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Misperceptions and misapplications of research in family law cases: Myths of “Parental Alienation Syndrome” and implanted false memories

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ABSTRACT

This introduction highlights the need for a special issue in the *Journal of Child Custody* on the misconceptions and misapplications of research within the family law arena. First, an examination of why these topic areas are relevant is conducted including an overview of the types of false assumptions and biases that are still very much present within the family legal system and child custody evaluations, and how they have an ongoing negative impact on the lives of children and families. Then, this introduction introduces and outlines the different ways that the articles included in this first of the double special issue address the misconceptions contributing to faulty practice, including false memories, and provide a critical examination of the different ways that parental alienation is assessed and treated. Both issues within this two-part special issue present articles that clearly identify better and more appropriate directions for future research in order to strengthen child custody evaluations and the family law system as a whole.

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If you were to ask for a consensus among experienced child custody evaluators about whether the concept of ‘Parental Alienation Syndrome’ (PAS; Gardner, 1992, 1998) is generally accepted and used in the course of conducting child custody evaluations today, the majority of them would likely state that PAS is not a validated concept that can be admitted into court and thus not utilized. While there is still a small subset of professionals who are today still explicitly pushing the concept of PAS (or Parental Alienation Disorder as it later became known, PAD; Bernet, 2008), the more concerning aspect is the much larger group of researchers and practitioners who are utilizing the same problematic core concepts and recommendations laid out by Gardner (see Sandoval & Geffner, 2019 for a review), but under a different cover of terminology. More recently, these

same principles and recommendations promoted by PAS advocates are now just being referred to as just parental alienation, parental alienation strategies, and so forth. As a result, while most would explicitly state that PAS specifically is not relevant and should not be used, they are still using the same underlying principles and assumptions to negatively affect children and families across the world. This is very much the result of poor or erroneous training and is often reinforced by poorly conducted and misconstrued research.

Anyone who has worked with children and families, particularly those families who are in contested and conflictual separations or divorces, would likely acknowledge that parents are capable of doing very selfish and cruel things to each other by using the children as pawns to hurt one another. This author will not argue that parents never engage in problematic behaviors with the goal of hurting a child's relationship with the other parent, but the larger issue here is how the concern of one parent alienating a child from another is actually affecting professionals' abilities to appropriately examine abuse allegations and other relevant factors in these types of cases. It is also of concern whether the mental health professionals evaluating these cases are actually basing their approach, techniques, and assumptions on accepted standards of practice and research.

It is important to remember the history of how parental alienation first became a prominent issue in the legal and child custody fields. The concept was originally introduced into the family law arena as a means to defend against abuse allegations, primarily sexual abuse allegations against a father. Gardner, the founder of the original concept, was not only implicated himself as being a proponent of pedophilia (Gardner, 1992), but extended and expanded his career by being used as an expert of PAS in the defense of parents being accused of perpetrating against their children or spouses. It should come as no surprise then that the vast majority of current cases where alienation is alleged also include child abuse or domestic violence allegations against the "target parent" of the alienation. It is interesting that the issues of parental alienation as noted above with PAS are not prominent in the fields of child development or child psychiatry, family or trauma psychology, and instead are primarily seen in the areas of family law and child custody disputes where we have an adversarial legal system. The latter has unfortunately become a battleground of experts, many of whom make much of their money from testifying in favor of parental alienation in these types of cases.

When we look at the best interest standard within family law, we see that there is a strong emphasis on children having access and a relationship with both parents. However, this presumption that a relationship with both parents is in the child's best interest is intended to be rebuttable when

violence or abuse within the family becomes a substantiated factor. Thus, the “friendly parent” standard that many states have adopted in child custody cases when the custodial arrangement is divided between the parents has become misapplied and misunderstood (Dale, 2018; Kohutis, 2018). It makes sense that before we limit one parent’s access to their child(ren), we force the burden of proof that abuse or violence did occur, and to do that we must explore other alternative hypotheses, such as inaccurate, misinterpreted, or false allegations of abuse. However, it is imperative that the family court system as a whole remember that the best interest of the child is first and foremost to remain safe from abuse and violence. While we do not want to falsely accuse someone of perpetrating child abuse, we more importantly do not want to place a vulnerable child who has little or no say in their living environment back in a home where they are being harmed. It is an inevitable challenge that our legal system and society as a whole regularly deals with: protecting the rights of the individual (or parent in this case) versus the safety of the public (or the child in this case). The sensitivity versus specificity debate in cases of child sexual abuse has been more thoroughly explored elsewhere (see Faller & Everson, 2012); however, that debate is still very much relevant today. It is important to remember that in the family court system (as compared to the criminal court system), the burden of proof for abuse allegations is lower for a reason (i.e., preponderance of the evidence rather than beyond a reasonable doubt) and the focus needs to be first and foremost on the safety of the child.

