

# PARENTAL ALIENATION IN U.S. COURTS, 1985 TO 2018

Demosthenes Lorandos

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Courts have been dealing with alienating behaviors in high conflict family litigation for hundreds of years. Experts in the behavioral sciences have been writing about mothers and fathers manipulating their children to disparage the other parent for more than seventy years. But in the last two decades some social scientists and legal professionals have questioned the legitimacy of parental alienation as a concept and its admissibility in child abuse and child custody litigation. This study was designed to examine the extent to which courts in the United States have found the concept of parental alienation material, probative, relevant and admissible. Thirty-four years of cases were found with a WESTLAW query and analyzed. Cases were selected for study only if the record reflected that a judge or an independent expert found the concept of parental alienation to be of value in the litigation. Results illustrate increasing awareness of the concept and document its admissibility in every one of the United States. The numbers, sex of the alienating parent and prevalence of significant custody changes are discussed. Limitations inherent in this form of quantitative analysis are also discussed with recommendations for future research.

Key Points for the Family Court Community:

- Do courts admit expert testimony on parental alienation?
- Do courts rely on expert testimony on parental alienation?
- Are the numbers of parental alienation cases increasing?
- What are the gender proportions of the alienating parents in appellate courts reports?
- Do courts change custody when dealing with parental alienation?
- What are the challenges in this kind of research?

**Keywords:** *alienation; children; courts; custody; evidence; parent.*

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## I. STATEMENT OF THE PROBLEM

Two-hundred-and-fifteen years ago, the first recorded case resembling parental alienation (PA) was fought out in the courts of England.<sup>1</sup> Over the last two centuries, English-speaking jurists have grappled with parents kidnapping, brainwashing, manipulating and influencing their children to reject the other parent in thousands of cases.<sup>2</sup> In dealing with the construct, innumerable courts have addressed “alienation”<sup>3</sup>; hundreds of peer-reviewed research articles have been published concerning it, using both qualitative and quantitative data<sup>4</sup>; scores of books legal and behavioral sciences professionals discussing PA have also been published; numerous chapters in scholarly books, lectures, and legal treatises on the subject have been produced;<sup>5</sup> many alienated parents and adult survivors of alienation have also written first-hand accounts.<sup>6</sup>

But a meme has developed that PA does not exist.<sup>7</sup> In contrast to scientific and legal literature describing PA behaviors, there have been a number of published articles and book chapters doubting the existence of the concept. Between 1994 and 2018, we find many *Notes*, bar journal and law review articles, lectures, newspaper stories, and websites where law students, attorneys, ex-lawyers and law professors critique the social science literature and research related to PA, while social workers, psychologists and a nurse have focused on the law of evidence and PA. These critics have left their fields of expertise, though in fairness there is a smaller literature where lawyers and legal

Corresponding: [dr.lorandos@psychlaw.net](mailto:dr.lorandos@psychlaw.net)

scholars who have criticized judicial approaches to alienation, and mental health professionals have raised concerns about social science research concerning alienation.

## II. THE DEVELOPMENT OF PARENTAL ALIENATION IN THE BEHAVIORAL SCIENCES

Seventy-seven years ago, David M. Levy, a pioneer in child psychiatry who introduced the Rorschach test to the United States and coined the term “sibling rivalry”, wrote about cases where a child developed a “derogatory attitude ...towards the father, which was in several instances fostered by the mother.”<sup>8</sup> His contemporaries also described attempts by one parent to psychologically separate a child from the other parent. Wilhelm Reich described high conflict divorces in 1949 where “[t]he true motive is revenge on the partner through robbing him or her of the pleasure in the child. ... In order to alienate the child from the partner, it is told that the partner is an alcoholic or psychotic, without there being any truth to such statements.”<sup>9</sup> And in 1953, New York psychiatrist Juliette Louise Despert wrote about “a sharp temptation for the parent who remains with the children to break down their love for the one who has gone. ... but it can do only hurt to the child.”<sup>10</sup>

In the 1960’s, family systems pioneer, Murray Bowen, described parents “in an extreme over-adequate position” who caused distance between the children and the other parent,<sup>11</sup> and by the end of the decade, forensic psychiatrist Philip J. Resnick published about “parents who killed their offspring in a deliberate attempt to make their spouses suffer.”<sup>12</sup>

Throughout the 1970s, behavioral scientists and others continued to describe various types of manipulation. In 1970, Jack Westman and colleagues discussed cases where “one parent appears to deliberately undermine the other through a child,”<sup>13</sup> and in 1974, structural family therapy originator Salvador Minuchin discussed parental conflicts in which “[o]ne of the parents joins the child in a rigidly bounded cross-generational coalition against the other parent.”<sup>14</sup> Also in the mid-1970s, psychiatrists Sheffner and Suarez wrote about a “woman who harbored much resentment” and influenced her young children against her ex-husband, and offered that “[t]he children experienced considerable anxiety when visiting their father and wanted to discontinue their relationship with him altogether.”<sup>15</sup>

In 1976, social worker Judith Wallerstein and psychologist Joan Kelly first identified one now well-known factor of PA - that the child had not previously rejected the target parent.<sup>16</sup>

They described aligned children who “formed a relationship with one parent following the separation which was specifically aimed at the exclusion or active rejection of the other. The alignments were usually initiated and always fueled by the embattled parent, most often by the parent who felt aggrieved, deserted, exploited, or betrayed by the divorcing spouse.”<sup>17</sup> By 1978, child psychiatrist Alan Levy introduced the term “brainwashed” to describe the phenomenon, when he wrote about children who were pathologically unambivalent: “[T]heir statements seem well-rehearsed, almost programmed; and the words they speak are stilted and inappropriate, often repeating the exact phraseology used by the preferred parent in meetings alone with the psychiatrist. They can be described as having been brainwashed by that parent.”<sup>18</sup>

One of the most eventful years in the development of PA was 1985, when sociologist Janet Johnston and colleagues described children whose parents separated involved in strong parental alliances as manifesting “a strong, consistent, overt (publicly stated) verbal and behavioral preference for one parent together with rejection and denigration of the other.”<sup>19</sup> That same year, psychiatrists Elissa Benedek and Diane Schetky wrote about hostile, vindictive parents who may pressure their children to take sides, causing them “to feel guilty about visiting the other parent. In the extreme, this may lead to brainwashing. [and]... Very young children ... may be particularly susceptible to brainwashing and come to believe that the horrible things one parent says about the other are true.”<sup>20</sup>

This was also the year that child and adolescent psychiatrist Richard Gardner published his first formulation of “parental alienation syndrome.”<sup>21</sup> In developing it, Gardner noted what he witnessed as two distinct factors in the high conflict families in his practice: (1) the brainwashing phenomenon

discussed by Alan Levy, Benedek and Schetky; and (2) the children's polarized behavior, including (a) derogatory attitudes as described by David Levy; (b) rigidly bounded coalitions like those discussed by Minuchin; (c) alignment with one parent as described by Wallerstein and Kelly; and (d) rejection and denigration as discussed by Johnston and colleagues. As he explained: "I introduced the term *parental alienation syndrome* to cover the *combination* of these two contributing factors."<sup>22</sup> He explained that his notion of parental alienation syndrome referred to "a disturbance in which children are obsessed with deprecation and criticism of a parent – denigration that is unjustified and/or exaggerated."<sup>23</sup>

Gardner was a prolific author, and he went on to write forty-one books and more than 200 professional journal articles and book chapters.<sup>24</sup> His works have been and continue to be cited routinely.<sup>25</sup> Nonetheless, there were limitations and Gardner was not without his critics; his parental alienation syndrome is used much less; rather most of the literature now uses the distinct, but related concept of parental alienation (PA).

Into the late 1980's independent researchers continued to study and describe the phenomenon. For example, Wallerstein and Blakeslee's 1989 book, *Second Chances: Men, Women, And Children A Decade After Divorce*, described a "Medea syndrome" referring to the character of Greek mythology who avenged the betrayal of her husband, Jason, by killing their children: "Modern Medeas [who] do not want to kill their children, but they do want revenge on their former wives or husbands—and they exact it by destroying the relationship between the other parent and the child."<sup>26</sup>

After reviewing 700 cases of family counseling, mediation and forensic evaluation, in 1991, sociologist Stanley Clawar and social worker Brynne Rivlin published *Children Held Hostage: Dealing with Programmed and Brainwashed Children* with the Family Law Section of the American Bar Association.<sup>27</sup> At that time they noted: "*Programming* is the formulation of a set or sets of directions based on a specific or general belief system directed toward another (target) in order to obtain some desired end/goal;"<sup>28</sup> "*Brainwashing* is the selection and application of particular techniques, procedures, and methods employed as a basis for inculcating the programme."<sup>29</sup>

In 1998, social worker Leona Kopetski and psychologist Claire Purcell from the Colorado Family and Children's Evaluation Team reported on 600 child custody evaluations. They described alienating parents whom they saw as people who "may or may not be consciously aware of manipulating the child and the legal/social systems. Alienating parents often believe that the accusations they make are true, but have developed those beliefs by a faulty reasoning process."<sup>30</sup> A year later, psychologist Ira Turkat coined the term "Divorce-related malicious parent syndrome," which referred to "a parent who unjustifiably punishes his or her divorcing or divorced spouse by ... attempting to alienate their mutual child(ren) from the other parent."<sup>31</sup>

