

CUSTODY SWITCH
BY JILL KRAMER
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If you suspect that your ex-spouse is molesting your child, don't report it to authorities. If you do, you risk losing custody to your child's molester.

Law professor John Myers has seen it happen time and again. "Abuse may have occurred, but the allegations can't be substantiated," says Myers, who teaches at the McGeorge School of Law in Sacramento. "The reaction often is, 'Ooh, an allegation of abuse that comes up in family court? That must be a lie.'" When family court judges hear unproven accusations, they often assume that the accusing parent is lying in order to smear the other parent. That's a crime punishable by loss of custody. And, when it comes to child molestation, there rarely is any proof. The horrific consequence is that sometimes children are placed in the custody of their abusers.

There is a theory behind this madness. Dubbed "parental alienation syndrome," it supposedly occurs during custody disputes when an angry parent brainwashes the child into believing that the other parent is malevolent -- often by making false allegations of sexual abuse. The theory, which almost always is applied to mothers, was formulated by Dr. Richard Gardner, a highly controversial New Jersey child psychiatrist. Gardner has shocked many of his professional colleagues with the tolerant views of pedophilia and incest he expressed in his early writings. In the last few years he has grown more guarded, although as recently as last March he wrote that parental alienation "may be even more detrimental than physically and/or sexually abusing a child." He has also been criticized for faulty logic and sloppy science. According to Dr. Paul Fink, past president of the American Psychiatric Association, "Parental alienation syndrome is a junk science term invented by Richard Gardner. His belief system is based on no evidence."

Despite all this, Gardner's theory has been embraced by judges and lawyers across the country. "Parental alienation syndrome is being used more and more in custody and visitation cases," says Nancy Frease, a marriage and family therapist who does evaluations for the Marin county juvenile court. "But the whole phenomenon of an angry mother coaching her children to make false statements against a father and the children going along with it I can say, in 13 years of clinical practice, I've seen a clear case of this maybe twice."

But PAS is in the eye of the beholder. Its proponents have broadened its definition, allowing it to be applied in more custody situations for example, where charges of violence or emotional abuse are raised. "PAS is no longer relegated only to sexual abuse cases," says Joanne Schulman, legislative chair of California Women Lawyers and president of the San Francisco Women Lawyers Alliance. "Now it's in almost every case! Any case where the mom doesn't want to give the dad 50-50 custody, or whatever the dad wants, she's [accused of] attempting to alienate the child."

The National Child Abuse and Neglect Data System confirms 105,000 new cases of child sexual abuse each year; 47% of the confirmed assaults are committed by fathers, step-fathers, uncles and older siblings. But Gardner's contention that there is an epidemic of sexual abuse allegations in custody fights is not borne out by research. In a study of 9,000 disputed custody cases, fewer than 2% involved such allegations - true or false. And when the charges are leveled, they're usually true. A team of researchers at the

University of Michigan examined 215 cases and found that, in 156 of them, or 72%, it was “likely” that sexual abuse had occurred. But, of those likely cases, the judges disregarded more than half.

“People dismiss these cases without looking at the evidence,” says Dr. Kathleen Faller, who conducted the Michigan study. “There’s a high degree of skepticism in the [family] court about any allegation of bad acts made by one parent against the other, and that filters down to how the child protection case is handled. Part of that arises because Child Protective Services has too much work to do, and one way to sort of get out of it is to say, ‘this belongs to the [family] court,’ and to not actually investigate it. There are a lot of horror stories out there a lot of children who have been abused and who continue to be abused who have no legal recourse.”

Even when CPS does substantiate an allegation of abuse, it’s usually not prosecuted.

“The reason so many cases don’t get prosecuted is because you typically have the word of a child against the word of an adult without corroborating evidence,” says Frease.

“There rarely is any medical evidence. Most molestation doesn’t involve penetration or bodily injury. It often involves fondling or things that are not going to leave bruises on a child.”

