

The Evidentiary Admissibility of Parental Alienation Syndrome

American Psychological Association. (1996). *Report of the APA Presidential Task Force on Violence and the Family*, Washington, D.C : Author. Available at <http://www.apa.org/pi/pii/familyvio/issue5.html>

Noting that custody and visitation disputes appear to occur more frequently when there is a history of domestic violence. Family courts often do not consider the history of violence between the parents in making custody and visitation decisions. In this context, the nonviolent parent may be at a disadvantage, and behavior that would seem reasonable as a protection from abuse may be misinterpreted as a sign of instability. Psychological evaluators not trained in domestic violence may contribute to this process by ignoring or minimizing the violence and by giving inappropriate pathological labels to women's responses to chronic victimization. Terms such as 'parental alienation' may be used to blame the women for the children's reasonable fear or anger toward their violent father." (p. 100).

Bruch, Carol S. Parental (2001). Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases. *Family Law Quarterly*, 35, 527 Available on-line

at http://www.abanet.org/family/familylaw/fam353_06_bruch_527_552.pdf

According to Bruch, the deficiencies in PAS theory are multiple. In addition to its lack of scientific support, Bruch notes the following problems:

First, Gardner confounds a child's developmentally related reaction to divorce and high parental conflict (including violence) with psychosis. In doing so, he fails to recognize parents' and children's angry, often inappropriate, and totally predictable behavior following separation.

Second, possibly as a consequence of these errors and his tail-of-the-elephant view, Gardner vastly overstates the frequency of cases in which children and custodial parents manufacture false allegations or collude to destroy the parent-child relationship.

Third, in this fashion, PAS shifts attention away from the perhaps dangerous behavior of the parent seeking custody to that of the custodial parent. This person, who may be attempting to protect the child, is instead presumed to be lying and poisoning the child. Indeed, for Gardner, the concerned custodial parent's steps to obtain professional assistance in diagnosing, treating, and protecting the child constitute evidence of false allegations.

Fourth, Gardner believes that, particularly in serious cases, the relationship of an alienated child with the rejected parent will be irreparably damaged, probably ending for all time,

Fifth, as these sources suggest, Gardner's proposed remedy for extreme cases is unsupported and endangers children

Dallam, S. J. (1999). Parental Alienation Syndrome: Is it scientific? In E. St. Charles & L. Crook (Eds.), *Expose: The failure of family courts to protect children from abuse in custody disputes*. Los Gatos, CA: Our Children Our Children Charitable Foundation.

This article examines the scientific support for PAS along with its underlying assumptions and logic. This theory's relevance to child abuse allegations that arise during child custody disputes is also explored.

Dallam, S. J. (1998). [Dr. Richard Gardner: A review of his theories and opinions on atypical sexuality, pedophilia, and treatment issues.](#) *Treating Abuse Today*, 8(1), 15-23.

While Gardner 's theories about PAS and mass sexual abuse hysteria have been widely criticized, his views on bona fide child sexual abuse and his treatment recommendations for working with incestuous families have largely been ignored. This article provides an in-depth exploration of Gardner 's views on pedophilia and his therapeutic approach to working with families in which a child has been molested by a parent

Dallam, S. J. (n.d.). [Are Allegations of Sexual Abuse That Arise During Child Custody Disputes Less Likely to Be Valid? An Annotated Review of the Research.](#)

This article examines the scientific support for PAS along with its underlying assumptions and logic. This theory's relevance to child abuse allegations that arise during child custody disputes is also explored.

Faller, K. C. (1998). [The parental alienation syndrome: What is it and what data support it?](#) *Child Maltreatment*, 3(2), 100-115. **(PDF)**

This article describes proposed characteristics and dynamics of PAS, and the methods used to document its presence. Research data related to various tenets of the syndrome are then reviewed. Dr. Faller notes that

"The parental alienation syndrome is a nondiagnostic syndrome. It is only useful for mental health professionals in explaining the symptom presentation if they know from other information that an abuse allegation is a deliberately made, false accusation. The syndrome cannot be used to decide whether the child has been sexually abused. As a consequence, it is of little probative value to courts in making decisions about the presence or absence of sexual abuse An additional problem with the parental alienation syndrome is that virtually every symptom described by Gardner as evidence of its presence, and consequent false charges against the accused parent, is open to opposing interpretations" (p. 111).

After reviewing the relevant research Faller concludes:

"No data are provided by Gardner to support the existence of the syndrome and its proposed dynamics. In fact, the research and clinical writing of other professionals leads to a conclusion that some of its tenets are wrong and that other tenets represent a minority view" (p. 112).

Jennifer Hault. The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law, and Policy, 26 *Children's Legal Rights Journal* 1 (2006). **[download PDF](#)**

Abstract: Since 1985, in jurisdictions all over the United States, fathers have been awarded sole custody of their children based on claims that mothers alienated these children due to a pathological medical syndrome called Parental Alienation Syndrome ("PAS"). Given that some such cases have involved stark outcomes, including murder and suicide, PAS' admissibility in U.S. courts deserves scrutiny.

