

*Parental Alienation Syndrome:
A 'Hidden' Facet of Custody Disputes*

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...extending through the years of childhood and adolescence in his [or her] relations with both parents, [a child] builds up working models of how attachment figures are likely to behave towards him in any variety of situations; and on those models are based **all his expectations, and therefore all his plans, for the rest of his life.**

John Bowlby, *Separation, Anxiety, and Anger*

Introduction

Custody determinations are not simple. In fact, there are often complications which are not readily discernible to judges, lawyers, counsellors, or even the parents and children. Such a "complication" occurs when a divorcing parent or parents attempt to brainwash or program their children during a custody dispute. This issue has not been given frank or frequent treatment in either law or psychiatry. However, it has the potential to be **the** most destructive aspect in custody disputes.

It is apparent, from the limited studies that have been done, that mothers are usually the source of the brainwashing.¹ Does this mean that there is a distinct gender differential at play? Two alternate and opposing explanations are available: women simply obtain custody with a greater prevalence this gives the mother the time and physical nexus necessary for successful brainwashing²; **or** out of a fear of losing sole custody due to the trends of joint custody and reverse discrimination in Family Law, mothers resort to brainwashing tactics.³

¹ Between 4 to 85 percent of females compared with 2 to 25 percent of males were involved in brainwashing. Furthermore, females were more likely to fit at the extreme end of the continuum in degree and type of brainwashing (Clawar, Stanley S., *et al. Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 155).

² "85 to 90 percent of children will reside with their mothers" (Johnston, Janet. *Non-Residential Parenting: New Vistas in Family Living*. California: Sage, 1993 at 109).

³ There are ideological reasons for women being the instigators of brainwashing: the link between female identity and parenting and the associated negative opinions of male parenting; desire to create the "new" family and peer group expectations; the paramour factor (fear of another loss) -

Both explanations, however, stem from a common basis: women are generally perceived as the “losers” in a divorce unless they get custody of the children.

Thus, the main catalyst for brainwashing is a combination of fear and loss — because a parent is alienated from the life they knew, they become alienating.⁴ Consequently, a father can brainwash his children just as easily as a mother provided he finds himself in a vulnerable position.⁵ The result is that the alienating parent becomes so self-oriented that he consciously or unconsciously detaches himself from the true dynamics of the situation.⁶ *Tables 1, 2, 3, 5, & 6, in the appendix*

The most severe cases of programming and brainwashing of children by mothers occurred when they were left for other women, believed there was another woman, or discovered a new woman in the life of the father

(Clawar, Stanley S., *et al. Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 160).

In addition,

With social changes creating parity between parents in the eyes of the court, a mother’s traditional role with her children may be undermined. This may be perceived by the mother as a considerable psychological threat which can only be dealt with by developing a pathological alliance with the child

(Dunne, John, *et al.* “The Parental Alienation Syndrome: An Analysis of Sixteen Selected Cases.” *Journal of Divorce & Remarriage*, 1994, Vol.21(3/4) at 36-37).

Nonetheless, in practice this “parity” does not always operate. Alienated fathers also experience gender bias but it is a product of their being alienated - the courts often automatically assume that the father is less of a good parent than the mother is. A member of the ACAB group in St. John’s, Newfoundland - a support group for accused and abused alienated parents founded in January of 1995 - felt that he had to play the same games as the court in order to “win” - he deliberately hired a female lawyer.

⁴ This “catalyst theory” is not supported by the social-class-bound nature of the phenomenon of brainwashing - fear and loss are not class-specific (Clawar, Stanley S., *et al. Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 170).

⁵ However, vulnerability also seems to be a characteristic of alienated parents. Interviews with members of the ACAB group indicate that the profile of men (most of the members are men though a couple of women have recently joined) who are alienated are generally passive. Mr. A. went along with his wife’s alcoholism until he knew that he had to seek help for her. After telling her doctor that he was afraid of her using Prozac because she had a drinking problem, his wife left him. She then accused him of sexually abusing his daughter. Despite her alienating behaviour, Mr. A. still feels that he could have helped her sooner and he blames the alcoholism for her actions. Mr. B. continued to pay the bills after their breakup though he did not live in the home and he did not try to get court orders enforced (regarding times he could see his daughter) which she was not following. His wife even set up counselling with a friend - a nun posing as a therapist - so that she would be portrayed favourably in the assessments. Mr. B.’s requests for a different counsellor were ignored. However, Mr. C. had a different attitude — less passive. This seems to be a consequence of the long-term nature of his situation — the alienation has been going on for almost eight years. Also, the alienation has become more than mental — the mother allows the stepfather to make Mr. C.’s son drink beer, show him how to use a hypodermic needle (the stepfather is apparently a diabetic), force him to do strenuous physical labour, and prevent him from going to church with Mr. C.

indicate that parents who brainwash tend to have the following characteristics: Upper-middle class with 2.5 children living in suburbia working in a professional occupation with a fairly high education level. From this one could conclude that brainwashing requires intelligence and skill. However, it may be that parents in a higher social class perceive their children as being another possession they could lose in the divorce. On a related note, they may be trying to keep up appearances as the “perfect” parent — having custody is an important part of this “role.” But one must not make generalizations.

Lower class, less educated parents do brainwash their children — though less frequently. Whether this is a product of social class or intelligence is uncertain. Perhaps the difference is in the brainwashing techniques — lower class parents may not brainwash with the same kind of formality and structure as the upper class, educated parents. Their techniques may not correspond with Clawar’s techniques. This could skew the data. While there is no final explanation for the data, they indicate that brainwashing is not a rare phenomenon. It has also been found that spouses who have a history of physically, socially-psychologically abusing their partner employ brainwashing simply as a new tool of abuse⁷. Spousal abuse does not seem to have any social class boundaries. Thus, it is virtually impossible to determine a “brainwasher” profile. The fact is that any divorcing parent involved in a custody dispute — if sufficiently alienated from their own world — could have the potential to become alienating.

Theories

There are multiple theories accounting for brainwashing during custody. However, whether any, all, or a combination of these theories apply to a particular family will depend, to a large extent, on: (1) the distinct personalities of the child and parent and (2) situational factors.⁸

Parents may brainwash as a result of the typical animosity associated with any custody dispute — as a reaction to situational conflict. However, more sophisticated theories have been devised to explain the phenomenon. Alignment is one such theory⁹. It is akin to the recently coined terms Parental Alienation Syndrome (P.A.S.) and the S.A.I.D. (He said, She said, Who said?) syndrome

⁶ This is supported by the fact that role reversals often occur during custody disputes. The child becomes parentified acting as the supporter and comforter of the divorced parent. This situation was recognized in *Radford v. Cassiano*, [1995] O.J. No. 105 Kingston Registry No. 460190, Ontario Court of Justice - Provincial Division.

⁷ Clawar, Stanley S., *et al. Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 162.

⁸ Catherine Foster, a mediator at the Unified Family Court in St. John’s, Newfoundland, emphasized that “theories” are meaningless in the absence of a context — personality attributes and situational factors must not be ignored.

⁹ Cross-gender alignments seem to be the most common (Johnston, Janet. *Non-Residential Parenting: New Vistas in Family Living*. California: Sage, 1993 at 112) and girls are less likely to be aligned than boys (*Ibid.* at 119). This appears to reflect the facts that women brainwash more frequently and that the parent is seeking a substitute for the failed marriage.

both of which are similarly defined and had their origins in the United States.¹⁰ P.A.S. (or S.A.I.D.) is defined as

...a series of conscious programming techniques such as brainwashing as well as subconscious and unconscious processes by the alienating parent combined with the child's own contribution denigrating the allegedly hated parent [often referred to as the lost, target, or alienated parent].¹¹

P.A.S. manifests itself in several ways.¹² The child usually gives frivolous or absurd rationalizations for deprecating the target parent. There is a loss of the ambivalence found in normal human relationships — the target parent is objectified by the alienating parent as an evil entity. In *Humphries v. Humphries* (1986), 59 Nfld. & P.E.I.R. 1 at 3, the child had to call her natural father “the man” and her stepfather “Mr. Daddy.” Children will do what their parents tell them out of fear, to gain respite from their parent's relentless interrogations or as the primary way to please their parents. Consequently,

P.A.S. children ‘express themselves like **perfect little photocopies of the alienating parent** and can see no good in the lost parent and no bad in the loved parent. The process resembles amnesia, wherein the child's good memories appear to be completely destroyed.’¹³

As a counterpart to this, brainwashed children feel little guilt for their actions.¹⁴ There are, however, two more serious manifestations of P.A.S.: refusal of visitation and sexual abuse allegations.

Refusal of visitation is often so multi-determined that it is difficult to link the refusal directly with P.A.S. Johnston indicates that estimating the

...extent to which disengagement results from voluntary withdrawal of the parent **or** from being pushed out or excluded by the child [is onerous], because the

¹⁰ Catherine Foster suggests that such **labels** might be viewed as an easy way out and, at best, they should only be used for severe cases.