In 2001, fifteen years after Gardner first described a parental alienation syndrome, Kelly and Johnston published a "reformulation" in which they argued that: "An alienated child is defined here as one who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child's actual experience with that parent."<sup>32</sup> Two key aspects of their reformulation were: (1) an explication of multiple contributing factors which are dynamic in nature and (2) the description of a continuum of contact problems. Their reformulation also marked a move away from the medical model and use of the term "syndrome" for this phenomenon. Gardner addressed these concerns in 2002.<sup>33</sup> In 2003, Richard Warshak argued for the term "pathological alienation" and referred to it as a "disturbance in which children, usually in the context of sharing a parent's negative attitudes, suffer unreasonable aversion to a person or persons with whom they formerly enjoyed normal relations or with whom they would normally develop affectionate relations."<sup>34</sup>

In 2007, psychologists Amy Baker and Douglass Darnall asked sixty-eight self-identified targeted parents to rate the frequency of types of behaviors exhibited by their children that, per Baker and Darnall, were consistent with alienation.<sup>35</sup> One year later, psychiatrist William Bernet identified a "parental alienation disorder," defined as "a typical example of a relational disorder because it usually involves the interacting attitudes of one child and two parents."<sup>36</sup> Two years later

a survey of members at the AFCC forty-seventh Annual Conference titled *Traversing the Trail of Alienation*, found that eighty-eight percent of respondents believed that some children are manipulated by one parent to “unjustifiably reject the other.”<sup>37</sup>

In a special issue of this journal prepared contemporaneously with the forty-seventh Annual Conference, Kelly identified that there was general agreement across the fields of mental health and law that some older children and teenagers become “pathologically alienated” in a custody dispute, particularly when there is a great deal of prolonged conflict.<sup>38</sup>

In 2011, Baker and Chambers expanded on Baker’s research into assessment measures for parental alienation behaviors (PABs), and published a study that found strong reliability and validity of their measure.<sup>39</sup> By 2013, although the APA decided not to specifically include “parental alienation” as a mental disorder, the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) included the following diagnosis: “Child affected by parental relationship distress [CAPRD]... should be used when the focus of clinical attention is the negative effects of parental relationship discord ... on a child in the family.”<sup>40</sup> Also in that year, the effort to eliminate the medical model term “syndrome” from the construct, begun by Warshak in his 2003 article,<sup>41</sup> and developed by Bernet in his 2008 DSM-5 text,<sup>42</sup> came to fruition with the publication of *Parental Alienation - The Handbook for Mental Health and Legal Professionals*.<sup>43</sup>

In 2016 Psychiatrists Marianne Wamboldt and William Narrow, the authors of the DSM-5’s CAPRD section, published a paper in the *Journal of the American Academy of Child and Adolescent Psychiatry* with Bernet in which they explained that CAPRD was specifically intended to include relationship distress such as “Intimate Partner Distress...Intimate Partner Violence... Loyalty Conflict [and] Parental Alienation.” In 2017 psychologists Marjorie Gans Walters and Steven Friedlander worked to further refine terms with the notion of a resist/refuse dynamic which they wrote “refers to a complex set of interacting factors, family dynamics, personality characteristics and vulnerabilities, conscious and unconscious motivations, and other idiosyncratic factors that combine to contribute to the unjustified rejection of a parent.”<sup>44</sup>

In that same year the American Professional Society on the Abuse of Children (APSAC) described PA as a form of child maltreatment, offering that this sort of child abuse involves “a repeated pattern or extreme incidents of caretaker behavior that thwart the child’s basic psychological needs ... and convey a child is worthless, defective, damaged goods, unloved, unwanted, endangered, primarily useful in meeting another’s needs, and/or expendable.”<sup>45</sup> In 2018, Jennifer Harman and colleagues located parental alienation behaviors squarely within the sphere of family violence.<sup>46</sup>

In contrast, arguments that PA does not exist or cannot be the proper subject of expert testimony, often came from legal professionals writing about social science or social science professionals writing about the law. For example, in a 1994 *Note*,<sup>47</sup> law student Cheri Wood mischaracterized and dismissed the extensive work done by Judge David F. Jung of the Family Court, Fulton County, New York,<sup>48</sup> as well as the review of a five-judge panel of the Supreme Court, Appellate Division, Third Department in New York.<sup>49</sup> Wood relied on a number of well-known “believe the children” social workers<sup>50</sup> for the proposition that PA as a concept was not accepted. One of her primary sources, social worker Kathleen Coulborn Faller of the University of Michigan, had a longstanding conflict with Gardner. Prior to Faller’s outspoken rejection of PA as a valid concept, Gardner had been subpoenaed to testify against Faller in a million-dollar lawsuit by a parent involved in litigation where Faller gave expert testimony.<sup>51</sup> Faller has continued to challenge Gardner’s hypotheses and, in at least one instance citing to herself,<sup>52</sup> concluded *inter alia*, that “mental health experts conducting custody evaluations” often rely on Gardner’s sense of PA “even though there is *no empirical evidence* to support them.”<sup>53</sup> Similarly, law professor Carol Bruch, not a social scientist, cited to newspaper articles and websites to opine in 2002 that Gardner’s description of the process of parents alienating a child from another parent “has neither a logical nor a scientific basis.”<sup>54</sup>

Likewise, following her involvement in a number of lawsuits relevant to how children and parents become alienated or estranged from one another,<sup>55</sup> attorney Jennifer Hoult offered opinions on Gardner and the behavioral sciences. She questioned whether the phenomena of PA exists at all.<sup>56</sup>

Several years later, social worker/attorney Marlene Moses and attorney Beth Townsend offered opinions about social science for their local bar journal. They reiterated descriptors for PA as “simplistic junk science and an unsophisticated pseudoscience theory.”<sup>57</sup> In 2013, suspended New York attorney Barry L. Goldstein<sup>58</sup> and a colleague held forth on the process of social science, offering that Gardner’s theory of parents alienating children from another parent “were never subjected to the scientific scrutiny of his peers.”<sup>59</sup> Relying *inter alia* on fellow law students Wood and Allison Nichols, as well as nurse Stephanie Dallam’s online material, law student Holly Smith argued in 2016 that the concept of PA is a “fabricated disorder” and an “alleged disorder,” which will never “gain legitimate recognition in the mental health and legal professions.”<sup>60</sup> Also in 2016, Goldstein argued in a website newsletter that alienation described by Gardner as PAS “is bogus and unscientific.”<sup>61</sup> In a continuing education seminar in 2018, Jennifer Hoult offered that, “There has never been a precedent setting case establishing parental alienation.” She went on to claim there is a lack of peer-reviewed social science literature supporting the construct.<sup>62</sup>

As for health professionals offering opinions regarding evidence law, here are a couple of examples: In 1999, Dallam (a nurse) made a legal argument about evidence, writing that when reviewing Gardner’s attempts to measure the legitimacy of sexual abuse allegations in high conflict custody cases, his ideas “cannot support expert testimony in legal proceedings.”<sup>63</sup> In 2004, psychology professor Lenore Walker and two of her students argued that Gardner’s descriptions of an alienation process do not “provide answers to the difficult questions concerning access to children that are raised especially during complex custody battles.”<sup>64</sup> Although qualified to provide an opinion, psychology professor Robert Emery’s claim that any suggestion that Gardner’s sense of the construct - parental alienation - was “supported by science either misunderstands the rules of science or the nature of scientific evidence.”<sup>65</sup>

To reconcile the literature for and against PA, the author and his research team reviewed thousands of American court decisions from both trial courts and appellate panels.

### III. ADMISSIBILITY OF PA IN U.S. COURTS

The study was designed to answer a number of inter-related questions: (1) Have the courts in the United States found the construct PA material in high-conflict child custody cases? Materiality is the first element in the admissibility of evidence in U.S. evidence law. Materiality concerns the fit between the evidence and the case. It looks to the relation between the propositions for which the evidence is offered and the issues in the case.<sup>66</sup> (2) Has the construct PA been found to be probative of anything that matters in high-conflict custody cases in the U.S.? Probative value is the second element in the admissibility of evidence in U.S. evidence law. Probative value has been defined as “evidence that tends to prove or disprove a point in issue.”<sup>67</sup> (3) Has the construct PA been found to be relevant in high-conflict custody cases in the U.S.? Relevancy is the third element in the admissibility of evidence in U.S. evidence law. Proposed evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.<sup>68</sup> (4) Have the courts of the United States grappling with high-conflict child custody issues found the construct PA to be valid and reliable enough to be admissible? It is admissible if the answers to the previous questions have been “yes.”

Additional questions the study aimed at were: (5) If expert evidence on the construct was deemed material, probative, relevant and, thereby, admissible, was it discussed at all or merely mentioned? (6) Since Gardner’s first formulation in 1985, how many cases identified to involve PA have been reported? (7) Have the number of alienation cases each year remained the same or fluctuated? (8) How often do courts identify the sex of the alienating parent? Similarly, how often is the sex of the target parent mentioned? (9) Do the proportions of male alienating parents to female alienating parents remain the same or have these proportions changed over time? And, (10) When provided with expert testimony or findings of PA, how often do courts make substantial changes to an established custodial regime?

