

# Bringing Sense to Parental Alienation: A Look at the Disputes and the Evidence

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## I. Introduction

A growing number of child custody decisions refer to children who irrationally reject one parent as a result primarily of the negative influence of the other parent. Critics of such decisions form a continuum. The most critical are those who deny the possibility that any child could develop an irrational alienation from a parent. Next are those who acknowledge the existence of irrational alienation but doubt that it is abnormal, and those who believe that alignment with one parent against the other parent is an unfortunate but natural by-product of divorce or a developmentally expected reaction. Further along the continuum are those who believe that irrational alienation exists but is never a product mainly of the favored parent's influence, and those who agree that some parents succeed in undermining their children's relationship with the other parent but object to specific terms that courts and mental health professionals have used to designate the phenomenon, such as brainwashing, parental alienation syndrome (PAS), and parental alienation. At the least critical end of the continuum are those who disagree only about how courts should respond to children's irrational alienation.

This article draws on a wide body of scientific literature to examine disputes about the existence, conceptualization, and treatment of parental alienation. The intent is to illuminate the nature of the major disputes and to provide information to assist attorneys and judges in evaluating the utility of alternative perspectives.

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## II. Can Children Become Pathologically Alienated From a Parent?

### A. Can Alienation From a Parent Ever Be Irrational?

No one disputes the existence of children who become alienated (in the dictionary sense of being estranged) from a parent. At issue is whether such alienation can ever be unreasonable and, if so, whether it can be considered abnormal.

Mental health and legal professionals generally agree that some children whose parents live apart develop extreme animosity toward or fear of one parent that is not reasonable or consistent with the prior history of the child's relationship with the rejected parent. Some parents, though, claim that any child's rejection of a parent is *prima facie* evidence of severe mistreatment by the rejected parent.<sup>1</sup> The position that irrational alienation does not exist essentially means that all rejected parents deserve what they get. They are not victims. They are perpetrators of some type of behavior that warrants their children's fear, hatred, or both. Those who subscribe to this position believe that courts regularly place children in the custody of abusive parents, who have fooled the courts into believing that the children's negative attitudes are the result of the favored parent's influence over the child rather than the rejected parent's mistreatment.<sup>2</sup>

In the early years following the recognition by health care professionals of the prevalence and destructiveness of the physical and sexual abuse of children and the tendency for people to deny the extent of the problem,<sup>3</sup> some psychotherapists and child advocates subscribed to the view that "children never lie" about parental mistreatment and that "where there's smoke there's fire." Such views were (and still are) expressed in reports and testimony.<sup>4</sup> More common are the predispositions to believe children's

allegations of mistreatment (as opposed to the automatic acceptance of the truth of all such allegations) and to deny the possibility of false accusations. A corollary to these predispositions is concern that scholars who emphasize children's suggestibility and the possibility of inaccurate memories overstate their case and make unwarranted generalizations from empirical research that, by necessity, cannot duplicate the experience of an abused child.<sup>5</sup>

A central problem for those who deny the possibility of irrational alienation is the wealth of highly respected research that has demonstrated that young children are more easily manipulated and suggestible and that it is a mistake for examiners and courts, particularly in the context of a contentious divorce, to assume that allegations of abuse and mistreatment are always likely to be true.<sup>6</sup>

Another problem for those who dispute the existence of irrational alienation is that very often children who reject a formerly loved parent offer trivial reasons for their change of heart.<sup>7</sup> In some cases favored parents accept trivial complaints as sufficient explanation for the child's alienation either because they do not think objectively about their ex-spouse or because they welcome their child's negative attitudes toward the ex-spouse. In other cases a parent or examiner assumes that trivial complaints mask severe mistreatment that the child is too scared, inhibited, or immature to articulate. In some cases this assumption may be warranted, but it does not account for children who, in the absence of any direct contact, develop an aversion to relatives with whom they previously had a loving relationship. Nor does this assumption accord with observations made by custody evaluators and clinicians that some children who refuse contact with a parent are very relaxed and affectionate with that parent as soon as they are outside the presence of the favored parent.

1. This attitude was exemplified by one woman who sought my services. She described herself as a former leading advocate against PAS, had hosted an anti-PAS web site and had lobbied the state legislature, because she had believed that when children reject a parent, they always have good reasons. She changed her stance when her children suddenly and unreasonably refused all contact with her.

2. See, e.g., Sheila Heim et al., *NOW Family Court Report*, (2002), available from California National Organization for Women, 926 J St., Suite 424, Sacramento, CA 95814 [www.canow.org](http://www.canow.org); *MOTHERS OF LOST CHILDREN, SAMPLE OF CALIFORNIA FAMILY LAW CASES: CHILDREN TAKEN AWAY FROM SAFE PARENTS, FORCED TO LIVE WITH ABUSIVE PARENTS* (2000), available from Mothers of Lost Children, P.O. Box 1803, Davis, CA 95617.

3. C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MED. ASSOC. 17, 105-112 (1962).

4. ("[A]n article of faith seems to have arisen which holds that children never lie about something like this"). David M. Mantell, *Clarifying Erroneous Child Sexual Abuse Allegations*, AM. J. ORTHOPSYCHIATRY 618 (1988). See also, T. M. Horner & Melvin Guyer, *Prediction, Prevention, and Clinical Expertise in Child Custody Cases in Which Allegations of Child Sexual Abuse Have Been Made: I. Predictable Rates of Diagnostic Error in Relation to Various*

*Clinical Decision Making Strategies*, 25 FAM. L.Q. 217 (1991); T. M. Horner et al., *Prediction, Prevention, and Clinical Expertise in Child Custody Cases in Which Allegations of Child Sexual Abuse Have Been Made: III. Studies of Expert Opinion Formation*, 26 FAM. L.Q. 141 (1992); Mary Ann Mason, *Expert Testimony Regarding the Characteristics of Sexually Abused Children: A Controversy on Both Sides of the Bench*, in EXPERT WITNESSES IN CHILD ABUSE CASES (Stephen J. Ceci & Helene Hembrooke eds., 1998); S. Milchman, *Professional Controversies in Child Sexual Abuse Assessment*, J. PSYCHIAT. & LAW 49 (Spring 1992).

5. Differing views on the prevalence of false memories are presented in 4 PSYCHOL., PUB. POL., & LAW 931 (1998). See also, John E. B. Myers, *New Era of Skepticism Regarding Children's Credibility*, 1 PSYCHOL., PUB. POL.'Y. & LAW 387 (1995).

6. For an excellent overview of this literature, see STEPHEN J. CECI & MAGGIE BRUCK, *JEOPARDY IN THE COURTROOM: A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY* (1995).

7. Douglas Damall, *Parental Alienation: Not in the Best Interest of the Children*, 75(2) N.D. LAW REV. 323 (1999); RICHARD A. GARDNER, *THE PARENTAL ALIENATION SYNDROME* (2d ed. 1998); Joan B. Kelly & Janet R. Johnston, *The Alienated Child: A Reformulation of Parental Alienation Syndrome*, 39 FAM. CT. REV. 249 (2001); RICHARD A. WARSHAK, *DIVORCE POISON: PROTECTING THE PARENT-CHILD BOND FROM A VINDICTIVE EX* (2002).

### B. Is Irrational Alienation Abnormal?

Despite agreement among professionals that some children whose parents divorce develop an irrational extreme animosity toward, or anxiety about, one parent, not everyone agrees that such alienation should be regarded as pathological, abnormal, or something requiring correction. One author argued that we have no basis for regarding parental alienation as abnormal because we lack normative data from intact and low-conflict divorced families (*i.e.*, we lack research on the prevalence of this phenomenon).<sup>8</sup> In this view irrational alienation from a parent could be considered a normal part of growing up. Professor Carol Bruch has argued that alignment with one parent and alienation from the other is natural for older children whose parents divorce. In this view irrational alienation is no cause for concern because every case of alienation in one study resolved itself before the children reached eighteen, most within one or two years.<sup>9</sup> The position that it might be normal for children to be alienated from their parents is inconsistent with the scientific literature and overlooks research on children's adjustment in divorced families and on healthy parent-child relations in intact families.

The scientific literature on the effects of parent conflict on children documents the harm to children who are caught in the middle of the conflict, as in situations where they are encouraged to side with one parent against the other.<sup>10</sup> Studies of children's attitudes about their parents' divorce consistently reveal that most children long for more time with each parent and wish their parents would reunite.<sup>11</sup> Another study found that three out of four college students who grew up in divorced families thought that the best parenting plans were those that gave children equal time in each parent's home.<sup>12</sup> The desire to be with a divorced parent is normative, not the desire to avoid a parent.

8. Vivienne Roseby, *Symposium on Child Custody Evaluations*, FAM. CONCILIATION CTS. REV. (1997). For an attorney's argument that PAS symptoms are common and normal, see "But I've Seen PAS!" No, You Haven't. <[http://www.gate.net/~liz/liz/parental\\_alienation\\_syndrome.html](http://www.gate.net/~liz/liz/parental_alienation_syndrome.html)> (last visited January 29, 2003).

9. Carol S. Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases*, 35 FAM. L.Q. 527, 533, note 20 (2001) (citing a telephone conversation with Dr. Judith Wallerstein about her non-controlled study of 60 families in Marin County who responded to an offer for free counseling in the early 1970s).

