

## The Alienating Courtroom: PAS in Child Custody Battles

Defining the best interest of the child in custody battles becomes further complicated with PAS.

In her parent's seven-year-long custody battle over her and her sister, Ilana Goldberg was branded by family court as yet another victim of Parental Alienation Syndrome. Goldberg, however, insists that she was never a victim of the controversial syndrome, which in her case concludes that Goldberg's mother alienated her from her father through unwarranted denigration. Goldberg claims that the negative view she had of her father did not stem from anything her mother may have said, but instead because her father was an abusive alcoholic. Unable to testify, at age 15 she explained this in a letter to her family court judge, begging for her mother to be assigned full custody. The judge ignored the letter, scolding Goldberg's mother for allowing her daughter to become "too empowered." The judge ruled for joint custody.

"Parental Alienation Syndrome underestimates the intelligence of minors," says Goldberg, now 19 years old. "If somebody had listened, my case would have had different results." Custody rulings in the family court system are to be based on the best interest of the child. However, this conclusion is ultimately decided by the judge and can become further complicated by claims of Parental Alienation Syndrome, which is already itself fueling an ongoing controversy within the scientific community.

The children in these cases are examined by specialized psychologists and psychiatrists serving as expert witnesses, who are already divided in their acceptance of the syndrome and although equally qualified in their fields, can have varying professional opinions of what is best for the child. Thus the acceptance of PAS as a syndrome and subsequent diagnoses varies from courtroom to courtroom. Acceptance of a child's testimony also varies, in some cases dependent upon whether PAS is recognized.

"You shouldn't take children away based on subtle innuendo," says Dr. Joyanna Silberg, executive vice president of the Leadership Council on Child Abuse and Interpersonal Violence. She worries that abusers use a diagnosis of PAS as a legal strategy to gain custody of their children. "It makes what the child says or does a symptom," she says. "It's a way to label somebody with a big 'L' for liar on their head." In her experience as an expert witness in cases involving claims of PAS, she says that when victims of child abuse reach out to the court, it is seen only as a reflection of the alleged alienation they have suffered. Silberg notes that in cases like Goldberg's, the child's concept of reality is questioned. "Convincing judges that it's not PAS takes every effort," says Silberg.

However, Dr. Reena Sommer, a divorce and custody consultant, believes that children should be left out of the courtroom entirely. "Otherwise children are being empowered to express their views against one parent or the other," she says. Dr. Glenn Caddy, who served as an expert witness in Goldberg's case and over one thousand others, agrees. "If the child has been alienated, the testimony is valuable only to the extent to show that the child has been alienated," he says. Dr. John Bone, a PAS consultant, says that in clear-cut

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cases involving PAS, the alienating parent is the one who pushes the child to testify. Caddy notes that in other cases it is difficult to prove the condition because “there may be multiple complexities.”

“The important part is that every judgment by a judge should be based on evidence,” says Dr. Paul Fink, past president of the APA and founder and president of the Leadership Council. Bone says that this idea becomes complicated in family court cases, noting that he has often seen illegally obtained evidence used in court by a judge. “In family court, the rules are more like guidelines,” says Bone. He says that these rules are counterbalanced with what the judge believes to be in the best interest of the child. As a result, he describes the system as “extremely unpredictable” and when consulting, takes a judge’s apparent opinions and previous rulings into account.

“It gives judges wide discretion,” says Patricia Macias, presiding judge at the 388<sup>th</sup> Judicial District Court and president of the National Council of Juvenile and Family Court Judges. “It’s so child-specific.” Macias believes that arguing the syndrome in court is largely a waste of time. “PAS is not a scientific conclusion,” says Macias. “It could exist and I think I’ve seen some possible examples, but as a judge making an analysis, I focus on the child.” Macias always talks to the children involved in her cases privately in her chambers. “The kids provide insight... that really adds a dimension to the case,” says Macias.

Caddy believes that the problem is that judges are not trained to investigate the testimony of a child and place it in real context. “It’s a question of whether the judge is sophisticated enough and if there is enough time to evaluate the child,” Caddy says, noting that the ruling in a case “depends very much on the strength of the lawyers and the wisdom of the judge.” Macias agrees, explaining that the goal of the National Council of Juvenile and Family Court Judges is to provide guidelines for judges to make the best informed decision in these cases and also to stress the importance of not only being well educated in law, but to have knowledge of child psychology.

“All of these judges can just do the best they can,” admits Dr. William Bernet, director of Vanderbilt Forensic Services. With so many differing professional opinions, one can only hope that “the best” is enough to produce the right decision. These children depend on it.