¹¹ Cartwright, Glenn F. “Expanding the Parameters of Parental Alienation Syndrome.” *The American Journal of Family Therapy*, Fall 1993, Vol. 21(3) at 205. Gardner, who coined the term P.A.S., states that P.A.S. “has been a problem in more than 90% of the custody conflicts in which he has been the court-appointed examiner” (Palmer, Nancy R. “Legal Recognition of the Parental Alienation Syndrome.” *The American Journal of Family Therapy*, 1988, Vol. 16(4) at 362).

¹² *Table 9* in the appendix indicates that parents either brainwash at an intense level **or at** extremely low levels or not at all. This would appear to make it relatively easy to perceive its manifestations. However, this does not seem to make the manifestations of P.A.S. any easier to explain.

¹³ Goldwater A. *Developpements recents en droit familial*. “Le syndrome d’alienation parentale.” Quebec: Les Editions Yvon Blais, 1991 at 126.

¹⁴ This is not simply explained by cognitive immaturity. Rather, it reflects the intense **degree** to which children can be programmed.

dropping out is likely to be a subtle **process** of reaction and counteraction to the mutual disappointment **inherent** in a failed relationship.¹⁵

This emphasizes that P.A.S. is primarily a product of the pain associated with divorce. Parents and children become caught in a cycle. For instance, as the frequency of refusals to visit increase, parental disputes heighten, parents become more sceptical of the value of visitation, and the rejected parent engages in counter-rejection.¹⁶ It is this spiral effect which complicates the diagnosis of P.A.S. False sex abuse allegations against the target parent entail similar complexities.

Though the allegations may be false, they are usually “based upon a core of reality.”¹⁷ Normal physical affection or bathing a child can be construed by the alienating parent as having sexual overtones. Nonetheless, unlike refusal of visitation, there appear to be criteria which can be applied in the case of sexual allegations.¹⁸ Gardner has a seventy point criteria test [22 criteria for the accused, 21 for the child, and 27 for the accuser].¹⁹ As the number of positive indicators increase, the greater the likelihood that the allegation is valid.²⁰ For instance,

The alleged perpetrator’s having a large collection of child pornographic materials is a very strong indicator of a true accusation. **But** a child may say ‘My daddy took a big knife and put it into my wee-wee hole and my poo-poo hole. There was a lot of bleeding. My mommy was there and she got very angry at my daddy and she gave him time out.’ Such a statement argues strongly for a false accusation.²¹

This sounds like common sense. In fact, most, of the criteria seem to be based on fairly obvious observations and differences between true and false incest victims can be found in their disclosures. Fakers tend to reveal details of the incest almost spontaneously and there are no

¹⁵ Johnston, Janet. *Non-Residential Parenting: New Vistas in Family Living*. California: Sage, 1993 at 110.

¹⁶ *Ibid.*, at 118 & 130.

¹⁷ Green, Arthur. “True and False Allegations of Sexual Abuse in Child Custody Disputes.” *Journal of the American Academy of Child Psychiatry*, 1986, Vol. 25(4) at 451.

¹⁸ A “criteria” approach can have negative implications. For instance, a member of the ACAB group reported that sitting in the leapfrog position was being used as an almost absolute criteria for proving that a child has been sexually abused.

¹⁹ Examples of **some** of the indicators: **For the accused** — Longstanding history of emotional deprivation, Impulsivity, Coercive-Dominating behaviour, Presence of sexual deviations, Substance abuse, Psychosis; **For the child** — Advanced sexual knowledge for age, Depression and withdrawal, Pathological compliance, Pseudomaturity; **For the accuser** — Childhood history of sexual abuse, Passivity and/or inadequacy, Moralism, Enthusiastic commitment to the data-collection process, Paranoia.

²⁰ However, applying these criteria do not result in a total evaluation (Gardner, Richard A. “Differentiating Between True and False Sex-Abuse Accusations in Child-Custody Disputes.” *Journal of Divorce & Remarriage*, 1994, Vol.21(3/4) at 17).

²¹ *Ibid.* at 2-3.

significant changes in mood or affect. In addition, fakers often use adult terminology and make few retractions or restatements. Most telling, however, is that a true victim

...will rarely describe the sexual activity in the [abuser's] presence, out of fear and guilt, while the faker will do this if the [alienator] is also present...[the alienator] often control[s] the child by monitoring his or her responses through eye contact and subtle facial expressions.²²

Though criteria can be applied, this does not remove all complexity. *P. (G.L.) v. P. (J.M.)* (1990), 27 R.F.L. (3d) 64 recognized that

The person making the complaint, usually the mother, is damned if she does and damned if she doesn't. If the complaint is made for the first time in the course of a custody case, there is a tendency to disbelieve the allegation. If the allegation cannot be proven, the mother is viewed as vicious and destructive. **Some judges have suggested that an unwarranted allegation of sexual abuse may be grounds to deny custody.** [However, this reasoning is not based on the allegations being viewed as a manifestation of P.A.S.]. On the other hand, if a mother suspects abuse, but does not report or raise the issue, she runs the risk of being branded a poor parent and being subject to C.A.S. supervision.²³

An even more problematic issue is that divorcing parents might be using the fact that reporting child abuse is in vogue as an apparently easy means of attacking their ex-spouses. The irony is that though the sex abuse allegations may be false, the children are being abused by becoming the pawn in their parent's "games."²⁴ What is even more frightening is that

The number of virtual allegations of abuse may be expected to increase in the future because of their more subtle nature, the greater difficulty in disproving them, and because judges and lawyers familiar with P.A.S. are becoming increasingly skilled at detecting [its more obvious manifestations such as those illustrated in *Table 8A* of the appendix].²⁵

Parents also resort to various brainwashing techniques in attempts to "win" their child over so that they can win them at the custody hearing. Clawar lists several techniques which he refers to as syndromes — suggesting that these tactics have a strong psychological component. Parents often use a combination of these techniques.²⁶ An analysis of *Table 8C* in the appendix suggests

²² Green, Arthur. "True and False Allegations of Sexual Abuse in Child Custody Disputes." *Journal of the American Academy of Child Psychiatry*, 1986, Vol. 25(4) at 452.

²³ *(G.L.) v. P. (J.M.)* (1990), 27 R.F.L. (3d) at 64.

²⁴ MacDonald, Peter, et al. "Suffer the Children." *Western Report*, February 5, 1990.

²⁵ Cartwright, Glenn F. "Expanding the Parameters of Parental Alienation Syndrome." *The American Journal of Family Therapy*, Fall 1993, Vol. 21(3) at 209.

²⁶ *Table 8A*, Appendix. *Table 8B* - it indicates the percentage of parents, by sex, who use each technique

that these techniques are not so effective that the children being brainwashed cannot detect them. Why, then, does the brainwashing continue? The children are afraid to confront their parents — without their parents they might not have a home to live in, food to eat, or clothes to wear. The “Who Me”, Middleman, and Circumstantial syndromes were most easily detected by children — perhaps because the child is more of a direct participant in these techniques. However, for the most part, the “no” awareness percentages were relatively high — some children may be able to detect the brainwashing but this may depend on age, maturity, and past life experiences.

Clawar also indicates some of the motivational factors connected with brainwashing: revenge, jealousy and self-righteousness; fear of losing the child, one’s identity and a sense of history; attempts to maintain the marital relationship through conflict; a desire for emotional and proprietary control and dominance.²⁷ Underlying each of these motivations is an emotional need. This is further supported by the fact that the brainwashing becomes more intense when “situational factors intervene such as changes in location, holidays, court work, or prosperity of the target parent.”²⁸ Also, the hostility of the alienating parent never seems to be proportional to the seriousness of the alienated parent’s actions.²⁹ Related to this idea of “emotional need” is the proposition that brainwashing could be the result of a mental disorder.

The alienating parent may have a mental disorder which is caused by the emotional turmoil of divorce or the disorder could be inherent — distinguishing between the two is difficult. However, data from the Custody Project at the University of Toronto shows that in 72 percent of the families, at least one parent was psychiatrically disturbed.³⁰ It has also been found that the presence of a mental disorder is connected to the propagation of a false sex abuse accusation.³¹ Nonetheless, there are no straightforward answers despite apparent linkages. This is evidenced in *Lapierre v. Lapierre* (1991), 34 R.F.L. 129 at 145:

I do not know if this action on her part was the act of a person filled with hatred, **or** if it was an act of gross bad judgment, **or** if this evidence was the evidence of a mentally ill person...

There is also the added confusion of whether pre-divorce influences on children can be separated from the impact of brainwashing:

should be examined in conjunction with 8A.

²⁷ Clawar, Stanley S., et al. *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 36-67.

²⁸ *Ibid.* at 166.

²⁹ Goldwater, A. *Developpements recents en droit familial*. “Le syndrome d’alienation parentale.” Quebec: Les Editions Yvon Blais, 1991 at 125.

³⁰ Parry, Ruth, et al. *Custody Disputes: Evaluation and Intervention*. Massachusetts: D.C. Heath and Company, 1986 at 118.