#### IV. METHODOLOGY OF RESEARCH PROJECT

Research into the number and characteristics of PA cases in the U.S. was begun by this author fifteen years ago in preparation for the chapter *Parental Alienation Syndrome in American Law*.<sup>69</sup> The work was expanded in 2012 for the chapter *Parental Alienation in North American Law*.<sup>70</sup> The 2012 research used a *Westlaw* query to examine 1104 cases from the U.S. and 1642 from Canada. The author shared preliminary findings with attendees at Parental Alienation Study Group and Association of Family and Conciliation Courts conferences in 2017 and 2018. Colleagues expressed concern that the number of PA cases was being underreported. Several colleagues provided the author with court opinions concerning PA which were not found in the author's previous research. This led to detailed discussions between the author, the author's staff, and specially trained *Westlaw* reference attorneys. Thereafter, this research began with a revised query and the ALLSTATES *Westlaw* database was searched.<sup>71</sup> The query used for this study was:

((alienat! /s (mother father son daughter parent!))) & DA(aft 12-31-1984 & bef 01-01-2019)

In plain English the query was: "Give me every state case in the U.S. that meets all three of the following criteria:

1. It contains the root word fragment 'alienat' (which would include any of the following words: 'alienate,' 'alienated,' 'alienating' or 'alienation');
- AND**
2. The 'alienat' word appears within the same sentence as with one of these words: 'mother,' 'father,' 'son,' 'daughter,' or the root word fragment 'parent';
- AND**
3. The case was released and available in the ALLSTATES database after 1984 and before 2019."

The query obtained 3555 case reports in the United States query pool. Initial review of thirty-four years of cases documented that the vast majority of the cases the query found related to high-conflict domestic disputes. In these circumstances many claims and counter-claims concerning allegations of abuse, violation of court orders, and descriptions of shared parenting violations were documented. The case reports reflected that these allegations were made by the parties, family members, witnesses, attorneys, mental health professionals, the children's attorneys, the children's mental health professionals, child protective services workers, or court appointed guardians ad litem. Due to the many potential biases in the court records and the high-conflict nature of the disputes, the author decided to adopt a conservative inclusion/exclusion criteria set for the study. Therefore, no case was selected for inclusion into the study unless at least one of the following two criteria were met:

1. An independent evaluating expert testified on the subject of PA, whether or not the expert found PA<sup>72</sup>
- OR**
2. The court found on any basis that there was PA, whether or not there was expert testimony.

For the first criterion, none of the following were considered "experts" on PA or qualified a case report for inclusion: parties, therapists for parents, children, children's therapists, attorneys, guardians ad litem, child advocates, mediators, parenting coordinators, custody conciliators, law enforcement officers, or CPS personnel. As for the second criterion, if the court did no more than speculate concerning PA or if the court's action was to appoint an expert to examine the extent to which there may be PA, the case was not included for further review.

Over the course of the research, the investigator trained and supervised six research assistants to carefully review each of the 3555 case reports the query found.<sup>73</sup> The work of each research assistant was monitored for application of the selection criteria and spot checks, and investigator/assistant meetings were held to carefully scrutinize the application of the inclusion/exclusion criteria to the case data set. When a designation of the sex of the alienating parent and the target parent was made by the court, it was noted. If the court ascribed equal responsibility for alienation or if the case report was unclear as to the sex of the alienator, the case was coded as “other.”

As the review of each case report was underway another variable was coded: substantial change in custodial regime. For purposes of this research, this was defined as whether there was a substantial difference in the parenting time allocation after the parties were in court versus before the parties were in court. Substantial changes in the custodial environment are typically made when a party can show a substantial change in circumstances requiring modification of an order. A substantial change in custody differs from a minimal change in custody that does not upset the custodial environment of the child.

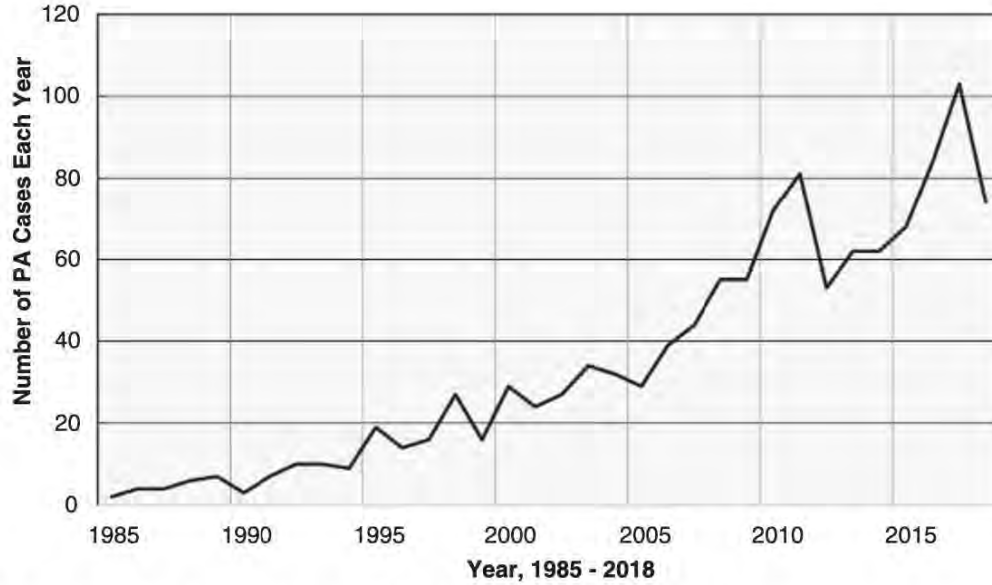
For instance, if the Plaintiff was the primary residential parent before the parties began the trial and the court changed the primary residential parent designation to the Defendant, there was a substantial change in custody. Similarly, if the Defendant had supervised visitation when beginning the trial, and the court changed that visitation to shared physical custody, there was a substantial change in the custodial regime. In addition, upon filing for dissolution of marriage, if the primary caretaker was the Defendant and temporary custody rested with the Defendant, but upon dissolution, sole custody was awarded to the Plaintiff, there was a substantial change in custody. For the purposes of this research, the author established the criteria “substantial change in the custodial environment” was not met when more visitation time was awarded—for instance, Plaintiff’s visitation time was increased by twenty overnights throughout the year. For this research, if shared residential time was awarded upon dissolution of marriage without a prior order, this did not constitute a change in the custodial environment that was coded. Finally, for this research, it was determined that when custody or visitation was rearranged because of a child’s schedule, that is, change in visitation times due to child’s soccer practice, this was not coded as a “substantial change in the custodial environment.”

When the review of all of the case reports was completed, research assistants used the annual tally sheets to back check the “non-relevant cases” and “selected cases” electronic folders to ensure that no relevant case was left out of the electronic database. A master tally sheet for 1985–2018 was compiled with each variable of note tallied and reported in real numbers and percentages. Although reported cases in which a parent claimed alienation but there was not expert opinion or judicial finding of alienation were included in the 3555 cases, these cases were not included in the final study.

## V. RESULTS OF THE RESEARCH PROJECT

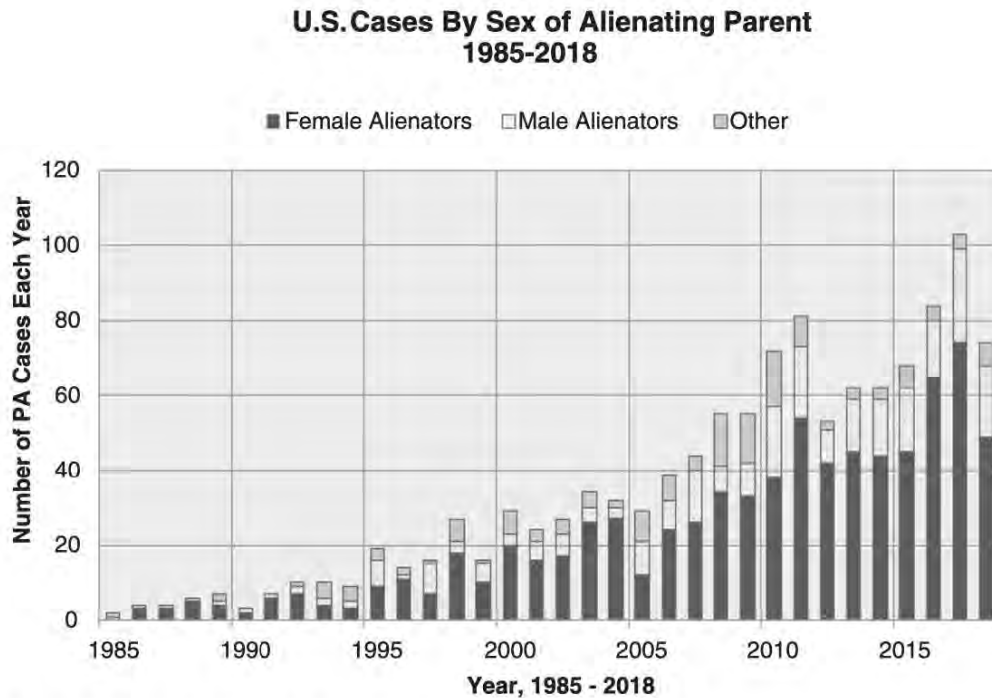
Search with the query ((alienat! /s (mother father son daughter parent!))) & DA(aft 12-31-1984 & bef 01-01-2019) in the *Westlaw* ALLSTATES database found 3555 cases. After applying the inclusion/exclusion criteria, 1181 cases were identified in which the construct PA was determined to be material, probative, relevant, admissible, and discussed. Therefore, application of the inclusion/exclusion criteria rejected sixty-seven percent of the cases the query found, before the 1181 cases were put through the SPSS Statistical package.

