

---

LAW AND THE FAMILY

## "Parental Alienation"

[New York Law Journal](#)

March 26, 2000

By Joel R. **Brandes**

Parental Alienation was recently described as a situation where one parent intentionally attempts to alienate his or her child from the other parent, by poisoning his mind, and usually succeeds. [FN1] Parental Alienation Syndrome ("PAS") is a disorder that usually arises in the context of child-custody disputes. Its primary manifestation is the child's unjustified campaign of denigration against a parent. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the parent.

Where the child's animosity may be justified, such as in a case where there is true parental abuse or neglect, the Parental Alienation Syndrome explanation for the child's hostility is not applicable. The term is applicable only when the target parent has not exhibited anything close to the degree of alienating behavior that might warrant the campaign of vilification exhibited by the child. In typical cases, the victimized parent would be considered by most examiners to have provided normal, loving parenting or, at worst, exhibited minimal impairments in parental capacity. The hallmark of PAS is the exaggeration of minor weaknesses and deficiencies. [FN2] The parent who programs the child brings about the destruction of the bond between the other parent and the child which, unfortunately, is likely to be lifelong in duration. [FN3]

We believe that inducing parental alienation in a child is a form of child abuse, which should be punishable as abuse under the Family Court Act. Moreover, a parent who alienates a child against the other parent should be denied visitation with all of his or her children until the child is no longer alienated against the target parent.

Parental alienation has been recognized in New York custody cases since the 1980s, when it was held that a custodial parent's interference with the relationship

between a child and a noncustodial parent is "an act so inconsistent with the best interests of the child as to per se raise a strong probability that the offending party is unfit to act as a custodial parent." [FN4]

In *Matter of Karen B. v. Clyde M.*, [FN5] the parties originally had a joint and split custodial arrangement and a comprehensive visitation arrangement. In September 1990, the mother filed a petition to modify, requesting that she "retain all custody and visitation to be supervised, if at all." She alleged a change of circumstances, in that "Mandi had disclosed sexual advances and behavior problems because of concerns. Also it is not good for her physical, emotional and social well being to go back and forth between parents. Social Services is currently investigating." As a result of her allegations, the court entered a temporary order requiring the father's visitations with Mandi to be supervised.

According to the mother, in September 1990 Mandi disclosed to her certain sexual abuse perpetrated on Mandi by her father. He allegedly put his finger in her "peer." When she said that it hurt, he told her that he could do what he wanted. She also claimed that her Daddy's "dinkie" got bigger and "stuff came out." The mother reported this to a friend of hers, employed by Community Maternity Services, who went to her home and investigated. The child and mother were interviewed by a child sexual abuse therapist specializing in victims of ages 2-1/2 to 18 years. The mother repeated all of the allegations to the therapist, and additionally stated that on Sept. 9, Mandi had told her that the respondent has put his "peer" on her "peer" and that he had put his hand under the covers of the bed and touched her buns stating, "You know, like you take your temperature." The expert observed no outward signs of emotion when the mother spoke to her and found that the mother seemed to be repeating the story by rote, and that she couldn't respond to questions without starting from the beginning and completing the entire story. The expert concluded that there was no information that would indicate that Mandi had been sexually abused by her father.

The court held that a parent who denigrates the other by casting the false aspersion of child sex abuse, and involving the child as an instrument to achieve his or her selfish purpose, is not fit to continue in the role of a parent. It found that it would be in Mandi's best interests that her custody be awarded to her father. It stated "As the court has no assurance that the mother will not continue to 'brainwash' or 'program' Mandi, petitioner shall have no visitation nor contact with her daughter."

The Third Department affirmed. [FN6] It noted that the Family Court found that petitioner had programmed Mandi to make the sexual abuse allegations in order to obtain sole custody and deny access to respondent. It held that the fact that Family Court made reference to a book regarding parental alienation syndrome, which was neither entered into evidence nor referred to by any witness, was not a ground for reversal, especially in light of all the testimony elicited at the hearing.

In *RB v. SB*, [FN7] the trial court found that prior to their separation in October 1994, the father (R.B.) and son (A.B.) had an extremely close relationship. They spent time together playing basketball and working on A.B.'s homework. R.B. walked A.B. to school in the mornings and regularly attended school functions. In August 1994, R.B.'s relationship with A.B. deteriorated substantially. The record was replete with numerous examples of the mother's (S.B.) campaign to poison A.B.'s relationship with his father. R.B. repeatedly asked S.B. to refrain from speaking to A.B. about these issues until after A.B.'s bar mitzvah the following Sunday. In response, S.B. reiterated her threats involving A.B. The court concluded that A.B.'s four-year estrangement from R.B. was the result of S.B.'s vindictive and relentless decision to alienate A.B. from his father. The court found that beginning in August 1994, S.B. engaged in a campaign to poison the relationship between A.B. and R.B. and effectively alienated A.B. from R.B. for approximately four years. During the four years when A.B. would neither see nor speak to his father, S.B. repeatedly referred to R.B. in front of A.B. as "evil," a "thief," an "embezzler" and a "liar." She told R.B. he would never see his son without her supervision, and attempted to condition visitation upon increased support. She told R.B. she wanted A.B. to "hate his f--guts."

