

NATIONAL COALITION FOR FAMILY JUSTICE, INC.
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PSYCHOLOGICAL EVALUATIONS ARE AN UNWARRANTED INVASION OF PRIVACY

In Laurie S. v. Superior Court (1994) 26 Cal.App.4th 195, a juvenile proceeding in which the Department of Social Services sought to have a four-month-old infant declared a dependent of the court, the Department requested that the mother undergo a psychological evaluation by an expert witness under Evidence Code section 730 in order to prove that the minor was at risk of physical harm or neglect due to the mother's mental illness. The juvenile court authorized funds for the psychological evaluation and ordered the mother to cooperate.

The mother petitioned the Court of Appeal for a writ of mandate, claiming that the order requiring her to submit to a psychological evaluation violated her privacy rights. The Department of Social Services responded to the mother's petition by arguing that a psychological evaluation was "necessary to assist the court in determining the current risk of future injury that [the mother] poses to [her minor daughter]" and that the court has inherent authority to order a parent to submit to a psychological evaluation where the parent's mental state is in issue because the state's interest in detecting and preventing child abuse outweighs any invasion of the parent's privacy. (26 Cal.App.4th at pp. 199-201.)

The Court of Appeal issued a writ of mandate directing the superior court to vacate its order requiring the mother to submit to a psychological examination. The court held that, at the prejurisdictional stage, an allegation by the county social services department that a parent is mentally ill or the fact of mental illness alone does not justify a psychological examination of that parent. (26 Cal.App.4th at p. 202.) By denying the allegations in the petition, the court observed, the parent does not tender his or her mental state in issue.

The Court of Appeal acknowledged that in enacting dependency law, it was the intent of the Legislature "to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm." (26 Cal.App.4th at p. 199.) At the same time, the court recognized that the interest of the state in protecting children must be weighed against the important liberty and privacy interests of a parent:

The right to privacy and to be let alone by the government in "the private realm of family life" is among the basic values of ordered liberty. (Prince v. Commonwealth of Massachusetts (1944) 321 U.S. 158, 166.) (26 Cal.App.4th at pp. 199-200.)

After carefully weighing these important personal liberty and state interests, the court held as follows:

Only after a finding that the child is at risk, and assumption of jurisdiction over the child, do a parent's liberty and privacy interests yield to the demonstrated need of child protection. At that stage, where the aim is to reunify parent and child, expert opinion on the cause and extent of mental illness may be required to ascertain which services will eliminate the conditions leading to dependency. (26 Cal.App.4th at pp. 202-203.)

Of course, the case against psych evals is even stronger in the context of family law proceedings.

"YOU DON'T NEED A WEATHERMAN TO KNOW WHICH WAY THE WIND BLOWS"

--Bob Dylan

Laurie S. makes another important point: Experts are appointed under Evidence Code section 730 only to testify to matters that are sufficiently beyond common experience—if a layperson could make the same determination within ordinary experience, no expert is necessary. The Court of Appeal found that the mother's actions toward her infant daughter—screaming, swearing and demonstrating indifference toward the child—could be assessed for risk without expert opinion, as *these are acts which a layperson would understand as inconsistent with caregiving.*

Recently, Judge Stewart ordered psych evals to determine which party was "**more blameworthy**" in fueling the contentious litigation. As if a psychologist was qualified to determine who was bringing frivolous, unnecessary or unsubstantiated motions. Clearly all Judge Stewart had to do was to look in the court file to make this determination.

THE MESSAGE FROM LAURIE S. IS CLEAR: FAMILY COURT IN SANTA CLARA COUNTY MUST STOP INVADING THE PRIVACY RIGHTS AND WASTING THE MONEY OF ITS LITIGANTS--THE COURT MUST PUT AN END TO PSYCH EVALS NOW!!!

PARENTAL ALIENATION SYNDROME -- THE REASON JUDGE STEWART WRENCHES CHILDREN FROM THEIR LOVING, PRIMARY PARENT, AND HANDS THEM ON A SILVER PLATTER TO THEIR ABUSIVE PARENT.

There are numerous cases we know about where **Judge James Stewart** has made an abrupt change in custody from a parent having a long-established pattern of primary care to a basically unnurturing or inattentive parent (until support was sought, that is) on the basis of "Parental Alienation Syndrome," a so-called syndrome that has never been subjected to empirical study, research, or testing. In fact, Parental Alienation Syndrome is simply a classification coined by one man--Richard Gardner--based on his very biased interpretation of his own personal clinical experiences. Yet **Judge Stewart** has repeatedly used this wholly unproved and unscientific theory of one man to cut off all contact between a child and the most important person in that child's world--his or her loving, nurturing parent.

In 1988, researcher and author Jon Conte wrote that the scale upon which Gardner's Parental Alienation Syndrome is based is "probably the most unscientific piece of garbage I've seen in the field in all my time. **To base social policy on something as flimsy as this is exceedingly dangerous.**" (Moss, D.C. (1988) *Abuse Scale: Point System for Abuse Claims*. Journal of the American Bar Association 26.)