The three figures below illustrate the results. Figure 1 shows the number of PA cases in trial and appellate courts in the U.S. between 1985 and 2018 that made it through the inclusion/exclusion criterion analysis. The graph indicates that the number of cases has grown over the years, suggesting that U.S. courts and their participants have increased their awareness of PA and/or increased their reliance on PA theory over time. Figure 2 shows the proportion of cases each year involving female alienating parents, male alienating parents, or some “other” category of alienator (e.g., not clear



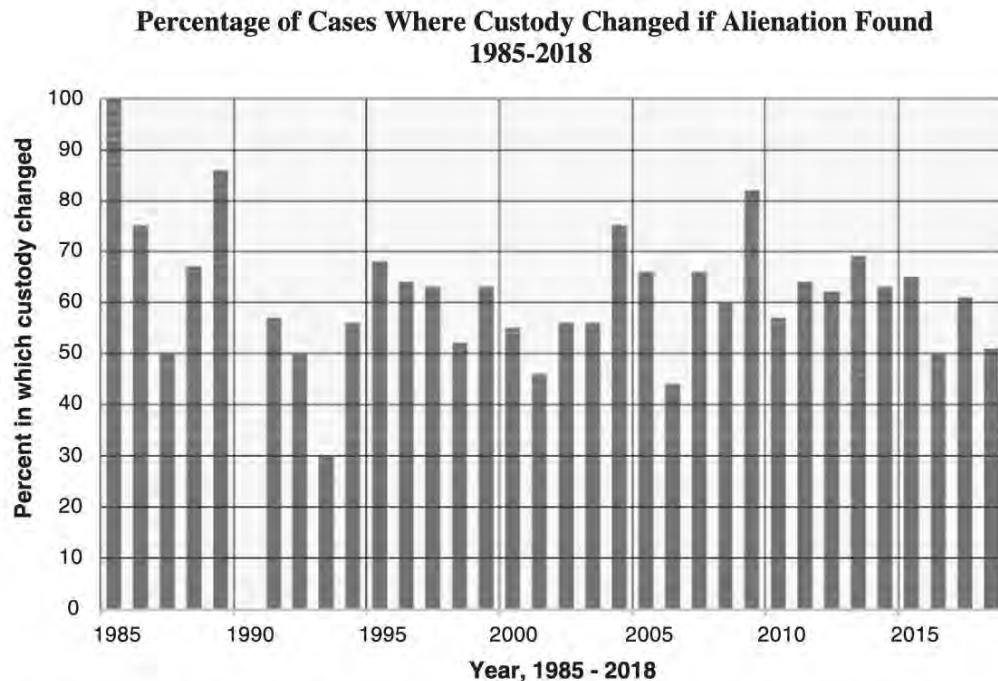
**Figure 1** Number of cases where PA found in U.S. Courts 1985–2018

which parent was the primary alienating parent). The graph in Figure 2 indicates that during 1985–2018, about seventy-five percent of the identified alienating parents were female and twenty-five percent were male. This proportion has remained approximately the same over the years of the study. Figure 3 shows the proportion of cases each year in which the court significantly changed child custody arrangements as a result of a finding of alienation, such as transferring custody from one parent to the other or substantially changing the parenting time schedule. The graph indicates that over time, a significant change in the child custodial environment occurred in sixty-one percent of the cases.



**Figure 2** U.S. Cases by sex of alienating parent 1985–2018





**Figure 3** Percentage of cases where custody changed if alienation found 1985–2018

## VI. DISCUSSION OF RESULTS

In the thirty-four years since the term PAS was first introduced and then later reformulated, trial and appellate courts across the United States have found the construct PA to be material, probative, relevant to their tasks, admissible, and worthy of discussion, as they have grappled with emotionally abusive parents and damaged children. Review of the thousands of opinions located by the query reveals that courts understand that there is a distinction between “[w]hen one parent says negative and disparaging things about the other parent to the child,”<sup>74</sup> and when an aggressor parent “engage[s] in behavior designed to sabotage the child’s relationship with the victim parent.”<sup>75</sup> Hundreds of opinions illustrating courts confronting “unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child’s actual experience with that parent,”<sup>76</sup> were located. Figures 1 and 2 illustrate that trial and appellate courts in the United States are having an increase in PA cases and, for the most part, identify the gender of the alienating parent.

Behavioral science research supports this increase in acceptance of the concept of parental alienation by the courts. As Kelly wrote a decade ago:

A few feminists and legal scholars continue to contest the very existence of child alienation; minimize its severity, impact, and duration; and strongly object to any court-ordered educational or therapeutic interventions. However, there is broad consensus among the mental health and family law community that some older children and adolescents do become pathologically alienated from a parent following separation and that the risk of child alienation is increased in highly conflicted separations accompanied by protracted adversarial child custody disputes.<sup>77</sup>

And more recent research seems to echo what hundreds of opinions describe as:

...remarkable agreement about the behavioral strategies parents can use to potentially manipulate their children’s feelings, attitudes, and beliefs in ways that may interfere with their relationship with the other

parent. The cluster of symptoms or behaviors indicating the presence of alienation in the child can also be reliably identified.<sup>78</sup>

Nevertheless, the controversy remains.

Recently Joan Meier and a team at George Washington University compiled a dataset of 4338 private custody litigation opinions and concluded there is “widespread gender bias in courts’ handling of abuse claims.”<sup>79</sup> In 669 of these cases (fifteen percent of the data set), one of the parents made an alienation claim. Meier’s team determined that 222 of these 669 cases in which alienation was reported were “paradigm cases,” that is, where mothers accused fathers of abuse and fathers accused mothers of alienation. These paradigm cases represent five percent of the 4338-case data set. This is consistent with past research which found that less than thirty percent of cases involving parental alienation have child or spousal abuse allegations.<sup>80</sup>

Despite this small portion of paradigm cases, and Meier’s caveat that the study did not determine the accuracy of courts’ beliefs or disbelief in mothers’ abuse claims, Meier and her team are asking important questions. Do family courts handle abuse claims in a way that is discriminatory to women? Are there more false negatives when mothers claim abuse than when fathers do? This is difficult to tease as abuse claims are often investigated by protective services or law enforcement. If the claim of abuse or violence is substantiated in the child protection or criminal context, it is unlikely that there will be a trial (or reported decision) in family court. Although Meier’s report does consider cases where there is “corroboration,” it does not directly address this issue of the skewing of the sample of cases studied, with the cases with the strongest evidence of abuse or violence being excluded.

Another important question is whether alienation claims are adjudicated in a manner that is gender discriminatory. Are there more false positives when fathers claim alienation than when mothers do? Do evaluators and guardians ad litem (GAL) working to aid the family court in determining the best interests of the children discriminate against abuse claims? Meier reports that they do because the data set revealed that when a neutral custody evaluator examines abuse claims mothers “do not benefit,”<sup>81</sup> and when a GAL investigates, a mother alleging abuse was 5.4 times more likely than a father to lose custody.<sup>82</sup> Meier concludes from this data that “GALs hurt protective mothers’ cases,” and neutral custody evaluators “fail to recognize abuse.”<sup>83</sup> She also points to her data to conclude “that women who allege abuse – particularly child abuse – by a father are at significant risk (over 1 in 4) of losing custody,” with the implication that the allegations were true.<sup>84</sup> Were this the case and protective parents and their children are being treated unjustly, this would be a grave problem, but it is submitted that the data in the study can equally be used to support alternative conclusions. For example, these findings support the idea that in high-conflict custody litigation, frequently claims of domestic violence and child abuse are false and made for reasons other than protection. This is so well-understood that some states specifically include false allegations as a factor in determining custody. *See* Hi Stat. § 571–46; Maine Rev. Stat. Ann., tit. 19A, § 1653(3)(O). Courts have long held that false allegations made in bad faith do not foster a relationship with both parents, thus justifying custody with the falsely accused parent.<sup>85</sup>

With a potentially high impact data set such as this, it is important to fully analyze the data, considering all possible conclusions, including both that some reporting parents are truly protective and others are using false allegations to “win” a custody battle. Thus, when reviewing court findings where CPS personnel, law enforcement, custody evaluators, GALs, trial courts and, in many cases, appellate panels have evaluated abuse accusations and determined that the accused parents were better able to provide for the children’s best interests, it is certainly possible they all got it wrong. It is equally possible they correctly discerned a parent’s attempt to use false allegations to alienate another parent.<sup>86</sup>

Further analysis of this data should dig deeper into several of the issues raised regarding gender bias in custody decisions. Of particular concern is Meier’s finding that “fathers who are proven to have committed child physical abuse still take custody from mothers 24% of the time.”<sup>87</sup> This is

shocking and requires serious attention to a number of questions: What were the operational definitions of abuse? Are there categories of abuse? Are some forms of abuse more serious than others? Does the emotional abuse of alienation ever outweigh other forms of abuse? “Abuse” is a broad and vague term, and it may be that in some cases, despite a conclusion that a parent has been “abusive,” they may still be the better caregiver for a child. Notably, in Meier’s study, when a court found that there was “child sexual abuse,” a much clearer term, it never gave a father care of a child.

