parent is not PA if abuse occurred. An expert can be impeached by examination of their non-use of abuse evidence.

c. An expert who claims to have diagnosed PA can be attacked because there is no such diagnosis either in DSM-5 or in ICD-11.

d. An expert who claims that PA is accepted by the relevant scientific community is impeachable on the ground that there exist numerous publications and a recent book (Mercer & Drew, 2022). APSAC has stated a clear position opposing the PA approach.

e. An expert who testifies that psychological tests show PA is readily impeached. There are no psychological tests specific to this issue and no evidence that any tests or combinations of tests reveal PA. Appropriate tests would need to be shown to be both valid (accurately discriminating PA from other causes of rejection of a parent) and reliable (providing similar evaluations when used more than once or by more than one evaluator), and this has not occurred for any test.

f. An expert who claims that a parent's behavior has caused a child's rejection of the other parent is easily impeached. Behavior is multiply determined, and when considering an individual, it is impossible to know which of many possible and interacting causes brought about a behavior. When considering groups of people who may be involved in PA cases, the available statistical procedures and data do not allow identification of cause and effect.

g. An expert who testifies that PA is a form of family violence or that PA is a child protection matter can be impeached. This statement, common in PA cases and an important foundation for custody reversal, is drawn from a 2018 article by Harman and colleagues, who made this assertion and argued that PA functions as if it were an adverse childhood experience (ACE). Harman and her co-authors supplied no evidence for these claims or for their conclusion that PA is a child protection rather than child custody matter.

h. An expert who evaluated the case and did not attempt to rule out alternatives to PA can be impeached on that point. Child custody evaluations must formulate and consider multiple hypotheses about the presenting problem, particularly in the case of an ill-defined phenomenon such as PA. Experts whose CVs show most of their training and professional activity in PA areas are likely to be weak on consideration of alternatives.

i. An expert mental health professional who fails to separate clinical and forensic roles can be impeached. The most likely issue here would be the involvement of a professional both in treatment and in making recommendations to the court.

Conclusion

APSAC members may find themselves involved in PA cases when a parent seeking custody asserts that the other parent has committed abuse by alienating the child and that the child needs to be protected by prohibition of contact with the preferred parent. PA situations are complex, and they require in-depth and open-minded investigation. In some cases, the parent alleging PA has committed abuse and is using allegations of PA to avoid responsibility.

If you would like the full *Child and Family Law Journal* article, feel free to contact Jean Mercer at Jean.Mercer@stockton.edu or John Myers at myersjohn@uchastings.edu

References

American Professional Society on the Abuse of Children (APSAC). (2022, January 22). APSAC position statement. Assertions of parental alienation syndrome (PAS), parental alienation disorder (PAD), or parental alienation (PA) when child maltreatment is of concern. Available at https://www.apsac.org/_files/ugd/c59607_77c786386dfe48adae4830b1f9881fcf.pdf

Harman, J. J., Kruk, E., & Hines, D. A. (2018). Parental alienating behaviors: An unacknowledged form of family violence. *Psychological Bulletin*, 144(12), 1275.

Mercer, J., & Drew, M. (Eds.). (2022). *Challenging parental alienation*. Routledge.

Myers, J., & Mercer, J. (2022). Parental alienation in family court: Attacking expert testimony. *Child and Family Law Journal*, 10(1), Article 3.

ABOUT THE AUTHORS

Jean Mercer, Ph.D., is a developmental psychologist who has long been concerned about potentially harmful psychological interventions for children. She has testified in a number of child custody cases where one parent alleged that the other had caused a child to be alienated and thus to reject contact with the complaining parent.

John Myers, J.D., is a visiting professor of law at the University of California Hastings College of the Law in San Francisco.

The American Professional Society on the Abuse of Children™
Strengthening Practice Through Knowledge
apsac.org @The_APSAC

In partnership with THE NEW YORK FOUNDLING
nyfoundling.org
@TheNYFoundling

590 Avenue of the Americas, 14th Floor, New York, NY, 10011
(Toll Free) 877-402-7722 **www.apsac.org**

The American Professional Society on the Abuse of Children is the only national m1em1bership association supporting professionals of all disciplines who serve children and families affected by child maltreatment and violence. As a multidisciplinary group of professionals, APSAC achieves its mission in a number of ways, most notably through expert training and education, policy leadership and collaboration, and consultation that emphasizes theoretically sound, evidence-based principles. If you found this publication valuable and would like to access all of APSAC'S publications, resources, and training discounts, please consider becoming a member. Learn more about membership at http://apsac.org/membership.