³¹ Green, Arthur. “True and False Allegations of Sexual Abuse in Child Custody Disputes.” *Journal of the American Academy of Child Psychiatry*, 1986, Vol. 25(4) at 452.

There are now a number of studies which show that long before parents separate, there are differences in the behaviour of their children as compared with those in other marriages where a divorce does not take place.³²

These studies are prospective — before it is known there will be a divorce — so they are not biased by hindsight. Children with a deceased parent do not seem to be as adversely affected as those with separated or divorced parents. But there is variation among individual children.³³ Thus, no definitive conclusions can be drawn although the effects on children — of either the brainwashing or the divorce or separation itself — are definite. P.A.S. children exhibit the same kinds of symptoms as abused children — depression, acting-out behaviours, fear of social situations. Basically, they are maladjusted.

There seems to be an overlap between several of these theories. For instance, minus a pre-existing mental disorder, can **all** of the “theories” be partially explained as being a reaction to the legal process?

There is ample reason to believe that much of the anger and disarray that accompany divorces are not so much a product of grief over the failed relationship as they are the result of what spouses **perceive** the other doing as part of the legal process.³⁴

Since the legal process is both adversarial and often procedurally convoluted, there are several detrimental reactions which parties to a divorce may experience. The justice system is often wrongly idealized:

Children often invest hope in the judicial process; they fantasize that the judge can put a stop to the brainwashing.³⁵

Clients [parents] become ever more dependent on the judgments made by their lawyers and less able to take initiative on their own.³⁶

This relates to the decision-oriented nature of the legal process — even in custody disputes there is an implicit attempt to distinguish guilt from innocence.³⁷ As a result, the positions of the parties

³² Elliot, Jane, *et al.* “Parental Divorce and the Life Chances of Children.” *Family Law*, November 1991, at 481.

³³ *Ibid.* at 483.

³⁴ Margulies, Sam, *et al.* “Litigation, Mediation and the Psychology of Divorce.” *The Journal of Psychiatry & Law*, Winter 1992, Vol. 20 at 496.

³⁵ Clawar, Stanley S., *et al.* *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 169.

³⁶ Margulies, Sam, *et al.* “Litigation, Mediation and the Psychology of Divorce.” *The Journal of Psychiatry & Law*, Winter 1992, Vol. 20 at 498.

³⁷ In theory, the fault provisions of family law legislation have been abolished. However, in practice, it

harden to the point where the truth becomes no more than a paradigm for courtroom success. But what about the fact that between 97 to 99 percent of all divorces are settled prior to trial.³⁸ Does this not obviate some of the negativity associated with the adversarial process?

Part of the **routine** is the use of the impending trial to generate anxiety in the clients that **causes** them to make the concessions necessary to compromise and settle the case.³⁹

This suggests that even if a case is settled, it is generally a forced settlement — out of fear that a trial would be “unsuccessful.” But what is success? According to Margulies, a successful divorce is one in which “all family members are thriving five years **after** the divorce.”⁴⁰ However, this definition is not obvious to most lawyers or clients — they want immediate success. Due to this mind-set, it is not surprising that parents resort to brainwashing — it becomes just another “legal” tactic.

Legal Implications

Gardner believes that the more recent judicial preference for joint custody has contributed to P.A.S.’s prevalence: the alienating parent fears either that shared parenting will be too difficult **or** that joint custody will keep past conflicts alive. The latter point is paradoxical since brainwashing — as a solution to parental fear — does not prevent conflicts, it merely produces new ones. Nevertheless, the answer is not to return to a sole custody system — children need both parents — but for the court to recognize P.A.S. Other than in Quebec, the Canadian legal system has not explicitly recognized an identifiable syndrome such as P.A.S. An article in the *Montreal Gazette* (November 30, 1992) entitled “Dirty Tricks penalized in Custody Battles: Courts frown on parents who turn kids against spouses” indicates how the legal system in Quebec is aware of the severe implications of P.A.S. for children. In *R.M. v. B. R.* [Unreported, 1994] Quebec C.A., the court made three important pronouncements regarding P.A.S.: (1) P.A.S. is neither purely objective and scientific nor purely legal; (2) the court must examine the parent’s conduct in the context of the child’s interest; and (3) expert evidence on P.A.S. should be given extensive weight. It is also significant that most of the Quebec P.A.S. cases went to the Court of Appeal.⁴¹ This emphasizes the initial “doubt” surrounding the validity of P.A.S. Nonetheless, the penalty imposed upon alienating parents has been severe — loss of custody. It seems as though Quebec children’s-rights advocates have been the main source of getting P.A.S. recognized in Quebec. As well, in Sherbrooke, Quebec there is a group called *PAIN* — Parental Alienation Information Network.

seems that blame is indirectly being apportioned.

³⁸ Margulies, Sam, *et al.* “Litigation, Mediation and the Psychology of Divorce.” *The Journal of Psychiatry & Law*, Winter 1992, Vol. 20 at 494.

³⁹ *Ibid.* at 495.

⁴⁰ *Ibid.* at 486.

⁴¹ Other cases with *ratios* based on P.A.S. — all from the Quebec C.A.: *L.C. v. P. E. C.* [Unreported, 1993]; *T.E.G. v. M.W.* [Unreported, 1990]; *E.H. v. L.V.* [Unreported, 1992]; *D.L. v. F.N.* [Unreported, 1991].

The *ACAB* group in St. John's, Newfoundland seems to be following this model, though on a lesser scale.

Nonetheless, there have been some advances in the Common Law provinces. In *Rutherford v. Rutherford* (1986), 4 R.F.L. (3d) at 459 the court did show insight into the rationale underlying P.A.S.:

The process [of brainwashing] may be so subtle and so slow that it escapes notice until too late...I hope the parties will take a step back and examine their own actions and motives rather than simply the actions and motives they perceive in the other...

Other courts have taken different attitudes. Some courts have simply labelled a parent's brainwashing behaviour as peculiar. "This foolish man did so much in such a diabolical fashion that it all becomes almost unbelievable."⁴² Other courts seem to be making excuses for a parent's behaviour: "...neither party is without imperfections."⁴³ In *Humphries v. Humphries* (1986), 59 Nfld. & P.E.I.R. 1 at 6 there was 'a sense of futility:

I cannot by order change Mrs. H.'s attitude nor has time. I cannot by order prevent her from communicating in many indirect ways the negative feeling she has about Mr. Humphries to her daughter. I conclude that **I must sacrifice Rhiannon's long term gain from access to her father to her current emotional health.**

Instead, the judge is sacrificing Rhiannon to the mental tortures imposed by Mrs. H.'s brainwashing. *Lapierre v. Lapierre* (1991), 34 R.F.L. 129 at 156 similarly held: "I am not here to solve the problems of P., however caused. I am here to stand as *parens patriae* to the children." Though it is positive that the court emphasized the child's interests, the child's interests will not be adequately addressed as long as the court fails to address P.A.S.

At times, the courts appear to be so innovative that the real issue - the brainwashing -is either ignored or treated as a secondary problem which will somehow resolve itself:

...there will be less reason for conflict between their parents [if decisions regarding visitations are left to the children]. A great deal of the **trouble** in the past has been **caused by the rigid timetable**...I have more confidence in them to behave reasonably than I have in their parents...⁴⁴

Similarly, the courts turn away from P.A.S. for it does not seem to fit conveniently into a legal framework:

⁴² *Thatcher v. Thatcher* (1980), 16 R.F.L. (2d) 263.

⁴³ *Lapierre v. Lapierre* (1991), 34 R.F.L. 129.

⁴⁴ *Metz v. Metz* (1991), 34 R.F.L. 255.

While there is no denying that courts have a difficult job at best, on balance it would appear that the prevailing tendency has been toward delaying judgment in the hope that the problem will go away, solve itself, or at the very least prove that no judgment is preferable to a wrong judgment.⁴⁵

But the role of the court in cases of P.A.S. must go beyond simply determining **who** gets custody and **when**. P.A.S. must be given direct consideration. Judges must not only specifically refer to it in their decisions — P.A.S. should be the basis for a major portion of their *ratio*:

...the precedent of clear, forceful judgment may deter some parents from beginning the alienation of their children.⁴⁶

If parents who engage in P.A.S. know that **aware** judges may give custody to the innocent parent, and perhaps even apply sanctions against parents who use a child to prevent the other parent's access to the child, the P.A.S., which is itself a form of child abuse, may suffer a fatal and well-deserved setback.⁴⁷

Currently, however, this is not the trend. In fact, the judge in *Humphries v. Humphries* (1986), 59 Nfld. & P.E.I.R. 1 at 5 would not order access “merely to ensure that intransigent behaviour in other parents is discouraged.” It is not surprising that deterrence is not a priority given that the seriousness of P.A.S. has not been judicially recognized.

