

## **Testimony Regarding How Child Abuse Allegations are Ignored in Family Court and Parental Alienation Syndrome (PAS) is used as a Rationale to Award Custody of Children to an Abusive Parent**

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My name is Joan S. Meier, a law Professor at George Washington University and Founder of DV LEAP, an advocacy group for expert appellate litigation to reverse unjust trial court rulings and to protect the legal rights of women and children victimized by family violence. We would like to take this opportunity to testify and express our concern for current legislation being introduced to promote the use of Parental Alienation Syndrome as a tool to abuse domestic violence (DV) victims in family court.

### **The Problem**

“Protecting our children is one of the most important things that we can do for society. Unfortunately, some courts are overlooking potential signs of abuse and are relying on scientifically unsound factors to make decisions that impact a child’s life.” Congressman Ted Poe

Despite numerous legislative and policy reforms designed to protect DV victims, many survivors and their children are denied legal protections in family court. Expert commentators assert that family courts are awarding unfettered access or custody to abusive fathers, and increasingly cutting children completely off from their protective mothers. This has been observed especially where mothers allege child sexual abuse. Studies show that an abuser will invoke the “alienation” defense, accusing the mother of trying to turn the children against him, rather than the court acknowledging that his abusive behavior has driven the children away.

Studies also have identified a trend toward favoring fathers, in contrast to widespread assumptions that mothers are favored in custody litigation. The findings reveal a pattern of family court failures to consider evidence of intimate partner violence, disrespectful treatment of battered women, gender biased treatment of mothers, and granting of physical custody to perpetrators of intimate partner violence. One study found that court preferences for joint custody and the

“friendly parent” principle outweighed judicial consideration of abuse claims. More in-depth empirical research has examined the lack of expertise in domestic violence and child abuse—particularly child sexual abuse—among forensic custody evaluators, who are relied on heavily by the courts.

**IN CUSTODY CASES WHERE MOTHERS AND CHILDREN REPORT THE FATHER’S SEXUAL ABUSE OF THE CHILD, THE COURT SIDES WITH THE FATHER 81% OF THE TIME.**

**EVEN WHEN FAMILY COURTS ACKNOWLEDGE THAT A FATHER HAS BEEN VIOLENT TO THE MOTHER OR CHILD, THE COURT SIDES WITH THE FATHER 38% OF THE TIME.**

A primary mechanism giving evaluators and courts a quasi- scientific rationale for rejecting or ignoring abuse allegations is the theory of “parental alienation (PA),” originally called “parental alienation syndrome (PAS),” and also called “child alienation,” or simply “alienation.” PAS is a construct invented and promoted by Richard Gardner to describe a “syndrome” whereby vengeful mothers employed child abuse allegations in litigation as a powerful weapon to punish ex-husbands and ensure custody to themselves. Gardner claimed that child sexual abuse allegations were rampant in custody litigation, and that the vast majority of such claims are false, designed by the mother to “alienate” the child from the father and drive him out of the child’s life. Gardner also characterized PAS as profoundly destructive to children’s mental health and as risking their relationships with their (purportedly falsely accused) fathers for life. Recommended remedies to PAS were often draconian, including a complete cutoff from the mother in order to “deprogram” the child. PAS quickly became widely incorporated into custody litigation when any abuse—not just child sexual abuse—was alleged.

## **The Solution**

On September 25, 2018, The U.S. House of Representatives passed H Con Res 72, a concurrent resolution urging state courts to determine family violence claims and risks to children before considering other ‘best interest’ factors. **The resolution, backed by dozens of organizations advocating for protection of women and children\*, encourages states to ensure courts rely only on admissible evidence and qualified experts, and adopt qualification standards for third-party appointees. It also affirms that Congress is prepared to use its oversight authority to protect at-risk children. The resolution also asks**

**for strengthened evidence admissibility standards to help ensure only scientific facts or qualified expert testimony are used to prove or disprove child abuse allegations.**

**It urges Congress to:**

- **identify child safety as the first priority in custody and visitation adjudications, considering it before all other interest factors;**
- **allow only qualified scientific evidence and certified expert testimony to be introduced in cases involving child abuse claims; and**
- **mandate Congressional hearings around the practices of family courts when handling family violence allegations.**

DV LEAP also partnered with the Dept. of Justice's Office on Violence Against Women on a 2-year cooperative agreement to improve the family court system's ability to protect children in custody cases involving domestic violence or child abuse. The agreement has concluded but great accomplishments and resources were achieved. In partnership with the Leadership Council on Child Abuse and Interpersonal Violence, we provided education on critical issues that often determine case outcomes, such as the misuse of flawed parental alienation theories and failure to consider evidence of abuse. One particularly powerful aspect of the Project's work was the development of a unique database of cases that have "Turned Around." These are cases in which the initial custody order placed a child (or children) in dangerous contact with an abusive parent and a subsequent order protected the child. Analysis of these cases provided valuable understanding of how and why custody evaluations so frequently fail to identify or predict actual risk to children who are victims of family violence.

**As a result of this Cooperative Agreement, DV LEAP and the Leadership Council produced a number of written tools and resource materials to assist professionals working in the family court system. Links to each of the documents are provided below.**

## **I. Resources on the misuse of Parental Alienation Syndrome/Parental Alienation**

1. [Critical Bibliography of articles on Parental Alienation Syndrome and Parental Alienation](#)
2. [Summary of Case Law Addressing Parental Alienation Syndrome and Parental Alienation](#)
3. [Fact Sheet on PAS Admissibility](#)
4. [Scientific and Professional Rejections of Parental Alienation Syndrome](#)

## **II. Resources for attorneys and advocates representing protective parents**

1. [Guidelines on Best Practices for Litigating Custody and Abuse Cases in Order to Preserve Appeals to State Court and the Supreme Court](#)
2. [Preparing DV Survivors for a Custody Evaluation](#)
3. [Making the Record for Appeal](#)
4. [Pro Se Guidelines on How to Make the Record for Appeal \(any jurisdiction\)](#)
5. [Pro Se Guidelines on How to Make the Record for Appeal \(WV annotations\)](#)
6. [Tip Sheet for Litigants and Their Advocates for Custody Evaluations](#)

## **III. Research Summaries**

1. [Research Indicating That the Majority of “High Conflict” Contested Custody Cases Have a History of Domestic Violence](#)
2. [Rates at Which Accused and Adjudicated Batterers Receive Sole or Joint Custody](#)
3. [Scientific and Professional Rejections of Parental Alienation Syndrome](#)
4. [False Allegations of Intimate Partner Violence and Child Abuse](#)

## **IV. Other Resource Materials**

Critiques and Case Reports of GALs’ Failures to Protect Children in Custody and Abuse Cases

Data on False Allegations in Custody

Context. [https://drive.google.com/file/d/1ehdOb-hS0v0Ot\\_rIoK\\_wc6QYySRtLPV6/view](https://drive.google.com/file/d/1ehdOb-hS0v0Ot_rIoK_wc6QYySRtLPV6/view)

We respectfully suggest that any family court legislation involving custody, PAS, allegations of child abuse and DV be thoroughly vetted by experts in the field of Domestic Violence.

Thank you for the opportunity to submit this written testimony. I can be reached with any questions at [jmeier@law.gwu.edu](mailto:jmeier@law.gwu.edu).