

PARENTAL ALIENATION
—
SCIENCE AND LAW

PARENTAL ALIENATION – SCIENCE AND LAW

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*This book is dedicated to S. Richard Sauber, Ph.D.,
a pioneer in educating professionals and the public
regarding parental alientation.*

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PREFACE

There are hundreds of papers in professional journals, book chapters, and books that constitute descriptive, qualitative research about parental alienation (PA). There are a smaller number of published reports of quantitative research. In the last 25 years, several important books have been published regarding PA, each with its own purpose:

- *Children Held Hostage: Identifying Brainwashed Children, Presenting a Case, and Crafting Solutions*, by Stanley S. Clawar and Brynne V. Rivlin (1991, 2013). In this research, which was commissioned by the Family Law Section of the American Bar Association, Clawar and Rivlin summarized their observations on 1,000 children in divorced families.
- *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals*, by Richard A. Gardner (1992). In this seminal work, Gardner described in a comprehensive manner a parental alienation syndrome (PAS), the mental condition that he had previously conceptualized and named in 1985.
- *Divorce Poison: How to Protect Your Family from Badmouthing and Brainwashing*, by Richard A. Warshak (2001, 2010). The two editions of Warshak's book are the most widely read accounts of PA in the world. The books have been published in the U.S., Croatia, Czechia, Finland, Japan, Korea, and Romania.
- *The International Handbook of Parental Alienation Syndrome: Conceptual, Clinical and Legal Considerations*, edited by Richard A. Gardner, S. Richard Sauber, and Demosthenes Lorandos (2006). At the time of its publication, this was the most wide-ranging book available regarding PAS. It included 34 chapters written by 31 authors from eight countries.
- *Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind*, by Amy J. L. Baker (2007). Baker was the first psychologist to conduct systematic research regarding PAS and PA. In this research project, Baker collected the life stories of adults who had previously experienced PAS as children.

- *Parental Alienation, DSM-5, and ICD-11*, edited by William Bernet (2010). In this book, Bernet and his colleagues methodically laid out the arguments that PA should be recognized as a serious mental condition experienced by thousands of children and adolescents.
- *Children Who Resist Postseparation Parental Contact: A Differential Approach for Legal and Mental Health Professionals*, by Barbara Jo Fidler, Nicholas Bala, and Michael A. Saini (2012). This book is an empirically based review of PA, which integrates research evidence with clinical insight from interviews with leading scholars and practitioners.
- *Working with Alienated Children and Families: A Clinical Guidebook*, edited by Amy J. L. Baker and S. Richard Sauber (2013). Baker, Sauber, and their colleagues explained various interventions for families that experience PA.
- *Parental Alienation: The Handbook for Mental Health and Legal Professionals*, edited by Demosthenes Lorandos, William Bernet, and S. Richard Sauber (2013). The editors developed the most comprehensive book ever published regarding PA. It contained chapters on the phenomenology of PA, the assessment of contact refusal, interventions for various levels of PA, legal strategies, and international aspects of PA.

Each of these books, published in the last 25 years, had an explicit purpose. So how does this new book—*Parental Alienation—Science and Law*—add to the vast literature that is currently available regarding PA? For clinicians and forensic evaluators, this book explains the research that creates the foundation for the assessment, identification, and intervention in cases of PA. For attorneys, judges, and family law professionals, this book explains in detail the scientific basis for testimony and legal decisions that relate to PA. There are two complementary features for most of the chapters. First, the chapter authors address how evidence regarding PA meets the criteria of the *Frye*, *Daubert*, and *Mohan* cases as well as the Federal Rules of Evidence for testimony by experts. Second, the chapter authors address and refute widespread misinformation and disinformation regarding PA, which have appeared in journals, books, and presentations intended for mental health and legal professionals as well as in media intended for the general public.

DEFINITIONS

The most important concepts that are addressed in the book are the following. *Parental alienation* is a mental condition in which a child—usually one

whose parents are engaged in a high-conflict separation or divorce—allies strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification. The *Five-Factor Model* introduced here is a method for the systematic identification or diagnosis of PA. The five factors are: (1) the child actively avoids, resists, or refuses a relationship with a parent; (2) presence of a prior positive relationship between the child and the now rejected parent; (3) absence of abuse or neglect or seriously deficient parenting on the part of the now rejected parent; (4) use of multiple alienating behaviors by the favored parent; and (5) exhibition of many or all of the eight behavioral manifestations of alienation by the child. There is nothing new about the components of the Five-Factor Model, since they have all been discussed in peer-reviewed articles, books, and presentations for many years. We have simply collapsed a large amount of scholarship into a short list of diagnostic criteria.