Meier’s preliminary data is intriguing, and it will be interesting to see how subsequent research into her data set will help illuminate the remaining unanswered questions.

## VII. LIMITATIONS OF THE RESEARCH

First, for the most part the cases included in the final list are from appellate reports. This is because of the great difficulty in obtaining trial court decisions from the various jurisdictions of the United States, and the underrepresentation of trial decisions on the Westlaw database. Each state’s court system is organized differently. Within each state, there may be different reporting guidelines depending on jurisdiction. While some states maintain an electronic filing system for trial-level cases, others do not. Even in states that do maintain electronic filing systems, the reporting and search functionality for each system is different. In order to maintain the integrity of the data for this project, only those cases available through *Westlaw*, were included.

Because litigation, and the appellate process, in the United States are so arduous, expensive and time consuming, it is reasonable to assume that for every appellate case represented here, there are dozens of trial-level decisions that were never appealed.<sup>88</sup> While there may be many reasons why parents choose not to appeal, a common motivation is to avoid further emotional and financial harm, and doubts about the success of an appeal. Cases where there was clear evidence of alienation (or clear evidence to support realistic estrangement) may be less likely to be appealed and be found in this data set.

Second, the residual economic effects of patriarchy may account for some of the skew in the numbers of female to male alienating parents. According to a Pew Research Center, analysis of median hourly earnings of both full and part-time workers in the United States, women earned eighty-two percent of what men earned.<sup>89</sup> In the process of a marital breakup, working males may have greater financial resources. Readers should be mindful of these differentials when considering the sex difference found in this research. Mothers who are target parents and have been rejected by a child, and hence are unlikely to be receiving child support, may be less likely to have the resources to litigate and may be underrepresented in the data set as well.

Third, the inclusion/exclusion criteria may be too restrictive. This research was designed to eliminate cases the *Westlaw* query found if the record did not reveal a neutral expert or a judge with or without an expert, making the judge’s own determination that the construct PA was worthy of discussion in the case. Reviewers’ application of the inclusion/exclusion criteria eliminated fully sixty-seven percent of the cases the query found. It may very well have been the case in some of the 3555 case reports obtained by the query that a competent GAL or experienced CPS social worker or well qualified child therapist offered cogent testimony about PA; but the inclusion/exclusion criteria would have eliminated that case from the data set.

Fourth, there are numerous cases the query did not find that reviewers would have qualified as PA or PA-related. This occurred because some PA and PA-related cases do not actually use any derivation of the term “alienation” and so they would not have turned up in the query data set. In addition, while some of these cases may not contain each of the elements necessary to identify PA, they are illustrative of the tactics employed by alienating parents. Many cases illustrate family courts overwhelmed with serial false allegations of sexual abuse.<sup>90</sup> The cases reviewed for this research demonstrate that severely alienating parents use this “nuclear option” all too often. Courts grappling with these pernicious allegations rarely use any derivation of the word “alienate” when describing the impact on the child victims. Other courts focus solely on the alienating parent’s pathological

parenting and do not use any derivation of the term “alienate” when describing the parents. Nonetheless, the decisions and opinions written by trial and appellate courts of such cases can be instructive, as they illustrate how lawyers, judges, parents, and other professionals manage, navigate, confront, and work to stop severe, alienating behaviors.<sup>91</sup>

#### A. A CASE ILLUSTRATING ALIENATING BEHAVIORS, BUT NOT FOUND BY THE *WESTLAW* QUERY

In *Doe v. Roe*,<sup>92</sup> the evaluators and court found the mother to be at times untruthful and willing to make repeated, false, unsupported allegations of child sexual abuse, willfully disobedient, perhaps a malingerer, and ultimately incapable of properly parenting her child alone.<sup>93</sup> The record reveals that Mother made her first allegation of sexual abuse after “the child was grabbing her and tickling her crotch *for some weeks*.”<sup>94</sup> A thorough forensic interview was conducted by Yale Sexual Abuse Clinic personnel in conjunction with child protection services, and no evidence of sexual abuse was found.<sup>95</sup>

Mother persisted, and one week after the Yale interview and the day before an important hearing regarding custody, “Ms. Doe used a camera on a tripod to take a picture of her son’s anus to document anal fissures. The child’s maternal grandmother’s hands are shown in the photograph spreading her grandson’s buttocks apart in order to highlight the child’s anus in the photograph.”<sup>96</sup>

As a hearing date on Mother’s numerous allegations approached and the family relations evaluator, Yale sexual abuse clinic personnel, and child protection services workers had all declined to substantiate Mother’s claims, the Mother hired a psychologist to support her claims. The court rejected the evidence of the expert retained by the mother, and placed sole custody with Father and ordered Mother’s contact be supervised<sup>97</sup> writing, *inter alia*:

...[Mother’s expert] also effectively undermined the mother’s cooperation with the child’s therapy... [Mother’s expert] did not hesitate, without ever communicating with Dr. Collins, to reinforce [Mother’s] distrust by opining that she did not believe he had a “clear handle” on [Child]. For her to offer such unilateral opinions, based only on [a] record review, undermines her credibility with the court.<sup>98</sup>

Reviewing the case report, most readers would find ample evidence of alienating behaviors in Mother and serious negative effects on Child. However, as terms typically found in PA cases were not used, the data base review did not find this case. Nonetheless, this case exemplifies Kelly’s statement that a “significant number of these parents have come to believe ... that ... noncompliance with court orders, whether for facilitating contact between the child and rejected parent or attending ... therapy, brings no negative consequences.”<sup>99</sup> As for the nuclear option, a New York judge put it well:

The damage to critical thinking is evident in cases where children align with one parent’s view of reality despite conflicting objective evidence and the unanimous judgment of numerous professionals and the judge. In several cases a mentally ill parent has convinced a child that the police, lawyers on both sides of the case, therapists, and the judge conspired against the parent during custody litigation. Some children are coached to make false accusations against a parent. For instance, ten years after their mother was convicted of attempted sexual abuse based on the testimony of her two sons, the boys confessed that their father coached and intimidated them into branding their mother as a sex offender.<sup>100</sup>

## VIII. CONCLUSIONS

The sample case of PA that the query did not find illustrates that colleagues expressing concern about the underreporting of PA cases, are correct. The query used in this research underreports PA

cases. Future research should (1) examine ways to obtain trial court opinions for which there was no appeal; and (2) consider creating a less restrictive inclusion/exclusion. Nevertheless, the 3555 cases analyzed in this study demonstrate experienced jurists, litigators, and mental health professionals across the United States are increasingly recognizing the construct PA, as well as its materiality, relevancy, and admissibility for determining child custody disputes.

As for the PA detractors and their meme of unreliability, it is noteworthy that none of the 3555 case reports documented a family court judge changing the custodial environment to a physically abusive parent. It appears that this is the case because of quality expertise and good advice:

A realistic approach to arriving at a conclusion regarding the presence or absence of domestic violence is being methodical and thorough. The evaluator should request and review police reports, court documents, medical documentation (psychological and physical), interview the parties, speak with collateral sources who know the parties in question, and review other pieces of information made available to them by the parties themselves.<sup>101</sup>

Together with the fact that at least twenty-five percent of the 1181 cases returned in the search involved male alienating parents and female targets, this refutes the claim of some alienation deniers that parental alienation was no more than “fabricated by male perpetrators of intimate partner violence.”<sup>102</sup>

Contrary to the negative memes described above, courts across the United States seem to agree with recent research that “the eight behavioral manifestations of PA,” and “cluster of symptoms or behaviors indicating the presence of alienation in the child can...be reliably identified.”<sup>103</sup> As Saini and colleagues explained:

[T]he identification of PABs [parental alienating behaviors] has produced a set of remarkably concordant findings...Mothers, fathers, children, young adults, and counselors have been able to describe the explicit behaviors that may be perpetrated by one parent and have the capacity to distance, damage, or destroy a child’s relationship with the other parent.<sup>104</sup>

The myriad of research and conclusions like these expressed by Saini, Johnston, Fidler and Bala are routinely relied upon by courts in finding that PA exists - and it hurts children and their parents. The 3555 cases reviewed here make clear that to say that PA does not exist, or that the construct is inadmissible, unjustifiably disparages the sagacity and experience of family court judges. This research documents that over the last thirty-four years, American courts have been increasingly focusing on the “insidious form of emotional abuse”<sup>105</sup> involved in PA and entering orders, decrees, and opinions to stop it.