10. Joan Berlin Kelly, *Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research*, 39(8) J. CHILD & ADOL. PSYCHIAT. 963 (2000).

11. JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP* (1980); Richard A. Warshak & John W. Santrock, *The Impact of Divorce in Father-Custody and Mother-Custody Homes: The Child's Perspective*, in CHILDREN AND DIVORCE 29-46 (Lawrence A. Kurdek ed., 1983); William V. Fabricius & Jeff A. Hall, *Young Adults' Perspectives on Divorce: Living Arrangements*, 38 FAM. & CONCILIATION CTS. REV. 446-461 (2000); Rhona Rosen, *Some Crucial Issues Concerning Children of Divorce*, 3 J. DIVORCE 19 (1979).

12. Fabricius & Hall, *supra* note 11.

Regarding intact families, the research is clear that the type of denigration, hatred, and fear characteristic of irrational alienation is foreign to most intact families and would be considered a symptom worthy of treatment.<sup>13</sup> Even in clinical samples with children who are enmeshed with one parent, usually the mother, the children still tolerate their father. I am unaware of any reports in the literature, or any therapeutic programs, in which a parent in an intact family who is not guilty of child abuse or gross mistreatment is advised to cut off contact with the children in response to overtly conflicted parent-child relationships. Instead, articles and books on treatment suggest strategies for helping the family understand and heal ruptured parent-child relationships.<sup>14</sup>

The view that irrational alienation requires no intervention because it resolves itself by age eighteen also is difficult to defend. To begin with, Wallerstein's Marin County study reported that children between the ages of nine and twelve were most likely to align themselves with one parent against the other. This means that some of these cases could have lasted as long as six to nine years. The study reported no measure of the quality of the child's relationship with each parent after the alienation abated, nor of the mental anguish suffered by the alienated parents during the period of estrangement, and the regret, guilt, and remorse suffered by the children when they confronted the irreplaceable lost years of childhood spent with one parent instead of two (and often one extended family instead of two).<sup>15</sup> Dr. Richard Gardner reported 33 cases in which alienation persisted for

13. See D. OFFER ET AL., *THE TEENAGE WORLD: ADOLESCENTS' SELF-IMAGE IN TEN COUNTRIES* (1988) (study of 6000 teenagers in 10 countries that found that most liked their parents); GALLUP ORGANIZATION, *AMERICA'S YOUTH 1977-1988* (1988) (finding that only five percent of U.S. adolescents reported not getting along with their parents at all).

14. See, e.g., JERRY M. LEWIS ET AL., *NO SINGLE THREAD: PSYCHOLOGICAL HEALTH IN FAMILY SYSTEMS* (1976); ROSS W. GREENE, *THE EXPLOSIVE CHILD* (1998); GERALD R. PATTERSON, *LIVING WITH CHILDREN: NEW METHODS FOR PARENTS AND TEACHERS* (1977).

15. My email folder is filled with hundreds of pleas from bereaved parents, about 60% from mothers, whose anguish at being shut out of their children's lives is heart-breaking. The distribution between mothers and fathers is not necessarily representative of the entire population of alienated parents. One bereaved man attributed his wife's suicide to her reactive depression to the hatred her formerly loving children, allegedly under their father's influence, heaped on her. July 3, 2002, posting from "John" to: <[http://www.custodyevaluation.com/parentalalienation/\\_disc103/0000004d.htm](http://www.custodyevaluation.com/parentalalienation/_disc103/0000004d.htm)> (last visited January 29, 2003). Two bereaved sisters wrote to me about the suicide of their brother that they attribute to the rejection of his children allegedly under their mother's influence. As with anecdotal reports of children damaged by court decisions, such emotionally compelling accounts dictate serious attention and caution but should not serve as a basis for blanket policies without further investigation. For an exploratory study on cases involving suicide of an alienated parent, see Deirdre Conway Rand & Randy Rand, *Alienated Children and Target Parents: Factors Affecting Reconciliation in PAS Families*, in preparation. For an exploratory study of the general impact of alienation on a small sample of alienated parents, see Despina Vassiliou & Glen Cartwright, *The Lost Parent's Perspective on Parental Alienation Syndrome*, 29(3) AM. J. FAM. THERAPY 181 (2001).

more than two years, and this accords with the many reports the present author has received of families in which a child's irrational alienation persisted for more than two years, often far beyond the age of 18.<sup>16</sup>

Some of Wallerstein's published work also supports the idea that parental alienation can be long-term. Introducing the term "Medea syndrome" to refer to parents who use their child to exact revenge on their former spouse, Wallerstein wrote, "They exact it by destroying the relationship between the other parent and the child. In so doing, they severely damage and sometimes destroy the child's psyche as well. . . . I have seen a great deal of evidence that Medea-like anger severely injures children at every age."<sup>17</sup> Note the reference to the *destruction*, rather than the temporary *interruption*, of the parent-child relationship. Underscoring this point Wallerstein added:

When one or both parents act the Medea role, children are affected for years to come. Some grow up with warped consciences, having learned how to manipulate people as the result of their parents' behavior. Some grow up with enormous rage, having understood that they were used as weapons. Some grow up guilty, with low self-esteem and recurrent depression . . . .<sup>18</sup>

When viewed in a wider context, the idea that children can develop pathological hatred and fear of a parent seems not at all controversial. It is well-known that children can be, and are, taught to hate and fear other people for no good reason, often based on racial or cultural differences. And it has long been recognized that some children develop irrational aversions to objects and situations; such disturbances are codified in several different diagnoses of anxiety and phobia.<sup>19</sup> There is no reason to assume that parents are exempt from becoming the target of such irrational feelings.

If a child begins to develop racial hatred, many reasonable people would consider this a problem worthy of attention. When children suffer from irrational anxieties that interfere with functioning, we do not ignore the suffering with the hope that eventually the fears will be overcome. We try to alleviate the fears in order to improve the child's current quality of life. Pathologically alienated children cannot experience or share affectionate feelings toward a parent. It would seem that this disturbance warrants at least as much concern as other irrational aversions.

16. Richard A. Gardner, *Should Courts Order PAS Children to Visit/Reside with the Alienated Parent? A Follow-up Study*. 19(3) AM. J. FORENSIC PSYCHOL. 61 (2001).

17. JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, *SECOND CHANCES: MEN, WOMEN, AND CHILDREN A DECADE AFTER DIVORCE* 196 (1989).

18. *Id.*

19. AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM IV* (4th ed. 1994).

### III. Conceptualizing Pathological Parental Alienation

Despite the opposition of some advocacy groups and a few attorneys and mental health professionals, discussions in learned treatises for child custody evaluators are testament to the widespread acceptance among therapists and courts that irrational alienation exists and that it should be considered a severe disturbance of normal functioning.<sup>20</sup> Controversy continues, though, regarding the issues of how to conceptualize the problem, what to call it, how to treat it, and why it has received such widespread acceptance.<sup>21</sup>

The central controversy about the conceptualization of this disturbance concerns the role attributed to one parent in fostering, encouraging, supporting, and accepting the child's irrational aversion toward the other. Wallerstein's description of the Medea syndrome echoes earlier accounts by Reich and Despert that attribute to the behavior of the favored parent primary responsibility for some cases of alienation.<sup>22</sup> Wallerstein and Kelly also emphasized the pernicious contributions of a vindictive parent in their description of children who:

were particularly vulnerable to being swept up into the anger of one parent against the other. They were faithful and valuable battle allies in efforts to hurt the other parent. Not infrequently, they turned on the parent they had loved and been very close to prior to the marital separation.

The most extreme identification with the parent's cause we have called an "alignment," a divorce-specific relationship that occurs when a parent and one or more children join in a vigorous attack on the other parent. *It is the embattled parent, often the one who opposes the divorce in the first place, who initiates and fuels the alignment.* [Emphasis added]<sup>23</sup>

The idea captured in the preceding quotes, that the attack on one parent results from the children joining with the other parent, is central to Richard Gardner's formulation of the problem.<sup>24</sup> His formulation, termed "parental

20. MARC J. ACKERMAN & ANDREW KANE, *PSYCHOLOGICAL EXPERTS IN DIVORCE, PERSONAL INJURY, AND OTHER CIVIL ACTIONS* (2d ed. 1993); JONATHAN W. GOULD, *CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS* (1998); PHILIP M. STAHL, *CONDUCTING CHILD CUSTODY EVALUATIONS* (1994). *See also* ELIZABETH M. ELLIS, *DIVORCE WARS: INTERVENTIONS WITH FAMILIES IN CONFLICT* (2000).

21. Richard A. Warshak, *Current Controversies Regarding Parental Alienation Syndrome*, 19 AM. J. FORENSIC PSYCHOL. 29 (2001).

22. WALLERSTEIN & BLAKESLEE, *supra* note 17; WILHELM REICH, *CHARACTER ANALYSIS* 249 (1949) (referring to parents who seek "revenge on the partner through robbing him or her of the pleasure in the child"); J. LOUISE DESPERT, *CHILDREN OF DIVORCE* 52 (1953) (referring to the temptation for one parent "to break down" their child's love for the other parent).