FIRST, PREPARING FOR *FRYE*, *DAUBERT*, AND *MOHAN* HEARINGS

This book presents in a comprehensive manner the scientific basis for parental alienation theory, which can be presented in *Frye*, *Daubert*, and *Mohan* hearings pertaining to PA. Chapter 1, “Introduction to Parental Alienation,” introduces PA theory, which will orient both experienced and novice mental health evaluators and legal practitioners to this topic. Chapter 2, “The Psychosocial Assessment of Contract Refusal,” explains how to conduct a methodical, evidence-based evaluation. There is a focus on the differential diagnosis of contact refusal and ways to distinguish alienation from estrangement. Chapter 3, “Parental Alienating Behaviors,” surveys the methods employed by alienating parents to abuse and damage their former spouses and their children. Chapter 4, “Parental Alienation: How to Prevent, Manage, and Remedy It,” explains the interventions for mild, moderate, and severe levels of PA. That chapter also summarizes the outcome studies of the Family Bridges educational workshop, the most widely used intervention for cases of severe PA. Chapter 5, “Parental Alienation and Empirical Research” illustrates how PA theory meets the principal *Daubert* and *Mohan* criterion, i.e., systematic research published in peer-reviewed journals. Chapter 6, “Recognition of Parental Alienation by Professional Organizations,” demonstrates that the *Frye*, *Daubert*, and *Mohan* criterion of general acceptance by the relevant scientific community is met by PA theory.

Subsequent chapters pertain more directly to legal topics. Chapter 7, “Alienating Behaviors and the Law,” relates the legal history of PA and its precursors over the last 200 years. Chapter 8, “Admissibility of the Con-

struct–Parental Alienation,” explains *Frye*, *Daubert*, and *Mohan* criteria and summarizes trial and appellate cases in the U.S. in which a court applied these criteria to PA expert testimony. Chapter 9, “Parental Alienation in U.S. Courts, 1985 to 2018,”—together with the appendix—identifies more than one thousand cases in the U.S. between 1985 and 2018 in which the trial court or an appellate court accepted PA as a reality and a factor to address in the case under consideration. Chapter 10, “The Importance of *Voir Dire* in High-Conflict Family Law Cases,” provides specific guidance on ways to challenge expert witnesses who try to deny or minimize the importance of recognizing and intervening in cases of PA. Chapter 11, “Parental Alienation: An International Perspective,” explains how jurisprudence regarding PA has played out in various countries, with reference to both common law and civil law systems. Chapter 12, “Tips for Expert Testimony,” provides succinct guidance for expert witnesses (when they testify about PA) and attorneys (when they examine and cross-examine witnesses). Finally, Chapter 13, “Parental Alienation and Public Policy,” suggests changes in family law that should be considered by legislatures and judicial bodies, with the purpose of reducing the prevalence of PA.

The book contains four appendices and three indexes. For example, Appendix A, “Parental Alienation Terminology and Definitions,” defines the concepts used in this book, so that the chapter authors and readers will use terminology in a consistent manner. Appendix B, “Parental Alienation Cases in the United States, 1985 to 2018,” lists more than one thousand trial and appellate cases in the U.S. involving PA, organized by state. Appendix C, “Cases Illustrative of Alienating Behaviors,” presents twenty rather dramatic vignettes involving PA. Appendix D, “Sample Motion and Brief for Extended *Voir Dire*,” provides a motion and supporting brief asking the court to allow extended time to examine the competency of a proposed expert.

SECOND, ADDRESSING MISINFORMATION

The second goal of this book is to refute common misinformation. The majority of mental health and legal professionals accept the basic premise of PA, i.e., that some parents indoctrinate their children to dislike or fear the other parent. Nevertheless, there is debate and disagreement about some aspects of PA theory. Although the editors of this book welcome legitimate and respectful discussion and debate, we are concerned that some of the discourse regarding PA has spun out of control, into pervasive misinformation.

Misinformation about PA is frequently presented in legal proceedings regarding divorce, custody, and parenting time arrangements. For example, one side wants to present expert testimony that involves PA, while the oppos-

ing side hopes to suppress such testimony by claiming that PA theory is not scientific enough to merit expert testimony and that it has never been endorsed by a professional organization. Sometimes an elaborate *Daubert*, *Frye*, or *Mohan* hearing ensues. Sometimes the court hears arguments pro and con and says they will take that information into consideration in determining the weight of the evidence. Occasionally, the court will say it already knows a lot about PA, it is clear the phenomenon occurs regardless what it is called, and the attorneys should move on to present the facts of the case before the court.

Blatantly false statements regarding PA regularly occur in professional literature as well as popular media intended for the general public. For example, statements such as: “Parental alienation is a hoax, invented by Richard Gardner to enable abusive fathers to gain control of their children.” “There is no empirical evidence published in peer-reviewed journals to support the reality of parental alienation.” “Parental alienation has not been recognized by the American Psychological Association or by any other professional organization in the United States.” “Child custody evaluators and parenting time evaluators should never look for parental alienation or discuss that topic in their reports.” Those statements are false. When psychologists, psychiatrists, social workers, and legal professionals make those statements, it is unclear whether the individual is actively misrepresenting the facts or is simply ignorant regarding basic information about PA.

It is unfortunate that legal professionals and expert witnesses devote time and energy over and over in debating whether PA theory fulfills criteria for testimony in court. This book provides plenty of evidence for overcoming that hurdle.