## NOTES

1. *King v. De Manneville* (1804) 5 East 221, 102 Eng. Rep. 1054 (K.B.). See also *Shelley v. Westbrook* (1817) 37 Eng. Rep. 850; *Earl of Westmeath v. Countess of Westmeath* (1826) 162 Eng. Rep. 992; *In re Barry*, 42 F. 113 (S.D.N.Y. 1844); *In re Burrus*, 136 U.S. 586 (1890). For a fuller explication of parental alienation claims in law, see Deirdre C. Rand, *The History of Parental Alienation From Early Days to Modern Times*, PARENTAL ALIENATION: THE HANDBOOK FOR MENTAL HEALTH AND LEGAL PROFESSIONALS 291–321 (Demosthenes Lorandos et al. eds. 2013) [hereinafter PA HANDBOOK (2013)].

2. William Bernet, *Introduction to Parental Alienation*, PARENTAL ALIENATION - SCIENCE AND LAW (Demosthenes Lorandos & William Bernet eds. Charles C. Thomas *in press*) [hereinafter *PA- SCIENCE AND LAW (in press)*]; STANLEY S. CLAWAR & BRYNNE RIVLIN, *CHILDREN HELD HOSTAGE: DEALING WITH PROGRAMMED AND BRAINWASHED CHILDREN* (A.B.A. 1991) [hereinafter *Clawar & Rivlin (1991)*]; STANLEY S. CLAWAR & BRYNNE RIVLIN, *CHILDREN HELD HOSTAGE: IDENTIFYING BRAINWASHED CHILDREN, PRESENTING A CASE, AND CRAFTING SOLUTIONS* 475–507 (A.B.A., 2d ed. 2013) [hereinafter *Clawar & Rivlin (2013)*]; LORANDOS DEMOSTHENES ET AL., *THE INTERNATIONAL HANDBOOK OF PARENTAL ALIENATION SYNDROME* 158, 169, 433–37 (Richard A. Gardner et al. eds. 2006) [hereinafter *INTERNATIONAL HANDBOOK (2006)*]; APSAC Taskforce, *Munchausen by Proxy: Clinical and Case Management Guidance*, THE AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN (2017), <https://www.apsac.org/guidelines> [hereinafter *APSAC Guidelines*].

3. See Rand, *supra* note 1.
4. See Amy Baker, *Parental Alienation Research and the Daubert Standard*, PA HANDBOOK 322–47 (2013); Amy Baker, *Parental Alienation & Empirical Research*, PA- SCIENCE AND LAW (in press); Bernet, *supra* note 2.
5. Under the auspices of the non-profit *Parental Alienation Study Group*, the Vanderbilt University's Center for Knowledge Management has digitized a bibliography of over thirteen hundred books, book chapters, and articles published in mental health or legal professional journals on parental alienation and closely related topics. PARENTAL ALIENATION DATABASE, <http://mc.vanderbilt.edu/pasg/> (last visited May 5, 2019) [hereinafter *PA Database*].
6. See e.g., Giancarlo, Christine, *Parentectomy: A Narrative Ethnography of 30 Cases of Parental Alienation and What to Do about It* (2018).
7. A “meme” is a concept, image, catchphrase, or piece of media which spreads from person to person via social networks, news sources, or professional journals. Similar to a fad or craze, the meme takes on a life of its own. See Olivia Solon, *Richard Dawkins on the internet's hijacking of the word 'meme'*, WIRED UK (June 20, 2013), <https://www.wired.co.uk/article/richard-dawkins-memes>.
8. DAVID M. LEVY, MATERNAL OVERPROTECTION 153 (1943).
9. WILHELM REICH, CHARACTER-ANALYSIS 265 (Theodore P. Wolfe trans., 3d ed. 1949).
10. J. LOUISE DESPERT, CHILDREN OF DIVORCE 63 (1953).
11. Murray Bowen, *Family Psychotherapy*, 31 AM. J. ORTHOPSYCHIATRY 40, 48–9 (1961).
12. Philip J. Resnick, *Child Murder by Parents: A Psychiatric Review of Filicide*, 126 AM. J. PSYCHIATRY 73, 78 (1969).
13. Jack C. Westman et al., *Role of Child Psychiatry in Divorce*, 23 ARCHIVES GEN. PSYCHIATRY 416, 419 (1970).
14. SALVADOR MINUCHIN, FAMILIES AND FAMILY THERAPY 102 (1974).
15. David J. Sheffner & John M. Suarez, *The Postdivorce Clinic*, 132 AM. J. PSYCHIATRY 442, 443 (1975).
16. Judith S. Wallerstein & Joan B. Kelly, *The Effects of Parental Divorce: Experiences of the Child in Later Latency*, 46 AM. J. ORTHOPSYCHIATRY 256, 266 (1976).
17. Id. (“It should be noted that none of these children...had previously rejected the parent who, subsequent to the alignment, became the target of their angers.”)
18. Alan M. Levy, *Child Custody Determination – A Proposed Psychiatric Methodology and Its Resultant Case Typology*, 6 J. PSYCHIATRY & L. 189, 207 (1978).
19. Janet R. Johnston et al., *Latency Children in Post-Separation and Divorce Disputes*, 24 J. AM. ACAD. CHILD PSYCHIATRY 563, 569 (1985).
20. Elissa P. Benedek & Diane H. Schetky, *Custody and Visitation: Problems and Perspectives*, 8 PSYCHIATRIC CLINICS N. AM. 857, 868 (1985).
21. Richard A. Gardner, *Recent trends in divorce and custody litigation*, 29 ACAD. F. 3 (1985); Richard A. Gardner, Paper presented for the Ninth Annual Herschfeld Lecture: The parental alienation syndrome (June 11, 1986); RICHARD A. GARDNER, THE PARENTAL ALIENATION SYNDROME AND THE DIFFERENTIATION BETWEEN FABRICATED AND GENUINE CHILD SEX ABUSE (Creative Therapeutics 1987).
22. See Gardner, *supra* note 2 (citing to Richard A. Gardner, *Recent Trends in Divorce and Custody Litigation*, 29 ACAD. F. 3 [1985] [emphasis in original]).
23. Richard A. Gardner, *Recent Trends in Divorce and Custody Litigation*, 29 ACAD. F. 3 (1985).
24. See, e.g., *The Gardner Library*, DR. RICHARD A. WARSHAK, <https://www.warshak.com/resources/gardner.html> (last visited May 5, 2019).
25. When the American Psychological Association published *Guidelines for Child Custody Evaluations in Divorce Proceedings* in 1994, Gardner was cited more than any other single authority in the “Pertinent Literature” section. American Psychological Association, *Guidelines for Child Custody Evaluations in Divorce Proceedings*, 49 AM. PSYCHOL. 677, 677–80 (1994). In the recent text published by the American Bar Association—*Children Held Hostage: Identifying Brainwashed Children, Presenting a Case, and Crafting Solutions*—33 percent of the citations in the bibliography have “parental alienation,” “parental alienation syndrome” or “alienation” in their titles, and Richard Gardner’s work is cited twenty-three times. Clawar & Rivlin (2013), *supra* note 2, at 475–507. Since Gardner’s numerous contributions, there have been hundreds of peer-reviewed articles, chapters in scholarly books, presentations at professional meetings, and legal treatises on PA. See *PA Database*, *supra* note 5 (“This database contains more than 1,000 books, book chapters, and articles published in mental health or legal professional journals. Most of these references pertain directly to parental alienation and parental alienation syndrome; some of the references pertain to a closely related topic such as divorce, child custody, parenting time, or sexual abuse. Newspaper and magazine articles and unpublished presentations at professional meetings are not included, unless they are unusually important.”). NOTE: There are dozens of peer-reviewed scientific publications by Richard Gardner in this extensive bibliography. Although Gardner’s detractors tend to overlook it, he went on to publish at least two dozen peer reviewed articles on his sense of an alienation syndrome.
26. JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, SECOND CHANCES: MEN, WOMEN, AND CHILDREN A DECADE AFTER DIVORCE 196 (1989).
27. Clawar & Rivlin (1991), *supra* note 2, at 7 (emphasis in original).
28. Id. (emphasis in original).
29. Id. at 8 (UK spelling of program in the original). See also Clawar & Rivlin (2013), *supra* note 2.

