

Judges and the Development of Parental Alienation Syndrome

By David Helleniak

As I defined it in "False Domestic Violence Accusations Can Lead To Parental Alienation Syndrome,"

Parental Alienation Syndrome (PAS) is a pattern of thoughts and behavior that can develop in a child of separated parents where the custodial parent causes the child, through manipulation and access blocking, to unjustifiably fear and/or hate the other parent. PAS is more than brainwashing, in that the child comes to actively participate in the degradation of the target parent, coming up with original (often ludicrous) reasons to fear/hate him or her.



Dr. Richard A. Gardner (1931-2003), who coined the term "Parental Alienation Syndrome" in 1985, believed that judges, rather than impede the development of PAS, often facilitated it. In two important articles written near the end of his life, "Should Courts Order PAS Children to Visit/Reside with the Alienated Parent?: A Follow-up Study" (2001) and "The Judiciary's Role in the Etiology, Symptom Development, and Treatment of the Parental Alienation Syndrome (PAS)" (2002), Gardner drew on his many years of experience with custody litigation to point out, by my count, five problems with the current system.

According to Gardner, one way judges facilitate the development of PAS is through their undue delay in resolving custody disputes.

I have not once seen a speedy trial in the context of a child-custody dispute. I have seen speedy issuance of restraining orders, often without proper collection of evidence.... But I have never seen a speedy decision made in a child-custody dispute. The usual duration of such cases that have come to my attention has been two to three years between the time of the initiation of the dispute and the time of the court's decision. By that time, the children are significantly older and the decision is made on the basis of data that may no longer be relevant. All this works for the alienator, because the more time the alienator has access to the children, the more deeply entrenched will become the PAS campaign of denigration. By the time the children do come to the attention of the court, they will protest vigorously any kind of a court-imposed program that might lead to reconciliation with the alienated parent.

Gardner observed a second way judges facilitate the development of PAS, through their reluctance to change the status quo.

Another problem with the courts is the failure to make decisions that involve significant change in the lives of the children. The orientation is to maintain the status quo. On the one hand, such reluctance may serve well many children because custodial transfer often involves a change in domicile, a change in neighborhood, school, and network of friends. On the other hand, such considerations must be weighed against the special needs of PAS children. If there is to be any hope of their reestablishing a relationship with the targeted parent, PAS children must spend significant time with him (her). They must

have living experiences that will demonstrate that the PAS parent is not noxious and/or dangerous. My experience has been that most judges do not appreciate that the arguments in favor of transfer for PAS children generally outweigh the arguments for maintaining the status quo.

A third way, in Gardner eyes, that judges facilitate the development of PAS is through their unwillingness to impose sanctions on the alienating parent.

Courts will, on occasion, change custody when it recognizes relentless PAS programming. My experience has been, however, that such transfer is uncommon and nothing else is done (other than empty warnings and threats) to discourage or restrict further the relentless programming.... I generally recommend a hierarchy of warnings to the alienating parent, from posting a bond to short-term incarceration. My experience has been that courts are extremely reluctant to even warn alienating parents about such sanctions--let alone implement them. Unfortunately, my experience has also been that even when judges do warn alienating parents that violating court orders places them in contempt of court, and they run the risk of the implementation of one or more of the aforementioned sanctions, nothing happens. Typically, the courts do not follow through with such threats (in the rare cases in which they are made). The alienators know this. In fact, they know this well, and they know that they can violate such court orders with impunity. Accordingly, they ignore the court orders and ignore the warnings of sanctions. I am not saying that courts never impose such sanctions; I am only saying that they rarely do so in my experience and the experiences of colleagues of mine in the field.

Unafraid of consequences, alienating parents

know well how to "work the system." They violate court-ordered visitation schedules, and they know that they can most often do so with impunity. They recognize that the courts are slow, and that time is on their side. The longer they have access to the children, the more deeply entrenched will become their PAS symptoms.

A fourth way judges facilitate the development of PAS, per Gardner, is through their over-reliance on and overconfidence in psychological therapy.

With regard to judge's ordering therapy, there is generally no problem getting judges to follow the recommendation of a mental health professional that an individual be in treatment. This is the in-vogue thing to do, and judges that do not profess a respect for therapy may be considered out of touch with the latest trends. Furthermore, courts are often happy to order therapy, because it shifts somewhat the responsibility for doing something constructive and useful into the hands of another person. Accordingly, ordering therapy can justifiably be viewed as a judicial "cop-out" in many cases. It is a far easier, and even safer course than ordering custodial transfer, and/or various restrictions and even sanctions for the alienating parent. Courts, in their eagerness to order treatment, often make little if any discrimination among therapists. Courts traditionally will order "therapy" without giving any consideration to who the therapist is and whether or not that therapist has any knowledge or

experience working with PAS children. The assumption is often made that any therapist will do and that most therapists know what to do with any patient who is sent their way. PAS children need therapy with a therapist who is knowledgeable about the special techniques necessary for the treatment of PAS children. Because, at this point, there are so few therapists who have this special knowledge, the likelihood of the children receiving proper treatment is very small.