In the United States, the courts are taking more steps towards acknowledging P.A.S.⁴⁸ In *Laurel Schutz v. Richard Schutz* (1985), Judge Feder used strong, though somewhat metaphorical, language regarding P.A.S.:

The court has no doubt that the cause of the blind, brainwashed, bigoted, belligerence of the children toward the father **grew from the soil nurtured, watered and tilled by the mother**. The court is thoroughly convinced that the mother breached every **duty** she owed as the custodial parent to the non-custodial parent of instilling love, respect and feeling in the children for their father. Worse,

⁴⁵ Cartwright, Glenn F. “Expanding the Parameters of Parental Alienation Syndrome.” *The American Journal of Family Therapy*, Fall 1993, Vol. 21(3) at 211.

⁴⁶ *Ibid.* at 211.

⁴⁷ Levy, D. “Review of Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals.” *American Journal of Family Therapy*, 1992, Vol. 20(3) at 277.

⁴⁸ “There are cases in the states of Louisiana, Missouri, Pennsylvania, Illinois, North Carolina, Iowa, and California where judges have held that a parent cannot poison the mind of a child and that it is **improper** and **illegal** for one parent to alienate the child against the other parent.” However, it must be remembered that this is **not** the case in **all** the states and its applicability as a precedent would seem to be limited to cases which are highly similar to those already decided. (Palmer, Nancy R. “Legal Recognition of the Parental Alienation Syndrome.” *The American Journal of Family Therapy*, 1988, Vol. 16(4) at 363).

she slowly dripped poison into the minds of these children, **maybe even beyond the power of this court to find the antidote.**⁴⁹

Judge Feder's emphasis on a parent's "duty" is significant. From this perspective, P.A.S. is not just misbehaviour — it is the breach of a legal duty. By placing P.A.S. in a legal context, the American courts appear to have generated some sort of respect for P.A.S.

This is only a first step, however — the legal system must interface with the field of psychiatry and related fields so that conflicting assumptions and practices can be reconciled. Otherwise, the *ratio* of the dissent in *Schutz* or the Canadian ambivalence will continue to prevail:

Judge Hendry's opinion [dissent in *Schutz*] was that the trial court's order went beyond the mother's **legal duty** to encourage legal visitation by requiring her to express opinions she does not hold and thus infringing on her rights of free speech.⁵⁰

It is paradoxical that the court speaks of a violation of the parent's rights when the child's rights are being equally affected. This kind of judgment makes P.A.S. seem like a figment of the imagination. The judge appears to be condoning brainwashing by framing it as a "right of free speech." Though this is an extreme example of judicial ignorance, it is not far from the more common judicial mistakes regarding P.A.S. In fact, reducing P.A.S. to pure legality — as in the majority in *Schutz* — is not ideal. The focus must **not** be on pure legality.

In general, the legal system appears to de-emphasize the distinction between physical access and social-psychological access — permission to love and identify with the other parent. Even when the court does highlight this distinction, it does not place it directly in the context of P.A.S. For instance, in *Smith v. Smith* (1991), 34 R.F.L. 367 at 369 the court referred to the "psychological safety of the children" and that the parents "**manipulated** the children to the point where they constantly live on **an emotional roller-coaster.**" Once again, the court uses metaphors instead of applying P.A.S.

Any argument that the law is normative should not dissuade proponents of P.A.S.:

... 'normative' in law seems to mean very little other than a specific preference, often in turn based on individualistic value judgments.⁵¹

Essentially, judicial interpretation of the law seems to be given priority over judicial interpretation of the facts in conjunction with informational authority on P.A.S. from the social sciences.

⁴⁹ Palmer, Nancy R. "Legal Recognition of the Parental Alienation Syndrome." *The American Journal of Family Therapy*, 1988, Vol. 16(4) at 362.

⁵⁰ *Ibid.* at 362.

⁵¹ Saunders, Richard T. "Some Ethical and Legal Features of Child Custody Disputes: A Case Illustration and Applications." *Psychotherapy*, Spring 1993, Vol. 30(1) at 52.

Consequently, the court seems to be hiding from the evidentiary problems associated with P.A.S. cases.

Evidentiary Dilemmas

Evidentiary issues relating to custody disputes become even more intricate when P.A.S. enters the scene. Interviews with children may reveal verbal compliance but it must be “evaluated against a behavioral context and with a full understanding of the development of the child’s assertions.”⁵² Brainwashed children tend to mimic what the alienating parent has told them. Even if a parent is not detected as being responsible for the child’s attitudes, parents often engage surrogate programmers as a means to avoid detection - usually members of the extended family, a new spouse or new in-laws.⁵³ In addition, detection itself is not an elementary task. This can be illustrated by specific examples of statements made by brainwashed children accompanied by a detection commentary. It should be noted that there is a great deal of overlap between the various commentaries and that any differences are the product of subtle psychological analysis.⁵⁴ *Table 7* in the appendix indicates that the methods most capable of detection involved either subtle linguistic or factual turns — contradictory statements, inappropriate or unnecessary information, use of indirect statements — **or** highly emotional, personalized tactics — character assault, restrictions on permission to be loved, good parent/bad parent, comparative martyr role, anxiety arousal. Thus, in this context, knowledge and love are no longer parental virtues — they are distorted into brainwashing mechanisms.

Thus, detection is not a matter that can be left solely to a judge or lawyer. In fact, sometimes lawyers act in a collusive nature — whether knowingly or unknowingly: (1) to unscrupulously extend the litigation and their profits rather than resolve the conflict and P.A.S. **or** (2) due to their ignorance of P.A.S., they misinterpret the evidence and their client’s motivations. As well, children often act in a collusive nature as a consequence of being brainwashed:

Children suffering with P.A.S. may present the judge with a convincing picture.. these children have a way of ‘snow balling’ **even experienced** psychologists and psychiatrists.⁵⁵

⁵² Clawar, Stanley S., *et al. Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 165.

⁵³ Alienating parents also use technical or mechanical surrogates — they tape record planned conversations with their children **or** surreptitiously tape record the alienating parent during a telephone conversation and then edit the tape so its context is skewed. For instance, the wife of a member of the *ACAB* group taped their daughter during a bathtime — getting her to say that “Daddy touched me where the washcloth is.” This is atypical parental behaviour. This evidence was assessed by a social worker and given great weight by the court. Alienated parents also try to use tapes to prove their case. Another member saved tapes from his answering machine which had his son crying for his father because of his alienating mother. The court would not allow such tapes into admission.

⁵⁴ *Table 10*, Appendix.

⁵⁵ Gardner, Richard A. *Family Evaluation in Child Custody: Mediation, Arbitration, and Litigation*. New Jersey: Creative Therapeutics, 1989 at 489.

Parents who brainwash also tend to do quite well on the witness stand — they have learned how to manipulate others and colour their behaviours in socially acceptable ways. Another related evidentiary complication pertains to the child’s experiences with previous interviewers:

The greater the number of previous interviews, the greater the likelihood the child’s description will become routinized and will resemble the litany typically provided in early interviews by the child...⁵⁶

[In *Thatcher v. Thatcher* (1980), 16 R.F.L. (2d) 263 at 273, there was evidence] that Regan, already having been seen by four psychiatrists, had become quite experienced and sophisticated in these interviews.

In addition, suggestibility during the interviewing process must be accounted for. It may be difficult to distinguish this suggestibility from the alienating parent’s suggestions.

Another detection hurdle is that many alienating parents use a potpourri of techniques to brainwash which do not fall within any identifiable theory. Evidence of this comes from the interviews with *ACAB* members. One alienating parent used repetition of a single phrase “Daddy wouldn’t let this happen to you [the brainwashing], if he loved you.” Another parent would get the stepfather to beat up the child so that the alienated father would get mad and call the police. Once the police arrived, the alienated father was the one who was arrested for disturbing the peace — putting his character into jeopardy for any future assessments. Another alienating parent tried to get the alienated parent to sign a “contract” — with no lawyer involvement — wherein the alienating parent would ask for no child support or maintenance if the alienated parent would never have anything to do with the child. It is clear that these techniques would not be easily recognized unless the family was under surveillance almost twenty-four hours a day.

There are possible methods to overcome these evidentiary twists. If kept on the witness stand for an extra long period of time, the alienating parent may eventually make inconsistent statements which will reveal their true actions and ultimate goals.⁵⁷ Similarly, special cross-examination or interviewing techniques may be used. For instance, Gardner has provided a series of explicit questions for judges to use when dealing with children.⁵⁸ Whether such direct questions will produce genuine answers may depend on the degree of brainwashing present. A more effective method may be the use of corroborating evidence:

[If the parent is] aware that the evaluator would have other sources of information regarding the child — from the other parent, from clinical interviews with the

⁵⁶ Gardner, Richard A. “Differentiating Between True and False Sex-Abuse Accusations in Child-Custody Disputes.” *Journal of Divorce & Remarriage*, 1994, Vol.21(3/4) at 7-8.