23. WALLERSTEIN & KELLY, *supra* note 11, at 77.

24. Gardner, *supra* note 7; RICHARD A. GARDNER, *ADDENDUM TO THE PARENTAL ALIENATION SYNDROME* (2d ed. 2000), available on the Internet at <<http://www.rgardner.com/refs.html>>.

alienation syndrome" (PAS), has garnered the most attention. It was the first to systematically describe in detail common behaviors of alienated children and the underlying psychological factors in parents and children that contribute to the problem. As a result, PAS became the model to which others responded, either with supporting observations, refinements, or criticisms, often with misunderstanding and misrepresentation.<sup>25</sup>

### A. Parental Alienation Syndrome (PAS)

Parental alienation syndrome refers to a disturbance whose primary manifestation is a child's unreasonable campaign of denigration against, or rejection of, one parent, due to the influence of the other parent combined with the child's own contributions.<sup>26</sup> Note three essential elements in this definition: (1) rejection or denigration of a parent that reaches the level of a campaign (*i.e.*, it is persistent and not merely an occasional episode); (2) the rejection is irrational (*i.e.*, the alienation is not a reasonable response to the alienated parent's behavior); and (3) it is a partial result of the nonalienated parent's influence. If any element is absent, the term PAS is not applicable. Properly understood, a clinician using the term PAS does not automatically assume that the favored parent has influenced a child's alienation from the other parent. Rather, the term PAS is used only when there is evidence for all three elements.

Some critics of PAS mistakenly equate PAS with only the first element, the child's negative attitudes and behavior toward a parent, and fear that the term obscures the difference between children who are reasonably and unreasonably alienated. These critics attack a straw man by pointing out the obvious fact that children develop conflicted relationships with parents for a variety of reasons and that alienation is not always irrational. When Gardner introduced the term PAS, he had already written extensively about other sources of parent-child conflicts and he used the new term to differentiate one type of alienation from all others, alienation that is unwarranted by the rejected parent's behavior and is influenced by the favored parent. Those who use the term PAS believe that this phenomenon is different enough from other types of parent-child disturbances to warrant a separate designation.

25. For reviews of this literature see Deirdre Conway Rand, *The Spectrum of Parental Alienation Syndrome (part I)*, 15 AM. J. FORENSIC PSYCHOL. 23 (1997); Deirdre Conway Rand, *The Spectrum of Parental Alienation Syndrome (part II)*, 15 AM. J. FORENSIC PSYCHOL. 39-92 (1997); Richard A. Warshak, *Psychological Syndromes: Parental Alienation Syndrome, in EXPERT WITNESS MANUAL*. (Richard A. Orsinger ed., 1999). A slightly different version of this chapter is available separately as PARENTAL ALIENATION SYNDROME IN COURT through <www.warshak.com>.

26. GARDNER, *supra* note 7.

Those who oppose the use of the term PAS either deny the existence of children who under the influence of one parent turn against the other parent, or believe that such a disturbance does not warrant a diagnosis, or believe that all forms of irrational alienation should be grouped into one category and designated with a single term, rather than reserve a term for cases in which the alienation is traced to the influence of the favored parent.<sup>27</sup> The latter position reflects a belief that the literature on PAS over-emphasizes the contributions of the favored parent and under-emphasizes the importance of multiple contributing factors.

### B. The Scope of Mental Health Diagnoses

Some disputes about PAS can be traced to different ideas about what exactly a diagnosis entails. A few critics have dismissed PAS as invalid based on their disagreement with Gardner's ideas about the etiology, treatment, prognosis, and incidence of PAS.<sup>28</sup> The implication is that a diagnosis logically entails only one view on such issues, in this case, the view of the person who originally described and named it. In this vein, Kelly and Johnston criticized PAS because it "sheds no light on cause, prognosis, and treatment." They argued that in high conflict divorces, "many parents engage in indoctrinating behaviors, but only a small proportion of children become alienated." Because the favored parent's behavior alone is insufficient to account for alienation, and Gardner's definition of PAS does not include the multiple factors that contribute to a child developing this disturbance, these authors reject the term PAS.<sup>29</sup>

The assumption that a proposed diagnostic term must include a well-established, comprehensive body of knowledge regarding the causes, prognosis, and treatment of the condition is a novel standard that is inconsistent with the way medicine, including psychiatry, generally regards diagnoses and syndromes. The American Psychiatric Association defines a syndrome as "a grouping of signs and symptoms, based on their frequent co-occurrence, that may suggest a common underlying pathogenesis, course, familial pattern, or treatment selection."<sup>30</sup> There is no requirement

27. Kelly & Johnston, *supra* note 7.

28. See, e.g., Bruch, *supra* note 9, at 530-34, in which three of the five deficiencies she posits about PAS concern Gardner's ideas about incidence, prognosis, and treatment. The other two "flaws" that Bruch mentions are concerns about the misidentification of PAS and a gross misstatement about Gardner's views on the relation between alienation and psychosis. For Gardner's response, see Richard A. Gardner, *Comments on Carol S. Bruch's Article "Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases,"* available on the Internet at <<http://www.rgardner.com/refs/ar17.html>> (last visited January 29, 2003).

29. Kelly & Johnston, *supra* note 7, at 249-50.

30. AMERICAN PSYCHIATRIC ASSOCIATION, *supra* note 19, at 771.

that a syndrome include definitive statements about causes, prognosis, incidence, or treatment. Professionals disagree about the causes and appropriate treatment of many, if not most, of the diagnoses listed by the American Psychiatric Association. Diagnostic terms are independent of the discovery or proposal of new treatments. Many syndromes in physical medicine have no currently known effective treatment. The professional community ordinarily regards the presentation of a new diagnostic term based on clinical observations as just the beginning of work in the area. It is assumed that the original formulation, sometimes even the definition, will undergo revision as more is learned about the condition. New information may result in more precise descriptions of what the diagnosis includes as well as what it excludes. Gardner has acknowledged his expectation that others will refine and expand on his contributions, and such revisions are evident in several articles on PAS.<sup>31</sup>

PAS fits a basic pattern of many psychiatric syndromes that denote conditions in which people who are exposed to a designated stimulus develop a certain cluster of symptoms. Post-Traumatic Stress Disorder (PTSD) refers to a particular cluster of symptoms developed in the aftermath of a traumatic event. Specific Phobia refers to a cluster of symptoms that develops in the presence of a circumscribed object or situation. Adjustment Disorder refers to symptoms that develop in reaction to psychosocial stress. These diagnoses carry no implication that everyone exposed to the same stimulus develops the condition, nor that similar symptoms never develop in the absence of the designated stimulus. For instance, a full understanding of why some women develop PTSD in the aftermath of a rape and others do not would require an understanding of multiple factors, including knowledge of the individual in question and the circumstances of the trauma. Similarly, some, but not all, children develop PAS when exposed to a parent's negative influence. Other factors, beyond the stimulus of an alienating parent, can help elucidate the

etiology for any particular child. But such explanatory factors are not part of the definition of the condition. For instance, one hypothesis is that only children who have suffered a certain type of disturbance in their early psychological development are susceptible to developing PAS.<sup>32</sup> If this generalization is valid (and I don't think it is), it would not change the diagnosis of PAS but would merely refine our understanding of it. With all diagnoses it is assumed that further knowledge will continue to reveal more dimensions of the disturbance, its causes, and its effective treatment.

When a proposed syndrome, such as PAS, is properly understood as referring to a cluster of observed symptoms rather than to a set of ideas about etiology, incidence, prognosis, and treatment, it becomes clear why it is a mistake to refer to PAS as a "theory."<sup>33</sup> PAS, as other diagnoses, describes observations. The term PAS is used to label the condition of children who develop an irrational alienation of affection for one parent when exposed to the other parent's negative influence. There is nothing theoretical about the existence of such children. Conjectures about the best way to treat PAS are theoretical, but not the diagnosis itself. (Technically, such conjectures are more properly termed hypotheses, although in colloquial usage the terms theory and hypothesis have become synonymous).

An example of a newly proposed syndrome in physical medicine illustrates the distinction between the acceptance of a term to describe a condition and conjectures about etiology and treatment. *The Harvard Health Letter* published an article about a condition known as Red Wine Headache Syndrome.<sup>34</sup> This syndrome describes a familiar condition in which a person gets a headache shortly after ingesting a small amount of red wine (not to be confused with the headache that arrives hours after a full evening of drinking, *i.e.*, a hangover). There are competing hypotheses about what substance in red wines causes the syndrome, and why some people, but not others, develop this reaction; but there is no generally accepted causal explanation or treatment. Nevertheless, disputes about causal mechanisms do not undermine the recognition that the syndrome exists.

### C. Validity and Reliability of PAS

For any newly proposed diagnosis to be accepted, including PAS, it should accurately, adequately, and usefully describe a recognizable disturbance that is not better accounted for by other diagnostic or explanatory

31. See, e.g., Glenn F. Cartwright, *Expanding the Parameters of Parental Alienation Syndrome*, 21 AM. J. FAM. THERAPY 205 (1993); Richard A. Warshak, *Remarriage as a Trigger of Parental Alienation Syndrome*, 28 AM. J. FAM. THERAPY 229 (2000) (describing situations other than child custody litigation that can accompany PAS). See also Benjamin D. Garber, *Alternatives to Parental Alienation: Acknowledging the Broader Scope of Children's Emotional Difficulties During Parental Separation and Divorce*, N.H.B.J. March 1996, at 51-54; Mary Lund, *A Therapist's View of Parental Alienation Syndrome*, 33 FAM. & CONCIL. CTS. REV. 308 (1995); Kenneth H. Waldron & David E. Joanis, *Understanding and Collaboratively Treating Parental Alienation Syndrome*, 10 AM. J. FAM. L. 121 (1996); Richard A. Warshak, *Misdiagnosis of Parental Alienation Syndrome*, 20 AM. J. FORENSIC PSYCHOL. 31 (2002). These authors accept the term PAS while delineating types of parent-child conflicts that should be excluded from PAS and factors in addition to the influence of the favored parent that contribute to the development of PAS.

