

# **PARENTAL ALIENATION SYNDROME IN FAMILY COURT DISPUTES**

A/Prof Carolyn Quadrio  
School of Psychiatry, University of New South Wales

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## **Abstract**

The Parental Alienation Syndrome is one that is sometimes invoked in Family Law Proceedings. It is said to explain false allegations made by one parent against another – usually the allegations refer to sexual abuse of a child and usually it is the mother who is said to be alienating the children from the father.

This paper will review the syndrome as defined by Gardener and its utility or otherwise in legal proceedings and will also review the issue of false allegations of sexual abuse and the credibility of children making disclosures.

The author has many years experience preparing family assessments for the Family Court and many of these involve allegations of sexual abuse.

## **Introduction**

The question of allegations of sexual abuse in Family Law cases is a complex issue. It is becoming increasingly common to see Parental Alienation Syndrome (PAS) invoked as an explanation for such allegations, with the implication that the allegations are false.

This presentation will review some of the literature on both issues - false allegations and PAS - in the context of Family Law disputes. It will examine the concept of PAS and will suggest that it has neither validity nor utility.

Parental Alienation Syndrome (PAS) was described by Gardener in the USA. He refers to cases of disputed custody or residency following divorce when one parent (usually the mother) seeks to deny access to the child(ren) by the other parent on the basis of alleged sexual abuse of the child(ren) by that parent. Gardner suggests that these are often situations where a false allegation is made in an attempt to deliberately alienate the child(ren) from the other parent. According to Gardner, in 90% of these cases the allegations are false.

The author has many years experience in preparing family assessments and giving expert witness testimony to the Family Court. Many of the cases assessed involve allegations of sexual abuse of children.

## **PAS as Syndrome**

First, a review of the validity and the utility of the concept of PAS as a syndrome.

A syndrome is a group of symptoms that occur together and that constitute a recognizable condition. (Myers 1993)

A disease: has a cause that is likely to be known.

A syndrome: has a less certain aetiology, but a cause is assumed for the group of symptoms that present.

Some syndromes are diagnostic, others are not.

Battered Child Syndrome for example is diagnostic: multiple unexplained bony abnormalities were originally designated as Schimmel-Busch Syndrome but once the cause - physical abuse - was identified, the descriptor was altered to acknowledge the cause.

The Child Abuse Accommodation Syndrome (Summitt, 1983) is non-diagnostic; it explains the behaviour of a child who is known to have been sexually abused. The features of accommodation mean nothing in and of themselves in relation to proving that sexual abuse has occurred.

Similarly, PAS is non-diagnostic; it only explains the behaviour of the child and the mother once it is known that the child has not been sexually abused.

### Child Abuse Accommodation Syndrome (CAAS)

This is useful to consider as a comparison with PAS:

Although empirically derived, CAAS is not a diagnostic formulation. It refers to commonly observed tendencies in children who have been sexually abused to make delayed, inconsistent and unconvincing disclosures of the abuse and frequently to recant. Children who are abused over a long period of time may come to accept the abuse as an inevitable aspect of their lives. They may remain attached (although often ambivalently) to the abuser. This continuing attachment and apparent lack of protest is part of the child's accommodation to the situation. The utility of this descriptor is to indicate that the presence of these features does not invalidate alleged sexual abuse. Obviously cases of false allegations may present similarly.

### **PAS: Its Utility in Court**

Because PAS is non-diagnostic syndrome, it is only useful in explaining the symptom presentation when it is known that an abuse allegation is a deliberately made false accusation. However, the reverse is not true. The syndrome cannot be used to decide whether a child has been sexually abused. It is of little probative value to courts making decisions about the presence or absence of sexual abuse.

In PAS as described by Gardener, every one his indicators is open to a different interpretation:

For example, his assertion that a child may be hostile towards her father because she is acting out her mother's or her own sexual strivings. More simply the child may feel hostility because the accused parent has treated her badly.

If an accused father has not abused the child, then the mother's behaviour may be vindictive, it may be misguided, it may reflect excessive anxiety, it may arise out of a projection of her own experiences. Each of those explanations needs to be given equal weight but RG does not do this, he assumes that in 90% of cases the allegations are false and vindictive.

PAS lacks parsimony:

*elaborate explanations are given for behaviours for which there are more likely explanations.*

Because of the possibility of multiple interpretations of a given symptom, inter-rater reliability is poor.

PAS does not take into account the range of behaviours a child adopts in relation to an abusive parent – this can be hatred, ambivalence or affection.

Mothers have a range of responses to disclosures, from disbelief to belief.

### **Myers' Conclusions**

1. Because PAS does not address the issue of whether children have been abused, it is of little use in deciding the issue.