⁵⁷ Clawar, Stanley S., et al. *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 171. *Viva voce* testimony by both parents was suggested in *Rutherford v. Rutherford* (1986), 4 R.F.L. (3d) 457. However, this method is usually used where there is a **lack** of evidence though it may clarify contradictory evidence.

⁵⁸ *Table 11, Appendix.*

children, and from outside agencies, such as schools, pediatricians, and protective services — [this may limit] an inclination to distort.⁵⁹

However, the effectiveness of this method may depend on the strength of the alienating parent's conviction. But in *Radford v. Cassiano*, [Unreported, 1995] Ont. C.J. - Prov. Div., the presence of a psychological assessment resulted in the alienating parent withdrawing her claim to terminate access after the third day of trial.

Specific methods have been illustrated in various cases. In *W. (K.M.) v. W. (D.D.)*, [Unreported, 1993] Ont. C.J. - Prov. Div., the court included questions of an adverse nature and avoided asking leading questions.⁶⁰ Lawyers must be careful not to use strong language without having any real foundation for it — without making any reference to P.A.S. This happened in *R. v. R.W.* [Unreported, 1993] Ont. C.J. - Gen. Div., wherein the judge stated:

The defence is inviting this court to believe that **for four days** Mrs. W. would have drilled these lies into the child's mind.

If counsel had explained that P.A.S. involves brainwashing that extends beyond four days, perhaps the judge would not have misconstrued counsel's attempt at portraying the truth as an attempt to attack the other party's character or credibility. *Lacaille v. Manger*, [Unreported, 1994] Ont. C.J. - Prov. Div., stresses that the court must make allowances for the fact that children:

...do not necessarily see the world as adults do...a flaw, such as a contradiction, in a child's testimony should not be given the same effect as a similar flaw in the testimony of an adult.

This makes detecting P.A.S. even less straightforward — is the flaw an indicator of P.A.S. or merely the “slip” of a child probably on the witness stand for the first time?

Two other “methods” are based on the personal interests of children and their parents, respectively. Eighty percent of brainwashed children want the process detected and terminated; 70 percent felt relief when it was discovered. Consequently, 90 percent of these children cooperate in investigations either covertly or overtly. Some children even use secret language to inform others: “Once she starts talking about my dad, she can't seem to stop.”⁶¹ Some alienated parents have taken a more direct approach to counter P.A.S. *MERGE* [Movement for the Establishment of Real Gender Equality] suggests codifying the amount of access to which a father is entitled.⁶² In this way, P.A.S. would not interfere with a father's natural right to have contact with his children. Feminist movements have volleyed for a similar right for alienated mothers.

⁵⁹ Ash, Peter, *et al.* “Biased Reporting by Parents Undergoing Child Custody Evaluations.” *Journal of the American Academy of Child Adolescent Psychiatry*, September 1991, Vol. 30(5) at 837.

⁶⁰ Bala, Nicholas. *ICPA Update Vol 5: Child Abuse and the Law* at 57.

⁶¹ Clawar, Stanley S., *et al.* *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 165.

⁶² MacDonald, Peter, *et al.* “Suffer the Children.” *Western Report*, February 5, 1990.

Given the psychological elements of P.A.S., expert evidence is quite essential to its accurate detection. However, such evidence creates extensive controversy. While the court does encourage the admission of all relevant evidence, expert evidence regarding custody dispute issues has not been held to be definitive:

...psychologists should be clear that their job is to assist in gathering information, not to determine the result of the case...clarification of roles is important...experts should not offer social and moral judgments in the **guise** of scientific solutions.⁶³

In *R. v. R. W.*, [Unreported, 1993] Ont. C.J. - Gen. Div., the trial judge simply rejected the defence's theory that the allegations of sexual abuse were contrived "without relating his findings to the evidence." To make matters worse, he placed the **onus** upon the alienated parent to satisfy the court that the other parent brainwashed the child to believe that the alienated parent was guilty of sexual abuse. However, *Lapierre v. Lapierre* (1991), 34 R.F.L. 129 at 138 basically held that expert evidence has validity provided it does not overstep its function:

[Expert evidence is] to be just that, assistance. It is for the court, and the court alone, to determine the matter. Yet, were it not for those **professional glimpses through wispy veils, I would** have, without hesitation whatsoever, labelled P. as an out and out liar.

Nevertheless, "blind adherence to diagnostic criteria could be as damaging as ignoring these criteria."⁶⁴ For instance, psychological expertise sometimes becomes psycho-legal expertise wherein

...the psychologist [is] cast as the hired gun engaged to put forth to the court the negative opinion of the contesting parent under the **guise** of an expert.⁶⁵

It is interesting that expert evidence is questioned because it might be a "guise" when, in fact, the evidence is being tendered to disclose the guise of the alienating parent. Nonetheless, there are situations where expert evidence would not advance a correct assessment of P.A.S. In *W. (K.M.) v. W. (D.D.)*, [Unreported, 1993] Ont. C.J. - Prov. Div., the judge severely criticized a psychologist's assessment and preferred a Children's Aid Society worker's opinion.⁶⁶ The judge described it as a "blitzkrieg assessment" conducted in 6 hours on one day." Dr. Albin even admitted that

⁶³ McAnulty, Richard D. "Expert Psychological Testimony in Cases of Alleged Child Sexual Abuse." *Archives of Sexual Behaviour*, 1993, Vol. 22(4) at 320.

⁶⁴ *Ibid.* at 317.

⁶⁵ Goldwater, A. *Developpements recents en droit familial*. "Le syndrome d'alienation parentale." Quebec: Les Editions Yvon Blais, 1991 at 123.

⁶⁶ This social worker followed the protocol of the Institute for the Prevention of Child Abuse. "While not accepted as an expert witness the judge gave her testimony great weight noting that she had 14 years experience" (Bala, Nicholas. *ICPA Update Vol. 5: Child Abuse and the Law* at 56-57). However, her evidence would not necessarily be flawless.

...he was selective in the information contained in his report.. He disavowed the evidence of other investigators and set himself up as the only viable assessor...

An additional consideration is that no expert is perfect — even the best trained experts will not always reach conclusions of absolute certainty.⁶⁷

The problem is that the majority of judges do not take the less restrictive view found in *Lapierre v. Lapierre* (1991), 34 R.F.L. 129. *Nanji v. Nanji* (1987), 8 R.F.L. (3d) 221 held the court is not to "rubber stamp expert opinion." In itself this is not detrimental but, in practice, judges go further than simply limiting the weight given to expert evidence. They equate their discretion with knowledge of the facts and equate knowledge of the facts with an intimate understanding of the family dynamics. But how can a judge **know and understand** all of the substantial incidents which have accumulated during critical stages of a child's life? In *Thatcher v. Thatcher* (1980), 16 R.F.L. (2d) 263 at 271 the judge perceived social status as being synonymous with good parenting:

...one expects from a member of the legislature a greater respect for the **law** than has been demonstrated by him throughout this conflict. One would expect a father, particularly one of such eminence, to show by example to his sons that the **law** is to be obeyed and the truth told.

Despite the fact that this reasoning did prevent Mr. Thatcher from getting access,

P.A.S. should have been applied instead. But P.A.S. is neither a legal term nor does it fall within legal precedent. This should not be a determining factor. In *Martiniuk V. Martiniuk* (1978), 2 R.F.L. (2d) 39 at 47 Hughes J. explained the process behind his reasoning:

No book of knowledge contains clear-cut answers as to whether I have reached a correct or incorrect decision. Like so many decisions that have to be made in matrimonial matters, **knowledge of the law**, limited as it may be, is of a **secondary nature** and has played little part in the decision arrived at.

I cling to no precedent nor authoritative text as supporting the result I have arrived at. In deciding this problem, it has been a matter, after weighing and considering all of the evidence, of drawing on such **experience, reason, and common sense** that I have at my command, admittedly **limited in** each instance.

I am mindful that in light of the **evidence** of Dr. Shepel and his supporting brief that perhaps there is some risk involved in deciding as I have. On balance, I have concluded that **cannot deter** me from ordering as I feel I must do, and, of course, **responsibility** for the decision must rest with me.

⁶⁷ Green, Arthur. "True and False Allegations of Sexual Abuse in Child Custody Disputes." *Journal of the American Academy of Child Psychiatry*, 1986, Vol. 25(4) at 456.

Though Hughes J. takes responsibility for his decision and makes legal knowledge subservient to common sense and experience, he does not mention P.A.S. Further, it is unlikely that his experiences — being “admittedly limited” — would include P.A.S.

As long as this cycle continues, P.A.S. will remain an ominous term which seems to have no reality outside a social science textbook. This cycle has another negative implication for P.A.S. progress:

...losing parties in a custody or visitation question have a **natural, vested interest** in contesting the findings of a psychologist. Because trial courts are ordinarily given wide latitude in making custody determinations, complaints regarding the professional behaviour of practitioners may be one of the few avenues open for appeal to a litigant who has lost an opening legal round over custody.⁶⁸

If P.A.S. has its foundations in psychology and psychological testimony is either ignored, devalued, or openly criticized, then it would seem that P.A.S. has little chance of survival - let alone initial recognition.