32. JANET R. JOHNSTON & VIVIENNE ROSEBY, IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING AND HELPING CHILDREN OF CONFLICTED AND VIOLENT DIVORCE 202 (1997).

33. Bruch, *supra* note 9.

34. *Red Wine Headaches*, HARVARD HEALTH LETTER, June 2002.

terms. Psychologists generally refer to these issues as related to the validity of a construct. With regard to PAS, a central issue is whether it is useful to think in terms of a category of alienated children who are influenced by one parent to turn against the other, or is it preferable to think only in terms of a wider category of children who have significant conflicts with a parent?

Prior to the introduction of the term PAS, the literature on child development and on divorce contained only passing references to the phenomenon of pathologically alienated children. Clearly the professional community has found the concept of PAS valuable as evidenced by a recent survey of child custody evaluators<sup>35</sup> and by the large volume of articles published in refereed (peer-review) journals on the appropriate identification and treatment of children suffering with this problem.<sup>36</sup> In an effort to supplement clinical analyses with more extensive data organized and analyzed in some systematic fashion, Kopetski published two reports on severe PAS in a sample of 413 court-ordered custody evaluations conducted by the Family and Children's Evaluation Team in Colorado.<sup>37</sup> The team identified eighty-four cases of severe alienation that led them "independently to conclusions that were remarkably similar to Gardner's conclusions regarding the characteristics of the syndrome." Independent identification of the same cluster of symptoms would generally be considered strong support for the validity of a newly proposed syndrome. Dunne and Hedrick found Gardner's criteria useful in differentiating sixteen cases of severe PAS from cases with other post-divorce disturbances.<sup>38</sup> As is typical in clinical research, though, neither study conducted statistical analyses and details

were not provided about the methods used to analyze clinical case material.

A survey of custody evaluators that did include some statistical analyses found significant correlations between symptoms of alienation and behaviors on the part of the alienating parent, but few links between the child's alienation and the target parent's behavior. This lends support to the position that the core problem in pathological alienation is between the alienating parent and the child, but this study was merely exploratory and has a number of methodological limitations including a small sample of twenty-one completed surveys.<sup>39</sup>

The American Psychological Association's *Guidelines for Child Custody Evaluations in Divorce Proceedings* provides another index of the value of the PAS concept to child custody evaluators.<sup>40</sup>

Taken together, the frequency of reports in the clinical literature, the close similarity of reported cases to Gardner's descriptions, and the reference section of the APA *Guidelines*, lend support to the validity of PAS in terms of its utility to a sizeable group of experienced practitioners in the field.<sup>41</sup> Nevertheless, clinical observations must be corroborated by systematic empirical investigations with larger samples of subjects, standardized and systematic measures, and appropriate scientific controls to test hypotheses drawn from the clinical literature.

A 12-year study of 700 families is the one large-scale study which delineated the phenomenon in which divorced and divorcing parents manipulate and program their children to turn against the other parent.<sup>42</sup>

39. Larry Nicholas, *Does Parental Alienation Exist? Preliminary Empirical Study of the Phenomenon in Custody and Visitation Disputes*, presented at the 13th Annual Symposium in Forensic Psychology of the American College of Forensic Psychology, Vancouver, British Columbia (1997); Larry Nicholas, *Parental Alienation Syndrome*, in *FATHERS, CHILDREN, FAMILY AND COMMUNITY: A PROGRAMMING MANUAL FOR COUNSELORS, PARENT EDUCATORS, AND FAMILY ADVOCATES*, 12-14 (Guy Thisdelle ed., 2000).

40. American Psychological Association, *Guidelines for Child Custody Evaluations in Divorce Proceedings*, 49(7) *AMER. PSYCHOL.* 677 (1994). The *Guidelines* conclude a reference section titled "Pertinent Literature," which includes books by Gardner; one *The Parental Alienation Syndrome*, and the other two include discussions about PAS.

41. Cf. Christopher Slobogin, *The Admissibility of Behavioral Science Information in Criminal Trials: from Primitivism to Daubert to Voice*. 5 *PSYCHOL., PUB. POL'Y. & L.* 113 (1999) (with respect to syndrome testimony in criminal trials, Slobogin argues for a formulation of the *Frye* test that would admit testimony "that a sizeable group of professionals find plausible, based on their specialized knowledge"). Bruch acknowledged that PAS "has entered into public usage" and is referred to often, but asserted that PAS is accepted not for its own value as an explanatory construct, but because legal and mental health professionals "do not know how to evaluate new psychological theories" (Bruch, *supra* note 9, at 541) and have been duped by an "aura of expertise" (*Id.* at 535) that accompanies Gardner's work. If this were true, it would mean that these intellectual deficiencies extend not only to the many clinicians, attorneys, and parents who have found the concept helpful, but also to the authors of the more than 125 articles on PAS published in refereed journals.

42. STANLEY S. CLAWAR & BRYNNE V. RIVLIN, *CHILDREN HELD HOSTAGE: DEALING WITH*

35. James N. Bow et al., *Assessment of Sexual Abuse Allegations in Child Custody Cases*, 23(6) *PROFESSIONAL PSYCHOL. RES. & PRAC.* 566 (2002).

36. Rand, *supra* note 25. Dr. Gardner's Web site, <[www.rgardner.com](http://www.rgardner.com)>, lists three groups of articles: articles on PAS authored by Gardner, articles by other authors specifically on PAS, and articles that focus significantly on the phenomenon of pathological alienation. Only some of articles in the third group are by authors who use or prefer a different term or different conceptualization of the problem of pathologically alienated children, and all articles in the first two groups specifically elucidate various aspects of the identification, clarification, and treatment of PAS. Many of these articles are available on the Internet at: <<http://www.fact.on.ca/Info/pas/>> Clinicians who have found the PAS concept useful in organizing their impressions of alienated children, in addition to those cited *supra* include: Cartwright, *supra* note 34; Lund, *supra* note 34; J. L. Price & K. S. Pioske, *Parental Alienation Syndrome: A Developmental Analysis of a Vulnerable Population*, 32 *J. PSYCHOSOCIAL NURSING* 9 (1994); M. Rogers, *Delusional Disorder and the Evolution of Mistaken Sexual Allegations in Child Custody Cases*, 10 *AM. J. FORENSIC PSYCHOL.* 47 (1992).

37. Leona M. Kopetski, *Identifying Cases of Parental Alienation Syndrome, Part I*, 29(2) *THE COLO. LAWYER* 65 (1998); Leona M. Kopetski, *Identifying Cases of Parental Alienation Syndrome, Part II*, 29(3) *THE COLO. LAWYER* 63 (1998), available on the Internet at <<http://www.fact.on.ca/Info/pas/kopet98b.htm>> (last visited January 29, 2003).

38. John Dunne & Marsha Hedrick, *The Parental Alienation Syndrome: An Analysis of Sixteen Selected Cases*, 21(3/4) *J. DIV. & REMARRIAGE* 21 (1994).

This study provides some empirical support for the validity of PAS. As an early study in the field, it is heavily descriptive, and the description of procedures does not make clear exactly how the data were analyzed and what procedures were used to ensure the reliability of the results. Nevertheless, because of the wealth of experience reflected in the large number of families studied, and the detailed and sophisticated analysis of the problem, this study's observations and conclusions merit significant weight. According to Lynne Gold-Bikin, "This treatise is based on years of experience counseling families in divorce and evaluating children during custody litigation. It should provide guidance to the bar, bench, and mental health professionals in ascertaining whether a child has been intentionally brainwashed or alienated from one parent by the other parent . . . ."<sup>43</sup>

The strongest scientific support for the PAS conceptualization of pathological alienation as a child's response to the negative influence of the favored parent is found in studies that were first published in academic (as opposed to clinical) journals that meet the most rigorous standards of scientific methodology, have very high rejection rates for submitted manuscripts, and thus enjoy reputations of the highest stature. Such research documents and elucidates the ways in which beliefs, attitudes, and memories can be altered under the influence of authority figures. Studies on memory, suggestibility, stereotype induction, social influence, and coercive influence, demonstrate that children are susceptible to accepting, and repeating as if true, suggestions implanted by adult interviewers that innocent adults did harmful or illegal things.<sup>44</sup> Tactics such as leading and suggestive interviews, selective attention, skewed information, repetition, and intimidation can corrupt a child's view of reality to the point where children will incorporate misinformation into their memories and manufacture and report elaborate details of events that never occurred. These research findings help to explain how one parent could exert enough influence over a child to cause that child to lose affection and respect for the other parent and the rejected parent's relatives.<sup>45</sup> Studies on persuasion and attitude change explain how a child's predominantly negative opinion of a parent

is liable to become deeply entrenched and highly resistant to modification even in the face of information that directly contradicts misconceptions, particularly if the opinion is expressed publicly.<sup>46</sup> For this reason caution should be exercised before giving children forums in which to publicly take a stand in custody disputes.<sup>47</sup>

Academic research forms a scientific foundation for understanding and testifying about how children can be manipulated by adults in general to develop negative attitudes about other people as well as false memories of harmful events.<sup>48</sup> That parents can be the agents of such manipulation and teach their children to hate people of a different race or culture is hardly controversial. Two methodologically rigorous studies have extended prior research by demonstrating that coaching and misinformation provided specifically by parents (as opposed to research interviewers) can corrupt their children's eyewitness reports.<sup>49</sup> What is needed to provide further evidence of the validity of PAS, and to strengthen its scientific legitimacy, is research that focuses more directly and specifically on children in high conflict families who are manipulated by a parent (as opposed to another adult such as a research interviewer) to develop negative attitudes and distorted views of the other parent (as opposed to another race or culture or research confederate). Future studies should attempt to clarify the number and combination of factors that most effectively discriminate among the different types of alienation (*e.g.*, reasonable or unreasonable in light of the history of the parent-child relationship, or influenced by the favored

PROGRAMMED AND BRAINWASHED CHILDREN (ABA 1991). Bruch, *supra* note 9, did not cite this study which is the largest study of alienated children and provides data and reaches conclusions diametrically opposite to many of Bruch's opinions.