2. It is only of use in understanding the behaviour of a child and mother in some cases in which the allegation of mistreatment by the father is determined by other means to be false. (c/f Summitt's Accommodation Syndrome.)
3. Its fundamental flaw is that it does not take into account other explanations for the child and mother's behaviour.
4. Gardner offers no data to support his view. Other research leads to a conclusion that some of its tenets are wrong and that others represent a minority view.
5. PAS takes no account of the fact that child sexual abuse (CSA) is actually prevalent, that some 20-30% of children have experienced CSA.

### **Child Sexual Abuse**

1. CSA is common.  
Mazza and Dennerstein in Australia (2001) showed that 36% of Australian women had experienced CSA before the age of 16 and this was defined as contact. The figure of around 1 in 3 female and 1 in 4 male children is replicated in many studies all over the world. On the basis of these well established data, it is to be expected that families proceeding through FC will be no different and therefore we need to consider that 1 in 3 female and 1 in 4 male children coming before the court may be the victim of CSA. (In fact there is good reason to consider that these families are more dysfunctional than a community sample.)
2. It is extremely difficult to determine that sexual abuse did not happen.  
This is the major problem in considering the possibility of false allegations. Once made such allegations are difficult to disprove. There are strongly confounding presentations, eg a child may exhibit attachment and lack of fear towards a known abuser and a child may exhibit mistrust and fear towards a parent who has been falsely accused.
3. Most CSA is unreported.  
When reported it is hard to prove and most studies show that false allegations occur in a minority of cases.

### **Data Regarding False Allegations**

Gardner presents no data on which to base his assertion that 90% of allegations of sexual abuse in the context of FC disputes are false. However, there is no dearth of literature on this topic and there are a number of excellent studies, such as the following:

Thoenes - allegations occur in 2-4% of contested cases.

Jones and McGraw – evaluated all cases of CSA in Denver Soc Services Dept (1983)  
8% were probably fabricated (same proportion as in the study by Thea Brown).

Others have higher rates (Green, Benedek and Schetky, Jones and Seig) but the number of children was 11,18 and 20 respectively and there were other design flaws, eg small private practices. (Note this criticism applies to my study).

Jones and Seig found 20% false – leaving 70-80% validated.

Clearly the research literature indicates that false allegations comprise only a minority.

## **Proof of Abuse**

In Australia, the FC is concerned with the question of “unacceptable risk” to the child. This means that it is only necessary to establish the likelihood or possibility of abuse, it is not necessary to prove that abuse has occurred.

## **Capacity of Children to Make Accurate Disclosures**

There is an excellent literature on the testamentary capacity of children and it suggests that children rarely fabricate stories of abuse and usually can report adequately. Mostly this refers to verbal children – at least 4 years of age. (Although even younger children are capable of providing reliable disclosures.)

Many studies have shown that children are not suggestible and that they have reliable memories. This is more so when the events are repetitive.

In order to be able to make a reliable report, a child must have:

- the capacity to observe
- sufficient memory to recollect events
- the capacity to communicate
- an appreciation of the moral duty to tell the truth
- an understanding of the difference between truth and fabrication

## **Assessing False Disclosures**

This is not so difficult but no single piece of behaviour on its own should be taken as conclusive. As with all clinical assessments, there is an accumulation of clinical data that point in a certain direction. Rarely can one say with confidence: “this allegation is false”. But often one can say there is not much clinical evidence to suggest that this child has experienced sexual abuse.

Children who are making false disclosures have usually been coached by an adult. This is often readily apparent in their history. They provide stereotyped statements, often use the same words as the parent who has coached them and cannot provide additional detail. Often they complain about minor transgressions of the accused parent in the same vein as the complaints of sexual abuse. Usually they offer reports that are intended to invoke sympathy for the coaching parent – for example complaining about the lack of child support payments.

## **Expert Psychological Testimony**

Some “experts” lack expertise in assessing children or CSA. It is extremely unwise for a clinician to offer an opinion on the likelihood or otherwise of CSA having occurred without undertaking a family assessment. In particular experts who present evidence based on the examination of only one parent are on very uncertain ground. In the case of concluding that this is PAS, it is impossible to make that assertion without having assessed both parents and all the children. Alienation is a family dynamic not a syndrome and it can only be assessed in the context of understanding the family dynamic.

The use of the term “syndrome” suggests a psychiatric disorder where there is no evidence of this and is potentially misleading to the court.

The fact that one parent is mentally disturbed tells very little about whether or not abuse has occurred. The children of mentally ill parents are in fact more not less exposed to abuse. Similarly, it is sometimes argued that because the mother has a severe personality disorder her allegations of sexual abuse of her child are more likely to be malicious. This may be so but it is equally true that such a mother is more likely herself to be the victim of abuse and is less likely to be able to protect her children from abuse.

### **Detecting CSA**

There is no pathognomic syndrome of Child Sex Abuse and 20-30% of children show no effects.