Solutions

“The key to the solution usually lies **within the child.**”⁶⁹ However, as illustrated by the evidentiary dilemmas, the child’s true mental state is often inaccessible. As well, often the brainwashing does not have to continue — eventually, the child internalizes the alienating parent’s thoughts and opinions. In the absence of the brainwashing, P.A.S. may appear to be eradicated when it has actually become a permanent state of mind. Thus, as stated above, the child must be the focus of any solution. Gardner’s radical treatment — to be used in extreme cases of P.A.S. — seems to reflect this reality. The treatment involves:

...forcibly removing the child from the custody of the [alienating] parent and placing him or her with the ‘hated’ other parent...with **supervised** access reinstated gradually.⁷⁰

⁶⁸ Saunders, Richard T. “Some Ethical and Legal Features of Child Custody Disputes: A Case Illustration and Applications.” *Psychotherapy*, Spring 1993, Vol. 30(1) at 50-51.

⁶⁹ Green, Arthur. “True and False Allegations of Sexual Abuse in Child Custody Disputes.” *Journal of the American Academy of Child Psychiatry*, 1986, Vol. 25(4) at 449.

⁷⁰ Johnston, Janet. *Non-Residential Parenting: New Vistas in Family Living* California: Sage, 1993 at 113. This is the solution for severe and moderate P.A.S. In mild P.A.S., “the symptoms in both the alienating parent and children are likely to disappear (most often dramatically) as soon as the court makes a final decision that the children shall remain permanently with the alienating parent. From that point on the symptoms serve no purpose and can be allowed to evaporate.” Though Gardner suggests that radical intervention is not necessary in mild cases, is it not possible that a parent who employs **any kind of brainwashing** would **not** be the best role model even though they have discontinued the alienation once they achieved their goal of custody.

Regarding the supervised access, Catherine Foster indicates that court budgets only allow for limited super-

But when P.A.S. is placed in a legal context — either in the courtroom or settlement proceedings — Gardner’s intervention has resulted in

...the major portion of the blame for the problem being placed upon the parent who is believed to fuel the child’s alienation. That is, **less attention is being paid to what the child brings to the situation**, whereas the hated parent is viewed entirely as the victim.⁷¹

Gardner’s rationale is that the degree of alienation is directly proportional to the time spent alienating. Thus, removal of the child from the alienator should stop the alienation — but this does not mean that the alienating effects are automatically eliminated. For the most part, however, the courts seem to have moved in Gardner’s direction. In *Martiniuk v. Martiniuk* (1978), 2 R.F.L. (2d) 39 at the court held that

To deny the father his access rights, given the conduct of the mother and her common law husband, would be tantamount to allowing the parties in error to ‘beat the system.’

In *Herbeniuk v. Herbeniuk* (1985), 44 Sask. R. 52 at 60 a similar approach was taken:

I am not, however, satisfied that the expressed concerns justify a complete denial of access. This, in my view, would merely serve to punish the children for their father’s indiscretions.

Though these cases do not reflect a willingness to reverse custody — as Gardner suggests — the emphasis on not denying access to the alienated parent appears to be a less radical version of the “radical intervention.” *Rutherford v. Rutherford* (1986), 4 R.R.L. (3d) at 458-459, however, reveals that the more likely — and disturbing — scenario is that

...access will be terminated if it proves sufficiently unsettling to the child, even where the problem may be laid squarely at the feet of the custodial parent.

This is an unfortunate product of being unaware of P.A.S.

vised access periods — not enough time for real changes to occur and parents are on their best behaviour during supervision.

Regarding the gradual reinstatement of the access, Clawar’s research demonstrates that “generally this is not necessary and only reinforces the message that the target parent is to be feared” (Clawar, Stanley S., *et al. Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 168).

⁷¹ Johnston, Janet. *Non-Residential Parenting: New Vistas in Family Living*. California: Sage, 1993 at 113.

The Family Systems framework seems to be more preventative than Gardner's intervention solution. This framework is premised on the notion that the family is a dynamic system which requires cohesion and continuity even after a divorce or separation. Its supporters contend that

Through participating in the decision-making process, members of the family are more likely to be supportive of the child custody arrangement — [hence, less conflict and less brainwashing].⁷²

Psychological interventions can also be preventative if instigated early enough. According to Roger Ulrich,

Awareness of our own needs and attitudes is our most effective instrument for maintaining our own integrity and **control** over our own reactions.⁷³

Alienating parents lack such insight into their behaviour. Thus, eradicating the alienation must also involve environmental modifications and knowledge of the actual brainwashing techniques, the motives behind them and their effects. Consequently,

Talk therapy with no focus, no measurements, and no time line is often a waste of time in [brainwashing] cases...it may be counterproductive because nothing may be discovered when, in fact, there are real social causes of the problems. Also, surfacing issues without an awareness of the causal agents may lead to serious mistakes in diagnosis and recommendations to parents and/or the courts.⁷⁴

Attribution therapy has also been recommended for P.A.S. situations. If the alienating parent can learn how to make interactive attributions — not blaming a single party or incident — regarding the reasons for the divorce, then it is less likely that they would brainwash.⁷⁵ However, even this form of therapy may not be completely effective:

It is still unclear whether interactive explanations for divorce lead to better post-divorce adjustment or whether people who make interactive attributions in general are just happier, more confident, and more active people, or whether both are true. [Perhaps the outcomes are personality-oriented].⁷⁶

⁷² Wall, Jack C., *et al.* "An Integrated Approach to Child Custody Evaluation: Utilizing the "Best Interest" of the Child and Family Systems Frameworks." *Journal of Divorce & Remarriage*, 1994, Vol.21(3/4) at 47.

⁷³ Ulrich, Roger, *et al.* *Control of Human Behaviour: Expanding the Behavioral Laboratory*. Illinois:Scott, Foresman and Co., 1966 at 320.

⁷⁴ Clawar, Stanley S., *et al.* *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 169.

⁷⁵ Brainwashing is the offspring of being too self-focused rather than examining the overall context of the situation — past, present and future.

⁷⁶ Langer, Ellen J. *The Psychology of Control*. California: Sage, 1993 at 194.

To further limit the effectiveness of psychological interventions, approximately 15 percent of children felt that mental health experts could not help their situation:

So what can anybody do? This has been going on for years. We've seen more therapists than I can count. Nothing against you, but if you don't agree with my mom [or dad], she'll [or he'll] try to get you fired too!⁷⁷

Thus, even court ordered changes in therapists may be futile for the alienating parent will simply seek out another therapist who supports his or her position. On rare occasions, the court acts as a kind of therapist. This was evident in *Metz v. Metz* (1991), 34 R.F.L. 255 at 260:

...the parents must earn their children's affections rather than depend upon the court to order the children to associate with them at certain times.

Nanji v. Nanji (1987), 8 R.F.L. (3d) 221 at 224 corresponds with *Metz*:

If I have misjudged Mr. Nanji or if there is a change of heart, the appropriate adjustment can be made. I am even hopeful that the parties might work something out between themselves.

Basically, court orders cannot be a substitute for the facilitation of an understanding between the parties — it is the latter process which will eventually break the P.A.S. impasse. However, this attitude does not frequent many *ratios* and even *Metz* and *Nanji* do not incorporate P.A.S. into their reasoning.

Nonetheless, the court is usually guided by the Best Interests Test. While this test is theoretically sound, it is not the best means to deal with P.A.S.⁷⁸ Many courts have held that “if [the] attitude persists against the non-custodial parent, [then] the child should stay with the custodial [alienating] parent.”⁷⁹ However, this is a superficial application of the Best Interests Test for the child is being forced to stay with an abusive parent simply because brainwashing is not currently within the court's definition of abuse. For instance, assertions about parent-contact preferences must be proven via careful interviewing techniques since 65 percent of children change their assertions immediately when asked the right questions in the right sequence:

⁷⁷ Clawar, Stanley S., et al. *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 171.

⁷⁸ The Best Interests Test has become such a presumptive legal standard that even though the *Divorce Act* lists specific criteria that are to be considered, “functionally the standard is indeed ‘amorphous’” — i.e. subjective (Saunders, Richard T. “Some Ethical and Legal Features of Child Custody Disputes: A Case Illustration and Applications.” *Psychotherapy*, Spring 1993, Vol. 30(1) at 52). Thus, if PAS is not recognized by the legal system nor to a large extent by the mental health system, it will become lost in the shuffle of subjectivity.

⁷⁹ Clawar, Stanley S., et al. *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 164.

Interviewer: If mom said it was okay, would it help you to see dad more often?

Child: She'd never say it, no way.

Interviewer: But if she would?

