



An Overview of Parental Alienation in the United States

Hon. Robert Hettleman

January 11, 2018

Haruv Institute

My Background

- **17 years as a prosecutor of criminal cases**
 - Including 10 years handling child abuse cases
 - Chief of the Child Abuse Unit in Manhattan
- **4 years as a Family Court Judge in New York City**
 - Primarily child protection cases, some custody cases
- **I am not a therapist**
 - But it sure feels like I am
 - Regular interaction, reports, and work with them on criminal and family cases



Overview of Today's Presentation

- 1. The Problem that We See in the Courts**
- 2. Alienation vs. "Parental Alienation Syndrome" in the Courts**
- 3. The Approach for investigators, attorneys, therapists, and judges**
- 4. Therapeutic Approaches for the Children and the Families**

1. The Problem of Parental Alienation or Estrangement

We know it happens in high-conflict families

- **Parent A is seeking an adult-oriented remedy – victory in court**
- **Child is caught in between, divided loyalty, “brainwashed”**
- Child Protection Cases – allegations by the government that a parent/guardian has abused or neglected a child
- Custody/Divorce Cases – allegations by a parent/child in seeking parenting time
- Claims in community: strongly reinforced by caregivers, family members, teachers, therapists, etc.

1. The Problem in Court: A Judge Has to Make a Decision

Decisions on custody, parenting time, nature of visitation have a huge effect on this family for the rest of their lives

- **Is there inappropriate estrangement?**
- **Is there underlying abuse, neglect, or other conduct that is genuine?**
- **I don't know any of these people or anything about them!**

1. The Problem in Court: A Judge Has to Make a Decision

- Witness 1: Parent A (tearful, concerned, sincere)
- Witness 2: Testimony or statements by child or therapist/social worker/teacher (tearful, concerned, sincere)
- Witness 3: Parent B (sad, angry, denial)
- Witness 4: NONE – very little other information for me to hear

2. United States Courts: Estrangement vs. Parental Alienation Syndrome

- **We consider estrangement in all decisions at every stage**
 - ✓ *Legal Standard is usually "Best Interests of the Child"*
- For parents: affects custody, visitation, ability to move, etc.
 - Parent A could be "punished" for engaging in alienation – alienation is a form of abuse
 - "any interference by the custodial parent has been said to be an act so inconsistent with the best interests of the children as to, per se, raise a strong probability that the [offending party] is unfit to act as a custodial parent." *Entwistle v. Entwistle (NY Appellate Court 1978)*.
 - Parent B could suffer unfair lack of access to the child
- For children: significant impact of alienation
 - Downward spiral of worsening interactions with Parent B
 - Long-term wellness of the child's development and family support

2. Parental Alienation Syndrome (“PAS”): A Huge Controversy in US Courts

Arguments *against* PAS being used in courts:

- PAS was created by fathers’ groups in an effort to discredit allegations of abuse made by women and children
 - ✓ Part of an ongoing pattern of ignoring and minimizing domestic violence; sexual abuse; child abuse and neglect
- Alienation is not a “syndrome” that can be defined – no consistent symptomology; no basis for Gardner’s view of how prevalent it is (he seems to ignore that behaviors during divorce are normal emotional development)
- **Permitting an expert in PAS to testify would give it unfair weight for the Judge**
 - ✓ Remember what evidence I have (and do NOT have) before me

2. Parental Alienation Syndrome (“PAS”): A Huge Controversy in US Courts

Arguments in favor of PAS being used in courts

- It is real, it happens regularly, we see it all the time
- Without significant intervention, the child will adopt Parent A’s position forever
- Mothers can have a distinct advantage with children and with Judges
 - Without an expert’s testimony, a Judge will simply side with the crying child and mother and view Parent B as scary, uninvolved, or bad

2. Parental Alienation Syndrome ("PAS") in United States Courts

- **PAS is NOT a recognized mental health condition in the DSM-V**
 - Rejected by much of scientific community in the US
 - Almost all reject Gardner's recommendation of full transfer of child to Parent B or appointing a "special master" to oversee all interactions between the child and Parent B
- **PAS is NOT recognized *as a syndrome* in most US courts**
 - Therefore, a parent usually cannot have an "expert" testify about PAS
 - *See, e.g., People v. Fortin* (NY Trial Court 2000)

3. What to Do? In Court Cases

Context Is Everything: Assess the Abuse/Neglect First

- **If there is real abuse, neglect, domestic violence, etc., then it is not “alienation,” but rather a child’s legitimate fear, discomfort, trauma**
 - Investigate evidence about whether the allegations are true
 - Look for and consider corroborating evidence, independent of statements by child, Parent A, and Parent A’s supporters

3. What to Do?

Investigators, Attorneys, Therapists

What really happened?