EDITORS AND AUTHORS

The editors of this book and the chapter authors have extensive experience with both clinical and legal aspects of divorce, child custody, parenting time evaluations, PA, and related topics. The editors and chapter authors include six psychologists, three physicians, two social workers, four attorneys, and one judge. Collectively, the mental health professionals have testified as expert witnesses hundreds of times regarding family law topics.

The editors and most of the chapter authors of this book are members of the Parental Alienation Study Group, Inc. (PASG), an international, non-profit corporation with the mission of educating the public, mental health clinicians, forensic practitioners, attorneys, judges, and policymakers regarding PA. PASG members are also interested in developing and promoting research on the causes, evaluation, prevention, and treatment of PA. The

members of PASG are located in more than 50 countries on six continents, which is an indication of the global reach of PA. PASG supported the development and production of this book by facilitating communication and collaboration among its members. The organization also supported this project financially, in that a PASG member donated funds that were used for legal research and editing activities.

The editors of this book dedicate the project to our friend and colleague, S. Richard Sauber, Ph.D., a founding member of PASG and an early researcher and writer regarding PA. Dr. Sauber was the founder and long-time editor of *The American Journal of Family Therapy*, which published many important papers regarding PA. He was also a co-editor of: *The International Handbook of Parental Alienation Syndrome: Conceptual, Clinical and Legal Considerations*; *Working with Alienated Children and Families: A Clinical Guidebook*; and *Parental Alienation: The Handbook for Mental Health and Legal Professionals*. We value Dr. Sauber's wisdom and we honor his dedication to educating mental health and legal professionals regarding PA.

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PARENTAL ALIENATION
—
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Section One

CLINICAL CONSIDERATIONS AND RESEARCH

Chapter 1

INTRODUCTION TO PARENTAL ALIENATION

WILLIAM BERNET

Parental alienation (PA), a serious mental condition that affects hundreds of thousands of children and families in the United States, has been described in legal cases since the early 19th century¹ and in the mental health literature since the 1940's.² Mental health professionals, family law attorneys, and ordinary citizens observe PA every day, even if they do not know that the phenomenon has a name, where it comes from, or what to do about it. There has been a vast extent of descriptive, qualitative research and a more limited amount of quantitative research regarding PA.

Despite the extensive professional literature regarding this topic and the growing number of trial and appellate courts that have accepted the importance of PA, there continues to be a small group of outspoken critics and detractors who deny the significance or even the existence of this mental condition. The chapters of this book will address PA through two perspectives: first, a detailed discussion of some aspect of PA with appropriate citations to the mental health and legal literature; and, second, a summary of what PA detractors and deniers have stated regarding that topic with clearly documented rebuttals of those statements, i.e., a debunking of the debunkers. This bifid approach—a statement of the positive arguments that support the reality and significance of PA joined with a refutation of the arguments against PA—will demonstrate the importance of PA for clinicians as well as the admissibility of testimony regarding PA in courts in the U.S. Of course, that is why the title of this book refers to “science” and “law.”

DEFINITION OF PARENTAL ALIENATION

PA is a mental condition in which a child—usually one whose parents are engaged in a high-conflict separation or divorce—allies strongly with one par-

ent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification.³

Several features of the definition should be noted. PA can be conceptualized as a mental condition of the child (e.g., the child has a false belief that the rejected parent is evil, dangerous, or not worthy of love) or an aberration in the relationship between the child and the rejected parent (e.g., absence of communication and camaraderie between child and parent, even though they previously enjoyed a loving, nurturing relationship). We refer to “separation or divorce” because PA can occur prior to legal divorce and in families in which the parents were never married in the first place. PA sometimes occurs in high-conflict marriages, when the parents are still living in the same household.

It is essential to recognize that the child’s rejection of the alienated parent is without legitimate justification. If a parent was abusive or severely neglectful, the child’s rejection of that parent is understandable or legitimate and does not constitute PA. We follow the convention of most writers, who use *estrangement* to refer to warranted rejection of a parent and *alienation* to refer to unwarranted rejection. Finally, we realize that the rejected parent is not typically a perfect mother or father, and that parent may have contributed in a limited degree to the child’s dislike of him or her. However, the essential feature of PA is that the child’s rejection of the alienated parent is far out of proportion to anything that parent has done.

MANIFESTATIONS OF PARENTAL ALIENATION

Criteria for the diagnosis of PA were originally published by Richard Gardner, who said that *parental alienation syndrome* (PAS) referred to a child who manifested some or all of eight characteristic behaviors.⁴ We have adapted Gardner’s eight criteria for the diagnosis of PA, as we use the term in this book (see Table 1). Gardner said that the diagnosis of PAS was based primarily on the presence of symptoms in the child, not on the behaviors of the alienator.

Researchers have studied the frequency with which the eight criteria occur in individual cases of PA. Amy Baker and Douglas Darnall studied self-identified alienated parents whose children “want nothing to do with the parent and the parent’s access to the child was minimal at best.”⁵ That is, they collected information from the rejected parents of children who manifested a severe degree of PA. The authors asked the parents whether the eight symptoms of PA, which had been identified by Gardner, occurred in their children. Baker and Darnall found that the following symptoms occurred “often” or “always” in the great majority of the families they studied:⁶