43. Lynne Z. Gold-Bikin, Foreword to CLAWAR & RIVLIN, *supra* note 42, at ix.

44. See, *e.g.*, Stephen J. Ceci & Maggie Bruck, *The Suggestibility of the Child Witness: A Historical Review and Synthesis*, 113 *PSYCHOL. BULL.* 403 (1993). This article received two prestigious awards—it was named one of the 20 outstanding articles in *Child Psychiatry and Child Development*, and was awarded a prize by the American Psychological Association for best article dealing with child abuse. Reviews and citations to these studies can be found in CECI & BRUCK, *supra* note 6.

45. It bears emphasis that such influence is only one possible source of a child's alienation.

46. Leon Festinger & J. M. Carlsmith, *Cognitive Consequences of Forced Compliance*, 58 *J. ABNORMAL & SOCIAL PSYCHOL.* 203 (1959); E. Jelalian & A. G. Miller, *The Perseverance of Beliefs: Conceptual Perspectives and Research Developments*, 2 *J. SOC. CLIN. PSYCHOL.* 25 (1984); L. Ross et al., *Perseverance in Self-perception and Social Perception: Biased Attribution Processes in the Debriefing Paradigm*, 32 *J. PERSONALITY SOCIAL PSYCHOL.* 880 (1975); S. L. Schauss et al., *Environment-behavior Relations, Behavior Therapy, and the Process of Persuasion and Attitude Change Change*, 28 *J. BEHAV. THERAPY & EXPERIMENTAL PSYCHIAT.* 31 (1997).

47. See, Richard A. Warshak, *Payoffs and Pitfalls of Listening to Children*, 54(4) *FAM. RELATIONS* (forthcoming 2003).

48. For a discussion of PAS and *Daubert* standards, see Warshak, *supra* note 21. In a text for child custody evaluators, Gould, *supra* note 22, at 67, suggests the following application of the research on children's suggestibility: "If parent-child verbal exchanges in alienating families can be construed as a form of suggestive interviewing, then the evaluator may attempt to identify how the parent has used specific suggestive interview techniques to alter the child's perception of his or her father or mother." See also John A. Zervopoulos, *Robinson/Daubert and Mental Health Testimony: The Sky Is Not Falling*, 64 *TEX. B. J.* 350 (2001), for a discussion of two guides to use in assessing the reliability of syndrome testimony.

49. Debra Ann Poole & D. Stephen Lindsay, *Interviewing Preschoolers: Effects of Nonsuggestive Techniques, Parental Coaching, and Leading Questions on Reports of Nonexperienced Events*, 60 *J. EXPERIMENTAL CHILD PSYCHOL.* 129 (1995); Debra Ann Poole & D. Stephen Lindsay, *Children's Eyewitness Reports After Exposure to Misinformation From Parents*, 7 *J. EXPERIMENTAL PSYCHOL: APPLIED* 27 (2001).

parent or arrived at independently by the child in response to the circumstances of the family conflict). This type of research will help clinicians classify children more precisely and reduce the possibility of misidentification of pathological alienation, regardless of what terminology and conceptualization of the problem is preferred.<sup>50</sup> In turn, such research may help resolve controversy about how to conceptualize pathological alienation.

Part of the effort to identify the most accurate diagnostic approach must include research on reliability. For social scientists, this means something different from legal reliability. For scientists, reliability refers to the degree to which a statistical measurement, test result, or diagnosis is consistent on repeated trials or among different observers. A proposed syndrome, such as PAS, has high reliability if different clinicians examining the same children can reach a high rate of agreement on which children do or do not have the syndrome. To date, no study has directly measured the extent to which different examiners, with the same data, can agree on the presence or absence of PAS (or of pathological alienation in a child). This does not mean that the diagnosis lacks reliability, any more than it meant that the diagnosis of AIDS lacked reliability prior to the publication of empirical research. But it does mean that the reliability has not yet been measured. If the symptoms of a proposed diagnosis are too imprecise and ambiguous, or require an excessively high degree of inference on the part of the observer, the rates of disagreement may be unacceptably high and reliability will not be achieved. Gardner lists eight symptoms of PAS. Kelly and Johnston, who offer an alternative framework for classifying alienated children, list nearly the identical symptoms as features of what they call "the alienated child."<sup>51</sup> Both lists appear on the surface to be clear-cut, but neither has verification from empirical research regarding the ability of clinicians to apply the list of symptoms to case material and agree on whether or not a particular symptom is present in a particular child. For example, Gardner's list includes "weak, absurd, or frivolous rationalizations for the deprecation" of a parent; Kelly and Johnston's list includes "trivial or false reasons used to justify hatred." Research needs to determine whether or not different observers can agree on what constitutes "frivolous" or "trivial" justifications.

#### D. Is Pathological Alienation a Syndrome?

Despite the widespread recognition of the phenomenon of pathologically alienated children, the use of the term "syndrome" in reference to such chil-

dren has sparked heated debate. Some clinicians prefer the term "parental alienation." Others limit themselves to behavioral descriptions and avoid the term "syndrome" when testifying about irrationally alienated children in order to avoid challenges to the admissibility of syndrome testimony. One concern is that the designation "syndrome" conveys to the court an established stature and legitimacy that may be more appropriate following the type of rigorous empirical research called for above. In court, the term "syndrome" may strengthen confidence in the scientific basis of the witness' testimony and, by implication, in the value and reliability of that testimony.

An additional concern about syndrome evidence is that expert witnesses sometimes offer a collection of symptoms as a test to prove the existence of one particular causal agent, even in the absence of independent verification of the cause. In the case of PAS this would mean that after determining that a child has the behaviors characteristic of alienated children, the expert assumes that the existence of alienation supports a claim that the favored parent must have fostered the alienation. This is a misuse of PAS. By definition, the negative influence of the favored parent must be identified in order to diagnose PAS. Perhaps future studies will identify a particular constellation of symptoms that effectively discriminates between children who have, and those who have not, been exposed to alienating influences. Until such time, though, the alienating influence of the favored parent cannot be inferred merely from the presence of alienation symptoms.

Mosteller has proposed that the purpose for which syndrome evidence is used should govern its admissibility.<sup>52</sup> When an expert proffers syndrome evidence as a test of whether certain conduct has occurred, such as child sexual abuse, "the science must be of the highest quality and should satisfy the standards set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*"<sup>53</sup> Mosteller argues that less exacting scientific standards should apply when the expert relies on syndrome evidence "to correct human misunderstandings of the apparently unusual and therefore suspicious reactions of a trial participant."<sup>54</sup> Although PAS testimony should not be used as a test of whether the aligned parent promulgated the child's alienation, it can provide the court with an alternative explanation of a child's negative or fearful conduct and attitudes. Also, PAS testimony can assist the court in evaluating a child's ability to perceive, recollect, or communicate. When PAS has been misdiagnosed, as in the case of children who are not alienated, or whose alienation is justified by the rejected parent's

52. R. P. Mosteller, *Syndromes and Politics in Criminal Trials and Evidence Law*, 46 DUKE L.J. 461 (1996).

53. *Id.* at 468. See also Daniel Shuman, *What Role Should Mental Health Experts Play*, 36 FAM. L.Q. 135 (2002).

54. *Id.* at 467.

50. Kelly & Johnston, *supra* note 7; Warshak, *Misdiagnosis of Parental Alienation Syndrome*, *supra* note 31.

51. GARDNER, *supra* note 7; Kelly & Johnston, *supra* note 7.

behavior, expert testimony on the reasons why testimony regarding PAS was irrelevant may be proffered in rebuttal.<sup>55</sup>

Despite the widespread acceptance of the term PAS, from the standpoint of trial strategy, it may be preferable for experts to avoid the term “syndrome” when testifying and rely only on descriptions of the behavior and statements of the child and each parent. Whether or not the term PAS is used, experts can educate the court about the scientific literature that demonstrates how children are susceptible to manipulation by adults to develop negative attitudes and false memories about other adults. This information can be used to elucidate the significance of the specific facts in the case at bar.