- Decisions must be based on **FACTS**
 - Not sympathy
 - Not gender
 - Not other biases
- Make *your own* decisions and recommendations based upon **facts**
 - Not sympathy, gender, or bias
 - Not what one parent (or both parents) tell you

3. What to Do?

Investigators, Attorneys, Therapists

FACTS, FACTS, FACTS

- **Ask questions, questions, and more questions during the investigation**
 - Proper, non-leading questions (Forensic interviews at CACs)
 - **Challenge assumptions (my father is “great”)**
- **Seek corroboration – for example???**
 - Eyewitnesses, earwitnesses
 - Friends, neighbors, teachers
 - Injuries, concerning behaviors, statements made
 - Timeframe is incredibly important (do not just ask about today – go back in time)
 - Records, emails, texts, social media

3. What to Do?

Corroboration

- Experts

- Therapists, psychologists, psychiatrists
- Statements made by children
- Behaviors and interactions observed
- Mental health diagnoses (e.g., PTSD, depressions, enuresis, etc.)

➤ In some Family Courts in some states (like NY), an expert *is permitted* to give an opinion as to whether a child was abused

- But the Judge must always make the final decision
- Experts may NOT give an opinion like this in criminal cases

3. What to Do?

Corroboration

➤ Should the Judge speak to the child?

- Children do not always follow Parent A's coaching when Parent A is not around
- Learn how to interview a child – avoid paternalism
 - “Of course you want to see your mommy happy, right?”
- Be careful of causing further trauma to child
 - Testifying in court is scary
 - Fear of saying things about parents
 - *IN CAMERA* option
 - ***Ensure proper support for a testifying child: preparation, therapeutic support, family support***

3. What to Do? Judges in Court

What really happened?

- Decisions must be based on **FACTS**
 - Not sympathy
 - Not gender
 - Not other biases
- Try not to rush decisions
 - This provides reflection to overcome sympathy, bias, anger
 - A delay may permit time for supervision, intervention, improvement

3. What to Do?

Judges in Court

- Push the parties for additional information, evidence
 - Other witnesses (eyewitness, earwitness, etc.)
 - Records (school, medical, social work)
- Ask more questions of witnesses
 - Was the child's behavior this way *before* the allegations were made or the divorce case began?
 - Breaking down conclusory language ("happy," "afraid," "always")

Danger: What is the role of the judge?

4. Therapeutic Approaches

Important Concepts

- Consider the child's position: Be careful about **forcing** the child to attend visits, joint therapy, etc.
 - **If there was abuse, the trauma is real** – forcing the child could be detrimental
- But the child does not make the decisions (*see Nehra v. Uhlar* (NY Ct. of Appeals 1977))
 - Refusal to visit Parent B might simply be the child's loyalty to Parent A
 - Demonstrate to the parents and the child that we will not give up on the family (judge, lawyers, therapists)
- Intervene quickly to avoid worsening of the problem, but think long-term
 - Process takes time and work by the child and **both** parents

Good summary: <http://ct.counseling.org/2015/12/parent-child-relationship-problems-treatment-tools-for-rectification-counseling/>

4. Therapeutic Approaches: Practitioners

- If it's truly alienation, then the relationship and trust must be re-established
- Relational work

1. Visitation

2. Therapy

4. Therapeutic Approaches: Practitioners

Visitation: Contact between the child and Parent B is crucial

- Supervised by a family member or trusted adult
- Supervised by a therapist or specialist
- Supervised by an agency worker (foster care, for-profit visitation host, etc.)
- Sandwich visits
- Progress to overnights

✓ *If there is no in-person visitation, consider phone, video, emails. Important for Parent B to have some contact (in most cases)*

4. Therapeutic Approaches: Practitioners

Therapy Options

- Individual therapy for the child
 - Assessing trauma vs. alienation: MUST know the child's position *independent* of the parents' opinions and statements
 - Either way, moving the child forward
 - Even in abuse, it is very unusual for a child not to want to see a parent with whom they have had significant involvement
- Then, introduce Dyadic/Therapeutic Visitation for child and Parent B
- Therapeutic approach should eventually include *both* parents and the child