Strong proponents of parental alienation research assert that alienating a child from the other parent is a form of psychological maltreatment and abuse that needs to be treated as such. This author agrees with that assertion in general, however, as an evaluator my first and primary concern is to assess and rule out other forms of abuse allegations before assuming that alienation is what is causing a child to not want, resist, or reject a relationship with one parent. Unfortunately, that is not what is done too often by evaluators in many cases, particularly as a result of faulty assumptions and beliefs about issues surrounding false allegations, false memories, coaching, and suggestibility. Additionally, once “alienation” is found to have occurred (often inaccurately or mistaken for protective parenting), then the recommended treatment is often to either force them into reunification therapy with the “targeted parent” before the child is ready, or to remove the child(ren) from their primary caregiver (or protective parent) and place them in treatment programs that have not been appropriately validated or researched (see Mercer, 2019, this issue). This approach is neither consistent with what we know from the research in child development or attachment, nor do we have any idea at this point about the long-term impact that it can have on the children and families.

A major goal of this two-part special issue is to critically examine influential research and practice that continues to impact work being done with children and families today in a negative way in child custody and family law cases. The first section of this double issue starts with two in-depth commentaries that analytically explore the historical underpinnings of both the False Memory Syndrome Foundation (FMSF) and ideas, as well as PAS. Crook and McEwen (2019, this issue) conducted a comprehensive investigation into how the FMSF and false memory research developed from a need by some attorneys and accused parents to find available legal defenses for parents being accused of abuse, similar to PAS. Both Crook and McEwen, as well as Blizard and Shaw (2019, this issue) then critically analyze the original research conducted by Elizabeth Loftus concerning implanted memories that still regularly is cited today as support for false allegations, suggestibility, and disclosures of abuse. The latter commentary very clearly identifies the major methodological and ethical issues within the Lost-in-Mall studies (Loftus & Pickrell, 1995), as well as the many ways in which the data have been distorted and misconstrued to meet the agenda of those who needed to use it as a means for discrediting abuse victims and survivors. The authors in this issue also explore the connection between false memory research and what the current state of research demonstrates in the areas of children's memories and suggestibility.

The two articles in the second section of this first issue then examine the different ways that parental alienation is inappropriately assessed and treated while providing guidance and suggestions for current and future research. Lubit (2019, this issue) reexamines the data previously used to support PAS and are still being used to assess parental alienation in families, and outlines the many issues and concerns with how evaluators are using faulty assumptions and biases to impact their work. He further proposes more methodologically sound ways of assessing and distinguishing between the various reasons that a child might reject a parent, including alienation. Mercer (2019, this issue) comprehensively examines the different treatments and interventions purported to "treat" parental alienation by reunifying the targeted parent and the child(ren), including the serious concerns with the reported research being used to support their efficacy. She also explores future research directions based on appropriate child development research that can be used to strengthen and validate research studies in the future that examine this incredibly important topic area.

The second issue of the special issue will follow up the present issue with additional research examining the construct validity of parental alienation and providing evidence regarding alienation in child custody cases that is responsive to the current state of the evidence regarding construct validity. The second issue will also present research related to "turned around cases"

within the family law system. These cases initially involved a determination of parental alienation by a court based upon recommendations of mental health professionals and/or custody evaluators, abuse allegations were minimized or dismissed, and the child(ren) were placed into the custody of the accused parent. At a later date, the abuse allegations were determined to be accurate and the child(ren) were removed from the abusive parent and returned to the protective parent. This research identifies important areas and constructs that were present in those cases. There is also a research that is examining and comparing a parental denigration perspective to the parental alienation perspective. Again, the goal of this two-part special issue is to not only critically examine misconstrued or misrepresented research and the ways in which that research is being inappropriately applied in practice, but to also identify future directions that research can take to make it meaningful in order to positively impact the lives of the families who come into contact with the family law system. The hope is that the commentaries and research being explored in this special issue will help the field of family law and child custody move into a state where the issues of parental alienation are not so polarizing and are not leading evaluators and decision-makers to use faulty assumptions and beliefs when making recommendations and orders. Moving the field into a place where abuse allegations are appropriately investigated and the concern for negative parental influence on a child can be viewed on a continuum from unintentional negative influence to more severe forms of intentional parental denigration may help better target the core issues within a family unit while still making the primary focus the safety and well-being of the child(ren). This continuum approach may help evaluators focus on the actual behaviors and observations of the family and alleviate some of the faulty assumptions and biases based on the connotation and confusion surrounding the term parental alienation with the overall goal of creating a stronger family law system.

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