

Parental Alienation Syndrome Passes the Frye Test

by J. Michael Bone, Ph.D.

In a recent article published in *The Commentator*⁽¹⁾, Miami psychologist, Michael Poliakoff, Ph.D., wrote an article arguing against the case for considering Parental Alienation Syndrome as a valid diagnosis, as well as for it not being admissible as evidence in court. His argument was legalistic in its posture, citing Frye Standards as well as Daubert. His conclusion was that Parental Alienation Syndrome could not pass these legal tests, and likely never would. That article was published in 2000.

It is perhaps ironic that on November 22, 2000, in the 13th Judicial Circuit here in Florida, that a Frye hearing was held wherein Richard Gardner, M.D., Parental Alienation Syndrome's originator; and Richard Warshak, Ph.D., one of PAS's leading psychological advocates, testified for two days in a specifically styled Frye Hearing. The result was that the Court ruled that Parental Alienation Syndrome did indeed pass the Frye Test. The Frye test is related to a 1923 Federal Appeals Court Decision that for scientific evidence to be admissible in court that it must be gathered using techniques that have gained general acceptance in their field.² This ruling was the first time in the United States, that PAS crossed this important legal threshold, obviously contradicting Dr. Poliakoff's predictions.

The key points of the Court's ruling are briefly discussed below.

Specifically, the court ruled, "If I do have to apply a Frye Test he has passed the Frye Test, and I find that Parental Alienation Syndrome has passed the Frye Test in my courtroom which is a Circuit Court courtroom in the Family Law Division, based on the evidence and the argument before me."⁽³⁾ The evidence cited included testimony from Dr. Gardner, his Curriculum Vitae, excerpts from his writings and other works by other writers. The Court, in its opinion, specifically cited an article published some two years before this hearing in the Florida Bar Journal, which was determined to have "credibility."⁽⁴⁾

The Court also heard from two psychologists who argued that Parental Alienation Syndrome was not accepted within the scientific community. Their argument was interpreted by the Court as being tantamount to there being some sort of "disciplinary turf battle" wherein one faction does believe in PAS, and the other faction does not. The Court concludes that this disciplinary divisiveness in no way invalidates the general acceptance of PAS by the scientific community. It was also argued that Parental Alienation Syndrome does not appear in the DSM-IV, which they offered as evidence of its nonexistence.

The DSM-IV is the official diagnostic manual used by mental health professionals in their work with patients. It is a resource containing diagnostic codes and diagnostic criteria. The argument was made that if PAS cannot be found in the DSM-IV, that it does not exist. The Court found that this argument was flawed. The Court reasons that PAS was first described in 1985, and the DSM-IV was last updated in 1994, only 9 years after PAS's original description by Dr. Gardner. Since the DSMs are rewritten every ten to twelve years, reflecting growing scientific knowledge, the Court reasoned that it is not unreasonable that PAS would not appear in the DSM-IV so shortly after it was first described. To support this conclusion, the Court found compelling the argument that AIDS was not in the medical diagnostic manual when it was first described, but that obviously did not invalidate its existence. Additionally, the Court found compelling the argument that Gilles de la Tourette first described his syndrome in 1885. It was not until 1980 that Tourette's Syndrome found its way into the DSM, some 90 years after its description. Therefore, the fact that Parental Alienation Syndrome has not yet appeared in the DSM only nine years after its original description, is an invalid argument against its nonexistence.

The court also found significant the fact that, as proffered by Dr. Richard Warshak, the American Psychological Association approvingly cites works by Dr. Gardner in its child custody guidelines. In fact, Dr. Gardner is the only author amongst this elite list of works cited by the APA, that has three different works cited as essentially being state of the art on the subject of child custody evaluation.

Finally, the Court ruled that all of Dr. Gardner's arguments were bolstered and confirmed by Richard Warshak, Ph.D. who is a psychologist and full professor at a prestigious university. Also submitted into evidence were multiple articles by various authors that echoed and confirmed the existence of Parental Alienation Syndrome within the scientific community.

The fact that Parental Alienation Syndrome has generated so much controversy and heated debate is an interesting question on its own, and one that will be addressed in a future article. Suffice it to say that this ruling **should** begin to answer and calm some of these arguments.

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1. Poliacoff, Jerome H. "Parental alienation Syndrome: Testing Gardner's Theory in the Family Courts" *Commentator*, vol. 9, pp., 2000.
 2. *Frye v. United States*, 293F. 1013, 1014, (D.C. Cir. 1923)
 3. *Kilgore v. Boyd*, Circuit Court of the 13th Judicial Circuit of the State of Florida, Hillsborough County, Family Law Division, Case No. 94-7573, Div. D.
 4. Bone, J. Michael and Walsh, Michael, "Detection of Parental Alienation Syndrome and What to Do About it", *The Florida Bar Journal*