30. Leona Kopetski, *Identifying Cases of Parent Alienation Syndrome, Part I*, 27 COLO. L., Feb. 1998, at 65, 65. See also Leona Kopetski, *Commentary on Parental Alienation Syndrome* in INTERNATIONAL HANDBOOK (2006), *supra* note 2, at 380 (“When I first began encountering the alienation cases in the 1970s, I thought of these families simply as disturbed. It would be another decade before Gardner introduced the term PAS...On balance, his work was extremely helpful to me as it confirmed my independently derived observations.”).
31. Ira Daniel Turkat, *Divorce Related Malicious Mother Syndrome*, 10 J. FAM. VIOLENCE 253, 253 (1995).
32. Joan B. Kelly & Janet R. Johnston, *The Alienated Child: A Reformulation of Parental Alienation Syndrome*, 39 FAM. CT. REV. 249, 251 (2001).
33. Richard A. Gardner, *Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?*, 30 AM. J. OF FAM. THERAPY 93–115 (2002).
34. Richard A. Warshak, *Bringing Sense to Parental Alienation: A Look at the Disputes and the Evidence*, 37 FAM. L. Q., Summer 2003, at 273, 292. See also Douglas Darnall, *Parental Alienation: Not in the Best Interest of the Children*, 75 N.D. L. REV. 323, 325 (1999) (“There has been a lot of confusion about the definitions of parental alienation and parental alienation syndrome. For purposes of this essay, parental alienation is any constellation of behaviors, whether conscious or unconscious, that could evoke a disturbance in the relationship between a child and the targeted parent.”).
35. Amy J.L. Baker & Douglas Darnall, *A Construct Study of the Eight Symptoms of Severe Parental Alienation Syndrome: A Survey of Parental Experiences*, 47 J. DIVORCE & REMARRIAGE 55, 70 (2007).
36. William Bernet, *Parental Alienation Disorder and DSM-V*, 36 AM. J. FAM. THERAPY 349, 351 (2008).
37. Amy Baker et al., *Brief Report on Parental Alienation Survey*, ASS’N OF FAM. & CONCILIATION CTS. (May 5, 2011), [http://www.afccnet.org/Portals/0/PublicDocuments/2011\\_may.pdf](http://www.afccnet.org/Portals/0/PublicDocuments/2011_may.pdf).
38. Joan B. Kelly, *Commentary on “Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children”* (Warshak, 2010), 48 FAM. CT. REV. 81, 82 (2010).
39. Amy J.L. Baker & Jaclyn Chambers, *Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation*, 52 J. DIVORCE & REMARRIAGE 55 (2011).
40. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 716 (5th ed. 2013).
41. Warshak, *supra* note 33, at 273, 292.
42. Bernet, *supra* note 36, at 351; PARENTAL ALIENATION, DSM-5, AND ICD-11 (William Bernet ed. 2010).
43. PA HANDBOOK, *supra* note 1.
44. Marjorie Gans Walters & Steven Friedlander, *When a Child Rejects a Parent: Working with the Intractable Resist/Refuse Dynamic*, 54 FAM. CT. REV. 424 (2016).
45. APSAC Guidelines, *supra* note 2, at 4–6 (with a description of the many modes of child emotional abuse parental alienation can cause).
46. Jennifer J. Harman et al., *Parental alienating behaviors: An unacknowledged form of family violence*, 144 PSYCHOL. BULL. 1275–99 (2018).
47. A “Note” in a law school’s journal is a student-authored piece of academic writing which discusses and analyzes an original legal issue or problem in some depth. See *Note Submissions*, STANFORD L. REV., <https://www.stanfordlawreview.org/submissions/notes-article/> (last visited May 5, 2019).
48. Cheri L. Wood, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability*, 27 LOY. L.A. L. REV. 1367, 1373 (1994) (discussing *Karen B. v. Clyde M.*, 574 N.Y.S.2d 267 [1991]). It should be noted that this author made three attempts to contact Ms. Wood with reference to this student article, her background (if any) in science and the impact (if any) of faculty supervisors. Attempts were made to contact Ms. Wood, through her former law firm employer, the State Bar of California and finally, via telephone. She did not respond to inquiries.
49. Wood, *supra* note 48 (discussing *Matter of Karen “PP” v. Clyde “QQ”*, 197 A.D.2d 753, 602 N.Y.S.2d 709 (1993)).
50. Wood, *supra* note 48 at 1373 referring to Lucy Berliner, Jon Conte, Kathleen Faller, Roland Summit and others. It is noteworthy, that student Wood also cites ((numerous times)) as an authority, a sensational 1993 newspaper article by Rorie Sherman, *Gardner’s Law*, NAT’L L.J. 1, 46 (Aug. 16, 1993).
51. Gardner and other experts testified in a civil suit brought by a father against Faller and her colleagues claiming that they had emotionally abused his daughter and induced her to make unfounded sexual abuse allegations. Dr. Gardner watched a videotape of Faller and her colleagues interviewing a three-year-old child with repeated, leading questions and sexually explicit pictures and dolls. Gardner testified that the interview process Faller and her group carried out was among the worst he had ever seen. Soon after this testimony, Faller began to attack Dr. Gardner’s work on alienation in the social work literature. According to the *Detroit Free Press*, the lawsuit in which Gardner testified found Faller’s University employer spending well over one and a half million dollars in defense costs to avoid a plaintiff who would have settled for one tenth that amount. See *Champney v. Faller et al.*, Washtenaw Cir. Ct. No. 95-4760CK; Jack Kresnak, *Expert and her methods on trial*, DETROIT FREE PRESS (Nov. 3, 1997), and follow up articles detailing the *Free Press’s* Freedom of Information Act suit to discover the taxpayer dollars spent on Faller’s defense. See also Stephanie Hepburn, *U Prof. faces trial on charges of improperly interviewing a child*, MICHIGAN DAILY (Nov. 4, 1997), <https://digital.bentley.umich.edu/midaily/mdp.39015071754985/809>.
52. Kathleen Faller obtained a Ph.D. in social work and social psychology, and the program in which she teaches offers a Ph.D. in a blend of social work and social psychology, but does not qualify the graduate for licensure as a psychologist. Her citation, at her note 8, was to “Faller, K. & DeVoe, E. (1995). Allegations of Sexual Abuse in Divorce, 4 *Journal of Child*

*Sexual Abuse 1.*” Kathleen C. Faller, *Child Maltreatment and Endangerment in the Context of Divorce*, 22 U. ARK. LITTLE ROCK L. REV. 429 (2000) [hereinafter Faller (2000)].

53. Faller (2000), *supra* note 52, at 431. *See also* Bernet, *supra* note 2, at 401–6 (explicating Faller’s work, the lawsuits against her and the findings of a special panel of the Michigan Court of Appeals into her methodology in *Bielaska v. Orley*, Nos. 173666, 174949, 175287, slip op. at 35, 38, 45 [Mich. Ct. App. July 19, 1996]), [https://courts.michigan.gov/opinions\\_orders/opinions\\_orders/pages/default.aspx?SearchType=2&CaseNumber=173666&CourtType\\_CaseNumber=2](https://courts.michigan.gov/opinions_orders/opinions_orders/pages/default.aspx?SearchType=2&CaseNumber=173666&CourtType_CaseNumber=2) -and- [http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/19960719\\_C173666\(0065\)\\_173666.OPN.PDF](http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/19960719_C173666(0065)_173666.OPN.PDF).

54. Carol S. Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases*, 35 F.A.M. L. Q. 527, 550 n. 83 (2001). *See also* Bernet, *supra* note 53, at 403–7 (explicating Bruch’s analysis and citations to questionable authority, such as Karen Winner, *Protecting Yourself from Your Lawyer*, DC’S EXPERT ONLINE SERIES [Apr. 18, 1997 13:38 EDT], <http://www.divorcecentral.com/DCLive/expert/winner.html>).

55. *See, e.g., Hoult v. Hoult*, 792 F. Supp. 143 (1992); *Hoult v. Hoult*, 57 F.3d 1 (1995); *Hoult v. Hoult*, 157 F.3d 29 (1998); *In Re Hoult*, 243 B.R. 818 (Bankr. M.D. Fla. 1999); *Hoult v. Hoult, et al.*, 2002 WL 1009378 (D. Mass.); *Hoult v. Hoult*, 2003 WL 21414304 (D.Mass.); *Hoult v. Hoult*, 373 F.3d 47 (2004). *See also* R. Christopher Barden et al., *The assessment of repressed and recovered memories - protecting the integrity of the legal system in THE LITIGATOR’S HANDBOOK OF FORENSIC MEDICINE, PSYCHIATRY AND PSYCHOLOGY* (Demosthenes Lorandos ed., Thomson Reuters WEST in preparation 2020).

56. Jennifer Hoult, *The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy*, 26 CHILD. L. RTS. J. 1, 6 (2006).

57. Marlene Moses et al., *Parental Alienation in Child Custody Disputes*, 47 TENN. B.J. 25, 26 (2011).

58. *In re Barry L. Goldstein* (N.Y. App. Div. Dec. 30, 2008) (unreported), <https://caselaw.findlaw.com/ny-supreme-court/1376997.html>; *Attorney Detail, Barry L. Goldstein*, N.Y.S. UNIFIED CT. SYS., [http://iapps.courts.state.ny.us/attorney/AttorneyDetails?attorneyId=Ok\\_PLUS\\_hiXqeYE\\_PLUS\\_ymwPoY\\_PLUS\\_38Dw%3D%3D](http://iapps.courts.state.ny.us/attorney/AttorneyDetails?attorneyId=Ok_PLUS_hiXqeYE_PLUS_ymwPoY_PLUS_38Dw%3D%3D) (last visited May 5, 2019) (Registration Status: Suspended).

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59. BARRY GOLDSTEIN & ELIZABETH LIU, REPRESENTING THE DOMESTIC VIOLENCE SURVIVOR 4 (Civic Research Inst. 2013). *See also supra* note 57.

60. Holly Smith, *Parental Alienation Syndrome: Fact or Fiction? The Problem with its use in Child Custody Cases*, 11 U. MASS. L. REV. 64, 80 (2016) *inter alia* Wood, *supra* note 48, at 1410; Allison M. Nichols, *Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes*, 112 MICH. L. REV. 663, 673 (2014); Stephanie Dallam, *Are “Good Enough” Parents Losing Custody to Abusive Ex-Partners?*, LEADERSHIP COUNCIL ON CHILD ABUSE & INTERPERSONAL VIOLENCE, <http://www.leadershipcouncil.org/1/pas/dv.html> (last updated May 27, 2006).

