

NEW YORK STATE OFF

Parental Alienation Syndrome and Parental Alienation

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A mother who raises the issue of domestic violence or child sexual abuse during child custody litigation may find herself accused of *parental alienation syndrome* or *parental alienation*. These accusations often lead family courts to focus on the mother's motives and unwillingness to co-parent, discount what she says about abuse, and, all too often, order the children into custody or unsupervised visitation with their abusive father.

Parental Alienation Syndrome (PAS)

"PAS" was defined by psychiatrist Richard Gardner² as a mental health disorder in which mothers use child (primarily sexual) abuse allegations to punish their ex-husbands and win custody for themselves. He theorized that these mothers brainwash their children into believing that their father had abused them and enlist them in a "campaign of denigration" against the father, in which the children contribute their own fabricated stories. Gardner's proposed remedy was extreme - denying all mother-child contact and "de-programming" the child to change their belief that they had been abused.

Gardner had no objective data to support his theory and extensive empirical research directly contradicts it. Studies show that child sexual abuse claims are actually made in a very small percentage of custody cases, and only 12% or fewer are intentionally false.³ Even researchers who see *alienation* as a real problem concur that there is no scientific basis for describing it as a mental health *syndrome* in the child.⁴ But because family courts place such a priority on fostering children's relationships with their noncustodial parents, alienation claims have more power than they deserve in defeating claims of abuse. To counter that trend, the National Council of Juvenile and Family Court Judges has warned that:

[t]he discredited "diagnosis" of "PAS" (or allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the children's responses by acting in violent, disrespectful, intimidating, humiliating and/or discrediting ways toward the children themselves, or the children's other parent.⁵

Parental Alienation (PA)

The discrediting of PAS has not ended allegations of alienation in custody litigation. But while children in divorcing families are sometimes estranged from one parent, there is no evidence that parental poisoning of the child's mind – as opposed to the disfavored parent's own conduct – *causes* this estrangement. Even Janet Johnston, a leading proponent of PA, found that, despite alienating behaviors by almost all the divorcing parents she studied, only 6% of the children were "extremely rejecting" and only 20% were "consistently negative" toward the other parent. And many of those had specific reasons for their hostility, including abuse or neglect.⁶

It may be no coincidence that, along with courts' increased focus on alienation, joint custody is regularly awarded despite a history of abuse, primary caregivers alleging abuse often lose custody, and a growing number have been judicially cut off from virtually all contact with their children.⁷ One study found that abusive fathers received *more* visitation than non-abusers.⁸ In response to these trends, the NYS legislature adopted Chapter 538 of the Laws of 2008, which amends §240 of the Domestic Relations Law, requiring courts to consider abuse allegations and to not punish parents who bring such allegations in good faith.

A RATIONAL APPROACH¹

The fact that divorcing parents often badmouth each other to the children can not justify the damage being done to abused and endangered children by PAS and PA accusations. A more rational and fair approach would follow these steps:

1. Assess abuse first.
2. Require evaluators to have genuine expertise in both child abuse and domestic violence.
3. Once abuse is found, do not consider alienation claims by the abuser.
4. Do not base any finding of alienation on unconfirmed abuse allegations or protective measures taken by the preferred parent.
5. Evaluate alienation claims only if (i) the child is actually unreasonably hostile to the other parent and resistant to visits, and (ii) there is active alienating behavior by the "aligned" parent. A finding of alienation should require, at minimum, that the parent consciously intends the alienation and specific behaviors can be identified.
6. Limit remedies for confirmed alienation to healing the child's relationship with the estranged parent.

¹ See Meier (2009), Note 1 for a fuller discussion of these recommendations.

1 The author, Joan Meier, excerpted this essay from her longer paper. See Meier, J. (2009). *Parental Alienation Syndrome and Parental Alienation: Research Reviews* Harrisburg, PA, <http://www.vawnet.org>

2 Gardner, R.A. (1992). *The Parental Alienation Syndrome: A Guide For Mental Health & Legal Professionals*, Cresskill, N.J.: Creative Therapeutics, 226-227.

3 Trocme, N. & Bala, N. (2005). False allegations of abuse & neglect when parents separate, *Child Abuse & Neglect*, 29(12), 1333-1345; Thoennes, N. & Tjaden, P.G. (1990). The extent, nature, & validity of sexual abuse allegations in custody/visitation disputes, *Child Abuse & Neglect*, 14, 151-163.