In the rare instance of a prosecution and conviction, the judge may still decide it’s irrelevant to the custody dispute. In one high-profile case, Manuel Saavedra won custody of his two daughters in San Joaquin county court despite having been convicted of fondling his 13-year-old niece. His wife, Debra Schmidt, divorced him shortly after the fondling incident and he was initially placed under supervision during his visits with his daughters. Saavedra, an illegal Chilean immigrant, had been ordered deported, and he often threatened to kidnap the little girls. While the deportation order awaited appeal, Saavedra allegedly came to Schmidt’s home and raped her in front of the older daughter. The girl described the violence she witnessed to a therapist. Saavedra’s attorney denied the charge and countered that Schmidt had coached the daughter’s statement. The family court mediator decided the mother was alienating daughter from father and convinced the judge to lift the supervision requirement. The horrified mom fled to Texas with the kids. The judge punished Schmidt by switching custody to Saavedra, and the district attorney’s office issued a fugitive warrant to have her and the children returned to California. But the state of Texas refused to cooperate. The statement from Governor Rick Perry’s office was, “The governor does not want to do anything voluntarily that would result in the children being turned over to their father, who is a child molester.” The state of California sued Texas in federal court, and Perry finally extradited Schmidt in August. The little girls are now staying with the parents of Schmidt’s first husband in Austin, under a protective order from Texas officials. Their mom sits in Santa Rita Jail, refusing to return her daughters to Saavedra’s custody. His deportation order is still pending, and may languish for years.

In this case, since there was a conviction, there was no dispute over whether abuse had taken place; the judge simply chose to ignore it. Sometimes judges just don’t want to address sex abuse in custody cases, and they’ll go to great lengths to avoid it. In one instance documented in the University of Michigan study, the judge took a report of abuse from a family clinic and threw it to the floor, then refused to hear testimony about it.

Idelle Clarke lost custody of her daughter to her ex-husband in Los Angeles family court after social workers determined that he had sexually abused her repeatedly. A family court judge dismissed the sexual abuse charge, deciding that the girl who was eight years old when she first described the abuse had been coached by her mother to lie. The children's services department filed an appeal, but promptly dropped it when the father, a well-fixed executive in the entertainment industry, sued department staffers. The child was placed in her father's custody in 1998 and Clarke has been fighting the decision ever since. Recently, she won three powerful allies. Judicial Watch, the California chapter of National Organization for Women, and the Leadership Council for Mental Health, Justice and the Media are all submitting briefs to the appeals court in her behalf.

Meanwhile, Clarke's daughter, now 15, claims that her father continues to molest her. She has written a number of letters to her court-appointed attorney, pleading for help. But the attorney is an ardent proponent of parental alienation syndrome. "The attorney for the child simply refuses to represent the interests of the child," says Sterling Norris of Judicial Watch, whose brief on Clarke's behalf will include that point. The same attorney appears as moderator in a series of instructional videos on PAS sold by the L.A. county bar association.

The proliferation of PAS theory is partly due to the marketing savvy of Richard Gardner. Videos and seminars on the topic offer lawyers credit for continuing education. Gardner himself tours the U.S. and Europe doing training sessions, and his disciples do training as well, spreading the gospel of PAS throughout the world. Gardner also has a series of self-published books that he markets through his own website and through father's rights groups.

Alan Rosenfeld, a Boulder-based attorney, says PAS is spreading "like an infection. I practice in every region of the country, and it's all over. When someone gets into the system who believes in PAS it may be a guardian ad litem or a psychologist who does a lot of court-ordered evaluations all of a sudden, that becomes the predominant solution or diagnosis to every contested custody case. Because it's such an easy answer to hard cases: threaten the mom with losing custody if she doesn't stop making these charges. Then you don't have to worry about child abuse. And the judges are lazy. If they have a psychologist who's got good credentials who tells them what to do, they do it."

Another explanation for the appeal of PAS is that the thought of child abuse, particularly by a parent, is so repugnant that we'd rather not believe it. And if the accused parent seems to be respectable, it's even harder to believe. Evaluator Nancy Frease says that appearances in these cases can often be deceiving. "If you think about what kind of man would molest his child and accuse his wife of fabricating the story and coaching the child, you're looking at someone who's fairly narcissistic and sociopathic," she says. "And these kind of people can present very well. They can look concerned, appropriate, loving while the mother may look fairly nuts. She's convinced her husband is getting away with this, she's in crisis because she believes something awful is happening to her child. So she's yelling and screaming and trying to get her case across and looking more inappropriate by the moment."

Law professor Alan Schefflin says it helps the molester's case when he's affluent. "You often have a wealthy father with a certain amount of reputation and prestige in the community the kind of person about whom one would say, 'oh, he wouldn't do something like that' who can buy off a series of lawyers and psychologists and experts,"

he says. "And you generally have a semi-frantic, semi-hysterical woman on the other side, who's fearful not only of her children being taken away from her, but put in the hands of people she believes are molesting them. And she has very little resources. And the emotionality of the women will contribute to the judicial perception that they're kind of crazy."