4. Therapeutic Approaches: Alienation “Specialists”

- Removal of the child from Parent A (Dr. Gardner)
 - To Parent B
 - To family
 - To foster care

Very controversial – generally rejected in the US

See, e.g., Kramer v. Kramer (NY Trial Ct 2015)

4. Therapeutic Approaches: Alienation “Specialists”

➤ Specialized visitation or therapy targeting alienation

- Example: Dr. Favaro
 - Intense: *10 visits in 14 days, NO “clinical talk”, do science project or goal oriented activity (claims 68% reconciliation rate)*
 - Less intense: *“Incidental” visits = short visits 2-3x/week – enough time to eat, not enough time to fight*
- Example: <https://paradigmmalibu.com> (intensive counseling for teenagers, including in-patient centers if appropriate)
- Example at Warshak’s blog Plutoverse and book Divorce Poison

4. Therapeutic Approaches: Alienation "Specialists"

- Hospitalization and treatment (Rye Hospitalization Facility) (Dr. Stephens)
 - Severe cases only
 - Separation from all parties
 - In-patient treatment for child, then incorporate parents into treatment

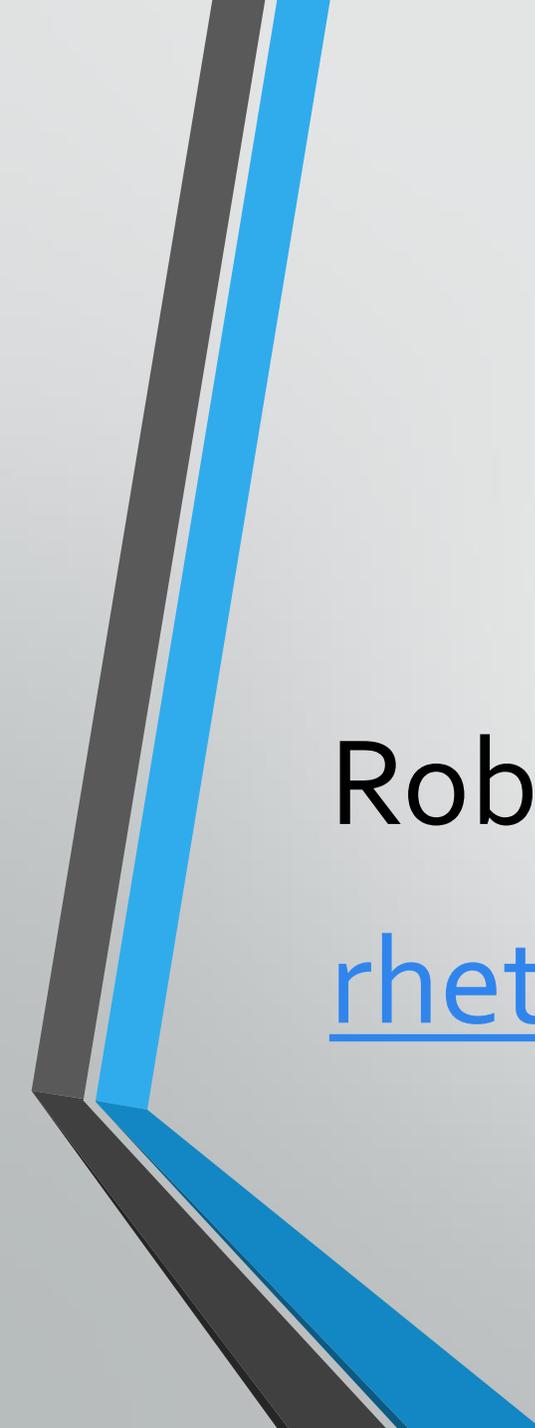
4. Therapeutic Approaches: Alienation "Specialists"

- No long-term studies on the effectiveness of these specialized treatments
 - *Many therapists have created a specialty and charge large amounts of money without any proven record of success*
- Opponents of PAS (as a syndrome) oppose the severe remedies as too traumatic to the child and not likely to succeed

Conclusion:

Alienation in the United States

- **Controversy and skepticism of PAS as a “syndrome”**
 - Concern of minimizing true abuse and neglect
 - Fear of overly-severe responses by courts and therapists
- **Courts and practitioners should focus on context and addressing the particular family**
- **Therapists still experimenting on treatment and studying alienation**



Questions

Robert Hettleman

rhettleman@gmail.com