The validity of PAS is often challenged on the grounds that it does not appear in the *Diagnostic and Statistical Manual of Mental Disorders* (fourth edition) of the American Psychiatric Association (DSM-IV). In truth, this is one of the weaker criticisms of the use of PAS in court. The DSM is not a test of whether a disorder exists. For example, Tourette’s syndrome was first described 95-years before it was included in the DSM, Asperger’s syndrome took 37-years before being included. Preparations for the DSM-IV began in 1990, just five years after the publication of the first article on PAS and prior to the burgeoning of the PAS literature. Furthermore, the process that leads to the inclusion of a proposed diagnosis is not purely scientific; it is driven by politics, economics, tradition, and compromises.<sup>56</sup> Inclusion in DSM does not necessarily end debate on the validity of a diagnosis.<sup>57</sup> Most important, the DSM-IV specifically cautions about its use in forensic settings. In short, inclusion in DSM-IV is not necessarily an appropriate test for court purposes.<sup>58</sup>

### *E. The Alienated Child Formulation*

Alternative conceptualizations of PAS, such as Wallerstein’s Medea syndrome, have not generated anything approaching the volume of literature

55. See Warshak, *Misdiagnosis of Parental Alienation Syndrome*, *supra* note 31.

56. Cf. Regarding the DSM, “Many forces besides science shape it, including politics, fashion and tradition.” John Cloud, *How We Get Labeled*, *TIME*, January 20, 2003, at 104.

57. See William M. Grove & R. Christopher Barden, *Protecting the Integrity of the Legal System: The Admissibility of Testimony From Mental Health Experts Under Daubert/Kumho Analyses*, 5 *PSYCHOL., PUB. POL’Y. & L.* 224 (1999) (arguing that common testimony about PTSD and Dissociative Identity Disorder does not meet *Daubert* criteria for admissibility).

58. Regarding its diagnostic criteria and classifications, the DSM-IV states, “They do not encompass, however, all the conditions for which people may be treated or that may be appropriate topics for research efforts.” Also, “The clinical and scientific considerations involved in categorization of these conditions as mental disorders may not be wholly relevant to legal judgments. . . .” American Psychiatric Association, *supra* note 22, at xxvii. See also Stuart A. Greenberg et al., *Unmasking Forensic Diagnosis*, *INT’L J.L. & PSYCHIATRY* (forthcoming 2002) (arguing that “The use of the *DSM* risks obfuscating the presentation of psychological and psychiatric testimony”).

on PAS. One recent formulation, though, has stimulated more interest than the others. Responding to concerns about the misdiagnosis and misuse of PAS in court, a Northern California group has recommended replacing the term PAS with the term “the alienated child,” and using this term to describe all children who express persistent and unreasonable negative feelings and beliefs about a parent.<sup>59</sup> This formulation emphasizes the importance of multiple contributing factors, sees no need for a separate term to designate a subcategory of children whose alienation is primarily influenced by the favored parent, and does not find it useful to label this phenomenon as a “syndrome.”

Apart from rejecting the concept of the favored parent being the primary cause of alienation, most aspects of this formulation are nearly identical to or consistent with the PAS literature. The aspects of similarity include the foundation in clinical experience as opposed to systematic empirical research, the distinction between alienated children and children whose rejection is rooted in mistreatment by the alienated parent (a phenomenon this formulation labels “estrangement”), the list of characteristics of irrationally alienated children, the description of the psychological factors operative in cases of alienation, the view that parent-child relationships exist on a continuum, and the view that the majority of children from divorced homes have positive relationships with both parents. Both regard irrational alienation as pathological and advocate the importance of making attempts to remedy the problem. Both recommend interventions with all members of the family. Both believe that the court must intervene in order for such interventions to be successful. Both advocate enforcing contact between alienated children and their rejected parents (although the authors of the alienated child model do not advocate custodial transfers as strongly as does Gardner). Both have been criticized for their advocacy of coercive judicial interventions.<sup>60</sup> It is too early to tell whether or not the alienated child formulation will generate a substantial literature on par with PAS.<sup>61</sup>

59. Kelly & Johnston, *supra* note 7. For a comparison of the alienated child model with PAS, see Warshak, *supra* note 21.

60. Bruch, *supra* note 9.

61. See Janet R. Johnston, *Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce*, *J. AM. ACAD. PSYCHIAT. & LAW* (forthcoming 2003), for “a preliminary correlational study” that sought to elucidate the various contributing factors to alienation. The study relied on subjective clinical ratings (some of which were derived from a projective test) made ten to twenty years earlier of a nonrepresentative sample that had received counseling and mediation services. The author acknowledged several significant drawbacks that limit the extent to which the results can be relied upon. Nevertheless, early studies such as this can serve a valuable function by stimulating subsequent research with more current and representative samples, more objective measures, and a design that sheds light on causal mechanisms rather than correlations.

#### IV. New Labels for Established Concepts?

The term PAS has served a valuable purpose in facilitating professional communication about pathological parental alienation and drawing attention to this phenomenon. The term has also been misused, misunderstood, misrepresented, politicized. The term has been closely associated with specific positions on the incidence, treatment, and course of the condition.<sup>62</sup> It is possible that the climate of controversy and misperception of the meaning of PAS will spread and eventually detract sufficiently from its value that another term will gain acceptance in its place. This would be unfortunate because the introduction of any new term carries the risk of impeding the integration of professional work in the field and confusing consumers of mental health services. A term such as *pathological alienation* might serve as a suitable substitute, particularly if defined in a manner that accommodated alternative formulations and helped circumvent unproductive debates. One possible definition is: a disturbance in which children, usually in the context of sharing a parent's negative attitudes, suffer unreasonable aversion to a person or persons with whom they formerly enjoyed normal relations or with whom they would normally develop affectionate relations.

The term *pathological alienation* has certain advantages: (1) Including the word *pathological* in the term reduces the likelihood that it will be

62. An example of the strong feelings aroused by PAS as well as gross misunderstanding about it is found in the work of certain groups and Web sites that claim to advocate on behalf of women's issues and mistakenly believe that a charge of fostering PAS is only raised in court by men against women. See, e.g., "CA NOW'S research into these syndromes indicates that they have been invented for the sole purpose of targeting women in custody disputes, and that they are never used against men under reversed conditions." Sheila Heim et al., *CA NOW Family Court Report*, June 26, 2002, at 5, available at, <www.canow.org/fam\_report.pdf>. This statement was removed from the CA NOW Family Court Report when a revised version was issued on September 26, 2002. Included in the revision are the following statements: "PAS is founded on sexist and perverted premises. . . . PAS is a syndrome created to affect custody decisions, to pathologize women, to discredit children who speak out about abuse, and to portray fathers vying for custody as the victims of a mother's revenge."

This author has been involved in several cases in which alienated mothers accused their husbands of turning the children against them. There are two established foundations and one being formed that deal with some aspect of pathological alienation, and all three were founded by alienated mothers. Many of the women involved in such organizations, and those who participate in online discussion groups, view PAS as a lifeline offering understanding and hope for their own distressing situations.

An analysis of unreported judgments in Australia over a five-year period reported approximately equal numbers of male and female alienators. Sandra Berns, *Parents Behaving Badly: Parental Alienation Syndrome in The Family Court—Magic Bullet or Poisoned Chalice*, 15 (3) AUSTRALIAN J. FAM. L. 191 (2001). In Kopetski's sample, about one-third of the alienating parents were men. Leona M. Kopetski & Deirdre Conway Rand, *Descriptive Statistics on Incidence, Gender, and Abuse Allegations in PAS*, (in preparation). See also *Begins v. Begins*, 721 A.2d 469 (Vt. 1998) (father was alienator).

mistaken for cases in which a child has good reasons for feeling alienated. This avoids an issue that has been a key concern of critics who fear that PAS lends itself to misapplication to cases of reasonable alienation; (2) A clear discrimination between pathological and rational alienation is made without the term *syndrome* that can generate much controversy in legal settings; (3) The term accommodates the observation that children can become estranged from other people in addition to their parents; and, (4) Something along the lines of the suggested definition offers a compromise between those who believe that a specific term is needed to delineate children whose alienation can be traced in part to the influence of the favored parent and those who believe that such children should be subsumed in a more general category of pathologically alienated children including children in whom the favored parent's negative influence is neither a necessary nor a sufficient etiological factor. The definition acknowledges the reality that frequently the pathologically alienated child acts in the shadow of the favored parent, while leaving open the question of the exact role that such a parent's attitudes have in shaping the child's perceptions and feelings.

A drawback of the term *pathological alienation* is that among social scientists it has traditionally meant something very different from parental alienation. Alienation has been used to refer to people who are either self-alienated (i.e., significantly out of touch with their feelings) or alienated from the dominant values of their surrounding culture (e.g., adolescents who perceive themselves as "outsiders"). In fact, Harvard researchers used the term "alienation syndrome" to identify the cluster of attitudes that corresponded to the latter type of alienation.<sup>63</sup> This drawback is to some extent alleviated by the context of discussion, which should make clear the type of alienation being referenced. Finally, it should be noted that any term that replaces PAS, such as *alienated child*, *Medea syndrome*, or *pathological alienation* is just as susceptible to distortion and misdiagnosis as is PAS or any other diagnosis.