4 Emery, R.E., Otto R.K. & O'Donohue, W. T. (2005). A critical assessment of child custody evaluations: limited science and a flawed system. *Psychological Science in the Public Interest*, 6(1), 1-29; Gould, J.W. (2006). *CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS* (2nd ed), Sarasota, FL: Professional Resource Press.

5 Dallan, C., Drozd, L., & Wong, F. (2004, rev. 2006). Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide, *National Council of Juvenile & Family Court Judges & State Justice Institute*.

6 Johnston, J.R., Walters, M.G., & Olesen, N.W. (2005). Is it alienating parenting, role reversal or child abuse? A study of children's rejection of a parent in child custody disputes. *J. Child Custody*, 5, 191-218.

7 Leshner, M., & Neustein, A. (2005). *FROM MADNESS TO MURDER: WHY MOTHERS ARE RUNNING FROM THE FAMILY COURTS – AND WHAT CAN BE DONE ABOUT IT*. Northeastern University Press.

8 Rosen, L. & O'Sullivan, C.S. (2005). Outcomes of custody & visitation petitions when fathers are restrained by protection orders, *Violence Against Women*, 11(8), 1054-1075.

Q&A About LGBT Legal Issues and Intimate Partner Violence

This Q&A was conducted with Amy E. Schwartz, Esq., Staff Attorney, Domestic Violence Legal Program, Empire Justice Center.

Q: What are some of the unique legal challenges facing LGBT victims of intimate partner violence?

A: Because of evolving or unequal state and federal law, and negative or unsettled case law relating to family formation and relationship recognition, some legal remedies available to heterosexual victims may be difficult to access for LGBT people. Examples include:

- Non-citizen LGBT victims in valid same-sex marriages with their abusers may be unable to access immigration status protections afforded by the federal Violence Against Women Act, such as battered spouse waiver or self petition, because federal law does not recognize same-sex marriages.
- A lesbian with a valid same-sex civil union from Vermont may be unable to get that union dissolved in New York, because civil unions are not recognized as a marriage under present case law.
- A transgender female may be improperly denied access to domestic violence shelter because of the program's unwillingness to support her gender identity and expression.

Q: What are the various legal relationships in the LGBT community and which are recognized by New York State?

A: Individuals should consult an attorney familiar with these issues as this is a quickly evolving and confusing area of law. While a number of states and other countries allow LGBT couples to obtain the rights and responsibilities of marriage or enter into civil unions

or domestic partnerships, at the time of this writing, New York does not. Certain municipalities do offer domestic partnership registries and there are state laws that provide specific rights to domestic partners, but these laws are limited in scope and legal relationship recognition. Because of these limitations, some LGBT residents have traveled outside New York to enter into marriages, civil unions, or domestic partnerships. Alternatively, some families have relocated to New York with these legal statuses already intact. As a result, New York courts have been litigating relationship recognition questions for LGBT families. These legal questions remain unsettled as case law evolves. For more information: www.empirejustice.org/New/DomesticViolence/DomesticViolence2.html

Many LGBT families have not attempted to legally formalize their relationships via marriage and the like, but have taken other legal steps (i.e. wills, partnership agreements, second parent or joint adoption, etc.) to protect mutual interests and/or children, and these would likely be recognized under the law. Other families have not taken these steps, facing legal uncertainty if families breakup.

Q: What are the legal remedies that might be affected by the type of relationship an LGBT victim has with their partner?

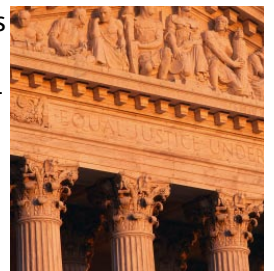
A: As of July 2008, many LGBT victims can now access civil and criminal remedies (such as family court orders of protection and mandatory arrest protections) not previously available because of a change in how NYS law defines "family or household member." Because of this change, it is anticipated that more LGBT families will have access to Integrated Domestic Violence Courts and other

specialized domestic violence courts. Additionally, there are existing domestic violence laws that provide assistance to a broad spectrum of victims, such as residential and non-residential domestic violence services, address confidentiality, name changes, absentee voting, housing, employment, insurance, and welfare benefits protections. However, some legal remedies based on marriage or family formation are complicated or impossible where there is a question if the relationship will be legally recognized. These include:

- divorce or dissolution;
- economic issues, such as equitable distribution or spousal support; and
- custody, visitation, and child support for the non-biological parent when parties have not completed a second parent or joint adoption of children.