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63. Stephanie J. Dallam, *Parental Alienation Syndrome: Is it scientific?*, LEADERSHIP COUNSEL ON CHILD ABUSE & INTERPERSONAL VIOLENCE, <http://leadershipcouncil.org/1/res/dallam/3.html> (last visited May 5, 2019).

64. Lenore A. Walker et al., *A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court*, 1 J. CHILD CUSTODY 47, 48–9 (2004).

65. Robert E. Emery, *Parental Alienation Syndrome Proponents Bear the Burden of Proof*, 43 F.A.M. CT. REV. 8, 9 (2005).

66. *See, e.g.,* McCORMICK ON EVIDENCE 306–307 (Kenneth S. Broun et al. eds., 6th ed. 2006).

67. BLACK’S LAW DICTIONARY 598 (8th ed., 2004).

68. *See, e.g.,* FED. R. EVID. 401.

69. INTERNATIONAL HANDBOOK (2006), *supra* note 2, at 333–51.

70. Demosthenes Lorandos, *Parental Alienation and North American Law*, PARENTAL ALIENATION: THE HANDBOOK FOR MENTAL HEALTH AND LEGAL PROFESSIONALS 348–424 (2013).

71. The author expresses his gratitude to Thomson-Reuters WEST for the free access it provided to the WESTLAW data base to enable this research.

72. Note that the Westlaw query, as coded, would not necessarily provide data on cases where an expert found no PA, or where a judge found no PA whether or not an expert testified, although these queries would be valuable to run in the future.

73. The research assistants were a college certified paralegal, a junior associate attorney, three law school graduates awaiting their bar examination results and one third year law student who had attained a doctoral degree before law school. Three of the research assistants were male and three were female.

74. Leslie M. Drozd & Nancy Williams Olesen, *Is It Abuse, Alienation, and/or Estrangement?: A Decision Tree*, 1 J. CHILD CUSTODY 65, 76 (2004).

75. Drozd & Olesen, *supra* note 74, at 88.



76. Kelly & Johnston, *supra* note 31, at 251. *See also* Drozd & Olesen, *supra* note 74, at 69 (noting “the differential analysis of allegations of alienation and allegations of spousal abuse”).

77. Kelly, *supra* note 31, at 82 (citing to Fidler, B. J., & Bala, N. [2010]). Children resisting postseparation contact with a parent: Concepts, controversies, and conundrums. 48 FAM. CT. REV. 81.

78. Michael Saini, Janet R. Johnston, Barbara Jo Fidler & Nicholas Bala, *Empirical Studies of Alienation, in* PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT 374, 423 (Leslie Drozd et al. eds., 2d ed. 2016).

79. Joan Meier (2019) Draft Summary of Family Court Outcomes Study, National Institute of Justice Grant 2014-MU-CX-0859 at 23 *And see*: <https://www.ncfr.org/sites/default/files/2018-12/ncfr-presentation-nov-2019--meier.pdf>

80. James N. Bow et al., Examining Parental Alienation in Child Custody Cases: A Survey of Mental Health and Legal Professionals. 37 THE AM. J. OF FAM.THERAPY, 136 (2009).

81. Meier, *supra* note 79 at 19.

82. *Id.* at 21.

83. *Id.* at 19, 21

84. *Id.* at 9.

85. *See* MED v. JPM, 350 S.E.2d 215 (1986); *Newsom v. Newsom*, 557 So.2d 511 (Miss. 1990); *Pallay v. Pallay*, 605 So.2d 582 (Fla. Ct. App. 1992); *Becker v. Becker*, 613 So.2d 275 (La. Ct. App. 1993); *Chase v. Chase*, 825 N.Y.S.2d 310 (N.Y. App. Div. 2006); *Grigsby v. Grigsby*, 39 So.3d 453 (Fla. 2d DCA 2010).

86. *See, e.g.*: *L.S. v. C.T.*, 2009 S.D. 2, 760 N.W.2d 145 (S.D. 2009); *K.M. v. S.M.M.*, 2011 WL 3176534 (N.J. Sup. Ct. Jul. 28, 2011); *Doe v. Roe*, No. NNHFA094037658, 2012 WL 2899327 (Feb. 2, 2012); *Domenicone v. Domenicone*, No. 2012CV210735 (Ga. Sup. Ct. Nov. 25, 2013); *M. v. S.*, 2018 WL 775420, at \* 7–9 (Md. Ct. Spec. App. Feb. 5, 2018).

87. Meier, *supra* note 79 at 21.

88. This author, several researchers and Westlaw reference attorneys spent hours working to find law reviews, treatises or articles on back numbering, numbers of trial court cases from the number of appellate cases on a particular issue. No treatise, article or algorithm was located.

89. *See, e.g.* Nikki Graf, Anna Brown & Eileen Patten, *The narrowing, but persistent, gender gap in pay*, FACTTANK: NEWS IN THE NUMBERS (Apr. 9, 2018), <http://www.pewresearch.org/fact-tank/2018/04/09/gender-pay-gap-facts/>.

90. While firm numbers on precisely how many of these cases involved false allegations are unavailable, more generally, data gathered by DHS’ Children’s Bureau showed that for FFY 2016, of the 3.5 million children who were the subject of at least one report of child abuse, only 17.2 percent received dispositions of substantiated or indicated, while the remaining 82.8 percent “were determined to be nonvictims of maltreatment.” U.S. DEP’T OF HEALTH & HUMAN SERV., ADMIN FOR CHILDREN AND FAMILIES, CHILD MALTREATMENT 2016, Appendix C at x (2018).

91. Amy J.L. Baker & Paul R. Fine, *Educating divorcing parents: Taking them beyond the high road in* WORKING WITH ALIENATED CHILDREN AND FAMILIES : A CLINICAL GUIDEBOOK 90, 95–97 (A.J.L. Baker and S.R. Sauber eds., Routledge 2013).

92. *Doe v. Roe*, No. NNHFA094037658, 2012 WL 2899327 (Conn. Super. Ct. Feb. 2, 2012). For examples of other, similar cases where PA appears to occur, but was not returned by the search query, see *In re Marriage of Cobb*, 26 Kan.App.2d 388, 988 P.2d 272 (1999)(where an alienating mother continued to make false allegations, custody was changed to target father); *L.S. v. C.T.*, 760 N.W.2d 145 (S.D. 2009)(where an alienating mother made repeated, unfounded allegations with different agencies in two states, custody was changed to target father); *K.M. v. S.M.M.*, 2011 WL 3176534 (N.J. Sup. Ct. App. Div. Jul. 28, 2011)(where an alienating mother’s pattern of behavior including false abuse reports resulted in custody changing to target father). Each of these cases were found during the author’s continuing work of annually updating the two-volume set, *Cross-Examining Experts in the Behavioral Sciences*.

93. *Doe*, *supra* note 92, at \*8.

94. *Id.* at \* 14 (*emphasis added*).

95. *Id.* at \* 17. (Note that while this case of severely alienating behaviors involved sexual abuse allegations, severely alienating behaviors can also occur even absent sexual abuse allegations.)

96. *Id.* at \* 18.

97. *Id.* at \*24, \*36–37 (“The nature of Ms. Doe’s contact with her child must be supervised. Without the supervision there is nothing to prevent her from imposing her thoughts and concerns on the child, or, to prevent her endless examination of his body in pursuit of proof.”)

98. *Id.* at \*32–33.

99. *See* Kelly, *supra* note 38, at 85.

100. *People v. Bronson*, 32 Misc.3d 201, 202, 921 N.Y.S.2d 509 (2011) (where the court countenanced the son’s “admission that as a troubled adolescent, he, prodded by his stepmother and father, falsely accused his mother of sex abuse and then repeated the fabricated assertion under oath at his mother’s trial to curry favor with his father.”)

101. Peter G. Jaffe, Janet R. Johnston, *Claire V. Crooks*, Nicholas Bala, *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 FAM. CT. REV. 500 (2008).

102. This claim had previously also been refuted by many behavioral science researchers. *See* Barbara Jo. Fidler & Nicholas Bala, *Children resisting postseparation contact with a parent: Concepts, controversies, and conundrums*. 48 FAM. CT. REV. 81 (2010) citing to Bruch, *supra* note 53, Hoult, *supra* note 55, at 26, Joan Meier, *A Historical Perspective on Parental Alienation Syndrome and Parental Alienation*, 6 J. CHILD CUSTODY, 232, (2009).

103. Saini et al., *supra* note 78.

104. *Id.* at 418.

105. Janet R. Johnston & Joan B. Kelly, *Rejoinder to Gardner's "Commentary on Kelly and Johnston's 'The Alienated Child: A Reformulation of Parental Alienation Syndrome,'" 42 FAM CT. REV. 622, 626 (2004).*

*Demosthenes Lorandos is an attorney and forensic psychologist with PsychLaw in Michigan. The Author extends thanks to all the members of the PsychLaw staff who helped in the development of this research, particularly Shawn Wygant, Elle Murphree and Melissa Blevins. Correspondence concerning this article should be addressed to Dr. Lorandos, PsychLaw, P.O. Box 734, Hamburg, Michigan 48139.*