Child: Yeah, I guess so.⁸⁰

Most alienating parents try to use the Best Interests Test to their own advantage. This is referred to as the Independent Thinker phenomenon — “I want him to see his father [or mother], but if he doesn't want to, I will fight to ensure that **his decision** is respected.”⁸¹

Another discrepancy in the application of the Best Interests Test is that there is no consistency regarding the age-preference connection. In *Lapierre v. Lapierre* (1991), 34 R.F.L. 129 the wishes of children aged seven and ten were not considered determinative. By contrast, a child of eleven in *Metz v. Metz* (1991), 34 R.F.L. 255 had his preferences respected even though it was apparent that a parent may have influenced his choice. *Smith v. Smith* (1991), 34 R.F.L. 367 at 370 takes a more realistic approach than *Metz*:

Unfortunately, Michael is at an age (12) when he is able to make certain decisions for himself, but is not yet free from the influences of others...

Radford v. Cassiano, [Unreported, 1995] Ont. C.J. - Prov. Div. is perhaps the most extreme application of the Best Interests Test and its approach could be quite damaging where P.A.S. is an issue:

...preferences of children of this age (6 and 7 years old) are generally not determinative of the issue, **but** when they are so **strongly held**, apparently arising from their own wishes and being **reasonable** under the circumstances, they should be taken into consideration...⁸²

However, a P.A.S. child will generally have strong views because of the intensity of the brainwashing and these views may appear reasonable because the alienating parent's aim is to convince others that the other parent is bad. Perhaps if the best interests of the child were considered in the home rather than being placed within the strictures of a legal test, then P.A.S. would not even be an issue.

The Custody Project at the Department of Psychiatry (University of Toronto) has attempted to combine the psychiatric and legal approaches. Custody Project involves a direct link between court-initiated referrals and child psychiatrists. However, there must be consent between all family

⁸⁰ *Ibid.* at 168.

⁸¹ Gardner, Richard A. *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals*. New Jersey: Creative Therapeutics, 1992 at 75.

⁸² This is particularly distressing given that *Radford* is a 1995 judgment. The court seems to be focusing so intently on expanding children's "rights" that the implications for P.A.S. are not considered. Hence, children's rights are actually being diminished.

members to receive counselling. As well, court-initiated referrals usually take place after litigation has begun. It is in this regard that Custody Project is most innovative:

[If initiated once the litigation has begun], it was hypothesized that this would be months at least after the emotional crisis of separation. On the basis that intervention might be more effective much earlier in the separation process, the members agreed to take referrals initiated by lawyers in the hope that these would be prior to litigation.⁸³

Perhaps this kind of referral system would help reduce the percentage of brainwashed children who reach the point of no return to less than its current 5 percent.⁸⁴

Given the Custody Project's positive outcomes one would assume that mediation would be effective in P.A.S. situations. However, most P.A.S. cases reactivated after an agreement was reached even if legal sanctions such as the guilty party pays legal and therapy fees were attached. Catherine Foster, a mediator at the Unified Family Court in St. John's, emphasized that mediation is not equal to treatment — it is front-end preventative and, in this sense, it is limited. There are three other reasons why mediation generally fails:

- (1) The 'day' in court serve[s] as an avenue for the programmers and brainwashers to carry on their crusade to demonstrate the 'truth' ...⁸⁵
- (2) ... one of the feuding parties is insincere and has little wish to solve the problem. The reason is that insincerity, conscious or unconscious, is one of the hallmarks of the alienating parent.⁸⁶
- (3) ... the lack of a swift, forceful court judgment is often perceived by the alienator as denoting approval of the alienating behaviour.⁸⁷

Mediation's only advantage regarding P.A.S. is that the brainwashing might be insinuated during the mediation process. This insight may assist therapists, lawyers, or judges in their subsequent assessments.

But are any of these solutions feasible? Though each theory has its flaws, at least each theory is, by its very existence, acknowledging that custody disputes are not clear-cut. Even Gardner's

⁸³ Parry, Ruth S., *et al. Custody Disputes: Evaluation and Intervention*. Massachusetts: D.C. Heath and Company, 1986 at 37-38.

⁸⁴ Clawar, Stanley S., *et al. Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 169.

⁸⁵ *Ibid.* at 171.

⁸⁶ Cartwright, Glenn F. "Expanding the Parameters of Parental Alienation Syndrome." *The American Journal of Family Therapy*, Fall 1993, Vol. 21(3) at 211.

⁸⁷ *Ibid.* at 212.

theory — which explicitly deals with P.A.S. — is not so encompassing and definitive that it can stand on its own. If the virtues of each of the previously mentioned solutions could be unified into a single theory, perhaps P.A.S. could be controlled, if not countered. However, the direct experiences of alienated parents illustrate how few ”solutions“ are actually being implemented.

Interviews with some members of the *ACAB* group underline how the “authorities” appear to be oblivious to finding solutions. They felt that more accountability and less apathy on the part of the police, social services, and the courts is essential. But is this an emotional overreaction or a reaction to a real problem? Would these individuals feel invisible, like non-persons, if they were genuinely receiving help? For instance, Mr. A told of a social worker’s naïveté or deliberate blindness during a home assessment. His daughter was asleep when the social worker came for the visit. But after a brief discussion the mother brought the social worker to the daughter’s room. The daughter immediately showed the worker a doll and how her father touched her. The social worker believed, without doubt, that this was unsolicited. In addition, home assessments are usually conducted over extremely short time periods [1-1/2 to 2 hours] and often the assessor has no real qualifications [in Mr. A.’s case, the assessor only had a Bachelor of Nursing and a Masters of Education - nothing relating to social work or psychology].

As a consequence of like scenarios, many of the *ACAB* members have resorted to representing themselves — at least then they can expose the flaws in such ”evidence“ and raise P.A.S. without having to deal with their lawyer telling them that P.A.S. is fool’s gold. Some members have even proposed solutions:

- (1) Consistent use of the polygraph on the alienating parent and on the brainwashed children.
- (2) Develop a Children’s Law which is a distinct branch of Family Law.
- (3) Place stricter requirements on the content, timing, and enforcement of court orders. For instance, even when sexual abuse charges are dropped, supervised access is maintained for abnormally long periods of time.
- (4) The legal system and the mental health system should not fall into the trap of believing that the child is in a ‘stage’ and will probably change their mind about the alienated parent when they get older. The courts should be more informed about child development theories.

These solutions, if implemented, could bring P.A.S. to the forefront. However, in the absence of legal authority, it is unlikely that the courts will be quick to adopt the recommendations of a support group — there is the risk of group self-interest. Nonetheless, with time, perhaps such groups as *ACAB* will gain more respect from the courts. Maybe then, P.A.S. will gain similar respect.

Conclusions

Whether P.A.S. is a new phenomenon or one which has always been present, it deserves more attention. While there is the danger of placing too much authority in a “syndrome,” there is the even greater risk of allowing innocent children to be victimized in their own homes by their

“caregivers.” Children do not choose that their parents divorce — they are victims of circumstance and if that circumstance results in P.A.S. their plight becomes that much worse. Cartwright expresses this idea eloquently:

We often speak of **preserving family values**, but even disintegrated [divorced] nuclear families have values and rights which must be preserved and respected to prevent further disintegration and total collapse. To do less is to **sacrifice entire generations of children** on the altar of alienation, condemning them’ to **familial maladjustment** and inflicting on them lifelong **parental loss**.⁸⁸

This parallels John Bowlby’s words quoted from *Separation, Anxiety, and Anger* at the outset of the essay.

Underlying all of the theories are three fundamental ideas: (1) brainwashing is a complex product of pain, emotional need, and a desire to “win”; (2) the legal context of divorce intensifies the brainwashing; (3) brainwashing can easily be disguised because it is generally founded on a core of reality. P.A.S. will never become more than a theory, however, if its practical, legal implications are not resolved. P.A.S. must be recognized by the legal system yet, at the same time, it must not be transformed into a legal term. If P.A.S. is to make its way into the courtroom it must be shown the way by lawyers and judges. But, once inside, it has to speak for itself. Once P.A.S. has reached this point, evidentiary dilemmas will be less impenetrable — P.A.S. will be open to discussion which will heighten understanding.

Thus, to search for a solution to P.A.S. is illusory. P.A.S. is multi-faceted in terms of its onset, development, and outcomes. At this point, awareness of the **existence** of P.A.S. should be given optimum importance. Although this awareness may not encourage an immediate awareness in alienating parents, it may eventually create an atmosphere wherein parents will not feel the need to alienate. Perhaps this will happen when the legalities surrounding divorce become less alienating — when the truth is not being sacrificed for “justice” in custody battles. Only then can the parameters of P.A.S. be fully explored. Only then will custody **battles** have a chance of becoming custody **evaluations**.

⁸⁸ *Ibid.* at 214.

APPENDIX

**Sample Description.
Children with Programming/Brainwashing Parents**

Number (N) 700

Age Range of Children Infancy through twenty *years* of age

Source: Clawar, Stanley S., *et al. Children Held Hostage. Dealing with Programmed and Brainwashed Children.* Chicago: American Bar Association, 1991 at 174-180.