Schefflin, who teaches at Santa Clara University law school, has been showered with honors over the years from the American Psychological Association and other professional groups for his expertise in brainwashing and mind control. For the last ten years, he has appeared in courts as an expert witness, sometimes going toe-to-toe against Gardner, whom he calls "the P.T. Barnum of science" he's been able to media-hype himself to the top of his profession. Any time he wanted to write an op-ed letter or be quoted, the New York Times would accommodate him. So because he's in the Times, [people think] he must be right. But nobody goes back and checks the original data. If an independent, neutral group of people studied his data and his reports, they would find that this [PAS theory] is all made up."

Stephanie Dallam, a researcher with the Leadership Council for Mental Health, Justice and the Media, did look at Gardner's data and published an analysis of it. "I found that all of his assumptions have been disproved," she says. "And if you disprove the assumptions, you should put the theory to rest. But rather than change his theory, he ignores the facts. So his theory is not science, it's ideology."

Gardner concocted his theory, in part, from research that was done in the '70s by psychologists Joan Kelly and Judith Wallerstein. They interviewed a group of Marin county children and their divorced parents to see how the breakup affected their mental health. Their findings were published in a 1980 book, "Surviving the Breakup: How children and parents cope with divorce." Kelly and Wallerstein noted that some children would take sides in the divorce, aligning with one parent and rejecting the other. Gardner elaborated on that theme, theorizing that angry mothers engineer this alignment by poisoning the children's minds against their fathers. To discourage such behavior, he recommends the mothers be punished with loss of custody, limited access to their children, fines and jail time. Children who refuse to visit one parent should be punished, too, he says, by serving time in a juvenile detention center or a foster home.

Kelly and several of her colleagues grew uncomfortable with the Frankenstein monster that the original research had become in Gardner's hands. "We decided that Gardner's formulation had some real problems," says Kelly. "One of them is that it's never been empirically tested. And there are legal problems. It's been used simplistically in a lot of places. Any time a child resisted visiting, there was a knee-jerk reaction to say, 'ah! parental alienation!' So we blame the mother. End of case. And a lot of lawyers supported that. The fathers are going into court saying, the mother has obviously alienated the child against me, it's her fault. And some of those fathers have been abusive or violent."

So Kelly and her colleagues organized a task force to come up with a reformulation of PAS that they call "the alienated child," which they published in July in Family Court Review, the journal of the Association of Family and Conciliation Courts. Rather than painting one parent as a vicious manipulator, the other as the victim and the child as the pawn, Kelly focuses on the psychology of the child. And, rather than seeing the child's relationship to the parent in black-and-white terms -- either alienated or normal -- Kelly

describes shades of grey, where the child may feel closer to one parent than the other, or may feel estranged from one for good reason. One of those reasons may be emotional, physical or sexual abuse.

Kelly also disagrees with Gardner's punitive solutions to perceived alienation. "We have taken him to task for his draconian recommendations," she says. "We would prefer therapeutic interventions that work on, why is this kid alienated? How can we work with the rejected parent and the child, and the alienating parent and the child? Most of us would not recommend change of custody."

They would, however, recommend enough therapy to keep the local psychologists and family counselors busy indefinitely. "You have a therapist for mom, a therapist for dad, a therapist for the child," says Carol Bruch, a research professor at University of California at Davis School of Law. Bruch has analyzed the Kelly reformulation in a paper to be published soon in the Family Law Quarterly. "In addition, they recommend that there be a special master -- who is entitled to make a great number of judicial decisions with no attorneys present. It's a highly intrusive, highly coercive, very costly scheme. [The parents] can be spending \$500 a week without blinking. You can end up with no property left afterwards, and not necessarily have gotten anything for your money." Kelly was highly ambivalent about granting an interview. She had just received an unsigned, accusatory letter, headed, "WE ARE WATCHING YOU." Kelly and the 31 other Marin psychologists, lawyers and judges named in the letter are charged with "illegal custody switching" connected with "pedophile protection programs," "taking kickbacks, suppressing evidence, rigging court cases for profit."

It's not the first time Kelly has been targeted. Last year, she says, she and her task force "started getting e-mails saying we were known to be associating with pederasts and that we were promoting men that had abused their kids to be primary parents. It's unbelievable. It just takes you aback. These allegations have no bearing on reality. Most of us in this field the psychologists who deal with children in these high-conflict custody cases care deeply about children's well-being. To be accused of siding with child abusers is so out of the context of what we've spent our lives doing, it's appalling."