The court held that S.B.'s intentional interference in R.B.'s relationship with his son, to the point where A.B. refused to see or speak to R.B. for nearly four years, was an appropriate factor for the court to consider pursuant to D.R.L. 236(B)(6)(11) in setting maintenance. It found that S.B. permanently damaged R.B.'s relationship with A.B. The court refused to order support to S.B. so that she could maintain her prior standard of living. Instead, it directed that R.B. pay to S.B. only those amounts S.B. reasonably needed to meet her daily living expenses so as not to diminish A.B.'s lifestyle. The award of maintenance and child support was contingent upon S.B. ensuring that the visitation schedule established by the court at the conclusion of the trial was adhered to. The court directed that it would entertain a motion by R.B. to terminate maintenance and decrease or terminate child support upon a showing that S.B. interfered with the visitation established by the court in any manner.

#### First New York Court

In *Matter of JF v. LF*, [FN8] the Family Court became the first New York court to discuss PAS at length in a custody decision. It pointed out that the theory is controversial, and noted that according to one of the expert witnesses who testified, the syndrome is not approved as a term by the American Psychiatric Society, and it is not in DSM-IV as a psychiatric diagnosis.

Parenthetically, we note that the DSM-IV, [FN9] which was published in 1994, cautions that "DSM-IV reflects a consensus about the classification and diagnosis of mental disorders derived at the time of its initial publication. New knowledge will undoubtedly lead to the identification of new disorders."

The Family Court acknowledged that New York cases have not discussed PAS as a theory, but have discussed the issue in terms of whether the child has been programmed to disfavor the noncustodial parent, thus warranting a change in custody.

The court observed the children and found them to be both highly intelligent and articulate. Yet, when discussing their father and his family, they presented themselves "at times in a surreal way with a pseudo-maturity which is unnatural and, even, strange." They seemed like "little adults." The court found that the children's opinions about their father were unrealistic and cruel. They spoke about and to him in a way which seemed to be malicious. Both children used identical language in dismissing the happy times they spent with their father as evidenced in a videotape and picture album as "Kodak moments." They denied anything positive in their relationship with their father to an unnatural extreme. The court concluded that nothing in the father's behavior warranted that treatment.

Three expert witnesses testified that the children were aligned in an unhealthy manner with the mother and her family. One expert testified that the "...[M]other has clearly won the war over the children's minds and hearts and the father is generally helpless to offset that. Children, likewise, are deeply attached in a symbiotic fashion with their mother ... Father is painted in a highly derogatory and negative fashion, way out of proportion to any possible deficiencies that he may have. This is clearly a borderline mental device within the mother's psychology which has been clearly duplicated in the children. The overall prognosis for any major change in their attitude would appear to be quite limited at this time, even with expert psychiatric assistance."

The court-appointed psychologist concluded that the PAS was "clear" and "definite" with both children.

The father's expert submitted a report to the court in which he stated that the alienation from the father was probably the most severe case of alienation he had ever witnessed as a child psychiatrist.

The court accepted the testimony of the mental health professionals to the extent that they indicated that the mother alienated the children from the father. It found that the children would have no relationship with the father if left in the custody of their mother, and that they would continue to be psychologically damaged if they remained living with her. Their negative view of their father was out of all proportion to reality. The court found that the mother had succeeded in causing parental alienation of the children from their father, such that they not only

wished to cease having frequent and regular visitation, but actually desired to have nothing to do with him. It awarded sole custody to him and suspended her right to visitation.

The court did not specifically base its decision on a finding of PAS. Instead, it relied on the case law, which requires the custodial parent to nurture the child's relationship with the noncustodial parent, and ensures access by the noncustodial parent, [FN10] pointing out that interfering with the child's "relationship with the noncustodial parent, has been said to be so inconsistent with the child's best interest as to per se raise a strong probability of unfitness." [FN11]

FN(1) R.B. v. S.B., New York Law Journal, 3-31-99, page 29, col. 5, Sup. Ct., NY Co. (Silberman, J),

FN(2) Gardner, R.A., The Parental Alienation Syndrome, Second Edition (1998)

FN(3) See Gardner, R.A., The Parental Alienation Syndrome (2d Edition) Addendum I (1999)

FN(4) Entwistle v. Entwistle, 61 AD2d 380, 384-5.

FN(5) Karen B. v. Clyde M., 151 Misc2d 794, aff'd, 197 A.D.2d 753 (3d Dept, 1999).

FN(6) Id.

FN(7) See note 1, supra

FN(8) 694 NYS2d 592, 1999 N.Y. Slip Op. 99408

FN(9) American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, 1994 at p. xxiii.

FN(10) Dagher v. Dagher, 82 AD2d 191, aff'd 56 NY2d 938.

FN(11) CITING, INTER ALIA, MALONEY V. MALONEY, 208 AD2D 603, 603-604; YOUNG V. YOUNG, 212 AD2D 114, 115; ENTWISTLE V. ENTWISTLE, SUPRA.

Joel R. **Brandes** has law offices in Garden City and New York City. He co-authored the nine-volume Law and the Family New York and Law and the Family New York Forms.

3/28/2000 NYLJ 3, (col. 1)