Common symptoms are: anxiety, regression, sleep disturbance, nightmares, acting out, depression. These are entirely non-specific and may signify CSA or may equally reflect the inevitable disturbance of a child experiencing a divorcing family.

More specific indicators are: sexualised behaviour and knowledge of sexual acts beyond age appropriate level.

The most specific indicator is: medical evidence. However, most cases of CSA do not involve penetrative abuse sufficient to leave medical evidence.

### **Alienation as a Dynamic**

Alienation is a family dynamic: it is common in divorce to some degree and in contested custody cases it is almost ubiquitous. It may be understood as occurring over a spectrum from:

- unconscious or unintended
- to conscious or intended
- to malicious.

Similarly, motivation covers a spectrum from altruism to self-interest.

At the minor end of the spectrum there is hurt and/or depressed behaviour by one parent who is not able adequately to conceal these feelings. Children are exquisitely sensitive to parental feelings so concealment is not easy. This may have the effect of alienating children from the other parent but it may be entirely unintended.

Sometimes the message to the children is “take care of me” – this is immature rather than malicious behaviour.

Sometimes the message to the children is “don’t blame me” – this may reflect the guilt prone depressive adjustment of a parent rather than a malicious attitude.

Further up the spectrum there is hurt and/or depressed and angry behaviour by one parent who is not able adequately to conceal these feelings. This may have the effect of alienating children from the other parent but it may be largely unintended.

Further up again is the case of hurt/angry behaviour by one parent who is unwilling or unable to conceal these feelings from the children. This may have the effect of alienating children from the other parent and it is intentional. Again it may reflect immaturity on the part of the angry/hurt parent. When severe it reflects vengeful behaviour and a lack of care about the welfare of the children and their bond with the other parent.

At the extreme end of the scale is wilful and intended alienation. This may be motivated very differently, eg including self-interest, immature and neurotic.

Alienation may be consciously intended also because the alienating parent genuinely believes that abuse has occurred.

Finally, as Gardener suggests, alienation may be consciously intended and false allegations maliciously made because the alienating parent intends to discredit the other parent and gain an advantage in FLC proceedings. However, I would suggest that far from representing 90% of cases of allegations of sexual abuse, this is only one scenario and there is no evidence at all that it is the most common.

### **Suggestibility of Children (Doris, 1991)**

Studies of children: do not easily yield to interviewer's suggestions BUT it must also be considered that in these cases it is a parent not an interviewer who is suggesting and it may be reinforced by other family members and suggestions may be made frequently over time.

In some cases experiences are implanted that the child cannot refute - e.g. abuse that is said to have occurred before 3 years.

### **Allegations in Divorce and Custody**

Pearce and Wilson, 1994 – although sometimes regarded as common, it actually occurs in <2% of cases.

Some reports are high, e.g. 36-55%, but these are small samples and often from private practices (c/f my data).

Jones & McGraw, 1987: large sample - 576 cases - 4% false

### **Divorce May be Associated with Factual or False Allegations** (MacFarlane & Waterman, 1986)

Factual:

1. In longstanding abuse: the child is no longer under threat and now able to disclose.
2. Distressed parent loses control, e.g. lonely, drinking.
3. Parent now has opportunity, e.g. unsupervised access.
4. Discovery may have precipitated the divorce.

False:

1. Avenging parent accuses as revenge.
2. Overanxious parent – especially in cases of DV or if parent has history of CSA herself.

### **Substantiation Rates**

Are about same as in CSA in the absence of divorce. False allegations uncommon, for example in studies of large samples from Child Protection agencies, rates vary from 2-8% (McDonald, 1998)

## Some Case Examples

I have undertaken some 150 Order 30A reports. About one half of them involve allegations of sexual abuse. Mostly, but not always, it is a mother who has concerns about a father.

In some cases there is good evidence that sexual abuse has occurred, eg other children are independently reported, there is prosecution, medical evidence or expert interviewing confirms the disclosure.

These data are useful qualitatively but not statistically because of the selection bias. This is a highly selected group – they are referred to me because of my expertise, therefore they are not representative. (Contrast, for example, the work of Lisa Young).

Most of the cases I assess have separate representation. Most have been investigated by state authorities before I assessed them (DOCs & Police). Many have had expert disclosure interviews (e.g. JIRT) and some children have been medically examined as well.

Some case examples will illustrate the points I have made about the varied nature of alienation and the fact that it is a complex family dynamic rather than a specific syndrome:

1. Possibly “PAS”  
Re – apparently false allegations to block contact.  
Daddy showed me his penis – aged 4/5, now aged 9.  
Daddy gives me the wrong food (brand name).
2. Mother developed breast cancer after she left the marriage.  
4 teenage children – severely alienated. Father injured one child 10 years earlier = guilt and anger and scapegoating.
3. Mother drug addict – neglectful  
Father – solid citizen  
Disclosure and medical evidence = sexual abuse.

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