The attacks seem to come from one or more individuals on the extreme fringe of a movement to reform family court. Three highly-publicized Marin county cases in the last several years have brought attention to the issue of alleged child abuse in custody cases. Paula Oldham was jailed in 1994 for kidnapping her daughter in the belief that she was being molested by her father. The girl has been in his custody ever since. Carol Mardeusz also lost custody to the father she thought was molesting her daughter and was jailed for attempted kidnap last year. That case sparked a special election in June that failed to recall the district attorney. And Jonea Rogers, who believed that her daughter was being molested but wasn't sure by whom, went underground with the child after being threatened by the court for making allegations.

These cases -- along with a number of others in which apparent cronyism seemed to skew judicial rulings -- have served to mobilize family court critics seeking reform. Adding to their outrage was a scathing privately-commissioned report published last year by New York consultant Karen Winner. She examined several hotly contested cases with questionable judicial decisions, and charged one judge and a commissioner with corruption. A Pacific Sun investigation revealed a group of lawyers who called themselves the "Family Law Elite Attorneys," or FLEAs, who enjoy close ties to the

judge outside the courtroom and consistently favorable decisions inside. There was picketing and protests, then a series of unsuccessful recall campaigns against four Marin county judges and the district attorney earlier this year.

Behind the brouhaha is a tangled mix of well-founded criticism, paranoia and hysteria. The dynamic resembles the development and propagation of PAS itself. The theory is based on behavior that most people have observed: when parents split up, children often choose sides and are sometimes furious at the one who left; and some parents try to interfere with the relationship between the child and the ex-spouse. The observation was interpreted by a somewhat nutty psychiatrist with a flair for self-promotion and an apparent grudge against mothers, then taken up by judges, lawyers and psychologists looking for easy answers.

Similarly, some court-watchers have observed bias, unwillingness to consider evidence and seemingly nonsensical judicial rulings. These could all be symptoms of nothing more nefarious than ignorance and laziness. But some believe there's a conspiracy. Cindy Ross, the California director of the National Alliance for Family Court Justice, has been amassing documents for the last two years, looking for connections between fathers rights groups, government grants and all the court-connected professionals who cite PAS in custody switches. "PAS was devised as a legal strategy to protect child molesters and suppress evidence of abuse and shift blame to mothers," she says. "The courts are getting kickbacks, essentially." Ross believes that federal welfare and child support enforcement funds have been directed to fathers rights groups intent on switching custody from mothers to fathers. And somehow, some of this money is going to judges who share the wealth with their colleagues, the court-appointed mediators, psychologists and special masters. "This whole perverse corruption scheme was devised primarily by pedophiles and incest advocates," she says. (Although Ross's rhetoric sounds strikingly like the language in the letter Kelly received, she denies having written it. It may have been sent by an impressionable follower of hers.)

Law professor John Myers says that many mothers who feel they've been railroaded in court try to make sense of what happened by resorting to conspiracy theories. "They tend to think that the judges are paid off," he says. "And there's no evidence that that's a common problem. But wouldn't you think that? If you're trying to protect your kid and you're telling the truth and the system doesn't work, it's real tempting to find an explanation by thinking that the system is corrupt. And then you're *really* viewed as a wacko."

Parents are caught in an insane system. They can lose custody of their kids either for reporting suspected abuse or for not reporting it. "If you don't move to protect your children from an abusive situation, you can be held to be a neglectful parent and you can even have your children removed from you," says Professor Carol Bruch. "On the other hand, you've got someone claiming there's parental alienation going on. So you are between a rock and a hard place." Small wonder that parents like Paula Oldham and Jonea Rogers give up on the legal system entirely and go underground. Of course, kidnapping is a federal crime and viewed as further proof of their unfitness as parents. If you suspect your child is being abused, says Myers, "my advice is to hold back, to wait, until you can begin to piece together a more convincing case. The thing to remember is that the person who makes the allegations in our legal system has the burden of proof. If you don't meet the burden of proof, you lose."

That's tough advice for the parent who has to listen to her child's reports of abuse. Ask Idelle Clarke. "I can't begin to tell you what it feels like," she says, her voice dropping to a whisper, "to have your child sitting on your lap, showing you how her father licks his fingers before putting them in her private parts. And to try to hold her arm back so that she doesn't keep doing it. I had to speak out. I couldn't have lived with myself if I didn't."