In one of **Judge Stewart's** cases several years ago, two siblings ages 9 and 11 had expressed to various therapists the anger and rage they felt toward their father because of his sexual and physical abuse of them (to the point that the 11-yr.-old boy was having homicidal fantasies about his father). In May of 1996, **Judge Stewart** actually issued an order that these children "**be admitted forthwith to Belmont Hills Hospital, under the guidance of the Juvenile Psychiatric Unit for immediate evaluation and treatment for Parental Alienation Syndrome.**" Judge Stewart awarded sole legal & physical custody to the abusive father, completely severed the children's contact with their mother, and allowed the father to move 3000 miles away with the children. The children and the mother have had no contact with each other for over two years and the children have no idea where their mother is or how to get in contact with her. (Nor does the mother know where her children are.)

It is both disturbing and revealing that Richard Gardner believes that "there is a bit of pedophilia in every one of us." (Gardner, R.A. 1991 Sex Abuse Hysteria: Salem Witch Trials Revisited, p. 118, Cresskill, NJ Creative Therapeutics.) Apparently the feeling seems so natural to him he simply can't imagine that everyone else doesn't feel the same thing. Perhaps this also explains why Gardner's views on child sexual abuse so closely parallel those of NAMBLA, the infamous North American Man/Boy Love Association:

Dr. Richard Gardner: A Review of his Theories

NAMBLA	GARDNER
DENIAL OF INJURY	
Redefines adult sexual behavior with children in positive terms. Contrary to popular belief, no injury or harm is incurred by children from engaging in sex with adults. Any harm that follows is due to the inappropriate and prejudicial reactions of ignorant people and society. (De Young, 1989).	"Sexual activities between adults and children are a universal phenomenon which may be part of the natural repertoire of human sexual activity. Such encounters are not necessarily traumatic; the determinant as to whether the experience will be traumatic is the social attitude toward these encounters." (Gardner, 1992, pp. 1-43; 1992, p. 525; 1992 pp. 670-71)
CONDEMNATION OF THE CONDEMNERS	
Redirects the condemnation and censure it has received from larger society back on the society itself. Thus, those who condemn sex between adults and children are characterized as hypocritical and deserving of condemnation themselves. Professionals in the field of child sexual abuse, criminal justice and mental health systems are mocked and accused of engaging in the same or even more victimizing or exploitative acts as those for which NAMBLA members are accused. The "protectors" of children are the real perverts, the real child abusers, who take advantage of the innocence and inexperience of children to spread guilt and fear of sex with adults. (De Young, 1988; 1989).	Therapists and lawyers are motivated by a combination of money, sex and power to fuel a national sexual abuse hysteria. Professionals who do child sexual abuse evaluations are portrayed as poorly trained, ill-qualified, and incompetent people who ask leading questions and utilize coercive techniques which are likened to physical torture. Many unlicensed therapists are "charlatans, and/or psychopaths, and/or incompetents." Investigation of sexual abuse claim may cause greater damage than that done by the abuse. (Gardner, 1988, p. 75; 1991, p. 126; 1991, pp. 45-89; 1992, p. 526).
APPEAL TO HIGHER LOYALTIES	
Normalizes pedophilia by insisting that the interests of a higher principle is being served. This higher principle is the liberation of children from what it characterizes as the repressive bonds of society. NAMBLA portrays itself as an organization that promotes the freedom of children to live and love as they please. (De Young, 1989).	Gardner claims pedophilia is the norm in most cultures and our Western culture is excessively inhibited. Gardner believes that, in the history of the world, men who sexually abuse their children have "probably been more common than the restrained behavior of those who do not sexually abuse their children." Gardner theorizes that pedophilia is a natural phenomenon which may enhance the survival of the species. (Gardner, 1992, p. 1-43; p. 585).
DENIAL OF THE VICTIM	
The child is reconceptualized as having deserved or brought on the deviant behavior. Children are viewed as seducing adults and thus the responsibility of offending individuals for their behavior and its consequences is diminished." (De Young, 1989).	Normal children exhibit a wide variety of sexual fantasies and behaviors, many of which would be labeled as 'sick' or 'perverted' if exhibited by adults. Believes that most children have the capacity to reach orgasm at the time they are born. Normal children may develop strong sexual urges during the first few years of life and may initiate sexual encounters with adults. "At the present time, the sexually abused child is generally considered to be the victim," though the child may initiate sexual encounters by "seducing" the adult. If the sexual relationship is discovered, "the child is likely to fabricate so that the adult will be blamed for the initiation." (Gardner, 1986, p. 93; 1992, p. 12; 1992, p. 15;)

Figure 1. How Gardner's views compare with those of the North American Man/Boy Love Association (NAMBLA)