#### V. Treating Pathological Parental Alienation

The literature regarding the proper response to pathological parental alienation has generated much dispute. Different conceptualizations of alienation lead to different treatment approaches. Naturally, those who deny the existence of irrational alienation and those who believe that irrational alienation is normal see no need for treating the child's condition and instead recommend accommodating a child's wishes to avoid a parent. Despite disagreements in conceptual frameworks, those who recognize the phenomenon of pathological alienation agree that intervention is warranted

63. KENNETH KENISTON, *YOUNG RADICALS: NOTES ON COMMITTED YOUTH* 327 (1968).

for children who persistently and unreasonably refuse to spend time with one parent and who hold polarized unrealistic views of both parents. The most controversial aspects of the treatments for these children proposed by Gardner, Kelly and Johnston, and other clinicians are the coercive elements. These clinicians recommend court-mandated treatment, some enforced contact between the children and the rejected parent, and sanctions for failure to comply with such orders.

With severe alienation, Gardner recommends transfer of custody to the alienated parent, the use of transition sites to facilitate the reconciliation between the alienated child and parent, and court-imposed sanctions on the favored parent and perhaps the child for failure to obey court orders. Other clinicians accept the value of reducing the alienated child's dependence on the favored parent and requiring the child to spend time with the rejected parent, but are more cautious about recommending transfer of legal custody.<sup>64</sup> A challenge for court-mandated treatment is the need for periodic adjustments in the structure and schedule of contact between the child and each parent depending on the progress of treatment. Rather than require the parents to return to court each time they disagree about proposed changes, some clinicians recommend that the court delegate some decision-making authority to therapists, or specially appointed "parenting coordinators," or "special masters." The use of professionals in such quasi-judicial roles has been criticized, as have court-enforced attempts to assist children who profess hatred toward formerly loved parents, grandparents, and entire extended families.<sup>65</sup>

Based on a sample of approximately twenty-six children, whom she described as "aligned" with one parent, Wallerstein concluded that, "There is great advantage in allowing natural maturation to take its course and to avoid overzealous intervention to break these alliances, which are usually strengthened by efforts to separate the allies."<sup>66</sup> Clawar and

Rivlin, in a study of 700 children, reached the opposite conclusion:

One of the most powerful tools the courts have is the threat and implementation of environmental modification. Of the approximately four hundred cases we have seen where the courts have increased the contact with the target parent (and in half of these, over the objection of the children), there has been positive change in 90% of the relationships between the child and the target parent, including the elimination or reduction of many social-psychological, educational, and physical problems that the child presented prior to the modification.<sup>67</sup>

Gardner's follow-up study of ninety-nine children diagnosed with PAS found a strong association between environmental modification and reduction in PAS symptoms.<sup>68</sup> In twenty-two instances, the alienated child's contact with the rejected parent was increased and contact with the alienating parent was decreased. In all twenty-two cases PAS symptoms were reduced or eliminated. By contrast, only 9% of the children (seven out of seventy-seven) whose contact with the rejected parent was not increased by the court, showed a reduction in PAS symptoms. This study also provides a beginning understanding of the factors that lead alienated children to initiate their own reconciliation with the rejected parent. Further study along these lines may assist decision-makers in determining which children might not require environmental changes in order to heal their alienated relationships.<sup>69</sup> The large sample and the statistical test of significance allowed by this size sample make this an important study. Nevertheless, its limitations must be noted, chiefly that the children were not interviewed, the only informant for the follow-up was the rejected parent, and the interviews were conducted by a clinician who had formulated the hypothesis being tested.<sup>70</sup>

Treatment approaches to severe PAS other than environmental changes have been reported in the clinical literature, but, in general, such approaches have met with failure. A follow-up study of forty-five children with PAS concluded that structural interventions involving custody and time share were the key components in the successful interruption and prevention of alienation. Psychotherapy as the primary intervention either was ineffec-

64. Kelly & Johnston, *supra* note 7; PHILIP M. STAHL, COMPLEX ISSUES IN CHILD CUSTODY EVALUATIONS (1999). Cf. Warshak, *supra* note 7, at 275. "If efforts to reduce divorce poison are unsuccessful, the alienating parent will continue to do a poor job of supporting the children's relationship with the target. In other respects, though, the alienating parent may be better situated to manage the children. For example, a mother who influences her children to turn against their father may be more available during the school week to supervise the children. Or the father may have limited skills in dealing with the routines of the school week and easily lose his patience. Ultimately the custody decision must rest on a careful consideration of all the factors that influence children's welfare and of each parent's capacity to provide a healthy growth-promoting environment."

65. Bruch, *supra* note 9, at 548 (citing opinions by Wallerstein and by Johnston to support a laissez-faire approach to children who refuse contact with a parent, although she acknowledges that Johnston now supports a more active role for the court).

66. JUDITH S. WALLERSTEIN ET AL., THE UNEXPECTED LEGACY OF DIVORCE: A 25 YEAR LANDMARK STUDY 116 (2000).

67. CLAWAR & RIVLIN, *supra* note 42, at 150.

68. GARDNER, *supra* note 16.

69. For an exploratory study, see Rand & Rand, *supra* note 15.

70. Bruch, *supra* note 9, at 535 n. 28, dismissed this study because there was a lack of homogeneity of the legal context in which the family was involved (criminal, family law, and personal injury cases) and factors, such as the children's ages and presence or absence of abuse allegations were not included in the data analysis. Although it would be helpful to assess the impact of such factors on the effectiveness of environmental modification, the type of legal case in which the irrationally alienated child's parents are involved seems less relevant for understanding the role of environmental changes in helping to heal alienated child-parent relationships.

tive or made things worse.<sup>71</sup> Dunne and Hedrick published a clinical study of sixteen severe PAS cases.<sup>72</sup> The court ordered a custody change and/or strict limitation of contact between the alienating parent and the children in only three of these cases. In all three cases PAS was eliminated. The other thirteen cases were treated with various, less restrictive interventions, ranging from individual or conjoint therapy for the parents, therapy for the children with either the alienating parent or target parent, or the assignment of a Guardian Ad Litem. In none of these cases was the PAS eliminated. Two cases showed “some” or “minimal” improvement, nine showed no improvement, and two were worse after the interventions. This study has significant limitations. The sample size is small. Details are not provided about the methods used to analyze clinical case material. As is typical in clinical research with small samples, no statistical analyses were conducted to document that the findings were not due to chance. Nevertheless, the 100% correspondence between elimination of severe PAS and strict environmental modification does provide some evidence in support of this intervention.

Lampel analyzed clinical case studies on eighteen families, out of which seven children were described as rejecting a father who had no objectively noted parental dysfunction.<sup>73</sup> The therapists conceptualized the children’s rejection of the father as a phobia with hysterical features and tried two different approaches commonly used to treat phobias. The first approach, used with six children, included individual therapy sessions with the child followed by gradually increasing times with the father both in and out of the therapist’s office. Sessions were also held for the mother, both individually and jointly with the child, for the father, and for both parents and child jointly. This approach is similar to Gardner’s recommended treatment for moderate PAS cases. The second approach, used with one child, is similar to Gardner’s recommendation for severe PAS. The child was placed with the father for six to eight weeks while the therapist provided individual therapy sessions for the child and parents, and joint sessions with the child and father. This child was the only one of the seven children whose symptoms reduced markedly. The children whose treatment did not include placement with the rejected father experienced results varying from minor improvement to deterioration. In three cases

the treatment was regarded as a clear failure. Lampel attributed the failures to the mothers’ “collusive involvement” with their children. Again, although this is a very small sample, the results support the effectiveness of placing the child with the alienated parent.

Treatment approaches to pathologically alienated children should benefit from more and higher quality long-term outcome studies on the effectiveness of different interventions. Until such scientific evidence is available, controversy will probably continue concerning the proper treatment of alienated children and their parents. Given the limitations in the available studies, some might dismiss the current professional literature as too inadequate to serve as an authoritative guide to decisions for alienated children. But no study is free of limitations. The issue is whether the limitations render the study useless. The peer review process, though no guarantee of a study’s lasting value, is designed to weed out studies whose flaws outweigh their contributions.

Courts and clinicians face decisions about alienated children on a daily basis. These decisions can draw on the best available information, while duly noting its limitations, and thereby benefit from the experience of the families reflected in the published reports or the decisions can ignore this information. At this point in time, the published findings on treatment outcomes support the effectiveness of enforcing contact between the child and alienated parent, and only Wallerstein’s observations oppose this policy.<sup>74</sup> While the circumstances of any single case may dictate an alternative treatment approach, an emerging consensus among mental health professionals supports the idea that “court orders for continued contact are the cornerstone for treatment” of PAS cases.<sup>75</sup> Similarly, Stahl refers to “general agreement” that recommendations should include “forced consistent time between the child and the alienated parent.”<sup>76</sup>

Apart from the issue of what structures of treatment are most effective in healing alienated child-parent relationships, there are important questions raised by Bruch about the proper role of the state in regard to families where parents live apart from each other and further questions about the amount and quality of research necessary to justify a court’s response to

71. Leona Kopetski et al., *Helping Children in Alienation Scenarios Maintain Relationships with Both Parents: A Follow-up Study of 45 PAS Children*, presentation at 19th Annual Symposium of the Am. College of Forensic Psychol. 2003.