TABLE 1
**Social-Class Breakdown Using Income, Education,
and Occupation as Class Indicators**

Class	%	N
Upper-upper	10	70
Middle-upper	10	70
Lower-upper	20	140
Upper-middle	30	210
Middle-middle	20	140
Lower-middle	5	35
Upper-lower	2	14
Middle-lower	2	14
Lower-lower	1	7
Total	100	700

TABLE 2
Occupations of Parents

Occupation	Mothers		Fathers	
	%	N	%	N
Professional	15	105	30	210
Business	25	175	40	280
Skilled	20	140	19	133
Semi-skilled	15	105	5	35
Unskilled	15	105	5	35
Unemployed	10	70	1	7
Total	100	100	100	100

TABLE 3
Family Size, by Number of Children

Range	1-6
Median	2.5

TABLE 4
Sex of Children

	%	N
Female	51	357
Male	49	343
Total	100	100

TABLE 5
Educational Levels of Parents

Level	Mothers		Fathers	
	%	N	%	N
Middle School	1	4	1	7
High School	14	100	10	70
Some College	40	280	20	140
Four-year college (completed)	30	208	40	280
Advanced Study (beyond four years of college)	16	108	29	203
Total	101	700	100	700

TABLE 6
Urban/Suburban Distribution

	%	N
Urban	15	105
Suburban	80	560
Rural	5	35
Total	100	700

TABLE 7
Most Common Detection Factors Present, by Percentage of Cases

Detection Factors	% of Cases
Contradictory statements	70
Inappropriate and unnecessary information	85
Character assault	60
Collusion or one-sided alliance	50
Child as spy or conduit of information	30
Use of indirect statements	70
Restrictions on permission to be loved	90
Unchildlike statements	30
Good parent v. bad parent	55
Comparative -martyr role	80
Fear of contact with other parent	20
Anxiety arousal	60
Cohort in secret-keeping	30
Child as mirror image of programmer	20
Confusion of birth parent's importance	21
Manifestation of guilt	49
Scripted views	45
Unmanageability for no apparent reason	15
Radical changes and dysfunctional behavior manifested in other spheres	44
Nonverbal messages	38
Coaching behavior	28
Brain twirling	15
Children threatens parent	8
Child as parent's best friend	12
Physical survival	10

TABLE 8A
Brainwashing Techniques

- (1) Denial-of-existence syndrome: Never talks about the other parent; desecrate photos of other parent; do not acknowledge child's positive experiences with other parent.
- (2) The 'Who, Me?' syndrome: Parent tries to convince the child that she must be misinterpreting the brainwashing parent — a form of denial.
- (3) Middle-Man syndrome: Speaking to the child about issues that should first have been discussed with the other parent — a form of exclusion.
- (4) Circumstantial syndrome: By manipulating, rearranging, changing and commenting on time, the parent tries to gain dominance in the child's eyes.
- (5) 'I don't know what's wrong with him' syndrome: Create and exaggerate differences between themselves and the other parent in front of the children.
- (6) The Ally syndrome: Sympathy is the key.
- (7) The Morality syndrome: Attack morality of other parent to elevate own morality
- (8) 'Threat of withdrawal of love' syndrome & 'I'm the only one who really loves you' syndrome: self-explanatory.
- (9) 'You're an endangered species' syndrome & Physical Survival syndrome: Judgmental, opinionated, negative commentary about the target parent after the child returns from a visitation.
- (10) Rewriting-reality syndrome: This is basically the intent behind all of the above techniques.

Source: Clawar, Stanley S. *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago: American Bar Association, 1991 at 15-36.

TABLE 8B

Percentage of Parents, by Sex, Using Certain Brainwashing Techniques

Techniques	M	F
1 Denial-of-existence syndrome	5	50
2 The 'Who me?' syndrome		
a. Extended family	12	40
b. Career	2	30
c. Living arrangements and travel	22	60
d. Activities	15	43
e. Associates	25	52
3 Middleman syndrome	20	60
4 Circumstantial syndrome	12	40
5 'I don't know what's wrong with him/her' syndrome	11	40
6 Ally syndrome	16	85
7 Morality syndrome	10	60
8 Threat-of-withdrawal-of-love syndrome	5	42
9 'I'm the only one who really loves you' syndrome	10	60
10 'You're an endangered species' syndrome	15	39
11 Rewriting reality syndrome	20	60
12 Physical survival syndrome	5	4

* Higher for Females, except for Physical survival syndrome (but only a narrow margin).

TABLE 8C
**Percentage of Children Aware of
 Brainwashing Techniques Employed by Parents**

Aware: the children understand that the messages sent were inappropriate attempts to influence their views and behaviors .

Techniques (as in Table 8B)	Awareness	
	Yes	No
1 Denial-of-existence syndrome	10	90
2 The 'Who me?' syndrome		
a. Extended family	5	95
b. Career	4	96
c. Living arrangements and travel	60	40
d. Activities	70	30
e. Associates	75	25
3 Middleman syndrome	86	14
4 Circumstantial syndrome	62	38
5 'I don't know what's wrong with him/her' syndrome	48	52
6 Ally syndrome	30	70
7 Morality syndrome	50	50
8 Threat-of-withdrawal-of-love syndrome	9	91
9 'I'm the only one who really loves you' syndrome	5	95
10 'You're an endangered species' syndrome	4	96
11 Rewriting reality syndrome	5	95
12 Physical survival syndrome	10	90

TABLE 9
Percentage of Parents Who Programme/Brainwash, by Intensity Level

Intensity Level (on average)	%
More than once per day	20
About once per day	20
More than once per week	10
Once per week	10
Occasionally	20
No detection of programming/brainwashing	20

TABLE 10
Detection Techniques & Commentaries

Character assault (with moral overtones):

Evaluator/Therapist/Judge: What do you like about being at Mom's?
 (open-ended and positive question)

Child: Mommy has lots of boyfriends who sleep over. Daddy says she's a whore because the Bible says so.

Commentary: Representative of externally imposed definition with negative moral judgments on the target parent. Note the child did not answer the question — a frequent occurrence for programmed children

Use of indirect statements:

E/T/J: How did this weekend go? Does Mom/Dad have an opinion about the time you spend at Mom's/ Dad's?

Child: When I get home, Mom says things like, 'Too bad you had to go with your dad this weekend — you missed a great ski trip. I bet you only watched TV, as usual.' Mom's right, he's boring.

Commentary: Rather than encouraging a child to enjoy the time spent with a parent, the parent convinces the child that he will experience boredom. He will also be programmed to be thinking about what he's missing, thereby mentally remaining in the mother's home even though he is physically with his father.

Child appears as a mirror image of the programmer:

E/T/J: Why do you think your father is trying so hard to make sure he has more time with you?

Child: Dad doesn't really love me or want me to live with him — he just wants custody to hurt mom.

Commentary: Most children who are aware of their parents' custody conflict do not interpret the legal battles as indicating; that they are not loved or that one parent wants to hurt the other, unless they have been so informed.

Brain Twirling:

E/T/J: On the one hand, you say that the joint custody was good in a lot of ways. On the other hand, you say you don't want it anymore. How come?

Child: I always thought I wanted joint custody (equal time in this case), and it was working in the beginning. But then my dad started so much trouble with Mom, it just isn't worth it anymore.

Commentary: A programmer sends the child confused messages of both support and disdain for the relationship the child is having with the target parent. If both positive and negative messages are sent to the child about the target parent, the child will usually be most influenced by the negative ones. Also, the child needs civility and often creates an alliance with the programmer in an attempt to stop the intrapsychic and social conflict.

Coaching Behavior: E/T/J is at a home visit

Child: [Upon entering her father's home, a four-year-old exclaims this to the evaluators who are present for a home visit]:

E/T/J: How do you know that?

Child: My mommy told me to tell you he did.

Commentary: The repetition of an idea by the programmer is one of the more easily detectable clues. Evaluators often can elicit this programming by asking direct questions, as in this case. However, at other times it is necessary to lead up to the source indirectly. Protectionistic responses by the child include 'I just know, that's all,' or 'It's true.' Pursuing the base of the information — actual observation, parental brainwashing, conjecture, other adults, overhearing a conversation — takes discretion and knowing when to drop a topic and return later. Rapport is often a key element in obtaining full disclosure.

Child threatens parent [reverse situation]:

E/T/J: I heard you say that you wanted to tell the judge certain things about your mom. What's the story?

Child: Yeah, I told my Mom she better do what I want, because my dad told me I should tell him whenever Mom does something wrong, because the judge will punish her.

Commentary: Parents can become the powerless ones in custody conflicts. Children move in to fill the "power vacuum" with the help of a brainwashing parent. The target parent walks on eggshells with the child fearing that any disciplinary measures will be relayed and misinterpreted to the other parent and/or to the court.

TABLE II
**Gardner's Questions for Judges
in Interviewing Children**

1. Describe your mother to me.
2. Describe your father to me.
3. What do you think about your father's family?
4. Does your mother interfere with your visiting your father?
5. Why then don't you want to visit with your father?
6. Does your mother harass you?
7. Does your father harass you?

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