Q: What can an LGBT victim do to ensure they are getting the most up-to-date information about these and other legal issues?

A: LGBT victims should consult an attorney well-informed about both LGBT and domestic violence law. However, because these attorneys are rare, an attorney with background in domestic violence law or LGBT law would be helpful where that attorney consults with an expert in the other field. Domestic violence and LGBT service programs are becoming increasingly knowledgeable about these issues and may also be able to provide support, advocacy, and direction. For a list of resources in New York: www.empirejustice.org/New/DomesticViolence/DomesticViolence3.html



Legislative Update



Governor Paterson signed into law three bills that would provide greater protections for victims of domestic violence:

Chapter 80

establishes victims of domestic violence as a protected class in the employment provisions of the NYS human rights law. The new law prevents an employer from firing or refusing to hire an individual based on their status as a victim of domestic violence and prevents discrimination

in compensation or in the terms, conditions or privileges of employment. Effective 7/7/09.

[Chapter 72](#) requires, at the beginning of any divorce proceeding, automatic orders to be issued to prevent both parties from incurring unreasonable debts, dissipating assets (including personal property, real estate, retirement funds, etc.), or removing a party or the children from health or life insurance policies. Effective 9/1/09.

[Chapter 83](#) extends protections for individuals seeking a name change. The NYS Civil Rights Law allowed a judge to

seal court documents and other records associated with a name change, and to waive the requirement that the change be published in a local paper, if the court found that disclosing this information would jeopardize the safety of the person requesting the change. The new law requires the judge to order the sealing and safeguarding of all information from the time the case is opened, rather than waiting until a final decision is reached. Effective 7/7/09.

Please visit the OPDV website periodically for any additional legislative updates.

Media Project

During the 2008-2009 academic year, a team of students from NYU Robert F. Wagner Graduate School of Public Service chose to work with OPDV on a project focusing on media coverage of domestic violence in New York State.

The project, based on a study done in Rhode Island, included a content analysis of print media, an examination of other national media projects, interviews with editors, reporters, and domestic violence programs, and recommendations on how OPDV might help to improve media coverage of domestic violence in New York State.

The team recently presented its findings and recommendations to OPDV staff. Recommendations ranged from training police, frequent sources for the media, to developing a tool kit for media professionals. OPDV is currently reviewing the findings and recommendations and is determining next steps. We look forward to building on the work done by the team and to providing support to media and the domestic violence community in this area. Check our website for updates on this project.

OPDV thanks the team (Emily Barnes, Aminata Diop, Sarah Felsenthal, Surovi



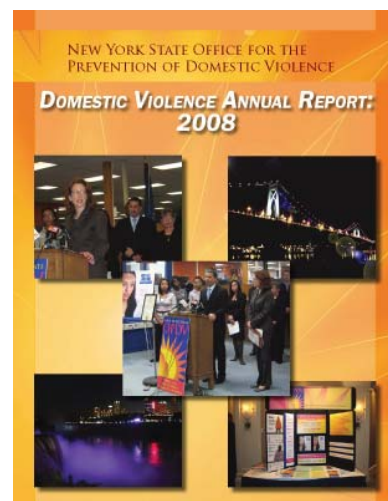
Mukerjee, Laura Prussin, and Instructor Sara Grant), NYU Wagner School of Public Service, and the editors, reporters, and domestic violence programs who agreed to be interviewed as part of this project.

Domestic Violence Annual Report: 2008

Recently, OPDV issued an annual report, highlighting steps the State took to address domestic violence in 2008, including information on training, legislation, policies, programs, and public education. The report, which also highlights plans for 2009, was developed by OPDV, but includes information about many different agencies' work to address domestic violence, such as NYS Crime Victims Board, NYS Office for Children and Family Services, and NYS Division of Probation and Correctional Alternatives. The intention is to release a report of this nature annually. To access this report,

visit: opdv.state.ny.us/statistics/reports/dvannual08/contents.html

Released with the annual report was the Domestic Violence Dashboard, a comprehensive compilation of domestic violence-related data from multiple agencies and systems. The Dashboard includes one year's worth of data, including criminal justice, social services, and medical information. The goal is to release an annual Dashboard, building on this document. Data elements will be added over time to allow for examination of trends. To access the Dashboard, visit: opdv.state.ny.us/statistics/nydata/index.html



NYS Office for the Prevention of Domestic Violence www.opdv.state.ny.us

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