72. Dunne & Hedrick, *supra* note 38.

73. Anita K. Lampel, *Post-Divorce Therapy with Highly Conflicted Families*, 6 THE INDEPENDENT PRACTITIONER 22 (1986), see <<http://www.fact.on.ca/Info/pas/lampel01.htm>> (last visited January 28, 2003).

74. Bruch, *supra* note 9, at 550 (FN 83) cites a reporter’s investigation and a phone conversation with a psychologist to support speculations regarding the pernicious effect of treatments that enforce a child’s contact with an alienated parent. To date, I know of no mental health professional who has documented any such cases in a peer-reviewed article appearing in the professional literature. As with the outcome studies documenting the positive effects of environmental modification, it is important that observations of the negative effects of such treatment be documented in refereed publications. Such clinical data may make valuable contributions toward a more differentiated approach to treating alienated children.

75. Lund, *supra* note 31, at 309.

76. STAHL, *supra* note 64, at 6.

families with alienated children.<sup>77</sup> Her criticism of the treatment recommendations of the group of professionals who formulated the alienated child model states:

They ask courts to order parties who are neither abusive nor neglectful to employ and cooperate with intrusive, costly teams of professionals, even when there is no assurance that improvement will be achieved before the family's resources are exhausted or that the results will be appreciably better than what is likely to occur without intervention.<sup>78</sup>

Bruch also believes that appointment of a special master over a parent's objections and court-ordered waivers of therapist-parent confidentiality constitute "an impermissible delegation of judicial authority,"<sup>79</sup> that would require that "judges violate their statutory duties,"<sup>80</sup> and would allow mental health professionals to assume "quasi-judicial roles that will authorize them to prescribe the details of life for many parents and children. . . . in a framework that lacks due process protections such as a record, evidentiary privileges, and full access to the courts."<sup>81</sup> More generally, Bruch questions the best-interests-of-the-child standard and "enhanced roles for noncustodial parents," and concludes:

Although parental separation may, of course, cause or exacerbate intra-familial difficulties, the degree to which these difficulties justify public intervention is a question of policy and law. Some difficulties, although extremely unfortunate, are appropriately left to families and individuals to address as a private matter, if at all.<sup>82</sup>

Bruch's arguments should stimulate greater elaboration and refinement of the best-interests-of-the-child standard in order to clarify the basis for state intervention, and the extent to which the court may delegate its authority to intervene in disputes between parents who want to participate in child-rearing while living apart from each other.<sup>83</sup> One issue is how to reconcile court-imposed child access schedules, that are readily accepted as within the province of the court, with a policy that would preclude any means of enforcing such schedules if one parent supports a child's refusal to see the other parent. The only alternative to judicial intervention seems

to be a public policy that takes away the court's role in deciding such matters other than by designating one parent or the child as the final authority regarding the child's contacts with the other parent.

Apart from fundamental questions about the proper role of the court when two divorced parents are in dispute about the allocation of financial resources or child-rearing authority and responsibilities, opinions about the proper reach of the court in intervening with pathologically alienated children and their parents may depend in part on how the problem is construed. Some mental health professionals, including Clawar and Rivlin, Gardner, and Kelly and Johnston, regard it as a form of emotional abuse when a vindictive parent systematically attempts to poison children's affections for the other parent, exploit the children by using them to express hostility toward the other parent, or prevent contact with the other parent (even to the point of abducting the child). In essence, the parent is inculcating fears and hatred in the children that induce a loss of the greatest magnitude, the loss of a parent and often an entire extended family.<sup>84</sup> In this view, when such harmful parental behavior is identified, the court is justified in intervening to protect the children, just as when children are subjected to other forms of abuse at the hands of their parents.<sup>85</sup> On the other hand, those who construe such a hostile environment merely as an unfortunate byproduct of growing up in a troubled family may believe that the state is overreaching its legitimate role by intruding into private family affairs. Bruch has raised a valuable line of inquiry directing attention to a difficult policy issue with no simple answers.

## VI. Conclusion

Ample evidence exists, and has received widespread acceptance among mental health professionals, that some children develop an irrational alienation from their parents that is not warranted by the history of the parent-child relationship and that should be considered a deviation from

84. CLAWAR & RIVLIN, *supra* note 42, at 172: "The legal system in most states is not currently adequate to protect children from this form of abuse." ACCORD GARDNER, *supra* note 7, at xxi; KELLY & JOHNSTON, *supra* note 7, at 257: "Whether such parents are aware of the negative impact on the child, these behaviors of the aligned parent (and his or her supporters) constitute emotional abuse of the child."

85. A problem for those who espouse this position is that, usually when a parent is engaged in such behavior, reports are not made to the local authorities to investigate abuse concerns as is done in cases of suspected physical or sexual abuse. This relates to the difficulties in defining the boundaries of emotional abuse, a topic that is outside the scope of this article. Cf. CLAWAR & RIVLIN, *supra* note 42, at 172: "Mental-health professionals who discover that the programming/brainwashing process is taking place with subsequent damage to various aspects of the child's life should operate on the ethic that they have an obligation to intervene on behalf of the child. This may mean contacting attorneys, the courts, or others on behalf of the child (similar to the social/legal ethic in abuse cases)."

77. Bruch, *supra* note 9.

78. *Id.* at 546.

79. *Id.* at 544.

80. *Id.* at 544, note 62.

81. *Id.* at 546. See Warshak, *supra* note 7, at 264, for a similar concern about due process when the therapist's opinions shape recommendations and testimony made in court by third parties, but the therapist is shielded from the litigation.

82. Bruch, *supra* note 9, at 546.

83. For an excellent analysis and an interesting proposal of a "reasonable child" standard to help courts define the best interests of the child, see David L. Chambers, *Rethinking the Substantive Rules for Custody Disputes in Divorce*, 83 MICH. L. REV. 477, 569 (1984).

normal functioning. Denials of the existence of pathological alienation are reminiscent of past generations' denial of the existence, prevalence, and destructiveness of physical and sexual child abuse. Further, it is clear that some cases of pathological alienation arise when children are exposed to behavior on the part of the favored parent that either discourages or fails to encourage an amicable relationship between the children and the alienated parent. What remains controversial is whether the behavior of the favored parent is primarily responsible for the alienation, or whether it is more accurate to conceptualize the problem as due to multiple factors, with the favored parent's behavior being neither necessary nor sufficient nor primarily responsible for the development of pathological alienation.

A conceptualization, such as PAS, that regards the influence of the favored parent as a primary causal factor has intellectual and scientific roots in developmental and cognitive psychology. Developmental psychology research has shown how children's attitudes are shaped by the socialization practices of adults. Cognitive psychology research has shown that children's memory and reports can be molded by suggestions implanted by adults. The PAS type of explanation for alienation is consistent with the way social scientists view the propagation of racial hatred in children. No fair-minded person blames such hatred on the targets themselves. Research on the interpersonal dynamics of power imbalances helps to explain why some children will identify with an angry parent just as some hostages bond with their captors (in what is known as the Stockholm Syndrome) and as some battered spouses bond with their abusive spouses.

A conceptualization, such as the alienated child formulation, that de-emphasizes the role of the favored parent and emphasizes the role of multiple interrelated factors also enjoys support in a well-established literature. Its intellectual roots rest on principles of family systems theory that regard children's problematic behavior as an expression of family-wide dysfunction.

A possible resolution of the controversy regarding conceptualization may be found in the recognition that each explanation may fit some alienated children but not others. Some children's negative attitudes may be best understood as a product of cognitive and affective manipulation. Other children's negative attitudes may be best understood as the end result of a complex interplay of factors such as the circumstances of the ruptured relationship between the parents and the behavior of the child, the alienated parent, the aligned parent, new partners, other family members, and therapists.

Other controversies concern the appropriateness of using the term PAS in court and whether this term, more than other formal diagnoses, lends itself to misuse by abusive parents who have actually earned their children's enmity and choose to blame the situation on the other parent rather

than acknowledge the children's alienation as reasonable. It remains an empirical question whether or not conceptualizing pathological alienation in a broader sense, without delineating a subgroup of children whose alienation is primarily the result of the favored parent's influence, will contribute to a reduction in the incidence of misdiagnosis and misunderstanding, or whether all that is needed is continued clarification about what PAS is and what it is not. Finally, prevailing opinion among mental health professionals regards the court's authority as a key element in successful remedies of severe alienation unless parents are able to agree on a course of action. But, this consensus is rooted in clinical experience without extensive support in large-scale, well-controlled outcome studies, and it does not extend to agreement on the exact manner and extent of judicial intervention.

Future empirical research should help resolve some of the controversies by providing data on the reliability and validity of PAS, the effectiveness of various interventions, and the long-term course of pathological alienation. The results of such studies should help refine and enhance our understanding of how best to help families with alienated children. When it comes to such families, legal and mental health professionals who work in the trenches of consultation rooms and courtrooms know that there are plenty of tales of misery to go around, misery from parents who worry that their children are being forced to spend time with a physically or sexually abusive parent, misery from children who are required to spend time with a parent they profess to hate or fear, misery from desperate parents who are cut off from contact with the children they raised and love, and misery from grandparents who fear that even if their grandchildren eventually recover their desire to visit, it will be too late. We can best serve this constituency by reducing inflammatory rhetoric and ad hominem attacks, appreciating the limits of our knowledge, continuing to pursue new knowledge, and applying what we have learned to safeguard the best interests of children.