As Gardner further observed,

There is no question that therapy has been oversold to the public and is far less efficient and effective than it is purported to be by most mental health professionals. Judges have often bought into this. I suspect that most judges do not have the respect for therapy that they profess in the courtroom, but it can serve as an ostensible solution to the case. By ordering everyone into therapy, they can make a quick decision and then move on to the next case. Most PAS indoctrinators are not candidates for therapy. To be a proper candidate for meaningful therapy two provisos must be satisfied: 1) the individual has insight into the fact that he (she) has psychiatric problems and 2) the individual is motivated to alleviate these problems. PAS indoctrinators do not generally consider their brainwashing of their children to be a manifestation of a psychiatric problem. They do not recognize that what they are perpetrating is a form of emotional abuse, because poisoning a child against a loving parent is very much a form of emotional abuse. Accordingly, they do not satisfy the first proviso. Furthermore, without insight into the fact that they have a psychiatric problem, they do not have the motivation to change anything--especially in the realm of the PAS indoctrinational process. Accordingly, the second proviso is not satisfied either. Judges do not seem to appreciate that they cannot really order someone into meaningful treatment. They might be able to order somebody to spend some time in a room with a therapist who is naïve enough to take on such a patient, but they cannot order the person to be motivated to change. Furthermore, most people do not follow through with the order anyway, from the recognition that the judge is not going to follow up on it in the immediate future. What happens then is that the PAS indoctrinator continues to program the children, and the PAS becomes more deeply entrenched.

Finally, a fifth way noted by Gardner that judges facilitate the development of PAS is through their refusal to punish perjury.

I have seen alienators consciously and deliberately fabricate on the witness stand and do so year after year. (As mentioned, some litigated custody disputes last for years.) And I am sure that in many such cases the court was aware of the fact that the alienating parent was being deceitful. Yet, I have never seen a case in which a court has in any way punished such a parent for perjuring themselves on the witness stand. I have seen courts punish such perjurers in other ways, such as transferring custody; but I have never seen a court impose a punishment for perjury per se. Accordingly, PAS indoctrinators know well that they can lie on the witness stand with impunity, and they try to get away with as much as they can. They are ever "pushing the limits," ever testing to see how far they can go with their

violations of the court orders. Accordingly, they continue to perjure themselves--often with the full knowledge and support of their attorneys.

In Gardner's experience, cases involving PAS usually end the same way, badly, and judges usually share in the blame for the outcome.

This is the most common sequence, a sequence I have repeatedly seen: The alienator successfully alienates the children. The target parent goes to court (the time gap between the onset of the alienation and the court hearing is often a year). The trial drags on over a few weeks or a few months. The court orders an evaluation (often the evaluator is someone who may know little, if anything, about the PAS). The evaluation takes four-to-five months. Five-to-six months later there is another court hearing, at which point the judge orders therapy for everyone. (And the therapists may know nothing about PAS either.) The alienator does not go, nor does the alienator bring the children. The alienator recognizes that he (she) can do so with impunity. The alienated parent, in desperation, decides to bring the case back to court. By this time another six-to-nine months may have elapsed. Another hearing is scheduled six months to a year later. By this point, in typical cases, the PAS has become even more deeply entrenched in the children's brain circuitry, and the children, by this time, have been alienated for three years or more. Back in court, the judge decides that the original evaluation is too old and orders a new evaluation. Sometimes this may be an update of the earlier one, and sometimes a new evaluator is brought in. In either case, the judge takes the position that any evaluator will do and is not concerned with whether the evaluator has any knowledge at all of the PAS. This takes another six months to a year. The new evaluator recommends more therapy. After the third or fourth round, the children are in their teens, and the judge (by this time the fourth or fifth one) throws up his (her) hands, claiming that there is nothing that can be done with teenagers. At that point, the children have become permanently alienated, and the judiciary has basically joined forces with the alienating parent in bringing about this all too common tragic result.

Gardner hoped that his articles would "play a role in mobilizing courts to do what is necessary for PAS children, and do it quickly." Hopefully other government officials--including legislators, prosecutors, police officers, child protective services agents, and appellate judges--will also be motivated to help family court judges and each other combat PAS.

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