This article presents the first comprehensive analysis of the science, law, and policy issues involved in PAS' evidentiary admissibility. As a novel scientific theory, PAS' admissibility is governed by a variety of evidentiary gatekeeping standards that seek to protect legal fora from the influence of pseudo-science. This article analyzes every precedent-bearing decision and law review article referencing PAS in the past twenty years, finding that precedent holds PAS inadmissible and the majority of legal scholarship views it negatively. The article further analyzes PAS' admissibility under the

The standards defined in *Frye v. United States*, *Daubert v. Merrell Dow Pharmaceuticals*, *Kumho Tire Company v. Carmichael*, and Rules 702 and 704(b) of the *Federal Rules of Evidence*, including analysis of PAS' scientific validity and reliability; concluding that PAS remains an ipse dixit and inadmissible under these standards.

The article also analyzes the writings of PAS' originator, child psychiatrist Richard Gardner - including twenty-three peer-reviewed articles and fifty legal decisions he cited in support of his claim that PAS is scientifically valid and legally admissible - finding that these materials support neither PAS' existence, nor its legal admissibility. Finally, the article examines the policy issues raised by PAS' admissibility through an analysis of PAS' roots in Gardner 's theory of human sexuality, a theory that views adult-child sexual contact as benign and beneficial to the reproduction of the species.

The article concludes that science, law, and policy all support PAS inadmissibility.

(Note: *The Children's Legal Rights Journal* is published by the American Bar Association, Center on Children and the Law, and Loyola University Chicago School of Law)

Justice for Children. (2001). [Amicus Curiae Brief of Justice For Children in Linville v. Linville \(PDF\)](#).

Brief filed by [Justice for Children](#) in a custody case heard by Maryland Court of Special Appeals. The brief provides a Frye-analysis asking whether evidence of PAS is reliable and relevant in child custody cases. discusses the lack of scientific support for PAS rendering it inadmissible under Frye.

Kleinman, T. G. (2004). [Strategies and Pretrial Hearings for Child Protection](#). *Journal of Child Custody*, 1 (2), 105-112. (pdf)

In order to provide maximum protection to abused children, the protective parent or counsel must avail themselves of all of the tools at their disposal from the very start of litigation in custody and/or visitation disputes involving family violence. This column sets forth examples of pretrial motions, hearings, and other strategies. These are used to provide the court with detailed information about the abuse that has happened and the impact that the courts decisions will have upon the children involved.

[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: Website: 2004 by The Haworth Press, Inc. All rights reserved.]

McDonald, M. (1998). The myth of epidemic false allegations of sexual abuse in divorce cases. *Court Review*, 12-19.

<http://www.omsys.com/mmcd/courtrev.htm>

It is commonly believed that false allegations of sexual abuse in the context of divorce are epidemic, that most allegations made in the context of divorce are made by vindictive mothers and that these allegations are almost always false. These beliefs are not supported by scientific evidence.

Poliacoff, J. H., Greene, C. L., & Smith, L. (1999). Parental Alienation Syndrome: Frye v. Gardner in the family courts. *Family Law Commentator (Florida Bar)*, 25(4), 19-20, 30-33.

<http://www.gate.net/%7Eliz/liz/poliacoff.htm>

This article explores the shortcomings of PAS under Frye and Daubert and reviews relevant case law pertaining to the admissibility of PAS in court. Ethical dilemmas that mental health professionals face when serving as experts in these

cases are explored and alternative areas for inquiry into the source of impaired parent child relationships occurring in the context of child custody litigation are offered.

Ragland, E. R. & Fields, H. (2004). Parental Alienation Syndrome: What Professionals Need to Know. *NCPCA Update* , 16(6-7). Alexandria, VA: American Prosecutors Research Institute.
Part one: [NCPCA Update Newsletter Volume 16, Number 6, 2003](#)

Part two: [NCPCA Update Newsletter Volume 16, Number 7, 2003](#)

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.

Walker, L. E., Brantley, K. L., & Rigsbee, J. A. (2005). A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court. *Journal of Child Custody*, 1(2), 47-74. [[download from Haworth \\$](#)]

ABSTRACT: Over the past three decades, a syndrome, titled 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. The association of certain negative behaviors by one parent (called the 'alienator') towards the other parent (called the 'target parent') are said to be the cause of the child's (called 'alienated child') behavior. 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, especially in those that have cross-complaints alleging family violence, there has been no consistent empirical or clinical evidence that PAS exists or that the alienator's behavior is the actual cause of the alienated child's behavior towards the target parent. It is argued here that the PAS construct itself is flawed and its use by custody evaluators to justify placement with the rejected parent may result in more serious damage to the child who is taken away from the parent to whom the child has bonded. These authors suggest that the PAS argument has been accepted by some courts that seem almost eager to punish the so-called alienating parent without regard for the immediate or long-term impact on the child. PAS has had difficulty meeting *Daubert* or *Frye* admissibility standards in criminal courts but few family courts have held hearings to determine its scientific integrity. 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.

Williams, R.J. (2001). Should judges close the gate on PAS and PA? *Family Court Review*, 39 (3), 267-282.

Wood, C. L. (1994). The parental alienation syndrome: A dangerous aura of reliability. *Loyola of Los Angeles Law Review*, 27, 1367-1415.
<http://fact.on.ca/Info/pas/wood94.htm>

Attorney Cheri Wood (1994) suggests that although Gardner 's self-published theories do not have any empirical grounding, they have been given a "dangerous and undeserved aura of reliability and trustworthiness" in the courtroom. Wood concludes that PAS should not be admissible in court for the following reasons: (1) because it has not gained acceptance among experts in the field, (2) because of difficulties in determining causation, and (3) because it endangers children.

Zirogiannis, L. (2001). Evidentiary issues with parental alienation syndrome. *Family Court Review*, 39(3), 334-343.

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