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## **Parental Alienation and the Judiciary**

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Increasing numbers of cases are coming before the Courts where one parent feels displaced in relation to the children in the family. The syndrome, parental alienation (PAS), as it is now called, is not a new one, but its importance is being highlighted in the United States as well as in the UK. Judges are often uncertain as to how to treat the situation where one parent seeks to make contact with the children following an estrangement, separation, or an unusually unpleasant and vicious divorce.

There is some pressure on the Judiciary to keep the child or children with the person who has major control, usually the mother. Parental alienation however, also affects some mothers denied contact with their children who are resident with the father. On the whole, it is the male member of the partnership who suffers from the alienation situation.

In recent cases in which I have personally been involved, I had the opportunity of talking about PAS and its problems with two judges, on different occasions. The dilemma is how to deal with the case where the resident partner i.e. the alienating partner, fails to co-operate with the courts in providing adequate access for the other partner. I will recreate the general conversation, on an informal basis and hence no names can be mentioned. Interestingly, similar conversations were repeated with both judges, one male and one female, demonstrating how similar problems are often faced by the Judiciary in parental alienation cases.

**Psych.:** Your Honour, this is a case typical of parental alienation and I feel it is only right that the alienated parent should have contact with the child in question.

**Judge:** But the mother says that the child does not want any contact with the boy.

**Psych.:** This is because there has been a considerable amount of programming, I have discovered through my assessment, to make the child respond in this manner.

**Judge:** This may well be so but how do I deal with this situation when mother stubbornly refuses to allow contact of the child with the father?

**Psych.:** It is a difficult situation, your Honour, but the question remains: should justice be done or should it be ignored?

**Judge:** it is not as easy as that. I have spent time with mothers, even sitting in a cell, to try to get them to see reason to allow their former husbands to have access to a child. Sometimes this has worked while at other times, there has been a refusal. This puts me in a very awkward position since I must consider carefully, first and foremost, the children concerned and they are, after all, in the care of their mother who, if they are deprived of her, due to her being sentenced for failing to follow instructions, will lose a mother vital to their welfare.

**Psych.:** Again it comes down, your Honour, to considering the question of failure to comply with the Court ruling. If an ordinary criminal fails to obey instructions of the Court, some punitive action is taken. Should not some punitive action also follow when a mother, or father for that matter, refuses to accede to the ruling of the judge and the Court?

**Judge:** Well, I will see what I can do on this particular matter and the case before me but I still feel that it is a difficult one to settle, when one of the partners is totally opposed to contact with the child and the child in question has decided openly and before me, to refuse to have any contact with the other parent. Are you suggesting that I fine the mother in question or place her in a prison for failing to adhere to my instructions and that of the Court?

**Psych.:** I personally see no other alternative. It may well be that if such a threat is made, the alienating parent may, in due course, accept what has been recommended by the Court and there will be no need to take the action which you and I both feel is undesirable and may even be counter-productive.

Both judges agreed the case before them was typical of parental alienation and the difficulties they faced are only too obvious. Their first concern, and also that of myself, was the children. If the children have been "brain-washed" and "programmed" in a particular direction, this made the judge's decision all the more difficult.

It is my view that no exception can be made for failing to adhere to the ruling of a court and that justice must be done however painful this may be. It may well be that the alienated parent should eventually gain access following a period of therapy between the psychologist and the child or children in question, to make them aware of what is happening. If older they themselves may well be able to put pressure on the alienating parent to see sense.

From the conversation, it can be seen that many judges are undoubtedly unsure how best to deal with alienating parents - this usually being the mother. Judges are often saved by the fact that fathers cease to pursue their role of wishing to play a part in their children's lives. This is due to the resistance they meet from the former spouse, who has often formed a new relationship and wishes the new partner to take over the role of father. I have even known cases where the mother insisted the child call the new husband "dad" and the natural father by his first name.

Fathers who pursue both their right and their sense of responsibility through the courts are relatively few. Many opt out due to the resistance they meet from their ex-partners, the programmed child and the reluctance of judges to give them justice. This is undoubtedly due to the following:

1. Judges are reluctant to punish and most especially incarcerate obdurate mothers who refuse to comply with a judge's decision that they must allow access with an estranged father.
2. Judges often are reluctant to ignore the view expressed by children that they do not wish to meet their fathers, despite the fact that such children have been "intensively programmed" to respond in this way by mothers and the mother's relations.
3. Judges are reluctant to advise that therapy should take place, despite the fact that when such alienation occurs, children are damaged. Such therapy is often recommended by expert witnesses such as a psychologist or a psychiatrist. Such recommended periods of therapy for the child and mother are viewed by judges (with the aid of the mother's Counsel!) as likely to damage further the children who are involved in this conflict and hostility between the parents.

Despite such reservations, judges have a moral duty to provide justice for the alienated party, this usually being the father. The threat of punishment for the alienator must be supported by punishment, including removing the child from mother's care to a neutral place or to the alienated parent, and to use incarceration when necessary. Failure to carry out this distasteful, but necessary, action against the obdurate party would constitute a mockery of the judicial system. It is my experience as an expert witness to the Courts as a forensic, clinical psychologist, that most alienating parents, whether mothers or fathers, will obey a court order if punishment is threatened for failure to adhere to the ruling. Hence the carrying out of the various possible measures is rarely necessary.

In connection with PAS many judges have, without always being aware, adopted a double standard. They see mothers who are alienators as "victims" to be protected even when they have committed what can only be described as a form of "emotional abuse". They

have abused their powerful position by influencing the young children and turning them against the other parent. They have usurped the role of the other parent or given it to yet another partner with whom they have become associated. In this way, they have, by destroying the right of the other parent taken away that parent's opportunity to contribute to the child's welfare. This is at a time when we are seeking to promote the equality of the sexes. Partners should have equal power and responsibility toward their children.

PAS, when it has been proven, is a vicious form of gender opportunism or gender apartheid, which those seeking through justice can no longer ignore. Judges must stop worrying about public outcries if they remove a child from the care of a vicious programming parent who is showing their hostility toward the former partner.

I therefore suggest that the alienated parents, be they fathers or mothers, be protected. In so doing we are also protecting the children of such a relationship from a gross and calculated mis-use of power or position, that of the resident care giver.

Judges in cases of proven PAS should act as decisively as they would if judging a case of proven crime such as rape or murder. They must remove the child from the emotional damage being heaped upon it, to a safe place, where the non-alienating parent, with the help of therapy for the child, can have his influences felt by the child. At the same time, it is necessary to help the parent who has alienated the child in the first place. He or she has undoubtedly suffered from a considerable amount of pathological hostility towards the former partner.

By removing the child, or children, from the influence of the "brain-washing" alienator, the child has the opportunity of experiencing the dedication of the previously alienated parent and to develop a less biased view of that parent. Also the child can develop a positive view of both parents despite them being at war with each other.

This will do much to ensure for that child that both parents, although hostile towards one another, care and are devoted to him/her. This provides the child with a reasonable start in life, which he or she would not have had, had the influence of the alienator been allowed to continue along with a failure to have any contact with the alienated parent at the same time.

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## **References**

1. Parent Alienation Syndrome: What the legal profession should know, MLJ Vol 66 ( 1998) pt 4, 151.